

AGENDA
SHAWNEE AIRPORT AUTHORITY
July 15, 2019 AT 6:00 P.M.
COMMISSION CHAMBERS AT CITY HALL
SHAWNEE, OKLAHOMA

CALL TO ORDER

DECLARATION OF A QUORUM

1. Consider approval of Consent Agenda:
 - a. Minutes from the June 17, 2019 regular meeting.
2. Discussion, consideration, and possible action to award a contract for professional engineering services to H.W. Lochner, Inc., with a provision to negotiate fees on a project by project basis based on a pre-established rate schedule.
3. Discussion, consideration, and possible action to establish late fees for products and services provided.
4. New Business

(Any matter not known or which could not have been reasonably foreseen prior to the posting of the agenda)
5. Adjournment

Respectfully submitted

Lisa Lasyone, CMC, City Clerk

Shawnee Airport Authority

1.a.

Meeting Date: 07/15/2019

Minutes

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Minutes from the June 17, 2019 regular meeting.

Fiscal Impact

Attachments

Minutes

THE TRUSTEES OF THE SHAWNEE AIRPORT AUTHORITY OF THE CITY OF SHAWNEE, COUNTY OF POTTAWATOMIE, STATE OF OKLAHOMA, MET IN REGULAR SCHEDULED SESSION IN THE COMMISSION CHAMBERS AT CITY HALL, 9TH AND BROADWAY, SHAWNEE, OKLAHOMA, MONDAY, JUNE 17, 2019, DURING THE BOARD OF CITY COMMISSIONERS MEETING AT 6:00 P.M., PURSUANT TO NOTICE DULY POSTED AS PRESCRIBED BY LAW. UPON ROLL CALL, A QUORUM WAS DECLARED WITH THE FOLLOWING MEMBERS IN ATTENDANCE:

PRESENT: Bolt, Gillham, Finley, Harrod, Sehorn, Salter

ABSENT: Rutherford

Call to Order

Declaration of a Quorum

AGENDA ITEM NO. 1: Consider approval of Consent Agenda:

- a. Minutes from the June 3, 2019 regular meeting and the June 10, 2019 special call meeting.

A motion was made by Trustee Harrod, seconded by Trustee Bolt, to approve Consent Agenda Item No. 1(a). Motion carried 6-0.

AYE: Harrod, Bolt, Gillham, Finley, Sehorn, Salter

NAY: None

AGENDA ITEM NO. 2: Budget Amendment – Fund 511
To properly appropriate funds for additional costs of part-time personnel, fuel, and capital improvements.

Finance Director Chance Allison stated this budget amendment was a result of the budgeting monitoring process. He advised that a revised budget amendment has been handed out correcting errors that were discovered since publication of the agenda, and also includes some other accounts and revenues that were not anticipated in the original amendment.

A motion was made by Trustee Sehorn, seconded by Trustee Gillham, to approve the budget amendment for fund 511. Motion carried 6-0.

AYE: Sehorn, Gillham, Harrod, Finley, Salter, Bolt

NAY: None

AGENDA ITEM NO. 3:

Consider approval of Fiscal Year 2019-2020 Shawnee Airport Authority budget.

Finance Director Chance Allison stated the Shawnee Airport Authority has an estimated revenue appropriation of Eight Hundred Forty-One Thousand Dollars (\$841,000.00). He stated that that is a decrease from the previous year due to taxiway improvements completed under some federal grants. Mr. Allison applauded Airport Manager Bonnie Wilson's efforts. He stated in past years the General Fund has subsidized the Airport Authority substantially. Through Ms. Wilson's efficiency in operation and increase in fuel sales, she has reduced that to approximately Ten Thousand Dollars (\$10,000.00).

A motion was made by Trustee Harrod, seconded by Trustee Bolt, to approve the budget amendment for Fund 511. Motion carried 6-0.

AYE: Harrod, Bolt, Gillham, Finley, Sehorn, Salter

NAY: None

AGENDA ITEM NO. 4:

Consideration of a resolution adopting the budget for the Shawnee Airport Authority for the period of July 1, 2019 through June 30, 2020 finding all things requisite and necessary have been done in preparation and presentation of budget.

Resolution No. SAA-2019-3 was introduced.

