

PREQUALIFICATION COMMITTEE  
MINUTES – AUGUST 13, 2009  
8:30 A.M. EDT

The following Committee members attended the meeting:

Karen Macdonald	Prequalification Engineer, Contract Administration Division; Committee Secretary and Non-Voting Member
Martha Kenley	Director, Economic Opportunity Division; Chair and Non-Voting Member
Tony Hedge	Chief, Accounting and Control Division; Voting Member
Grant Knies	Budget Analyst; Voting Member
Greg Kicinski	Manager, Office of Project Management; Voting Member
Mark Miller	Director, Construction Management; Voting Member
Tiffany Mulligan	Attorney, Legal Division; Counsel to the Committee and Voting Member
Joe Novak	State Construction Director; Voting Member
Jim Stark	District Deputy Commissioner, Seymour District; Voting Member

Also in attendance:

Fred Bartlett	Prequalification Section, Contract Administration; INDOT
Paul Berebitsky	Indiana Construction Association
Mike Beuchel	Contract Administration; INDOT

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The Committee reviewed the following agenda items:

1. Adoption of meeting minutes from July 9, 2009 meeting
2. Revocation of former policies

3. Adoption of charter and procedures
  - a. Prequalification Committee Charter
  - b. Prequalification Committee Meeting Procedures
  - c. Prequalification Committee Complaint/Issue Procedure
4. Proposed business rules for prequalification of companies submitting consolidated statements
5. Planning for future initiatives

PREQUALIFICATION COMMITTEE MEETING  
OPEN SESSION AUGUST 13, 2009

Martha Kenley, Committee Chair, called the meeting to order at 8:32 a.m. EDT. She facilitated introductions of all individuals present. All Committee members were present.

Martha Kenley introduced Sheryl Borszem. Ms. Borzem will attend the meetings to take notes for the minutes. Ms. Macdonald stated she will continue to take notes also.

Martha Kenley called for consideration of the meeting minutes from the July 9, 2009 meeting.

Mark Miller moved to adopt the meeting minutes from the July 9, 2009 meeting. Jim Stark seconded the motion. All members voted in favor.

Karen Macdonald stated the meeting minutes will be on the website in the near future. Tiffany Mulligan and Ms. Macdonald explained that there will be a link on the "Doing Business with INDOT" Contractor's web page for Prequalification Committee information.

Martha Kenley proposed starting fresh with the new Charter and proposed procedures. She called for a motion to revoke all old internal prequalification policies and procedures.

Jim Stark made a motion to revoke all former policies related to the Prequalification Committee. Tiffany Mulligan seconded the motion.

Mark Miller questioned if the revocation applied to other policies that may exist, specifically the document entitled "Prequalification Operating Procedures."

Karen Macdonald stated the policies to be revoked are only those related to the Committee. The "Prequalification Operating Procedures" provide guidance to her section on certain issues and are not specific to Committee operations.

Martha Kenley stated the policies to be revoked are specific to how the Committee runs.

All Committee members voted in favor of the motion to revoke all former policies specifically related to the Committee.

Martha Kenley stated she proposed at the last meeting to defer a vote as to the adoption of the policies until today's meeting to allow time for Committee members to review and make suggestions and/or comments.

Martha Kenley stated that she, along with Tiffany Mulligan, reviewed comments from Committee members and for expediency either accepted or rejected the changes. Where they rejected changes, they explained their reasoning individually to the member who made the suggested change. Accepted changes are tracked in the documents included in the Committee members' packets. Members are welcome to move to amend the documents if they want to discuss any additional changes not included in the red-lined version of the documents included in the Committee members' packets.

Paul Berebitsky asked for a copy of the updated version of the documents. Karen Macdonald provided Mr. Berebitsky with a copy.

Martha Kenley asked for the Committee to consider the proposed Charter. She explained a minor revision on the first page and questioned if there were any comments.

Mark Miller moved to adopt the Committee Charter. Joe Novak seconded the motion.

Paul Berebitsky questioned item #4 of the Charter under Permissive Activities of the Committee regarding the Committee considering confidential information. He requested the word "only" be added to the language.

Tiffany Mulligan stated the language is from 105 IAC 11-2-4 (d). She noted that executive sessions are already limited in the rule and in the Charter because they must be "pursuant to Indiana's Open Door Law."

Paul Berebitsky questioned whether item #6 of the Permissive Activities section should include action to request additional information from the contractor.

Tiffany Mulligan stated the Committee can request additional information under Item #5 of the Permissive Activities section; however, this does not require action by the Commissioner, which is why it is not included in item #6. For example, the Committee does not need the approval of the Commissioner to ask for a corrective action plan.

Martha Kenley stated the Commissioner does not have to approve such action, and the Committee has the authority to take such action on its own.

Martha Kenley reiterated Mark Miller's earlier motion to adopt the Charter.

