

PREQUALIFICATION COMMITTEE  
OPEN SESSION  
MINUTES – JULY 11, 2013  
9:00 A.M. EDT

The following Committee members attended the meeting:

Heather Kennedy	Acting Director of Economic Opportunity and Prequalification Divisions; Acting Committee Chair and Non-Voting Member
Karen Macdonald	Prequalification Engineer; Committee Secretary and Non-Voting Member
Louis Feagans	Director of District Project Management, Capital Program Management; Voting Member
Joe Novak	Crawfordsville District Construction Director; Voting Member
Mark Ratliff	Director of Economics, External Audit, and Performance Metrics; Voting Member
Jim Stark	Deputy Commissioner of Innovative Project Delivery; Voting Member
Gerry Burton	Claims Administrator Manager; attending for Mark Miller as Voting Member
Bob Cales	Contract Administration Director; attending for Ryan Gallagher as Voting Member
Peter Yao	1-69 and Technical Support Road Design Engineer; attending for John Wright as Voting Member

Also in attendance:

Blaine Hayden	Prequalification Coordinator; INDOT
Ike DeBurger	Seymour District Area Engineer; INDOT
Jason Bunselmeier	Seymour District Area Engineer; INDOT
Michele Conyer	Stormwater Specialist Environmental Services; INDOT
Nathan Saxe	Ecology and Permits Manager, Environmental Services; INDOT

Joe Jones	Acting Seymour District Construction Director; INDOT
Harold Force	President, Force Construction Company, Inc.
Tim Nierman	Vice President, Force Construction Company, Inc.
Jim Albertson	Project Manager, Force Construction Company, Inc.
Tom Rayburn	Force Construction Company, Inc.
Earl Settles	Force Construction Company, Inc.
Pat Kirchner	Force Construction Company, Inc.
Amy Roberts	Force Construction Company, Inc.
Tom Pastore	Attorney for Force Construction Company, Inc.
Karen Powers	President, Central Engineering and Construction Associates, Inc.
Paul Berebitsky	Indiana Construction Association (ICA)

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The Committee reviewed the following agenda items

1. Adoption of April 4, 2013 meeting minutes
2. Adoption of May 2, 2013 meeting minutes
3. Force Construction Company, Inc. - Compliance with Erosion and Sediment Control requirements on Contracts R-27969 and IR-34452
4. Central Engineering and Construction Associates, Inc. - Appeal of six month bidding and subcontracting restriction

PREQUALIFICATION COMMITTEE MEETING  
OPEN SESSION  
JULY 11, 2013

Ms. Kennedy, acting Director of Economic Opportunity and Prequalification Divisions and acting Committee Chair, called the meeting to order at 9:01 a.m. EDT. All Committee members were present with the exception of Mr. Miller, Mr. Gallagher, and Mr. Wright. Mr. Gerry Burton attended for Mr. Miller, Mr. Bob Cales attended for Mr. Gallagher, and Mr. Peter Yao attended for Mr. Wright. Mr. Louis Feagans is now a permanent member of the Committee, replacing Greg Kicinski.

Mr. Burton stated that he will recuse himself from voting on the Force Construction issue.

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

1. Adoption of April 4, 2013 meeting minutes

Ms. Kennedy called for consideration of the meeting minutes from the April 4, 2013 meeting.

Mr. Cales moved to adopt the meeting minutes from the April 4, 2013 meeting. Mr. Novak seconded the motion. All members voted in favor.

2. Adoption of May 2, 2013 meeting minutes

Ms. Kennedy stated that she is withdrawing the May 2, 2013 meeting minutes, because they were just passed out to Committee members this morning. The meeting minutes will be considered at the next Committee meeting.

3. Force Construction Company, Inc. - Compliance with Erosion and Sediment Control requirements on Contracts R-27969 and IR-34452

Ms. Kennedy introduced the item regarding Force Construction Company, Inc (Force). She explained the normal 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. In this case, Force requested the case be continued to a later meeting. Force will be allowed to make opening statements.

