

PREQUALIFICATION COMMITTEE
MINUTES - NOVEMBER 12, 2009
8:30 A.M. EDT

The following Committee members attended the meeting:

Karen Macdonald	Prequalification Engineer, Contract Administration Division; Committee Secretary and Non-Voting Member
Martha Kenley	Director, Economic Opportunity Division; Chair and Non-Voting Member
Tony Hedge	Director, Accounting Division; Voting Member
Greg Kicinski	Manager, Office of Project Management; Voting Member
Grant Knies	Budget Analyst; Voting Member
Tiffany Mulligan	Attorney, Legal Division; Counsel to the Committee and Voting Member
Joe Novak	Construction Director, Crawfordsville District; Voting Member
Jim Stark	District Deputy Commissioner, Seymour District; Voting Member

Also in attendance:

Frederic Bartlett	Prequalification Section, Contract Administration; INDOT
Paul Berebitsky	Indiana Construction Association
Mike Beuchel	Estimating Manager, Contract Administration; INDOT
Mary Brouillette	Equal Employment Opportunity Officer, Vincennes District; INDOT
Joe Hardwick	Laborers Union
Mike Kopp	General Counsel and Chief Compliance Officer; Gohmann Asphalt and Construction Inc.
Steve Passaloukos	President; Five Star Painting, Inc.
Mike Porter	District Council 9 Field Representative; International Union of Painters and Allied Trades

Kevin Resler	Contract Compliance Manager, Economic Opportunity Division; INDOT
Mike Rowe	Prequalification Auditor, Contract Administration; INDOT
Brian Short	Laborers Union
Trent Short	Laborers Union

The Committee reviewed the following agenda items:

1. Adoption of September 10, 2009 meeting minutes
2. Adoption of Business Rules
 - a. Business Rules for Prequalification of Companies Submitting Consolidated Statements
3. Five Star Painting, Inc. – prevailing wage and fringe rate compliance on Contract B-25804
4. Update on internal committees

PREQUALIFICATION COMMITTEE MEETING
OPEN SESSION NOVEMBER 12, 2009

Martha Kenley, Committee Chair, called the meeting to order at 8:32 a.m. EDT. She facilitated introductions of all individuals present. All Committee members were present, with the exception of Mark Miller.

1. Adoption of September 10, 2009 Meeting Minutes

Martha Kenley called for consideration of the meeting minutes from the September 10, 2009 meeting.

Jim Stark moved to adopt the meeting minutes from the September 10, 2009 meeting. Tony Hedge seconded the motion. All members voted in favor. Martha Kenley stated the minutes would be posted on the website.

2. Adoption of Business Rules for Prequalification of Companies Submitting Consolidated Statements

Martha Kenley proposed the adoption of the Business Rules for Prequalification of Companies Submitting Consolidated Statements. She stated that Paul Berebitsky of the Indiana Construction Association (ICA) submitted comments to the Committee at the last meeting. Committee members then submitted comments on ICA's suggested changes to Tiffany Mulligan, who reviewed the comments and incorporated many of the suggested changes into the document. Ms. Kenley asked if there were any questions.

Tiffany Mulligan suggested a technical change to the last sentence in Item II. 6 to add the word "entity's" before "vehicles" to clarify which vehicles the contractor would be asked to identify.

Martha Kenley called for a motion to adopt the business rules as amended. Greg Kicinski moved to adopt the business rules as amended. Joe Novak seconded the motion. All members voted in favor.

3. Five Star Painting, Inc. – Prevailing Wage and Fringe Rate Compliance on Contract B-25804

Martha Kenley called for consideration of Five Star Painting, Inc.'s (Five Star) compliance with the prevailing wage and fringe rate requirements on Contract B-25804.

Martha Kenley introduced Kevin Resler, INDOT's Contract Compliance Manager with the Economic Opportunity Division, and Mary Brouillette, INDOT's Vincennes District Equal Employment Opportunity Officer, who brought the matter to the Committee for its consideration.

Kevin Resler stated Mary Brouillette brought to his attention concerns that Five Star was in violation of Contract B-25804, specifically for failure to meet federal Davis Bacon requirements. He explained INDOT had numerous problems with Five Star on the Contract, including problems getting needed documentation from Five Star and problems with inconsistent information in documents submitted by Five Star with what actually happened on the job site.

