PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – JULY 14, 2015
9:00 A.M. EDT

The following Committee members attended the meeting:

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| Mark Tidd | Director of Prequalification Division; Committee Chair and Voting Member only in case of tie |
| Karen Macdonald | Prequalification Engineer; Committee Secretary and Non-Voting Member |
| Bob Cales | Director of Contract Administration; Voting Member |
| Louis Feagans | Statewide Director of District Project Delivery; Voting Member |
| Angela Fegaras | LaPorte District Construction Director; Voting Member |
| David Holtz | Director of Pavement Engineering; Voting Member |
| Joe Novak | Crawfordsville District Construction Director; Voting Member |
| Mark Ratliff | Director of Economics, External Audit, and Performance Metrics; Voting Member |
| Jim Stark | Deputy Commissioner of Innovative Project Delivery; Voting Member |

Also in attendance:

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| K. D. Thurman | Prequalification Coordinator; INDOT |
| Lynn Butcher | Director of Litigation and Appeals; INDOT |
| Linda Jelks | Associate Counsel for Litigation and Appeals; INDOT |
| Teresa Giller | Attorney; INDOT |
| Mark Hawkins | Attorney; INDOT |
| Laura Turner | Attorney; INDOT |
| Isaac Gaylord | Legal Intern; INDOT |

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| Libby Crawford | Director of Economic Opportunity; INDOT |
| David Alyea | Contract Compliance Manager; INDOT |
| Derrick Casson | DBE Certification Manager; INDOT |
| Joe Jones | Seymour District Construction Director; INDOT |
| Ike Deburger | Seymour District Area Engineer; INDOT |
| Kirk Stafford | Seymour District Area Engineer; INDOT |
| Ted Niemann | Seymour District Project Engineer; INDOT |
| Lance Erhart | Seymour District Project Engineer; INDOT |
| Terrah Hartson | Seymour District Project Supervisor; INDOT |
| Roland Fegan | Greenfield District Construction Director; INDOT |
| James Colonis | Greenfield District Area Engineer; INDOT |
| Keith Myers | Greenfield District Project Engineer; INDOT |
| Kyle VanMeter | Greenfield District Project Supervisor; INDOT |
| Andrew Pangallo | Central Office Construction Field Engineer; INDOT |
| Diana Brenner | B & B Contracting and Supply, LLC |
| Jacob Brenner | B & B Contracting and Supply, LLC |
| David Vornehm | Attorney; Drewry Simmons Vornehm, LLP representing B & B |
| Eryn Fletcher | Federal Highways Administration (FHWA) |
| Dan Osborn | Indiana Construction Association (ICA) |

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The Committee reviewed the following agenda items:

1. Adoption of March 5, 2015 meeting minutes

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2. Explanation of use of contractor evaluations (CR-2s) by Committee without waiving exception to disclosure under Access to Public Records Act (APRA)

3. Force Construction Company, Inc. – Status update on performance

4. Billy Ray Isom Construction, LLC – Update on denial of application

5. B & B Contracting and Supply, LLC – Review of past performance on INDOT projects in the Seymour and Greenfield Districts

6. New Committee Business

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION
JULY 14, 2015

Mr. Tidd, Committee Chair, called the meeting to order at 9:07 a.m. EDT. All Committee members were present.

1. Adoption of March 5, 2015 meeting minutes

Mr. Tidd called for consideration of the meeting minutes from the March 5, 2015 meeting.

Mr. Feagans moved to adopt the meeting minutes from the March 5, 2015 meeting. Mr. Ratliff seconded Mr. Feagans' motion. All members voted in favor.

2. Explanation of use of contractor evaluations (CR-2s) by Committee without waiving exception to disclosure under Access to Public Records Act (APRA)

The Committee reviewed the June 29, 2015 memorandum from Mr. Tidd. The CR-2s and consultant evaluations are excepted from disclosure under the APRA because of the "deliberative materials" exception in Indiana Code 5-14-3-4(b)(6). The memorandum allows for the use of these evaluations by INDOT's Prequalification Committee during its public meetings, while INDOT uses its discretion to maintain the "deliberative materials" exception from APRA disclosure for all other uses of these evaluations.

There was no discussion by the Committee.

