

PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – MAY 2, 2013
9:00 A.M. EDT

The following Committee members attended the meeting:

Heather Kennedy	Acting Director of Economic Opportunity and Acting Prequalification; Chair and Non-Voting Member
Karen Macdonald	Prequalification Engineer; Committee Secretary and Non-Voting Member
Greg Kicinski	Director of Project Management; 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
John Wright	Director of Highway Design and Technical Support; Voting Member
Bob Cales	Contract Administration Director; attending for Ryan Gallagher as Voting Member

Also in attendance:

Blaine Hayden	Prequalification Coordinator; INDOT
Joan Widdifield	Administrative Manager, Contract Administration; INDOT
Jeff Logman	Seymour District Construction Director; INDOT
Roy Zimmerman	President; American Contracting and Services, Inc.
Andrew Charnstrom	Attorney for American Contracting and Services, Inc.
Charles Robertson	President; R.H. Marlin, Inc.
Mike Sorenson	Project Manager; R. H. Marlin, Inc.
Mark Fagan	R. H. Marlin, Inc.

Martin Murphy	R. H. Marlin , Inc.; ADAI
William Hancock	Attorney for R. H. Marlin, Inc.
Karen Powers	President; Central Engineering and Construction Associates, Inc.
Roy Rodabaugh	Attorney for Central Engineering and Construction Associates, Inc.
Paul Berebitsky	Indiana Construction Association (ICA)

The Committee reviewed the following agenda items:

1. Adoption of January 25, 2013 Meeting Minutes
2. Adoption of April 4, 2013 Meeting Minutes
3. American Contracting and Services, Inc. R. H. Marlin, Inc. and Central Engineering and Construction Associates, Inc. - Unauthorized use of a subcontractor on Contract IR-30697
4. Force Construction Company, Inc. - Compliance with Erosion and Sediment Control requirements on Contracts IR-27969 and IR-34452

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION
MAY 2, 2013

Ms. Kennedy, Acting Committee Chair, called the meeting to order at 9:00 a.m. EDT. All Committee members were present, with the exception of Mr. Gallagher and Mr. Stark. Mr. Bob Cales attended for Mr. Gallagher.

Ms. Kennedy asked that everyone sign the sign-in sheet that is circulating. She facilitated introductions of all individuals attending the meeting.

1. Adoption of January 25, 2013 Meeting Minutes

Ms. Kennedy called for consideration of the meeting minutes from the January 25, 2013 meeting.

Mr. Miller moved to adopt the meeting minutes from the January 25, 2013 meeting. Mr. Wright seconded the motion. All members voted in favor. Ms. Kennedy stated the minutes would be posted on the website within a few days.

2. Adoption of April 4, 2013 Meeting Minutes

Ms. Kennedy stated that the April 4, 2013 meeting minutes are not compiled yet and will be considered at the next Committee meeting.

3. American Contracting and Services, Inc. R. H. Marlin, Inc. and Central Engineering and Construction Associates, Inc. - Unauthorized use of a subcontractor on Contract IR-30697

Ms. Kennedy introduced the item regarding American Contracting and Services, Inc., (American), R.H. Marlin, Inc. (Marlin), and Central Engineering and Construction Associates, Inc. (Central Engineering). She explained the Committee meeting procedures: representatives from INDOT present the issue(s) first, the contractors are allowed to respond, then Committee members and the audience may ask questions.

Mr. Logman, Seymour District Construction Engineer, INDOT, stated that the Project Supervisor is no longer with INDOT and the Area Engineer is working on another assignment now, so he is presenting this issue for the Seymour District. He stated that James Couch, INDOT Project Supervisor, found Central Engineering was performing the subgrade treatment on the job site, when Marlin was the subcontractor for this work on the project. Mr. Couch contacted Dell Ballard, Seymour District Equal Employment Opportunity (EEO) Officer. After investigating the issue it was found that no paperwork was submitted to change subcontractors. They later found that a rental-lease agreement had been submitted, but it was denied, because it was not a true rental-lease agreement. The Seymour District has subsequently paid for the subgrade treatment.

