

PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – APRIL 4, 2013
9:00 A.M. EDT

The following Committee members attended the meeting:

Heather Kennedy	Acting Director of Economic Opportunity and Prequalification Divisions; Acting Committee Chair and Non-Voting Member
Karen Macdonald	Prequalification Engineer; Committee Secretary and Non-Voting Member
Ryan Gallagher	Deputy Commissioner of Operations; Voting Member
Mark Ratliff	Director of Economics, External Audit, and Performance Metrics; Voting Member
Jim Stark	Deputy Commissioner of Innovative Project Delivery; Voting Member
John Wright	Director of Highway Design and Technical Support; Voting Member
Mike Beuchel	Estimating Manager, Contract Administration; attending for Joe Novak as Voting Member on Agenda Item 4
Louis Feagans	Director of District Program Management; attending for Greg Kicinski as Voting Member on Agenda Item 4
Joe Novak	Crawfordsville District Construction Engineer; Voting Member attending only for Agenda Item 3
Greg Kicinski	Director of Project Management; Voting Member attending only for Agenda Item 3
Mark Miller	Director of Construction Management; Voting Member attending only for Agenda Item 3

Also in attendance:

Blaine Hayden	Prequalification Coordinator; INDOT
Joan Widdifield	Administrative Manager, Contract Administration; INDOT
Steve Heller	Compliance Investigator, Contract Administration; INDOT

Steve Sperry	I-69 Environmental Coordinator, Environmental Services; INDOT
Donald Thornton	Construction Area Engineer, Crawfordsville District; INDOT
Anita Snyder	Project Supervisor, Crawfordsville District; INDOT
Sam Sarvis	Deputy Commissioner of Capital Program Management; INDOT
Greg Ellis	Project Engineer, Vincennes District; INDOT
Chriss Jobe	Construction Area Engineer, I-69 Office; INDOT
Nathan Saxe	Ecology and Permits Manager, Environmental Services; INDOT
Jennifer Jansen	Attorney, Legal Services; INDOT
Will Wingfield	Public Information Officer; INDOT
Josh Wise	Contract Compliance Specialist, Economic Opportunity Division; INDOT
Chris Gottman	Fred Weber, Inc.
John Byrd	Fred Weber, Inc.
Jeremy Brummond	General Counsel for Fred Weber, Inc.
Tom Linkel	Owner; Linkel Company
Timothy Eckstein	Superintendent; Linkel Company
Jama Linkel	Administrative Assistant; Linkel Company
Grant Reeves	General Counsel for Linkel Company
Ken Woodruff	Federal Highway Administration
Eryn Fletcher	Federal Highway Administration
Paul Berebitsky	Indiana Construction Association (ICA)

The Committee reviewed the following agenda items:

1. Adoption of December 6, 2012 meeting minutes
2. Adoption of January 25, 2013 meeting minutes
3. Fred Weber - Follow up from the October 4, 2012 and December 6, 2012 Committee meeting regarding compliance with Erosion and Sediment Control requirements and contract requirements to protect the Indiana Bat on Contract IR-33051, I-69 Section 3
4. Linkel Company – Appeal of bidding restrictions from January 25, 2013 Committee meeting regarding performance on clearing Contract IR- 34446 on SR 641 Phases 3 and 4 in Vigo County and conformance with On-the-Job Training Program

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION
APRIL 4, 2013

Ms. Kennedy, acting Director of Economic Opportunity and Prequalification Divisions and acting Committee Chair, called the meeting to order at 9:03 A.M. EDT. All Committee members were present for Agenda Items 1, 2, and 3.

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

1. Adoption of December 6, 2012 meeting minutes

Ms. Kennedy called for consideration of the meeting minutes from the December 6, 2012 meeting.

Mr. Miller moved to adopt the meeting minutes from the December 6, 2012 meeting. Mr. Novak seconded the motion. All members voted in favor. Ms. Kennedy stated the minutes would be posted on the INDOT website within a few days.

2. Adoption of January 25, 2013 meeting minutes

Ms. Kennedy stated that the January 25, 2013 meeting minutes were not compiled yet and will be considered at the next Committee meeting.