Mr. Pastore, Attorney for Force, stated Force is here to defend allegations made by the Seymour District. INDOT rules and regulations have not been followed pertaining to CR-2's and the General Instructions to Field Employees (GIFE) manual. INDOT had no basis for the actions that were taken and Force feels this has been a witch hunt. Interim discussions were not held with Force project employees. An interim CR-2 is to be issued when the project spans more than a year. Interim CR-2's were not done at the end of the year on these projects. Force has not had the opportunity to resolve issues before coming to the Committee. Problems should be documented in daily reports, but the issues were not addressed there. CR-2's should be an ongoing process. The problems happened at the end of the project, then an interim CR-2 was issued. He stated the CR-2 grading scale was not followed. The job was completed seven

months early and now Force is being hung out to dry. Force requested a meeting with INDOT, but it was denied. They were told the issues would be presented to the Committee.

Mr. Bunselmeier, Seymour District Area Engineer for INDOT, stated INDOT met with Force every two weeks on both projects.

Ms. Kennedy asked if there was any proposal for the Committee to dismiss the case.

Mr. Novak stated the district should be able to present its case. They are here to discuss the Erosion and Sediment Control (ESC) on the projects.

Mr. Pastore stated a letter was sent to all districts reminding employees to enforce inspection reports and sign off on weekly reports.

Mr. Novak called a point of order. INDOT should be allowed to present the issues first.

Ms. Kennedy asked for Committee members to vote: All those in favor of proceeding today? Any opposed?

Mr. Novak voted to continue the meeting and Mr. Feagans seconded the motion.

All Committee members voted in favor of allowing the Seymour District to proceed.

Mr. Bunselmeier presented a PowerPoint presentation. He stated that the Seymour District will cover three topics concerning non-compliance on two projects performed by Force: 1) Environmental Compliance, 2) Safety, and 3) Management and Supervision. He stated that they will discuss environmental compliance issues and safety concerns in detail. He stated that neglect by Force ultimately caused the flooding of an apartment complex and a cease and desist order from the United States Army Corps of Engineers (USACE). He stated he will describe safety events which resulted in employees being transported to the hospital. He also stated that Force's negligence caused the loss of power to parts of Seymour and Hayden. He stated they will briefly touch upon Force's management and supervision issues.

#### Environmental Compliance

Mr. Bunselmeier stated that recurring special provision 108-C-192 was included in the contract documents. That provision along with Standard Specification 205.03, and the contract plans are all part of the contract requirements for environmental compliance. Contractors are responsible to amend the Erosion and Sediment Control (ESC) plan based on the site and the construction methods. He stated that Force violated both the contract requirements and their own ESC plan by continuously placing material in the ditchline and obstructing the waterway. Photos show obstructions placed in the ditchline, such as a port-a-let, pallets, equipment, and a tool storage facility. Each obstruction diverted water away from the ditch/hillside and directed it across the roadway to the most prone area of the contract. Another slide shows Force's ESC plan, which specifies that stockpiles would be placed right of the drilled pier shafts and within the limits of the silt fence. The photos show stockpiles of structure backfill and riprap. The

stockpiles were planned, by Force, to be located right of the location and are on the left. Additional obstructions includes a hillside with remnants of stockpiled material which further obstructed the ditch during rain events. A stockpile of riprap was in the ditchline. Mr. Bunselmeier stated that the placement of the material is a violation of INDOT specifications and Force's own policies.

Mr. Bunselmeier showed photos of incorrect placement of temporary check dams. The existing ditch was filled with stockpiled material. The check dam did not have a flat top, thus the water was forced out of the ditch, onto the roadway, and around the temporary check dam.

Mr. Bunselmeier stated the contract required the use of concrete washouts, and to highlight just a few of the maintenance items per the plan, 1) the washouts were to be inspected weekly for leaks and spills, 2) material should be removed when the washout reaches 50 percent capacity, and 3) the use of the washout should be discontinued until appropriate measures have been taken. Force did not construct the washouts as detailed. One picture shows overlapping concrete in the foreground that has overtaken the required plastic lining. The washout is more than 100 percent full and does not have at least 50 percent remaining capacity. The purpose of the concrete washout was to contain the material and keep it from contaminating the bare soil. The concrete suppliers continued to use the washout after it was at capacity. This allowed washout material to flow onto the bare soil in front of and behind the designated washout.