Mr. Zimmerman, President of American, referred the Committee to the binder materials provided by American. The binder includes the following items: 1.) Letter to American for meeting with Prequalification Committee; 2.) Marlin schedule of pay items; 3.) Instructions to subcontractor sent to Marlin; 4.) Marlin lease agreement with Central Engineering; 5.) American correspondence to INDOT with Marlin-Central Engineering lease; 6.) Central Engineering proposal for lease agreement with American; 7.) Central Engineering demand for payment; 8.) Central Engineering invoice to American; 9.) Central Engineering request for joint check; 10.) Central Engineering joint check agreement with Omni Materials; 11.) Central Engineering proposal for lease agreement with American; 12.) Dell Ballard notice of unauthorized subcontractor to Jim Mead; 13.) Central Engineering signed subcontract agreement with American; and 14.) American subcontract bid package sent to Central Engineering.

Mr. Zimmerman stated that American is trying to be transparent. The lease agreements sent by email on September 2, 2012 show that the agreement was known to INDOT before

Central Engineering showed up at the site. Original information provided by American shows that they expected Marlin to perform the work. Once American became aware of Central Engineering working for Marlin, American tried to get Central Engineering under subcontract. When it was found that there was a problem, American tried to take appropriate actions to correct the issues. On September 15, 2012, INDOT notified American that they would not be paid for the work, and at that time the employees were put on American's payroll. American tried to keep INDOT apprised of what was happening on the contract. He stated the employees got paid for the work.

Mr. Zimmerman stated that American has had a long working relationship with INDOT. He also stated that Mr. Logman mentioned that the work has been paid for, but American has not been paid.

Mr. Logman stated that Marlin's portion of the work has been paid.

Mr. Charnstrom, Attorney for American, stated when American became aware that Central Engineering was working for Marlin, American tried to get Central Engineering under a subcontract. With Central Engineering no longer prequalified and over the unearned work limit there were issues to be resolved.

Mr. Hancock, Attorney for Marlin, stated that Mr. Zimmerman and Mr. Charnstrom did a good job laying out the facts. He stated Marlin has been in business for a long time and has worked hard to establish a good relationship with INDOT. Marlin is also trying to be transparent. The regulations do not allow second tier subcontracting. He stated Marlin did not intend to violate that provision. There are issues with closing out the contract.

Mr. Sorenson, Project Manager for Marlin, stated the reason Marlin hired Central Engineering to perform some of the work was because of the schedule. Marlin could have cut out 16 to 18 inches of material and place 53 stone. To save time and keep on schedule, Marlin decided to use Central Engineering to apply lime stabilization.

Mr. Robertson, President for R. H. Marlin, stated some of the employees were placed on American's payroll and the equipment was leased. Some of the work was paid for, but not all of it.

Mr. Rodabaugh, Attorney for Central Engineering, stated Central Engineering has been a good contractor for INDOT for many years. Central Engineering did not do anything to deceive INDOT. Central Engineering did not lose their prequalification; they did not renew their prequalification due to financial hardship. He stated that Central Engineering has not been paid for \$19,000 in services and \$19,000 to \$20,000 in materials.

Ms. Powers, President for Central Engineering, stated that Central Engineering was aware that their prequalification had expired. She stated she worked with George Roney, INDOT Economic Opportunity Division (EOD) Contract Compliance Specialist, to set up joint checks. Central Engineering agreed to work on this project under a rental-lease agreement; however, it was set up incorrectly. She stated the work put Central Engineering slightly over the

\$300,000 unearned work limit. Central Engineering is being as transparent as possible on this issue.

Ms. Kennedy asked if the Committee had any questions.

Mr. Novak asked who was requested to be here.

Ms. Macdonald stated that the Seymour District recommended to bring in American as the prime and R H Marlin as their approved subcontractor. She stated that she and Ms. Kennedy decided to bring all three of the contractors to appear before the Committee.

