

PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – MAY 24, 2011
10:00 A.M. EDT

The following Committee members attended the meeting:

Tiffany Mulligan	Director of Economic Opportunity and Prequalification; Chair and Non-Voting Member
Karen Macdonald	Prequalification Engineer; Committee Secretary and Non-Voting Member
Tony Hedge	Director of Accounting; Voting Member
Greg Kicinski	Director of Project Management; Voting Member
Greg Pankow	State Construction Engineer; attending for Mark Miller as voting member
Joe Novak	Crawfordsville District Construction Director; Voting Member
Jim Stark	Deputy Commissioner of Capital Program Management; Voting Member
Troy Woodruff	Deputy Commissioner of Operations; Voting Member
Peter Yao	Senior Road Design Engineer, Office of Roadway Services; attending for John Wright as voting member

Also in attendance:

Jim Burkart	Prequalification Auditor; INDOT
Susan Miles	Manager of Contract Compliance, Economic Opportunity Division; INDOT
Kent Borggren	Equal Employment Opportunity (EEO) Officer, LaPorte District; INDOT
Monica Rongere	Contract Compliance Specialist, Economic Opportunity Division; INDOT
Heather Kennedy	Attorney, Economic Opportunity and Prequalification Divisions; INDOT

Jennifer Jansen	Attorney, Legal Division; INDOT
Joy Koester	Manager of Fiscal Analysis and Reporting, Accounting Division; INDOT
Danny Williams	Accounts Receivable Supervisor, Accounting Division; INDOT
Bill Isom	Jack Isom Construction Co.
Ethan Tan	Jack Isom Construction Co.
Tom Pastore	Attorney representing Jack Isom Construction Co.
Paul Berebitsky	Indiana Construction Association (ICA)

The Committee reviewed the following agenda items:

1. Adoption of March 22, 2011 meeting minutes
2. Jack Isom Construction Co.
 - a. Consideration of Prequalification Application
 - b. Prevailing Wage and Fringe Rate Compliance on Contracts B-31463 and R-27986

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION
MAY 24, 2011

Ms. Mulligan, Committee Chair, called the meeting to order at 10:02 a.m. EDT. All Committee members were present, with the exception of John Wright and Mark Miller. Mr. Peter Yao attended for Mr. Wright. Mr. Greg Pankow attended for Mr. Miller.

Ms. Mulligan asked that everyone sign the sign-in sheet that is circulating. She facilitated introductions of all individuals attending the meeting. At this time, Ms. Jansen was not present at the meeting.

Ms. Mulligan explained the 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.

1. Adoption of March 22, 2011 Meeting Minutes

Ms. Mulligan called for consideration of the meeting minutes from the March 22, 2011 meeting. She stated there is a typographical error on page 2. The heading below the agenda items should reference March 22, 2011 and not March 3, 2011.

Mr. Hedge moved to adopt the meeting minutes from the March 22, 2011 meeting with the typographical error corrected. Mr. Pankow seconded the motion. All members voted in favor. Ms. Mulligan stated the minutes would be posted on the website within a few days.

2. Jack Isom Construction Co.

- c. Consideration of Prequalification Application
- d. Prevailing Wage and Fringe Rate Compliance on Contracts B-31463 and R-27986

Ms. Mulligan introduced this item regarding Jack Isom Construction Co. (Isom). She stated that an executive session of the Prequalification Committee was held yesterday, and the only information discussed was Isom's financial information. The Committee may consider items that are classified as confidential under state or federal statute during an executive session.

Ms. Mulligan stated that Mr. Hedge had submitted a statement to her indicating that he has not been personally or substantially involved in these issues. Ms. Mulligan read the statement, which stated that Mr. Hedge has not had direct involvement with the Accounting actions associated with this matter. Although Mr. Hedge's signature appears on certain correspondence and documentation relevant to this matter, as the Director of Accounting, Mr. Hedge's name and/or signature is computer generated on such documents as a matter of routine business.

Ms. Mulligan stated that as Committee chair, she does not vote unless there is a tie. She stated that because she is the Director of the Economic Opportunity Division, and she has been involved with the prevailing wage and fringe rate compliance issue, she will recuse herself from voting if there is a tie.