Mr. Bunselmeier stated that Force was aware of inadequate ESC measures. His presentation included an Indiana Department of Environmental Management (IDEM) evaluation citing: 1) inappropriate perimeter protection, 2) incorrect installation of ESC measures, 3) lack of maintenance of existing erosion control measures, and 4) incorrect placement and violation of IDEM requirements for concrete washout areas. A copy of the report was given to Force on June 7, 2012.

Mr. Bunselmeier reported that Jeff Logman, Seymour District Construction Engineer, sent an email to all Area Engineers on August 30, 2012 concerning the possibility of inclement weather. The email was forwarded to all Project Engineers and Project Supervisors (PE/PS) in the district that same day. INDOT provided copies of the emails to Force and discussed the need to make immediate repairs to ESC measures. A rain event occurred on September 5, 2012. Mr. Bunselmeier showed pictures of ESC measures that were installed and/or maintained incorrectly and performed poorly during the rain event. One slide showed an upstream inlet that was overwhelmed by structure backfill that was stockpiled in the ditch. It resulted in the inlet's complete loss of function. Another slide shows stockpiled material from upstream that filled in the ditch after a subcontractor on site moved stockpiled material out of the natural drainageway. The material obstructed the flow. Force did not have a representative on site during the event and the subcontractor was tasked to perform maintenance work.

Mr. Bunselmeier showed a picture of an area in Phase 6 of the project, where structure backfill and sand were stockpiled and obstructions were in the ditchline. All drainage was forced to cross the roadway and exit the site at the most prone area, downhill of the completed phase. He stated that Force did not place ESC measures in this area after the meeting was held to discuss ESC. Mr. Bunselmeier showed a picture of a location in Phase 9, where Force placed

ESC measures. They used plywood to contain the structure backfill, constructed a swale and a temporary ditch check, and placed silt fence. This system worked well. He stated that Force did not attempt these measures at the most prone open ended area downhill of Phase 6. Mr. Bunselmeier showed a slide of the woods located directly behind Phase 6. It became a thoroughfare for sediment leaving the construction site.

Mr. Bunselmeier stated that approximately \$250,000 to \$300,000 of damage to the apartment building located downhill from Phase 6 is a direct result of the September 5, 2012 rain event and Force's blatant neglect with ESC. This apartment complex is owned by the Heart House Homeless Shelter, which ministers to low-income families in Dearborn, Franklin, Ohio, Switzerland, and Ripley Counties. After this event, nine families were left homeless with damage to what possessions they have. Force took no action and did not work with Heart House to assist the families. The Vevay Fire Department and Belterra Casino took the initiative to temporarily house these families until they could make other accommodations.

Mr. DeBurger, Seymour District Area Engineer for INDOT, stated that on August 3, 2012, Force cleared a designated wetland and waters of the United States (waters of the US) in direct violation of the conditions of the contract and the pending permits. At this time, permits had not been secured for the contract. The special provision clearly outlined that no work was to be done in the areas marked as wetlands or waters of the US on the plans until the applicable permits were issued. This information was thoroughly covered and discussed on several occasions, including at 1) pre-construction conference, 2) subsequent project meetings, and 3) at a meeting held on July 18, 2012 that Force requested. Mr. DeBurger stated that INDOT agreed to pay for silt fence to delineate the areas. No silt fence was installed prior to clearing operations commenced. The wetland area and waters of the US were encroached upon. Mr. DeBurger stated that if the silt fence had been installed as discussed on July 18, 2012, this violation would have likely been avoided. This violation could have jeopardized the permit process and potentially could have resulted in the denial of the 401/404 permit for not only this contract, but the adjacent contracts that are a part of the US 50 bypass project. One week after the first violation, and after the permits were obtained, the second violation occurred. On August 10, 2012, Force cleared an area that was marked do not disturb on the plans. If Force would have delineated the do not disturb areas like they had been asked to multiple times, this violation would have likely been prevented. On August 16, 2012, less than one week after the second violation, a third violation was discovered during a District ESC Review. The photo shows evidence that Force's excavator turned around in a do not disturb zone.

