

PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – SEPTEMBER 4, 2014
9:00 A.M. EDT

The following Committee members attended the meeting:

Mark Tidd	Director of Prequalification Division; Committee Chair and Voting Member only in case of tie
Karen Macdonald	Prequalification Engineer; Committee Secretary and Non-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
Angela Fegas	LaPorte District Construction Director; Voting Member
Louis Feagas	Statewide Director of District Project Delivery; Voting Member

Also in attendance:

Lori Torres	Chief Legal Counsel; INDOT
Jennifer Jansen	Managing Attorney; INDOT
Heather Kennedy	Attorney, Director of Economic Opportunity Division; INDOT
Mark Hawkins	Attorney; INDOT
Mark Miller	Director of Construction Management; INDOT
Greg Christoff	Prequalification Auditor; INDOT
Blaine Hayden	Prequalification Coordinator; INDOT
Sam Sarvis	Deputy Commissioner of Capital Program Management; INDOT
Paul Berebitsky	Indiana Construction Association

Eryn Fletcher	Federal Highway Administration
Harold Force	Force Construction Company, Inc.
Tom Pastore	Attorney for Force Construction Company, Inc; Attorney for Jack Isom Construction Company
Billy Ray (Bill) Isom	Jack Isom Construction Company
Ethan Tan	Jack Isom Construction Company
Edward Opperman	Edward Opperman, CPA for Jack Isom Construction Company

The Committee reviewed the following agenda items:

1. Adoption of January 9, 2014 Executive Session Meeting Minutes
2. Adoption of January 9, 2014 Open Session Meeting Minutes
3. Linkel Company – Status update on INDOT’s approval of Linkel’s Work Improvement Plan
4. Force Construction Company, Inc. – Reconsideration of INDOT’s limitation of Force’s Aggregate Bidding Capacity
5. Jack Isom Construction Company – Reconsideration of the Prequalification Division’s denial of Isom’s Prequalification Application

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION
SEPTEMBER 4, 2014

Mr. Tidd, Committee Chair, called the meeting to order at 9:05 a.m. EDT. All Committee members were present, with the exception of Mr. Bob Cales and Mr. David Holtz.

1. Adoption of January 9, 2014 Executive Session Meeting Minutes

Mr. Tidd called for consideration of the Executive Session meeting minutes from the January 9, 2014 meeting.

Mr. Stark moved to adopt the meeting minutes from the January 9, 2014 meeting. Mr. Novak seconded the motion. All members voted in favor.

2. Adoption of January 9, 2014 Open Session Meeting Minutes

Mr. Tidd called for consideration of the Open Session meeting minutes from the January 9, 2014 meeting.

Mr. Feagans moved to adopt the meeting minutes from the January 9, 2014 meeting. Mr. Novak seconded the motion. All members voted in favor.

Mr. Tidd stated the minutes would be posted on the website within a few days.

3. Linkel Company – Status update on INDOT’s approval of Linkel’s Work Improvement Plan

Mr. Tidd provided a status update regarding this item. Construction Management and Office of Environmental Services have approved the Work Improvement Plan (WIP) and Linkel Company can bid on all work types in its Certificate of Qualification.

4. Force Construction Company, Inc. (Force) – Reconsideration of INDOT’s limitation of Force’s Aggregate Bidding Capacity

Mr. Tidd explained the Committee meeting procedures; representatives from INDOT present the issue first, the contractor is allowed to respond, then the Committee members may ask questions. He is allowing 30 minutes for each side.

Ms. Jansen, Managing Attorney for INDOT’s Legal Section, stated that INDOT and Force have provided a joint submission to remove the limit to Force’s bidding capacity and she has no objection to remove the \$60 million aggregate limit and reinstate Force’s full bidding capacity. She noted that there was little opportunity to observed Force’s QA/QC plan in action.

Mr. Stark suggested that the Committee review Force’s CR2s as projects continue.

