

PREQUALIFICATION COMMITTEE  
OPEN SESSION  
MINUTES – MAY 25, 2012  
1:00 P.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
Mark Ratliff	Director of Economics, External Audit, and Performance Metrics; Voting Member
Troy Woodruff	Deputy Commissioner of Operations; Voting Member
Louis Feagans	Manager of District Program Management; attending for Jim Stark as voting member
Peter Yao	Project Manager I-69 and Tech Support Road Design Engineer, Office of Roadway Services; attending for John Wright as voting member

Also in attendance:

Heather Kennedy	Attorney, Economic Opportunity and Prequalification Divisions; INDOT
Jim Burkart	Prequalification Auditor; INDOT
Fred Bartlett	Prequalification Research Analyst; INDOT
Marie Jett	Prequalification Coordinator; INDOT
Susan Miles	Contract Compliance Manager, Economic Opportunity Division; INDOT
Kevin Hetrick	Project Manager, Office of Project Management; INDOT

Scott Adams	Director of Real Estate; INDOT
Bob Hazzard	Buying Manager, Office of Real Estate; INDOT
Gabe Paul	Attorney, Legal Services; INDOT
Denise McHenry	Indiana Acquisition of Indiana, LLC
Angela Whicker	Formerly of Indiana Acquisition of Indiana, LLC
Scott Sondles	Burgess & Niple, Inc.
Greg Garrison	Burgess & Niple, Inc.
Greg Rominger	Burgess & Niple, Inc. and American Council of Consulting Engineers (ACEC)
Dave Blackburn	President, Asphalt Materials, Inc. / Pavement Maintenance Systems, LLC
Doug Felton	Vice President, Pavement Maintenance Systems, LLC
Stewart Schwikert	Vice President, Pavement Maintenance Systems, LLC
Mark McCollough	Asphalt Materials, Inc. / Pavement Maintenance Systems, LLC
Jan Schutt	Indiana Sign and Barricade, Inc.
Paul Berebitsky	Indiana Construction Association (ICA)

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The Committee reviewed the following agenda items:

1. Adoption of December 1, 2011 Open Session Meeting Minutes
2. Adoption of December 1, 2011 Executive Session Meeting Minutes
3. INDIANA ACQUISITION OF INDIANA, LLC – 1:00
  - a. Errors and Omissions on SR 8 Road Project (Des. No. 0100970); LA Code 5257; Parcel 20
4. PAVEMENT MAINTENANCE SYSTEMS, LLC – 2:00

- a. Compliance with On-the-Job Training Program
- b. DBE Utilization Requirements on Contracts RS-33287 and RS-33301
- c. Consideration of Prequalification Application

PREQUALIFICATION COMMITTEE MEETING  
OPEN SESSION  
MAY 25, 2012

Ms. Mulligan, Committee Chair, called the meeting to order at 1:01 p.m. EDT. All Committee members were present, with the exception of Mr. Stark and Mr. Wright. Mr. Louis Feagans attended for Mr. Stark. Mr. Peter Yao attended for Mr. Wright.

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

Ms. Mulligan 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.

1. Adoption of December 1, 2011 Open Session Meeting Minutes

Ms. Mulligan called for consideration of the meeting minutes from the December 1, 2011 meeting.

Mr. Miller moved to adopt the meeting minutes from the December 1, 2011 meeting. Mr. Ratliff seconded the motion. All members voted in favor. Ms. Mulligan stated the minutes would be posted on the website within a few days.

2. Adoption of December 1, 2011 Executive Session Meeting Minutes

Ms. Mulligan called for consideration of the meeting minutes from the December 1, 2011 meeting. There are two versions of the Executive Session minutes in the Committee members' packets. The full version of the Executive Session minutes will not be posted due to confidentiality of the subject matter; however, the shortened version of the Executive Session minutes will be posted on the Committee's website.

Mr. Woodruff moved to adopt the meeting minutes from the December 1, 2011 meeting. Mr. Miller seconded the motion. All members voted in favor. Ms. Mulligan stated the minutes would be posted on the website within a few days.

3. Indiana Acquisition of Indiana, LLC - Errors and Omissions on SR 8 Road Project (Des. No. 0100970); LA Code 5257; Parcel 20

Ms. Mulligan introduced Mr. Kevin Hetrick from INDOT Project Management and stated that he will present the issues to the Committee first, and then Indiana Acquisition of Indiana, LLC (Indiana Acquisition) will have an opportunity to respond.

The Executive Summary submitted by the Office of Capital Program Management, which was included in the Committee members' packets, incorrectly referred to parcels 5 and 20. The correct parcels are 20 and 25.

Mr. Hetrick explained that the first item on the table for discussion involves the State Road 8 widening project between Auburn and Garrett. Burgess and Niple, Inc. (B&N) was the prime consultant on the project. Denise McHenry, owner of Indiana Acquisition, provided buying services on the project. Parcels 20 and 25 were owned by the same company. The Deputy Attorney General (DAG) reviewed the parcels and rejected the mortgage release on Parcel 20 twice. The DAG rejected it the first time because it was a copy and the seller's name did not match the name registered with the Indiana Secretary of State (SOS). With the second submission, the DAG rejected the mortgage release because it was a forgery. The Parcel 20 mortgage release showed the same unique pen marks as found on the Parcel 25 document. The notary stamp on the second submission is also in question. Mr. Hetrick stated that this is inappropriate conduct and a serious issue of trust.

