

PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – NOVEMBER 07, 2013
9:00 A.M. EST

The following Committee members attended the meeting:

Heather Kennedy	Director of Economic Opportunity Division; Acting Committee Chair and Non-Voting Member
Karen Macdonald	Prequalification Engineer; Committee Secretary and Non-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
Jim Stark	Deputy Commissioner of Innovative Project Delivery; Voting Member
John Wright	Director of Highway Design and Technical Support; Voting Member
Bob Cales	Contract Administration Director; attending for Ryan Gallagher as Voting Member
Walt Land	Project Manager, Capital Program Management; attending for Louis Feagans as Voting Member

Also in attendance:

Mark Tidd	Attorney, Prequalification Director; INDOT
Gregory Christoff	Prequalification Auditor; INDOT
Maurice Moubray	Compliance Investigator; INDOT
Blaine Hayden	Prequalification Coordinator; INDOT
Jennifer Jansen	Managing Attorney, Legal Services; INDOT
Lynn Butcher	Director of Litigation and Appeals; INDOT

Ike DeBurger	Seymour District Area Engineer; INDOT
Jason Bunselmeier	Seymour District Area Engineer; INDOT
Joe Jones	Acting Seymour District Construction Director; INDOT
Nathan Saxe	Ecology and Permits Manager, Environmental Services; INDOT
Michele Conyer	Storm Water Specialist, Environmental Services; INDOT
Latosha Higgins	Title VI/ADA Program Manager, Economic Opportunity Division; INDOT
David Alyea	Contract Compliance Manager, Economic Opportunity Division; INDOT
Kristin Brier	Innovation Performance Analyst; INDOT
Harold Force	President, Force Construction Company, Inc.
Tom Pastore	Attorney, Force Construction Company, Inc.
Tim Nierman	Force Construction Company, Inc.
Jim Albertson	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.
Mike Shanks	Force Construction Company, Inc.
Grace Jutte	Jutte Excavating, Inc.
Eryn Fletcher	Federal Highway Administration (FHWA)
Charles Kahl	Indiana Construction Association (ICA)
Paul Berebitsky	Indiana Construction Association (ICA)

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Ms. Heather Kennedy, Director of Economic Opportunity Division and Acting Committee Chair, called the meeting to order at 9:02 am EST. All Committee members were present with the exception of Mr. Feagans and Mr. Gallagher. Mr. Walt Land attended as the designee of Mr. Feagans. Mr. Bob Cales attended as the designee of Mr. Gallagher.

The Committee reviewed the following agenda items:

1. Adoption of October 3, 2013 meeting minutes

Ms. Kennedy called for consideration of the October 3, 2013 meeting.

Mr. Miller moved to adopt the meeting minutes from the October 3, 2013 meeting. Mr. Novak seconded the motion. All members voted in favor.

2. Jutte Excavating, Inc. – Appeal of six month suspension

Ms. Kennedy introduced the item regarding Jutte Excavating, Inc. (Jutte).

Ms. Latosha Higgins, Title VI/ADA Program Manager, Economic Opportunity Division, stated that the remaining paperwork due to INDOT has a deadline of November 19, 2013. When INDOT receives the remaining documents, Jutte will be in compliance.

Mr. David Alyea, Contract Compliance Manager, Economic Opportunity Division, stated Ms. Jutte has provided all documents and materials required by his section.

Mr. Miller moved to postpone a decision on Jutte's appeal until the next meeting after INDOT gets a report from EOD.

Mr. Stark seconded Mr. Miller's motion.

All Committee members voted in favor of the motion.

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

Ms. Jennifer Jansen, INDOT's Managing Attorney, stated that this is a follow up meeting from July 11, 2013 regarding the issues with Force Construction Company, Inc. (Force), and provided a few examples of the types of problems that the Seymour District routinely observed

on Contracts IR-34452 and R-27969. The issues on the contracts were erosion and sediment control (ESC) and safety issues.

Mr. Ike DeBurger, Seymour District Area Engineer, presented information about ESC, safety, and other issues on contract IR-34452:

- Force violated pending United States Army Corps of Engineers (USACE)/Indiana Department of Environmental Management (IDEM) permits jeopardizing the work on several US 50 bypass contracts. Delineation of the wetlands was the responsibility of Force. Failure to mark the wetlands resulted in three separate permit violations.
- Force cleared through another area marked “Do Not Disturb” on the plans but not delineated in the field. The area was not to be disturbed per the 401/404 permits. INDOT had instructed Force to mark this area several times. Environmental Services (ES) instructed Force to reseed the area with emergent wetlands mix and take better precautions to prevent intruding upon environmentally sensitive areas.
- Force intruded into another “Do Not Disturb” area that was delineated with tape. An excavator entered the “Do Not Disturb” area and turned around within the area.
- Force drained a 4.5 acre lake to use for disposal of excess dirt. Waste Area forms were not submitted to INDOT prior to draining the lake. This was a 404 permit violation and the USACE issued a Cease and Desist Order.
- Force pumped contaminated water into a sediment basin that drained into Mutton Creek. INDOT agreed to the necessity of a change order to contain the material. Containment tanks were ordered, but Force did not wait and dumped the contaminated water. The mitigation at this site is estimated to cost \$200,000 plus delays to the contract.
- Force Construction removed a tree next to Duke powerlines. An excavator knocked a limb into a 34,000 volt powerline and caused a power outage for all of Hayden, Indiana and half of Seymour, Indiana. This was obviously a very dangerous situation and luckily no one was injured.
- Force harvested a soybean field after they were explicitly instructed not to do so. Force cut approximately seven acres in Right-Of-Way (R/W) and about six acres outside of R/W. INDOT purchased the area north of the R/W, but this area was not inside our construction limits. Force did not have the right to be on this property or harvest crops from it. Mr. DeBurger was visited by a Jennings County Sheriff deputy explaining that the farmer submitted a police report and wanted to file charges for theft. The farmer rented this property and had not been compensated in any way.

Mr. DeBurger stated that violations of Rule 5 and environmental permits can have serious, negative consequences along with numerous costs. The ESC problems, disturbing of wetlands, and draining of the lake were serious violations of permits and state and federal laws.

Mr. Jason Bunselmeier, Seymour District Area Engineer, presented information about ESC and safety issues on contract R-27969:

- Pictures show water going around the stockpiled materials in the ditchline and other obstructions downstream. There were stockpiles of structure backfill and riprap, not riprap check dams. The water had no place to go other than across the roadway.
- The stockpiles were located in the ditchlines, and were not as shown on the plans. The plans show the stockpiles should have been outside the drilled pier shafts.
- There are highly erosive areas and large runoff areas at this site.
- Force continued to use concrete washouts after they were well over capacity. They should not exceed 50% capacity. Overlapping concrete washout was over capacity.
- Construction Memo 12-05 was passed out at a progress meeting, which incorporates Special Provision 108-C192. The Special Provision states “All appropriate erosion control items shall be in place prior to disturbing the project site.” There was improper placement and maintenance of the ESC measures. Force placed over 100 tons of riprap after the memo was discussed, which was 5 months after the start of the project.
- Force did not place all ESC measures in their ESC plan and did not maintain all of the measures they did place.
- Because of the lack of ESC measures in place, the Heart House apartment complex was hit with sediment. Nine families were displaced.

Ms. Jansen stated the Committee asked the Seymour District to provide additional materials after the July 11, 2013 meeting. CR-2's and ESC reports were then provided for each project. Both projects had ESC issues, permit violations, and safety issues. Force disturbed wetlands and drained the lake, which prompted the Cease and Desist Order.

The Seymour District recommended that Force be required to submit a Work Improvement Plan (WIP) and be suspended from bidding work for a total of twelve months as a prime contractor or a subcontractor. The Seymour District also recommended that Force's maximum prequalification bidding capacity be lowered to \$44,000,000 for twelve months after the suspension.

The following representatives from Force addressed the issues: Harold Force, Jim Albertson, Amy Roberts, Earl Settles, Mike Shanks, and Tom Pastore, Attorney for Force. They disputed INDOT's assertions and provided information in support of Force's position.

Mr. Force stated the following: Force has a high regard for INDOT. The CR-2 reports over the past five years are overwhelmingly positive. One negative CR-2 was in Dearborn County. The other negative CR-2 was in Switzerland County and was received four months after the end of the project. The rain event was not expected. ESC measures performed as expected after Hurricane Isaac went through. INDOT and IDEM have responded well. Safety is important. Force tries to address the issues and improve practices. Force looks forward to working with INDOT on future projects. Force strongly disagrees with the proposed sanctions.

Committee members noted that Force has historically performed well for INDOT. The Committee agreed with requiring a WIP and imposing a reduction to Force's maximum bidding capacity, but did not agree with the twelve month suspension requested by the Seymour District.

Ms. Kennedy stated that a 20% or 30% reduction to Force's maximum bidding capacity would not reduce it below the unlimited level.

The Committee discussed having Force come back in six months for a progress review. Of the two projects in question, one is already complete, and the other is 85% complete. Projects will close down for the winter. Force replied that it does not have any new projects where they are responsible for ESC.

Mr. Miller moved to require (1) a QA/QC plan for ESC practices due in 30 days to be reviewed by Construction Management and Environmental Services, (2) a 30% reduction to Force's maximum bidding capacity, and (3) the Committee would review the issues and Force's maximum bidding capacity again in six months.

Mr. Novak seconded Mr. Miller's motion.

All Committee members voted in favor of the motion.

Ms. Kennedy adjourned the meeting at approx 12:06 pm.