

PREQUALIFICATION COMMITTEE  
OPEN SESSION  
MINUTES – September 6, 2018  
9:00 A.M. EST

The following Committee members attended the meeting:

Chris Serak	Director of Prequalification Division; Committee Chair and Voting Member only in case of tie
Jose Murillo	Prequalification Engineer; Committee Secretary and Non-Voting Member
Jeff Clanton	Consultant Contracting Manager; Voting Member
Louis Feagans	Statewide Technical Services Director; Voting Member
Jim Stark	Director of Multi-Modal Planning and Programs; Voting Member
David Holtz	Pavement Director; Voting Member
Joe Gustin	Senior Director of Finance; Voting Member
Heather Kennedy	Capital Program Management Director; Voting Member

Also in attendance:

Alison Grand	Deputy Commissioner and Chief Legal Counsel; INDOT
Aggie Wagoner	Prequalification Specialist; INDOT
Steve Duncan	Director of Contract Administration Division; INDOT
John Leckie	Director of Construction & Materials Management; INDOT
Teresa Giller	Attorney; INDOT
Dan Osborn	Director of Government Affairs; Indiana Constructors, Inc.
Libby Crawford	Economic Opportunity Division Director; INDOT
Erin Fletcher	PE; FHWA

Matthew Gariup            Treasurer; Gariup Construction

Joseph Chapelle            Attorney & Partner; Barnes & Thornburg

The Committee reviewed the following agenda items:

1. Call to Order and Welcome
2. Adoption of August 2, 2018 meeting minutes
3. Gariup Construction Co. Inc.
4. Committee role- terms of new/renewal certificates
  - a. Ellas Construction Co. LLC
  - b. Midwest Paving LLC
5. Committee charter discussion
6. Committee authority over consultant prequalification
7. Paperless Update
8. New Business
9. Public Comment
10. Adjournment

PREQUALIFICATION COMMITTEE MEETING  
OPEN SESSION  
September 6, 2018

Mr. Serak, Committee Chair, called the meeting to order at 9:00 a.m. EST. All Committee members were present, with the exception of Joe Novak.

1. Call to Order and Welcome
2. Adoption of August 2, 2018 meeting minutes.

Mr. Serak asked Ms. Wagoner to discuss the meeting minutes from the previous meeting.

Ms. Wagoner said the minutes were sent out via email for the committee members to review. Ms. Wagoner noted the changes that were requested had been made. Ms. Wagoner asked if there were any questions or other changes that needed to be made. The members did not have any questions or additional changes.

Mr. Holtz moved to adopt the amended meeting minutes from the August 2, 2018 meeting.

Mr. Gustin seconded Mr. Holtz's motion. All members voted in favor.

3. Gariup Construction Co. Inc.

Mr. Serak said Ms. Crawford will discuss the next item on the agenda, which was the settlement agreement between INDOT and Gariup Construction Co. Inc.

Ms. Crawford said she met with Mr. Chapelle (Barnes & Thornburg) and Mr. Gariup (Gariup Construction) to resolve the matter via settlement agreement.

Mr. Chapelle said it was a mistake due to a lack of knowledge. Mr. Chapelle said they acknowledge the gravity of the situation created through their actions. Mr. Chapelle said based on the error, they have agreed to the settlement agreement. The settlement agreement includes a one (1) year probation, 90 day suspension of prequalification status and educational instruction, which they have scheduled to start September 14, 2018.

Mr. Serak asked Ms. Crawford to give background on the issue with Gariup Construction.

Ms. Crawford said Gariup bid a project as a prime and used a subcontractor to meet the DBE goal. After the contract had been awarded, Gariup put more dollars in subcontract than they had listed on the original bid in order to meet the DBE goal. As a result, the contract had to be terminated and awarded to the next lowest bidder.

Mr. Gariup said they did not intend to profit from the situation, they were just trying to meet the DBE goal and made a mistake by adding dollars after the contract had been awarded.

Mr. Serak asked what the suspension includes.

Ms. Crawford said they are suspended from all activity, including bidding and subcontracting on INDOT jobs.

Mr. Serak asked if any members had questions or comments. There were no questions or comments.

Mr. Feagans moved to accept the settlement agreement.

Mr. Clanton, Mr. Gustin, Mr. Holtz, Mr. Stark, Mr. Feagans and Ms. Kennedy all voted individually in favor of accepting the settlement agreement.

Mr. Serak said the agreement has been entered and the motion has passed by a vote of six to zero (6-0).

Ms. Kennedy asked if there is now a standard for Directors to follow the same procedure that Ms. Crawford used in terms of coming to an agreement before presenting to the Prequalification Committee.

Mr. Serak said no standard has been set, but the goal going forward is to encourage Directors to work the issue out informally and present the agreement to the Prequalification

Committee to vote on the matter. Mr. Serak said the members are always welcome to propose an adjustment to the terms, but it would be helpful to have an offer to work from.

#### 4. Committee role- terms of new/renewal certificates

Mr. Serak said both he and Mr. Murillo will work to handle as many contractor/consultant issues as they can without bringing each issue to the Prequalification Committee. Mr. Serak and Mr. Murillo gave a summary of the meetings they have had recently.