Mr. Hetrick stated that in 2010 a similar issue was brought to Ms. McHenry's attention on another project. Because this is the second occurrence, INDOT's Office of Capital Program Management asked that Indiana Acquisition be brought to the Committee. He stated that it is necessary to have clear titles on the properties.

Mr. Hetrick stated that Ms. McHenry violated the requirements in the INDOT Buying Manual. The State of Indiana requires buyers to have a real estate license. Some states do not require buyers to be licensed, but Indiana does. This forgery goes against the public trust. The Office of Project Management recommends that Indiana Acquisition's prequalification be withdrawn for twelve (12) months.

Ms. Mulligan asked if there were any other presenters.

Mr. Scott Adams, INDOT Director of Real Estate, stated that he had information to present in regards to the I-69, Section 4 project. Mr. Adams stated that out of nine parcels assigned to Indiana Acquisition, there were multiple errors with five of the parcels, which is an error rate of 55 percent. He passed out copies of an email summarizing the issues with the five parcels. He stated that these types of errors are inexcusable and cause delays on projects. INDOT relies on the consultant workforce to provide a large amount of work. We require our consultants to have high standards. As a state agency, we have the duty to have competent consultants represent INDOT to the taxpayers of Indiana. Buying is a delicate process. The buyers meet with the property owners in their homes, around the kitchen table. Mr. Adams stated that when a consultant fails, INDOT fails. The Office of Real Estate's (ORE) recommendation for discipline is contractual suspension of work for twelve (12) months.

Ms. Mulligan asked Ms. McHenry if she would like to respond.

Ms. McHenry introduced herself as the owner of Indiana Acquisition and stated she has been a licensed real estate broker since 1988. She has been doing work for INDOT for 20 years. She used to work for United Consulting Engineers (UCE). She started her company in 2000. Ms. McHenry stated that this is the first allegation of fraud that has ever been mentioned to her.

Ms. McHenry stated she wanted to address the allegations. The property owners gave her the document printed on 8 ½” x 11” paper, which was too short and she knew it would not be accepted by INDOT. The property owner made corrections on the document. Ms. McHenry explained that she asked the property owners for permission to make corrections to the document, and they provided permission in writing.

Ms. McHenry stated that initially the mortgage had been secured properly; however, when the packet was submitted for review, Ms. Kristen Edmundson, DAG, denied the mortgage release because the SOS had the company name listed as G & B Aggregates, LLC, when the company name was actually G & B Aggregate, LLC. She stated that according to the owner, the SOS’s records were in error with the extra “s”. It took two months to get the correction with the SOS. Ms. McHenry added that she went back to the owners for additional signatures on paperwork six different times and the owners were tired of signing documents.

Ms. McHenry passed out copies of documents related to these parcels, including copies of mortgage releases on Parcel #05 (sic), Parcel #20, and Parcel #25. Apparently the parcel number in the first document was a typographical error. The mortgage amount and mortgage record instrument number were the same as on the mortgage release for Parcel #20. Also included in the documentation provided by Ms. McHenry were the following two statements:

- From G & B Aggregate, LLC dated September 3, 2011- “Andrew F. Brooks, Member and Constance E. Overly, Notary for the State of Indiana do hereby give permission to Denise McHenry, Buyer for the State of Indiana, to change the date on all documents to August 9, 2011.” This statement was signed by Andrew F. Brooks and Constance E. Overly.
- Statement dated September 26, 2011- “The undersigned holders of a mortgage excuted (sic) by G & B Leasing dated November 17, 1999 and record (sic) December 13, 2000 in mortgage record instrument #00-10749 of the records of DeKalb County Indiana hereby release all funds from the partial or full sale of said property to G & B Leasings (sic) LLC.” This statement was signed by Andrew F. Brooks, John R. Brooks, and Larry Gerig.

Ms. McHenry stated that she has been asked by INDOT personnel from ORE on numerous occasions to make corrections on documents and resubmit them. She gave examples such as changing a name or date on the first page of a warranty deed. She stated that she has asked ORE to make the corrections but has been told that they could not do it, but she as the buyer could on warranty deeds because the signatures were not on the first page.

Ms. McHenry stated she wanted to address the issues on the I-69 project. She was hired to work on Phase 4. She stated that 20 buyers were brought in for a meeting with ORE, and Mr. Adams told them that they hired the best of the best to work on this project. During this phase of acquisition, there was a special incentive made to the property owners; if they signed the purchase agreement within 30 days, then they would receive 10 percent more. She explained that for an offer of \$1400, the incentive would be \$140. Ms. McHenry stated that nine parcels were assigned to Indiana Acquisition. She stated that she made a mistake with the incentive on five parcels. Ms. McHenry explained that she had increased the incentive when the offer increased. She stated she went back to all five property owners to explain the mistake and correct the incentive.

Ms. McHenry stated that in 20 years working with INDOT, she has only condemned twelve properties. She stated that she has tried to always work out deals with the property owners, and it has saved INDOT a lot of money.

Ms. Mulligan asked if there were any questions.