Mr. DeBurger stated Force drained a 4.5 acre lake on property adjacent to the project with plans to use this area to dispose of excess dirt. INDOT discovered this after a July 18, 2012 project meeting. INDOT informed Force that no waste area approval forms had been submitted as required by Construction Memo 08-05 and as was discussed at the preconstruction meeting. Force submitted the forms for two waste areas after the fact on August 3, 2012. INDOT denied both submittals based upon suspicions that the proposed waste areas were under USACE jurisdiction and would require a 401/404 permit. On September 11, 2012, the United States Army Corps of Engineers (USACE) issued a cease and desist order to Force pertaining to all work on the Charles Couchman property due to USACE violations.

Mr. DeBurger showed a slide of an IDEM inspection report from a March 1, 2013 site review. The report shows that none of the items were marked as satisfactory. A picture from that inspection show a site where there was no ESC measures used to prevent sediment from leaving the jobsite. The IDEM inspector noted this as a Rule 5 permit violation.

Mr. DeBurger stated on June 28, 2013 Force decided to pump known contaminated water into a sediment basin adjacent to Mutton Creek violating the requirements concerning handling of contaminated material. Force submitted a Notice of Changed Condition on June 13 informing INDOT of the contaminated water in the drilled shaft excavation and that pumping operations could not be performed until test confirmed or denied contamination. The test results were reviewed and the project engineer informed Force that the water was to be treated as contaminated. IDEM and INDOT were concerned that a fish kill would likely occur if this water was allowed to enter Mutton Creek. Force immediately began working with Heritage Environmental and began providing pricing to INDOT to build a haul road and storage area for two 20,000 gallon tanks to contain the contaminated water. The tanks were scheduled to arrive within days; however, Force did not wait until the tanks arrived and the water was discharged by Force into the environment into sediment basin by means of a two inch and a three inch pump. INDOT had agreed to the change order for the containment tanks, which were not used. This mitigation has an unknown cost at this point but is expected to cost the taxpayers a minimum of \$60,000 plus delays to the contract.

### Safety

Mr. Bunselmeier reported there were some safety issues on Contracts R-27969 and B-28869. R-27969 had an area with 1:1 cut slopes, and the area was slide prone. OSHA safety requirements are the responsibility of the contractor. During the placement of concrete lagging panels, the restraints were not sufficient and an employee was pinned under a two ton lagging panel. The employee was airlifted to a Louisville hospital. The employee was in critical condition and suffered numerous severe injuries. The safety issues were not addressed until after this incident and after a visit by Mr. Harold Force, President of Force Construction.

Mr. Bunselmeier stated that on Contract B-28859, three incidents occurred on the US 50 bridge over the CSX railroad. At the end of the curing period in Phase 1, Force removed the insulated blankets from the bridge but could not drive on deck at this time. Force decided to throw the blankets over the edge of the bridge onto a closed roadway below. One of the heavy blankets struck an employee in the head necessitating a trip to the emergency room. During the placement of safety cable posts an employee was trying to weld a post while trying to hold and maintain the post plumb, adjacent to live traffic. The post slipped and was struck by passing vehicle striking the employee in the head. The employee was wearing a welding helmet and not a hard hat. The incident necessitated another trip to the emergency room resulting in staples being placed in the employees head. During the removal of the superstructure, Force elected to hoe ram the deck off of the structure. In doing so, the debris from the removal process struck passing vehicles resulting in a police report for damages sustained. This occurred more than once. Furthermore, during the removal process a large section of the superstructure fell within the railroad right-of-way (R/O/W). This resulted in a shutdown of operations above the railroad until the contractor supplied the railroad with a new removal plan.

