

7/11
6/82

PROFESSIONAL SERVICES CONTRACT

CONTRACT NO.: _____

This Contract made the day and year last written below, by and between the Oklahoma Department of Transportation (hereinafter called ADEPARTMENT@), and Empowering Initiatives, LLC (hereinafter called the ACONSULTANT@) for the following intent and purposes:

WITNESSETH:

WHEREAS, the DEPARTMENT requires complete support and promotion of the McClellan Kerr Waterway and to provide current, accurate, readily available information to its key officials; and,

WHEREAS, reduced manning levels within the DEPARTMENT have caused a marked reduction in the availability of DEPARTMENT employees to provide the proper support needed to conduct the business functions necessary to support the McClellan Kerr Waterway; and,

WHEREAS, the DEPARTMENT is authorized under the provisions of Title 69 O.S. ' 1502 and Title 74 O.S. ' 85.12 to contract for necessary services; and,

WHEREAS, the CONSULTANT has the training, experience and all necessary qualifications to assist with the understanding and evaluation of the DEPARTMENT'S current Waterways Program and to provide leadership and direction to enhance the DEPARTMENT'S program; and

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, the DEPARTMENT and the CONSULTANT do hereby mutually promise and agree as follows:

SECTION 1: Purpose of the Contract

CONSULTANT will perform services consistent with promoting the Department Waterways Branch operations to assist the staff and members of the Department's Waterways Advisory Board and provide technical support for the DEPARTMENT'S responsibilities concerning the DEPARTMENT'S role in the resources management of the McClellan-Kerr Arkansas River Navigation System. The CONSULTANT will also serve as a coordinator to assist the DEPARTMENT with all aspects of the State Waterways Program to ensure that the DEPARTMENT'S assigned responsibilities and commitments to develop and conserve waterway transportation in Oklahoma are fulfilled and implemented appropriately.

Section 2: Scope of Services

1. Serve as a CONSULTANT to promote the Department's Waterways Program Branch operations.

2. Coordinate with other DEPARTMENT staff and other State, Federal and local agencies to provide a detailed work plan, schedule and needs assessment to best promote the Intermodal assets of the McClellan Kerr Waterway.
3. Provide information to DEPARTMENT's Senior Management as needed for decision-making regarding all aspects of waterway transportation.
4. Foster working relationship on behalf of the DEPARTMENT with the Oklahoma Waterways Advisory Board and the United States Army Corps of Engineers.
5. Engage and participate in National Waterways activities to include legislation and peer reviews as a representative of the DEPARTMENT.
6. Recommend work processes to be improved by modification and enhancements to current functions of the DEPARTMENT'S Waterways Program Branch.
7. Ensure proper communication between the Waterways Program Branch and the DEPARTMENT'S Senior Staff.
8. Serve in an advisory capacity to Senior Staff members as related to the needs of the DEPARTMENT regarding waterway transportation issues.
9. Will report to the Department's Director of Engineering.

SECTION 3: Time and Place Performance

CONSULTANT will assist the DEPARTMENT with any business process that is needed to ensure the needs of the DEPARTMENT are fulfilled. This contract shall be effective from and after the start date of July 1, 2011, and shall continue thereafter until June 30, 2012. This contract may be extended at the option of the DEPARTMENT by supplemental agreement upon the same terms as are contained herein.

SECTION 4: Compensation

The maximum not to exceed amount of this contract is Seventy Thousand Dollars (\$70,000.00). the Department will make payments monthly in arrears in the amount of Five Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$5,833.33). The CONSUTANT will submit a progress report and claim on a monthly basis.

SECTION 5: Travel

CONSULTANT may be compensated for travel necessary to the performance of this Contract. If travel is required for the performance of the Contract, it will be paid by a travel claim, all costs associated with in-state travel not requiring an overnight stay will be borne by the

CONSULTANT. Overnight and/or out-of-state travel will be paid by a travel claim not as a part of the contract, at the same rates provided for travel of state employees by Title 74 of the Oklahoma Statutes, Section 500.1. Travel rates will be those in effect on the date in which travel is performed. The DEPARTMENT will assist CONSULTANT in obtaining and arranging all approved travel. CONSULTANT will furnish his own cell phone.

