

PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – JANUARY 5, 2017
9:00 A.M. EST

The following Committee members attended the meeting:

| | |
|--------------|--|
| Mark Tidd | 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 | Contract Administration Manager; Voting Member |
| Joe Gustin | Senior Director of Finance; Voting Member |
| David Holtz | Director of Pavement Engineering; Voting Member |
| Joe Novak | Crawfordsville District Construction Director; Voting Member |
| Jim Stark | Deputy Commissioner of Innovative Project Delivery; Voting Member |

Also in attendance:

| | |
|----------------|--|
| K. D. Thurman | Prequalification Coordinator; INDOT |
| Libby Crawford | Director of Economic Opportunity Division; INDOT |
| Steve Duncan | Director of Contract Administration; INDOT |
| Lynn Butcher | Director of Litigation & Appeals; INDOT |
| John Leming | Prequalification Analyst; INDOT |
| Greg Christoff | Prequalification Auditor; INDOT |
| Lori Mansfield | Project Manager; Rieth Riley |
| Dan Osborn | Director of Governmental Affairs; Indiana Constructors, Inc. |

The Committee reviewed the following agenda items:

1. Adoption of July 14, 2015 meeting minutes.
2. Fenton Excavating and Construction, Inc. – Federal Debarment
3. Contractor Performance Evaluation (CPE) example and discussion.
4. Committee involvement and sanctions in lesser disputes and matters.
5. Committee involvement during reconsideration of decision made by Prequalification Division.
6. New Committee Business

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION
JANUARY 5, 2017

Mr. Tidd, Committee Chair, called the meeting to order at 9:00 a.m. EST. All Committee members were present, except for Louis Feagans.

1. Adoption of July 14, 2015 meeting minutes

Mr. Tidd called for consideration of the meeting minutes from the July 14, 2015 meeting.

Mr. Holtz moved to adopt the meeting minutes from the July 14, 2015 meeting. Mr. Novak seconded Mr. Holtz motion. All members voted in favor.

2. Fenton Excavating and Construction, Inc. – Federal Debarment

Mr. Tidd explained that Fenton Excavating and Construction, Inc. and Mr. Mike DeMil, Vice President of Fenton Excavating and Construction, Inc., are barred from federal contracts effective December 21, 2016 until December 21, 2019. He stated the company is not currently prequalified, but the committee would need to take action in order to prevent the company from contracting with INDOT.

Mr. Holtz asked if the federal debarment would only apply to contracts which have federal funds.

Mr. Clanton stated that INDOT's consultant contracts contain a clause that consultants attest they are not federally debarred. These terms should be passed on to any subcontracts.

Mr. Stark inquired if Fenton Excavating reapplied for prequalification and if a company needed to be on a prequalified list to act as a subcontractor with INDOT.

Mr. Tidd responded that Fenton Excavating has not reapplied for prequalification. INDOT has to approve each subcontractor, but there is a question whether INDOT can approve the company as a subcontractor solely based on the federal debarment.

Mr. Stark said he was worried that under the prequalification rules we would be unable to prevent the company from subcontracting with the State of Indiana. He suggested the recommendation be based only for INDOT, as he can't suggest a change for other state agencies.

Mr. Stark moved that Fenton Excavating and Construction, Inc. and Mr. DeMil would be excluded from INDOT subcontracts and applying to the prequalification division during the federal debarment period of December 21, 2016 to December 21, 2019. After the expiration of the debarment period, the company will need to come before the Prequalification Committee to be reinstated. Mr. Gustin seconded Mr. Stark's motion. All members voted in favor.

3. Contractor Performance Evaluation (CPE) example and discussion

Mr. Tidd provided a sample of contractor evaluations within the new Contractor Performance Evaluation system. He explained the Prequalification Division is charged with using these evaluations in a meaningful way. The division could use the evaluations to determine applicants' aggregate capacity, work types, and sub-aggregate amounts for those specific work types. He asked the committee to provide their feedback on the best use of this data going forward.

Mr. Murillo noted a comment is required in an evaluation anytime the PE/PS gives any negative number or a positive number higher than two.

Mr. Clanton said that on the consultant side the firms don't seem to change business practices until the firm sees that it affects their future work. INDOT construction professionals need to create a defined list of things to look for and determine the magnitude of the problem when it should affect the company. Companies doing business the right way, and safely, will want the data being used as opposed to companies which are cutting corners.

Mr. Novak suggested reviewing the consultant process to come up with best practices for contractor evaluations.

Mr. Stark said the consultant process allows to use the scoring system, but on the contractor side we are unable to make a change on an individual contract within the low bid system.

Mr. Novak responded if the Prequalification Committee saw a pattern of negative scores, the committee could consider a change to work types or capacity for a company.

Mr. Tidd asked if there should be a process the committee or the Prequalification Division use to make adjustments – including those situations where the amount of preparation isn't as extensive and the results don't have to be as strict as committee actions in the past.

Mr. Gustin inquired if all of the evaluations are final or if interim evaluations could be available.

Mr. Novak stated interim evaluations are recommended for any multi-season contract. He thought any committee action should be based on final reports as that may be the first time the contractor received feedback.

