

PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – OCTOBER 4, 2012
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
Greg Kicinski	Director of Project Management; Voting Member
Mark Miller	Director of Construction Management; 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 Capital Program Management; Voting Member
John Wright	Director of Highway Design and Technical Support; Voting Member
Jay Wasson	Deputy Commissioner of Engineering Services & Design Support; attending for Ryan Gallagher as Voting Member

Also in attendance:

Heather Kennedy	Attorney, Economic Opportunity and Prequalification Divisions; INDOT
Maurice Moubray	Prequalification Auditor; INDOT
Fred Bartlett	Prequalification Research Analyst; INDOT
Blaine Hayden	Prequalification Coordinator; INDOT
Daphne Widdifield	Prequalification Assistant; INDOT
George Dremonas	Managing Attorney; Legal Division; INDOT
Sam Sarvis	Deputy Commissioner of Major Program Management; INDOT
Ronald Boehm	Indiana Department of Environmental Management (IDEM)

Greg Ellis	Construction Engineer; Vincennes District; INDOT
Chriss Jobe	Construction Area Engineer; I-69 Office; INDOT
Elliott Sturgeon	I-69 Operations Director; INDOT
Laura Hilden	Office of Environmental Services; INDOT
Chris Gottman	Fred Weber, Inc.
John Byrd	Fred Weber, Inc.
Lina Klein	Fred Weber, Inc.
Paul Berebitsky	Indiana Construction Association (ICA)

The Committee reviewed the following agenda items:

1. Adoption of August 9, 2012 Meeting Minutes
2. Fred Weber, Inc.- Compliance with Erosion and Sediment Control requirements and contract requirements to protect the Indiana bat on Contract IR-33051, I-69 Section 3

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Ms. Mulligan, Committee Chair, called the meeting to order at 9:00 a.m. EDT. All Committee members were present, with the exception of Ms. Macdonald and Mr. Gallagher. Mr. Wasson attended for Mr. Gallagher.

Ms. Mulligan asked that everyone sign the sign-in sheet that is circulating. She facilitated introductions of all individuals attending the meeting.

1. Adoption of August 9, 2012 Meeting Minutes

Ms. Mulligan called for consideration of the meeting minutes from the August 9, 2012 meeting.

Mr. Miller moved to adopt the meeting minutes from the August 9, 2012 meeting. Mr. Novak seconded the motion. All members voted in favor. Ms. Mulligan stated the minutes would be posted on the INDOT website within a few days.

2. Fred Weber, Inc. – Compliance with Erosion and Sediment Control requirements and contract requirements to protect the Indiana bat on Contract IR-33051, I-69 Section 3

Ms. Mulligan introduced this item regarding Fred Weber, Inc. (Weber). 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.

Mr. Dremonas, Managing Attorney with INDOT, stated that Weber repeatedly failed to comply with clean water standards in violation of 327 IAC 15-5-7. Mr. Dremonas stated that INDOT attempted repeatedly to communicate with Weber regarding their deficiencies and contractual requirements. Mr. Dremonas and the INDOT team provided a PowerPoint presentation that included an overview of Weber's performance on the Contract, including detailed pictures, aerial views of the project, and a summary of Weber's legal obligations.

Mr. Boehm, with the Indiana Department of Environmental Management (IDEM), discussed the power point presentation with several photos explaining Weber's lack of compliance with erosion and sediment control requirements. The pictures displayed Weber's poorly maintained silt fences, unprotected streams, lack of protection of pipes, and inadequate erosion control measures. He stated that INDOT and IDEM require pipes be protected from sediment during construction. The embankment was not stabilized. A fifty-four (54) inch pipe was completely covered and full of sediment. Additionally, silt fences were subject to poor maintenance and improper installation, and they were overwhelmed with sediment.

Mr. Ellis, with INDOT's Vincennes District, described the purpose of the pipes and how to build embankments. The exposed soil was not contained within the right-of-way line. He discussed photos from July 18, 2012 that showed tree clearing before the designated time as outlined in the Contract. A tree was removed despite INDOT informing Weber not to do so, resulting in the property owner filing a complaint with Indiana Department of Natural Resources (DNR) Fish and Wildlife. INDOT hired a consultant to investigate whether the Indiana bat existed in the tree. Although no bats were found in the tree, this does not excuse the fact that Weber disregarded the law and INDOT's instructions. He explained how the site was contaminated from concrete washout, which makes the pH level in the water high and can kill vegetation. Mr. Ellis saw grey silt around trees at the site. Rain caused the contaminated water to run into the forest area, which is designated a do not disturb area.

Mr. Dremonas recommended that Weber complete a Work Improvement Plan within 30 days of the Committee meeting. This Work Improvement Plan should be approved by the Office of Environmental Services and the I-69 team. He further asked Weber to promptly implement the Work Improvement Plan and cooperate going forward. INDOT is willing to work with Weber to improve the construction of I-69, but this corrective action is needed.

Ms. Mulligan turned the floor over to Weber. She explained that the floor will be open for discussion after Weber responds.