3. Force Construction Company, Inc. – Status update on performance

Mr. Tidd provided a status update regarding Force Construction Company, Inc. (Force). The Committee had recommended at the September 4, 2014 meeting to review Force's performance over the next year. CR-2s for Force were provided to the Committee for review.

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Mr. Tidd asked if Seymour District had any comments on Force's performance.

Mr. Joe Jones, Seymour Construction Director, stated the feedback received about one Force supervisor had been positive.

4. Billy Ray Isom Construction, LLC – Update on denial of application

Mr. Tidd introduced the item regarding Billy Ray Isom Construction, LLC (BRIC). He stated that this item is only for information; there is no action to be taken.

BRIC submitted a prequalification application and it was denied by the Prequalification Division. BRIC was formed in 2014 and is owned by the children of Billy Jack Isom, owner of Jack Isom Construction Company (Isom). Isom was suspended indefinitely September 30, 2014, and the reason for denial was outlined in the June 8, 2015 letter to BRIC. Mr. Thomas Pastore, BRIC's attorney, is seeking administrative review of the decision. Mr. Tidd stated that Committee recommendations adopted by the Commissioner are quasi-judicial and can be appealed; however, Prequalification Division decisions on pending applications are administrative in nature and cannot be appealed. There are two statutory remedies for a company dissatisfied with the Prequalification Division's decision on its application. He stated that after BRIC submitted a request to appeal the denial of the application, he offered BRIC the opportunity to meet with Ms. Lori Torres, INDOT's Chief Legal Counsel. Mr. Tidd indicated that BRIC has met with Ms. Torres. BRIC can also submit a new application in 90 days.

Mr. Tidd stated that the Prequalification Division determined that BRIC is a scheme or device to work around the administrative rules to avoid Isom's suspension.

Ms. Fegaras asked if we should take into consideration Isom's performance when we review BRIC's application again. She asked if the district should do interim CR-2s on Isom's remaining contracts. Ms. Fegaras asked to be notified if they submit a new application.

5. B & B Contracting and Supply, LLC – Review of past performance on INDOT projects in the Seymour and Greenfield Districts

Mr. Tidd introduced this item regarding B & B Contracting and Supply, LLC (B & B). He explained the Committee meeting procedures: a representative from INDOT presents the issues, the contractor is allowed to respond, and then Committee members may ask questions.

Mr. Hawkins, INDOT attorney, served as representative for Seymour and Greenfield Districts. He recommended a one year suspension due to B & B's poor performance. Mr. Hawkins said B & B blames others for problems and refuses to take responsibility for their actions. B & B's letter regarding their poor performance evaluations by district staff came months after the complaints were issued from INDOT.

Mr. Joe Jones explained that each of the INDOT districts handle several contracts with many contractors. B & B performed poorly on several contracts in the Seymour and

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Greenfield Districts. He stated that B & B has been unwilling and unhelpful to correct problems on several different contracts.

Ms. Terrah Hartson, Seymour District Project Supervisor, presented issues she had with B & B on Contract R-33076. She stated B & B showed up wearing t-shirts and shorts, and did not wear proper personal protective equipment (PPE). B & B placed post driven construction signs without any traffic control measures, exposing workers to danger in the event a driver did not see the contractor's vehicles. B & B used a hand cart to place pavement markings in excess of 2000 feet. They ran out of paint and temporary tape, and did not have enough detour signs per the plans. They could not leave the pavement undelineated, so they used barrels. She also stated that on occasion B & B did not show for work when expected or arrived at the work site without proper advance notification to INDOT. She received calls after the signs were placed. Ms. Hartson stated that B & B did not provide advance notice before performing work on more than one occasion. She stated that this also happened on two other projects. Ms. Hartson stated that B & B showed no concern for safety of the public or the employees.

Mr. Ike Deburger, Seymour District Area Engineer, explained issues on three additional contracts:

- Contract T-35186: Signage was at incorrect height. It was too low. A work zone inspection was completed August 26, 2014. B & B was notified about the issue two days later. B & B should have corrected the problem within 24 hours. The work zone was inspected several more times, and B & B never adjusted the sign.
- Contract B-30981: B & B personnel did not follow INDOT staff's advice to use multiple guide marks when placing lines with a hand machine. The prime contractor had to stop the work, remove the lines, and complete the lines themselves.
- Contract B-30994: B & B showed up without notice and completed the work using a hand cart. The County Commissioner agreed that the markings need to be replaced.

