

PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – MARCH 5, 2015
9:00 A.M. EST

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
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

Also in attendance:

Lori Torres	Chief Legal Counsel; INDOT
Mark Hawkins	Attorney, Legal Services Division; INDOT
Brett Kramer	President; Kramer's Land Clearing
Larry Stillwell	Principal; Archaeological Consultants of Ossian (ACO)
Steve Badger	Attorney for ACO; Badger Law
Patrick Carpenter	Cultural Resources Manager, Environmental Services Division; INDOT
Shaun Miller	Archeology Team Lead, Cultural Resource Office; INDOT
Laura Turner	Attorney, Legal Services Division; INDOT
Teresa Giller	Attorney, Legal Services Division; INDOT

Libby Crawford	Director of Economic Opportunity Division (EOD); INDOT
David Alyea	Contract Compliance Manager, EOD; INDOT
Sam Sarvis	Deputy Commissioner of Capital Program Management
Fred Bartlett	Contractor Prequalification Analyst; INDOT
John Leming	Consultant Prequalification Analyst; INDOT
K. D. Thurman	Prequalification Coordinator; INDOT
Eryn Fletcher	Federal Highway Administration (FHWA)
Dan Osborn	Indiana Construction Association (ICA)
Cash Canfield	American Structurepoint for American Council of Consulting Engineering Companies (ACEC)

The Committee reviewed the following agenda items:

1. Adoption of January 8, 2015 meeting minutes
2. Adoption of January 27, 2015 meeting minutes
3. Force Construction Company, Inc. – Status update on performance
4. Kramer’s Land Clearing – Continuation from January 8, 2015 meeting
5. Archaeological Consultants of Ossian – Appeal of suspension
6. New Committee Business

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION
MARCH 5, 2015

Mr. Tidd, Committee Chair, called the meeting to order at 9:03 a.m. EST. All Committee members were present, with the exception of Mr. Stark.

1. Adoption of January 8, 2015 meeting minutes

Mr. Tidd called for consideration of the meeting minutes from the January 8, 2015 meeting.

Mr. Holtz moved to adopt the minutes from the January 8, 2015 meeting. Mr. Feagans seconded Mr. Holtz's motion. All members voted in favor.

2. Adoption of January 27, 2015 meeting minutes

Mr. Tidd called for consideration of the meeting minutes from the January 27, 2015 meeting.

Mr. Feagans moved to adopt the minutes from the January 27, 2015 meeting. Mr. Cales seconded Mr. Feagans' motion. All members voted in favor.

Mr. Holtz suggested that the Prequalification Committee have a refresher meeting every year, to go over the procedures and rules of the Committee.

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

Mr. Tidd provided a status update regarding Force Construction Company, Inc. (Force), and passed out three CR-2s received for projects in the Seymour District (B-33278 - interim report, R-30961 - final report, and IR-35187 - 2014 year-end report.) All three CR-2s had scores that were at or above standard and had good comments. The Committee is monitoring Force's CR-2s for 12 months to help correct a pattern of poor behavior.

Mr. Tidd reported that he spoke with Seymour District Construction Director Joe Jones about Force's performance and was told that they are more attentive.

4. Kramer's Land Clearing – Continuation from January 8, 2015 meeting

Mr. Tidd introduced this item regarding Kramer's Land Clearing (Kramer), non-compliance with Fair Labor Standards Act and Davis-Bacon Act (non-payment of wages). Mr. Brett Kramer asked for a continuance of this issue at the January 8, 2014 meeting. Mr. Tidd stated that INDOT representatives will have 30 minutes to present the issues, and Mr. Kramer will have 30 minutes to respond.

Mr. Mark Hawkins explained that the INDOT Economic Opportunity Division (EOD) recommends that in lieu of the 15 month suspension recommended at the January 8, 2015 meeting, the new recommendation is a six month suspension. He stated that according to Mr. Chris Huber of the United States Department of Labor (USDOL), Kramer has met the terms of the compliance agreement with USDOL. Mr. David Alyea, EOD Contracts Compliance Manager, explained that Kramer failed to properly 1) pay correct prevailing and overtime wage

rates, 2) pay fringe benefits, and 3) classify all workers and submit correct certified payrolls under the Davis-Bacon Act.

