

PREQUALIFICATION COMMITTEE  
OPEN SESSION  
MINUTES – JANUARY 8, 2015  
10:30 A.M. EST

The following Committee members attended the meeting:

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|-----------------|--|
| 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                         |
| Bob Cales       | Director of Contract Administration; Voting Member   |
| Louis Feagans   | Statewide Director of District Project Delivery; Voting Member                               |
| Angela Fegaras  | LaPorte District Construction Director; Voting Member  |
| David Holtz     | Director of Pavement Engineering; 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                            |

Also in attendance:

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|-------------------|--|
| Lori Torres       | Chief Legal Counsel; INDOT   |
| Mark Hawkins      | Attorney, Legal Services Division; INDOT                             |
| Patrick Carpenter | Cultural Resources Manger, Environmental Services Division; INDOT    |
| David Alyea       | Contract Compliance Manger, Economic Opportunity Division; INDOT     |
| Mary Konig        | Vincennes District Equal Employment Opportunity (EEO) Officer; INDOT |
| Brett Kramer      | Kramer's Land Clearing   |

Leslie Lahndt                      Federal Highway Administration (FHWA)  
Paul Berebitsky                    Indiana Construction Association (ICA)  
Bill Bailey                           Crawford, Murphy, Tilly, Inc. for American Council of Consulting  
Engineers (ACEC)

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The Committee reviewed the following agenda items:

1. Adoption of December 11, 2014 Executive Session meeting minutes
2. Adoption of December 11, 2014 Open Session meeting minutes
3. Force Construction Company, Inc. – Status update on performance
4. Archaeological Consultants of Ossian – Reconsideration of Committee recommendation from December 11, 2014 meeting
5. Kramer’s Land Clearing – Review of non-compliance with Fair Labor Standards Act and Davis-Bacon Act (non-payment of wages)
6. Prequalification Committee procedures and practices for submitting issues (2014 proposed revision and 2010 current document)

PREQUALIFICATION COMMITTEE MEETING  
OPEN SESSION  
JANUARY 8, 2015

Mr. Tidd, Committee Chair, called the meeting to order at 10:35 a.m. EST. All Committee members were present.

1. Adoption of December 11, 2014 Executive Session meeting minutes

Mr. Tidd called for consideration of the executive session meeting minutes from the December 11, 2014 meeting.

Mr. Cales moved to adopt the executive session meeting minutes from the December 11, 2014 meeting. Mr. Holtz seconded Mr. Cales’ motion. All members voted in favor.

2. Adoption of December 11, 2014 Open Session meeting minutes

Mr. Tidd called for consideration of the open session meeting minutes from the December 11, 2014 meeting.

Ms. Fegaras moved to adopt the open session meeting minutes from the December 11, 2014 meeting. Mr. Cales seconded Ms. Fegaras' motion. All members voted in favor. Mr. Tidd stated the minutes would be posted on the website within a few days.

3. Force Construction Company, Inc. – Status update on performance

Mr. Tidd provided a status update regarding Force Construction Company, Inc. (Force). One CR-2 was received since the Committee's report in December. The report was an interim evaluation on Contract R-37475. The only comment on the report was that "Force is a good contractor to have on this contract due to being on other jobs of its kind in the past." The project was a slide repair.

Mr. Stark asked about interim evaluations and Mr. Novak replied that INDOT does them at the end of the season, and they generally are not sent to the Central Office. INDOT does not want to surprise the contractor at the end of a contract. The interim evaluations give the contractors feedback.

Mr. Stark stated that Force is on our list to monitor. We should solicit reports on specific projects. Mr. Tidd stated that we can recommend to Mr. Bob Tally to solicit specific contracts.

Mr. Novak stated that Ms. Macdonald has asked for outstanding CR-2s when a contractor was coming before the Committee. Mr. Tidd stated that the Prequalification Division will continue doing that.

Ms. Fegaras asked if CR-2s can be submitted on other contractors. Ms. Macdonald stated that CR-2s can be submitted to the Prequalification Division at any time.

4. Archaeological Consultants of Ossian – Reconsideration of Committee recommendation from December 11, 2014 meeting

Mr. Tidd introduced this item regarding Archaeological Consultants of Ossian (ACO). He stated that at the December 11, 2014 meeting, the Committee recommended a suspension and various conditions for ACO and Mr. Stillwell. The Commissioner does not disagree with any of the recommendations of the Committee, but wants the Committee to reconsider restitution if ACO did not correct their errors or if ACO was paid twice. Mr. Tidd stated that Mr. Stillwell informed him that he would not be here today and he intends to hire counsel.