Ms. Mulligan stated that the consideration of Isom today is different from other more recent meetings because the Prequalification Division brought the pending prequalification application to the Committee for consideration because of issues that were brought to light. Usually it is another owner office that submits the issue for consideration by the Committee on a currently prequalified contractor.

Ms. Mulligan introduced Ms. Susan Miles, Manager of Contract Compliance, Economic Opportunity Division (EOD), and Mr. Kent Borggren, LaPorte District Equal Employment Opportunity (EEO) Officer.

Mr. Borggren stated that his initial involvement with the issue on contract B-31463 was due to a Freedom of Information request received on March 23, 2011. The request was for certified payrolls for the prime contractor and subcontractors on the contract. In addition to receiving the certified payrolls, he also received the weekly sign and barricade reports for the contract. Mr. Borggren stated that he believed the sign and barricade reports were prepared by Traffic Control Specialists, a subcontractor on the project. There were no certified payrolls for Traffic Control Specialists. He contacted Traffic Control Specialists and asked for certified payrolls.

Mr. Borggren stated he reviewed Isom's certified payrolls and did not see classifications, such as operators or ironworkers. He also found that the Statement of Compliance form (WH-348) did not indicate where the fringe benefits were being paid. He sent an email to Isom and asked about these issues. He stated he also asked about who is filling out the weekly sign and barricade reports because there were missing certified payrolls for Traffic Control Specialists.

Mr. Borggren stated that at a progress meeting for contract B-31463 on April 4, 2011, he asked Isom about the weekly sign and barricade reports and where the fringes benefits were being paid. He also pointed out to Isom that they need to track hours and pay employees under the correct classifications.

Mr. Borggren referred to correspondence on other dates, which is summarized below:

- April 7, 2011 - Mr. Borggren received an email from Isom stating benefits are paid into a fund at First Merchants Trust Company. The statement shows no deposits were made for the fourth quarter of 2010.
- April 8, 2011 - Mr. Borggren sent an email to Isom requesting documentation of fringe benefits paid for each employee.
- April 14, 2011 - Mr. Borggren sent a certified letter to Isom. Again he requested documentation of fringe benefits paid for each employee. He reminded Isom that per FHWA-1273, which is incorporated into the contract, fringe benefits can be paid weekly, but not less than quarterly.

- April 20, 2011 - Mr. Borggren sent an email to Isom asking Isom submit the requested information by April 29, 2011.
- April 27, 2011 - Mr. Borggren learned that Isom has not submitted certified payrolls since March 19, 2011 and had not submitted weekly sign and barricade reports since April 4, 2011. Mr. Jeff Million, Project Supervisor for DLZ, told Mr. Borggren that he would not do progress estimates for Isom until he receives the missing paperwork.
- April 28, 2011 – Mr. Borggren learned that Mr. Million received the missing certified payrolls from Isom. Those payrolls did indicate that the fringe benefits were being paid into the approved fund.
- April 29, 2011 – Mr. Borggren received a letter from Isom with a summary annual report on the Isom Money Purchase Plan. The report did not indicate any deposits for calendar year 2010 or the first quarter of 2011.

Mr. Borggren stated that he still has not received the breakdown of payments made for each employee. Mr. Borggren stated that he calculated the fringe benefits and came up with \$27,506.35 owed on contract B-31463 and \$37,209.42 owed on contract R-27986.

Mr. Bill Isom, President of Jack Isom Construction Co., stated he has submitted payrolls every week the same way for years to the Crawfordsville and LaPorte Districts and has not been questioned in the past.

Mr. Tom Pastore, attorney for Isom, stated that the current plan allows Isom to make deposits every six month. Isom is actually current under the plan he has in place. Isom was audited by the Department of Labor, and they have approved his plan.

Mr. Isom stated that union representatives came into his field office and were let in by Mr. Million. Mr. Isom stated that they are not supposed to enter the field office.

Mr. Isom stated that his cousin works for him and is paid two days as an operator and three days as a laborer. He said he does not use ironworkers.

Mr. Pastore asked if the Committee is concerned with Isom not following procedure or more concerned with the fringes not being paid. He said that the fringes have been paid.

Ms. Mulligan asked if Mr. Pastore stated that Isom only pays fringes every six months.

Mr. Pastore stated Isom pays fringes every six months, and this is shown on their corporate tax returns. Now Isom is paying fringes quarterly because Isom is now a union contractor.