Mr. Gottman, Regional Manager with Weber, stated that Weber underestimated the weather, soil conditions, staffing, and experience level involved on the Contract. As a result, Weber has hired new staff with proper training and admits it is the manager's fault that Weber's employees were not properly trained. Weber met with INDOT over the winter of 2011 and regrouped. They took a different approach and have progress in timeliness. Weber's management has come a long way since last October, and he hopes that everyone at INDOT agrees Weber is making progress. Mr. Gottman stated Weber likes to work for INDOT and doesn't want its prequalification taken away. They will not defend what they did in the past year. It is unusual for Weber to do this. Weber takes pride in their work and it shows in the end product. He stated that they think the recommendation is reasonable and they want to cooperate.

Mr. Byrd, Project Manager with Weber, stated that Weber had an extremely challenging job. They had twice as much rainfall, different soil types, and there was a lack of training. He stated the biggest factor was training, and Weber now has an Environmental Manager on site. Two people have completed sixteen (16) hour Certified Compliance Inspector – Stormwater (CCIS) training. Mr. Byrd stated that Weber is not making excuses, but they are doing much better this year.

Mr. Gottman stated that Weber has spent a lot of money on rework; therefore, Weber is taking a much different approach going forward.

Mr. Byrd stated that Weber hopes no one thinks they do not put forth the effort. There was a lack of training.

Mr. Gottman stated the effort is there now. Weber still needs to improve, and they are trying. Weber doesn't want to be a contributing factor for permit delays.

Ms. Klein, Environmental Manager with Weber, stated she started in September of 2011. She explained her background is in consulting and media work. Since she has been employed by Weber, everyone now is in training and they hold safety committee meetings. They hold weekly Toolbox Talks to discuss timeliness, stormwater and erosion control. Now some staff is certified, and the Indiana team is ready. They hope to have the opportunity to continue to work with INDOT. They have a joint effort with Missouri DNR, and they have received awards. The environment continues to be important to Weber.

Mr. Gottman stated that Weber has a partnership with Occupational Safety and Health Administration (OSHA). Weber is a leader on safety. They have a lot of training and commitment now. They understand and respect the issue of sediment and erosion control.

Mr. Gottman stated that the tree incident was dumb. Weber's superintendent did something that he should not have done, and he was removed from the project and disciplined. He will not be back in Indiana.

Ms. Klein stated that they tried multiple fixes for the erosion and sediment control, and it is not an exact science. Also relationships are improving.

Mr. Byrd stated some things get overlooked sometimes, and some areas are problem areas and those items are on the list every week. This season is different than last season.

Mr. Byrd stated that he has learned a lot from Mr. Boehm, and he respects him greatly.

Ms. Mulligan stated that the meeting will now be open for discussion from the Prequalification Committee members and other interested parties.

Mr. Stark asked Mr. Dremonas if the plan is an overall plan. He questioned what was the benefit of the plan. Why would INDOT give Weber more work? He needs more clarity on the recommendation.

Mr. Sturgeon stated that the paving is done, and the job is moving along. Weber has expressed interest in two bids on other contracts. Weber continues to do what is needed to finish this job.

Ms. Mulligan stated the I-69 team could ask for a Work Improvement Plan without the Committee's consent. It would go into the Prequalification file.

Mr. Stark stated that it holds no weight to prevent Weber from bidding.

Mr. Kicinski stated that Weber is sincere, but he is not sure if learning erosion control on a \$100 million job is a good idea. He needs assurance that Weber has qualified people.

Mr. Ellis stated that INDOT projects should not be a training ground and other companies have gone through the training before the job was awarded. Mr. Ellis further stated that 2012 has been better than 2011, but there are still issues with current projects, but he agrees there have been improvements. Mr. Ellis asked if this Committee action would stop Weber from bidding.

Ms. Mulligan explained that if the Committee votes to suspend Weber's prequalification, the recommendation is sent to the Commissioner, and he would decide whether they can bid or continue work.

Mr. Novak asked about the appeal process.

Ms. Mulligan explained the appeal process in accordance with 105 IAC 11-2-9.

Mr. Stark stated we are not trying to stop Weber from bidding, just to stop the issues. Mr. Stark asked whether or not we want Weber to do business with INDOT. Mr. Stark stated he wants Weber to understand how important these issues are and he wants to know why Weber has not resolved the issues after learning of the problems from INDOT. The Committee goes through a lot to just get folks here.

Mr. Kicinski stated that he agrees, but he also thinks that before more bids are accepted, the Work Improvement Plan should be approved by INDOT, and Weber should ensure its employees are qualified.

Mr. Ellis stated \$100 million projects are not taken lightly, and there are people that can do the job. INDOT and IDEM are still waiting on reports on issues and still having problems, and time is an issue. It is better than last year and things are progressing, but we are still having issues.

Mr. Boehm stated he is happy to see improvements, but he thought Weber's people were trained already. He presented pictures from yesterday of sediment being dumped into a stream, and that is not good. Also three weeks ago there are still grates and laborers who were taking the sediment and dumping it in a stream, and the workers were not able to answer questions on the job. They are not trained.