Mr. Ratliff asked Mr. Hetrick and Mr. Adams why the recommendation is for a twelve month suspension and not a lifetime suspension.

Mr. Adams replied that they were advised by INDOT's Legal Services Section to recommend a twelve month suspension.

Ms. Mulligan stated that when a suspension is issued a time frame is usually set.

Mr. Gabe Paul from INDOT Legal Services explained that the issues of fraud are allegations. He asked Ms. McHenry about the notary signature and stamp.

Ms. McHenry stated she has been a notary for 20 years. She stated she applied her seal to the document.

Mr. Woodruff asked Ms. McHenry for clarification of the name of the notary on the document she sealed.

Ms. McHenry stated that she got permission from the sellers and the notary to apply her stamp. She stated that the owners held their own mortgage. The reason for a mortgage release is to notify the mortgage holder. They did not need to notify themselves. It was a moot point.

Mr. Hetrick stated that there were two reasons the mortgage release was denied the first time; the extra "s" in the company name and the mortgage release was a copy.

Mr. Bob Hazzard, INDOT Buying Manager, explained that the reason the DAG denied the mortgage release was because it was not an original document.

Mr. Paul questioned Ms. McHenry about the incentive program that she mentioned.

Ms. McHenry stated that she did not realize that if the offer went up, then the incentive did not go up. That is where the confusion occurred. Ms. McHenry added that she went back to all the sellers and made corrections to the incentive offers. Ms. McHenry stated that a notary would not predate or back date and then send documents through to INDOT.

Mr. Adams asked Ms. McHenry about the \$140 incentive example she gave earlier. He asked about details of the incentive program.

Ms. McHenry replied that there had been a minimum of \$500 that went up to \$300 on the second phase. She then corrected her reply and said it went from \$1000 to a minimum of \$500.

Mr. Adams stated that the minimum incentive is \$500.

Mr. Kicinski asked Mr. Adams what the issues were with the I-69 project.

Mr. Kicinski asked what INDOT's policy is on changing document errors.

Ms. McHenry replied that it is common practice for buyers to be asked by INDOT to correct the front page and resubmit it to INDOT. Ms. McHenry added that she has two people who can verify that they have talked with buyers and then have had to make changes on documents. Ms. McHenry stated that Ms. Angela Whicker, a former employee of Indiana Acquisition, can verify that it happens regularly.

Mr. Ratliff stated that there is a difference between correcting a name or date and a forged document. The mortgage company and/or title company could have a claim with INDOT.

Mr. Paul asked Ms. McHenry if it was her obligation to go back to the seller to get it signed and notarized again. The seller needs to fill it out. As the buyer, you have an obligation to go back as many times as it takes to get the proper documentation.

Ms. McHenry replied that the sellers gave her permission to change the documents. The documents were not forged. Ms. McHenry stated that a copy is valid because it can be recorded.

Mr. Adams stated that the owners did not sign the mortgage release for Parcel 20. The document submitted to INDOT was not the original signed document.

Ms. McHenry replied that it was an original. The 8 ½" x 11" document that the owners altered was the original.

Mr. Joe Novak asked if it wouldn't have been easier to get a new mortgage release signed, instead of getting a letter stating it was OK to revise the document.

Ms. McHenry replied that she did go back for signatures.

Mr. Feagans asked Ms. McHenry if INDOT's expectations were for buyers to get original signatures on the form.

Ms. McHenry stated that she was trying to help the property owner and not have to go back to them.

Mr. Scott Sondles stated that he is with B&N. He is an engineer and was one of the authors of the 1999 INDOT Real Estate Manual. He stated he wanted to speak on behalf of the SR 8 project. It is a unique situation when the owner of the parcel is also the mortgage holder. The purpose of the mortgage release is to notify the mortgage holder. It is a moot point in this case. Mr. Sondles stated that Ms. McHenry made a good faith effort. It was a tough assignment. There is a small community of real estate buyers. There was no malice or intent to commit fraud. Please take into consideration that this was a very small team.

Ms. McHenry stated that she has a letter from Mr. Steve Jones, Vice President of UCE, that states that she used to work for them and still does work for them on contract and everything that she has done for them has been with integrity. Ms. McHenry also stated she has a letter from Mr. McClure that states that Ms. McHenry had gone far above what was expected of her on a project involving apartments at Purdue University. She put together a deal that allowed the students to stay in the apartments for the remaining school year after the property was sold.

Mr. Woodruff asked INDOT staff what happened in 2010.

Mr. Adams replied that it was an issue involving a warranty deed. One document was a color photo copy of the other document. It also was rejected by the DAG.

Mr. Woodruff asked if Ms. McHenry was informed of this problem.

Mr. Adams replied yes, she was.

Mr. Woodruff asked Ms. McHenry why she would not go back for new signed documents, especially after the first incident.

Ms. McHenry replied that she barely remembers that incident and stated she did not think the incident was the same. She stated that she found out that the recorders would take copies.

Mr. Woodruff asked Ms. McHenry if it was her understanding that she needed to provide originals to INDOT.

Ms. McHenry replied yes, she needed to provide originals.

Mr. Woodruff asked Ms. McHenry why she would submit copies.

Ms. McHenry replied that she had approval from the owners.