3. Fred Weber - Follow up from the October 4, 2012 and December 6, 2012 Committee meeting regarding compliance with Erosion and Sediment Control (ESC)

requirements and contract requirements to protect the Indiana Bat on Contract IR-33051, I-69 Section 3

Ms. Kennedy introduced the item regarding Fred Weber, Inc. (Weber). She explained the Committee meeting procedures: representatives from INDOT present the issue(s) first, the contractor is allowed to respond, then Committee members and the audience may ask questions.

Mr. Jobe, Construction Area Engineer, I-69 Office, INDOT, provided an evaluation summary of the Weber Work Improvement Plan (WIP). The evaluation of Weber's actions was divided into nine sections: 1.) Project ESC Inspection Segments; 2.) Project Inspection/Maintenance Protocol; 3.) FWI Training; 4.) Outside Expertise; 5.) Goal of Changes to Protocol; 6.) Future Projects; 7.) Pre-Activity Planning; 8.) Approach During Construction; and 9.) Conclusion. Mr. Jobe proceeded to discuss INDOT's interpretation of Weber's performance in each of the nine areas.

1.) Project ESC Inspection Segments

Per Weber's WIP, Weber committed to provide three designated trained employees and one Consultant to oversee the ESC inspection of IR-33051 project. Weber provided only one designated trained employee plus the independent consultant. As a result, Weber did not fully satisfy its WIP commitment.

2.) Project Inspection/Maintenance Protocol

Per Weber's WIP, Weber committed to establish more effective inspection reporting guidelines; establish dedicated work crews for ESC installation and maintenance; reinforce responsibility and accountability of both Weber's project level supervision and upper level management personnel. Weber implemented more appreciably effective inspection reporting guidelines; adequately demonstrated willingness to provide as-needed additional resource allocation; and adequately demonstrated enforcement accountability for project level personnel. As a result, Weber adequately satisfied its WIP commitment.

3.) Weber Training

Per Weber's WIP, Weber committed to provide expanded formal training to its project level personnel to ensure ESC Best Management Practices (BMP) are effectively being incorporated beginning winter 2012/2013. Weber incorporated weekly Tool Box type discussions. At this time, Weber has not provided evidence of advanced management level training and Weber's inadequate installation of BMPs continues to be a prevalent issue. As a result, Weber has possibly satisfied its WIP commitment, but the produced results are inadequate at this time.

4.) Outside Expertise

Per Weber's WIP, Weber committed to utilize a Consultant to evaluate possible discrepancies between Weber and INDOT inspection reports. Weber utilized a Consultant to provide a third party evaluation of reporting deficiencies. As a result, Weber has adequately satisfied WIP commitment.

5.) Goal of Changes to Protocol

Per Weber's WIP, Weber committed to establish a goal of maintaining contract regulatory permit compliance at all times. Weber continued to have ESC deficiencies in contract regulatory compliance. As a result, Weber has not adequately satisfied its WIP commitment.

6.) Future Projects

Per Weber's WIP, Weber committed to establish a more proactive approach in both performance and management of ESC permit compliance. At this time, Weber has not been awarded additional INDOT projects; therefore, INDOT has not evaluated any additional projects during the WIP period. As a result, the INDOT's evaluation of Weber's performance is pending.

7.) Pre-Activity Planning

Per Weber's WIP, Weber committed to conducting a pre-activity ESC meeting prior to installation of BMP's; provide project level supervisory personnel sufficient contract documentation with BMP specific information to better ensure a thorough understanding of contract BMP requirements; and train subcontractors in BMP's in a manner consistent with commitment to Weber personnel. Weber's project level supervisory personnel have periodically continued to lack adequate BMP specific information to best ensure permit compliance. As a result, Weber has not fully satisfied its WIP commitment.

8.) Approach During Construction

Per Weber's WIP, Weber committed to implementing new construction phasing methodology to reduce the need for ESC maintenance. Since IR-33051 is near completion, Weber has not had opportunities to incorporate this WIP commitment. As a result: the INDOT's evaluation of Weber's performance is pending.