Mr. Bunselmeier stated that while Force was removing a tree next to Duke Power lines, the excavator knocked the limb into a 34,000 volt power line and caused a power outage for all of Hayden and half of Seymour.

### Management and Supervision

Mr. Bunselmeier stated Force illegally harvested a soybean field after they were explicitly instructed not to do so on Contract IR-34452. Force asked about the status of the soybean crop during an October 2, 2012 progress meeting and whether or not they could harvest and sell the crop. This parcel had been in condemnation with INDOT and had just recently received a right of entry to gain access to the property. INDOT informed Force that they could not harvest the bean crop until it could be determined if the farmer had been compensated for his crops. Force harvested the soy beans on October 4, 2012 after having been told not to two days earlier. Force harvested approximately seven acres within the R/O/W and six acres outside the R/O/W. Force had no right under the contract to be performing work outside of the R/O/W limits. On October 9, 2012, INDOT received a visit from a Jennings County Sheriff deputy explaining that the farmer submitted a police report and would like to file charges for theft. The farmer rents the property and had not been compensated in any way. INDOT called a meeting on October 16, 2012 with all involved parties to discuss the theft of the soy beans. Force and the farmer were able to settle the unlawful harvest out of court at no cost to INDOT.

Mr. Bunselmeier stated the Seymour District recommends a combination of suspension and a lowering of the aggregate prequalification amount. The District recommends that a twelve month suspension be enacted on the date of decision. The suspension should be enforced for the entire twelve months. Force's current qualification expires in August of 2013 when the current qualification expires and is only revisited after the twelve month suspension. Furthermore, the District recommends that once the suspension has been served for the entire twelve months that Force's prequalification bidding capacity be reduced by 25 percent. This aggregate amount should not be revisited until after Force has served the twelve month suspension.

Mr. Pastore stated the ESC letter dated April 11, 2012, sent to Central office and the Seymour District to address these issues. Force followed their ESC plan. They didn't think anyone would dispute this. Force submitted weekly reports and INDOT did not return the reports concurred or not concurred on the back. Requirements say INDOT is to cooperate with the contractor on all the issues.

Mr. Pastore stated that an email was sent on August 30, 2012 requesting a meeting. The meeting was recorded. INDOT informed Force to stop work and take measures. There were three rain events. During the first two rain events, the ESC worked well. On the September 5, 2012 rain event where 3 to 3.5 inches fell in 45 minutes, the ESC failed. This was discussed with IDEM and the plan only is set up for a 2 inch per hour rain event. Mr. Pastore stated that if there were real issues, they should have been raised weekly or bi-weekly, and that was not done. He stated that it is not fair to bring Force to the Committee for this event. It was a slide project.



Mr. Pastore stated for the topic of the Heart House, Force wrote a \$5,000 check and Force's insurance is now involved. Force was able to secure permission to remove the sand and did so. The damage is substantial, estimated around \$200,000 and Heart House is suing. This case is in negotiations at this time.

Another representative from Force stated that once the insurance company got involved, then the estimators and insurance contractors control the shots. Force called the insurance company and reported the claim on September 5, 2012. They went to the site that night. They asked the insurance company if they could move the sediment. They were able to secure permission from the property owner on Friday night. The damage was substantial. It was approximately \$250,000. Heart House has sued Force in excess of \$200,000. There is potential for negotiations. It is still under review. In the event of weather, each homeowner is responsible for their own property.

Mr. Pastore directed the conversation back to ESC. He stated that there was a spirit of cooperation. It is an ongoing process. If was not a joint effort, but a cooperative effort. The ESC worked until there was a catastrophic event. Then pictures were taken. He stated the wetland delineation specifications do not specify that delineation is the contractor's responsibility. This issue came up in a meeting with INDOT on June 8, 2012, and it was agreed that INDOT would pay for silt fence. Force asked if lathe and plastic tape would be sufficient and Mr. DeBurger said he did not know what should be used. Mr. Pastore stated that Mr. DeBurger stated that INDOT can place the lather and tape. Mr. Pastore stated that wetlands delineation and do not disturb areas are two different things. He stated that INDOT took responsibility, but did not place the tape. Force took it upon themselves to do it to keep the project moving.