SECTION 6: Dispute Resolution

The parties hereto have entered into this Contract in the State of Oklahoma and the laws of the State of Oklahoma shall apply. Venue for any action brought to enforce the terms of this Contract shall be Oklahoma County, State of Oklahoma. The parties agree to bargain in good faith in direct negotiation to achieve resolutions of any dispute and, if such efforts are unsuccessful, to retain a neutral mediation service to mediate the dispute prior to the filing of any court action. Mediation shall be conducted in the Oklahoma City area and the costs of such mediations shall be borne equally by the parties.

SECTION 7: Termination

This contract may be terminated upon thirty (30) day written notice by either the DEPARTMENT or the CONSULTANT without fault. In the event of such termination, the CONSULTANT shall be entitled as compensation only to the reasonable value of services rendered prior to the termination.

SECTION 8: Covenant Against Contingent Fees

The CONSULTANT warrants that he has not employed or retained any company or person specifically to solicit or secure this Contract, and that he has not paid or agreed to pay any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this contract without liability.

SECTION 9: Hold Harmless Clause

The CONSULTANT hereby agrees to indemnify and save harmless DEPARTMENT from any and all claims, suits at law or in equity, of any nature whatsoever, paying for money damages or otherwise, arising from any of the work performed by the CONSULTANT hereunder, including but not limited to negligent injury or damage to persons or property, and the tortuous interference with contract rights of others.

SECTION 10: Limitation of Liability

Both parties agree that the CONSULTANT'S responsibility is to assist the DEPARTMENT with any business process that is needed to ensure the needs of the DEPARTMENT are met. To the extent any limitation of liability contained herein is construed by a court of competent jurisdictions to be a limitation of liability in violation of Oklahoma law, such limitation of liability shall be void.

SECTION 11: Force Majeure

Neither party shall be liable for delays in performance or failure to perform this Contract, or any obligations hereunder which are attributable to causes beyond its reasonable control, including but not limited to, obstruction, fire, flood, epidemic, illness, earthquake, acts of God, lightning, public or private power failure or surge, explosion, strike or other labor dispute, riot or civil disturbance, war or armed conflict, or any other similar occurrence not within its control (an event of "Force Majeure"), provided however, that upon occurrence of an event of Force Majeure, the delayed party shall notify the other party in a reasonable time.

SECTION 12: Prior Understandings

This Contract incorporates and reduces to writing all prior understandings, promises agreements, commitments, covenants, or conditions, and constitutes the full and complete understanding and contractual relationship for the parties.

SECTION 13: Amendments or Modification of Contract

No changes, revisions, amendments or alterations in the manner, scope, or type of work or compensation to be paid by DEPARTMENT shall be effective unless reduced to writing and executed by the parties with same formalities as are observed in the execution of the Contract. It is specifically agreed by and between the parties that this contract may be supplemented or amended by written agreement of the parties to provide for additional funds and/or time for completion of the service to be performed under this contract. The parties may additionally, by written supplemental agreement, extend the terms of this agreement if necessary to allow the completion of the services to be performed by the CONSULTANT.

SECTION 14: Records

The CONSULTANT is to maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at its respective offices at all reasonable times, during the Contract period and for three (3) years from the date of final payment under the Contract, for inspection by the DEPARTMENT and the State Auditor and Inspector, and copies thereof shall be furnished to the DEPARTMENT, if requested.

SECTION 15: Notices

All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either party to the other pursuant to the contract shall be in writing and shall be deemed to have been properly given or sent:

(a) if intended for the DEPARTMENT, mailing first class mail or, if sender prefers, by registered mail, return receipt requested, with postage prepaid addressed to State at:

Oklahoma Department of Transportation
Attention: David Streb, Director of Engineering
2nd Floor, Room 2-C3
200 NE 21st Street
Oklahoma City, Oklahoma 73105

(b) if intended for CONSULTANT, mailing by first class mail or, of senders prefers, by registered or certified mail, return receipt requested, with postage prepaid, addressed to the CONSULTANT:

Empowering Initiatives, LLC
Attn: Todd Hiett
16431 Slick Road
Kellyville, Oklahoma 74039

SECTION 16: Civil Rights Act of 1964

The CONSULTANT agrees to comply with Title VI of the Civil Rights Act of 1964, 78 Stat. ' 252, 42 U.S.C. ' 2000d et seq., and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 21 – *“Nondiscrimination in federally assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.”*

SECTION 17: Headings

Article headings used in this Contract are inserted for convenience of reference only and shall not be deemed a part of this Contract for any purpose.

SECTION 18: Severability

If any provision, clause, or paragraph of this contract or any document incorporated by reference shall be determined invalid by a court of competent jurisdiction, such determination shall not affect the other provisions, clauses, or paragraphs of this Contract which are not affected by the determination. The provisions, clauses, or paragraphs of this Contract and any documents incorporated by reference are declared severable.