Mr. Paul asked Ms. McHenry if she worked for the property owners or INDOT.

Ms. McHenry replied INDOT.

Ms. Mulligan asked if there were any other questions.

Mr. Kicinski asked Ms. McHenry whose stamp was used to notarize the corrected document.

Ms. McHenry replied that it was hers.

Mr. Kicinski asked if she used her stamp when it was another notary's signature.

Ms. McHenry replied yes. She stated she had permission to do so. Mr. Andrew Brooks (property owner) and Ms. Constance Overly (notary) were both fine with a copy. The owner has all the documents.

Mr. Hazzard stated that the original paperwork from Parcel 25 was copied, altered, and used for Parcel 20. This creates a risk. The owners could come back on INDOT.

Mr. Adams stated that an original document was submitted for Parcel 25. We did not receive the original document for Parcel 20. The signatures were from a copy of the Parcel 25 document. It now has been recorded and the mortgage released. The DAG's job is to ensure that INDOT is acquiring right-of-way in accordance with the laws of the State of Indiana. INDOT cannot accept a copy of the mortgage release because the owners could come back on INDOT.

Ms. Mulligan asked Ms. Kennedy to inform the next contractor that the meeting was running behind schedule.

Mr. Yao asked if the mortgage release has been signed by the property owners for Parcel 20.

Ms. Mulligan asked what has been done to correct the problem.

Mr. Hazzard replied that ORE asked Ms. McHenry to go back to the property owners and have a whole new document signed. Mr. Hazzard stated that INDOT does not ask buyers to make changes on documents, except on the front page of deeds.

Mr. Adams stated that this is Ms. McHenry's second offense. ORE does not tell buyers to make changes to documents. The owners are allowed to make changes to the document, but it is not a policy that ORE tell the buyers to make changes.

Ms. McHenry asked Ms. Wicker to speak to the Committee. Ms. Wicker is Ms. McHenry's daughter. Ms. Wicker stated that she worked for Indiana Acquisition for ten years. She stated that there are a lot of gray areas with this issue. Ms. Wicker stated that she personally has been asked by INDOT personnel, and she knows other buyers who have been asked, to make changes to documents and fax or email the document back to INDOT. She has been asked to change the wording on documents to satisfy the DAG. She goes back to the owners to get permission, but has never been asked by INDOT to provide justification of the approval from the

owners. Ms. Wicker stated that she has never witnessed fraudulent behavior by Ms. McHenry. Her actions with this incident were not malicious.

Ms. McHenry asked if anyone would like to see the letter of recommendation from UCE that she previously mentioned. She provided copies of the letter to the Committee.

Mr. Greg Garrison from B&N stated that he had been told by two buyers that they had been asked to correct documents and they were not asked to provide approval/concurrence from the owners. He stated that Ms. McHenry corrected the problem quickly.

Ms. Mulligan asked if anyone on the Committee wanted to make a motion. She stated the options include suspending a company's prequalification certificate, reducing their capacity rating, removing a work type, or the Committee could ask for additional information or an improvement plan. Ms. Mulligan asked Ms. Heather Kennedy, Attorney for the Economic Opportunity and Prequalification Divisions, if that covers the options.

Ms. Kennedy responded yes.

Mr. Joe Novak asked if Ms. McHenry's current assignments exceed her capacity.

Ms. Macdonald referred to the list of contracts provided in the Committee members' packets and replied that Indiana Acquisitions may have work remaining on older on-call buying contracts, but it appears that her current work is from subcontractors.

Ms. McHenry stated that she has lost two jobs this year on I-69 because she has been blackballed by INDOT. Consultants were told not to use her. She stated that she knows this is a serious allegation, and she is here to clear her name.

Mr. Woodruff asked Mr. Hetrick why the recommendation is for a one year suspension.

Mr. Hetrick replied it was the recommendation given by Mr. Adams.

Mr. Adams added that one year is a significant amount of time to send a message.

Mr. Feagans asked if we should go to the Indiana Professional Licensing Agency to get their opinion.

Ms. Kennedy replied that process requires the complaint to be sent in to the Attorney General's Office and then they decide whether or not to take it to the Real Estate Board.

Mr. Adams also pointed out the issue is with the notary license too.

Mr. Woodruff stated that he is disturbed by this incident and the one that happened in 2010. Both had been brought to McHenry's attention. INDOT should not accept this type of behavior.

Mr. Kicinski stated that this is not a court. He asked if the attorneys present in the meeting would consider Indiana Acquisition's actions illegal.

Mr. Paul stated that there was fraud; however, he is not sure if we could prove malice.

Ms. McHenry stated that she did not remember the details of the 2010 incident. She did not know that it was going to be brought up in this meeting. She stated that she would have to rely on what ORE said happened with that incident.

Mr. Kicinski asked if Ms. McHenry received a copy of the packet.

Ms. Mulligan stated that the notice to Ms. McHenry did not include the 2010 incident, but the Committee generally allows for additional information to be presented. The INDOT owner office submits the issue for consideration, and it is distributed to the Committee members two to three days before the meeting. We generally do not provide that information to the contractor or consultant prior to the meeting, unless we are asked. We do provide the packet to the contractor or consultant at the beginning of the meeting.

Mr. Yao asked if Indiana Acquisition is suspended, can they continue current work.