A RESOLUTION APPROVING AND ADOPTING THE BUDGET FOR SHAWNEE AIRPORT AUTHORITY, OKLAHOMA FOR THE PERIOD JULY 1, 2019 THROUGH JUNE 30, 2020 FINDING ALL THINGS REQUISITE AND NECESSARY HAVE BEEN DONE IN PREPARATION AND PRESENTATION OF SAID BUDGET.

A motion was made by Trustee Gillham, seconded by Trustee Bolt, to approve a resolution adopting the budget for the Shawnee Airport Authority for the period of July 1, 2019 through June 30, 2020 finding all things requisite and

necessary have been done in preparation and presentation of budget. Motion carried 6-0.

AYE: Gillham, Bolt, Harrod, Finley, Sehorn, Salter

NAY: None

AGENDA ITEM NO. 5:

New Business (Any matter not known or which could not have been reasonably foreseen prior to the posting of the agenda)

There was no New Business.

AGENDA ITEM NO. 6:

Adjournment

There being no further business to be considered, the meeting was adjourned by power of the Chair. (6:35 p.m.)

RICHARD FINLEY
CHAIRMAN

ATTEST:

LISA LASYONE, SECRETARY

Shawnee Airport Authority

2.

Meeting Date: 07/15/2019

Lochner

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion, consideration, and possible action to award a contract for professional engineering services to H.W. Lochner, Inc., with a provision to negotiate fees on a project by project basis based on a pre-established rate schedule.

Fiscal Impact

Attachments

Memo

Contract



Date: July 15, 2019

To: Shawnee Airport Authority

The Honorable Richard Finley, Mayor
James Harrod, Vice Mayor
Ed Bolt, Commissioner
Ron Gillham, Commissioner
Darren Rutherford, Commissioner
Ben Salter, Commissioner
Mark Sehorn, Commissioner

From: Bonnie A. Wilson, CM Airport Manager

A handwritten signature in blue ink, appearing to read "Bonnie A. Wilson", is placed next to the "From:" line.

Subject: Discussion and Consideration of Awarding Contract for Professional Engineering Services –H.W. Lochner, Inc.

Nature of Request:

Award a contract for professional engineering services to H.W. Lochner, Inc., with a provision to negotiate fees on a project by project basis based on a pre-established rate schedule.

Staff Analysis and Considerations:

Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant funds may be used to address engineering costs if a qualifications-based selection process is used by the airport sponsor. Firms selected in this manner may be contracted for up to five years to support AIP funded projects. Fees for services may only be established once a selection based on qualifications has been made.

Staff published a Request for Qualifications (RFQ) for general engineering services to support the Shawnee Regional Airport Capital Improvement Plan and other engineering and planning projects at the airport. Fourteen firms requested the RFQ documents, four firms submitted Statements of Qualifications.

John Klaser, Airport Advisory Board, Michael Ludi, City of Shawnee Director of Engineering, and Bonnie Wilson, Airport Manager participated in a review of the submissions utilizing the standard scoring criteria published in solicitation document. All three review committee members ranked the submission provided by H.W. Lochner, Inc. (Lochner) in first place.

Recommendation:

The Shawnee Airport Advisory Board and airport staff are recommending award of the contract opportunity to provide professional engineering services to Lochner, and their proposed sub-contractors Frontier Land Surveying and DBE Plans and Goals Preparation Services. Fees for professional services will be negotiated on a project by project basis utilizing pre-determined rates for the various service categories.

Budget Consideration:

Fees for engineering services to include design and construction administration for the rehabilitation of Runway 17/35 and Taxiway Alpha, and design of storm water improvements supporting these surfaces are estimated at \$125,000. Ninety (90%) percent of these fees are eligible for reimbursement under the AIP grant program. Available State of Oklahoma Aeronautics Commission grant funds may be used for up to an additional five (5%) of the associated costs. Future projects, not yet included in the five-year capital improvement program, are eligible to be supported at the same percentage rates based on availability of appropriated and authorized grant funds.

