

PREQUALIFICATION COMMITTEE  
OPEN SESSION  
MINUTES – DECEMBER 1, 2011  
9:30 A.M. EST

The following Committee members attended the meeting:

Tiffany Mulligan	Director of Economic Opportunity and Prequalification; Chair and Non-Voting Member
Karen Macdonald	Prequalification Engineer; Committee Secretary and Non-Voting Member
Greg Kicinski	Director of Project Management; Voting Member
Mark Miller	Director of Construction Management; Voting Member
Mark Ratliff	Director of Economics, External Audit, and Performance Metrics; Voting Member
Jim Stark	Deputy Commissioner of Capital Program Management; Voting Member
Troy Woodruff	Deputy Commissioner of Operations; Voting Member
John Wright	Director of Highway Design and Technical Support; Voting Member

Also in attendance:

Heather Kennedy	Attorney, Economic Opportunity and Prequalification Divisions; INDOT
Jim Burkart	Prequalification Auditor; INDOT
Fred Bartlett	Prequalification Research Analyst; INDOT
Marie Jett	Prequalification Coordinator; INDOT
David Faulkner	Forge Construction, LLC
Larry Wethington	Forge Construction, LLC
Paul Berebitsky	Indiana Construction Association (ICA)

Gerry Burton                      Claims Administrator, Construction Management Division,  
INDOT

Monica Rongere                  Compliance Specialist, Economic Opportunity Division, INDOT

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The Committee reviewed the following agenda items:

1.      Adoption of July 27, 2011 Open Session Meeting Minutes
2.      Adoption of August 9, 2011 Executive Session Meeting Minutes
3.      Forge Construction, LLC – Consideration of Prequalification Application
4.      Committee Discussion on 2012 Meeting Dates

PREQUALIFICATION COMMITTEE MEETING  
OPEN SESSION  
DECEMBER 1, 2011

Ms. Mulligan, Committee Chair, called the meeting to order at 9:35 a.m. EST. All Committee members were present, with the exception of Joe Novak.

Ms. Mulligan asked that everyone sign the sign-in sheet that is circulating. She facilitated introductions of all individuals attending the meeting and welcomed the newest Committee member, Mr. Mark Ratliff.

Ms. Mulligan 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.

1. Adoption of July 27, 2011 Open Session Meeting Minutes

Ms. Mulligan called for consideration of the meeting minutes from the July 27, 2011 meeting.

Ms. Macdonald stated that the start of the third paragraph on page 14 should read, “Ms. Wren stated...”

Mr. Stark moved to adopt the meeting minutes from the July 27, 2011 meeting as amended. Mr. Miller seconded the motion. All members voted in favor, with the exception of

Mr. Ratliff, who did not attend the July 27, 2011 meeting. Ms. Mulligan stated the minutes would be posted on the website by tomorrow.

## 2. Adoption of August 9, 2011 Executive Session Meeting Minutes

Ms. Mulligan called for consideration of the meeting minutes from the August 9, 2011 meeting. There are two versions of the Executive Session minutes in the Committee members' packets. The full version of the Executive Session minutes will not be posted due to confidentiality of the subject matter; however, the shortened version of the Executive Session minutes will be posted on the Committee's website.

Mr. Wright moved to adopt the meeting minutes from the August 9, 2011 meeting. Mr. Miller seconded the motion. All members voted in favor, with the exception of Mr. Ratliff, who did not attend the July 27, 2011 meeting. Ms. Mulligan stated the minutes would be posted on the website within a few days.

## 3. Forge Construction, LLC - Consideration of Prequalification Application

Ms. Mulligan introduced this item regarding Forge Construction, LLC (Forge Construction). She stated that typically the contractor is already prequalified when brought before the Committee to discuss the contractor's performance. In this case the contractor is not yet prequalified. The Committee is being asked to consider the prequalification application submitted by Forge Construction. The owners of Forge Construction had previously done business with INDOT under Faulkner Construction, LLC (Faulkner Construction), and there are issues with some of Faulkner Construction's contracts with INDOT. The procedures for the meeting will remain the same. Representatives for INDOT will present information first, then Forge Construction will have the opportunity to respond. Committee members and the audience will be allowed to ask questions at the end of both presentations.