Mr. Harold Force, President of Force Construction, admitted that Force disturbed the area, but stated a logger had come in and damaged it first. INDOT asked Force to clean up the area. He stated there was another area that was not delineated, where Force encroached. They self-reported that incident. They seeded and mulched the area and marked it.

Mr. Pastore stated there was a misunderstanding of where the equipment operator was at. He stated the third encroachment incident was a break in the tape. There was a hornet's nest and the excavator operator eased in and covered the nest. Then Force delineated the area.

Mr. DeBurger asked Mr. Pastore about the June 8, 2012 meeting that he stated Mr. DeBurger agreed to delineate the areas with lathe and tape. He stated he was in Virginia on that date. He said he does not dispute that he may have said it though at another time.

Mr. Force replied that he thought it was discussed at the pre-construction meeting.

Mr. Pastore replied that he was not sure of the date.

Mr. Pastore brought up the issue with the soy bean field. He stated the property was cleared as of September 11, 2012. Force was not informed that they could not go onto the property. At the meeting on November 2, 2012, Force asked if they could enter the property and

INDOT said we would check and let them know. INDOT never got back with Force. Force had the right to be on the property. It was a tenant farmer. At this point it is improper to bring this issue up, since Force has settled this matter with the property owner and it should not even be an issue.

Mr. Stark stated that even though INDOT did not get back to Force, it does this give them approval to enter the property. He asked why the beans were harvested off the R/O/W.

Mr. Albertson, Project Manager with Force, stated the land was locked and the farmer was unable to get to the land. There was no malicious intent on Force's part because at the September meeting it was brought up and Force was under the impression that they could harvest.

Mr. Force referred to the letter provided on July 10, 2013. He stated that on page 3 the wetland consultant stated the USACE did not have jurisdiction over the pond. Force stopped work and the USACE has stated that this is the simplest permit to obtain.

Ms. Amy Roberts, Project Supervisor with Force, stated on August 31, 2012, nine check dams were installed and approved. It had rained a couple of times and there were no negative results on silt fences or inlets. She stated she checked the measures herself. The work crew went home the long weekend and came back on Tuesday and a rain event had occurred, but the ESC measures looked like they did on Friday when we left. On Wednesday, they were notified that a storm was on the radar. They shut down operations. It took awhile to get a subcontractor to shut down. The rain and lightening was blinding. They returned to the project and the rain event had dropped 3 to 4 inches of rain in 45 minutes.

Ms. Roberts stated that there were tight constraints on the job. The flooding and ESC measures did not work well together. They were told it was OK to leave vegetation on the uphill slope, then later told to remove it. Force did not do it. They did not have stock piles in the ditchlines, they were check dams. They were directed by INDOT to remove them. There are no good answers.

Mr. Force addressed one of the safety issues. He stated that five minutes before the accident happened, the employee was told not to do it.

Mr. Pastore stated no matter what the crew does in a rain event of that measure there is nothing that can be done to control the ESC. Force was told to leave the vegetation on the hillside, and then was told to remove it. Information was conflicting and so Force left the vegetation until they received some good information. To address the safety with the employee that was injured, the employee was told not to be there. The employee has recovered and is back to work with Force with no restrictions.

Mr. Force stated that Force has worked hard to be in a position of being in a good partnership with INDOT, being a preferred contractor. Force does not want to be here for these issues and they are here to take action and correct the issues. Force wants to cooperate, wants an

honest exchange of information. They don't want to be sanctioned. They don't think they should be sanctioned. There are lessons learned here.

Ms. Kennedy asked if there were any questions from the Committee members.

Mr. Ratliff asked if there were any incentives to complete work early.

Mr. Bunselmeier replied there were none on the slide project.

Mr. Stark asked how many contracts Force is currently working on.

Mr. Force stated he believes it is two projects.