9.) Conclusion

Per Weber's WIP, Weber committed to provide a minimum of one CCIS certified employee on the project site daily and provide one Consultant specializing in ESC to assist. Weber provided one CCIS certified employee on the project site daily and provided one Consultant specializing in ESC to assist as needed. As a result, Weber adequately satisfied its WIP commitment.

Mr. Jobe concluded that Weber has not fully satisfied the applicable review period ESC WIP commitments. Based on Weber's performance, the I-69 Project Team recommends that the Committee require Weber to remain in an active WIP status for an additional six months in an effort to provide a continued formal evaluation of ESC performance. Mr. Jobe stated the additional six months duration is needed to provide a sufficient timeframe for review of Weber's remaining IR-33051 contract performance through the spring of 2013 and to also provide a sufficient timeframe for Weber's contract activities during the summer of 2013, in the event Weber is awarded contract IR-35574. Mr. Jobe further requested Weber to replace and/or provide additional ESC formally trained supervisory and management level personnel if awarded contract IR-35574, as compared to Weber's past and current IR-33051 designated ESC personnel. Mr. Jobe also recommended that Weber notify INDOT project level supervisory personnel when Weber's designated ESC supervisory personnel is unavailable to be on-site during any period construction is active on the projects.

Ms. Kennedy turned the floor over to Weber.

Mr. Byrd stated the best way to respond is to go through the list of WIP segments. Weber started with nine areas of concern and they have reduced it to three areas of focus. Mr. Byrd stated Weber initially provided three trained personnel, but as the project progressed, they reduced the personnel from three to two to one. Mr. Byrd asked Mr. Jobe if he is saying that Weber did not satisfy their commitment.

Mr. Jobe explained that over the last four month period, when strictly looking at Weber's commitments in its WIP, Weber did not satisfy all the issues.

Mr. Byrd stated that it is Weber's goal to be compliant with INDOT and to be on top of the issues. He stated that the training documentation can be provided by Mike Hobson.

Mr. Jobe stated if that even if the training commitment is satisfied, INDOT is still concerned with ESC measures.

Mr. Byrd stated Weber is not denying it has deficiencies, but they fix them. Weber's goal is to have no deficiencies at any time, but it is impossible, especially after a rain event.

Mr. Gottman asked what INDOT considers an expected compliance level. He further explained Weber expects staff to record issues and fix problems within 48 hours.

Mr. Jobe stated that he understands there are rain events, but he still has concerns that areas have not been corrected within 48 hours.

Mr. Sperry stated that preplanning would have helped.

Mr. Byrd stated the design plan was for a two year event and was approved. Some areas were not in the contract. The contract requirements were to fix measures within 48 hours.

Mr. Sperry stated the measures used at the sites were not always the best and measures designed for a two year rain event would still have to be repaired. He stated that check dams needed maintenance and in dry spells it was not happening.

Mr. Jobe stated INDOT has seen improvement, but we still have concerns based on the commented deficiencies and the I-69 Team believes a WIP is currently needed.

Mr. Sperry stated that one area was deficient for awhile. The silt fence was topped for some time. It was to protect a jurisdictional waterway. It was only cleaned up twice. It now looks like the measure Weber is using is working properly.

Mr. Byrd pre-activity planning is geared toward construction activity and since the plan was approved, there has not been any construction activity. The roadway is open to traffic. He stated that INDOT misinterpreted Weber's intention for this item. It applies to new contracts.

Mr. Gottman stated that Weber is working toward the goal to be 100 percent compliant. Some maintenance has extended beyond 48 hours, but they have been included on the reports. There are some discrepancies between Weber's and Bernardin, Lochmueller and Associates' (BLA) reports. He stated that it does not make sense to repair some areas, such as when there are other measures downstream. He stated that Weber has fulfilled the WIP and Weber has done what is required for the contract. Weber also put in place a third party to assist.

Mr. Byrd asked if the current supervisors should not be on future projects.

Mr. Jobe stated that the number of Weber's personnel was not adequate.

Mr. Byrd stated that Weber's self monitoring reports when compared to BLA's reports can be misleading.

Ms. Kennedy asked if the Committee members had any questions.