Mr. Brett Kramer explained that Kramer was subcontracting for Gohmann Construction (Gohmann) and E. S. Wagner Company (Wagner) on the I-69 projects to remove trees. He said that INDOT did not have the proper 401 permits and it caused a delay in payment. INDOT asked for additional work under change orders. Kramer had \$250,000 into the I-69 project and did not receive payment for the work for 8 to 10 months, causing Kramer to file Chapter 11 bankruptcy. Mr. Kramer stated that he does not deny the problems with payments to the employees. He stated his daughter, who handles the payroll, was confused because of union and non-union workers. He could live with a three month suspension, but if the six month suspension goes forward eight employees will be out of work.

Ms. Fegaras stated that over a two year period Kramer's employees weren't being paid correctly. She asked how INDOT would be assured that payroll problems will not happen again.

Mr. Kramer responded that other than his assurances that he will not do it again, he will not bid on another I-69 project or any big project from INDOT. He said he has never been late on payroll, if people were paying him on time.

Mr. Alyea stated that he was not comfortable with a verbal agreement.

Mr. Ratliff asked how Kramer would resolve the company's cash flow problems going forward.

Mr. Kramer responded said they will only take small jobs that last 1-2 weeks, until they can handle big jobs again. They had to file Chapter 11 to handle this problem.

Mr. Novak asked if INDOT was informed about the I-69 problems with delayed payments.

Mr. Alyea replied that this is the first that EOD heard of it.

Mr. Kramer stated that Elliot Sturgeon would not meet with him a few years ago because Kramer was a subcontractor.

Ms. Macdonald reminded the Committee that Kramer is not prequalified with INDOT and has been working as a non-prequalified subcontractor, so Kramer can only take on a total of \$300,000 of unearned work at any time from anyone.

Mr. Holtz asked about Mr. Kramer's daughter handling Kramer's payroll.

Mr. Kramer responded that his wife had been doing the payroll and was having issues. Now, he and his daughter take care of it and are trying to complete the union payments.

Mr. Holtz asked about the subcontract amount for the I-69 project. Mr. Kramer responded the contract was for around \$300,000.

Mr. Holtz asked about the change orders and Mr. Kramer replied that it was around another \$300,000.

Mr. Tidd said that Kramer should not have been approved for more than \$300,000 total, since they were not prequalified.

Mr. Feagans recommended that a training requirement for payroll issues be added to INDOT's recommended six month suspension.

Mr. Alyea stated that EOD sometimes offers certified payroll training to Disadvantaged Business Enterprises (DBE) but not annually; however, the Equal Employment Opportunity (EEO) officers at the districts can provide guidance.

Mr. Feagans asked what sanctions the Committee can recommend to a non-prequalified subcontractor.

Ms. Torres stated that INDOT can suspend a contractor from getting work as a subcontractor on INDOT projects in accordance with 105 IAC 11-2-10(e).

Mr. Ratliff stated that Kramer may have a cash flow problem. He wants to see some type of financials to guarantee that Kramer can make payroll.

Ms. Macdonald stated that our rules allow us to prequalify a contractor with a compiled statement.

Ms. Torres said the suspension would be lifted after corrective action has been met to the satisfaction of the Committee.

Mr. Ratliff recommended a six month suspension, and before Kramer is allowed to continue INDOT work they would have to submit a compiled financial statement as of June 30, 2015 or later, and attend certified payroll training with EOD or the EEO officer in the district.

Ms. Torres asked if there was a requirement once he submits the financial statement, she wants the motion to be clear. The Committee questions if this would move him from a non-prequalified contractor to a prequalified contractor.

Mr. Tidd replied that Kramer can submit a compiled statement with or without the prequalification application. They would not become prequalified without the application.

Ms. Torres and Mr. Tidd questioned if we need assurances that Kramer is paying wages in accordance with the Bacon-Davis Act. Mr. Alyea stated that DOL has investigated. Mr. Novak stated that the EEO officers check this anyway, so if there is a problem it would surface.

Mr. Cales stated that Gohmann should have paid Kramer within 10 days of being paid by INDOT. We should have invited Gohmann to the meeting to address some of the concerns brought up at this meeting. Mr. Novak stated that there was force account work and the correct paperwork was not provided, thus payment was delayed.

