

PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – OCTOBER 03, 2013
9:00 A.M. EDT

The following Committee members attended the meeting:

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| Heather Kennedy | Director of Economic Opportunity Division; Acting Committee Chair and Non-Voting Member |
| Karen Macdonald | Prequalification Engineer; Committee Secretary and Non-Voting Member |
| Louis Feagans | Director of District Project Management, Capital Program 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:

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| Mark Tidd | Prequalification Director; INDOT |
| Fred Barlett | Contractor Prequalification Analyst; INDOT |
| Blaine Hayden | Prequalification Coordinator; INDOT |
| Matt Voors | Deputy Commissioner and Chief Legal Counsel; INDOT |
| David Alyea | Contract Compliance Manager; INDOT |
| Donna Poole | Contract Compliance Specialist; INDOT |
| Sam Sarvis | Deputy Commissioner, Capital Program Management; INDOT |

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| Latosha Higgins | Title VI/ADA Program Manager; INDOT |
| Diane Keefer | Fort Wayne District Equal Employment Opportunity Officer; INDOT |
| Grace Jutte | Jutte Excavating, Inc. |
| Paul Berebitsky | Indiana Construction Association (ICA) |

The Committee reviewed the following agenda items

1. Adoption of September 5, 2013 meeting minutes
2. Force Construction Company, Inc. – Follow-up from the July 11, 2013 Committee Meeting regarding compliance with Erosion and Sediment Control requirements on Contracts R-27969 and IR-34452
3. Jutte Excavating, Inc. – Equal Employment Opportunity and Title VI compliance on Contract R - 33303

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Ms. Kennedy, Acting Committee Chair, called the meeting to order at 9:11 a.m. EDT. All Committee members were present with the exception of Mr. Gallagher and Mr. Stark. Mr. Cales attended for Mr. Gallagher.

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

1. Adoption of September 5, 2013 meeting minutes

Ms. Kennedy called for consideration of the Executive Session meeting minutes from the September 5, 2013 meeting. There are two versions of the Executive Session minutes in the Committee members' packets. The full version of the Executive Session minutes will not be posted due to confidentiality of the subject matter. Once adopted, the Prequalification Division will post the condensed version of the Executive Session minutes on the Committee's website.

Mr. Novak moved to adopt the condensed version of the Executive Session meeting minutes from the September 5, 2013 meeting. Mr. Feagans seconded the motion. All members voted in favor.

Mr. Miller moved to adopt the full version of the Executive Session minutes from the September 5, 2013 meeting. Mr. Cales seconded the motion. All members voted in favor.

Ms. Kennedy called for consideration of the Open Session meeting minutes from the September 5, 2013 meeting.

Mr. Miller moved to adopt the Open Session meeting minutes from the September 5, 2013 meeting. Mr. Cales seconded the motion. All members voted in favor.

2. Force Construction Company, Inc. – Follow-up from the July 11, 2013 Committee Meeting regarding compliance with Erosion and Sediment Control requirements on Contracts R-27969 and IR-34452

Ms. Kennedy stated that the issue with Force Construction Company, Inc. has been continued to the November Committee meeting.

3. Jutte Excavating, Inc. – Equal Employment Opportunity and Title VI compliance on Contract R – 33303

Ms. Kennedy introduced this item regarding Jutte Excavating, Inc. (Jutte). She 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. At this point, no one from Jutte had arrived for the meeting.

Mr. Alyea, INDOT's Contract Compliance Manager from the Economic Opportunity Division (EOD), stated that his office reviews prime contractors for Equal Employment Opportunity (EEO) compliance. As an overview, EOD contacts the contractor to schedule an on-site review, requests items to be provided prior to the review, and performs a desk audit. EOD issued correspondence to Jutte requesting a number of items for review. Jutte's submission was insufficient. EOD requested an on-site meeting with Jutte, but Jutte's EEO officer failed to show. As a result of the non-compliance determination, EOD issued a Show Cause Notice to Jutte. Jutte failed to respond to the notice. EOD discussed its noncompliance concerns with the Federal Highway Administration (FHWA) and FHWA recommended INDOT bring this issue to the Prequalification Committee.

Mr. Feagans asked if Jutte had responded yet.

Mr. Alyea stated that Jutte has not responded to the Show Cause Notice.

Ms. Diane Keefer, Fort Wayne District's Equal Employment Opportunity (EEO) Officer, stated they typically hold meetings with a contractor in the field office, but they went to the project site first. She stated that Dan Jutte, President of Jutte, was onsite and he indicated that

Jutte's EEO Officer, Grace Jutte, was home gardening and she is not to be disturbed. He told them that Grace had waited all of the day before, expecting INDOT personnel from Indianapolis to show up.

At this point Grace Jutte showed up to the meeting.

Mr. Alyea provided a brief summary of what had been reported prior to Ms. Jutte's arrival. He stated that Jutte failed to show up for the on-site review and Jutte did not respond to the Show Cause Notice.

