

PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – SEPTEMBER 05, 2013
9:00 A.M. EDT

The following Committee members attended the meeting:

Heather Kennedy	Acting Director of Economic Opportunity and Prequalification; 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
Ryan Gallagher	Deputy Commissioner of Operations; Voting Member
Mark Miller	Director of Construction Management; Voting Member
Joe Novak	Crawfordsville District Construction Director; Voting Member
John Wright	Director of Highway Design and Technical Support; Voting Member
Jay Wasson	Deputy Commissioner of Engineering and Asset Management; attending for Jim Stark as Voting Member
Bill Weinmann	Economist; Cost Accounting and Audits; attending for Mark Ratliff as Voting Member

Also in attendance:

Maurice Moubray	Prequalification Auditor; INDOT
Fred Barlett	Prequalification Analyst; INDOT
Blaine Hayden	Prequalification Coordinator; INDOT
Daphne Widdifield	Prequalification Assistant; INDOT
Dan Williams	Accounts Receivable Supervisor; INDOT
Ben Miller	Staff Accountant, Accounts Receivable Section; INDOT

David Alyea	Contract Compliance Manager, Economic Opportunity Division; INDOT
Sam Sarvis	Deputy Commissioner; Capital Program Management: INDOT
Bill Isom	Jack Isom Construction Company, Inc.
Ethan Tan	Jack Isom Construction Company, Inc.
Tom Pastore	Attorney for Jack Isom Construction Company, Inc.
Megan Sullivan	Sullivan Construction, Inc.
Paul Berebitsky	Indiana Construction Association (ICA)

The Committee reviewed the following agenda items

1. Adoption of May 2, 2013 meeting minutes
2. Adoption of July 11, 2013 meeting minutes
3. Jack Isom Construction Company – Appeal of denial of prequalification
4. Sullivan Construction, Inc.- Non-prequalified subcontractor limits

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION
SEPTEMBER 05, 2013

Ms. Kennedy, Acting Committee Chair, called the meeting to order at 9:01 a.m. EDT. All Committee members were present with the exception of Mr. Stark and Mr. Ratliff. Mr. Weinmann attended for Mr. Ratliff and Mr. Wasson attended for Mr. Stark.

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

1. Adoption of May 2, 2013 meeting minutes

Ms. Kennedy called for consideration of the meeting minutes from the May 2, 2013 meeting.

Mr. Novak moved to adopt the meeting minutes from the May 2, 2013 meeting. Mr. Feagans seconded the motion. All members voted in favor.

2. Adoption of July 11, 2013 meeting minutes

Ms. Kennedy called for consideration of the meeting minutes from the July 11, 2013 meeting.

Mr. Feagans moved to adopt the meeting minutes from the July 11, 2013 meeting. Mr. Novak seconded the motion. All members voted in favor.

3. Jack Isom Construction Company – Appeal of denial of prequalification

Ms. Kennedy introduced the item regarding Jack Isom Construction Company (Isom). She explained the Committee meeting procedures for an appeal: the contractor presents their case first, INDOT representatives are allowed to respond, then Committee members and the audience may ask questions.

Mr. Pastore, Attorney for Isom, stated the overpayment by INDOT on Contract R-31652 is resolved and no longer an issue. Isom originally said they would pay it. Isom had objected to some of the contract items, but signed the M-39 form anyway, and it triggered an overpayment. Isom objected to the liquidated damages. Through communication with INDOT district and central office personnel, they have now been granted extra days, which reduces the overpayment to zero.

Mr. Pastore addressed the second issue of several subcontractor claims. He stated that a Local Public Agency (LPA) job last year in Marshall County had liquidated damages that were assessed at approximately \$400,000. Isom worked with Gerry Burton, INDOT Construction Management Claims Administrator, and agreed to \$160,000 in liquidated damages on the project. Isom had cash flow problems and then had another \$78,000 hit. Greg Pankow, INDOT State Construction Engineer, informed Isom that there is another project with liquidated damages. Isom's cash flow issues became apparent, and when subcontractors hear of cash flow problems, they file claims to get their money. Isom is not disputing the subcontractor claims, but INDOT does not pay the contractor when subcontractor claims have been filed. Isom is working with their bonding company to get all of the claims paid. They are scheduled to come out next week to take a look at Isom's books.

Mr. Pastore stated that regarding the Engineering Aggregates and Prestressed Services (PSI) claims, Isom asked Stefanie Fouty, INDOT Accounting and Control Progress Estimate Supervisor, to back charge Isom and pay the subcontractors directly. It was granted. He stated that INDOT may not have a process to do this and it may have been handled with a band-aid, but it is allowed by the specifications.

