

INDOT Prequalification & Compliance

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Legal Disclaimer

The following presentation is for informational purposes only and is not intended to be legal advice. Local Public Agencies, vendors, and other attendees are advised to obtain counsel from their attorney regarding individual efforts to comply with rules and requirements governing INDOT work.

What do we do?

PREQUALIFICATION (“PQ”)

- Determine eligibility of vendors
 - Construction (“contractors”)
 - Professional services (“consultants”)
 - Work type assignment- what type of work
 - Bidding capacity- how much work at one time
- Performance regulation
 - Constant review of performance on jobs
 - Project-level quality improvement meetings
 - Bring vendors to PQ Committee (RARE)
 - Set capacity and work types to reflect performance
- Maintain work types
 - Create new work types to account for new types of projects
- Assign work types to each project for letting

COMPLIANCE

- Legal & administrative requirements on INDOT projects
 - Program level policy & process drafting
 - Statewide coordination
 - Program level compliance auditing
 - Education- internal & external
 - Vendor performance regulation
- Civil Rights & Nondiscrimination (ADA & Title VI)
 - Ensure INDOT compliance with federal civil rights law
 - Ensure subrecipient compliance with ADA & T6
 - INDOT Technical Advisory Committee
 - Vendor performance regulation
 - Compliant intake & investigation
 - Coordination with federal government

How can LPAs use INDOT Prequalification?

- PQ is required for all LPA jobs over \$300K that are “the construction, improvement, alteration, repair, or maintenance of a highway, street, or road (as defined by IC 8-23-1-23) or alley.”
- LPAs can advertise projects with the most relevant INDOT work type(s) listed as bidder requirement
- LPAs can set specific capacity requirements (ex. Vendor must have aggregate capacity of at least \$500K)
 - This limits bidding only to vendors of a certain size threshold.

LEGAL DISCLAIMER: the above is not intended to be legal advice; the structure and administration of all lettings should be reviewed by your attorney.

How can LPAs use INDOT Prequalification?

- LPAs can also require vendors to list current unearned work in bid
 - Unearned Work: Total uncompleted work on books from all sources
 - Bidding Capacity Balance: Aggregate bidding capacity minus unearned work
 - *Only bidders with Bidding Capacity Balance equal to or greater than the advertised contract value are eligible for award*
- Contact INDOT PQ for performance info about bidders
- Report poor or outstanding performing vendors to INDOT PQ
 - If the contract is let through INDOT, LPAs can access Contractor Performance Evaluation (CPE).

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Prequalification Updates

- Continued Contractor Prequalification (CPQ) Improvements
 - Improved path forward for denied apps
 - Previously, contractor had to start from scratch if app was denied.
 - Gives contractor choice: Start with blank app, or edit denied app.
 - Also improves process on INDOT side.
 - Improved data input for financial info
 - Allows for negative values – not a great accounting practice, but common.
 - More contractors applying!
 - 9% more in 2022 over 2021
 - Trend is continuing in 2023.

Prequalification Updates

- Continued Contractor Performance Evaluation (CPE) Enhancements
 - Better reporting functionality for Contractors and INDOT
 - Updated User Guide!
- Regular Interim Snapshots (minimum 2/contract OR 2/year)
 - Snapshots=platform for discussion
 - Final Snapshot shouldn't carry resolved issues through
- Contractors have role in CPE
 - Can request, review & appeal snapshots
 - Seeing ITAP confusion – snapshots are not getting to right personnel

Prequalification Updates

- Trainings & Education Coming
 - Updated CPQ User Guide & FAQs being drafted
 - Recorded CPQ walkthrough in the works.
- Seeing an overall improvement in the quality of applications

Intro- Compliance Programming

- What is compliance?
 - Project Compliance- legal & administrative requirements governing project delivery
 - Civil Rights- internal and external assurance of nondiscrimination
- What is PQ-Compliance role in Project Compliance?
 - State-level coordination of compliance on construction jobs (ex. bring together stakeholders)
 - Setting parameters for administration & enforcement of regulations (ensure consistency)
 - Regulatory performance management
 - Answer novel questions
 - Audit, audit, audit
- PQ-Compliance is third escalatory step in project-level work flow
 - Starts with EEO/Project Manager (PEMS) → Area Engineer → DCD → PQ-Compliance
 - Share escalatory role with Construction Management
- Project Compliance includes:
 - Payroll
 - Prompt Payment
 - Subcontracts/Leases
 - Misc.