Ms. Mulligan introduced Mr. Gerry Burton, Contract Claims Administrator for Construction Management Division, to present for INDOT.

Mr. Burton stated that he would present four positions that Construction Management has in regards to issues with Faulkner Construction.

1. The first issue involves bridge abandonment by Faulkner Construction in Vigo County, Indiana. Mr. Burton commented that since he has been at INDOT, only two prime contractors have defaulted on their work. In this case, the surety company took over the work. The surety hired Faulkner Construction as the subcontractor to finish the work.
2. The second issue of concern is that it appears the insurance policy on the project had a termination date of June 26, 2011. INDOT did not take over the project until July 26, 2011. Thus, there was a lapse in insurance coverage.

3. The third issue is that five subcontractors have filed liens against Faulkner Construction. Two of the subcontractors were paid by INDOT with money that was withheld from payment to Faulkner Construction. On three contracts, there is approximately \$185,000 in outstanding liens.
4. The fourth issue relates to Faulkner Construction's failure to comply with applicable non-discrimination laws and regulations. Ms. Monica Rongere from INDOT's Economic Opportunity Division (EOD) will present those issues.

Mr. Burton stated that the following exhibits were included in the packet he provided to the Committee prior to this meeting:

- Exhibits A, A1, A2, and A3 relate to Contract B-33064-A.
- Exhibits B, B1, and B2 relate to Contract SR-32761-A. The outstanding liens total \$2,669.02 for this contract.
- Exhibits C, C1, C2, and C3 relate to Contract SB-29950-A. The outstanding liens total \$182,154.50 for this contract.
- Exhibit D relates to Contract B-28868.

Mr. Burton stated that failure by Faulkner Construction to complete the contracts and having their surety take over the contracts is an egregious concern.

Mr. Burton stated that on behalf of Construction Management he would suggest five alternatives for the Committee to consider:

1. Deny prequalification to Forge Construction,
2. Set a small limit on Forge Construction's capacity and have Construction Management monitor Forge Construction's business practices,
3. Wait to prequalify Forge Construction until they submit documentation showing they have resolved these issues,
4. Prequalify Forge Construction based on their current application, or
5. Find another alternative.

Ms. Mulligan thanked Mr. Burton for his presentation and introduced Ms. Monica Rongere, Compliance Specialist in INDOT's Economic Opportunity Division (EOD), to provide a presentation for INDOT.

Ms. Rongere stated that she sent out a notice to Faulkner Construction for the on-site review and desk review for Contract B-33064-A on March 25, 2011. The notice requested Faulkner Construction send in documentation by April 15, 2011. Faulkner Construction asked for the deadline to be extended, and EOD granted the extension. The EOD sent a second notice for the on-site and document reviews on April 27, 2011 with a deadline of May 11, 2011. The documentation was received on May 19, 2011; however, several pieces of needed paperwork were missing, such as EEO compliance records, a description of complaint process procedures for employees wanting to file an appeal, and missing On the Job (OTJ) training hours documentation.

Ms. Rongere stated that Mr. Larry Wethington, Vice President of Faulkner Construction, had requested that the on-site interview be rescheduled from April 28, 2011 to June 23, 2011, which the EOD accommodated. She stated that on the day of the on-site review, the INDOT Project Supervisor (PS) let Mr. Wethington know that EOD was on the site and would interview the employees first and then conduct the in-person interview at the field office. It was through the on-site employee interviews that it was disclosed that the bonding company had taken over the job. Upon returning to the field office after completing the employee interviews, EOD personnel discovered Mr. Wethington had already left the project site.

Ms. Rongere stated that during the on-site interview, the PS learned that Faulkner Construction's equipment and employees were still on the jobsite; however, the bonding company had taken over the contract. Because the bonding company had taken over the job site, INDOT provided no further communication with Faulkner Construction.

Ms Rongere stated that EOD could not file their report with the Federal Highway Administration (FHWA) for their onsite review because the EOD was unsure what the status of the contract was. The EOD sent a letter dated July 1, 2011 to FHWA explaining that the EOD would further investigate the situation. The EOD sent another letter dated November 1, 2011 to the Prequalification Engineer to place in Faulkner Construction's file. These letters were included in the packet to Committee members.