**AGREEMENT FOR SERVICES
FOR IMPROVEMENTS TO THE
SHAWNEE REGIONAL AIRPORT
SHAWNEE, OKLAHOMA
FIVE-YEAR MASTER ON-CALL AGREEMENT**

THIS AGREEMENT made and entered into this _____ day of _____, 2019 by and between the Shawnee Airport Authority on behalf of the City of Shawnee, Oklahoma, with offices located at 16 W 9th St, Shawnee, OK 74801, hereinafter referred to as the "Sponsor", and H.W. Lochner, Inc. (Lochner), with offices located at 13439 Broadway Ext, Suite 101, Oklahoma City, OK 73114, hereinafter called the "Consultant."

WITNESSETH:

WHEREAS, the Sponsor is desirous of making airport improvements, and has selected H.W. Lochner, Inc. to provide consulting services at the Shawnee Regional Airport for a five-year term commencing on the date of the initial Notice to Proceed on Task Order Number 1.

WHEREAS, the Sponsor has agreed to employ the Consultant to provide the engineering services required for performing planning, design, and construction administration in support of projects identified in the Airport Capital Improvement Program and any additional projects that the Shawnee Airport Authority, on behalf of the Shawnee Regional Airport, requests for Lochner to perform.

NOW, THEREFORE, in consideration of these premises and the mutual covenants herein contained, the parties hereto agree as follows:

**ARTICLE I
SCOPE OF SERVICES**

The Consultant, in consideration of the payment on the part of the Sponsor, will agree to perform the engineering services as more specifically described in written Task Orders to this Agreement.

**ARTICLE II
SPONSOR'S RESPONSIBILITIES**

The Sponsor, as a part of this Agreement, shall provide the following:

1. Arrange for access to and make all provisions for the Consultant to enter upon public and private property as required for the Consultant to perform his/her services.
2. Assist in approvals and permits from all governmental entities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
3. Designate in writing a person to act as Sponsor representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define Sponsor policies and decisions.
4. Give prompt written notice to the Consultant whenever Sponsor observes or knows of any development that affects the scope or timing of Consultant's services.

5. Pay publishing cost for advertisements of notices, public hearings, request for bids, and other similar items. The Sponsor shall pay for all permits and licenses that may be required by local, state or federal authorities; and shall secure the necessary land, easements and rights-of-way required for the project.
6. One (1) copy of existing plans, reports, or other data the Sponsor may have on file with regard to future projects.
7. Available information relating to environmental conditions at the property, including any permits, clearances, investigations, and remediation required for federal, state, and local agencies identified by environmental consultants for the Sponsor in currently available reports.

ARTICLE IV COMPENSATION

The Sponsor agrees to compensate the Consultant for performing airport administrative and planning, engineering, and construction administration services as agreed upon and detailed on Attachment “A” – Lochner 2020 Compensation Rates. Compensation for each project shall be determined separately based on Lochner’s current compensation rates at the time of preparation of the Task Order. Lochner shall be afforded the opportunity to adjust its compensation rates and overhead on an annual basis, by no greater than three percent (3%). A revised compensation schedule shall be provided to the Sponsor for approval not later than the first (1st) day of May, each calendar year of the Agreement, with an implementation date of not sooner than the first (1st) day of July of each calendar year of the Agreement.

The Task Order for each project shall define the specific scope of work for the project and provide detail for the estimated consultant costs based on the number of hours estimated to complete the tasks listed in the scope of work. The hourly rates included in Attachment “A” shall be utilized as the basis for developing fees for each project. The overhead, administrative expenses, and profit multiplier shall be applied to the direct hourly compensation.

ARTICLE V MANDATORY FEDERAL CONTRACT PROVISIONS

Reference Federal Contract Provisions Attachment “B”.

ARTICLE VI MISCELLANEOUS PROVISIONS

1. Change in Scope. The Scope of Services described herein shall be subject to modification or supplement upon the written Agreement of the contracting parties. Any such modification in the Scope of Services shall be incorporated in this Agreement by Supplemental Agreement executed by both parties.
2. Ownership of Drawings and Contract Documents. Original documents, tracings, plans specifications and maps prepared or obtained under the terms of the Contract shall be delivered to and become the property of the Sponsor and basic survey notes and sketches, charts, computations, and other data shall be made available upon request by the Sponsor without restriction or limitation on their use. In the event any of the above documents are re-used by the Sponsor, the nameplates will be removed and the Consultant will be released and held harmless of subsequent liabilities. There shall be no legal limitations upon the Sponsor in the subsequent use of plans or ideas developed in this project and incorporated in the preliminary or final reports or plans for the subsequent preparation of construction plans.

