



CONTRACTOR
SAFE



Experts in Contractor
Safety Management

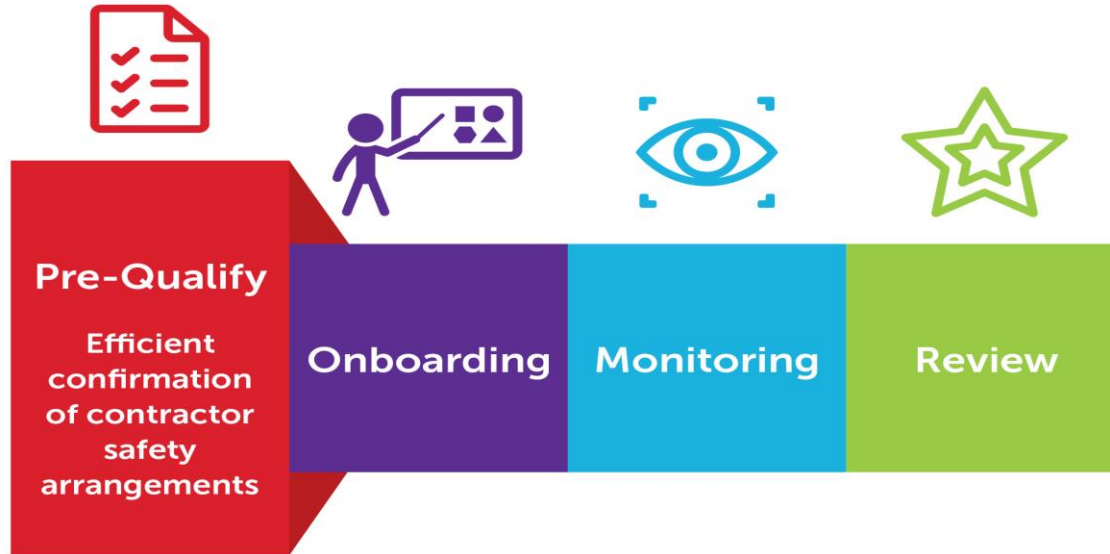
**CONTRACTOR PREQUALIFICATION
WHAT TO ASK AND WHY?**

PRESENTED BY: Director Sue Bottrell



Experts in Contractor Safety Management

Webinar 1- Effective Prequalification



TODAY

1. Why prequalify?
2. Drafting agreements
 1. Appointment of Principal Contractor
 2. Engagement of Independent Contractor
3. What to ask and why?
4. Documentation what to collect and what to do with it.



“just because a Principal has a legal right to issue instructions and it is possible to take that step, this does not establish that it is a step which was reasonably practicable to provide and maintain a safe working environment, even where the Principal has knowledge of the risks and knows of ways to control such risks.”

Baiada v The Queen 2012 – High Court of Australia



WHY PREQUALIFY

- Establish legal relationship
- Confirm obligations of parties
- Clarify operational responsibilities
- Set expectations

**PREQUALIFICATION IS NOT A MEANINGFUL PROCESS TO ASSESS
OPERATIONAL SAFETY**



DRAFTING AGREEMENTS

- What do you want the agreement to do?
 - Appoint Principal Contractor
 - State you are appointing (refer to regs if you want)
 - State what their role is and what they are expected to do (everything)
 - State what your role and what you will **NOT** do
 - Engage Independent Contractor
 - Confirm your role and obligations as a Principal Contractor
 - Confirm their role and obligations as an Independent Contractor
 - Highlight separation of obligations and activity
 - Confirm your reliance on them as the independent expert to manage risks



WHAT TO ASK AND WHY

Fairbrother Pty Ltd Coroner Tasmania – 2018

The Coroner accepted that Fairbrother had "effectively 'got the experts in' to do this high-risk work and most if not all of their workers were entitled to rely on that expertise".



WHAT TO ASK AND WHY

- Confirm safety arrangements of contractor (yes/no)
- Yes you can rely on assurances without evidence!
- Confirm core safety obligations under OHS legislation
- Not elements of ISO 450001
- Confirm management of critical safety concerns for your business
- Outcome not process
- Verification of truth
- Agreement to conditions



DOCUMENTATION – TO COLLECT OR NOT TO COLLECT



Licensing

SafeWork NSW v Lend Lease Pty Ltd [2018] NSWDC

Worker killed by contractor operating a forklift . Contractor and Lend Lease prosecuted

Contractor guilty of failing to confirm licensing

Principal guilty of failing to ensure appropriate traffic management systems were implemented at the premises to prevent pedestrians coming into contact with forklift trucks or their loads when undertaking work in areas where forklift trucks and other vehicles operated,.



LICENSING?

- NOT REASONABLY PRACTICABLE TO CONFIRM LICENSES ON AN ONGOING BASIS
- You can assume trades are licensed until they aren't
- Obtaining licenses at a point in time is of questionable value
- They are out of date the moment after they have been collected
- Cannot stay on top of changes to staff by contractors
- Administrative nightmare
- Undertake random license checks as part of monitoring



TO SWM OR NOT TO SWM

Leighton v Brian Allen Fox High Court 2009

“A Principal Contractor owes no stringent or strict common law duty to train subcontractors engaged to work on a site in the way the subcontractor is to perform its specialty work;”

“It is not reasonably practicable to require a Principal Contractor to implement, review or monitor the work methods of independent contractors.”



TO SWM OR NOT TO SWM

An employer/ PCBU undertaking the high-risk construction work is responsible for preparing, implementing and supervising SWMS for high risk construction work as defined under WHS regulation.

A contractor undertaking HRCW is the employer/ PCBU for the purpose of the regs.

A SWMS must be prepared at a time when enough is known about the work and the hazards to inform the SWMS.

The purpose of a SWMS is to allow an employer to consider HRCW and decide on hazard controls

Generic SWMS may only provide guidance, they must be customised

To request SWMS at the prequalification stage is nonsense.



This is SWMS

HRC Task	Hazard	Controls	Implementation
Work at height	Fall from roof	Erect scaffolding	Contractor to implement, daily inspection
Work near mobile plant	Struck by forklift in loading bay	Pedestrian exclusion	Install physical barriers (water filled bollards)
Work near live electrical installation	Contact with overhead powerlines	Appoint spotter	Appoint and train spotter
Location:			
Sign off			
Date:			



WHS Act and Collection of SWMS

- The WHS Regulations requires contractors give SWMS to Principal Contractor – **AMEND TO HAVE AVAILABLE**
- WHS Regulation requires that a Principal Contractor must take reasonable steps to collect SWMS - **AMEND TO CONFIRM PREPARATION**

WorkSafe Victoria

“our concern is not what is written but what actually happens”



IN SUMMARY

- Prequalification is a legal process NOT a safety management process.
- It cannot provide evidence of anything more than the ability to prepare paperwork
- Prequalification should be efficient and establish clear liability, roles and expectations to inform monitoring if/when undertaken.
- Prequalification should be efficient (15 – 30 min)



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