Ms. Rongere stated that she received a verbal confirmation that the DBE goal on Contract B-28868 had been achieved; however, the DBE-3 paperwork documenting it has yet to be submitted. She stated that Construction Management had asked Faulkner Construction to submit the DBE-3 forms on two occasions.

Ms. Mulligan thanked Ms. Rongere for her presentation and invited Forge Construction to present their response.

Mr. David Faulkner, former President of Faulkner Construction and current President of Forge Construction, responded by stating his father started Faulkner Construction in 1983, and that he has been a part of the construction business ever since. Mr. Faulkner stated that in 2010 they ran into two situations that became catastrophic for Faulkner Construction. Currently they are part of a \$2 million dollar claim in a lawsuit against the Kentucky Transportation Cabinet (KYTC). Mr. Faulkner stated that in hindsight he should have stopped the project, but instead Faulkner Construction kept trying to complete the project for KYTC. He stated that KYTC is denying all claims instead of settling issues in the field.

Mr. Faulkner stated that Faulkner Construction had three other contracts that have caused him financial trouble and one for which they were facing \$7200 in liquidated damages. He stated that in one year Faulkner Construction went from a viable company to cash strapped. In order to help with the lawsuits, he stated that he went to the bonding company. The bonding company is concerned with risk. The bonding company allowed Faulkner Construction to bring in Louisville Paving Company to help finish the projects.

Mr. Faulkner stated that Faulkner Construction has also been losing people. In October 2011, someone left, and Faulkner Construction dropped the ball on DBE issues. Faulkner Construction's female worker on the Hendricks County job left to work closer to her home. After calling the union for some replacement help, the union informed Faulkner Construction that they did not have anyone to replace her. Faulkner Construction called all the subcontractors and 90 % of them agreed to call the bonding company to work out payment. Milestone Contractors' (Milestone) claim has been settled for \$142,000 with the bonding company. Irving Materials' claim has been settled. Mr. Faulkner added that apparently not all liens have been released from INDOT. He is not sure about Ray's Trash Service (Ray's).

Mr. Wethington stated that Ray's claim has been settled.

Mr. Faulkner stated that there were no payment issues on the Vigo County job. He stated that he was not sure why Ambassador Steel and CLS Industries (CLS) filed liens.

Mr. Wethington stated that he thinks CLS's claim has been settled.

Mr. Faulkner stated that the surety should have settled all the liens and that Forge Construction is still doing business with subcontractors and suppliers. Mr. Faulkner stated that they are trying to start over as Forge Construction and that they did not hide that they were previously known as Faulkner Construction.

Mr. Faulkner stated that he has never been through this before, and they are trying to get their house back in order. It's not easy fighting lawsuits and trying to get everyone paid. Mr. Faulkner asked Mr. Wethington to discuss the DBE issues.

Mr. Wethington explained that the DBE-3 form is an acknowledgement that is forwarded to the DBE subcontractor showing that payment has been made. Faulkner Construction met the DBE goal and exceeded the requirement by 5%. Faulkner Construction used C-Tech Corporation (C-Tech) as the DBE to meet the DBE goal. He stated that he did not realize that C-Tech had not sent the form on to INDOT. Mr. Wethington received the second notice from INDOT maybe ten days before the holiday. He stated it is on his desk.

Mr. Wethington stated that the insurance company should have sent the certification of insurance to INDOT and KYTC. He stated that it is renewed every June 30<sup>th</sup>. He stated that there should be no absence of coverage.

Mr. Wethington stated that he was supposed to be at the Vigo County project field office at 2:00 p.m. and arrived at a quarter to 2:00. Ms. Fox, the Project Supervisor (PS), was at the field office and reported to Mr. Wethington that the group he was to meet with was in the field and was planning to talk with the painter. Mr. Wethington stated that a little after 3:00, Ms. Fox left the office to go to the job site to find out where EOD was at with the interviews. She returned to the office and reported that at 3:30 the group was starting their interviews. Mr. Wethington stated that he left around 4:15. It was a two and a half hour drive and he had a commitment that evening, and he could not wait any longer. Mr. Wethington stated that he told

Ms. Fox that if any further information was needed, he could be reached by phone or email. Mr. Wethington stated that he did not receive any calls or emails.