Kevin Resler stated Five Star paid one of its employees, Harold Goad, for labor at \$17.00 per hour, which is below the prevailing wage rate. He stated Five Star and INDOT argued as to whether Mr. Goad was a trainee or in fact a laborer.

Martha Kenley clarified meeting procedures by explaining that INDOT would present its issues first, then it would let Mr. Passaloukos from Five Star respond. Committee members and other interested parties would have an opportunity to ask questions and comment after both sides had presented information to the Committee.

Kevin Resler stated Five Star was in arrears of \$70,000 for benefits to employees. He stated he was concerned whether the payroll registry reflected what actually occurred on the job. He stated there were discrepancies with who was on the job and who was actually performing the labor.

Kevin Resler stated Five Star agreed to correct the health and welfare benefits payments with Gohmann Asphalt and Construction, Inc. (Gohmann), the prime contractor on the Contract; however, when Gohmann issued joint checks, Five Star Painting, Inc. refused to sign the checks.

Mary Brouillette stated Mr. Goad was concerned about his wages and wanted to speak to INDOT about being underpaid; however, he expressed concerns about losing his job for speaking up. According to Ms. Brouillette, Mr. Goad explained he was working with painters with the same level of experience and also worked as a boatman. He said Five Star told him he would be put on a weekly salary of \$500 regardless of how many hours he worked. Mr. Goad told Ms. Brouillette that he worked forty plus hours a week.

Martha Kenley questioned what amount Five Star should have paid Mr. Goad.

Mary Brouillette stated Five Star should have paid Mr. Goad \$26.60 per hour, plus \$8.00 for the benefit package.

Mary Brouillette stated the Foreman on the job explained that Mr. Goad was working under a rent lease agreement with Five Star. She stated they did not have such an agreement. When she contacted Five Star, she was told they would return her call and never did. Mr. Goad was then terminated and left the area, and she was unable to proceed.

Mary Brouillette stated Mr. Goad returned to the area and presented all his pay stubs. Upon her review she discovered the payroll register did not match up with the payroll stubs. Mary Brouillette questioned if the payroll register was fabricated when presented to INDOT. She discovered Mr. Goad was not paid for all his hours when working as a boatman.

Martha Kenley questioned what a boatman was.

Mary Brouillette explained that the Occupational Safety and Health Administration (OSHA) requires a safety person to be in the water when workers are performing a job over water. This is a boatman.

Steve Passaloukos explained OSHA requires a boatman when a platform is being built, and once the platform is up, a boatman is not needed; however, the prime contractor requested a boatman at all times.

Mary Brouillette stated Five Star did not provide her with payroll records when she requested them.

Mike Porter stated he has records showing pay variations and that four other members did not receive pension or fringe benefits.

Martha Kenley asked if there were any questions from Committee members on INDOT's presentation of the issues before the Committee.

Greg Kicinski asked how many people were on site for Five Star.

Mary Brouillette stated it varied from day to day - sometimes approximately fifteen people a day or sometimes just two to three people a day.

Mary Brouillette stated she was concerned that the pay stubs did not match up with the payroll register. She also stated Five Star promised extra pay on Sunday.

Mike Porter stated he had pay stubs from other employees for review. He also stated employees were not aware that Five Star was not paying their benefits.

Steve Passaloukos stated Harold Goad was never employed as a painter; he was a boatman. Mr. Passaloukos was not sure how to list him on payroll. He stated he told Mr. Goad to go to the union and sign up as an apprentice, but he never did. Mr. Passaloukos stated he listed him as an apprentice because he didn't know how else to list him. He also stated Mr. Goad was provided an apartment and paid \$200 a week for lodging that wasn't reflected on the payroll.

Steve Passaloukos stated the prime contractor insisted Mr. Goad continue to be a boatman regardless of the platform being up. He stated once Mr. Goad's boat duties were finished he asked him again to join the union so he could keep his job. He explained Mr. Goad never joined the union so he was terminated.

Steve Passaloukos stated he was behind on paying his fringe benefits to employees so the painter's union put a lien on the job and Gohmann Asphalt stopped paying him. He stated Five Star sent a check, and Gohmann Asphalt released some of the funds; however, Gohmann was still holding some of the money owed to Five Star.