Mr. Stark stated we don't like to bring contractors to this Committee but the communication here is lacking. He stated he would like to see minutes and reports from the meetings.

Mr. Ratliff stated he did not disagree with Mr. Stark; however, he stated it sounds like Force is deflecting the issues back to INDOT. Force stated that INDOT did not communicate, but from what I have read so far INDOT communicated just fine and when INDOT says to do something Force should comply.

Mr. Yao stated INDOT is not responsible for the ESC and if the contractor does not follow the standards, then water will flow around the check dam.

Ms. Roberts stated they were built to standard.

Mr. Yao stated that there is an issue with regular runoff versus a heavy storm.

Mr. Feagans stated that our specifications require that after a rainfall event the ESC measures are to be inspected. He asked for the inspection reports from the first two rainfall events.

Mr. Force stated that Force can provide the inspection reports.

Mr. Cales stated that an ESC plan is required by the contractor. He asked Force if they stockpiled material in a different location than was specified in their plan.

Mr. Albertson stated it is not an easy yes or no question.

Mr. Cales stated yes it is a yes or no question, did you follow your plan that was submitted to INDOT.

Mr. Albertson stated it is not as simple as that.

Mr. Cales stated Force should have modified the plan if material is stockpiled in other areas.

Mr. Pastore stated the stockpile did not have an effect on the rain event or the ESC of the apartment building.

The Committee took a five minute break.

Ms. Kennedy asked if the Committee members had any more questions or a recommendation for a motion

Mr. Novak stated that delineating a wetland is good practice. It was not necessary here, because it was shown on the plans. He stated that he is more concerned with the IDEM inspection reports after the rain events, but he would be curious to see the contractor's inspection reports as well.

Mr. Pastore stated Force did not track through a wetland, it was a do not disturb area. No one should track through a wetland. He stated that Force was directed to clean up incident #1. The second area was the pond. Their consultant, FPBH, Inc., told them they were not dealing with a wetland or USACE area. They took care of the beehive, then delineated it. It was a do not disturb area. They did not deliberately track through wetlands. He stated that he has not seen an IDEM report with satisfactory ratings in all areas.

Mr. Novak stated that INDOT would prefer contractors be proactive and not reactive.

Mr. Feagans asked Force about cleaning out the wash out pits.

Mr. Force replied that there was a miscommunication on site. They have changed their procedure.

Mr. Pastore stated that we are not all perfect. If the storm event would not have happened, Force would not be here today. Lessons learned. If INDOT decides to suspend Force's prequalification, Force will appeal. It is a line in the sand.

Mr. Feagans moved to pause deliberation to see CR-2's from these jobs and any current projects.

Mr. Ratliff stated he would like to see a one page summary of events of what has happened and evidence of the communication breakdown. A copy should be sent to Force as well.

Mr. Pastore stated Force would like to be able to respond to the summary.

Ms. Kennedy restated the Committee's request for a summary of events leading up to this meeting with evidence supporting the lack of communication be submitted to the Committee members by August 15, 2013 and Force will be asked to return to the September meeting.

Mr. Stark seconded the motion.

All Committee members voted in favor, except Mr. Burton who recused himself from voting.

Ms. Kennedy stated that INDOT will send a letter to Force. Since no action was taken today, it is not a recommendation that has to go through the Commissioner; however, the Commissioner will be copied on the letter.

Mr. Stark stated to Force that the Committee has had other contractors come in about ESC issues. We are not gathering information to create problems. Everyone has issues with time and resources. He just wanted to say that it is not a witch hunt.

The Committee took a 5 minute break to allow Force and INDOT representatives to leave.

4. Central Engineering and Construction Associates, Inc. - Appeal of six month bidding and subcontracting restriction

Ms. Kennedy introduced the issue regarding Central Engineering and Construction Associates, Inc. (Central Engineering). She explained the Committee meeting procedures for an appeal: the contractor presents their case first, INDOT representative are allowed to respond, then Committee members and the audience may ask questions.