Mr. Pastore stated that if Isom is denied prequalification, then the bonding company will have to take over the contracts. They are asking the bonding company for \$350,000 to \$400,000 to pay off the subcontractors. Then they would pay the bonding company back \$40,000 to \$50,000 per month.

Mr. Pastore stated that Isom needs their prequalification approved to continue to get work from INDOT. He stated that 90% of Isom's jobs are INDOT or LPA jobs. Isom has a plan in place to maintain obligations. He recommended a reduction in capacity of 25%. He stated that this would be a reasonable solution compared to denial.

Mr. Pastore stated the issue with the CR-2 for Contract R-34090 is a little premature at this point. He stated the project had a causeway and when the project was advertised, there was no easement issued. Isom requested information and the consultant informed them that the information would not be available at the letting. Isom was the low bidder. They were not told at the pre-construction conference that the easement was not available. It was a full month afterwards before they found out they would not get the easement. Isom should be granted more time on this project. Isom would like the opportunity to work it out with INDOT and would like it taken off the table today.

Mr. Pastore stated that as a comparison, a CR-2 for Contract B-27570, from the packet handed out at the meeting today, shows positive comments about Isom's handling of that project. He again stated that an appropriate action would be to prequalify Isom with a capacity reduction, instead of denying them prequalification.

Ms. Macdonald stated the district is not in attendance to discuss the CR-2 and this was not a factor in denial of Isom's prequalification application. She stated the main issue for denying prequalification to Isom was the overpayment issue. The secondary issue was the multiple subcontractor liens. She also stated that after listening to Mr. Pastore's explanation of the issues, she would be willing to prequalify Isom with a capacity reduction.

Mr. Feagans asked if the bonding company can come in.

Mr. Pastore stated that Isom currently cannot bid. To delay any further would be devastating to the company. This needs to be resolved so Isom can continue to work.

Ms. Kennedy asked when Isom's prequalification expired.

Ms. Macdonald replied that Isom's prequalification expired on April 30, 2013. They submitted their renewal application after their prequalification had expired.

Mr. Miller admitted that a mistake was made with the liquidated damages on Contract R-31652, but it was just corrected this week. He stated that he has concerns with Isom's timely completion of projects.

Mr. Novak stated that Isom is not following the claims process. They need to resolve the issue quicker. There is only a certain amount of time to respond. Isom should contact INDOT immediately when Isom is contacted. He agreed that the CR-2 discussion should not be on the table today. He recommended a capacity reduction.

Mr. Pastore stated that Isom disagreed with the liquidated damages.

Mr. Novak replied that Isom still needs to respond to INDOT.

Mr. Pastore stated that Isom agrees with what the Committee is saying and he is here to make the relationship better between Isom and INDOT.

Ms. Macdonald stated that what concerns her about the overpayment issue was that Isom was sent three dunning notices from INDOT's Accounting Division before the issue was sent to her in March 2013. It appears that Isom ignored the issue and they did not push to resolve it until their prequalification was denied.

Mr. Novak stated that it is hard to keep moving on project issues and it is especially burdensome during the construction season, but you need to respond to INDOT's requests.

Ms. Kennedy asked of the Committee would like to see a follow-up on the CR-2 submitted by the LaPorte District.

Mr. Gallagher asked who would follow-up on the CR-2.

Ms. Kennedy replied it should be Construction Management.

Mr. Novak stated that it was an interim CR-2.

Ms. Kennedy stated that the project is due to complete in October.

Mr. Pastore stated that Isom can follow through with Construction Management and he will work with Isom on getting the issues resolved.

Mr. Feagans asked if the Committee should ask Isom to come back with their bonding company.

Mr. Gallagher stated Isom can work with Construction Management, and if there is a reason to bring them back, then Mr. Miller can inform the Committee.

Mr. Wasson asked if a 25% capacity reduction would be enough. He asked if is necessary for Isom to follow-up with the Committee in a month.

Ms. Kennedy referred to the memo from the Prequalification Auditor, that was a part of the members' packets, and it gave examples of 20% and 50% capacity reductions.

Mr. Feagans stated that a 30% capacity reduction sounds good. We use that for new applicants.

Mr. Wasson stated it should be Isom's responsibility to request a higher bidding capacity. They should have to come back to the Committee if they want to reduce the experience reduction factor below 30%.

Ms. Macdonald asked if the Committee really wants to require Isom to come back to request a reduction of the experience reduction factor.

Mr. Wasson stated that he does not want the experience reduction factor reduced unless Isom comes back to the Committee and demonstrates that they are paying their subcontractors and performing well on their projects.

Mr. Gallagher moved to recommend to the Commissioner to issue a Certificate of Qualification to Isom with a 30% capacity reduction.

Mr. Feagans modified the motion to perpetuate the 30% experience reduction factor until Isom requests a change and comes back to the Committee.

