

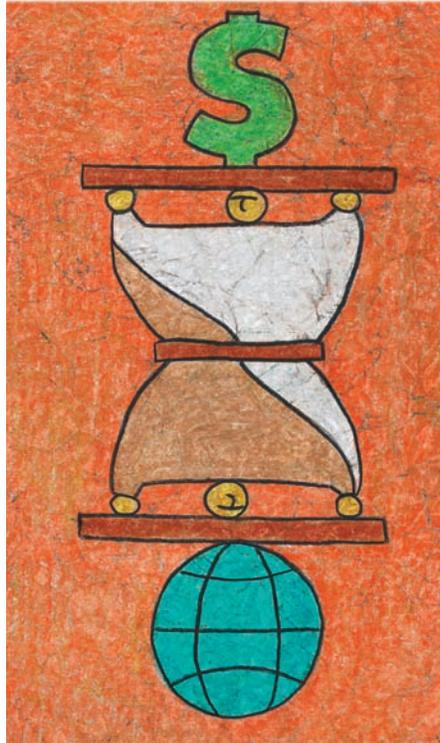


## 'Prequalifying' Primes Pays Off for Subcontractors

by David Walls and Michelle Campney

**I**magine that you need to fill a high-level position in your business. This position is one that will have a visible and immediate effect on your bottom line. Perhaps it is your chief estimator, COO or head of sales. Because you need this person right away, you decide not to ask any applicants for a resume or do any kind of background check. You are going to hire solely on the basis of the fact that you really need to fill the position. Sound crazy?

It is. Yet, many businesses follow this same plan when submitting bids or soliciting work from owners, developers and prime contractors — all of whom will affect their business to at least the same extent as the aforementioned employees. This is likely traceable to the difficult economic environment for the construction industry. When work is scarce, it is hard to be too picky about work. Regardless, there are some basic steps any subcontractor can and



should take to assess, or "prequalify," a prime contractor before taking on any new project.

### Reputation

A great deal of information can and should be learned about a prime contractor's business reputation before bidding a new project. This is especially true if the subcontractor has not worked for the prime contractor previously, or the project is in a state where the subcontractor has not previously worked. The Internet, and particularly social networking sites, can be a wealth of information about a prime contractor.

Many businesses will list their projects and customers on their Web sites, and a few quick phone calls

can provide valuable information regarding how those projects turned out. Many Web sites will also list the trade groups that a prime contractor belongs to, and these can be verified and investigated. This same type of reputation investigation should be done for the project owner and the project architect.

Remember that much information can be discovered simply by speaking to other subcontractors. Questions that should be asked include:

- What type of work is the prime contractor known for in the industry?
- What current or recently completed projects has the prime contractor done?
- What subcontract agreement does the prime contractor use, and can it be negotiated?
- Can a copy of the subcontract be obtained in advance of bidding?
- Will the prime contractor work with the subcontractors when the inevitable project challenges arise?

[Editor's note: ASA-chapter Business Practice Interchanges are a great forum for getting objective information about prospective customers.]

### Project Liens and Legal Filings

Subcontractors also should do a thorough background check on the public legal records pertaining to a prospective prime contractor partner. Many states and counties make these records available on the Internet, but at a minimum they can be checked via a quick trip to the office of the records clerk.

Typically, county records can be checked to determine if

### IN THIS ARTICLE . . .

- **Research primes' reputations.**
- **Research project liens and litigation records.**
- **Investigate financial strength of prime and project financing.**

subcontractors and suppliers have filed liens on projects involving the prospective prime contractor. If a foreclosure action has resulted from the lien, it may mean that, for some reason, payment issues were serious and difficult to resolve. It is important to keep in mind that liens can be filed even when a project is going smoothly, but their existence likely warrants further inquiry.

Subcontractors can check court filings to see if the prime contractor has been involved in litigation, and if so, the nature of the lawsuits that have been filed. Unfortunately, today's society is litigious, so the mere existence of litigation does not

in and of itself reveal much about any business. But a large volume of litigation, or a large volume relative to the number of projects undertaken, may warrant further investigation. Moreover, lawsuit records will show the names of other businesses that can be contacted to obtain additional information.

## Financial Status

A subcontractor should attempt to determine the financial liquidity of the prime contractor. Examining Uniform Commercial Code filings against the prime contractor in the county clerk's office may provide some information in this regard. If there are many filings, most of the prime contractor's assets may be encumbered for financing.

It is even more important to investigate the financial status of the owner and the project. If the project is not fully funded, there is a real possibility the project will terminate and payment in full on the subcontract will not be made. Is the project financed with public, private or a combination of public and private funding? Publicly financed projects need scrutiny, as government

agencies struggle with tight or reduced, and sometimes forecasted, funding. For example, some public projects may be funded in phases and have only partial appropriations before work commences. If the project is privately financed, the project likely has to meet requirements of the financial institution. A project financed by a public-private partnership may have project financing in place, but could lack payment assurances for subcontractors, as liens cannot be filed on public property and a payment bond may not be required.

The subcontractor also should scrutinize the financial health of the industry of which the owner/developer is a part, such as oil and gas, technology, or health care.

## 10 Commandments of Getting Paid

"Prequalifying" the prime contractor will help ensure that the project goes smoothly and that the subcontractor will receive full payment in a timely fashion. Follow these 10 commandments of getting paid:

1. Know your customer.
2. Know your lien rights.
3. Know your bond rights.
4. Calendar all deadlines to file claims.
5. Deal with payment issues immediately.
6. Get change orders and extra work in writing.
7. Obtain the legal description for the property or project.
8. Understand your backcharge rights.
9. Know what happens if you don't get paid.
10. Know whether the contract has an arbitration clause or venue provision.

Taking the time up-front to protect your company will save you time and money in the end.

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### Learn the Right Questions to Ask About GCs/CMs

Gain insights on the questions you should ask to reveal information about unfamiliar GCs and CMs. Purchase FASA's video-on-demand, "Seller Beware! Why You Need to Know Your Customer Before Signing the Subcontract" (Item #8049), at [www.contractorknowledgedepot.com](http://www.contractorknowledgedepot.com) (\$65 for members/\$95 for nonmembers).