Mr. Deburger stated that B & B has a total disregard for INDOT's directions.

Mr. Ted Niemann, Seymour District Project Engineer, said the main expectations for contractors are to use the INDOT specification book to complete their jobs, to be accountable and make corrections in a timely manner, and to focus on safety. He discussed inadequate performance issues on Contract RS-34902: B & B was unavailable during weekends and provided inadequate notification before performing work. He stated that they had trouble reaching B & B, and B & B told INDOT staff that they did not work on weekends unless it is scheduled in advance. Mr. Niemann stated that signs were not adequately secured to the ground (posts were not pinned to bases and bases not weighed down with sand bags), worksite speed limit assemblies intermittently were out of service, and the State Police complained that the speed limit signs were not in conformance with the Manual on Uniform Traffic Control Devices (MUTCD) causing the speed limit to be unenforceable. Mr. Niemann stated the certified payrolls showed that B &B employees were paid at incorrect rates, and it took six months to correct.

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Mr. Roland Fegan, Greenfield District Construction Director, stated that B & B was not ready or able to perform work correctly for INDOT. There is a pattern of behavior that does not meet INDOT standards. The issues for B & B are simple items that should not have to be brought before the Committee. B & B's overall poor work brought them here today.

Mr. James Colonis, Greenfield District Area Engineer, spoke about B & B safety issues on five contracts in Greenfield:

- Contract R-34454: B & B only served as a supplier on the contract. B & B provided tubular markers with bulbs missing and defective adhesive pads. (The tubes should be able to take a hit and bounce back.)
- Contract B-31455: B & B was to provide a simple lane closure for bridge painting. B & B improperly set up the lane closure and INDOT was unable to reach B & B to correct the mistake. INDOT and the prime contractor had to correct the setup.
- Contract B-28790: B & B provided Temporary Worksite Speed Limit Assemblies (TWSLA) with faulty lights causing speed limits to be unenforceable. B & B did not provide adequate traffic control devices for RAM Construction Services of Michigan (RAM), the prime contractor. B & B refused to remove a damaged TWSLA from near the roadway for 10 days, causing a hazard to the public. INDOT staff was again told that B & B did not work on Sunday, and that their insurance company told them to leave the damaged TWSLA at the site. Mr. Colonis reported that in another incident a dangerous situation occurred when B & B directed live traffic towards the work zone while changing the traffic set up. In this case, RAM ended up taking over the traffic set up.
- Contracts B-28790 and B-31720: B & B failed to install contracted work. B & B's use of Airmarkings, Inc. is considered a pass through agreement by INDOT's Equal Employment Opportunity (EEO) officers. This caused RAM to lose credit towards their DBE goal. DBE credit was lost for the same reason on Contract T-35186 in the Seymour District.

Mr. Colonis also addressed the performance report card provided by B & B, which included a list of contracts and CR-2s the company has completed for INDOT. More than half of the contracts do not have CR-2s yet. Those that are completed, 5 of 16 had negative ratings.

Mr. Hawkins explained that B & B sent an email to RAM and warned of a lawsuit if RAM did not revoke the May 15, 2015 letter to Mr. Hawkins (Exhibit P). He stated that B & B has complained to INDOT Executive Staff, the Governor's Office, and the Lt. Governor's Office. INDOT wants B & B to work with INDOT to improve their work. Unfortunately B & B has worked outside of the process instead of making a good faith effort to improve their work.

B & B was provided 30 minutes to present their side of the situation. B & B was represented by David Vornehm, Attorney at Drewry Simmons Vornehm, LLC, Diana Brenner, President and owner of B & B, and Jacob Brenner, Manager of B & B.

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Ms. Diane Brenner, President and owner of B & B, stated that she was shocked by the allegations against the company. She agreed that they have made mistakes in the past and claimed that they have made efforts to make corrections.

Ms. Brenner stated that she owns two companies, B & B and Brenner Design, which is an architectural firm. Ms. Brenner founded B & B in 2002 with a partner. In 2011, she took full control of the company and brought in new management. The current staff includes four college graduates and four ATSSA Certified Traffic Control Supervisors. Her son Jacob is a manager, and another son is a project manager. 80% of B & B's inventory includes items for INDOT projects.