Civil Rights for LPAs- ADA & Title VI

- To receive federal \$\$ from INDOT LPAs must maintain up to date ADA and Title VI plans
- PQ-Compliance is responsible for ensuring LPAs are in compliance each year
 - Receive and review plans
 - Provide input & training
 - Audit
- What do LPAs have to do?
 - Title VI- submit *annual* Implementation Plan & Goals and Accomplishments Report
 - ADA- submit ADA Transition Plan every 3 years
 - Implement plans!
- Introductory-level LPA training for ADA & Title VI on MS Team next **Wednesday March 22, 2023 at 1 pm**
 - Send email to ChSerak@indot.in.gov for invite!
 - Recording will be posted to website

Certified Payrolls

- Federal regulations and INDOT Standard Specifications require prime contractors to submit weekly certified payrolls for each week that any contract work is performed. (See 29 CFR Section 5.5(a)(3)(ii)(A) and INDOT Standard Specification 103.06(b)).
- The prime contractor is responsible for the submission of all certified payrolls by the prime contractor, subcontractors, equipment lessors with operators, and haulers, if required.
- Prime contractors submit certified payrolls to INDOT's online application Contractor Payroll Management System ("CPMS").

Certified Payrolls Continued

- Required information on the weekly certified payroll includes, but is not limited to, the project number, project location, identification of employees who worked on the project, his/her classification, hourly rate of pay, hourly rate of fringe benefits, daily and weekly number of hours worked, gross wages earned, all deductions, and net wages paid. (See 29 CFR 5.5(a)(3)(i) and (ii)).
- Payrolls must also include a “Statement of Compliance” signed by contractor’s or subcontractor’s employee who pays or supervises the payroll. (See 29 CFR 5.5(a)(3)(ii)(B)).
- Contractors are required to maintain the payroll records during the project and for a period of three (3) years after completion of the project. (See 29 CFR 5.5(a)(3)(i) and (ii) and INDOT Standard Specification 103.06(b)).

Common Issues on Certified Payrolls

- Improper Classification of Work
- Improper Hourly Wage Rate or Fringe Benefit Rate Per the Applicable Wage Determination
- Impermissible Deductions
 - Examples of **permissible** deductions include, but is not limited to, deductions for social security tax withholding, federal income tax withholding, state income tax withholding, court ordered payments (child support payments, wage garnishments), and union membership dues. (See 29 CFR 3.5 for complete list of permissible deductions).

Prompt Payment

- Prime contractors are required to make payment to all subcontractors (including lessors and material suppliers for the value of the work performed and materials in place within 10 business days of receipt of payment from INDOT. (See Standard Specification 109.07).
- INDOT conducts random Prompt Payment audits to ensure that prime contractors are in compliance with the prompt payment provisions in Standard Specification 109.07.
- INDOT also conducts prompt payment investigations following a complaint from a subcontractor, lessor, or material supplier.

Subcontract Requirements – Federal-Aid Construction Contracts

- A written subcontract agreement has been executed between the parties.
- All pertinent provisions and requirements of the prime contract with INDOT are physically included in the subcontract.
- A properly executed Subcontractor's Certification of Unearned Work is physically attached to the subcontract.
- FHWA Form 1273 and the Wage Determination are physically attached to the subcontract.

Subcontract Requirements - Federal-Aid Construction Contracts

- Notice of Requirements of Affirmative Action is physically attached to the subcontract.
- EEO Special Provisions are physically attached to the subcontract.
- Title VI Assurances are physically attached to the subcontract.
- A copy of the executed subcontract is on file at the prime contractor's office and available for inspection by INDOT and/or Federal Highway.

Subcontract Requirements – State Funded Construction Contracts

- A written subcontract agreement has been executed between the parties.
- All pertinent provisions and requirements of the prime contract with INDOT are physically included.
- A properly executed Subcontractor's Certification of Unearned Work is physically attached to the subcontract.

Subcontract Requirements – State Funded Construction Contracts

- Title VI Assurances are physically attached to the subcontract.
- The State Wage Provisions and the State Funded Contract Requirements (INDOT RSP 112-C-122) are physically attached to the subcontract.
- A copy of the executed subcontract is on file at the prime contractor's office and available for inspection by INDOT.

We are here to help!

Prequalification (ChSerak, Director)

Crystal Weaver (CmWeaver)

- PQ Engineer
- Work Types, Performance Matters
- Quality Improvement Mediation
- Pat Goralski (PGoralski)
 - Performance & Technical Manager
 - Performance matters
 - Business position, contracting capacity
 - Vendor work type assignment
- Greg Christoff (GChristoff)
 - PQ Auditor- all things financial
- Korin Light (KLight)
 - PQ Specialist
 - CPQ, vendor PQ or application status
- John Leming (JLeming)
 - All things Consultant Prequalification

Compliance (ChSerak, Director)

Melissa Beaucaire (MBeaucaire)

- Project level Compliance (EEO= first stop)
- Legal compliance questions
- Compliance Performance Matters
- Taffanee Keys (TKeys)
 - Discrimination on jobsite or within INDOT operations
 - ADA deficiencies/needs
 - Any civil rights related matters, including human trafficking