

PREQUALIFICATION COMMITTEE  
OPEN SESSION  
MINUTES – AUGUST 2, 2012  
9:30 A.M. EDT

The following Committee members attended the meeting:

Tiffany Mulligan	Director of Economic Opportunity and Prequalification; Committee Chair and Non-Voting Member
Karen Macdonald	Prequalification Engineer; Committee Secretary and Non-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
Shelly Gottschalk	Executive Operations Manager, Capital Program Management; attending for Jim Stark as Voting Member
Walt Land	Project Management Supervisor, Office of Project Management; attending for Greg Kicinski as Voting Member
Ryan Gallagher	Deputy Commissioner of Operations; attending for Troy Woodruff as Voting Member

Also in attendance:

Heather Kennedy	Attorney, Economic Opportunity and Prequalification Divisions; INDOT
Maurice Moubray	Prequalification Auditor; INDOT
Fred Bartlett	Prequalification Research Analyst; INDOT
Greg Pankow	State Construction Engineer, Office of Construction Management; INDOT
Gerry Burton	Claims Administrator, Office of Construction Management; INDOT

Susan Miles	Contract Compliance Manager, Economic Opportunity Division; INDOT
Kent Borggren	LaPorte District Equal Employment Opportunity Officer, Economic Opportunity Division; INDOT
Steve Heller	Compliance Investigator, Contract Administration Division; INDOT
Bill Isom	Jack Isom Construction Company, Inc.
Ethan Tan	Jack Isom Construction Company, Inc.
Tom Pastore	Attorney representing Jack Isom Construction Company, Inc.
Paul Berebitsky	Indiana Construction Association (ICA)

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The Committee reviewed the following agenda items:

1. Re-adoption of May 25, 2012 Meeting Minutes
2. Adoption of July 13, 2012 Meeting Minutes
3. Jack Isom Construction Company, Inc. – Appeal of denial of Prequalification

PREQUALIFICATION COMMITTEE MEETING  
OPEN SESSION  
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Ms. Mulligan, Committee Chair, called the meeting to order at 9:33 a.m. EDT. All Committee members were present, with the exception of Mr. Kicinski, Mr. Stark, and Mr. Woodruff. Mr. Walt Land attended for Mr. Kicinski, Ms. Shelly Gottschalk attended for Mr. Stark, and Mr. Ryan Gallagher attended for Mr. Woodruff.

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

1. Re-adoption of May 25, 2012 Meeting Minutes

Ms. Mulligan explained that the May 25, 2012 meeting minutes, which were adopted at the July 13, 2012 meeting, were missing the sections related to the adoption of the December 1, 2011 open session and executive session minutes. The missing sections are highlighted on page three of the amended minutes. She called for consideration for adoption of the meeting minutes from the May 25, 2012 meeting as revised or a motion to further amend the minutes.

Mr. Wright moved to adopt the meeting minutes from the May 25, 2012 meeting as revised. Mr. Novak seconded the motion. All members voted in favor. Ms. Mulligan stated the minutes would be posted on the website within a few days.

2. Adoption of July 13, 2012 Meeting Minutes

Ms. Mulligan called for consideration of the meeting minutes from the July 13, 2012 meeting. Ms. McHenry submitted some comments via email, but the Prequalification Division did not add those into the draft minutes presented. The committee members can amend the minutes to add Ms. McHenry's comments.

Mr. Miller moved to adopt the meeting minutes from the July 13, 2012 meeting as drafted. Mr. Wright seconded the motion. All members voted in favor. Ms. Mulligan stated the minutes would be posted on the website within a few days.

3. Jack Isom Construction Company, Inc. – Appeal of denial of Prequalification

Ms. Mulligan introduced this item regarding Jack Isom Construction Company, Inc. (Isom). It is a different situation because it is an appeal to a denial of their prequalification renewal application.

Ms. Mulligan explained the Committee meeting procedures are a little different with an appeal. A representative from Isom will present their case first, then INDOT will have the opportunity to respond, then the floor will open up for questions.

Mr. Tom Pastore, Attorney to Isom, stated that there are seven conditions that the Committee considers per the rules. There were three issues listed when Isom was denied prequalification; one was a lien by Purdy Concrete, Inc. and Purdy Materials, Inc. He stated that the information that was included in the members' packets also shows liens by Transit Mix, Inc. and Rock Industries, Inc. Mr. Pastore stated that Isom has paid all of these claims.

Mr. Pastore stated that the second issue regarded wages and fringes. He stated that apparently employees raised the issue. He stated that Isom has been paying wages and fringes timely. He stated that he doesn't understand why this was an issue.

Mr. Pastore stated that the third issue is the pending claim on contract B-31463 for liquidated damages. He stated that \$375,000 is being withheld for liquidated damages.