Mr. Miller stated he had spoken to the Project Engineer and Area Engineer from the Seymour District who had appeared before the Committee in 2013. They informed him that Force’s performance is much improved.

Mr. Pastore stated that Force has no objection to continued monitoring.

Mr. Feagans moved to recommend to the Commissioner to accept the joint agreement to remove the \$60 million capacity limitation, but also have status updates provided at each Committee meeting over the next year.

Mr. Pastore asked who would provide the CR-2s.

Mr. Tidd stated that the Prequalification Division will gather the CR-2s done by INDOT. He stated that Force can submit evaluations from the LPAs to the Prequalification Division.

Mr. Ratliff seconded Mr. Feagans' motion.

All Committee members voted in favor.

5. Jack Isom Construction Company (Isom) – Reconsideration of the Prequalification Division's denial of Isom's Prequalification Application

Mr. Tidd stated that Isom's last prequalification certificate expired on April 30, 2014. Isom submitted a renewal application in early May. The Prequalification Division denied the application by letter dated July 15, 2014. Isom is requesting a reconsideration of the denial.

Mr. Tidd asked Mr. Pastore if he consented to Mr. Tidd as the chair regarding this matter, even though the Prequalification Division issued the denial letter.

Mr. Pastore gave his consent on the behalf of Isom.

Mr. Tidd asked Mr. Pastore if Isom agrees to discuss in this open session its confidential financial information provided to INDOT.

Mr. Pastore gave his agreement on behalf of Isom.

Ms. Kennedy, appointed to represent the Prequalification Division in this matter, introduced the issue. She asked the Committee to uphold the Prequalification Division's denial of Isom's prequalification application.

Ms. Macdonald stated that Isom has been before the Committee each of the last four years (2010-2013) and now in 2014. She provided a summary of the issues at those meetings:

- 4-1-10 meeting – Isom's prequalification application was pending
 - They had an issue with On-the-Job Training (OJT) program compliance.
 - The Committee recommended to deny prequalification until Isom submitted the 2010 OJT agreement.
 - Isom's prequalification application was approved on 5-11-10.
- 5-24-11 and 6-29-11 meetings – Isom's prequalification application was pending
 - Wage and fringe issues- requests for information showing wages and fringes were paid were ignored by Isom.
 - Sign and Barricade reports were not submitted on a weekly basis.

- There were overpayments on two contracts. Dunning notices were sent and ignored. Isom was making payments after it was referred to the Attorney General's (AG) office.
 - The Committee recommended to reconvene in one month and get an update on fringe issues and asked Isom to demonstrate they understand INDOT's business rules and practices.
 - At the second meeting, it was reported that Isom was current on payments to the AG and confirmed that Isom made payments to their plan for fringes, but Isom still had not provided a breakdown of fringes paid per individual.
 - The Committee recommended to approve Isom's prequalification with no reduction.
- 8-2-12 meeting – Isom appealed the decision by the Prequalification Division to deny prequalification to Isom
 - Subcontractor liens had been filed against Isom, (two at time of denial, and two more came in afterwards.)
 - Wage and fringes were behind again.
 - Liquidated damages on a claim were withheld on one contract. There was no movement on the dispute for several months.
 - The Committee recommended to approve Isom's application with a 20% capacity reduction.
- 9-5-13 meeting – Isom appealed the decision by the Prequalification Division to deny prequalification to Isom
 - There was an overpayment on a contract due to INDOT. It was resolved after Isom disputed it, but only after Isom's prequalification was denied. Multiple dunning notices had been sent and the issue was sent to the Prequalification Division in March. Construction Mgmt relooked at the issue and found a mistake. Once it was cleared up, extra days were added and it wiped out the overpayment.
 - Again, multiple subcontractor claims had been filed against Isom, totaling approximately \$360,000. Isom claimed they have paid several of those claims and blamed problems on a few issues with contracts that put them behind. Isom claimed they would get the payments caught up and may have to borrow money from their surety company.
 - The Committee recommended to approve Isom's application with a 30% capacity reduction, and not to be reduced below 30% unless Isom comes back to the Committee and demonstrates they are performing better.

