

PREQUALIFICATION COMMITTEE
MINUTES – MARCH 3, 2011
9:00 A.M. EDT

The following Committee members attended the meeting:

Tiffany Mulligan	Director of Economic Opportunity and Prequalification; Chair and Non-Voting Member
Karen Macdonald	Prequalification Engineer; Committee Secretary and Non-Voting Member
Greg Kicinski	Director of Project Management; Voting Member
Mark Miller	Director of Construction Management; Voting Member
Joe Novak	Crawfordsville District Construction Director; Voting Member
Jim Stark	Deputy Commissioner of Capital Program Management; Voting Member
Troy Woodruff	Deputy Commissioner of Operations; Voting Member
John Wright	Director of Highway Design and Technical Support; Voting Member
Joy Koester	Manager of Fiscal Analysis and Reporting; attending for Tony Hedge as voting member

Also in attendance:

Mike Rowe	Prequalification Auditor; INDOT
John Leming	Prequalification Research Analyst; INDOT
Susan Miles	Manager of Contract Compliance, Economic Opportunity Division; INDOT
Donna Poole	Contract Compliance Specialist, Economic Opportunity Division; INDOT
Monica Rongere	Contract Compliance Specialist, Economic Opportunity Division; INDOT
Tom Faulkner	Equal Employment Opportunity (EEO) Officer, Greenfield

	District; INDOT
Gabe Paul	Attorney, Legal Division; INDOT
Steve Heller	Contract Administration; INDOT
Jeff Perry	Project Manager; Poindexter Excavating, Inc.
Kim Andrews	Project Engineer; Poindexter Excavating, Inc.
Kyle Bibbs	Bibbs Hauling, LLC
Tom Lintz	Engineer; Shelly & Sands, Inc.
Paul Berebitsky	Indiana Construction Association (ICA)
Joan Widdifield	Contract Administration, INDOT

The Committee reviewed the following agenda items:

1. Adoption of December 6, 2010 meeting minutes
2. Poindexter Excavating, Inc.– Compliance with DBE Utilization Requirements on Contract R-28931

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION
MARCH 3, 2011

Ms. Mulligan, Committee Chair, called the meeting to order at 9:02 a.m. EST. All Committee members were present, with the exception of Mr. Tony Hedge. Ms. Joy Koester attended for Mr. Hedge.

Ms. Mulligan facilitated introductions of all individuals attending the meeting. At this time, Poindexter Excavating had no representative present at the meeting.

1. Adoption of December 6, 2010 Meeting Minutes

Ms. Mulligan called for consideration of the meeting minutes from the December 6, 2010 meeting.

Mr. Stark moved to adopt the meeting minutes from the December 6, 2010 meeting. Mr. Novak seconded the motion. All members voted in favor.

Ms. Mulligan stated the minutes would be posted on the INDOT website.

2. Poindexter Excavating, Inc. (Poindexter) – Compliance with DBE Utilization Requirements on Contract R-28931

Representatives for Poindexter arrived to the meeting.

Ms. Mulligan introduced Ms. Susan Miles, INDOT Manager of Contract Compliance, Economic Opportunity Division (EOD), to present the issue to the Committee.

Ms. Miles reported that INDOT awarded Poindexter Contract R-28931-A. INDOT let the contract on February 11, 2009 with a Disadvantaged Business Enterprise (DBE) goal of seven percent. Poindexter's bid amount was \$6,953,624.50. Poindexter met the goal with DBE participation of just over seven percent included in their Affirmative Action Certification (AAC). The AAC listed the following DBEs: Major Engineering and Land Survey (Major); Earth Images, Inc.(Earth Images); Bibbs Hauling, LLC (Bibbs); and Eastside Trucking Company, Inc. (Eastside).

Ms. Miles stated that INDOT requires that a bidder meet the DBE goal or demonstrate that it made good faith efforts to meet the DBE goal on a contract prior to award of a contract. INDOT expects contractors to follow the DBE program requirements in accordance with federal regulation and INDOT contract requirements.

Ms. Miles reported that Bibbs notified EOD in August 2010 with concerns that Poindexter might not use Bibbs for the full amount of the DBE participation listed in the AAC. In response to this, Poindexter's Project Engineer, Ms. Kim Andrews, sent an email to the Greenfield District EEO Officer, Mr. Tom Faulkner, indicating that Poindexter and a subcontractor, Shelly and Sands, were in agreement as to the quantities to be utilized towards the DBE goal and on the utilization of Bibbs on the project. The email also indicated that the line items listed in the AAC were for asphalt, not milling.