Ellas Construction Co., LLC has had ongoing project management, safety, and character issues in the LaPorte District. These issues came prequal's attention as the result of negative CR-2s produced for several recent projects (see attached). As a result of the negative evaluations, Ellas was issued a shortened three (3) month certificate of qualification, the extension of which would depend on further investigation of the issues and affirmative steps by Ellas to address identified problems. On Aug. 28, 2018, prequal and LaPorte district construction leaders met with Dyer to discuss the problems and determine if a solution could be found to avoid the expiration of their certificate. After several hours of discussion it was agreed that INDOT would extend Ellas' certificate if: 1) all of Ellas' principals and field supervisors completed 40 hours of OSHA training (including John Ellas and his wife); 2) Ellas provided a new safety plan to address specific work site issues; 3) Ellas produced an acceptable quality assurance plan to address project management issues; and 4) Ellas had no new negative evaluations. Ellas' certificate has been extended to October 31, 2018 to allow the firm to produce the requirement safety and quality plans. If the documents are received and approved, Ellas will have until January 1, 2019 to complete the required OSHA training. If all terms are satisfied, the certificate will be extended the remaining eligible term. Prequal will not renew Ellas' certificate for 2019 if any new negative evaluations are given between Jan. 1, 2019 and the expiration of the 2018 certificate.

Midwest Paving had a few very bad CR2s in Greenfield for workmanship issues. Midwest was issued a three month certificate subject to additional investigation based on several negative interim CR2s. Prequal monitored Midwest's performance since the last negative evaluation and spoke with each INDOT evaluator that created a CR2 for Midwest over the last year. Midwest showed major improvement during this time. The final CR2s improved by a combined 20 points. Based on this fact, and the input of the Greenfield district construction team, Midwest's certificate of prequalification was extended the full eligible term, subject to prequal's completion of a field audit of an ongoing work site and the firm's equipment yard. This audit will occur in early October, 2018. If the findings of the audit are satisfactory Midwest will be monitored but subject to no further restrictions by prequal.

#### 5. Committee charter discussion

Mr. Serak introduced this item and said this will be an ongoing discussion. Mr. Serak said the first changes are the titles of Ms. Wagoner and Ms. Grand to better define their roles. Mr. Serak also discussed adding two additional members, one will be a permanent member and the other will be a rotating member.

Mr. Gustin asked about the definition of "person".

Ms. Grand suggested to add a definition section after the “Purpose” section (before “Activities”) in the next draft.

Ms. Giller pointed out a typo in the second paragraph.

Mr. Serak brought up the issue of the Committee Chair (Mr. Serak) being a voting member (in the case of a tie), because this limits his ability to be involved in the discussions beforehand.

Ms. Giller said the rule will have to be changed if Mr. Serak does not want to be required to vote in the case of a tie.

Mr. Clanton asked if it would be beneficial in terms of time to change just one (1) rule.

Ms. Grand said all rule changes will need to be done at once. Ms. Grand said there is a statute proposal in with the governor’s office. Once approval is received from the governor’s office to add a statute change to the 2019 session, then an evaluation on the economics of the prequalification limits will begin. Ms. Grand and ICI will start working on the data for the rule change, which will all be done at once. Ms. Grand she is trying to get emergency rule making authority approved to make the rule change faster and to allow for more flexibility in the future in order to adapt to economic upswings and downswings.

Based on suggestions, Mr. Serak said he can take out the paragraph requiring one member to be on a rotating basis. Although the requirement will be removed from the charter, the goal will still be to have one (1) member that rotates after a certain amount of time. In addition, Mr. Serak will take out the last paragraph, which states: “Matters involving the status of a contractor or consultant’s qualification should not be voted on by the Committee unless an odd number of members are present so as to avoid requiring the Chairman to cast a tiebreaking vote”. Mr. Serak will also change the language about the Secretary and Administrative Coordinator to make it less wordy and broader.

Ms. Giller suggested taking out the third paragraph in Section V.

Mr. Serak said he will make the suggested changes and have the next draft available at the October Prequalification Committee meeting.

6. Committee authority over consultant prequalification

Mr. Serak explained the legal background of consultant prequalification, and why they are subject for review by the prequalification committee.

7. Paperless Update

Mr. Murillo gave a status update on the paperless project. The Prequalification Division is about half way done scanning the folders. Starting January 2019, contractors will submit an electronic copy of the application and in 2020 contractors will apply online via the ITAP portal.

8. New Business

Mr. Serak asked if there was any new business.

Mr. Clanton said he would like to see the Prequalification Committee start to do the same things with consultants as we are with contractors, in regards to conversations about performance.

Ms. Grand said to look at historical data and put together a proposal to present to ACEC.

Mr. Clanton, Ms. Kennedy and Mr. Gustin will meet separately (only two (2) at a time) for the beginning of these discussions.

9. Public Comment

Mr. Serak asked if there were any comments or questions from the public.

Mr. Osborn (ICI) wanted to verify that the private contractor information will remain unavailable for the public to see after everything has become electronic.

Mr. Murillo said it will remain the same as it has been. Contractors will not be able to see other contractors' information, and the private information will only be available to those with the required permissions.

10. Adjournment

Mr. Feagans moved to adjourn the meeting and Ms. Kennedy seconded the motion. All members voted in favor of adjourning the meeting.

The meeting adjourned at approximately 10:40am. EST.