3. Electronically Produced Documents. Electronically produced documents will be submitted in data files compatible with AutoCAD Release 2018 and Portable Document Format (PDF). The Consultant makes no warranty as to the compatibility of the data files beyond the above specified hardware and release or version of the stated software.

Because data stored on electronic media can deteriorate undetected or be modified without the Consultant's knowledge, the electronic data files submitted to the Sponsor or other Agencies will have an acceptance period of thirty (30) days. If during that period the Sponsor or other Agencies find any errors or omissions in the files, the Consultant will correct the errors or omissions as a part of the basic Agreement. The Consultant will not be responsible for maintaining copies of the submitted electronic data files after the acceptance period.

Any changes requested after the acceptance period will be considered additional services for which the Consultant shall be reimbursed including the cost of materials.

The data on the electronic media shall not be considered the Consultant's instrument of service. Only the submitted hard copy documents will be considered the instrument of service. The Consultant's nameplate shall be removed from all electronic media provided to the Sponsor or other Agencies.

4. Engineer's Opinion of Probable Project Cost and Construction Cost. Since the Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s) methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project Cost and Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but the Consultant cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by him. However, the Consultant represents that he will use reasonable engineering care and judgment commonly exercised by an engineer in the same or similar circumstances in making and transmitting such cost estimates to the Sponsor.
5. Remedies. In the event of a claim, dispute and other matters in question arising out of or relating to this Agreement or the services to be rendered hereunder, the Consultant and the Sponsor agree to attempt to resolve such disputes in the following manner:

First, the parties agree to attempt to resolve such claims, disputes and other matters in question through direct negotiations between the appropriate representatives of each party.

Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining claim, dispute or other matter in question by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by the parties.

Third, if the claim, dispute or other matter in question, or any issues remain unresolved after the above steps, then such unresolved issues may, with the consent of both parties, be settled by binding arbitration in accordance with the rules of the American Arbitration Association current as of the date of this Agreement then pertaining.

6. Insurance. The Consultant shall procure and maintain at its expense during the effective period of this Contract the following insurance from insurance companies authorized to do business in Oklahoma covering all operations and services under this Contract performed by Engineer.
 - a. Workers' Compensation Insurance in accordance with the provisions of the Oklahoma Workers' Compensation Act.

- b. Commercial General Liability in amounts not less than \$1 million combined single limit per occurrence and \$1 million aggregate for bodily injury, personal injury and property damage with endorsements to include broad form contractual, and broad form property damage.
- c. Automobile Liability, Bodily Injury and Property Damage with a limit of \$1 Million for occurrence, combined single limit including owned, hired and non-owned autos.
- d. Professional Liability Insurance in amounts not less than \$1 million per claim and annual aggregate.

The Consultant shall furnish to the Sponsor a certificate or certificates of insurance showing compliance with this paragraph. The Certificate shall name the City of Shawnee as additionally insured, excluding Workers' Compensation Insurance and Professional Liability Insurance. Such certificate shall provide that the carrier issuing the certificate shall notify the City within ten (10) days in advance of any cancellation or significant change in the terms of coverage of such insurance policies. The failure of the Consultant to obtain and maintain such insurance coverage shall not relieve the Consultant from any liability arising from this Agreement, nor shall any such liability be limited to the liability insurance coverage provided herein.

- 7. Liability. Each party will defend and indemnify and hold harmless the other party from and against third party claims for liability, damage, loss, costs and expenses, including attorney's fees, on account of injury or damage to persons or property occurring on or occasioned by facilities owned or controlled by such indemnifying party, unless such injury or damage resulted from the sole negligence of the other party. In the event negligence is attributable to both parties, each party shall be responsible for the resulting damages attributable to the negligence of such party whether such proportionate share is arrived at through agreement between the parties or as a result of litigation.
- 8. Force Majeure. Any delay or failure of Consultant in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God, war, riot, strike, fire, storm, flood, windstorm, discovery or uncovering of hazardous or toxic materials or causes beyond the reasonable control of Consultant, provided that prompt written notice of such delay or suspension be given by Consultant to the Sponsor. Upon receipt of said notice, if necessary, the time for performing shall be extended for a period of time reasonably necessary to overcome the effect of such delays and Consultant shall be reimbursed for the cost of such delays.
- 9. Binding Upon Successors. This Agreement shall be binding upon the undersigned parties, their successors, partners, assigns, and legal representatives.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above-written.

