

PREQUALIFICATION COMMITTEE
MINUTES – MARCH 4, 2010
8:30 A.M. EST

The following Committee members attended the meeting:

Karen Macdonald	Prequalification Engineer, Legal Division; Committee Secretary and Non-Voting Member
Martha Kenley	Director, Economic Opportunity Division; Chair and Non-Voting Member
Tony Hedge	Director, Accounting Division; Voting Member
Grant Knies	Budget Analyst; Voting Member
Tiffany Mulligan	Attorney, Legal Division; Counsel to the Committee and Voting Member
Joe Novak	Construction Director, Crawfordsville District; Voting Member
Jim Stark	District Deputy Commissioner, Seymour District; Voting Member
Mark Miller	Director, Construction Management; Voting Member

Also in attendance:

Mike Rowe	Prequalification Auditor, Legal Division; INDOT
Frederic Bartlett	Prequalification Section, Legal Division; INDOT
John Leming	Prequalification Section, Legal Division; INDOT
Joan Widdifield	Contract Administration; INDOT
Jennifer Jansen	Attorney, Legal Division; INDOT
Jim Poturalski	Deputy Commissioner of Highway Management; INDOT
Michelle Allen	Office of Environmental Services; INDOT
Nathan Saxe	Office of Environmental Services; INDOT
Laura Hilden	Office of Environmental Services; INDOT

Susie Kemp	Office of Environmental Services; INDOT
Kenny Franklin	Project Manager; INDOT
Rusty Fowler	Vincennes District; INDOT
Jeff Stahl	Vincennes District Area Engineer; INDOT
Dwight Archibald	Vincennes District Project Manager; INDOT
Paul Berebitsky	Indiana Construction Association
Lewis J. Wagner	E. S. Wagner Company
John C. Wagner	E. S. Wagner Company
Kurt Huber	E. S. Wagner Company
Joe Hardwick	Laborer's Union
David Williams	Laborer's Union

The Committee reviewed the following agenda items:

1. Adoption of January 13, 2010 meeting minutes
2. E. S. Wagner Company - Performance on contract IR-27845 in regards to Rule 5 and 401 permitting
3. Proposed changes to the INDOT Consultant Prequalification Manual to extend Prequalification Committee activities to consider Consultants

PREQUALIFICATION COMMITTEE MEETING
MARCH 4, 2010

Ms. Kenley, Committee Chair, called the meeting to order at 8:31 a.m. EST. She facilitated introductions of all individuals present. All Committee members were present, with the exception of Greg Kicinski.

1. Adoption of January 13, 2010 Meeting Minutes

Ms. Kenley called for consideration of the meeting minutes from the January 13, 2010 meeting.

Mr. Hedge moved to adopt the meeting minutes from the January 13, 2010 meeting. Mr. Stark seconded the motion. All members voted in favor. The minutes will be posted on the website.

2. E. S. Wagner Company - Performance on contract IR-27845 in regards to Rule 5 and 401 permitting

Ms. Kenley asked the E. S. Wagner (Wagner) representatives to come to the table. She explained that INDOT representatives will explain the issues with the contract, then Wagner will have a chance to respond, and then the Committee will ask questions.

Wagner provided a packet, which included the company's response to the issues and supporting documents.

Ms. Hilden, Supervisor of the Water Permitting Unit of INDOT's Office of Environmental Services (OES), explained the issues. INDOT awarded Wagner Phases 2 and 3 of the US 231 new construction project. Phase 3 is complete, and Phase 2 is currently under construction. Wagner cleared right-of-way and brought the roadway up to rough grade in 2009. The only work Wagner has performed to date in 2010 has been to install small structures. The work requires the contract to adhere to Rule 5 for erosion and sediment control. The contract plans included erosion and sediment control plans. The contractor is responsible for revising the plan as work progresses. The Town of Chrisney contacted the Indiana Department of Environmental Management (IDEM) in October 2009, because Chrisney Lake was brown and was not clearing due to sediment entering the lake. IDEM inspected the site and found that erosion control measures were not installed, were poorly installed, or were ineffective. INDOT OES and Vincennes District staff visited the site. The sediment that left the project site entered an adjacent stream and wetland complex and the lake. In addition to the Rule 5 violation, there were violations to the Section 401 and 404 permits. INDOT is having a consultant develop remediation plans under an on-call contract. Wagner has added additional erosion control measures. On follow-up inspections, IDEM cited inadequate stabilization and a staging area that had not originally been inspected. Ms. Hilden stated that Wagner did not follow correct procedures.

