

PREQUALIFICATION COMMITTEE
MINUTES – SEPTEMBER 10, 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

Also in attendance:

Paul Berebitsky	Indiana Construction Association
Sheryl Borszem	Internal Affairs/Legal Department, INDOT

The Committee reviewed the following agenda items:

1. Adoption of August 13, 2009 meeting minutes
2. Adoption of business rules and revised procedures
 - a. Business rules for prequalification of companies submitting consolidated statements
 - b. Conflict of interest/recusal amendment to Committee meeting procedures
3. Update on internal committees

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION SEPTEMBER 10, 2009

Martha Kenley, Committee Chair, called the meeting to order at 8:33 a.m. EDT. All Committee members were present, with the exception of Jim Stark who did not attend the meeting or send an alternate.

1. Adoption of August 13, 2009 meeting minutes

Martha Kenley called for consideration of the meeting minutes from the August 13, 2009 meeting. Ms. Kenley asked for any comments, additions, or revisions.

Greg Kicinski moved to adopt the meeting minutes from the August 13, 2009 meeting. Mark Miller seconded the motion. All members voted in favor.

2.a Adoption of business rules for prequalification of companies submitting consolidated statements

Martha Kenley introduced the adoption of business rules for prequalification of companies submitting consolidated statements. Ms. Kenley asked for any comments.

Tony Hedge suggested not referencing taxpayer ID numbers in the business rules. Mr. Hedge stated the Auditor of the State will no longer be using taxpayer ID numbers as vendor codes with the new changes in PeopleSoft.

Tony Hedge stated all taxpayer ID numbers, whether social security numbers or not, should be kept confidential.

Karen Macdonald stated the prequalification section does not use social security numbers for sole proprietors. Ms. Macdonald stated her group currently uses taxpayer ID numbers as the vendor ID number in many cases.

Karen Macdonald suggested making changes in the future to the proposed business rules when INDOT stops using taxpayer ID numbers as vendor numbers; however, for the time being her group is using taxpayer ID numbers as vendor numbers.

Paul Berebitsky provided all Committee members with a document with suggested revisions from the Indiana Construction Association. Mr. Berebitsky had two main concerns: first he suggested revisions to the definition of "group;" second he suggested removing the requirement to have company names on vehicles and equipment.

His first recommendation to change the definition of group was based on his concern that not all groups may consist of a parent and subsidiary. There may be situations where a group consists of two related subsidiaries without the parent.

His second recommendation to remove the requirement to have company names on vehicles and equipment was based on his concern that it would be difficult for companies to comply with. He explained there was no benefit in having the company name on a vehicle and asked for consideration in deleting the sixth paragraph in the rules.

Martha Kenley asked everyone to take a few minutes to review the suggestions.

Karen Macdonald suggested withdrawing the item to let Mike Beuchel review and comment because Mr. Beuchel was heavily involved in drafting the rules.

Martha Kenley asked if there were any questions regarding Mr. Berebitsky's suggestions.

Tony Hedge questioned how often two subsidiaries get prequalified versus two subsidiaries as a joint venture.

Karen Macdonald stated joint ventures are limited to a particular letting. Ms. Macdonald stated INDOT has prequalified some combinations of companies before.

Martha Kenley stated the Committee could take these items into consideration and vote at the next meeting.

Greg Kicinski asked if anyone had any comments that we should discuss during the meeting to facilitate the Committee's consideration of Mr. Berebitsky's suggestions.

Mark Miller stated that Mr. Berebitsky's suggestions in paragraph 5 under "Prequalification as a Group" were too vague. He stated the original language is more specific because it references what the company is prequalified for.

Mark Miller stated the Committee should not change vendor ID to taxpayer ID in light of Mr. Hedge's earlier comments.

Tiffany Mulligan stated Mr. Berebitsky's first request has merit and should definitely be considered.

Tiffany Mulligan stated Mr. Berebitsky's second request may cause concern for the district Equal Employment Opportunity (EEO) Officers. The EEO Officers have expressed concern in the past over not knowing who the contractors are working for when they show up on the job site. Ms. Mulligan questioned whether it's appropriate to strike the language regarding identification of equipment from the rules.

Mark Miller stated he understood why INDOT wants this requirement. Mr. Miller stated there is no way to tell if the subcontractor is unauthorized when they show up, until the contractor provides certified payrolls to the EEO Officers, which may be some time after the work has started.

Greg Kicinski stated the language should stay as originally written.

Martha Kenley asked if there were any questions and stated more time was needed for review.

Tiffany Mulligan stated she was concerned about striking the notification to the EEO Officers.

Tiffany Mulligan asked Paul Berebitsky for an electronic version of the document with his suggested changes and stated she would forward the document to other Committee members for comments.