Mr. Gottman stated they are hiring from Indiana local laborers union and assumed the workers were trained. He stated Weber now has a disadvantage because the workforce here in Indiana has no training and the local contractors do. They could hire consultants to help with the issues. Words only mean so much, and at the end of the day Weber needs to have a better plan and more training in the field. If Weber could retain some people with the proper training, they are willing to go ahead with the recommendation by George Dremonas.

Mr. Ellis stated he agrees with the training, and it will always be necessary in the field.

Mr. Boehm stated we are going down the right road; however, when he was onsite earlier, near the 231 silt fence, the worker indicated the trained person was not on site, and they had no idea what to do.

Mr. Ratliff asked why not ask for prequalification suspension, and let Weber finish the job. If the work is good, lift the suspension.

Mr. Sarvis stated that Weber is capable, and his team has seen improvements. At this time, the I-69 team does not want to reduce the prequalification status of a capable contractor. INDOT wants all contractors to be able to bid and not hinder the ability to bid. He is looking for Weber to demonstrate they can do better on the job. This is a geographically challenging area. 404 permits were released this week and this is a direct result of the success of the job. Lastly, Weber is not the only company we have had issues with.

Mr. Sturgeon stated he would not hire a college graduate for something complex. Instead, he would hire someone who has already been doing it for years.

Mr. Gottman stated he agreed, and they have qualified people out there today, but they are still training employees. They are talking to the union about the training needs.

Mr. Wasson stated that it is not enough just to receive a plan. We need follow ups.

Mr. Byrd stated that Weber has not walked away from their commitments.

Mr. Ellis stated that Weber does the inspection reports, but Weber does not reflect all of the issues onsite.

Mr. Wasson stated the problem is still there.

Mr. Stark asked if Weber can get a plan together in thirty (30) days.

Mr. Gottman stated yes.

Mr. Stark stated he recommends thirty (30) days to get an action plan in place. At this time, we would not prevent Weber from bidding, but if INDOT has not approved the plan by a letting date, then we would not accept the award if they win the bid.

Mr. Ellis stated this is not the first time we have had an issue.

Mr. Sarvis stated that he has seen good results from a Work Improvement Plan in the past.

Ms. Mulligan stated that there is another option as well. The Committee can call the contractor back after a period of time to see if there are any improvements.

Mr. Jobe stated that whether Weber is suspended or not, a Work Improvement Plan is needed.

Mr. Dremonas stated that this plan would heighten the awareness for the contractor by having an officer sign the plan. Also, he asked if INDOT's Construction Management Division should approve the plan as well.

Ms. Mulligan asked if there were any other comments. She summarized the discussion: the Committee would ask for a Work Improvement Plan, then call Weber back to see the progress, with no suspension at this time.

Mr. Stark asked what kind of turnaround INDOT's I-69 Team, Office of Environmental Services, and Construction Management Division will need to approve a plan.

Ms. Hilden stated that Environmental Services would not want to rush the review, but she estimated it would take approximately two weeks.

Mr. Boehm stated 30 days is too long. We need to cut that in half since winter is coming, and we need performance now.

Mr. Sarvis stated we are getting close to the end of the project and asked if the Committee can consider a two week window for the plan.

Ms. Mulligan stated we could have the submission of the plan due by October 19 and have the review by INDOT staff due by November 19. Then on December 6, we could hold another Prequalification Committee Meeting to view the results. She asked for comments or a motion from a Committee member.

Mr. Miller stated that he thinks we should require the plan. There will be activity next year on this project.

Mr. Stark stated we should get the report and come back in December. If we feel nothing has improved at that point, then we can consider suspending Weber's prequalification.

Ms. Mulligan summarized the proposal: we have Weber submit a Work Improvement Plan by October 19. INDOT staff will review and approve the plan within 30 days. Then we will call Weber back at the December 6 meeting and evaluate the status.

Mr. Jobe asked if we could require the Work Improvement Plan to have two parts, this project and future projects.

Ms. Mulligan stated yes and asked if there was a motion.

Mr. Stark made a motion to require that Weber submit a Work Improvement Plan by October 19, 2012. INDOT's Office of Environmental Services, I-69 team, and Construction Management Division will review the plan by November 19, 2012. We will then call Weber back on December 6 and consider performance on this project and future plans for improvement.

Mr. Ratliff moved to amend the motion to require an officer of Weber sign off on the plan.

Ms. Mulligan restated the amended motion: the Committee will require Weber to submit a Work Improvement Plan by October 19, 2012, that is signed by an officer of the company. INDOT's Office of Environmental Services, I-69 team, and Construction Management Division will review the Plan by November 9, 2012, and let Weber know the results. We will then call Weber back for the December 6 meeting to discuss the plan status. She asked for a second to the motion.

Mr. Novak seconded the motion.

All Committee members voted in favor.

Ms. Mulligan asked for a motion to adjourn the meeting.

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

Ms. Mulligan adjourned the meeting at approximately 11:15 a.m. EDT.