Mr. Pastore stated that due to Indiana bat habitation, the main work on the project was moved from the summer until fall. Isom had to postpone clearing of right-of-way until fall. Isom requested to start work on the bridge immediately. Isom's request was denied, and they were not allowed to start the bridge because of the Marshall County Blueberry Festival. Part of the festivities is a bike ride that crosses the bridge. Isom received the notice to proceed on the contract in July, but they could not start until fall.

Mr. Pastore stated that there were other issues. He stated that Marshall County complained that Isom was not working when they could have. He believes they were not aware of all the issues.

Mr. Pastore stated that Isom has worked with Mr. Greg Pankow, INDOT's State Construction Engineer, to cut down the number of days for the claim to 75. Isom still disagrees with the number of days.

Mr. Pastore stated that Isom has provided information to the claims consultant, which has taken time to gather. He stated the claims consultant has taken time to do his research. He stated the claims consultant met with Isom this past week. It looks like they preliminarily have the days for the claim down to 37. He stated that most of the delays were due to weather.

Mr. Pastore stated that the claims consultant is working from information provided by INDOT. The claims consultant is still reviewing and gathering information.

Mr. Pastore stated that if the days for the claim are down to 37, he thinks they can come to an agreement without going to litigation.

Mr. Pastore stated that he does not think that a claim on a contract is sufficient reason to deny a contractor prequalification. If it goes to litigation in two years, it would not be fair to be denied prequalification until this issue is resolved.

Mr. Pastore stated that more like \$460,000 instead of \$375,000 is being withheld on this contract. He stated that is why there was a cash flow problem for paying the subcontractors. He stated that the subs have been paid now. He stated that there are a few others that that have not filed claims, but Isom is working those out.

Mr. Pastore stated that the solution should not be to prevent Isom from getting work. Isom has already lost an opportunity to get a contract on the July 11, 2012 letting because they were not prequalified at the time.

Mr. Pastore stated that Isom has received three positive CR-2s recently.

Mr. Pastore stated he does not know why the liquidated damages went from \$1,500 per day to \$5,000 per day.

Ms. Heather Kennedy, Attorney to the Prequalification Division, stated the reasons the Prequalification Division denied Isom's prequalification. She stated that the denial letter dated July 11, 2012 raised issues that came from three divisions at INDOT: the Economic Opportunity Division (EOD), Construction Management, and Accounting.

Ms. Kennedy stated that a problem with the pending claim on contract B-31463 was that there had been no progress since December 2011. Isom promised to provide information, but INDOT had not received it. INDOT is not concerned that there is a dispute but that the resolution of it has been dragging on.

Ms. Kennedy stated that when the Prequalification Division sent the denial letter, we did not consider the other two subcontractor liens.

Ms. Kennedy stated that with the wage and fringe issues, EOD is concerned that the payments have not been made timely. EOD requested 2012 information but then found that two quarters from 2011 had not been paid.

Ms. Kennedy stated that INDOT is also concerned that the prime contractor had paid for materials for Isom on a contract. Isom was seven months late in paying it. We are concerned that Isom is overextended.

Ms. Kennedy stated that Isom was brought before the Committee three times in the past two years. Isom was brought in last year for similar wage and fringe issues.

Ms. Kennedy stated that the recommendation to the Committee is to uphold the denial of Isom's prequalification and let them resubmit an application in 90 days. She also recommended that a 30% reduction factor be applied to Isom's capacity, similar to a new contractor.

Ms. Mulligan stated that Mr. Miller is recusing himself from voting because of involvement in some of these issues.

Mr. Pastore stated that Isom did not know there were still wage and fringe issues. He stated the main issue was that Isom was untimely in making payments. He also stated that Isom did not ask Crider and Crider to pay for the materials because of Isom's financial situation.

Mr. Pastore stated that resolving the project claim is complicated and will take time.

Mr. Pankow stated that the number of days for the claim is below 90.

Mr. Pastore stated that the claims consultant has the number of days for the claim down to 37.

Ms. Mulligan stated that Isom's certificate expired on April 30, 2012. Isom submitted a renewal application after the expiration date, but the Prequalification Division denied Isom prequalification. The Committee can recommend to uphold the denial, in which case Isom can

then reapply in 90 days, or the Committee can recommend to approve Isom's prequalification, with or without a capacity reduction.

Mr. Miller stated that he is recusing himself from voting because he was involved with more than one issue with Isom. He reiterated what Ms. Kennedy stated. We do not want to penalize a contractor for disputing a claim. He is concerned that the same issues are recurring.

Ms. Mulligan stated that Mr. Pastore said it was coincidental that there was no activity with the claim dispute since December 2011. She asked Mr. Pastore why there was no activity.