Mr. Hawkins, INDOT attorney representing the Environmental Services Division's Cultural Resource Office (CRO), stated that CRO recommends reinstating the previous recommendations with the addition of restitution in the amount of \$1041.52. Mr. Hawkins provided handouts that show the time CRO staff spent on the projects. On Project One, CRO spent 40.75 hours for a direct labor cost of \$892.97. On Project Two, CRO spent 6.75 hours for a direct labor cost of \$148.55. The total hours spent by CRO on both projects was 47.5 hours for a total direct labor cost of \$1041.52. This analysis includes follow-up field visits to the sites.

Mr. Hawkins discussed whether ACO was paid more than once for the work completed. He stated that according to Chris Reynolds of Porter County, no additional funds were paid other than the original contract amount. Mr. Hawkins stated they do not know yet if ACO was paid more than once on the Monroe County project, but they are looking into it.

Mr. Ratliff asked if the costs presented are straight wages. Mr. Carpenter replied yes. Mr. Ratliff stated that the Accounting Division can provide assistance with overhead, etc.

Ms. Torres stated that the statute/rules allow INDOT to suspend and revoke a contractor's Certificate of Qualification, but they do not specify whether the Committee can demand restitution, attend training, or impose other specific conditions.

Mr. Tidd asked CRO if ACO eventually did the work. Mr. Carpenter replied yes, we know that in Porter County they did not get paid twice, and we are checking on the Monroe County project.

Mr. Cales stated that on consultant contracts it is common practice to make lump sum payments to subconsultants. He stated that the question is whether the prime consultant had to redo the work for ACO or any of their own work. Mr. Carpenter stated that the work that ACO stated they had done in the falsified reports was redone by ACO, and basically it did not affect the prime's work.

Ms. Torres stated that the Committee can only revoke, suspend or change the capacity on a contractor's Certificate of Qualification. INDOT can only revoke prequalification for two years. She asked if they have to meet our recommendations in two years. Mr. Tidd stated that the requirements recommended by the Committee still have to be met, because the Prequalification Division would consider those items as part of our review of the new application.

Ms. Torres stated the review includes prosecution of work, organization, contractor attitude towards department and public. Mr. Tidd added that INDOT wants to break this pattern of improper behavior.

Mr. Feagans moved to reissue the recommendation to the Commissioner that was developed at the December 11, 2014 meeting and require that restitution be paid if determined later.

Mr. Tidd read the previous motion from the December 11, 2014 meeting: The Committee recommended to the Commissioner to suspend ACO's prequalification for one year with the opportunity to review again as early as six months at ACO's request; also require Section 106 training, require ethics training for all staff at ACO, require ACO submit examples of recent work completed to show how ACO is performing (a significant amount and reasonably approved by CRO), require the field director must be from the Qualified Professional Roster from DHPA, and submit a formal QA/QC plan to be reviewed by CRO. CRO and the Prequalification Division should review the request before coming back to Committee.

Mr. Stark moved to amend Mr. Feagans' motion to require that no restitution be imposed, because of the small amount and because it would be only for reimbursement of INDOT's staff costs.

Ms. Fegaras moved to reissue the December 11, 2014 meeting recommendation, but to remove the six month option for early termination of the suspension.

Mr. Holtz seconded Ms. Fegaras' motion.

Ms. Fegaras amended her motion to include the language of Mr. Stark's amendment concerning restitution.

Mr. Holtz seconded Ms. Fegaras' amended motion.

All voted in favor of Ms. Fegaras' amended motion, except Mr. Feagans, who dissented.

The Committee took a five minute break. The meeting restarted at 11:56.

5. Kramer's Land Clearing – Review of non-compliance with Fair Labor Standards Act and Davis-Bacon Act (non-payment of wages)

Mr. Tidd introduced the item regarding Kramer's Land Clearing (Kramer).

Mr. Hawkins recommends a 15 month suspension of work on INDOT contracts, due to non-compliance with Davis-Bacon Act and Fair Labor Standards Act. He stated the US Department of Labor (DOL) is also investigating Kramer. He stated that INDOT could have a potential loss of federal funding.

Mr. David Alyea, Economic Opportunity Division's Contracts Compliance Manager, stated there was a breach of contract with payment of labor, and fair and competitive bidding. The contractor must provide certified payrolls. Kramer failed to provide proper classifications, fringe benefits, etc. INDOT spent an inordinate amount of time in the field and overseeing contracts. Kramer's employees may lose or have disruption of union benefits.