Mr. Wagner responded that there are two issues. He mentioned he was not expecting to discuss the Chrisney Lake issue. The erosion control measures were in place, and prior to the storm event, the INDOT Project Supervisor inspected the installation. The storm event exceeded the design criteria. INDOT's consultant designed the erosion control plan. Regarding the other issue, Mr. Wagner admitted his company failed with obtaining permits for the borrow area and two disposal areas. In early June 2009, Wagner's Project Manager, Dave Ferguson, met with Steve Sperry from INDOT and Ronnie Boehm from IDEM to discuss modifications to the erosion control plan. Wagner submitted information to the District to have the permit modified, but Wagner did not follow-up to ensure it had been filed. At the staging area, less than one acre was off INDOT right-of-way, so Wagner assumed they did not have to obtain a permit at that location. Wagner received a violation letter regarding a non-permitted area affecting a dry stream with sediment. Mr. Wagner stated it would be cleaned up before affecting any waters of the United States. Mr. Wagner stated the Chrisney Lake issue is not within the parameters of the contract.

Mr. Wagner stated that his company has implemented remedial action. He mentioned there are new requirements in the Clean Water Act that are more restrictive than previous requirements. He explained that Wagner has developed a new environmental section to oversee projects. The new section includes four Certified Professionals in Erosion and Sediment Control (CPESC) and fourteen Certified Erosion Sediment and Storm Water Inspectors (CESSWI). CPESC certification requires a licensed Professional Engineer to pass the CPESC test for certification. CESSWI provides similar training, but the individual does not have to be an engineer. Mr. Wagner stated that his company is making changes to be proactive and ahead of the curve and there is no other contractor working for INDOT that has this level of training. Wagner wants to make sure these issues do not happen.

Mr. Wagner stated the rain event caused the sediment discharge into the lake. Erosion control plans are usually designed for a two inch rain event, and the storm produced more than four inches. The erosion control measures did not contain the erosion because the rain event exceeded the design requirements.

Mr. Huber stated that all Wagner field supervisors have now had erosion control training.

Ms. Kenley asked if the Committee or anyone else had any questions.

Mr. Miller asked about maintenance of the erosion control measures prior to the problems.

Mr. Archibald stated the heavy rain event was in September 2009, and with additional rain, ten inches had fallen by mid September. He mentioned Wagner was trying to schedule the temporary seeding, but it kept raining. He mentioned Wagner had placed the sediment trap at Structure 16 and had ripped all but one ditch before the heavy rain event occurred. He mentioned uphill ditches called for in the plans were not cut yet, so there were no erosion control measures at those locations.

Mr. Miller asked if Wagner was trying to implement the erosion control measures before the rains occurred. Mr. Archibald replied yes.

Mr. Wagner stated that they had issues with their seeding subcontractor, Earth Images, which is a DBE and WBE. He mentioned there is a series of emails between Wagner and Earth Images, which are included in the supporting documents Wagner provided. He stated that Earth Images has just finished seeding on the project that should have been done in October 2009. He mentioned Wagner continued to work with Earth Images because of the DBE goals on the contract.

Ms. Kenley asked how Earth Images comes into play. Mr. Miller responded that they were supposed to seed it for erosion control.

Ms. Mulligan asked the OES staff where the project stands now with IDEM.

Ms. Hilden referred to Attachment 9. The last review by IDEM was in January 2010. IDEM cited borrow waste sites.

Mr. Huber stated that Jared Sanders from IDEM visited the site on February 18, 2010. He mentioned it may not have been a full inspection. There is an e-mail included in the supporting documents Wagner provided that indicates that erosion control measures for Stage 1 of the Remediation Plan are in compliance.

Ms. Hilden asked if the sediment trap was installed. Mr. Huber replied yes and mentioned they have pictures.

Ms. Kenley asked OES if the problems are resolved. Ms. Hilden mentioned the Lowell site is a separate area, which is downstream of the borrow area. Erosion entered a jurisdictional waterway. Wagner is using a sediment trap now.

Ms. Kenley asked if the trap could have been installed prior to the erosion. Mr. Wagner responded that the foreman installed the sediment trap in the wrong location. He has been dismissed. His replacement is CESSWI certified.

Mr. Saxe asked if Wagner's new foreman will be responsible for the erosion control plan implementation and inspection. Mr. Wagner responded yes.

Mr. Huber stated that checks and balances have been implemented to make sure this doesn't happen again.

Ms. Kenley stated that Wagner has worked for INDOT for a long time. She asked why they are having problems now; are the standards tighter or has Wagner just been lucky in the past?