All Committee members voted in favor.

Martha Kenley asked for consideration of the Prequalification Meeting Procedures and stated changes are tracked throughout the document.

Paul Berebitsky suggested adding a statement about voting members recusing themselves from voting if they are involved in an issue.

Tiffany Mulligan stated this issue was discussed in the last meeting and agreed a person should recuse themselves from voting if personally and substantially involved in an issue.

Martha Kenley agreed a Committee member that has a personal involvement with a specific issue should recuse himself or herself and suggested this could be added to the procedures.

Jim Stark questioned if several members of the Committee had to recuse themselves from a vote on an issue whether the Committee would be able to have a quorum.

Martha Kenley stated a Committee member who was personally and substantially involved with an issue should not designate someone to vote in his or her place. She suggested the Committee Chair appoint someone to vote in the person's place if obtaining a quorum due to recusal is an issue.

Tiffany Mulligan suggested adopting the procedures as is and considering an amendment on recusal at a future meeting so the members could have the suggested language in front of them before voting.

Martha Kenley agreed.

Joe Novak questioned item 2.g., Meeting Structure, in regards to a Committee member making a motion to recommend a change in a contractor's rating.

Martha Kenley stated this would fall under 105 IAC 11-2-5, which is listed under 2.g.iv of the Meeting Structure section.

Tiffany Mulligan stated the Committee would vote on a recommended action, and then the Commissioner would make a final decision to accept or reject the Committee's recommendation.

Martha Kenley called for a motion to adopt meeting procedures with the understanding amendments can take place in the future.

Tony Hedge moved to adopt the meeting procedures. Greg Kicinski seconded the motion. All Committee members voted in favor.

Martha Kenley called for consideration of the Procedures for Submitting Issues to the Prequalification Committee. She stated the word "complaint" was changed throughout document to the word "issue" regarding the procedures for submitting a complaint.

Tony Hedge suggested changing the word “procedure” to “guidelines” or “process.”

Jim Stark stated the word “procedure” needed to be used so that employees would follow the steps outlined in the document.

Jim Stark made a motion to adopt the procedures for submitting an issue. Mark Miller seconded the motion.

Paul Berebitsky stated from the time an issue is placed on the agenda, there should be no discussion between Committee members.

Martha Kenley stated it would be inappropriate for members to meet privately to discuss issues.

Joe Novak and Tiffany Mulligan stated the Open Door Law should cover this situation.

Martha Kenley called for a vote based on Jim Stark’s earlier motion. All Committee members voted in favor.

Martha Kenley introduced the proposed business rules for prequalification of companies submitting consolidated statements. She stated she wanted to introduce the rules at today’s meeting for possible consideration and adoption at next month’s meeting.

Tiffany Mulligan stated this issue has caused confusion for some time. This issue was brought to the Prequalification Section’s attention by the districts Equal Employment Opportunity Officers. Contractors were showing up on job sites and there was confusion as to whether or not they were the approved subcontractor.

Tiffany Mulligan referred to the proposed business rules and noted that a contractor has two choices under the rules: to be prequalified as a group or as a separate entity, with rules and limitations attached to each option.

Martha Kenley stated she would send out the proposed business rules to all Committee members for comments and/or suggestions.

Tiffany Mulligan stated the goal of the rules is to provide guidance to INDOT employees, such as the Equal Employment Opportunity Officers and to allow all contractors to be treated consistently.

Martha Kenley questioned the issue of a subcontractor not being prequalified because of limited assets and being a subsidiary of a contractor.

Karen Macdonald stated a subsidiary should be allowed to perform work on a job if the parent company is prequalified.

Tiffany Mulligan stated if a company submits a consolidated statement to be prequalified as a group, the taxpayer ID number should be the same for the parent and subsidiary and if it is not, then the prequalified entity should submit a letter explaining the relationship between the two companies.

Mark Miller questioned how INDOT would enforce having the parent company's name on all equipment and whether this is practical for the contractor as some equipment is not marked with the contractor's name.

Tiffany Mulligan referred to item #6 and stated not every piece of equipment needs to be marked, but where equipment is normally marked it should include the prequalified entity's name.

Paul Berebitsky questioned how this would apply to subcontractors that are not prequalified.

Martha Kenley stated the proposed rules should be reviewed and any comments or suggested language for improvement would be considered. This item will be brought back for committee consideration next month.

Tiffany Mulligan addressed future initiatives stating anyone interested in being on one of the subcommittees should contact her.

Karen Macdonald addressed the issue of committee meeting dates because of conflicts with other regularly scheduled meetings. There are conflicts with the Consultant Selection Review Committee meetings and the State Ethics Committee meetings. She will send an email asking members for alternative dates, but the meetings will continue to be on the second Thursday of each month through the end of the year.

Martha Kenley adjourned the meeting at 9:28 a.m.