Ms. Kennedy restated the motion – The Committee moves to recommend to the Commissioner to issue a Certificate of Qualification to Isom with a 30% capacity reduction. The Committee also recommended the 30% capacity reduction be perpetual until Isom requests a change and comes back to the Committee.

Mr. Feagans seconded the motion.

All Committee members voted in favor.

Ms. Macdonald stated that she would still have to deny any future applications if Isom has another overpayment issue.

Ms. Kennedy stated that a letter would be sent to the Commissioner today for his approval.

Mr. Pastore asked if Isom will be able to bid on next week's letting.

Ms. Macdonald replied that if the letter is not approved by the Commissioner before the letting, she will set Isom up in the database to allow them to bid. The award of any low bid contract to Isom will be contingent upon the Commissioner's approval of the Committee's recommendation.

4. Sullivan Construction, Inc. - Non-prequalified subcontractor limits

Ms. Kennedy introduced the item regarding Sullivan Construction, Inc. (Sullivan). 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.

Ms. Macdonald reported that she asked Sullivan to be here today for submitting quotes to prime contractors beyond the \$300,000 limit as a non-prequalified subcontractor. Over the past few years, Sullivan has been listed as a subcontractor on various contractors' Affirmative Action Certificates (AAC) for amounts exceeding \$300,000 when Sullivan was not prequalified with INDOT. Sullivan had been prequalified with INDOT over several years in the past. Sullivan's latest prequalification certificate expired on April 30, 2013 and they have not submitted a renewal prequalification application to date. Their prequalification also lapsed between April 2011 and May 2012. There was a situation on a contract where the letting was before Sullivan's prequalification expired, but their prequalification bidding capacity was below the amount listed on the AAC. INDOT cannot approve subcontractors when they are not prequalified and the contract amount or their unearned work is over \$300,000, or if they are prequalified and their unearned work is over their bidding capacity.

Ms. Macdonald stated that she has sent out letters to prime contractors on four contracts to point out that Sullivan cannot be approved to perform the work until they get prequalified. In all four cases, the subcontract amount was more than \$300,000.

Ms. Kennedy introduced David Alyea, INDOT Economic Opportunity Division Contract Compliance Manager.

Mr. Alyea stated that Sullivan has outstanding subcontracts that cannot be approved at this time, and it causes delays on contracts. INDOT has DBE goals to meet on contracts. The availability of subcontractors in the DBE pool can be limited. When Sullivan is pulled off a contract as a DBE, it falls back on the prime contractor to replace them with another DBE to try to meet the contract's goal. If the DBE goal is not met on the contract, it places INDOT at risk with the Federal Highway Administration (FHWA) and federal funding for our projects.

Mr. Wasson asked what action the Committee can take with a contractor that is not prequalified.

Ms. Macdonald quoted the Rules for Prequalification of Contractors and Bidding in the Indiana Administrative Code, 105 IAC 11-2-10(e): A contractor that is not prequalified may be prohibited from performing subcontract work or limited in the dollar value thereof if the contractor has been found in violation of a rule that would subject a contractor to suspension, revocation, or reduction of its certificate of qualification.

Mr. Novak asked if we have statements from Sullivan on their unearned work.

Ms. Kennedy replied that information is provided to the district Equal Employment Opportunity (EEO) officers when approval of a subcontractor is requested. She stated that INDOT denied approval of Sullivan on a Dave O'Mara contract.

Ms. Sullivan, owner of Sullivan Construction, Inc. stated that they are readjusting their long term debt so that they can have a favorable prequalification amount. The work she does has long lead times, and the materials they order stays on the books until the work is installed. She stated that in the past when Sullivan got large contracts, they would complete some work, then do a change order and put more work on the books. She stated she has had conversations with Mary Konig, Vincennes District EEO Officer, and she recommended to do change orders so Sullivan could do more work.

Ms. Sullivan stated that with the E S Wagner Company (Wagner) contract, the delivery of the beams was pushed back due to weather. We have the purchase orders for this project. She stated that Sullivan has to do all of the work or Wagner won't get full credit for the DBE goal. She stated that Sullivan has not been denied as a subcontractor, but she has not signed the subcontract yet. INDOT let the contract without having the permits, and if you are awarded the contract, then it sits on your books until the prime contractor can start the work. Also the clock begins against the prime contractor, even when INDOT does not have the permits.

Mr. Gallagher asked when Sullivan expects their audit to be complete.

Ms. Sullivan replied in October.

Mr. Miller asked why Sullivan has continued to quote contractors after getting the letters on the other contracts.

Ms. Sullivan stated that until the contract is signed you don't own the work.

Ms. Kennedy stated all of the contracts that letters went out on were over the \$300,000 limit.

