

PREQUALIFICATION COMMITTEE
OPEN SESSION
MINUTES – DECEMBER 11, 2014
1:30 P.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 Fegasas	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:

John Leming	Consultant Prequalification Analyst; INDOT
Lori Torres	Chief Legal Counsel and Deputy Commissioner; INDOT
Jennifer Jansen	Managing Attorney, Legal Services; INDOT
Lynn Butcher	Director of Litigation; INDOT
Linda Jelks	Attorney; INDOT
Mark Hawkins	Attorney; INDOT
Laura Hilden	Director of Environmental Services; INDOT

Patrick Carpenter	Manager of Cultural Resources, Environmental Services Division; INDOT
Jeffrey Laswell	Archaeologist, Environmental Services Division; INDOT
David Moffatt	Archaeologist, Environmental Services Division; INDOT
Matt Coon	Archaeologist, Environmental Services Division; INDOT
Joan Widdifield	Administrative Manager, Contract Administration; INDOT
Larry Stillwell	Principal; Archaeological Consultants of Ossian
Leslie Lahndt	Federal Highway Administration (FHWA)
Paul Berebitsky	Indiana Construction Association (ICA)
Dan Osborn	Indiana Construction Association (ICA)
Trent Newport	Crossroad Engineers for American Council of Consulting Engineers (ACEC)

The Committee reviewed the following agenda items:

1. Adoption of September 4, 2014 Open Session meeting minutes
2. Force Construction Company, Inc. – Status update on performance
3. Archaeological Consultants of Ossian – Non-performance on INDOT projects and compliance with Section 106 requirements
4. Prequalification Committee Procedures and Practices
 - a. Issues and suggestions from members at meeting
 - b. Procedures for submitting issues (2014 proposed revision and 2010 current document)
 - c. Discussion on using performance evaluations at meetings
 - d. Discussion on application of experience reduction factor
 - e. Suggestions on Meeting Procedures (2010 current document)
 - f. Suggestions on Charter (2010 current document)

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION
DECEMBER 11, 2014

Mr. Tidd, Committee Chair, called the meeting to order at 1:32 p.m. EST. All Committee members were present at this time, except Mr. Stark.

1. Adoption of September 4, 2014 Open Session meeting minutes

Mr. Tidd called for consideration of the meeting minutes from the September 4, 2014 meeting.

Mr. Feagans moved to adopt the meeting minutes from the September 4, 2014 meeting. Ms. Fegaras seconded Mr. Feagan's motion. All members voted in favor. Mr. Tidd stated the minutes would be posted on INDOT's website.

2. Force Construction Company, Inc. (Force) – Status update on performance

Mr. Tidd provided a status update regarding this item. At the September 4, 2014 meeting, the Committee recommended to lift Force's bidding capacity restriction with the understanding that status updates would be provided regarding Force's performance at each meeting over the next year. Since the last meeting, the Prequalification Division received one CR-2 report. Mr. Tidd summarized the report. Force scored a negative one on the report for question D.4, which was "The contractor managed the work to maximize the quality of work and use of good construction practices." The rest of the scores were zeros, which either indicates that they are at standard, or that the question did not apply. Mr. Tidd read the comments on the report, which were, "As a result of poor management and scheduling of bridge construction, the finished surfaces of cast-in-place concrete was less than desired. Early in the life of the contract, the topic of concrete finishing was discussed among both INDOT and Force Construction representatives. INDOT stated that all concrete surfaces shall be rubbed after the forms were removed according to INDOT Standard Specification 702.21. These tasks were never completed as discussed due to the contractor's management choices and/or scheduling. In short, Force Construction responded by stating that they do not rub concrete surfaces anymore. Another similar topic discussed was the need to consistently apply curing compound to cast-in-place concrete. Contractor personnel were not properly maintaining spray nozzles in order to provide an even application of curing compound. Due to the contractor's management choices and/or scheduling, the application of curing compound never improved."

Mr. Tidd stated that no action is to be taken at this time.

Mr. Feagans asked if a running total of the reports can be provided for future meetings.

Mr. Tidd replied that CR-2s will be provided in members' packets in the future.

NEW ITEM - Mr. Tidd added a new item to the agenda, regarding a status update on Jack Isom Construction Company (Isom).