Ms. Powers, owner of Central Engineering stated that she did not come with an attorney today because she thought the appeal today would be with the Commissioner. She asked why there were no female voting members on the Committee. She also asked if Central Engineering's confidential information was passed out at the last meeting to the other contractors.

Ms. Kennedy replied that she is the Chairperson to the Committee and Ms. Macdonald is the Prequalification Engineer and according to the prequalification rules, that position is the Committee Secretary. Both positions are non-voting, although the Chairperson will vote in the event of a tie.

Ms. Macdonald stated that a contractor's confidential information is only given to the specific contractor.

Ms. Powers stated Central Engineering had a signed contract with American Contracting and Services, Inc. (American) and it was not a second tier contract. Central Engineering was contacted by R.H. Marlin; Inc. (Marlin) and she was told they would have to do the work under a rental/lease agreement. She stated that Ms. Macdonald knew Central Engineering was not prequalified and the draft minutes show that Central Engineering was not requested to be at the meeting initially. Ms. Macdonald and Ms. Kennedy decided to add Central Engineering to the agenda. Central Engineering did not enter into an agreement with Marlin. She stated the issues

are between American and Marlin. Central Engineering was working under the direction of the prime contractor. American requested that Central Engineering sign an agreement. After showing up on site, American put Central Engineering's employees on American's payroll. To date the materials and equipment have not been paid for. She feels Central Engineering has been unjustly penalized. Central Engineering made a mistake relying on the prime to make sure everything was in compliance. She asked that the Committee reconsider the action and not suspend Central Engineering.

Ms. Powers had suggestions for the minutes from the last meeting.

Ms. Kennedy replied that those minutes were not adopted today and are still considered draft.

Ms. Powers referred to page 4 of the minutes. She stated the lease agreement was not properly filled out. It was resubmitted a few different times to try to get it right.

Mr. Kicinski asked if the equipment had been paid for.

Ms. Powers replied that it has not been paid to date.

Ms. Powers stated that she signed an agreement with American. She stated they assumed the rules were being followed. They were being directed by others at INDOT. She stated that she feels Central Engineering was unjustly penalized. Her mistake was relying on the prime assuming that everything was in compliance. She stated that Central Engineering should not be penalized at the end of the food chain when those at the head of the food chain were not penalized.

Mr. Burton asked if Central Engineering has a prequalification certificate.

Ms. Powers replied no.

Mr. Burton stated that since Central Engineering does not have a certificate of prequalification, their prequalification could not be reduced, so the only options were to suspend or take no action.

Ms. Kennedy passed out a rental/lease agreement provided by the district at the last meeting.

Mr. Ratliff stated that we cannot lease equipment and pay for it by square yards. It can only be paid for by the hour or by the day.

Mr. Novak stated that we cannot change the format of the rental/lease agreement. A rental/lease agreement can only be used for equipment and the operator.

Ms. Powers stated American gave Central Engineering a contract and Central Engineering signed it. We thought we were under contract.

Mr. Feagans asked why the Committee did not sanction American.

Mr. Novak stated American subcontracted with Marlin to do the subgrade. Marlin originally planned to remove the material and replace with aggregate. Marlin decided to hire Central Engineering to do the subgrade treatment to save time.

Ms. Kennedy stated that Central Engineering's subcontract was not approved, because Central Engineering was over the \$300,000 limit for non-prequalified subcontractors.

Ms. Powers stated she submitted paperwork claiming \$360,000 of work-on-hand.

Mr. Feagans asked if Marlin appealed their suspension.

Ms. Macdonald replied no.

Mr. Burton moved to reaffirm the Committee's original decision.

Mr. Cales seconded the motion.

All Committee members voted in favor.

Ms. Kennedy stated that a letter will be sent to Central Engineering from the Commissioner. Central Engineering will have the opportunity to appeal under Step 2.

Ms. Powers asked how can Central Engineering get paid for the work done.

Mr. Novak stated there is a certain timeframe to claim money. Central Engineering may only need to file a lien. The money is only held temporarily.

Ms. Kennedy adjourned the meeting at approximately 11:54 a.m. EDT.