Ms. Isom stated that he brought tax returns from 2006 and forward.

Mr. Pankow stated that the sign and barricade reports need to be submitted weekly and are supposed to be reviewed by a traffic control specialist.

Mr. Isom stated that Isom's superintendent did weekly checks, Isom sent the report to Traffic Control Specialists, and Barry Triska reviewed the reports. The report has to be approved by a certified work zone traffic control specialist.

Mr. Borggren stated that Traffic Control Specialists indicated they did not fill out or review the reports on the project in question. Mr. Borggren stated Traffic Control Specialists are filling out and signing the reports now on a bridge project.

Ms. Mulligan asked if there were any additional comments regarding wage and fringe rate compliance. Hearing none, she asked Mr. Danny Williams to provide information to the Committee.

Mr. Danny Williams, INDOT Accounts Receivable Supervisor, reported on overpayments INDOT made on two contracts. INDOT sent an invoice to Isom on October 21, 2009 in the amount of \$21,314.98 for overpayment made by INDOT on contract B-27216. After the initial invoice was sent, several dunning notices went out. Mary Ella Brickey from Isom contacted INDOT and said Isom would make a payment by mid-May, but INDOT did not receive the payment. Mr. Williams stated that payments should have been made quarterly. Ms. Brickey called in September 2010 and asked if Isom could make \$5000 payments each month. INDOT did not receive those payments.

Mr. Williams stated that INDOT overpaid Isom on a second contract, R-29034, and INDOT sent an invoice to Isom on September 30, 2010 for \$9,391.08. INDOT sent several dunning notices and combined both contract overpayments on these notices. The total amount due on both projects is \$30,706.06. The matter was referred to the Indiana Attorney General's (AG) office. Isom has signed a promissory note to make payments to the AG's office.

Mr. Pastore stated that they did not realize the issue with the overpayments was going to be brought up today, and he was not prepared to discuss it. Isom does not agree with the overpayments. Isom was expecting a letter from INDOT pointing out what needed to be paid.

Ms. Mulligan stated that the Construction Management Division brought the overpayment issue up to the Prequalification Division. We then asked the Accounting Division to provide the back-up information on the overpayment issue.

Ms. Mulligan pointed out the pending prequalification worksheet in the members' packets shows what Isom's prequalification capacity would be if the Committee recommends no reductions be taken.

Mr. Hedge asked if Isom was not aware of the accounting issue when they applied for prequalification.

Mr. Stark asked that even though Mr. Isom stated they are not prepared to discuss this issue, the Committee can still consider it and ask questions.

Mr. Pastore stated that Isom is aware of the overpayments.

Mr. Hedge asked if the amount owed to INDOT is included in Isom's prequalification application.

Mr. Isom replied that the information was provided to his accountant.

Ms. Mulligan asked if it is included in the liabilities listed in the application.

Mr. Isom stated it is.

Mr. Pastore asked if the Committee is considering the On-the-Job (OJT) training program issue that brought Isom to the Committee last year. (It was included in the members' packets.) Mr. Pastore stated that Isom continued in the program, but Isom may have been some hours short.

Ms. Mulligan stated the Committee can consider previous issues regarding a contractor's performance, and we commonly include information in the Committee members' packets on previous issues brought before the Committee involving the contractor.

Ms. Miles reported that Isom's OJT goal was 992 hours, and Isom met 854.5 hours. Isom submitted its OJT reports on time.

Mr. Woodruff asked Mr. Borggren if he is aware of the fringe benefits being paid and if Isom is now in compliance.

Mr. Borggren stated that he does not have reports showing what was paid per employee so he cannot check the wage rates and fringes by employee.

Mr. Isom stated that he has census forms showing the hours per employee. Those forms are used for their tax returns.

Mr. Kicinski asked if Isom tracks how much is being paid per employee throughout the year.

Mr. Borggren stated the information he received showed the total submitted to the plan, and it was not broken down by employee.

Ms. Mulligan asked what type of information other contractors provide.

Mr. Borggren stated that union contractors provide information weekly, and fringes are paid to the union.

Mr. Isom stated that with the OJT issue last year, Isom provided the reports to the project superintendents and should have been submitting the information to the EEO officers. Mr. Isom again stated that he has been providing certified payrolls the same way for years with the fringe payments listed as blank.