Mr. Tidd stated that Heather Kennedy, Director of INDOT's Economic Opportunity Division, reported that Isom has not provided the monthly reports showing Isom has paid their subcontractors on a timely basis. Also, Isom has not submitted a QA/QC plan. Both of these items were recommended by the Committee at the September 4, 2014 meeting.

Ms. Fegaras stated she asked her staff to report to her on Isom's performance, but she did not having anything to report today.

3. Archaeological Consultants of Ossian (ACO) – Non-performance on INDOT projects and compliance with Section 106 requirements

Mr. Tidd stated that INDOT'S Cultural Resources Office (CRO) brought this issue to the Committee regarding ACO. Mr. Tidd explained the Committee meeting procedures: a representative from INDOT will have 30 minutes to presents the issue first, the contractor will have 30 minutes to respond, then Committee members may ask questions.

Mr. Hawkins, Attorney with INDOT and appointed to represent CRO in this matter, presented the issue with a slideshow. He stated that CRO recommends that INDOT suspend ACO and Larry Stillwell for one year due to ACO's non-performance on INDOT projects and non-compliance with Section 106 requirements. ACO has had a pattern of non-performance on three projects over the past two years. ACO failed to properly inspect properties and falsified reports in some cases. ACO failed to meet minimum standards of applicable laws and guidelines. ACO's pattern of non-performance exposes INDOT to risks. ACO has cost INDOT in project delays.

Mr. Patrick Carpenter, INDOT's Cultural Resources Manager, continued with the slideshow. He stated that CRO administers Section 106 of the National Historic Preservation Act for FHWA. Section 106 requires that CRO make reasonable and good faith efforts to identify historic properties and consider the effects of projects on properties included in or eligible for the National Register of Historic Places.

Mr. Carpenter stated that ACO was hired to identify historic properties. ACO failed to properly inspect INDOT project areas and falsified work in reports submitted to INDOT. Archaeological consultants are required to 1) make reasonable and good faith efforts to identify historic properties, 2) meet the professional qualification standards per 36 CFR 61, and 3) comply with code of ethics and professional standards in accordance with 312 IAC 21-3-4(h) and IC 14-21-1-31. The Indiana Department of Natural Resources (DNR) Division of Historic Preservation and Archaeology (DHPA) produced the Guidebook for Indiana Historic Sites and Structures Inventory and Archaeological Sites (Guidebook). The guidebook governs archaeological professional standards and code of ethics.

Mr. Carpenter stated that ACO has not fulfilled their contractual obligations. ACO misrepresented work on two projects. ACO failed to meet minimum standards on three projects. He stated that there have been other instances where ACO did not meet minimum standards.

Mr. Carpenter stated that the guidebook dictates that shovel probes be placed at a maximum of 15 meter intervals where ground surface visibility is less than 30% and surface slope is less 20% or 11 degrees for Phase I investigations. Shovel probes must be placed at a maximum of 5 meter intervals in areas of previously reported archaeological sites.

Mr. Carpenter stated that on the first project, which was an LPA project, ACO claimed 143 probes were placed in the location of a previously identified site. CRO initially accepted ACO's report, but CRO subsequently visited the site and found only 3 probes. He stated that ACO also reported that they had talked with the property owner. After CRO discovered the discrepancy in the number of shovel probes, Mr. Stillwell acknowledged the report had been fabricated. The LPA could have lost federal funding on this project.

Mr. Carpenter stated that 3.5 acres at this project site were not investigated that should have been, according to the guidebook.

Mr. Carpenter stated that during re-examination of the site, ACO discovered artifacts from the potentially eligible archaeological site, which triggered a Phase II investigation.

Mr. Carpenter stated that the Phase II investigation is more detailed, including determining the sites boundaries. The State Historic Preservation Office (SHPO) requires a work plan for Phase II. ACO's work plan stated that 1) all fills from the units would be screened through ¼ inch wire mesh and 2) the excavation documented through detailed field notes, maps, and scaled photographs. The guidebook also requires that unfinished excavated units must be covered with plastic or tarps immediately or as soon as weather conditions permit.

Mr. Carpenter stated that ACO did not screen the upper plow zone as required in the work plan. An email from Mr. Stillwell acknowledged this fact.

