



ASSOCIATION OF SOUTH CENTRAL
OKLAHOMA GOVERNMENTS

June 21, 2012

Mr. John Hall
Oklahoma Department of Commerce
900 N. Stiles Avenue
Oklahoma City, OK 73104

RE: Response to Findings
Monitoring Visit, April 5, 2012
Contract No. 13250 CDBG 08

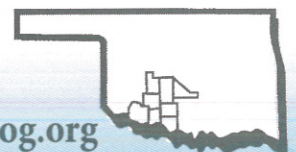
Dear Mr. Hall:

Please allow this letter to provide a detailed, chronological summary addressing the findings listed in your letter addressed to the city of Hinton dated April 6, 2012. As you process this response, please keep in mind that Hinton's city government has experienced a complete turnover in key positions between when the Community Development Block grant (CDBG) was signed until now. The positions for Mayor, all Council members, the Town Clerk, and the Town Treasurer are staffed with different individuals than those who would have received an initial briefing from the Oklahoma Department of Commerce (ODOC). Some of these positions have turned over several times. At one point, a City Manager was hired for a short period of time who determined that he would work on the grant but no progress was made before he left employment with the City. Needless to say, such personnel changes wreak havoc on continuity and institutional memory. Like all new city leaders, there is a learning curve on everything from purchasing requirements to grant requirements. However, none of the individuals identified by position were directly, implicitly or solely responsible for any intentional action that does not comply with the grant requirements. Quite simply, when turnovers in key positions occur in local government, things sometimes slip through the cracks – even important things.

Hinton received a 2007 Rural Economic Action Plan (REAP) grant from the Association of South Central Oklahoma Governments for \$45,000 to be used for engineering and other costs related to this project. Using these funds, Hinton hired Steve Fox of Fox Engineering to: (1) prepare plans and specifications, (2) provide a project description, (3) provide a cost estimate, and (4) obtain a "Permit to Construct" from the Oklahoma Department of Environmental Quality (ODEQ).

Hinton also applied for a 2008 CDBG Water Wastewater Construction Community Development Block Grant (CDBG) from the Oklahoma Department of Commerce (ODOC) using Barbara Birden, a certified CDBG grant writer who contracts with the Association of South Central Oklahoma Governments (ASCOG) to serve our northern communities. Subsequently, Hinton was awarded a CDBG grant for \$123,000, to drill a water well after two (2) of Hinton's existing wells were closed. The Oklahoma Department of Environmental Quality (ODEQ) determined the de-commissioned wells were too high in nitrates to continue to use. To keep costs to a minimum, the city of Hinton relied heavily on Keith Wright, their water superintendent, to oversee the project and perform the work that the city crews were capable of completing.

With the amount of funding available, it was first believed that Hinton would only be able to drill one (1) well to replace the two (2) de-commissioned wells. A test well was required by the engineer to



ensure a location could be identified that would provide usable water. In turn, the location would serve to properly identify the project description for obtaining a Permit to Construct.

Bill Keck, owner of Bill's Water Well Service located in Marlow, was the low bidder for the project and hired in February 2009 to drill test wells to ensure the permit to construct could be obtained for a location that would provide usable water. The first test well did not produce usable water. A second test well was dug which did produce usable water. When I interviewed Mr. Keck on June 6, 2012, he told me he drilled the test wells by himself except for one day when his son assisted him. He also provided a certified payroll sheet reporting the wages paid to his son. Mr. Keck stated that the rest of the drilling he performed independently.

Mr. Fox prepared the bid specifications but did not include any references to the Davis-Bacon wage requirement within the document. I contacted him on May 8, 2012, to determine why the specifications were not included. He told me that he did not remember it being a CDBG project and thought that it was being funded by REAP. However, Ms. Birden later provided me with a copy of the "Preliminary Engineering Report" for the Town of Hinton signed by Mr. Fox with the following statement: *"The following project schedule will begin upon the notification of the Town of Hinton that they have received a grant from the Department of Commerce."* I emailed Mr. Fox on June 5, 2012 for further explanation. He responded on June 11 and included a schedule of events reflecting the ads for the water well were published on March 12th and March 19th, 2008, bids were received April 2, 2008, and a contract signed on April 17, 2008. The test well was dug on September 15, 2008 and the actual water well was completed in February 2009.