SPONSOR:

ATTEST:

CITY OF SHAWNEE, OKLAHOMA

By: _____

By: _____

Title: _____

Title: _____

CONSULTANT:

ATTEST:

H.W. LOCHNER, INC.

By: Patrick J. Barnas
Patrick J. Barnas, P.E.

By: Steven D. Harris
Steven D. Harris, P.E.

Title: Civil Engineer

Title: Vice President

ATTACHMENT “A”
LOCHNER 2020 COMPENSATION RATES

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$75.00
Project Manager	\$65.00
Sr. Electrical Engineer	\$65.00
Sr. Design Engineer	\$50.00
Design Engineer	\$42.00
Sr. Airport Planner	\$43.00
Environmental Scientist	\$40.00
Engineer Intern	\$32.00
Design Tech	\$27.00
Administrative Assistant	\$23.00
Sr. Construction Inspector	\$45.00
Construction Inspector	\$38.00
Overhead, Administrative Expenses, and Profit Multiplier	3.01

ATTACHMENT "B"

FEDERAL CONTRACT PROVISIONS FOR A/E AGREEMENTS

ALL REFERENCES MADE HEREIN TO "CONTRACTOR", "PRIME CONTRACTOR", "BIDDER", AND "OFFEROR" SHALL PERTAIN TO THE ARCHITECT/ENGINEER (A/E).

ALL REFERENCES MADE HEREIN TO "SUBCONTRACTOR", "SUB-TIER CONTRACTOR" OR "LOWER TIER CONTRACTOR" SHALL PERTAIN TO ANY SUBCONSULTANT UNDER CONTRACT WITH THE A/E.

ALL REFERENCES MADE HEREIN TO "SPONSOR" AND "OWNER" SHALL PERTAIN TO THE STATE, CITY, AIRPORT AUTHORITY OR OTHER PUBLIC ENTITY EXECUTING CONTRACTS WITH THE A/E.

ACCESS TO RECORDS AND REPORTS

Reference: 2 CFR § 200.333, 2 CFR § 200.336, and FAA Order 5100.38

The contractor must maintain an acceptable cost accounting system. The contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

CIVIL RIGHTS – GENERAL

Reference: 49 USC § 47123

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

CIVIL RIGHTS – TITLE VI ASSURANCE

Reference: 49 USC § 47123 and FAA Order 1400.11

A) Title VI Solicitation Notice

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

B) Title VI Clauses for Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

- 1) **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2) **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4) **Information and Reports:** The contractor will provide all information and reports required by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5) **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

C) Title VI List of Pertinent Nondiscrimination Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non- discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

DISADVANTAGED BUSINESS ENTERPRISE

Reference: 49 CFR part 26

Contract Assurance (§ 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) calendar days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

ENERGY CONSERVATION REQUIREMENTS

Reference: 2 CFR § 200, Appendix II (H)

Contractor and each subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

Reference: 29 USC § 201, et seq.

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The ~~contractor/~~Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The ~~contractor/~~Consultant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Wage and Hour Division.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Reference: 20 CFR part 1910

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

RIGHT TO INVENTIONS

Reference: 2 CFR § 200 Appendix II (F) and 37 CFR §401

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

SEISMIC SAFETY

Reference: 49 CFR part 41

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

TRADE RESTRICTION CERTIFICATION

Reference: 49 USC § 50104 and 49 CFR part 30

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror:

- a) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and
- c) has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- a) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- b) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- c) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

VETERAN'S PREFERENCE

Reference: 49 USC § 47112(c)

In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$3,500

DISTRACTED DRIVING

Reference: Executive Order 13513 and DOT Order 3902.10

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The

Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$10,000

TERMINATION OF CONTRACT

Reference: 2 CFR § 200 Appendix II (B)