Mr. Wagner responded that standards are tighter now, but these issues will not happen again. He stated that Wagner has never been before the Prequalification Committee before for

INDOT or in any other state. Their new division will allow them to focus their attention on erosion control and permitting. He mentioned North Carolina is probably the most restrictive with these issues. They plan to implement their new program in North Carolina and other states.

Ms. Hilden stated the new standards are quantitative. The amount of sediment will be measured.

Ms. Kenley questioned the consultant designed erosion control plan.

Mr. Wagner responded that after the storm event, they tried to determine why the erosion control measures failed. Wagner determined that the drainage area the consultant used was not large enough.

Ms. Hilden stated that may have been the case, but the contractor should realize modifications to the plan should be expected as work progresses. She stated that it is also a violation if there is a high likelihood of ineffective measures.

Mr. Wagner stated that part of the issue was the inadequate design and he agrees it should have been checked. He stated that another part of the issue was that the sediment basins were large enough, but there was not enough right-of-way to install them.

Ms. Hilden stated that the new standards are performance based. The contractor needs to be creative.

Mr. Wagner stated they brought to the District's attention other problem areas. On another project there is not enough right-of-way to build adequate basins and the project falls under waters of the United States. Wagner wants to use a riprap dam, but it may not be allowed.

Mr. Archibald concurred with Mr. Wagner and stated riprap has not been approved.

Ms. Mulligan asked if the 401 issues have been resolved.

Ms. Hilden replied that there were three 401 issues; one has been resolved, one is the 401 issues at the Lowell area, and the third is the sediment in Chrisney Lake. She stated that she was not aware of the problem Mr. Wagner and Mr. Archibald are referencing.

Mr. Saxe stated that INDOT has to address the 401 violation from our site to Chrisney Lake. He said we gave Wagner a chance to participate in the remediation plan, but they declined. He stated the remediation plan is being developed by an on-call consultant to be completed this fall. INDOT hopes to have the remediation done next spring. The sediment trap has been stabilized. We are trying to acquire right-of-way to clean up the off-site sediment.

Ms. Mulligan asked why Wagner declined to participate.

Mr. Saxe stated that INDOT did not want to develop a plan and not ask Wagner to participate.

Mr. Wagner stated the reason they declined was because there is no right-of-way to remediate. They chose to let INDOT determine the remediation and right-of-way needed.

Ms. Hilden stated we will contact Wagner once we have the right-of-way.

Ms. Kenley asked if it is Wagner's responsibility.

Mr. Wagner responded no, but they will help once the parameters are determined.

Mr. Saxe stated this 401 issue should be resolved once IDEM approves the remediation. He also mentioned there will be multi-year monitoring.

Mr. Miller asked if the permit INDOT obtained covers the staging area.

Ms. Hilden responded that those sites are not specific in the permit. It would require an amendment to the permit once the staging area is determined.

Mr. Wagner stated they have all permits now.

Ms. Hilden asked if that includes a permit for the staging area.

Mr. Wagner responded that they have that permit as well. He asked about clarifying the staging area with IDEM. He mentioned they should be covered without a permit because less than one acre was outside right-of-way. He asked if it is possible for IDEM to visit the site and claim they do not have a permit for the entire staging permit.

Ms. Hilden stated Rule 5 is the notice of intent to inform IDEM when it is an acre or more. Although they only have to be notified if greater than one acre, you still need to use erosion control measures.

Mr. Wagner stated they have all permits now.

Mr. Saxe stated that INDOT cannot own the permit for area outside our right-of-way. We have to own the permit for areas within our right-of-way.

Ms. Mulligan stated the last IDEM report was in January. She asked if they would be back for follow-up inspections.

Ms. Hilden responded that they will be back out.

Mr. Stark referred to the memo from OES regarding Chrisney Lake and asked if it has been resolved. He asked what is being done about that issue.

Mr. Wagner asked OES/INDOT to clarify the responsibilities.

Mr. Saxe stated that the contractor cannot fully blame the designer's erosion control plan. INDOT's Standard Specifications require the contractor to submit construction sequence before entering the project site. The plan needs to be modified as construction unfolds. INDOT defers to the contractor on this type of work, and Wagner deemed the plan was adequate. They had a chance to provide for the site. We were not at the site before the event to know what it looked like prior to the event. Wagner is deferring the problem on the design. We have had a lot of offsite sediment. It is hard to argue that it was adequate.

Ms. Kemp stated there is an additional area with 600 feet of offsite sedimentation, which now requires remediation.

Mr. Wagner stated that for the contractor to certify the erosion control plan is adequate prior to beginning construction would require a lot of additional information. Wagner had the info that was used in the original design. It indicated the designed measures were adequate. The drainage area that was used for design was too small.