Ms. Mulligan replied yes, the suspension applies to new contracts.

Ms. McHenry stated that she has had no new work since January because she was blackballed by INDOT.

Ms. Mulligan stated that if there is to be disciplinary action, the Commissioner makes the final decision. The Committee makes a recommendation to the Commissioner.

Mr. Woodruff made a motion to recommend to the Commissioner to suspend Indiana Acquisition's prequalification for twelve months.

Mr. Kicinski seconded the motion.

Six of the Committee members voted in favor of the motion. Mr. Novak voted nay.

Ms. Mulligan explained that the recommendation will go to the Commissioner. The Commissioner has the ability to accept or reject the recommendation made by the Committee. A letter will go to Indiana Acquisition if the Commissioner accepts the Committee's recommendation. Indiana Acquisition will have an opportunity to appeal. The appeal process is included in the back of the INDOT Consultant Prequalification Manual.

Ms. Mulligan opened the floor to any other comments.

Mr. Novak stated that he would have been willing to impose a reduction but did not want to go as far as suspension.

Ms. Mulligan called for a five minute break.

4. Pavement Maintenance Systems, LLC - Compliance with On-the-Job Training Program, DBE Utilization Requirements on Contracts RS-33287 and RS-33301, and Consideration of Prequalification Application

Ms. Mulligan reconvened the Committee meeting at 2:28 p.m. Ms. Mulligan introduced the item regarding Pavement Maintenance Systems, LLC (Pavement Maintenance). Ms. Mulligan explained that INDOT will present first and then Pavement Maintenance will have the opportunity to respond. Ms. Mulligan introduced Ms. Susan Miles, Contract Compliance Manager, in INDOT's Economic Opportunity Division.

Ms. Miles stated that there are a few issues with Pavement Maintenance's compliance with the On-the-Job Training (OJT) program. The OJT program is mandated by the Federal Highway Administration (FHWA). It focuses on the advancement of females and minorities in the construction trades. All federally funded construction contractors with INDOT are required to comply. Ms. Miles explained that prior to the end of 2011 she found discrepancies in the hours reported by Pavement Maintenance. She found that a female was working some hours in the office, instead of in the field. EOD asked Pavement Maintenance to provide certified payrolls. Pavement Maintenance reported that Stacy Hill worked 1480 hours and Guadalupe Gonzalez worked 1310 hours. The documented hours on the OJT report did not match the certified payrolls. Per the certified payrolls, Stacy worked 203.25 hours and Guadalupe worked 456.75 hours.

Ms. Miles stated that she asked for certified payrolls on multiple occasions for all weekly OJT reports. EOD met with Pavement Maintenance. Ms. Miles finally received twelve reports on contract RS-33287 on May 17, 2012. The certified payrolls showed prevailing wages paid on some hours, plus hours were included for shop and office work.

Ms. Miles stated that Pavement Maintenance was at the OJT training. The contractors were directed to submit their 2012 OJT agreement by April 1, 2012. Ms. Miles added that Pavement Maintenance submitted the agreement late and had asked EOD if it was acceptable. EOD requested some changes to the document. Pavement Maintenance resubmitted it again last night, and Ms. Miles reviewed it and requested additional changes. She reported that it was submitted again this morning, but she had not reviewed it yet. Ms. Miles stated that the 2011 OJT agreement was submitted by Pavement Maintenance in July of 2011, which was a late submission.

Ms. Miles reported on Disadvantage Business Enterprises (DBE) issues with Pavement Maintenance on two contracts. INDOT let Contract RS-33287 on January 12, 2011 for \$502,749.98 with a 4% DBE goal. The Affirmative Action Certificate (AAC) submitted with Pavement Maintenance's bid listed Indiana Sign and Barricade, Inc. (Indiana Sign), MAS Markers, Inc., and Major Engineering and Land Surveying as the DBE subcontractors on the contract. INDOT issued the Notice to Proceed on February 11, 2011. INDOT held the preconstruction meeting on April 21, 2011. It was brought to EOD's attention late last fall that Pavement Maintenance did not use Indiana Sign. Pavement Maintenance did not meet their

DBE goal. Indiana Sign had ordered supplies for the contract and because they were not used on the contract, they are out \$30,000.

Ms. Miles reported that INDOT let Contract RS-33301 on July 13, 2011 for \$845,580.76, and it had a 4% DBE goal. The Affirmative Action Certificate (AAC) submitted with Pavement Maintenance's bid listed K & S Markers, Inc., Major Engineering and Land Surveying, Karen Haan, Inc. (Haan), and Hoosier Bulk Transport. When Haan was asked to sign the DBE-3 form at the end of the contract, she was surprised to learn she was a DBE listed on the contract. Haan was not utilized on the contract.

Ms. Mulligan turned the floor over to Pavement Maintenance.

Mr. Dave Blackburn introduced himself and others from Pavement Maintenance. He is the President of Asphalt Materials, Inc. (AMI), which is the parent company of Pavement Maintenance. Mr. Mark McCollough works in business development for AMI and Pavement Maintenance, Mr. Stewart Schwikart is a Vice President and runs Pavement Maintenance, and Mr. Doug Felton works in human resources at Heritage Group and is Vice President at Pavement Maintenance.