Mr. Pastore stated that there was activity during that timeframe. Information was being supplied back and forth with the claim mediator.

Mr. Ratliff asked about the earlier issues that brought Isom to the Committee.

Ms. Mulligan replied that a summary of the past Prequalification Committee meetings that Isom attended was in the members' packets. Copies of the minutes from those meetings were included too.

Ms. Kennedy stated that Isom was brought in last year for wage and fringe and On-the-Job-Training (OJT) issues.

Mr. Bill Isom, President of Jack Isom Construction Co., Inc. questioned the wage and fringe payment on one project listed in the EOD packet. He stated that with contract IR-30849, Isom was not union yet. At that point Isom was making payments to two different accounts.

Mr. Kent Borggren, LaPorte District Equal Employment Opportunity Officer, stated that he was trying to get information from the unions to confirm delinquent payments.

Ms. Kennedy asked Mr. Pastore about a pending lawsuit against Isom filed on June 21, 2012.

Mr. Pastore stated that the lawsuit was cancelled.

Ms. Kennedy stated that she was not aware it was cancelled.

Ms. Kennedy stated that the Prequalification Division is concerned with the multiple issues and does not want to continue to give Isom work until the issues are resolved. All contractors have to follow INDOT's rules.

Mr. Pastore stated that two of the three issues are resolved now. The only issue remaining is the liquidated damages on one project. He stated that it is Draconian to not allow Isom to bid for 90 days. He also stated that all contractors are probably behind with payments at some time.

Ms. Mulligan stated that all contractors have to follow INDOT's rules. She stated that other contractors that have been brought to the Committee must abide by the same rules.

Mr. Pankow stated that the report he submitted to the Committee was based on the information that he had at the time.

Mr. Pastore stated that the number of days for the claim went from 87 to 35. He stated that of the remaining 35 days, some could be attributed to the weather.

Mr. Pankow stated that he already considered credit for the weather.

Mr. Pastore stated that the credit may have been given one day because it rained, but Isom may not have been able to work due to wet material on the site the next day or days. He also stated that Isom would want to negotiate the \$5,000 per day to \$1,500 per day.

Mr. Pankow stated that the per day delay fee is set in the contract. It includes what it costs for INDOT to run the project and it also includes user costs.

Mr. Miller stated that Mr. Pankow could give a report on where the negotiations are at.

Ms. Mulligan asked if there were any conversations about the claim between Isom and INDOT between December 2011 and July 2012.

Mr. Gerry Burton, INDOT's Claims Administrator, stated that Isom asked for mediation, but it was put on hold. He stated he had a conversation in March 2012 with Mr. Pastore. He stated that Mr. Pastore assured him that it was moving forward. Mr. Burton stated that he felt that it was not moving, and he told Mr. Pastore that he felt it was not moving on several occasions. Mr. Burton asked Mr. Pastore if he agrees that it is a true statement.

Mr. Pastore stated he agrees.

Mr. Wright stated that it appears Isom currently has four projects. He asked Isom where they are at with those contracts and will reduction in capacity affect those projects.

Mr. Pastore stated that Isom is currently working on one INDOT project. One project is outstanding. One project is adjacent to a project being built by Milestone Constructors, LP. He stated the adjacent projects were set up for one to move dirt to the other. Excess dirt from the Milestone project is to be used on Isom's project. He stated that the problem is they are waiting on Milestone. The work is on hold because we are waiting for a pile of dirt. That contract number is IB-33804. Mr. Pastore stated that a reduction will not affect those projects today.

Ms. Mulligan stated that denial of a contractor's prequalification will only affect future projects. The contractor can continue working on current projects.

Mr. Pastore stated that Isom could withstand \$3 to \$4 million in capacity reduction. He stated Isom would be hard-pressed if they could not get new work.

Ms. Mulligan stated that this is the first step on the appeal. The second step would be to go to an administrative law judge (ALJ). While under appeal the status quo holds, which for Isom is no prequalification. Isom could have requested to go directly to step two.

Ms. Mulligan stated that the options the Committee should consider are to uphold the denied prequalification. Isom would have to wait 90 days to reapply. The Committee could recommend approving Isom's prequalification, with or without a capacity reduction. She stated that what the Committee decides is a recommendation to the Commissioner.

Mr. Ratliff suggested waiting 60 days to allow Isom to resolve the issues.

Mr. Novak stated that they could resolve the issues in two weeks or in two years.

Mr. Pastore stated that waiting 60 days is the same as denying prequalification. They can reapply in 90 days.

Mr. Ratliff stated that it is irrelevant if Isom is not prequalified with INDOT. He stated they can work for others.