Mr. Faulkner stated that Faulkner Construction did drop the ball on some things. He thinks that the payments have been made to the various subcontractors and vendors. He stated that he understands Mr. Burton's concerns and has tried to go out of his way to make sure everyone has been paid. Mr. Faulkner added that he does not know why the liens are still in place, but added if there is still money that needs to be paid, it will be paid.

Mr. Faulkner admitted that Faulkner Construction did not meet the female participation. Faulkner Construction dropped the ball when the gentleman from their office left. He normally handled those duties. Mr. Faulkner added that they are trying to start over as Forge Construction.

Ms. Mulligan asked if there were any other questions or comments.

Mr. Stark asked Mr. Faulkner why they changed the company name.

Mr. Faulkner replied that it wasn't something that he wanted to do. There were two vendors who did not file a lien or bond claim, but filed a suit against Faulkner Construction instead. Mr. Faulkner stated that he gave the vendors instructions on how to file the claim. The vendors did not want to do the paperwork. He received advice from his lawyer to shut down Faulkner Construction.

Mr. Stark asked Mr. Faulkner if Faulkner Construction filed bankruptcy.

Mr. Faulkner replied that bankruptcy is the last thing they want to do. People do not get paid under bankruptcy.

Mr. Ratliff asked Mr. Faulkner what office support Forge Construction has and what changes have been made. If the DBE reporting fell short after losing their office worker, he wants to know if they have addressed the issue.

Mr. Faulkner replied that he now insists on getting weekly reports and is trying to get processes in place. When the company was Faulkner Construction, there were six office support personnel. Now there are four, including himself and Mr. Wethington. He stated that regarding the trainee hours, they have documented that they could not replace the lost female worker.

Mr. Stark asked Mr. Faulkner if Faulkner Construction can provide formal documentation to show claims were paid.

Mr. Faulkner responded that he can provide documentation. He stated that they keep track of the payments that have been made on a spreadsheet.

Mr. Stark asked Mr. Faulkner if they can provide the documents to show that the liens were paid.

Mr. Wethington replied that with a little time they can get the documentation from the surety.

Ms. Mulligan asked Mr. Faulkner if they have written policies in place.

Mr. Faulkner replied that he likes to have everything on an 8 ½ X 11 sheet. He can provide it to INDOT. There is no written policy.

Mr. Miller asked Mr. Faulkner if they can provide the DBE-3 form that is still needed on the one project.

Mr. Faulkner replied yes.

Ms. Rongere asked what project C-Tech worked on for Faulkner Construction.

Mr. Faulkner replied it was the Hendricks County project.

Mr. Wethington stated that he was only aware of the \$90,000 DBE issue.

Ms. Rongere responded that Faulkner Construction met the goal on the other project, and the EOD is not as concerned about it.

Ms. Mulligan stated the filing of the DBE-3 form is very important to close out the project and file the report to FHWA. Also, the paperwork for the on-site review was not submitted.

Mr. Wethington replied that he had the documents at the site with him.

Ms. Mulligan asked the Committee members if there is a motion. She stated again that Forge Construction's application is pending. She also stated that the Committee discussed the application in Executive Session. Only confidential information was discussed during the Executive Session.

Mr. Kicinski replied that he does not think the Committee can recommend prequalification until all the documentation is provided.

Mr. Stark moved to not prequalify Forge Construction until all documents are provided to Construction Management and EOD and that the Committee receives confirmation from those offices. He stated it needs to be formally done. He acknowledged that it will take time to gather and provide the information.

Mr. Faulkner states that he would request the same if he was in the Committee members' shoes. He asked what Faulkner Construction needs to provide, i.e., copies of the discharged claims and liens.

Mr. Stark replied yes.

Mr. Kicinski reminded the Committee that references are still pending for the prequalification application.

Mr. Faulkner replied that he was aware of the need for references; he received a letter from the Prequalification Section.

Ms. Mulligan stated that there is a motion on the table.

Mr. Miller stated that if Forge Construction wanted to work as a subcontractor there would not be the same issues.

Ms. Mulligan stated that the prequalification rules allow non-qualified subcontractors to work up to \$300,000 and asked if the Committee has any concern about this.

Mr. Woodruff asked Ms. Mulligan if INDOT approves subcontractors.