Mr. Miller asked why Marlin submitted a document that says it is a lease agreement, but it is actually a subcontract. You cannot do a rental-lease agreement and pay for the work by square yards. Subcontractors cannot perform work before being approved. Central Engineering should not have been out on the job site. Also, Central Engineering was working above the \$300,000 unearned work limit.

Mr. Robertson stated the only way to do the job was to have a lease agreement. Then the employees were put on American's payroll. The work was only stopped for a few hours. He stated they are at the mercy of INDOT to tell them what to do.

Mr. Miller asked if American put Central Engineering's employees on their payroll when it was determined that the rental-lease agreement was not valid

Mr. Zimmerman replied yes.

Mr. Miller asked if American has a rental-lease agreement with Central Engineering or Marlin.

Mr. Zimmerman stated American did not have an agreement with Central Engineering.

Mr. Kicinski asked how American paid for the equipment.

Mr. Miller asked who was paid for the subgrade treatment.

Mr. Zimmerman stated payment was sent to Marlin.

Mr. Hancock stated that "game time calls" were made. He stated the field personnel were trying to get the work done. The contractors are aware of the importance that the rules be followed.

Mr. Fagan from Marlin asked who suggested to American to put the employees on their payroll.

Mr. Zimmerman stated it was Dell Ballard.

Mr. Hancock stated that there are still close out issues.

Mr. Miller stated the downfall of all of this is that the Federal Highway Administration (FHWA) could pull the funding. FHWA said that they would accept it if INDOT reassures them that this won't happen again.

Mr. Novak stated this has happened before on other contracts and would not want to risk losing funding. He stated that something needs to be done about this, even if it is just at close out. He stated we may need to find a mechanism to pay for the work.

Mr. Miller stated that he told FHWA that this issue would be brought before the Committee.

Mr. Ratliff asked how many days was Central Engineering on the job before INDOT realized what was happening.

Ms. Powers stated only a few hours. She stated that Central Engineering mobilized equipment a few days before work started.

Mr. Logman stated that Mr. Couch is no longer with INDOT. He stated that Mr. Couch worked with Mr. Ballard and they contacted Mr. Roney.

Mr. Robertson stated that 10,000 square yards have not been paid for.

Ms. Kennedy asked if the Seymour District had a recommendation.

Mr. Logman stated he does not have a recommendation.

Mr. Wright asked if the DBE goal was met.

Ms. Kennedy stated that she is not sure. Central Engineering was not on the Affirmative Action Certificate (AAC).

Mr. Ratliff asked if the Committee has ever suspended a contractor for three months.

Ms. Kennedy stated the Committee can suspend a contractor for up to two years.

Ms. Powers asked if Central Engineering can still work up to \$300,000 of unearned work as a non-prequalified contractor if suspended.

Ms. Macdonald replied that the Committee can apply the suspension to non-prequalified contractors and it can keep the contractor from being approved for subcontracts during the suspension period.

Ms. Kennedy asked if there are any more questions or thoughts on an action.

Mr. Novak asked if materials were an issue.

Ms. Powers replied that the materials remain on Central Engineering's books.

Mr. Ratliff asked who is ultimately culpable in this matter.

Ms. Kennedy replied that American as prime contractor is responsible for the contract.

Mr. Miller stated that although American is the prime contractor, he recommends no action against them. He recommended a 25 percent reduction and six month suspension for Marlin. He also recommended a six month suspension for Central Engineering.

Mr. Novak stated Marlin is at 30 percent reduction now and their prequalification recently expired.

Mr. Miller revised his motion to suspend Marlin and Central Engineering for six months and no action against American at this time.

Mr. Cales seconded the motion.

All Committee members voted in favor.

Ms. Kennedy stated that the recommendation goes to the Commissioner. Letters will be sent to the contractors after the recommendation is approved. She also stated that there is an appeal process.

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

Ms. Kennedy stated that the issue with Force Construction Company, Inc. has been continued to the June meeting at the request of the contractor.

Ms. Kennedy adjourned the meeting at approximately 9:51 a.m. EDT.