Martha Kenley asked if Five Star could afford to pay fringes to the union.

Steve Passaloukos stated there were discrepancies of exactly how much was owed. He stated Five Star has not had any work and has no cash flow.

Martha Kenley questioned the discrepancies between certified payrolls and pay stubs.

Mary Brouillette stated it was not a major discrepancy. She stated payroll checks should match the accounting system, and when she looks at pay stubs and the payroll register and they don't balance, she has to wonder if they were prepared separately or somehow fabricated.

Steve Passaloukos stated he entered the figures into the computer, and the computer calculated the amounts.

Martha Kenley asked if Committee members had any questions.

Greg Kicinski asked if Mr. Goad did painting on the job.

Mary Brouillette stated she talked to witnesses that said Mr. Goad did in fact do painting and other jobs.

Steve Passaloukos stated Mr. Goad never did any painting on the job, he was not hired to do any painting and he should not have been painting.

Mike Porter stated Harold Goad did join the union.

Steve Passaloukos asked when Mr. Goad joined the union.

Mike Porter stated he was not sure, but it could have been after Five Star hired Mr. Goad.

Martha Kenley asked if Five Star would have turned in payrolls when INDOT requested, whether Gohmann would have paid Five Star the money owed rather than withholding the money.

Steve Passaloukos stated yes, that was correct.

Tiffany Mulligan asked what the difference is between what Gohmann thinks Five Star owes in benefits and what Five Star thinks is owed.

Steve Passaloukos stated he does not know what the difference is.

Mary Brouillette stated if payroll registers were made at the same time as pay stubs, then there should not be a problem.

Mike Porter stated Five Star is approximately \$70,000 behind in lost wages, fringe benefits and insurance on members.

Steve Passaloukos stated Five Star paid wage rates at either 65% or 85% of the Davis Bacon wage rates under the International Maintenance Agreement. He stated Mr. Goad was on the job from January, 2008 to August, 2008 and the negotiated amount of payment to Mr. Goad was \$500 per week.

Joe Novak asked under what conditions a contractor could pay employees at rates of 85% or 65% of the Davis Bacon wage rates.

Steve Passaloukos stated helpers can be paid at those rates.

Mike Kopp stated Five Star never provided Gohmann with an amount Five Star thought was owed to its employees.

Tony Hedge questioned who told Five Star the International Maintenance Agreement could be used.

Steve Passaloukos stated it was Tom Faulkner in INDOT's Greenfield District during a conversation involving another contract, which Five Star worked on a few years ago.

Martha Kenley asked Steve Passaloukos if he certified that he did something he actually did not do.

Steve Passaloukos stated yes, he guessed he did certify that he paid the proper rates when he did not. He stated he intended to pay the employees the proper rates when he signed the certified payrolls, but right now he is not able to.

Martha Kenley asked if Five Star had been paid on a timely basis, would they have made payments to the union for fringe benefits.

Steve Passaloukos stated basically yes, he would have. He stated he had been current for the past two years and it was not until near the end of the project that he got behind.

Mary Brouillette stated Five Star has worked on INDOT projects in the past and knows how projects work, but Five Star brought Mr. Goad on the jobsite regardless of INDOT policies.

Steve Passaloukos stated Mr. Goad was not qualified to paint and that he never saw him paint.

Mike Porter stated Mr. Goad is a Journeyman, who has been performing painting and blasting.

Mary Brouillette stated the Project Supervisor on the job saw Mr. Goad painting and blasting.

Tiffany Mulligan asked if Gohmann has paid Five Star for all of its work on the project, except for the prevailing wage and fringe amounts at issue today.

Mike Kopp stated Gohmann has paid Five Star for everything but the disputed amounts and has written a joint check to Five Star and the Union for those amounts. Mr. Kopp indicated that Gohmann wanted to make sure everyone on the job had been paid properly.

Tony Hedge questioned who at INDOT told Five Star to use Labor Tender 1 and Labor Tender 2.

Mary Brouillette stated if an employee was a non-union member they should have been paid at Davis Bacon prevailing wages.

Steve Passaloukos stated he feels the \$200 per week for lodging should be considered a benefit.