Ms. Brenner stated she submitted a prequalification application for B & B on November 18, 2014. Her understanding was that they would receive a response within 30 days according to 105 IAC 11-2-1(d). B & B did not receive a response until the March 17, 2015 letter, which cited several reasons for not prequalifying the company.

Ms. Brenner also addressed the comments contained within Exhibit B of the March 17, 2015 letter. She claimed that Mr. David Alyea, INDOT Contract Compliance Manager, told her there were no reports of certified payrolls not being correct on Contract IR-34454. She also stated she has no record of B & B staff or management acting hostile towards INDOT staff.

Ms. Brenner stated that on Contract B-35707 the prime contractor had a breach of contract because B & B did not sign the subcontract. B & B requested 10 days' notice and the prime contractor gave less than 24 hours' notice.

Ms. Brenner stated that B & B was the supplier on Contract IR-34454 and they should not have been evaluated. She claimed that Hunt Paving should have been evaluated instead.

She stated that Contracts R-33076 and T-35186 were incomplete at the time of the denial letter. Contract R-33076 is ongoing. Contract T-35186 was completed in April 2015, and the final CR-2 was received May 20, 2015.

Ms. Brenner acknowledged the issues with Contract B-28790. The batteries were not properly recharging, and they did not work properly with the controller boards. B & B recharged the batteries numerous times. She admitted that B & B left the damaged equipment behind the new TWSLA, and they towed it away on August 13, 2015, the same day it was requested by INDOT. She stated there was no written procedure for lane switches in the original contract. B & B modified their procedure as requested by the INDOT inspector. Finally, B & B was never told to notify INDOT, but they always notified the prime contractor when removing signs.

Ms. Brenner discussed evaluation comments on Contract R-33076. B & B ran out of paint and tape, and finished with barrels, they went back on Sunday and replaced the barrels



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with the tape. B & B installed signs without traffic control, but they were not working in the road, they were working off road. B & B was unequipped to perform line removal, and she stated that this work was not part of their subcontract. B & B placed a sign that was not standard, but replaced it once notified. She stated that she disagreed with the statement that B & B did not provide prior notification. They always notified the prime contractor.

Ms. Brenner also discussed evaluation comments about installing two signs too low on Contract T-35186. B & B installed one sign too low and it was corrected. The other sign was in an urban area and she argued that it was correctly installed according to MUTCD standards.

Ms. Brenner stated that B & B has received five negative CR-2s. B & B requested changes on four of the CR-2s, but corrections were not made.

Ms. Brenner responded to B & B's failure to properly stripe a bridge on Contract RS-30981. B & B agreed to pay the prime contractor for the rework. They contacted them again this year to confirm a process for reimbursement. She stated that B & B can do striping correctly, after two years.

Ms. Brenner addressed the issue of B & B being cited for a rolling road block failure on Contract RS-34902. According to Ms. Brenner, B & B did not paint the gore on this project and B & B was not responsible for this issue.

Ms. Brenner stated that B & B had $11,481.50 of work removed from Contract B-28790 with RAM, and was not able to be counted towards the DBE goal. B & B met with INDOT Economic Opportunity Division and was informed that their DBE certification is valid through January 2018.

Ms. Brenner said the additional arrow board was rented from B & B by American Contracting & Services (American Contracting). She claimed that American Contracting placed the arrow board in an improper location.

Ms. Brenner explained that sand bags were stolen from projects, but B & B will replace them if notified. In one case a sign was hit, and it did not just fall down from a lack of sand bags.

Ms. Brenner then addressed the Certified Payroll issue. The USDOL 20% rule states that certain classifications of employees who spend more than 20% of their work week on site are to be paid the prevailing wage. Mr. Mark Miller, INDOT Construction Director, sent a memorandum dated April 6, 2015 stating the rule no longer applied, at which point B & B corrected the issue. She stated it took months to correct.

Ms. Brenner provided a summary of issues she admitted B & B was responsible for: 1) batteries not recharging continuously 2) wavy pavement markings 3) sign installed too low, or non-standard height 4) removal of damaged equipment, and 5) emergency call response.