Ms. Mary Konig, Vincennes District EEO officer, stated she reviews compliance issues in the field. The problems with Kramer have been consistent and repetitive. Part of her job is to

review complaints. She got a complaint from a Kramer employee and reviewed the documentation. She discussed the issue with Kramer. Kramer made an extra payment to that employee, which resolved that issue. Ms. Konig stated she thought Kramer was now educated on this issue. Then in 2011, there was another Kramer employee with problems with fringe benefits. Ms. Konig stated she found out that there was a problem with fringe benefits in arrears on ten contracts. She informed Kramer that it needed to be resolved immediately. Gohmann Construction, Inc. recalculated everything, and provided the numbers to Kramer. This puts the prime contractor at risk. In 2014 Mr. Hubert from DOL did an audit, but Kramer had not submitted payrolls as required. Mr. Hubert had asked where else Kramer was working, and they found another project with these issues. Ms. Konig stated that on another project she found \$11,570 in unpaid overtime, \$6,700 in unpaid fringes, and payroll made on incorrect job classifications, Kramer violated both the Davis Bacon Act and the Fair Labor Standards Act. Ms. Konig eventually saw the payrolls in Kramer's office. One example was of an employee who was paid with two checks for two projects in same week, but was not being paid for overtime. Other employees attended training, but Kramer did not show that they were paid for attending training. She stated that there were also more people at site than were reported. She stated that Kramer was listing people under the wrong classifications, paying them the wrong rates, not paying for overtime, not showing all staff on payroll, and not paying fringes. Payroll documents should feed into the general ledger. She stated that she has had complaints from prime contractors, who question why they are responsible for Kramer.

Mr. Hawkins recommends to suspend Kramer and Mr. Brett Kramer from working on INDOT contracts for 15 months, and against any company or association Mr. Kramer joins or assumes ownership.

Mr. Tidd pointed out that Kramer is not currently prequalified with INDOT and has not been prequalified in the past. They have done work on INDOT contracts as a non-prequalified subcontractor.

Ms. Torres asked how we would let prime contractors know not to use Kramers.

Mr. Tidd stated that we can send out a Listserv notice. Ms. Macdonald stated that EEO officers approve subcontractors before they start work, and they cannot work until they are approved. INDOT would notify the EEO officers to not approve Kramer.

Mr. Kramer stated that he did not have counsel here with him.

Ms. Torres stated that the Committee can consider a continuance.

Mr. Feagans moved to allow the continuance to the next meeting on February 5, 2015. Mr. Cales seconded Mr. Feagans' motion. All members voted in favor, except Mr. Ratliff, who dissented.

6. Prequalification Committee procedures and practices for submitting issues (2014 proposed revision and 2010 current document)

This item was discussed at the December 11, 2014 meeting. Mr. Tidd presented the revised document for submitting issues to the Committee. He added information about the issue resolution process, but stated that it has not been adopted yet. He stated that the attached Exhibit 1 is to be sent to Legal for review. If the issue resolution process is not used, then the requested information should be provided. He stated that we want senior management to know when there is an issue. The new procedure outlines what should be submitted to the Committee. The issue resolution process may require a WIP or QA/QC plan, and that should be done prior to progressing the issue to the Committee.

Mr. Tidd stated that the material that is submitted to the Committee members a week before the meeting is also provided to the contractor/consultant.

Mr. Feagans asked if the contractor has an opportunity to respond. He stated that when problems are found the contractor should be allowed to fix it, but if they do not correct it, then it should come to the Committee.

Mr. Stark questioned if the Committee is the right forum to address non-prequalified subcontractors. Ms. Macdonald stated that 105 IAC 11-2-10(e) states that “a contractor that is not prequalified may be prohibited from performing subcontract work or limited in the dollar value thereof if the subcontractor has been found in violation of a rule that would subject a contractor to suspension, revocation, or reduction in its certificate of qualification.”

Ms. Macdonald stated that if the Committee recommends imposing a restriction on a non-prequalified subcontractor, and the sub is a DBE, then we should inform EOD and it might affect the contractor’s DBE certification

Ms. Torres asked if Section 2 of the procedure should be Deputy Commissioner or Director. Ms. Macdonald stated that when the original procedure was adopted the intent was that the Deputy Commissioner be made aware of the issue. Mr. Tidd stated that he can change that to read “Deputy Commissioner or Director.”

Mr. Stark moved to adopt the document with the changes Mr. Tidd suggested. Mr. Novak seconded the motion. All members voted in favor of adopting the revised procedure.

Mr. Holtz stated that it would be a good idea to have an educational session for the Committee members to understand the rules, etc.

Mr. Stark stated that the rules need to be reviewed and revised. Ms. Torres stated that there is a current moratorium on rule making at this time imposed by the Governor’s office.

Ms. Torres suggested adding General Business Items to future agendas.

It was decided to have a special meeting to discuss meeting procedures, statutes, rules, Administrative Orders and Procedure Act (AOPA) , and other issues that might affect the Committee on January 27, 2015 from noon-2:00 pm.

Ms. Fegaras stated that they now have Construction Director peer group meetings on the first Thursday of every other month starting in February. This conflicts with our Prequalification Committee meetings.

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

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

Mr. Tidd adjourned the meeting at approximately 1:05 p.m. EST.