Mr. Stark stated four of the nine items are not satisfied.

Mr. Jobe stated that Weber is partially compliant with the four items but we have seen improvement and are willing to continue on for a while. Four months is not enough time to evaluate and our biggest concern is maintenance issues. We have those documented, but we have seen improvement.

Mr. Kicinski stated Weber is under a microscope and should be perfect now.

Mr. Ratliff asked if INDOT awards another contract is there anything INDOT can do after six months.

Ms. Kennedy stated INDOT has options and contract IR-35574 was awarded earlier this week.

Mr. Ellis stated INDOT has an assessment of quality adjustments of \$250 per day for failure to install and maintain ESC measures.

Mr. Sarvis also noted that INDOT has allocated more resources for ESC.

Mr. Novak asked Weber how they will try to improve month by month.

Mr. Gottman replied that Weber naturally ramps down number of employees over the winter. They have ramped down the trained ESC managers from three to one. He stated that some trained employees left Weber's employment. They are training their people to use the right BMPs. The training is not available through the apprentice schools. He stated it will be a challenge, but Weber is prepared to do it. Weber likes to partner with the project owners. He stated they have spent a lot of money on ESC and did not anticipate it when it was bid. He stated they are working hard towards their goals and trying to address issues within 48 hours. Weber has disciplined employees. They are doing a lot to improve.

Mr. Byrd stated that money is not the issue here. Weber has met the contractual obligations and repaired issues within 48 hours. They didn't want to tear up the slopes to repair some of the erosion problems. He stated that maybe they should have indicated in their WIP that they would ramp down their ESC personnel.

Mr. Kicinski asked if Weber has good communication with INDOT personnel. He asked if the issues, such as not tearing up the slope to correct the measures, are being communicated with INDOT.

Mr. Byrd stated that yes, they have communicated these issues with INDOT and they have emails.

Mr. Ellis stated that Weber has communicated most things with INDOT. He stated that they have prioritized items that need to be fixed.

Mr. Miller stated he has read through all of the reports and the thing that caught his attention was the same locations continue to have problems, so something is not working and ESC measures will have to be maintained even in the winter.

Mr. Ellis stated that he is not trying to speak on Weber's behalf, but we processed a change order for \$500,000 to add riprap to the contract. We had continued problems at CR 900W and in a ditch line. The change order process did not happen overnight. Weber submitted the cost, the Area Engineer did a cost comparison, and it had to be approved by FHWA. Weber has done a good job with communication on this issue.

Mr. Gottman stated the change orders were at least \$500,000 of riprap was not part of the ESC plan.

Mr. Byrd stated that problem areas will need to be addressed earlier on. Mr. Jobe and Mr. Ellis have worked well with Weber to correct the issues. He further stated that on the next job, Weber is aware that there will be the similar challenges and needs.

Mr. Gottman stated that some of the reports showing deficiencies were generated while the change orders were pending.

Mr. Byrd stated that they may need to employ different measures or permanent measures.

Mr. Sperry stated Weber has another issue at a wetland where a coconut mat was not placed properly and sediment has built up. This deficiency has been on at least three reports.

Mr. Byrd stated this is a problem area and a change order was submitted to place a French drain. A spring bubbles up in this area. The foreman was disciplined for this problem.

Mr. Sperry stated that the measures used at this location were working OK at one time. BLA had suggested going back to those measures.

Mr. Ellis stated there were slope stability and ground water issues at this location.

Mr. Gallagher stated there is not a whole lot of disagreement here and Weber demonstrates a commitment. Weber agrees that they have to invest to achieve the goals. He

stated that it sounds like we are not fully confident with 100 percent of the WIP. He recommended that the I-69 team submit a report to the Committee in six months.

Mr. Stark asked Weber how fast they can submit the training documents to INDOT.

Mr. Byrd stated Weber can submit the documents by tomorrow.

Mr. Stark stated that INDOT would have expected it be submitted before now.

Mr. Novak asked what the current completion date is for the contract.

Mr. Jobe stated June of this year. The WIP will cover the two contracts. The new contract is open to traffic in 2015 and is scheduled to be completed in 2016.