Mr. Saxe stated the sequence of operations may affect the plan. Execution of the plan requires more work by the contractor. He asked if Wagner submitted the construction sequencing prior to entering the site. He also noted that Wagner mentioned they had a lot of additional information when sequencing was finally submitted.

Mr. Wagner stated the drainage area used for the design was too small; the rain event was two times more than designed for. Once the structure reached capacity, it is impossible to predict failure.

Ms. Hilden stated that Wagner could have used additional structures upstream or could have redirected the water.

Ms. Kenley asked if Wagner felt the plan was adequate.

Mr. Wagner stated that based on the specified drainage area the measures in place were adequate. He stated the criteria they were given to check the design was inadequate. They assumed the consultant provided the correct data. Wagner stated that they did not check the drainage area size but would do so on future projects.

Ms. Hilden asked Wagner if they thought the rain event was an act of God.

Mr. Wagner stated the rains compounded the situation.

Ms. Kenley stated that oversight was an issue. She asked OES if they felt that Wagner did not modify the plan or add additional measures as necessary.

Mr. Saxe stated that a contractor should look at the plan early as to adequacy and not later after problems occur.

Mr. Miller stated that this issue is very complicated. We are raising the bar. There are two issues that are mingling here. He stated the responsibility could be both INDOT's and Wagner's.

Mr. Stark pointed out there were multiple infractions over a year and a half.

Ms. Hilden stated IDEM's reports addressed design and installation. The reports indicated infractions with unstabilized fill, stabilization of side ditches. She said those issues address implementation. There were long term issues from IDEM in Phase 3 and Phase 2.

Mr. Stark asked if we are in compliance.

Mr. Archibald responded possibly.

Mr. Stark stated that the reports indicate we are in compliance.

Ms. Hilden responded that IDEM may still question implementation.

Mr. Huber stated that based on the reports, we are clear on the issues.

Mr. Wagner stated that if IDEM went to the project today, they would find that all measures have been addressed. He also mentioned that due to the nature of the business, we would never meet all measures. As an example, a check dam specified in the erosion control plans was not in a good location. Wagner moved it.

Mr. Archibald mentioned that some of the erosion control measures were moved to prevent sediment from entering waters of the United States.

Ms. Mulligan asked if INDOT had any issues with Wagner cooperating with INDOT before IDEM's reports or the rain event.

Mr. Archibald responded no, other than some scheduling issues.

Mr. Poturalski asked what roles IDEM and INDOT have relating to the issues.

Ms. Hilden responded that IDEM visits projects at will and if they receive a complaint. They will do follow-up inspections. They give a clean inspection when everything is satisfactory. OES wants to find issues before IDEM finds them.

Mr. Stark asked if OES has the authority to close down a project if they find issues from a quality assurance inspection.

Ms. Hilden responded that OES informs the district about the issues. She mentioned that it is OES's duty to coordinate responses to findings from IDEM. On IDEM inspection based violations, OES coordinates documentation on corrective measures. If IDEM sends a violation letter to INDOT, OES responds back with a formal letter.

Mr. Stark asked what OES recommends on this project. He mentioned raising the bar.

Ms. Hilden responded that OES would like to see contractors be proactive. They should do weekly inspection reports. She said Wagner has taken good steps forward. She said she is not completely convinced and is conservative with her judgment. She recommended Wagner continue to be proactive. She mentioned that with the last IDEM visit, fewer issues remained.

Ms. Kemp stated she has visited most of the sites and there are minor issues still pending. She said she is concerned with spring rains. She stated that having someone from Wagner that is trained in erosion control at the site is beneficial. There is potential for runoff with the amount of earthwork that is occurring. Plans showed multiple sediment traps in one location that were not installed prior to violation.

Mr. Wagner stated that his company has worked for INDOT for over 25 years. He suggested his company come back before the Committee in one year and INDOT would find that Wagner is a poster child for erosion control. Wagner has modified their inspection reports to include checking the erosion control measures. He admitted Wagner did not apply for permits for the borrow and waste sites and the staging area. He stated that Wagner checked the provided erosion control plan at Chrisney Lake, based on the information that was given to them. Wagner has trained staff that will be responsible that this will not happen again. Wagner wants to restore their good standing.

Mr. Miller stated he was cautiously optimistic. There was a lack of preparedness and Wagner may have been slow to respond; however, he is encouraged by Wagner's plans for the future.

Mr. Novak stated he agrees with Mr. Miller. The issues were unacceptable, but he is glad they are being resolved. The direction Wagner is going is where we need to be ultimately.