Ms. Miles reported that in December 2010, EOD learned that the project was 80 to 85 percent complete and the hauling was approximately 90 percent complete. EOD found that neither Poindexter nor Shelly and Sands had utilized Bibbs for the full amount listed on the AAC. Bibbs had received a total of \$29,097.30, but the AAC listed Bibbs to receive \$149,890.40. During this investigation, EOD also determined that Eastside was not used for the full amount listed in the AAC. Poindexter utilized another DBE subcontractor who was not listed in the AAC, and Poindexter did not request approval from INDOT to change DBE utilization in advance of using the other DBE.

Ms. Miles stated that EOD sent a letter to Poindexter asking for an explanation regarding these issues, and Poindexter sent a timely response with backup documentation. The response from Poindexter indicated that Eastside had determined it had enough work on other projects and released Poindexter from the DBE commitment on the contract. Poindexter then contracted with another DBE, Bunny Trucking (Bunny), to provide hauling.

Ms. Miles stated that she is concerned with Poindexter's response regarding not utilizing Bibbs. Poindexter's letter indicated that Shelly and Sands was responsible to utilize Bibbs and that Poindexter cannot control the actions of their subcontractor.

Ms. Miles stated that the AAC is part of the contract, and the contractor signs the AAC as part of its bid documents. Contractors must fulfill the commitments they make on their AACs by fully utilizing the DBEs they commit to on their AACs. Poindexter met the overall DBE goal on the Contract, but they failed to notify or get INDOT approval to change their DBE utilization. Furthermore, Bibbs only received a small portion of the amount of work Poindexter committed to using Bibbs for on its AAC. As DBEs are small firms, they often rely on the DBE commitments from prime contractors and may have turned down other work based on this reliance.

Ms. Miles stated that according to Shelly and Sands, Poindexter chose to haul the material themselves. Originally Poindexter told INDOT that Bibbs was to haul the material for Shelly and Sand; however, it was still Poindexter's responsibility to ensure that they fulfilled their DBE commitments on the contract by fully utilizing the DBEs listed on their AAC or received approval from INDOT to change DBE utilization. Bibbs could have been used to do the hauling that Bunny did. Bibbs could have been used to haul something else. The contract is now 90 percent complete. The current scheduled completion date is June 30, 2011. There is little to no opportunity to use Bibbs on the remainder of the contract.

Ms. Miles asked why Poindexter did not contact INDOT to request the DBE substitution. She stated that when she receives this type of request, she asks for a letter with an explanation for the requested substitution. If the request is reasonable, she will approve it. She stated that the EOD is always glad to see DBEs succeed and for prime contractors to meet or exceed the DBE goal on a contract.

Ms. Mulligan asked if there were any more comments from EOD. She explained the Committee meeting procedures: a representative from INDOT presents the issue first, the contractor is allowed to respond, then Committee members and the audience may ask questions. Hearing no requests to present additional information, Ms. Mulligan asked Poindexter to respond.

Ms. Kim Andrews, Project Engineer from Poindexter, stated that in August when they were notified that Bibbs was not getting the work, Poindexter contacted Shelly and Sands and Shelley and Sands said they would look into it. In December, Poindexter became aware that Bibbs had not been used to haul millings. The pay items listed in the AAC were for various

asphalt items. She stated that Poindexter would have utilized Bibbs if they had known earlier that Bibbs was not being used.

Ms. Andrews stated that proper protocol may not have been followed with request to releasing Eastside and utilizing Bunny. She stated that Poindexter submitted a lease agreement to Mr. Faulkner, and she was not aware they needed to request approval on the substitution. She stated she thought she was following the correct procedure.

Mr. Jeff Perry, Project Manager for Poindexter, stated that the original estimator who submitted the contract proposal and AAC was no longer with Poindexter. Mr. Perry was not aware that Poindexter was supposed to use Bibbs to haul millings. Poindexter chose to haul millings themselves.

Ms. Mulligan asked if representatives from Shelly and Sands or Bibbs Hauling would like to respond.