Mr. Novak stated it is \$300,000 for that moment, not over a period of time. On the date we go to approve you as a subcontractor, you have to have less than \$300,000 of unearned work. Based on the amount of work Sullivan already has on their books, you will have to get prequalified to do a significant amount of work.

Ms. Sullivan stated that she has no intention of not being prequalified.

Mr. Wasson stated that Sullivan's prequalification expired in April and it is now September.

Mr. Miller stated that Sullivan was prequalified at the time of the Weber/Kolb bid, but the amount was for \$3 million and Sullivan's prequalification capacity was under that amount.

Ms. Sullivan stated we are working with the bank to move capital, then will submit our application to the INDOT Prequalification Section.

Ms. Kennedy stated INDOT sent letters to the prime contractors informing them that Sullivan was not prequalified.

Ms. Sullivan stated she read past Committee meeting minutes and saw that contractors were allowed to split the work.

Mr. Novak stated splitting the work is not allowed in the Crawfordsville District.

Mr. Miller agreed that allowing subcontractors to split the work into small subcontracts should not be allowed.

Ms. Sullivan stated that seems discriminatory.

Mr. Novak stated it is the same for everyone.

Ms. Sullivan stated that as a subcontractor there is so much out of her control and it keeps the company from growing. She stated she was under the impression that INDOT and the primes were to work with the DBE's.

Mr. Novak stated it is hard for subcontractors to pick up work on multi-year contracts.

Mr. Miller stated that Sullivan should get prequalified, then they can work up to their prequalification capacity. Work may not physically happen right away.

Mr. Novak stated we don't want to discourage work for the subcontractors.

Ms. Kennedy stated that Sullivan quoted \$3 million on the Weber/Kolb contract, and that was already over Sullivan's prequalification limit.

Ms. Sullivan stated she has seen where the work has been broken up and have never been told it could not be broken up.

Mr. Alyea asked if there has to be a legally binding contract for it to be included in the subcontractor's unearned work. He stated that the AAC indicates that the subcontractor is planning to do the work.

Mr. Novak stated that Sullivan is not contracting all work at one time.

Ms. Macdonald stated that she has been Prequalification Engineer for over five years and has sent out six letters for non-prequalified subcontractors quoting over the \$300,000 limit and Sullivan was on four of those letters.

Ms. Kennedy stated INDOT is working on updating the prequalification rules.

Ms. Sullivan apologized saying she is not trying to put INDOT in a bind. She is trying to keep work on the books and service the prime contractors and fulfill obligations. She stated she did not think it was a risk to the primes. She stated that the DBE rules contradict INDOT rules.

Mr. Wasson stated that Ms. Sullivan is criticizing the rules as burdensome. The sooner Sullivan submits their prequalification application, the better.

Ms. Sullivan stated she thought it was common practice to break up jobs.

Ms. Kennedy stated we do not allow breaking up the work. The EEO officers can't approve it, because SiteManager does not allow for it. The Committee can recommend to either do nothing or restrict Sullivan from subcontracting for a period of time.

Ms. Sullivan stated we don't know when we are commented to a contract until the prime sends a contract in the mail.

Mr. Novak suggested that we should consider this a counseling session and ask Sullivan not to commit to more than \$300,000 on any given contract or in unearned work until they become prequalified.

Mr. Wasson agreed with Mr. Novak's suggestion.

Ms. Kennedy asked if the Committee's recommendation is to do nothing.

Mr. Novak stated that Sullivan's work will clear out eventually. He is asking that she not commit to more than the \$300,000 limit.

Ms. Sullivan agreed to not commit to more than \$300,000.

Ms. Kennedy asked where Sullivan was at on the projects they are committed to already.

Ms. Sullivan replied that IR-31218 is completed. IR-33734 is partially completed. And Sullivan is not under subcontract yet on the other two contracts.

Mr. Alyea stated that there is a disconnect here. Ms. Sullivan refers to not being under contract yet, but they have a commitment with those two contracts from the AAC.

Ms. Sullivan stated that Wagner would not tell her if she was included on their AAC until the contract was awarded.

Mr. Novak stated that Sullivan should not commit to more than \$300,000 on any given contract until they are prequalified.

Ms. Sullivan stated that she agrees she cannot sign the subcontract if she is over the limit.

Ms. Kennedy stated the motion on the table is to take no action today, but the Committee asks that Sullivan not commit to any extra work. She stated if the practice of quoting work above the \$300,000 limit continues, INDOT will continue to send letters to the primes.

Mr. Wasson seconded the motion.

All Committee members voted in favor.

Ms. Sullivan asked if there is something she can do now on the three remaining contracts.

Ms. Kennedy replied that Sullivan should ask the primes to reduce the amount of her work.

Ms. Kennedy adjourned the meeting at 10:42 a.m. EDT.