Ms. Kenley asked for a motion or the recommendation that no motion is required.

Ms. Mulligan stated options based on 105 IAC 11, including suspension, revocation, change to certificate of qualification, or requesting additional information.

Mr. Stark stated he would like to see an update. We need to raise the bar.

Mr. Miller asked when the project is scheduled for completion. Mr. Archibald responded in July.

Ms. Kenley called for a motion.

Mr. Miller moved to have a report and to invite Wagner back to the July meeting, with the same parties in attendance, with no action at this time.

Ms. Mulligan asked if it is possible to have IDEM inspect the project before then.

Ms. Hilden responded yes, IDEM will probably visit the site several times before July.

Mr. Wagner said he would like to attend the inspection, if possible.

Ms. Mulligan seconded Mr. Miller's motion.

All Committee members voted in favor.

3. Proposed changes to the INDOT Consultant Prequalification Manual to extend Prequalification Committee activities to consider Consultants

Ms. Kenley asked Ms. Mulligan to introduce the item.

Ms. Mulligan stated that the contractor prequalification rules are in the Administrative Code, whereas consultant prequalification is by policy in INDOT's Consultant Prequalification Manual. We are proposing to add language to the consultant manual that will expand the Committee to allow it to consider consultant issues. Section I.1 gives the Committee the authority to act on a consultant's prequalification status. Section I.2 provides options for the Committee to make recommendations to the Commissioner, similar to the contractor rules.

The proposed changes to the consultant manual include an added statement in Section A, which refers to the new Section I. New Section I mirrors the contractor rules, with two major exceptions. The proposed appeals process has been modified from the process in the contractor rules to omit the second step. The consultant will not have the option to go before an Administrative Law Judge. The other major difference is the addition of reference to errors and omissions.

The proposed changes were submitted to the American Council of Engineering Companies (ACEC) on February 5, 2010 for review and comment. Ms. Mulligan stated Tim Miller had called her the day before with two questions. He asked if a consultant can work during an appeal. Ms. Mulligan responded that INDOT currently allows contractors to work during the appeal process so it would be the same for consultants, but only if they are currently prequalified with INDOT. Mr. Miller's other question was whether consultants could continue to work on existing contracts if their prequalification is suspended or revoked. Ms. Mulligan responded that in most cases we would allow the consultant to finish out the contract, similar to how this situation is handled with contractors.

Someone questioned if INDOT prequalifies subconsultants. Ms. Macdonald stated that most subconsultants are prequalified. There has to be a prequalified consultant for every work type advertised for the project. There are certain types that do not require prequalification, such as those posted on our website for DBE consultants.

Mr. Stark asked if those were the only comments received.

Ms. Mulligan responded yes and stated that ACEC was invited to attend today's meeting.

Mr. Hedge asked if the provisions for appeals spell out that consultants can continue working.

Ms. Mulligan stated that the rules for contractor state that no action will take place until appeals have been exhausted. We have abbreviated the appeals process for consultants. Section I.4 allows the consultant to continue working until the appeals process has been exhausted.

Ms. Macdonald mentioned that although the proposed item was sent to ACEC in early February, she understands the information was not disseminated to their membership.

Ms. Mulligan reiterated that Jeff Clanton distributed this item in early February to Stephanie Morse and Beth Bauer of ACEC, and Mr. Clanton asked for a response by February 19th. ACEC asked Tim Miller to review this process within the last few days. Mr. Miller indicated he only had the two concerns.

Ms. Kenley asked if Ms. Mulligan followed up with Beth Bauer of ACEC. Ms. Mulligan replied yes, she had talked with Ms. Bauer the week prior to the meeting.

Ms. Mulligan stated that the proposed item had been reviewed by Jeff Clanton, INDOT's Contract Manager; Bob Cales, INDOT's Director of Contract Administration, and Mark Ahearn, INDOT's Chief Legal Counsel and Deputy Commissioner.

Mr. Hedge questioned if consultant prequalification includes review of areas of expertise. Ms. Mulligan responded yes, John Leming from the Prequalification Section reviews the technical application.

Ms. Kenley mentioned a perfect example for bringing a consultant to the Committee was the issue today with the erosion control plan.

Ms. Kenley called for a motion.

Mr. Miller moved to approve the proposed addition to the INDOT Consultant Prequalification Manual.

Mr. Novak seconded the motion.

All Committee members voted in favor.

Ms. Mulligan stated that the three Committee documents may need to be revised to reference consultants. She will bring those revisions to the next Committee meeting.

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

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

Ms. Kenley adjourned the meeting at approximately 10:56 a.m.