Tony Hedge stated lodging should not be deducted from pay.

Martha Kenley questioned if Steve Passaloukos certified that fringes had been paid.

Steve Passaloukos stated he had been making monthly payments.

Mary Brouillette stated the instructions are on the back of certified payrolls stating fringes will be paid, but fringes do not have to be paid at the same time as an employee is paid.

Jim Stark asked when certified payrolls were due.

Mary Brouillette stated they are due seven days after the pay period. She stated the certified payrolls were two to three months late.

Jim Stark asked when Five Star was submitting payments.

Mary Brouillette stated sometimes Five Star was months overdue and was never timely.

Martha Kenley asked if there were any additional comments.

Mary Brouillette stated she expects compliance on all contracts. Here she questioned why payroll registers weren't submitted when asked for, which made her investigate further.

Greg Kicinski asked if everything was turned in now. Mary Brouillette stated yes.

Steve Passaloukos stated it was difficult to submit everything timely when he was out in the field and had no one in the office.

Greg Kicinski questioned the disagreement with the union over the amounts owed and asked what Five Star believed it owed the employees.

Steve Passaloukos stated Five Star owed \$28,000 for pension and \$16,000 for other benefits, but he wasn't sure of the exact amount.

Greg Kicinski asked what the reason was for the discrepancy between what Gohmann and the union thought Five Star owed and what Five Star thought it owed. He asked whether they disagreed on the number of hours worked, the rates to be paid, or something else.

Mr. Passaloukos said he did not know.

Martha Kenley asked if Mr. Passaloukos brought any documents for the Committee to review to the meeting.

Steve Passaloukos stated he didn't realize it would be such a formal meeting, and he did not have any documents for review.

Mary Brouillette stated the wages being paid were not Davis Bacon scale and part of the discrepancy was the hours Mr. Goad worked.

Steve Passaloukos stated Mr. Goad did not work forty hours per week.

Jim Stark stated the issue is not about the money but about compliance on the contract. He stated the subcontractor looks to the prime to be in charge.

Greg Kicinski agreed with Jim Stark that it was a compliance issue and stated he was questioning if Five Star disagreed with the discrepancy amounts owed.

Tiffany Mulligan noted the joint checks issued by Gohmann were dated in June, but Five Star had not made any progress on resolving the issue. She asked if there was anything preventing the parties involved from getting together and resolving the issue.

Mike Porter stated that would not be a problem from his end, and he had the dollar amount owed for benefits.

Kevin Resler stated the interested parties arrived at the amounts owed in March, and Five Star had been given plenty of time to make a counter proposal.

Tony Hedge asked to what extent was Five Star advised to come prepared to the meeting.

Karen Macdonald stated INDOT sent Five Star a letter requesting Five Star attend the Committee meeting last week. She called to follow up and was told by Mr. Passaloukos that he didn't receive the letter. She stated she then faxed him a copy of the letter with an agenda attached. No one from Five Star called to ask about the issues.

Tiffany Mulligan stated the letter contained the contract number and indicated the Committee would be considering Five Star's compliance with prevailing wage and fringe rate requirements.

Steve Passaloukos stated he thought it was an informal meeting to resolve the issues.

Martha Kenley asked Committee members if anyone had additional questions or a motion for the Committee's consideration.

Tony Hedge stated the documents in the packet show INDOT has a long history of doing business with Five Star, and it appears that except for in the mid 1990's there hasn't been any issues with them.

Mary Brouillette stated this was her first involvement with Five Star.

Tony Hedge stated he observed there was a long period of time where INDOT had no problems with Five Star, and now there is a major issue. Mr. Hedge expressed concern over what action might be appropriate.

Jim Stark stated he believes the Committee is responsible for noncompliance issues. He stated the rules clearly state contractors are supposed to supply certified payrolls, and Five Star did not supply those in a timely manner for this Contract. He stated regardless of not having any issues with Five Star in the past, Five Star is not complying with contract requirements now.

Jim Stark stated if Five Star does work on INDOT contracts, then it has to comply with INDOT rules. He stated the Committee needs to make a decision what do to about Five Star's noncompliance.

Martha Kenley called for a motion.

Greg Kicinski questioned how many contracts Five Star has with INDOT.