Mr. Pastore replied that it is true, but most of Isom's work is with INDOT, and they are a bridge contractor. He stated that local public agencies (LPA's) check to see if a contractor is prequalified with INDOT.

Mr. Wright asked how much of Isom's work is through LPA's.

Mr. Isom replied about 15%.

Ms. Macdonald stated that it is her understanding that LPA bridge projects are let through INDOT.

Mr. Wright replied that a few LPA bridge projects may be paid with local funds.

Ms. Mulligan asked what assurance INDOT would have that Isom would resolve the wage and fringe issues and make timely payments.

Mr. Pastore stated that Isom has a line of credit and Isom should be making payments on time. He stated he did not realize there were still wage and fringe issues.

Ms. Mulligan stated that this is the second time Isom has been brought before the Committee for wage and fringe and subcontractor lien issues.

Mr. Pastore asked if there were any suggestions on what Isom could do to keep up with the wage and fringe payments.

Ms. Mulligan deferred to Mr. Borggren.



Mr. Borggren stated that the best thing they could do is to just pay the wages and fringes on time. He stated he was told that Isom was behind, so he checked with the Laborers and Carpenters Unions. They both indicated that Isom was behind.

Mr. Isom stated that Jack Isom Construction has been working for INDOT since 1974. They have had their pension account since 1991. He stated he always makes payment to the pension fund yearly after paying taxes in September.

Mr. Isom stated that with the OJT issue, his secretary received the letter from INDOT, but she did not pass it on to him. He stated he takes full responsibility for it. He stated that Isom is now up to date with the OJT program.

Mr. Borggren stated that Isom is now current through the end of May 2012, but the Operators and Laborers union payments are not current. He stated that Isom may have made arrangements for payments for outstanding payments from the end of 2011.

Ms. Mulligan asked Mr. Borggren if Isom has been timely with submitting certified payrolls.

Mr. Borggren replied that as far as he knows, Isom has been submitting them timely.

Mr. Novak stated that these problems may indicate that there are other issues; however, he suggests the Committee recommend to approve Isom's prequalification with a capacity reduction.

Mr. Gallagher stated he agrees with Mr. Novak. He stated that two of the three issues are off the table.

Ms. Mulligan stated that with Isom's visit to the Committee last year, the Committee recommended to approve their prequalification with no capacity reduction. She stated that she would suggest a reduction. She stated that she is not a voting member on the Committee. The egregiousness and frequency of the problems should be considered.

Mr. Novak stated that Isom could be brought back to the Committee if continued problems or other issues arise.

Mr. Miller asked Mr. Pankow if he had any other comments.

Mr. Pankow stated that he has heard some complaints about erosion control on a contract. Crider and Crider is the prime contractor, but the issues are near the bridge that Isom is working on.

Ms. Mulligan asked Ms. Miles if Isom submitted their 2012 OJT agreement.

Ms. Susan Miles, EOD Contract Compliance Manager, stated that Isom submitted their agreement on March 31, 2012. She stated Isom submitted a report on July 23, 2012, but no hours have been provided yet.

Ms. Mulligan stated that Isom could be in compliance with the OJT program, but we don't know at this point.

Mr. Novak moved to recommend to the Commissioner to approve Isom's prequalification with a 20% capacity reduction.

Mr. Gallagher seconded the motion.

Ms. Mulligan stated that when a capacity reduction is applied it is generally in place until the Certificate of Qualification expires. She stated the Committee can recommend a different time frame. She stated that with next year's certificate, the experience reduction factor would go back to zero.

Ms. Mulligan asked for a vote.

All Committee members voted in favor.

Ms. Mulligan stated that the recommendation will go to the Commissioner this week.

Mr. Pastore asked if Isom can bid on next week's letting.

Ms. Mulligan deferred to Ms. Macdonald.

Ms. Macdonald stated that she thinks it is similar to the instance with the July 11, 2012 letting. Isom had submitted their prequalification renewal application in time to bid on the letting; thus, they were allowed to bid. But because Isom's prequalification was denied, they did not get awarded the low bid. She stated that Isom should be allowed to bid. The award of any low bid contract will be based on whether the Commissioner approves the Committee's recommendation.

Ms. Mulligan stated that she agrees with allowing Isom to bid. She asked Ms. Kennedy for her opinion.

Ms. Kennedy replied that she agrees.

Ms. Mulligan stated that the approval of Isom as a subcontractor on a current contract is based on when they entered into the agreement with the prime, and if they were prequalified at the time.

Ms. Mulligan asked for a motion to adjourn the meeting.

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

Ms. Mulligan adjourned the meeting at approximately 11:05 a.m. EDT.

Mr. Pastore thanked the Committee for being objective and professional.