Mr. Felton addressed the Committee on the OJT issues. He stated that he thought all of the certified payrolls had been provided. Mr. Felton acknowledged that he received an email from EOD in January mentioning the discrepancies. Mr. Felton stated that Pavement Maintenance was unclear on what hours should be reported. They did not realize that travel time should not have been included. The weekly OJT reports included all hours. The certified payrolls only included hours paid the prevailing wage rate. He stated that on previous contracts they reported the OJT hours, but the payroll hours were not reported. He stated that Pavement Maintenance now understands that they are only to report prevailing wage hours on the OJT reports.

Mr. Felton admitted that Pavement Maintenance missed the April 1<sup>st</sup> deadline to submit the OJT agreement. Pavement Maintenance sent it in after Ms. Miles reminded them to do so. He stated that Pavement Maintenance is thinly staffed, which is not a good excuse. They knew the deadline was April 1<sup>st</sup>. They were busy with other things.

Mr. Felton stated that he had all of the certified payrolls with him, and he can provide them to EOD, if needed.

Ms. Mulligan opened the floor to questions from Committee members.

Mr. Kicinski asked if Pavement Maintenance is a new company or part of the Heritage Group.

Mr. Felton replied that Pavement Maintenance is in its fourth year of business.

Ms. Mulligan explained that there is confidential prequalification information in the member's packets, including Pavement Maintenance's prequalification history and an email

from the Prequalification Auditor giving an update on their pending application. The Prequalification Division is asking the Committee for a recommendation on what to do with the pending application. Please be aware that anything marked confidential will not go to the public.

Mr. Feagans asked EOD if all contractors go through the OJT training each year or is it just new contractors.

Ms. Miles replied that the training is offered annually to all contractors and that she is available to answer questions one-on-one.

Mr. Woodruff asked if all paperwork has now been submitted.

Ms. Miles replied that there is some missing paperwork, including some missing certified payrolls.

Mr. Felton stated that Pavement Maintenance does not generate certified payrolls if there are no prevailing wages. He stated that Ms. Miles asked for payrolls for specific weeks. Pavement Maintenance provided that information. They asked if other things were missing, but got no response.

Ms. Mulligan stated that Pavement Maintenance submitted the latest OJT agreement this morning. We don't know if there are still issues with it until it is reviewed. There are still issues with certified payrolls.

Mr. Ratliff asked Ms. Miles to clarify that the information received has been inaccurate, incomplete, and not on time.

Ms. Mulligan asked Ms. Miles approximately how many contractors submit their application on time.

Mr. Josh Wise, Contract Compliance Specialist from EOD, replied that approximately 60 to 65 contractors out of 87 turned their OJT agreements in on time.

Mr. Miller asked what Pavement Maintenance's goal was for 2011.

Ms. Miles replied 600 hours in 2011.

Mr. Yao asked if last year was Pavement Maintenance's first year in the OJT program.

Ms. Miles replied no, it is Pavement Maintenance's third year. She stated that she was not the Contract Compliance Manager two years ago. The overall goal of the OJT program is for the apprentices to gain experience by working enough hours to obtain their journeyman cards, if they so choose.

Mr. Woodruff asked what the incentive is for contractors to be in the program.

Ms. Miles replied that it is a FHWA program that is for the advancement for females and minorities. It is required for contractors that have had federally funded contracts. The majority of INDOT contracts are federally funded. If contractors want to work for INDOT, then they will have to follow the specified guidelines.

Mr. Kicinski asked if the program is contract specific.

Ms. Mulligan stated that if a contractor was awarded a federally funded contract and was not already in the program, then they would have to enroll in the program for the current year.

Mr. Felton stated that Pavement Maintenance can recalculate the hours for 2011.

Mr. Blackburn reported that the program is different from state to state. Pavement Maintenance does a lot of work in Michigan and their program is different. INDOT's program is union oriented. Pavement Maintenance is not a union contractor. They do not have journeymen. It is difficult to apply the program as a non-union contractor.

Mr. Blackburn stated that in regard to contract RS-33287, Indiana Sign was not available to do the work required due to a scheduling conflict. Haan took on the work. The line removal was done by Gridlock. They paid over \$17,000 to DBE subcontractors, which calculated to 3.39% of the total. Taking into account a project overrun of \$25,000, the percentage increased to 3.6% of the total. Still the contract ended up being short of the 4% DBE goal.

Mr. Blackburn stated that Pavement Maintenance did not acquire the written consent from INDOT to change DBE's for the contract. They have no excuse, other than they did not realize that they needed to get approval. They utilized another DBE subcontractor for part of the job.

Mr. Woodruff asked Ms. Schutt of Indiana Sign if it was true about the scheduling.

Ms. Schutt replied that she did not think they were asked if they were available. She stated she called Pavement Maintenance to see when they would be needed. She stated that she was told it did not matter if the DBE goal was met.

Mr. Blackburn asked Ms. Schutt who she spoke to at Pavement Maintenance.

Ms. Schutt replied that she spoke to the person who answered the phone, and she believed her name was Kimberly. No one from Pavement Maintenance called her back. She stated that it is a federal requirement to notify INDOT if the contractor is changing DBE subcontractors.