Mr. Holtz moved to recommend a six month suspension and require Kramer take payroll training with an EEO officer and have Kramer come back to the Committee to lift the suspension, with the option to come back in three months if Kramer provides a compiled financial statement as of March 31, 2015 or later date.

Mr. Cales seconded Mr. Holtz's motion.

All Committee members voted in favor.

Ms. Torres stated that the recommendation goes to the Commissioner. A letter will be sent to Kramer afterwards.

The Committee took a five minute break. The meeting restarted at 10:16 a.m.

5. Archaeological Consultants of Ossian (ACO) – Appeal of suspension

Mr. Tidd introduced this item regarding Archaeological Consultants of Ossian (ACO). He stated that ACO will have 30 minutes to present their case, then INDOT representatives will have 30 minutes to respond, then Committee members may ask questions.

Ms. Torres discussed the informal appeal procedure, found in 105 IAC 11-2-9 STEP ONE and STEP TWO. Following the procedure, the Committee will make another recommendation to the Commissioner.

Mr. Badger, Attorney for ACO, stated they are asking the Committee to go back to the original decision with the original suspension terms found in the Commissioner's letter dated December 31, 2014, which would allow ACO to come back to the Committee in six months. ACO is not asking for the Committee to reconsider the underlying findings that led to the suspension; ACO takes full responsibility of the problems. ACO will not go forward with STEP TWO of the appeal process if the Committee goes back to original recommendation. He stated that the employees who filed the false reports have been fired from ACO. ACO went out to the project sites to gather the information. ACO has taken prompt, voluntary action against the problems that were raised and it would be unfair to place stricter restrictions on ACO compared to the original decision.

Mr. Stillwell said ACO hired new people and submitted their resumes for the Committee's review. ACO employees also attended Section 106 training through the Department of Natural Resources (DNR). ACO is in the process in taking an ethics training course and developing a quality control plan, which he plans to submit to INDOT-CRO.

Mr. Badger discussed the qualifications of ACO's new employees, Keith Lautzenheiser and David Perry. He clarified that ACO engages employees when there is work available to them, but the work can be seasonal. He stated that Brent Alexander has been on staff with ACO for some time.

Mr. Badger explained the Commissioner originally decided that a six month suspension would be allowed if ACO corrected the problems: 1) Attend ethics and Section 106 training. 2) Hire a full time field director. 3) Submit a quality control plan to INDOT-CRO. The Commissioner approved these recommendations in his December 31, 2014 letter, but sent the issue back to the Committee to discuss the restitution at the January 8, 2015 meeting. Mr. Stillwell did not believe that any of the original conditions would be discussed again. The Committee found that restitution was not needed, but then reconsidered the conditions of ACO's suspension. Mr. Badger believes that the conditions should have been lessened rather than increased. He stated that he disagrees with Mr. Hawkins that due process does not apply here. He stated that by INDOT not notifying ACO that the suspension provisions would be reconsidered is an issue with complying with due process.

Mr. Badger said that Mr. Alexander did not work on the projects where the problems arose. He stated there was a discrepancy with the project location and review of previous archaeological determinations was based on the wrong site. He asked if it was fair to blame ACO with the map discrepancy on this site. He also questioned why the DNR training wasn't acceptable for the Section 106 training. He asked if it was too general. The DNR training used the Shaard User Guide, Shaard online tool, National Register, INDOT historic bridges, etc. The issue for ACO was cost; the DNR training is free and the INDOT-CRO training is costly. Mr. Stillwell paid his five employees who attended the training. ACO believes six months is long enough to assess corrective action. ACO has a list of current INDOT projects, and Mr. Stillwell would like the opportunity to complete these projects.

Mr. Hawkins stated that INDOT-CRO recommends upholding the sanctions outlined in Commissioner Browning's January 29, 2015 letter. ACO and the Committee need to see a full year of projects to assess performance.