Mr. Carpenter stated that CRO asked ACO to notify them before Phase II began on the project.

Mr. Carpenter stated that ACO did not show all information required by the guidebook when showing pictures in reports. The unit walls were not cleaned, the soil strata was not visible and not described, the scale was not shown, and the north arrow was not shown.

Mr. Carpenter stated that ACO did not cover the excavated units. INDOT found the units filled with rainwater. They had been exposed for four days.

Mr. Carpenter stated that CRO had to micromanage the project. He stated they have not had to do this for other consultants. Mr. Carpenter stated that CRO staff spent an inordinate amount of time to review the project.

Mr. Carpenter stated that ACO reported that 173 shovel probes were done at 15 meter interval for the second project. CRO visited the site and discovered that shovel probes had not been done. Mr. Carpenter stated that ACO admitted that the report was fabricated. Approximately 10 acres were not surveyed.

Mr. Carpenter stated that ACO did not backfill probe holes properly. INDOT found that the project was not properly surveyed. Shovel probes were found near shoulders where area has been disturbed previously, but probes were not found in areas further away. The right-of-way on this project is 75 feet from the centerline.

Mr. Carpenter stated that if there is a previously found site, then the site must be probed on a 5 meter grid. On the third project, ACO thought a site had already been evaluated and determined to not qualify as a historic site; however, that was not the case. A determination had not been made previously.

Mr. Carpenter stated that ACO's failures have exposed INDOT to risk. ACO has falsified two reports, and continually failed to perform duties to minimum standards.

Mr. Hawkins stated that INDOT has been exposed to risks due to these incidents, including possible loss of federal funding. CRO has spent a disproportionate amount of time overseeing ACO's projects.

Mr. Hawkins recommends a one year suspension that applies to ACO or any other firm that hires Mr. Stillwell or uses Mr. Stillwell as a qualifying person for prequalification. He also recommends that ACO and Mr. Stillwell come back to the Committee prior to reinstatement of any prequalification.

Mr. Stillwell provided two handouts for the Committee members. He stated that ACO has been prequalified with INDOT since 2005 and has had contracts with INDOT back to 2003. ACO has performed 28 records checks with no fieldwork required, 88 Phase Ia field reconnaissances on road or bridge projects, 27 Phase Ia field reconnaissances on trail projects, 128 Phase Ia field reconnaissances on borrow or disposal areas, and 4 subsurface reconnaissances and/or Phase II testing projects for a total of 275 projects for INDOT.

Mr. Stillwell acknowledged that those two projects were falsified and claimed that it was because the field crew chief provided the false information. ACO's reports were based on the information the field crew provided. The issues came up after INDOT visited the site. ACO's field chief was let go.

Mr. Stillwell admitted that some things were not done properly. He stated that a bag of artifacts was misplaced and a photo board was not used.

Mr. Stillwell stated he was out of town when he got the call from INDOT about the second project. The report was falsified, but he claimed that it was not a deliberate act.

Mr. Stillwell stated that the third issue was with the known site. He stated that this site was investigated at least three times. Ball State University did an investigation of the site in 2007, but he could not get a copy of their report. Mr. Stillwell stated that someone from SHPO had investigated the site, but the area had shifted.

Mr. Stillwell stated that he fired Mr. Alan Miller and two other workers. Last month he hired Mr. Keith Lautzenheiser. Mr. Stillwell stated that after the Phase II testing project in Monroe County, he decided that ACO is not set up to do Phase II testing.

Mr. Stillwell stated that he feels a one year suspension is harsh. He suggests a 90 day suspension and a meeting with CRO.

Mr. Feagans asked if ACO went back to the sites to check. Mr. Stillwell stated that he used to not go out to check his staff's work, but he is going out now that these issues came up.

Mr. Holtz asked both Mr. Carpenter and Mr. Stillman what they consider minimum standards.

Mr. Carpenter stated that the principal investigator at the site should be on SHPO's Qualified Professionals Roster.

Mr. Stillwell stated that SHPO and CRO have two different set of standards. Not one of ACO's reports submitted to SHPO has come back. It is a matter of adapting to what INDOT wants and what SHPO wants.

Mr. Holtz asked how many of ACO's 275 projects were under Mr. Miller's responsibility.

Mr. Stillwell replied about one-third.