Ms. Schutt stated that the signed subcontract with Pavement Maintenance states that they are to provide five to eight days notice before each job.

Mr. Blackburn stated that Pavement Maintenance was told that Indiana Sign was too busy.

Ms. Mulligan asked if there were any other questions on that contract or the other contract.

Mr. Blackburn stated that INDOT advertised contract RS-33301 three times and awarded it on the third letting. Haan had submitted a bid to Pavement Maintenance on the first and second lettings, but they did not have a third bid. This was a mix up. They had Haan's bid listed in their file. When Haan was contacted, she was unable to perform the work. Pavement Maintenance then called Work Zone, and they were able to do the pavement markings. The DBE goal was met. The total paid to DBE subcontractors was over \$49,000, which calculated to 5.84% of the contract total, which exceeded the 4% DBE goal. Mr. Blackburn stated again that Pavement Maintenance did not realize that they were required to contact INDOT about changing the DBE subcontractors.

Ms. Mulligan asked if the DBE -3 forms have been submitted to INDOT.

Mr. Blackburn replied yes, they have one or two of them.

Ms. Miles asked when it was submitted.

Mr. Blackburn replied that the DBE-3 forms were sent to the Fort Wayne District on November 30, 2011.

Ms. Miles reported that she had not seen them.

Mr. Feagans asked about the contract being let three times.

Mr. Blackburn replied that INDOT did not award it the first time. There were no bidders the second time, due to the fact that the qualified bidders were not prequalified at the time.

Mr. Ratliff asked for clarification on contract RS-33301. He asked if Haan did not do the work on the contract.

Mr. Blackburn replied no.

Ms. Mulligan stated that when a contractor submits their bid, the contractor submits the AAC with pre-bid commitments. She asked if there were other questions or comments.

Mr. Kicinski asked if there is a problem changing DBE utilization during the project.

Ms. Mulligan replied that the contractor needs to get approval from INDOT to change the DBE commitment. The contractor also has to notify the subcontractors and give them five days notice and a chance to reply when requesting a change. The DBE-3 has to be filled out at the end of the contract. INDOT submits all DBE-3s to FHWA and has to explain any discrepancies.

Mr. Kicinski suggested that we move forward with prequalification and keep this information in Pavement Maintenance's file in case there are any other issues.

Mr. Woodruff stated that he is inclined to not prequalify Pavement Maintenance until they submit all required paperwork.

Mr. Ratliff suggested perhaps applying a capacity reduction.

Mr. Novak stated he agrees with applying a capacity reduction.

Ms. Mulligan stated that Pavement Maintenance currently has a 30% experience reduction factor (ERF), based on being a new contractor. Ms. Mulligan further explained, that she would recommend that the Committee not prequalify Pavement Maintenance until their OJT paperwork issue is resolved.

Mr. Feagans asked if we are looking at Pavement Maintenance's prequalification now.

Ms. Mulligan reported that Pavement Maintenance's prequalification status expired on April 30, 2012. Pavement Maintenance submitted the renewal application after the application expired. She stated that this is different than a contractor that is currently prequalified.

Mr. Kicinski asked if there were more than the one CR-2 in the file.

Ms. Macdonald replied that there is just one CR-2 in the file.

Ms. Mulligan stated that INDOT requires that the DBE contractor perform the work that they bid. There is a concern that Haan was listed without an agreement.

Mr. Kicinski stated that it would be a problem if it was Pavement Maintenance's intent.

Ms. Mulligan stated that the federal regulations require that a contractor has to list a reason why they aren't using the DBE and inform INDOT and the DBE. The DBE contractor is suppose to receive a five day notice as to why they are not being used.

Mr. Ratliff moved to recommend to the Commissioner to suspend Pavement Maintenance's prequalification until the OJT issues are resolved to EOD's satisfaction, then set the capacity to \$1 million.

Mr. Kicinski stated that he agrees with Mr. Ratliff that Pavement Maintenance's bidding capacity should be reduced.

Mr. Woodruff asked what the Committee recommended for the other contractors brought before the Committee with DBE issues.

Ms. Mulligan replied that in one case a DBE trucking company was underutilized, and the prime contractor was brought before the Committee. In that case, although the prime

contractor asked if they should commit to using the DBE on future contracts, INDOT could not require such a commitment or allow work on a different contract to be reported to the contract in question.

Mr. Ratliff stated that another option could be to allow Pavement Maintenance to work for another year without reducing the capacity any further, then review this issue in a year.

Ms. Mulligan stated that the Committee can recommend placing a time limit on the penalty. We can always ask a contractor back to the Committee for any issue.

Ms. Macdonald stated that a contractor's aggregate (bidding capacity) is reduced by the amount of the contractor's unearned work. That includes unearned work with any party, including other state DOT's, LPA's, and private contracts. She stated that Pavement Maintenance's unearned work may be above \$1 million. As a relatively new contractor, Pavement Maintenance currently has a 30% reduction to their capacity.

Mr. Woodruff stated that the Committee should be careful. He stated he is not happy that Pavement Maintenance does not have their paperwork in order and that they did not use Indiana Sign; however, we don't want to shut Pavement Maintenance out of working in Indiana.

Mr. Feagans asked if there is a staff recommendation.