Mr. Ratliff asked if the new contract will affect this WIP.

Mr. Sarvis stated the Committee can limit future work. He stated the penalties are in place in the newly awarded contract.

Mr. Wright asked if there will be a new preapproved WIP for the new contract.

Mr. Jobe stated the current WIP will satisfy the new contract as well. Weber will also have to follow contract documents and ESC plans. He stated that Weber has made improvements with ESC. He has seen enough improvements and commitment, and if it continues, we anticipate full compliance.

Ms. Kennedy asked if Weber should come back to the Committee.

Mr. Stark stated the only reason to bring them back is if Weber is not in compliance. On face value, the reports indicated that Weber was failing, but it is clearer now after the presentation that the big issues have been fixed.

Ms. Kennedy asked if the Committee wanted to approve the I-69 team's recommendation. The I-69 team needs to submit a report to the Committee on Weber's progress after six months.

Mr. Stark moved to adopt the motion.

Mr. Novak seconded the motion.

All Committee members voted in favor.

Ms. Kennedy stated that the report would be due to the Committee on or around October 1, 2013.

Mr. Gottman asked if Weber should submit a report to INDOT.

Ms. Kennedy stated Weber can respond after INDOT's report.

Ms. Kennedy stated the Committee would break for five minutes.

4. Linkel Company – Appeal of bidding restrictions from January 25, 2013 Committee meeting regarding performance on clearing Contract IR- 34446 on SR 641 Phases 3 and 4 in Vigo County and conformance with On-the-Job Training Program

Ms. Kennedy introduced the item regarding Linkel Company (Linkel). She explained the Committee meeting procedures for an appeal: the contractor presents their case first, INDOT representative are allowed to respond, then Committee members and the audience may ask questions. Mark Miller and Joe Novak attended the meeting, but recused themselves from voting on this item. Mike Beuchel and Louis Feagans attended as voting members for Mr. Kicinski and Mr. Miller for this item. Mr. Novak had presented the issue for the Crawfordsville District at the January 25, 2013 meeting.

Mr. Reeves, Attorney for Linkel, stated that Linkel is working aggressively with Department of Labor (DOL) to create an On-the-Job Training Program (OJT). Linkel has one position and may have another position available and its good faith efforts should be considered. The lack of diversity in the counties where Linkel hires laborers for its jobs makes it difficult and some of the issues have been worked through. Mr. Wise has worked with Linkel on the OJT. Linkel asks for additional time instead of being barred from federal contracts. The punishment exceeds the issues and the decades of work for INDOT shows the commitment from Linkel. Linkel does not believe it violated ESC laws. The manner in which the stream was crossed did not encroach upon the stream. It is a permanent stream. There was no discharge. Linkel is asking to be allowed to bid on federal contracts and be released of the restrictions that were imposed from INDOT.

Mr. Linkel, owner of Linkel Company, stated that he would like to thank Mr. Wise for working with Linkel on the OJT program. As far as the Terre Haute job, if we knew about the 404 permitting issue, Linkel would have never started the job to begin with.

Mr. Wise, Contract Compliance Specialist, Economic Opportunity Division (EOD), INDOT, stated the communication with Linkel is good and the DOL is considering the OJT program that Linkel submitted.

Mr. Ratliff asked if this is the only item that is outstanding.

Ms. Kennedy stated the main issue was the lack of good faith efforts.

Mr. Wise stated Linkel's good faith effort submittal at the time consisted of a letter of explanation without any evidence. Linkel was more passive than aggressive and there was no tangible evidence.

Mr. Ratliff asked if Linkel has provided this now.

Mr. Wise stated that we do not have the evidence, but we are looking forward as last year's good faith efforts have already been decided.

Mr. Linkel stated that Linkel has emails and documents showing the efforts to communicate with Ms. Susan Miles on the OJT. Mr. Linkel passed out the documents to the Committee.

Mr. Novak asked what Linkel wants accomplish with the appeal.

Mr. Reeves stated that Linkel wants to bid on federal contracts and was denied on a recent letting before the process was complete.

Mr. Reeves asked if Linkel is not allowed to bid, how INDOT will know that the WIP will work.