SECTION 19: Effective Date

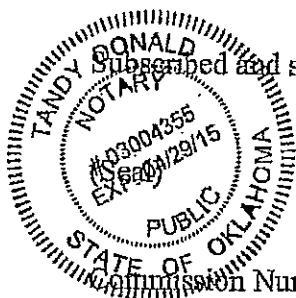
The Contract shall become effective on July 1, 2011.

IN WITNESS WHEREOF, Todd Hiett, duly authorized agent of Empowering Initiatives, Inc., has set his hand and seal this 15th day of July, 2011; and David Streb, Director of Engineering, Oklahoma Department of Transportation, has set his hand and seal this ____ day of , 2011.

Todd Hiett

TODD HIETT
Empowering Initiatives, LLC
EIN: 02-0801842

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA)



Subscribed and sworn before the undersigned on the 15th day of July, 2011.

[Signature]
Notary Public

Commission Number: 03004355
Commission Expires: 4/29/15

OKLAHOMA DEPARTMENT OF
TRANSPORTATION

APPROVED AS TO FORM:

[Signature]
General Counsel's Office

APPROVED:

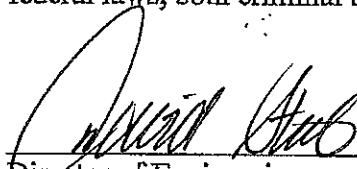
[Signature]
GARY EVANS
Deputy Director

OKLAHOMA DEPARTMENT OF TRANSPORTATION

I, DAVID STREB, hereby certify that I am the Director of Engineering of the Department of Transportation of the State of Oklahoma, and that the CONSULTANT or his representative has not been required, directly, or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- a) employ or retain, or agree to employ or retain, any firm or person; or
- b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Federal Highway Administration and the US Department of Transportation, in connection with this contract involving participation of Federal-aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.



Director of Engineering

7/15/11

Date

**OKLAHOMA DEPARTMENT OF TRANSPORTATION
STATUTORY AFFIDAVIT**

State of Oklahoma)
) §
County of Oklahoma)

Affiant, Todd Hiatt, of lawful age, and having been first duly sworn, on oath says:

1. He is the duly authorized agent of Empowering Initiatives, LLC (CONTRACTOR), the contractor under the contract which is attached to this statement, for the purpose of certifying the facts pertaining to the giving of things of value to government personnel in order to procure said contract;
2. He is fully aware of the facts and circumstances surrounding the making of the contract to which this statement is attached and has been personally and directly involved in the proceedings leading to the procurement of said contract;
3. Neither the contractor nor anyone subject to the contractor=s direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring the contract to which this statement is attached;

The contractor further certifies that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract.

If this contract is for professional services and if the final product is a written proposal, report, or study, the contractor further certifies that he has not previously provided the state agency with a final product that is a substantial duplication of the final product of the proposed contract.

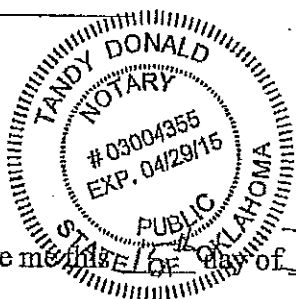
Todd Hiatt
Signature

7-15-11
Date

Todd Hiatt
Printed Name

Contractor
Title

State of Oklahoma)
) §
County of Oklahoma)



Subscribed and sworn before me on this 15 day of July, 2011.

[Signature]
Notary Public

Commission Number: 03004355
Commission Expires: 4/29/15

STATUS VERIFICATION SYSTEM AFFIDAVIT

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, Todd Hiett, of lawful age, and having been first duly sworn, on oath states:

1. That I am the agent authorized by the Contractor to submit the attached contract to the State of Oklahoma. I am fully aware of the facts and circumstances surrounding the making of the contract to which this statement is attached and have been personally and directly involved in the procurement of this contract.
2. That the Contractor has registered and fully participates in the Status Verification System, as required by Title 25 O.S. § 1313(B)(1), to verify the work eligibility status of all new employees of the Contractor.

FURTHER AFFIANT SAITH NOT.

Todd Hiett
AFFIANT

Subscribed and sworn before me this 15th day of July, 20 11.

Tandy Donald
NOTARY PUBLIC

My Commission Expires: 4/29/15
My Commission Number: 03004355