Ms. Mulligan stated that her recommendation is that the prequalification be suspended until the OJT issues for both 2010 and 2011 are resolved. We also would like to see a reduction. She stated that if these issues have occurred due to Pavement Maintenance being thinly staffed, then perhaps this would give them time to catch up.

Mr. Kicinski asked if the Committee wanted to consider a reduction above 30%.

Ms Macdonald added that the standard 30% is automatically applied to new contractors. We usually do not start reducing that factor until we start seeing CR-2s.

Mr. Novak stated that Pavement Maintenance is way under capacity, and they are still showing troubles.

Ms. Mulligan stated that the Committee can recommend to either approve the pending application with the current 30% capacity reduction or increase the experience reduction factor (thereby reducing the capacity more), or deny prequalification for a period of time or until the issues are resolved.

Mr. Feagans suggested that Pavement Maintenance's bidding capacity be reduced to 10% below last year's aggregate.

Mr. Miller stated that failure to follow DBE rules is a serious matter and suggested to amend the motion to recommend the capacity be limited to \$5 million.

Mr. Blackburn stated that Pavement Maintenance does most of their work in Michigan, and that capacity would not allow them to bid in Indiana.

Ms. Mulligan stated that it is easier for the Prequalification Section to apply the experience reduction factor than set an aggregate limit.

Mr. Blackburn stated that Pavement Maintenance has had twelve other projects with INDOT with which they have not had any problems.

Ms. Mulligan asked if those other contracts had DBE goals.

Mr. Blackburn replied yes, some of the contracts had DBE goals.

Mr. Miller stated that the Committee needs to see CR-2s from other projects.

Ms. Mulligan stated that reconvening to review CR-2s is another option.

Ms. Macdonald stated that she queried the districts for any outstanding CR-2s.

Mr. Novak stated that if the Prequalification Section has not received the CR-2s, then we probably will not get quality CR-2s for past work. He stated that he would like to avoid reconvening.

Mr. Woodruff stated that he would like to see CR-2s from other projects and that the OJT paperwork has been submitted and accepted.

Mr. Novak stated that he would prefer to extend the period of suspension rather than reduce the capacity.

Ms. Mulligan asked for a new motion. She thought there had been two attempts at revisions since the original motion.

Mr. Novak made a motion to recommend suspending Pavement Maintenance's prequalification for the latter of: 1) the time it takes to resolve the OJT issue with EOD; or 2) six months and apply a 40% capacity reduction.

Mr. Woodruff stated that he would prefer to recommend a suspension of Pavement Maintenance's prequalification for six months that will not start until the OJT issues are resolved, and then apply the 40% capacity reduction.

Mr. Novak stated that he agrees with Mr. Woodruff's amendment to the motion.

Mr. Woodruff responded this gives Pavement Maintenance an incentive to get the paperwork done sooner.

Ms. Mulligan stated that the Prequalification application will not be processed until Ms. Miles reports that all the OJT issues are resolved.

Ms Mulligan added that because this is a pending application, the six month suspension with 40% capacity reduction would be a recommendation to the Commissioner. We do not have to wait until the OJT issues are resolved. We can go ahead and get the recommendation to the Commissioner now.

Mr. Feagans stated that he would like to see a higher capacity reduction.

Mr. Woodruff stated that if Pavement Maintenance resolves the OJT issue, we do not want to keep them from getting work. He stated that we want Pavement Maintenance to become a good partner with INDOT.

Mr. Kicinski stated that if other problems come up, we can bring them back to the Committee.

Mr. Woodruff stated that he thinks we will not see them back.

Mr. Feagans stated he will second Mr. Woodruff's motion.

Mr. Blackburn asked if the trigger for the approval is to come from Ms. Miles.

Ms. Mulligan stated that she can be contacted directly if the review is not done in a reasonable amount of time, but she is confident Ms. Miles will perform the review in a reasonable time.

Mr. Blackburn stated that a six month suspension would kick Pavement Maintenance out of 2013 work. He stated that microsurfacing lettings are in November, December, and January.

Mr. Novak stated that microsurfacing projects could be let in any month. They are not targeted for a specific time of year.

Ms. Mulligan stated that Pavement Maintenance will have the right to appeal. The appeal process is defined in the Indiana Administrative Code prequalification rules that are posted on our website.

Ms. Schutt stated that she has been in the DBE program since 1984. The DBE piece is important. She stated she would like to acknowledge that the Committee is taking this seriously. Indiana Sign ordered \$30,000 worth of materials for the job. They had the material but Indiana Sign was not utilized on the project. She stated that Indiana Sign had to eat the loss, because they did not use it within the year. Ms. Schutt stated that there are lots of people who would be happy to help explain the DBE process to Pavement Maintenance.

Ms. Mulligan called for a vote. All Committee members voted in favor of the motion. Ms. Mulligan stated that the motion carries.

Ms. Mulligan explained that the motion will be given to Commissioner Cline, and if he approves it, INDOT will send a letter to Pavement Maintenance.

Ms. Mulligan stated that it is likely that we will cancel the regularly scheduled June meeting that is less than two weeks away.

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

Mr. Miller moved to adjourn the meeting. All members voted in favor of adjourning the meeting.

Ms. Mulligan adjourned the meeting at approximately 4:00 p.m.