Mr. Novak stated that Linkel was not brought to the Committee because of permits or the work being shut down. It was because of ESC, progress on the site, and the ability to follow directions. The clearing of trees went from sixty to eighty-nine acres. As far as the stream crossing, Linkel may have had permission from Marathon and did not touch the stream, but this is all beside the point. Linkel's contract requirements did not allow crossing of the stream. Linkel had reassured INDOT in an email that they would not cross the stream.

Mr. Thornton, Crawfordsville District Construction Area Engineer, INDOT, stated that Linkel claims they did not violate any laws. The Indiana Department of Environmental Management's (IDEM) reports documented that Linkel was not compliant. Linkel claims they covered areas within seven days and INDOT has photos showing they did not cover the area within seven days.

Mr. Saxe, Ecology and Permits Manager, Office of Environmental Services (OES), INDOT, stated that Linkel did not have perimeter protection and that created large potential for problems. Overall, the strategy that Linkel took on the Contract was poor.

Mr. Novak stated the WIP was due within thirty days after receiving the letter from the Commissioner and it has now been two months since the January 15, 2013 meeting. Linkel still has not submitted the WIP.

Ms. Macdonald reported that the letter from the Commissioner was dated February 25, 2013 and the appeal letter from Linkel was dated March 15, 2013.

Ms. Jansen stated the EPA and United States Army Corps of Engineers (USACOE) violations indicate that Linkel did in fact violate law.

Mr. Gallagher stated Linkel cannot bid until the WIP is accepted.

Mr. Reeves stated Linkel thought there would be guidance on format for the WIP.

Mr. Eckstein stated we waited because Linkel asked for instructions on the format of the WIP.

Ms. Macdonald stated the question she had noted in the January 25, 2013 meeting notes was where to submit the WIP.

Mr. Gallagher stated it is not up to the Committee to provide the WIP.

Ms. Kennedy asked if INDOT has ever provided an example of a WIP.

Mr. Miller stated that every plan is different and unique.

Mr. Feagans asked if Linkel has submitted the OJT plan.

Mr. Wise replied that EOD has not received it yet. He stated that to keep everyone on a level playing field, we use DOL's standards.

Mr. Ratliff stated INDOT had culpability on the project and should allow them to work through the WIP and still bid. INDOT should be consistent.

Ms. Kennedy asked what is going on with the EPA and settlement issue.

Mr. Reeves stated that it is a delicate issue and for now Linkel cannot discuss it.

Mr. Stark stated the EPA issue does not tie into this Committee. He asked if Mr. Novak could provide an example of a WIP.

Mr. Novak stated each company is different.

Ms. Kennedy stated from the last meeting the issues were well outlined.

Mr. Novak stated Linkel addressed these issues in the appeal letter.

Ms. Kennedy asked if Linkel has contacted INDOT to request examples.

Mr. Saxe stated that OES would expect the WIP to address all issues. He stated that training is good to include.

Mr. Linkel stated that they thought they would be provided the framework for the WIP.

Ms. Kennedy apologized for any miscommunication from the last meeting.

Mr. Beuchel stated sanctions should not go into effect until all avenues of appeals have occurred.

Ms. Kennedy agreed with Mr. Beuchel. She stated it was an error on INDOT's part that Linkel was not allowed to bid on one contract while the appeal window was still open.

Mr. Stark stated that it looks like Linkel has made efforts towards the OJT plan. He moved to rescind the OJT and require the WIP to be submitted.

Ms. Kennedy asked the Committee if it wanted to rescind the OJT portion.

Mr. Gallagher motion is not to rescind either WIP or OJT and to uphold the original decision.

Ms. Kennedy restated the original decision to require Linkel to submit a WIP and the restriction from bidding on all federal-funded projects until Linkel has submitted an OJT plan and it is approved by EOD. Linkel is to be restricted from bidding on all federal and state projects involving grading, clearing, grubbing, erosion control, and tree trimming and removal work until the WIP is approved by INDOT.

Mr. Feagans seconded the motion.

All Committee members voted in favor.

Ms. Kennedy adjourned the meeting at approximately 11:22 EDT.