Mr. Patrick Carpenter, INDOT Cultural Resources Manager, said Mr. Alexander was the field director over one if not both of the projects in question, and INDOT-CRO was concerned about his involvement in the projects. INDOT-CRO requires that ACO hire permanent, full time employees that are listed on the Division of Historic Preservation and Archaeology (DHPA) roster. INDOT-CRO has seen some improvement in ACO's reports, (the photos and maps are still not high quality). ACO recently submitted a report where they failed to recognize a previously recorded site, which indicates that ACO failed to consult the original survey report. This required ACO to go back into the field three times to complete the report. ACO's pattern of non-performance on the two projects that brought them to the Committee in December was severe. ACO's non-performance exposes INDOT to the following risks:

- Possible loss of federal funding;
- INDOT staff allocating disproportionate amount of time, effort and personnel

- to oversee ACO's project;
- Invitation of heightened scrutiny from FHWA;
- Exposure to liability and litigation; and
- Costly project delays

Mr. Carpenter explained that DNR's training on Section 106 is broad and brief (1 day training). ACO did not consult with INDOT-CRO about whether the DNR training would qualify. There is a three day training course available on April 3, 2015. He also stated that INDOT-CRO only expects to look at reports that are submitted to public agencies; however, other reports submitted to DHPA are not off limits. If ACO meets the minimum standards, then INDOT-CRO will be satisfied with their work. ACO has not submitted their improvement plan, but INDOT-CRO is willing to work with ACO.

Mr. Hawkins said ACO has falsified two reports over the past two years. For this reason INDOT-CRO wants a 12 month suspension and to review ACO's work to see if they are ready to perform on INDOT contracts in the future.

Ms. Torres clarified the difference between the Commissioner's two letters was the six month option; the Commissioner has the right to determine what is the best option. The Committee is not quasi-judicial. She did not think it was wrong to increase the suspension. She pointed out that the Committee could have taken further actions. Mr. Stillwell had notice of the meeting, but he did not attend.

Mr. Tidd said the requirements of the letter required Mr. Stillwell to discuss these elements with INDOT-CRO. He asked if there is a problem submitting reports to INDOT at the same time as DHPA.

Mr. Stillwell responded he does not want to submit reports to INDOT that have not yet been submitted to SHPO. He plans to submit a quality control document to INDOT-CRO and to discuss the ethics training with Mr. Carpenter. There was a limited window to attend the free training provided by DNR. The training that INDOT-CRO suggested will cost \$700 per person plus wages. With five employees needing to attend, ACO will incur \$5000 to \$6000.

Mr. Tidd asked about the employee who claimed he did multiple shovel probes, but only did three. Mr. Stillwell replied that he was fired along with two other employees.

Mr. Carpenter stated that he is concerned that Mr. Alexander, ACO's field director, is still employed at ACO. Mr. Stillwell explained that he terminated Mr. Alan Miller, the employee who did the original survey. Mr. Alexander and Mr. Stillwell went back out to the sites to correct the problems.

Ms. Fegaras stated her concern was that ACO had to submit the report three times to complete it properly.

Mr. Stillwell replied the first time ACO went to the site, they had the wrong design plans. INDOT asked why ACO surveyed that area.

Mr. Tidd clarified that the Committee needs to decide between the recommendations from the two meetings, with the difference being the six month option. The Committee will then make a recommendation to the Commissioner. Mr. Badger and ACO recommend that the six month option be allowed from Committee's recommendation at the December 11, 2014 meeting, while Mr. Hawkins and Mr. Carpenter recommend the Committee stay with the recommendation from the January 8, 2015 meeting.

Mr. Novak said he did not have an objection to putting the option back into the recommendation and raised the question about ACO having the ability to complete their current work.

Mr. Tidd and Ms. Torres agreed that ACO can complete current work under contract.

Mr. Holtz asked how INDOT confirms that ACO is providing professional services after they have falsified documents. He is concerned that there were multiple occasions for potential falsified documents from ACO.

Mr. Tidd stated that ACO is required to provide the work improvement plan, examples of work, and show they have done the training to INDOT-CRO for approval before the suspension can be lifted. If INDOT-CRO comes back with a negative recommendation, then it will be a big issue for ACO. It would be more of an issue than the 6 or 12 month suspension, because the Committee would not have to approve ACO if INDOT-CRO is not comfortable with their work.

Mr. Feagans stated that 12 months is a long time. ACO still has to meet ACO's standards.

Mr. Tidd called for a motion.

Mr. Feagans moved to go back to the recommendations from the December 11, 2014 meeting. Mr. Novak seconded Mr. Feagan's motion. The motion was carried 4-2. All Committee members voted in favor of the motion, except for Ms. Fegaras and Mr. Holtz.

6. New Committee Business

There being no new business.

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

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

Mr. Tidd adjourned the meeting at approximately 11:22 a.m. EST.