Ms. Mulligan stated that the fringe benefit issue should not be a surprise to Isom because they have been asked to provide the information on several occasions.

Mr. Woodruff asked if INDOT renews prequalification applications when the contractor owes INDOT money.

Ms. Macdonald stated that Mr. Mark Miller is checking that now. As Prequalification Engineer, Ms. Macdonald signs the Certificate of Qualification, and Mark Miller signs the certificate for the Commissioner.

Ms. Mulligan stated that under INDOT's prequalification rules in the Indiana Administrative Code, the Committee can take into consideration the financial condition of the contractor.

Ms. Mulligan stated that whatever the Committee decides today will be a recommendation to the Commissioner. Isom submitted their application in time to bid on the May 11, 2011 letting. In the letter asking Isom to attend this meeting, we notified Isom that they would be allowed to bid on the letting, but INDOT would not award any contracts to Isom until Isom is prequalified.

Mr. Pastore stated that the issue with the overpayment is being taken care of with the payment plan. Mr. Isom wants to be prequalified. Mr. Pastore suggested that the only remaining issue is payment of the fringe benefits. He stated that since Isom is now in the union, the issue will resolve itself.

Mr. Stark stated that being in the union does not mean Isom will be following procedure and making the deposits.

Mr. Isom stated that the certified payrolls do not ask for the fringe rates. He stated the only thing he did wrong was not having the fringes checked on the paperwork.

Mr. Borggren stated that INDOT can request the information at any time to find out what a contractor is paying its employees in wages and fringes. Because it was not on the paperwork, he asked for all certified payrolls for both projects and asked what wages and fringes Isom was paying for each employee.

Mr. Hedge asked how long Isom has done work with INDOT.

Mr. Isom stated their first contract was in 1979.

Mr. Hedge stated that it was mentioned earlier that Isom did not agree with the overpayment.

Mr. Pastore stated that he may have misspoken earlier. He stated he briefly asked Mr. Isom about this at the start of the meeting because they were not aware this issue was to be discussed today.

Mr. Hedge stated that with progress payments at the end of the contract, we may owe a big payment or the contractor may have been overpaid. Mr. Hedge stated he did not understand why an overpayment would not been sent back immediately. INDOT sent several letters and dunning notices.

Mr. Woodruff asked how long the prequalification application can be left pending.

Ms. Mulligan stated the rules require we act on an application within 30 days.

Mr. Woodruff stated that bringing Isom to the Committee meets the 30 day deadline.

Mr. Borggren asked if Isom makes deposits to the fund yearly or semi-annually as mentioned earlier.

Mr. Isom stated that he makes deposits throughout the year, but the money is not transferred to the accounts until September each year. It is a Money Purchase Plan; an IMM account.

Mr. Borggren stated he needs to see the information broken down by employee and by contract or pay period. He stated he can use the certified payrolls to determine what was paid per contract.

Mr. Woodruff asked if Isom's prequalification application is not acted upon today, what would happen with the contract from the May 11, 2011 letting.

Ms. Mulligan stated the Commissioner may choose to reject the bid and let it to the second low bidder or relet the contract.

Mr. Woodruff asked how long a contract can wait to be approved.

Mr. Pankow replied 60 days.

Mr. Pastore asked if the Committee would consider a probationary prequalification.

Ms. Mulligan replied that we have done that in a way here by allowing Isom to bid with the application still pending.

Mr. Woodruff stated that we may want to not take action today and ask Isom back in 30 days.

Mr. Stark moved to not take action and ask Isom back in 30 days and that Isom should put together a checklist of INDOT requirements.

Mr. Kicinski suggested Isom review its business practices.

Ms. Mulligan repeated the motion: the Committee will not take action today and reconvene in 30 days. In addition, the Committee asks Mr. Borggren to submit a report on the fringe issue with Isom, and Isom must demonstrate that they understand INDOT business rules and practices.

Mr. Woodruff seconded the motion.

All Committee members voted in favor.

Mr. Novak asked if any credit or monies get transferred to the union plan for the employees.

Mr. Isom stated the employees will start new with the union. It will take 5 years to become vested with the union.

Mr. Pastore stated that the existing plan will be stopped and the employees can roll over their money to other plans.

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

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

Ms. Mulligan adjourned the meeting at approximately 11:26 a.m.