Mr. Gustin responded if there is a pattern of negative interim reports, maybe action needs to be made in advance to improve the performance before the project is complete.

Mr. Stark said when INDOT takes action to reduce a contractor's ability to do work with the state, it makes a change in the contractor's behavior. It provides the district personnel with a tool to improve the contractor behavior. If you bring a company to the committee based on one negative evaluation, it would be a little severe. If we changed their prequalification renewal status and lowered their aggregate, this may make a big impact.

Mr. Tidd asked if the committee wants to be more involved in the issues that arise in the districts or monitoring the evaluation process.

Mr. Holtz said if we wait until the final evaluation, INDOT has already paid for the contract. The sooner INDOT gets involved, the sooner the contractor can improve their behavior or we can bring them to the Prequalification Committee.

Mr. Clanton suggested the Prequalification Engineer should be tasked with recognizing a pattern of poor performance in the contractor evaluations.

Mr. Tidd asked if the committee would want to take action before a company needs to be suspended.

Mr. Novak responded the committee could help by making these evaluations more meaningful. If the district personnel are aware that negative interim evaluations could cause action by the committee, then personnel may be more likely to take the first step. If Mr. Murillo created guidelines for a red flag, then he could notify the committee at that point and request the contractor to come to a committee meeting. Currently whenever Crawfordsville District receives a negative evaluation for a company, Mr. Novak sends a copy of the evaluation to the president of the company.

Mr. Tidd said forwarding the negative evaluations to a company president could be an action that the Prequalification Division staff does during the application process.

Mr. Clanton said the Prequalification Division should first review the evaluations and have a better idea of the data set to come up with the red flags.

Mr. Tidd suggested the Prequalification Division create standards over time and coordinate with committee to decide if a company should come to the committee. The committee could be more vigilant to take actions when the problem first arises, rather than after the project is finished.

Mr. Stark suggested breaking down the reports and look for trends in the contractor's performance. The Prequalification Division can warn others at INDOT about recurring issues.

Mr. Gustin asked if the committee could get access to the CPE system.

Mr. Tidd said all of the committee members would be granted access to view all evaluations in CPE. The Prequalification Division staff could attend the district construction meetings to provide information about CPE data.

Mr. Murillo suggested the division also pay attention to where the complaints are coming from and only send the notices to those areas that are having the issues, rather than blanketing an entire company.

Mr. Tidd added the division could provide data trends to the Prequalification Committee without requiring a committee meeting.

Mr. John Leming, INDOT Consultant Prequalification Analyst, asked if INDOT has a system in place to review the reviewers of the evaluations.

Mr. Stark responded if Mr. Murillo looks for trends, then he should find evaluators' trends as well.

Mr. Novak added a report of the evaluators for the CPE evaluations would be helpful.

Mr. Dan Osborn, Director of Governmental Affairs of Indiana Constructors, Inc., said most of the questions within CPE are subjective. A common theme is companies getting different scores in the different districts. He also noted that getting a negative interim evaluation can negatively impact a relationship between the evaluator and the construction personnel. He suggested discussing the problems with the personnel in person rather than in writing.

Mr. Stark responded if there is a trend in the data, no matter if it is subjective or not, then it is an issue that needs to be brought forward.

Mr. Tidd added INDOT is trying to find ways to improve our processes and avoid suspending companies.

Mr. Clanton said there is a role for the committee and the Prequalification Engineer in approving work types for contractors and consultants. Mr. Clanton is putting together

information regarding consultant evaluations that could be discussed in a future committee meeting, along with the contractor evaluation data trends.

4. Committee involvement and sanctions in lesser disputes and matters

This item was discussed concurrently with agenda item 3.

5. Committee involvement during reconsideration of decision made by Prequalification Division

Mr. Tidd introduced this item regarding reconsideration of decisions made by the Prequalification Division, regarding work types, capacity or revoking the certificate. It has been the policy that the Prequalification Division will review new information and make a decision. He would like the committee to be aware of the situation, since there is no right to appeal.

Mr. Stark said if a company is trending a negative one score on all of their evaluations, and the company is notified that the committee is reviewing the company's application; then the company will change their performance.

Mr. Tidd asked if the consultant application review process included reviewing evaluations when adding a new work type.

Mr. Leming stated the evaluations are not considered as part of the consultant prequalification process. There was discussion about using the consultant evaluations in the prequalification process, but there wasn't enough data when the evaluation system was first implemented.

Mr. Stark responded if there is bad scoring in a certain work type, then maybe we don't prequalify the company in that certain work type.

Mr. Tidd explained that going forward these suggestions would need to be made into standards. There would not be any legal impediments to consistently apply standards to use the evaluations to determine prequalification status. We would need to make sure that significant notice was given about these changes.

6. New Committee Business

Mr. Tidd suggested moving the meetings from monthly to a quarterly basis, and arranging for special meetings as necessary. The committee agreed.

Mr. Osborn inquired about the approval of minutes for the quarterly meetings.

Mr. Tidd stated he could approve the minutes tentatively, and provide the draft to Indiana Constructors, Inc. within a month of the meeting. The committee would give the final approval at the following meeting.

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

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

Mr. Tidd adjourned the meeting at approximately 10:51 a.m. EST.