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Ms. Brenner provided B & B's QA/QC Plan. She also explained how B & B is trying to make amends for their mistakes. B & B apologized to Sunesis Construction Company for the painting rework. B & B negotiated a settlement with American Contracting for the unusual hardship of frequently replacing the signboard batteries.

Ms. Brenner stated that B & B would like to continue to work with INDOT and would like to have face-to-face communication with district personnel and engineers. She emphasized that B & B is willing to work to make improvements.

Ms. Brenner urged the Committee to approve B & B's request for an increased capacity, because they are the only non-union traffic control company in the state and they can help meet DBE goals.

Mr. Tidd stated that Mr. Hawkins is recommending that B & B be suspended from subcontracting with INDOT for one year, and B & B is asking for the Committee to reverse the decision of the Prequalification Division denying their application and increase B & B's capacity from $300,000 (the statutory limit for non-prequalified contractors) to $500,000.

Mr. Feagans asked about the employees coming to work in tennis shoes and shorts.

Ms. Brenner responded that it happened once, and if anyone did it again, then they would be fired.

Mr. Jacob Brenner stated that the second issue was his fault.

Mr. Cales asked if B & B has any certified traffic control supervisors.

Ms. Brenner stated that B & B had four certified traffic control supervisors, although one supervisor is no longer with the company. B & B has asked employees to improve inspections.

Mr. Cales referred to INDOT maintenance policies, Standard Specifications, and the MUTCD. He stated that traffic control is needed when placing signs on the shoulder.

Mr. Holtz stated that some of the issues revolve around the prime contractor and subcontractor communications link. He asked the district representatives what is the standard policy.

Mr. Fegan replied that INDOT's contract is with the prime contractor, but at any time the INDOT Project Supervisor can request information from the subcontractor.

Mr. Holtz stated that it sounds like B & B was waiting to be told what to do with the damaged TWSLA. It could have been a high impact event.

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Ms. Brenner stated that B & B has started to notify the prime contractor and INDOT at the same time.

Mr. Ratliff asked Mr. Hawkins and INDOT staff for their opinion on what the Committee should do. All contractors need to follow the Standard Specifications. INDOT has 100 years of experience. He stated that B & B stated they are capable of doing INDOT work, but INDOT has presented a host of issues. It sounds like B & B may have started to work on their communications issues, but as Ms. Hartson reported, that is not what happened in her experience. There are repeated patterns of poor performance. The shoulder is not big enough to pull off, thus B & B workers were adjacent to live traffic.

Mr. Colonis said B & B was notified August 3, 2014 about the TWSLA being hit. B & B did not reply until August 13, 2014 and at that point they removed the equipment. He stated that B & B workers had improper clothing on two projects, not one.

Ms. Fegaras asked B & B to outline their QA/QC plan.

Ms. Brenner stated that B & B started the plan in 2012, and it includes:

- Re-train staff on replacing slices and bolts
- Instruct employees to wear PPE
- Invest in training to get additional supervisors
- Remove wrong reflective sheeting from inventory
- Replace batteries and removed malfunctioning ones from inventory
- Provide examples of good pavement markings on curved roadway
- Now notifying the prime contractor and INDOT with work schedule
- Remove damaged equipment, but waited to hear from the insurance company

Mr. Tidd asked how B & B's QA/QC plan explained what they would do differently.

Ms. Brenner continued about B & B's QA/QC plan:

- Remove old specifications sheet from inventory
- Will not bid on curved roads until they can do it correctly
- Utilize four staff members to change signs and barrels simultaneously
- Notify inspector when they will be on the site
- Work with insurance company to fix damage equipment issue
- Review contract with inspector beforehand to understand the scope of work
- Install new software to have a better understanding of available materials
- New employees will review materials before they are delivered to field
- Staff instructed to provide backup emergency number
- No longer using faulty equipment manufacturer

Mr. Stark asked how many contracts B & B currently has with INDOT.

Mr. Brenner stated about 25, and most will finish this year.

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Mr. Stark stated that this is an unusual situation where we bring in a subcontractor to this Committee. If the prime contractors were here, we may hear other comments. B & B has had 25 projects to show us that they can do a good job. He stated that he is concerned because the issues were raised by two district offices.