Ms. Mulligan responded yes, but if the Committee does not address the subcontracting question, then the contractor can work as a subcontractor up to the \$300,000 limit for non-qualified subcontractors.

Mr. Miller requested to add a motion to not allow Forge Construction to work as a subcontractor until all the paperwork is provided and approved.

Ms. Mulligan repeated the motion: The Committee recommends denying prequalification to Forge Construction until they have submitted documentation to Construction Management and EOD regarding the issues discussed and until those offices have provided notice to the Prequalification Section stating that the issues have been resolved. In addition, the Committee recommends denying Forge Construction to work as a subcontractor until these issues are resolved. Ms. Mulligan stated that the first part of the motion can be adopted without the Commissioner's approval; however, the second part of the motion, which does not allow Forge Construction to work as a subcontractor, would have to go to the Commissioner for approval.

Mr. Faulkner asked that after the information is provided and approved, can Forge Construction go back and work as a subcontractor.

Ms. Mulligan asked Ms. Rongere what issues remain with EOD.

Ms. Rongere replied that there are two DBE-3's needed plus another project that was taken over by the bonding company. She stated that she does not know what is needed for that project.

Mr. Faulkner asked if that was the Vigo County project. He asked if a list of the information that is needed will be provided to him.

Ms. Heather Kennedy, attorney for the EOD and Prequalification Division, replied that a letter will be provided.

Mr. Woodruff replied that Mr. Faulkner's question was not answered. Mr. Faulkner had asked if the issues are cleaned up, can Forge Construction begin working as a subcontractor.

Ms. Mulligan replied that we can rescind the restriction once the documents are approved by Construction Management and EOD, or we can ask for it to come back to the Committee for approval.

Mr. Woodruff responded that he did not want it to come back to the Committee.

Ms. Mulligan stated that Construction Management and EOD can provide a report to the Prequalification Section and they can send a letter out rescinding the restriction.

Mr. Faulkner replied that he can provide documentation from the bonding company and may have to call the subcontractors directly to make sure the liens have been lifted.

Ms. Mulligan stated that a motion was made by Mr. Stark and amended by Mr. Miller.

Mr. Kicinski seconded the motion.

All Committee members voted in favor.

Ms. Mulligan stated that one letter will be sent from the Prequalification Section and another letter regarding the subcontracting restriction will go to the Commissioner for his approval.

#### 4. Committee Discussion on 2012 Meeting Dates

Ms. Mulligan introduced the Committee meeting scheduled for 2012. The meetings are scheduled for the first Thursday of every month. If there is nothing on the agenda, then the meeting will be cancelled. She stated that special meetings may come up.

Ms. Mulligan asked for a motion to accept the Committee meeting schedule.

Mr. Stark moved to adopt the schedule, and Mr. Miller seconded the motion. All members voted in favor.

Mr. Stark asked if contractors get prequalified each year.

Ms. Macdonald replied yes and added that consultants are prequalified every two years.

Mr. Stark asked that in regard to the contractor prequalification rules, if there is an issue with compliance from a contractor, does that automatically disqualify the contractor from being prequalified. This needs to be added to the rules. The rules need to state that if the contractor was not compliant, then the prequalification status will be affected.

Ms. Mulligan stated that no, it is not automatic.

Mr. Stark stated that we need to add it to the rules.

Ms. Macdonald stated that Mr. Miller signs the Certificate of Qualification, and he has not been signing certificates if contractors have outstanding claims.

Ms. Mulligan stated that there are provisions in the rules for considering compliance issues, but they are not automatic. Ms. Mulligan added that we are in the process of revising the rules and explained that in order to revise the contractor rules, we have to go through the rule making process.. The process takes about a year and is very time sensitive with deadlines. Ms. Mulligan stated that after the first of the year she would like to have some internal meetings with INDOT staff including Construction Management and the Committee to discuss possible rule changes. Then we would present the proposed changes to outside groups. For the rule making process, a notice of intent must be issued and then the clock starts running. A good draft, cost benefit analysis, small business analysis, and an economic statement all have to be ready. Ms. Mulligan asked that if any Committee member was interested in helping with the process, to please let her know.

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

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

Ms. Mulligan adjourned the meeting at approximately 10:55 a.m.