Mr. Tom Lintz, Engineer for Shelly and Sands, stated that it was a miscommunication on their part. He stated that Shelly and Sands understood that Bibbs was assigned to haul millings, but there was no pay item for excavation (milling). He stated that the amount of trucking on the project was reduced because Poindexter did some of it themselves. Shelly and Sands had another hauler committed to haul asphalt. That hauler traveled two hours to the site. They should have utilized Bibbs because Bibbs was closer. Mr. Lintz stated that Shelly and Sands has committed to using Bibbs to haul the remainder of the asphalt on the project as a good faith commitment.

Mr. Perry stated that there is \$30,000 to \$40,000 of hauling remaining on the project, and Poindexter is willing to utilize Bibbs for this work. Poindexter also has another contract with hauling available and can use Bibbs for that project.

Mr. Kyle Bibbs stated that Bibbs is able to do the job. There was no communication to Bibbs as to why they were not being utilized other than they were not needed to haul the millings.

Ms. Andrews asked Mr. Lintz if the contract between Shelly and Sands and Bibbs was to haul asphalt and milling and whether it was for a certain amount.

Ms. Miles read the agreement.

Mr. Lintz stated that it was a standard hauling agreement.

Ms. Andrews stated that it may not have been covered correctly by the estimator that is no longer with Poindexter. She handles this information now. There was a lack of communication.

Ms. Mulligan stated that one reason Poindexter was brought to the Committee is to ensure that the DBE goal is met. The Federal Highway Administration (FHWA) mandates that DBE requirements are met on contracts using federal funds. Another reason Poindexter was

brought to the Committee is because Bibbs was not fully utilized, and Poindexter's response that they had no control over their subcontractor is not acceptable.

Mr. Miller asked if Mr. Faulkner could confirm the communication regarding the substitution of DBEs went through him.

Mr. Faulkner stated that INDOT was going through a changeover to Site Manager at the time. He stated he was aware of the Eastside issue.

Mr. Stark asked how much work Poindexter currently has with INDOT.

Ms. Andrews stated it is around \$23 to \$25 million.

Mr. Stark stated that as prime contractor Poindexter is ultimately responsible. It is important that when changes are made that all parties are told. If something is going to be taken away, the DBE needs to be informed along with INDOT. Mr. Stark recommended that INDOT monitor Poindexter for the next six to eight months to make sure all parties comply with DBE requirements. He recommended that the Committee take no action today. He stated that it sounds like Poindexter and Shelly and Sands are trying to fix the problems.

Ms. Mulligan stated that she does not vote unless there is a tie; however, today she will recuse herself from voting if there is a tie because she is Director of EOD. The recommendation from EOD is to place a letter of reprimand in Poindexter's file.

Mr. Stark moved to place a letter of reprimand in Poindexter's file explaining the issues and for the EOD to monitor Poindexter for the next six months. If they are not in compliance, INDOT should ask Poindexter back to the Committee.

Mr. Miller asked if the Committee wants to automatically bring Poindexter back in six months.

Ms. Mulligan recapped Mr. Stark's motion to send a letter of reprimand to Poindexter explaining problems with this contract, and EOD will monitor all Poindexter contracts for the next six months. At the end of six months, if there continues to be an issue, then Poindexter will be brought back to the Committee. She stated the rules require that motions affecting a contractor's prequalification status must be made as recommendations to the Commissioner. Since the motion on the floor is for no action, the letter will not need to be sent through the Commissioner for approval; however, we will brief the Commissioner.

Mr. Woodruff seconded Mr. Stark's motion.

All Committee members voted in favor.

Ms. Mulligan stated that Poindexter will receive a letter about what happened today and a copy will be placed in Poindexter's file. No further action will be taken at this time.

Mr. Perry asked if they should use Bibbs on another contract to compensate for the underutilization.

Mr. Woodruff stated that Poindexter should try to use Bibbs, and he is sure Bibbs would appreciate the work.

Ms. Andrews stated that Poindexter wants to make good on their commitments.

Ms. Mulligan stated that INDOT encourages contractors to use any and all DBEs. Race conscious goals have to be met first, then the contractor can go above the goal to utilize additional DBEs.

Ms. Miles asked if someone could provide her with the letter requesting Bibbs be used on a Rieth-Riley contract.

Ms. Andrews thanked the Committee for allowing Poindexter to speak.

Mr. Woodruff moved to adjourn the meeting, and Mr. Miller seconded. All members voted in favor of adjourning the meeting.

Ms. Mulligan adjourned the meeting at approximately 9:46 a.m.