Ms. Fegaras asked how ACO will assure INDOT that the new staff are performing at standard. Mr. Stillwell stated that he is hiring people that CRO has previously approved. He also stated that he is spot checking the investigations.

Mr. Feagans asked about Mr. Stillwell signing reports without going out to the site. Mr. Stillwell replied that he relied on his crew chief. Mr. Carpenter replied that it might be standard practice. DNR suggests that there should be a qualified field director at the site.

Mr. Carpenter stated he feels there is a pattern of poor behavior. One ACO staff member was at all three sites. ACO should have been aware that there were problems.

Mr. Stillwell stated that he is now taking pictures of all shovel probes.

Mr. Tidd stated that CRO's recommendation is for a one year suspension to include ACO and any company Mr. Stillwell owns or goes to work for as a qualifying person. Also, after the

suspension, ACO and Mr. Stillwell have to come back to the Committee before becoming prequalified again. Mr. Tidd stated that Mr. Stillwell requested a shorter suspension.

Mr. Cales stated that even though we are only talking about a few projects today, it could be a lot bigger than this. Mr. Tidd asked if ACO has checked any of the other projects that Mr. Miller had supervised to determine if they were done correctly or not. Mr. Stillwell stated he did not go out to visit the other sites. ACO is now taking pictures and he is now visiting sites on current projects.

Ms. Fegaras recommended that a QA/QC plan be submitted and CRO verify that ACO is following it. Mr. Tidd suggested that CRO does not have the time to check all of ACO's projects for QA/QC. Mr. Carpenter suggested that ACO provide examples showing that they are performing better and that ACO has a qualified person on site. Also ACO should notify CRO when they are onsite and when they are done so that CRO can spot-check some sites. He also suggested that ACO be required to attend Section 106 training.

Mr. Stark showed up to the meeting, and agreed to abstain from voting on this issue.

Mr. Feagans moved to recommend 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. Novak seconded Mr. Feagans' motion.

Mr. Ratliff moved to recommend removing the one year suspension. He suggested to make it indefinite, but to have ACO meet the remaining requirements.

Ms. Fegaras asked if six months is long enough.

Mr. Tidd stated that CRO should report that either ACO has showed that they have made changes, they have not made changes, or there are not sufficient examples to show that they have made changes.

No one seconded Mr. Ratliff's amended motion.

Mr. Leming informed Mr. Tidd that LPAs require that consultants be prequalified with INDOT. Mr. Holtz asked ACO if they have work with other entities. Mr. Stillwell replied yes.

Mr. Tidd asked for a call to vote on Mr. Feagans' motion.

All members voted in favor of Mr. Feagans' recommendation, except Mr. Stark who abstained.

Mr. Tidd stated that this recommendation will go to the Commissioner for his review and approval. We will send a letter to Mr. Stillwell afterwards.

4. Prequalification Committee Procedures and Practices

a. Issues and suggestions from members at meeting

Ms. Fegaras suggested the Prequalification Division provide education at the district Construction Conferences. Possibly hold a meeting in the IGC South building.

b. Procedures for submitting issues (2014 proposed revision and 2010 current document)

Mr. Stark brought up the dispute resolution process and suggested that coming to the Prequalification Committee should be the last step. This issue procedure should only be used after the issue goes through the dispute resolution process.

Mr. Tidd stated that there may be an emergency case. Another case is when the Prequalification Division denies an application.

Mr. Novak suggested the dispute resolution process be added to the checklist attached to the issue procedure document.

Mr. Tidd, Mr. Feagans and Mr. Holtz discussed the dispute resolution process. INDOT is required to follow it, but the contractors and consultants are not required to follow it, and INDOT cannot hold it against them in regards to prequalification.

Ms. Torres suggested that the document be redrafted and resubmitted at the next meeting.

c. Discussion on using performance evaluations at meetings

No discussion on this subject.

d. Discussion on application of experience reduction factor

No discussion on this subject.

e. Suggestions on Meeting Procedures (2010 current document)

No discussion on this subject.

f. Suggestions on Charter (2010 current document)

No discussion on this subject.

The remaining items will be discussed at a subsequent meeting.

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

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

Mr. Tidd adjourned the meeting at approximately 4:16 p.m. EDT.