Termination for Convenience

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

Termination by Default

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) Termination by Owner: The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
 - 1) Perform the services within the time specified in this contract or by Owner approved extension;
 - 2) Make adequate progress so as to endanger satisfactory performance of the Project;
 - 3) Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are

incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) Termination by Consultant: The Consultant may terminate this Agreement in whole or in part, if the Owner:
 - 1) Defaults on its obligations under this Agreement;
 - 2) Fails to make payment to the Consultant in accordance with the terms of this Agreement;
 - 3) Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$25,000

DEBARMENT AND SUSPENSION

Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, and DOT Order 4200.5

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

- 1) Checking the System for Award Management at website: <https://www.sam.gov>.
- 2) Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
- 3) Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$100,000

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

Reference: 2 CFR § 200 Appendix II (E)

1) Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2) Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3) Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4) Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

Reference: 31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment; 2 CFR part 200, Appendix II (J); and 49 CFR part 20, Appendix A

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress

in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$150,000

BREACH OF CONTRACT TERMS

Reference: 2 CFR § 200 Appendix II (A)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

CLEAN AIR AND WATER POLLUTION CONTROL

Reference: 2 CFR § 200 Appendix II (G)

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

Shawnee Airport Authority

3.

Meeting Date: 07/15/2019

Fees

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion, consideration, and possible action to establish late fees for products and services provided.

Fiscal Impact

Attachments

Fee Memo

Fee Document



Date: July 15, 2019

To: Shawnee Airport Authority

The Honorable Richard Finley, Mayor
James Harrod, Vice Mayor
Ed Bolt, Commissioner
Ron Gillham, Commissioner
Darren Rutherford, Commissioner
Ben Salter, Commissioner
Mark Sehorn, Commissioner

From: Bonnie A. Wilson, CM Airport Manager

Subject: Discussion and Consideration of Establishing Late Fee for Products and Services Provided

Nature of Request:

Staff is seeking the authority to establish and impose a late payment fee in the amount of 1.5% of any overdue balances for all billable charges assessed by the Shawnee Regional Airport.

Staff Analysis and Considerations:

Standard hangar leases have a provision indicating that rental payments are due on the first (1st) day of each month and shall be deemed late if not received by the tenth (10th) day of each month. Payment on billable accounts for fuel and oil are due ten days following receipt of invoice. There are no monetary penalties associated with late payments. In the case of hangar agreements, two instances of sixty (60) days of delinquency are required before lease termination action may be taken. The process of issuing notices of late payment, revised account statements and certified letters to tenants in arrears is time consuming, and costly to the Airport and the City.

Recommendation:

The Airport Advisory Board and staff are recommending the imposition of a 1.5% late fee for all payments received after the payment deadline established by leases and other billable agreements.



Late Payments

1. In General.

- 1.1. The City of Shawnee accepts cash, check and credit card payments for the purchase of fuel, oil and merchandise. Payment for these purchases is due at the time of purchase, unless the purchaser has established a Monthly Account.
- 1.2. Invoices are issued for payments due under Monthly Accounts, within the first business week of each month.
- 1.3. Rental fees, and payment schedules are established by lease agreements.

2. Monthly Accounts.

- 2.1. Customers may request the establishment of a Monthly Account for fuel, and oil via the Airport Manager.
- 2.2. The City of Shawnee prepared and issues invoices against Monthly Accounts within the first five business days of each calendar month.
- 2.3. Payment on monthly fuel and oil purchase accounts are due not later than ten (10) business days following the date of the invoice document generated by the City of Shawnee.
- 2.4. Payments received after the tenth (10th) business day following the date of the invoice will be considered Late Payments.

3. Rental Fees.

- 3.1. In the case of rental fees, payments shall be deemed late if not received by the tenth (10th) calendar day of each month, regardless of receipt of invoice or other request for payment.
- 3.2. Payments received after the tenth (10th) calendar day of each month will be considered Late Payments.

4. Fee for Late Payments.

- 4.1. A Late Payment penalty in the amount of 1.5% of the total amount due, will be applied to any overdue balances.
- 4.2. Late Payment penalties will be calculated and applied each month on any balance remaining due from the prior month.