Mr. Hawkins stated that the recommendation is for a 12 month suspension with an opportunity for reinstatement only after the conditions are met. If there are continued issues going forward, then that will be considered in the future.

Mr. Holtz asked Mr. Brenner if he had read INDOT's Standard Specifications book.

Mr. Brenner replied that he had several times.

Mr. Cales stated that there are provisions in the Standard Specifications requiring that damaged equipment should not be left within project limits and must be removed. The traffic control specialists should know to do this.

Mr. Tidd asked the Committee members to consider the actions towards B & B. The recommendation from Mr. Hawkins is contained in his May 21, 2015 letter and B & B's recommendation is in their July 6, 2015 letter to Mr. Tidd. The Committee can also fashion its own recommendation.

Ms. Fegaras stated that she has concerns about increasing the capacity with B & B's performance issues. They have current projects to show that they can do good work.

Mr. Tidd stated that in the past the Committee has given contractors an opportunity to request their performance be reviewed before the 12 month suspension is complete.

Mr. Holtz asked how we make them show the work has improved.

Mr. Stark suggested B & B finish the 25 contracts and have the prime contractors provide letters of recommendation to the Committee.

Mr. Feagans recommended modifying INDOT's recommended sanction to suspend B & B for 12 months, with an added option of returning to the Committee for reinstatement after six months with positive CR-2s and recommendations from prime contractors. In addition, B & B's QA/QC plan must be approved by Greenfield and Seymour Districts and B & B will provide training to supervisors.

Ms. Fegaras added that the prime contractor recommendation letters should come from INDOT projects.

Mr. Ratliff added that INDOT should require district personnel to submit these CR-2s in a timely manner.

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Ms. Fegaras stated that B &B's QA/QC plan should include some specific safety training. She suggested B & B participate in safety briefings on days when they are going to perform work.

Mr. Feagans suggested OSHA training.

Mr. Tidd stated that B & B will have the opportunity to appeal. The suspension will not start until the appeal is concluded.

Mr. Vornehm stated that B & B performs their own safety briefings and could supply that information to the prime contractor or INDOT as part of the QA/QC plan.

Mr. Feagans stated he was fine with allowing B & B to work as a supplier. He stated that it seems to be more of an issue with the people on the ground.

Mr. Novak asked if the Committee recommended to suspend B & B for 12 months, but allowed the option to come back in 6 months, would B & B's suspension automatically end after 12 months.

Mr. Tidd replied that in either case, B & B should thereafter demonstrate to the Committee that the company has made the appropriate changes.

Mr. Feagans made the following motion:

A. Recommend a 12 month suspension against B & B and Diana Brenner from performing as a subcontractor on projects let through INDOT, with an option of returning to the Committee any time after 6 months, and against any contracting or subcontracting entity with whom Diana Brenner joins and/or assumes majority ownership; and
B. Before B & B is reinstated, the Committee recommends that B & B:
    1. Performs satisfactorily on remaining INDOT projects (with District personnel promptly evaluating the projects through CR-2s);
    2. Obtain approval from both Seymour and Greenfield on a QA/QC plan that addresses all the deficiencies outlined by the Districts in the documents presented and as discussed during today's meeting;
    3. Provide documentation of attending safety briefings; and
    4. Meet and demonstrate, to the Committee's discretionary satisfaction, that Diana Brenner and B & B are ready, willing, and able to perform to the expected standards and will properly cooperate with the Districts.

Mr. Vornehm asked if these sanctions would apply to B & B's work as a supplier.

Mr. Alyea replied that work as a supplier does not go against the $300,000 unearned work limit.

Mr. Cales seconded Mr. Feagans motion. All Committee members voted in favor.

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Mr. Tidd stated that the recommendation would go to the Commissioner for approval. Then a letter would be sent to B & B, and they will have the right to appeal.

Ms. Brenner asked if B & B can meet with the districts now.

Mr. Jones and Mr. Fegan replied yes.

6. New Committee Business

There was no new business.

Mr. Tidd asked for a motion to adjourn the meeting.

Mr. Stark moved to adjourn the meeting, and Mr. Cales seconded the motion. All members voted in favor of adjourning the meeting.

Mr. Tidd adjourned the meeting at approximately 11:28 a.m. EDT.

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