Steve Passaloukos stated he currently has no contracts with INDOT, but he maybe had three or four this summer.

Mary Brouillette stated it is her job to partner with the prime and sub contractor and ensure all parties comply with the terms of the contract. She stated she tries to work together to ensure INDOT's federal funds are not in jeopardy, and she needs a level of cooperation to make sure the job is successful.

Jim Stark made a recommendation that INDOT should not award Five Star any work until the issues on this Contract are settled.

Martha Kenley asked Tiffany Mulligan what the rules are regarding Jim Stark's recommendation.

Tiffany Mulligan read 105 IAC 11-2-1, the rule pertaining to non-prequalified sub contractors.

Martha Kenley asked Jim Stark if he would like to amend his recommendation.

Jim Stark stated he would like to move to make a recommendation to the Commissioner to suspend Five Star as a subcontractor until the issues on the Contract involving wage and fringe rate compliance are settled to INDOT's satisfaction.

Martha Kenley stated there is a motion on the table to recommend to the Commissioner to suspend Five Star until the issues on the Contract are settled to INDOT's satisfaction.

Tiffany Mulligan seconded the motion.

Tony Hedge questioned if Gohmann did all it could to resolve the issue.

Mary Brouillette stated she had cooperation from Gohmann.

Tiffany Mulligan suggested that the Committee not take action involving Gohmann at this time because of the cooperation Ms. Brouillette received from Gohmann. Ms. Mulligan further suggested the Committee reconsider whether Gohmann should have done more to resolve the issue and whether to take action against Gohmann if the issues on the contract are not resolved at a later date.

Martha Kenley called for a vote on the motion to recommend to the Commissioner to suspend Five Star from performing work on future INDOT contracts until the issues on the Contract involving wage and fringe rate compliance are settled to INDOT's satisfaction.

All Committee members voted in favor.

Martha Kenley explained to Mr. Passaloukos that he will receive a letter from INDOT following up on the Committee meeting and providing the Commissioner's decision on the Committee's recommendation.

Tiffany Mulligan stated under the recommendation, INDOT can reconsider doing business with Five Star if the issue is resolved to INDOT's satisfaction. This gives Five Star an incentive to resolve the issues and comply with the contract.

Steve Passaloukos stated the Committee's recommendation would throw him into bankruptcy.

Martha Kenley stated all contractors on INDOT projects are expected to comply with contract requirements, and Five Star's failure to do so here caused the Committee to recommend that the Commissioner suspend Five Star's ability to do work on future INDOT projects until the issues on the contract are resolved.

4. Update on Internal Committees

Martha Kenley proposed the next item on the agenda - an update on internal committees. She first asked for an update on the revision to the consultant prequalification manual to allow INDOT to bring consultants before the Prequalification Committee for possible disciplinary action.

Tiffany Mulligan stated the subgroup approved the proposal and draft language to amend INDOT's consultant prequalification manual. The proposal is currently under review by INDOT's Chief Legal Counsel. She stated the language mirrored the language of the current prequalification rules for construction contractors.

Greg Kicinski questioned if this was different from the Errors and Omissions Committee.

Tiffany Mulligan stated this effort was different than the Errors and Omissions Task Force because the task force was looking at a process for determining whether a consultant made an error and omission and recovering from errors and omissions that occur. The Prequalification Committee subgroup's efforts are limited to extending Committee action to consultants. She stated the Prequalification Committee subgroup also discussed an evaluation form similar to the CR-2 for construction contractors.

Martha Kenley asked for comments or concerns.

Martha Kenley stated extending the Committee to consultants would allow consultants to tell their side of the story before INDOT takes action against them.

Jim Stark stated there has to be a way to separate compliance issues from recovery issues.

Martha Kenley asked for an update on the group's efforts to amend the prequalification rules in the Indiana Administrative Code.

Tiffany Mulligan stated there is no update at this time. She stated if there were any questions or if anyone had suggestions for revisions to the rules to let her know.

Martha Kenley stated the agenda for the meeting had been completed and called for a motion to adjourn.

Tiffany Mulligan moved to adjourn the meeting, and Greg Kicinski seconded. All members voted in favor of adjourning the meeting.

Martha Kenley adjourned the meeting at approximately 10:20 a.m.