Ms. Higgins, INDOT's Title VI and ADA Program Compliance Manager from EOD, stated that her section performs Title VI compliance reviews. EOD sent notice to Jutte regarding the review and requested specific information be provided. Jutte responded to EOD's Request for Information, but did not include complete information. After Jutte's Title VI officer, Grace Jutte failed to show for the field visit, EOD issued a Compliance Review Preliminary Findings – Deficiency Notice to Jutte, asking Jutte to respond in 30 days. Jutte failed to respond to EOD's Preliminary Findings Deficiency Notice. EOD sent a 5-Day Deficiency Notice to Jutte via email and certified mail. Jutte failed to respond to the 5-Day Notice and the mail was not claimed.

Ms. Kennedy asked if EOD had any recommendations to the Committee.

Ms. Higgins replied that EOD recommends one or more of the following actions against Jutte: 1) withhold remaining progress payments on this and any other federal-aid contract with INDOT, 2) limit Jutte's ability to bid on future federal-aid contracts, and/or 3) limit Jutte's bidding capacity on future federal-aid contracts with INDOT.

Mr. Alyea added that EOD recommends the sanctions be in place until Jutte comes into compliance with the EEO and Title VI requirements.

Ms. Jutte stated that they received the notices and when she read the letter and saw that it was an audit, she thought it was a different type of audit. She expected the review to take place at her house, because they have Jutte's office there. She stated that she called another contractor, Slusser's Green Thumb, and got some examples of what INDOT is expecting from them.

Ms. Kennedy asked if there were any questions.

Mr. Wright asked how many contracts Jutte currently has with INDOT.

Ms. Jutte replied that the 2012 project is now closed.

Mr. Cales asked if there are any CR-2's on Jutte.

Ms. Macdonald stated that three or four CR-2's were included in the members' packets.

Mr. Feagans asked if Jutte works in Ohio under the same federal rules.

Ms. Higgins stated the rules are the same in each state.

Ms. Jutte stated Jutte is located in Ohio near the Indiana border. Ms. Jutte replied that most of their work is in Ohio.

Mr. Wright asked if there are any outstanding payments owed to Jutte.

Ms. Macdonald stated no.

Mr. Feagans asked if there was any training available for EEO and Title VI regulations.

Ms. Kennedy stated that EOD provides some training. They do audits on a random sampling of contracts. They try to include some new contractors in the sampling.

Ms. Higgins stated that they send training notices out through the Listserv and it is posted on the website.

Ms. Keefer stated that she has talked to Ms. Jutte on the phone several times over the years. When she did not receive a call from Ms. Jutte about the compliance reviews, she assumed that Jutte had been in contact with the Central Office. She stated that she was surprised when Jutte did not show up at the on-site reviews.

Mr. Miller asked if Jutte has ever had a compliance review with Ohio Department of Transportation (ODOT).

Ms. Jutte replied that ODOT has performed wage reviews with some of Jutte's contracts.

Mr. Cales asked if anyone from Jutte went to the training offered by INDOT.

Ms. Jutte replied no.

Ms. Kennedy asked if there were any other questions or if anyone had a motion.

Mr. Novak stated that these issues put INDOT's federal participation at risk. Imposing a reduction in bidding capacity may not reduce INDOT's risk.

Mr. Feagans questioned if the Committee should require Jutte attend the training.

Ms. Higgins stated INDOT has training six times a year and other states have it as well.

Mr. Ratliff suggested that the Committee recommend a six month suspension and require that Jutte be compliant before getting their prequalification back.

Ms. Kennedy stated we have a motion for suspension for six months and full compliance with Title VI.

Mr. Alyea requested that the Committee also require that Jutte come into full compliance with both reviews and have periodic monitoring.

Mr. Ratliff moved to recommend to suspend Jutte's prequalification for six months and require that they come into EEO and Title VI compliance.

Ms. Kennedy asked if the six month suspension would automatically lapse without Jutte coming back to the Committee.

Mr. Novak asked if EOD will have a training session within the next six months.

Ms. Higgins replied yes, EOD has one set up for October 23, 2013.

Mr. Novak moved to amend the motion to require that Jutte attend the training and it must be through INDOT.

Ms. Kennedy restated the motion is to recommend to the Commissioner to suspend Jutte's prequalification for six months, and Jutte must be in compliance with the EEO and Title VI requirements, and Jutte must attend the Title VI training offered by INDOT. At the end of six months, if this is all complete, Jutte will not have to come back before the Committee.

Mr. Cales seconded the motion.

Mr. Miller stated that Jutte must bring the contract into compliance.

All Committee members voted in favor.

Ms. Jutte asked if the Certificate of Qualification will be good for one year when it is reinstated after six months.

Ms. Macdonald replied that the expiration date is tied to the financial statement date. The furthest out the expiration date can be set is sixteen months after the end of the fiscal year.

Ms. Kennedy stated that Jutte's certificate was to expire on December 31, 2013, so Jutte will have to submit a renewal prequalification application.

Ms. Kennedy stated that the action taken today is a recommendation to the Commissioner. A letter will be sent out from the Commissioner's office. Jutte will have an opportunity to appeal.

Ms. Kennedy adjourned the meeting at approximately 9:48 a.m. EDT.

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