Mr. Miller stated the subcontractor liens in INDOT's database show 201 overall claims and 51 of those claims were with Isom. 25% of the claims were filed against Isom. Mr. Miller stated that multiple subcontractors have called asking what to do about subcontracts not being paid by Isom.

Ms. Kennedy stated that Isom has had a repeated pattern of poor behavior over the past five years and that Isom has had a pattern of cleaning up their problems when they come before the Committee. Due to this pattern of behavior, she asked that the Committee deny prequalification to Isom.

Mr. Pastore, Attorney for Isom, stated Isom is digging out of their financial difficulties and he asked that INDOT reconsider the denial. He stated that the issue is cash flow. He stated that Billy Isom has infused \$65,000 into the company to cover costs. Isom's surety, Zurich, was asked to cover the subs. Mr. Isom is seeking to get a \$1.2 million loan against some property he personally owns. Isom owes Zurich around \$500,000.

Mr. Pastore stated that Isom wants to bid in January. Isom would like to resubmit a prequalification application with a new October 31, 2014 statement date and new full audit. Isom is willing to submit reports showing they are making payments to subcontractors.

Mr. Tidd confirmed with Mr. Pastore that Mr. Pastore recommends a suspension of Isom to December 31, 2014 and to allow the new application with audit based on a October 31, 2014 statement date. The recommendation from the Prequalification Division was a suspension for six months. The Prequalification Division denied Isom's prequalification on July 15, 2014. Mr. Tidd confirmed with Ms. Kennedy that the recommendation from the Prequalification Division was based on a six month suspension from July and requiring a December 31, 2014 audit.

Mr. Pastore stated that the Committee has asked other contractors to submit QA/QC plans to help correct problems. He suggested that Isom probably needs a QA/QC plan for project management.

Mr. Feagans asked what Billy Jack Isom's position is in Jack Isom Construction Company.

Mr. Isom replied that he has been the General Manager since 1982, but he has no ownership of the company.

Mr. Novak asked whether Isom can work as a subcontractor if the Committee upholds the suspension.

Ms. Kennedy replied yes; however, non-prequalified subcontractors are limited to \$300,000 of unearned work, and at this time, Isom is over that \$300,000 limit.

Mr. Stark moved to recommend a suspension until Isom submits a new application with a new audited financial statement.

Mr. Feagans moved to amend Mr. Stark's motion and to uphold the denial until Isom submits a new application and then comes before the Committee and shows they are financially able and capable to handle INDOT work.

Mr. Tidd stated that the Prequalification Division will review the application and make a recommendation to the Committee.

Ms. Kennedy stated also to add a review of QA/QC plan and a prompt payment plan to be reviewed by Economic Opportunity Division and Construction Management.

Mr. Tidd repeated Mr. Feagans amended motion, which is that Isom may submit a new application on or after October 15, 2014. Isom must submit a new audited financial statement with its application. Isom shall submit monthly reports to the Economic Opportunity Division showing Isom's prompt payment to subcontractors. Isom shall submit a QA/QC plan that focuses on steps to correct Isom's pattern of improper payment behavior and improve Isom's responsiveness to inquiries and instructions from INDOT, and the plan shall be reviewed and approved by the Construction Management and Economic Opportunity Divisions. Isom shall not bid as a prime contractor and will not be approved as a subcontractor on future INDOT contracts until the Committee approves Isom's new application.

Mr. Ratliff seconded Mr. Feagans' motion.

All voted in favor.

Mr. Tidd stated that this recommendation has to go to the Commissioner.

Mr. Tidd asked for a motion to adjourn the meeting.

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

Mr. Tidd adjourned the meeting at approximately 11:13 a.m. EDT.