Martha Kenley stated she would forward any questions and comments from the Committee to Paul Berebitsky.

Martha Kenley called for a motion to postpone voting on the business rules to give Committee members time to further consider the rules.

Mark Miller so moved. Joe Novak seconded the motion. All members voted in favor.

2.b. Adoption of conflict of interest/recusal amendment to Committee meeting procedures

Martha Kenley introduced the revised prequalification procedures and the proposed recusal amendment.

Tiffany Mulligan stated that in addition to the proposed recusal amendment, the State Ethics Code applies to all state employees. Ms. Mulligan stated that among other things, the Ethics Code prevents members from participating in a decision or vote if they have a financial interest in that decision or vote.

Tiffany Mulligan stated the proposed amendment only requires members to recuse themselves from a vote if they were personally and substantially involved in the issue. They would not have to recuse themselves if someone they work with was involved in the issue or if they had only minimal involvement with the issue.

Tony Hedge questioned the last sentence regarding the proposal of the Committee Chair designating alternates to vote. As written, it limits the Committee Chair to designate alternates only when necessary to have a quorum.

Martha Kenley stated the Committee Chair should not designate an alternate when a member does not vote for reasons other than a conflict of interest. Ms. Kenley stated it should be the decision of the member to designate an alternate in these cases.

Tony Hedge stated the member might not be able to appoint an alternate when he or she has a conflict of interest even when there is no question of having a quorum, and the Committee

Chair might want to appoint an alternate. Mr. Hedge stated his concern that the procedures might be too restrictive.

Mark Miller agreed with Tony Hedge.

Martha Kenley stated that she does not believe the Chair should appoint alternates unless a quorum is not possible because of the number of members who might have to recuse themselves due to conflicts of interest. She stated the Commissioner appointed the membership of the Committee, and the Chair does not have the authority to change the makeup of the Committee.

Tiffany Mulligan agreed and stated that the Chair should appoint alternates to vote only in rare circumstances when the Committee is unable to conduct business without the Chair appointing alternates.

Greg Kicinski stated in cases where a member cannot vote for reasons other than a conflict of interest, it should be the decision of the member if they want someone to vote in their place and not the decision of the Chair.

Martha Kenley stated if the Committee could not function, then she would appoint alternates.

Tony Hedge stated he could accept the language as written after the discussion and explanation.

Martha Kenley called for a motion to adopt the conflict of interest/recusal amendment.

Tiffany Mulligan moved to adopt the conflict of interest/recusal amendment. Greg Kicinski seconded. All members voted in favor.

3. Update on internal committees

Martha Kenley stated the internal consultant subcommittee held a meeting last week, and those in attendance included Karen Macdonald, Jim Stark, Bob Snider and Jeff Clanton.

Martha Kenley stated the subcommittee proposed options on how to bring consultants before the Prequalification Committee for disciplinary action. The subcommittee plans to start by amending the Consultant Prequalification Manual to allow for Prequalification Committee consideration of a consultant's prequalification status. It also plans to create a form for evaluating consultant performance. The subcommittee may consider promulgating rules in the future, but this is a lengthy process.

Greg Kicinski raised questions regarding the evaluation form.

Karen Macdonald stated Jeff Clanton is revising the evaluation form.

Greg Kicinski questioned errors in design and how INDOT can make claims against the contractor for the cost of these errors.

Martha Kenley stated that the subcommittee is not considering a process for collecting from consultants for errors and omissions. The subcommittee is only considering procedures allowing the Prequalification Committee to address a consultant's prequalification status.

Tiffany Mulligan stated INDOT has an errors and omissions task force that is looking at a claims process for consultant errors and omissions. The group has met regularly and is making progress towards creating a process.

Martha Kenley stated if INDOT plans to discipline a consultant, the consultant should have an opportunity to come before the Committee and respond to INDOT's arguments. This is one of the goals of the proposal to extend the Prequalification Committee's work to consultants.

Tiffany Mulligan proposed the issue of another subcommittee revising the prequalification rules in the Indiana Administrative Code. Ms. Mulligan stated she has not yet sent out a notice for the meeting and anyone interested in joining should contact her. Ms. Mulligan stated input is needed and she would like someone from the Committee to join.

Paul Berebitsky questioned what sections of the rule might be revised.

Tiffany Mulligan stated that some changes would be technical in nature and some changes would clarify current language; however, nothing has been drafted yet and rule language is needed before public discussion. Ms. Mulligan stated that the process would include opportunity for public input.

Martha Kenley asked if there were any questions.

Martha Kenley called for a motion to adjourn.

Mark Miller moved for a motion to adjourn. Tony Hedge seconded the motion. All members voted in favor.

Martha Kenley adjourned the meeting at 9:23 a.m.