When I looked at these dates, I immediately checked the CDBG contract to see when it was signed. The signature date on the contract is August 1, 2008. I then contacted you to get the date when a Release of Funds would have been issued. You provided me with the date of October 13, 2008.

I then called Mr. Fox again and went over the dates he provided as well as the contract date and the date the Release of Funds was issued. He reiterated that he was operating under the impression that the project was going to be funded solely with REAP which would explain why the test well occurred before a Release of Funds was obtained and would also explain why the federal requirements were not included in the bid documents. He works on too many projects to remember details for sure but believes that he initiated the bidding process after getting directions from someone with the city.

Regardless, the bid response documentation reveals that Mr. Fox assisted Hinton with advertising for bids. Two (2) bids to drill the wells were received - one from Myers Pump Service for \$57,128 and one from Bill's Well Drilling for \$42,613. Roy Hartley, owner of Roy's Water Well Service, was hired to pump the water for testing. He stated that he did not have any employees working for him because all he had to do was run the pump on his truck.

Wright Construction was hired to assist city crews construct the well house. I talked to Lee Wright on May 8 by telephone and he informed me that he did use a couple of his helpers on the project. I mailed copies of the certified payroll sheet, and he returned them on June 7. Bob Karlin, owner of Karlin Company was hired to install the sand and screening around the piping in the well as well as to install the pump. I talked to Mr. Karlin on May 14, and he stated that he had no employees work on the Hinton water well project. Gerald Kauhlden, owner of Action Electric, was hired to wire the well house. I talked to Mr. Kauhlden on May 8, and he stated that he did all of the work himself and had no employees work on the well house because it was such a small job. Keith Wright, owner of Tri-Services, also did some additional electrical work on the well house. I talked to him on May 8, and he reported he had one helper which was reported on the certified payroll form that I sent him. From the expense records, it appears that the first new well was completed and placed in operation by July 2009. Since one well was in operation, Ms. Birden suggested several options to the city including drilling another well or to de-obligate the remaining balance. She informed them the final decision would be up to the city, but a course of action was needed to work toward closing out the CDBG.

It should be noted at this point that Mr. Keith Wright was operating with the understanding that he could make purchases or obtain services without formal bid as long as the cost was less than \$25,000. Mr. Wright told me that several years ago he had an emergency repair that had to be done. He said that some of the council members told him that as long as he stayed under \$25,000 he would not have to come back for council approval. This misunderstanding has been addressed and will be further explained later in this correspondence. Regardless, the only vendors whose total cost exceeded \$10,000 through the first phase were Bill's Water Well Services (2 test wells and water well) and Water Products, Inc. (plumbing supplies).

By July 2009, many of the changes in city leadership had already occurred. Some of the new council members were not completely satisfied with Fox Engineering and decided to use Sullivan Engineering to engineer the second well because at least one of them had heard good reports about Sullivan. They did not understand the CDBG process and nobody from the City contacted the grant administrator for advice. Sullivan's contract with Hinton includes preparation of bid specifications and assisting with the bid process. I talked with Glenn Sullivan II on May 8 and he said he did not prepare these particular documents because he was later informed that a local well-driller was going to drill the second well for less than \$25,000 and no formal bids would be needed. He said based on that information he had no reason to believe the project would be funded with federal dollars and only provided Hinton with what they needed to get the second well dug.

Mooter's Water Well Service was hired in August 2009 to drill test wells for a second well. Keith Wright, Hinton's Water Superintendent, could not recall if he tried to contact Bill's or if he did call and found out that they were not available at that time. Water from the first test revealed that its nitrate content was also too high to be useful. Mooter's then dug a second test well where acceptable water was found.

According to expense records, Mr. Sullivan submitted his first bill in October 2009, a second bill in July 2010, and a third invoice in March 2011. In May 2011, Mooter's was hired to drill the second well. Calvin Opitz was hired to assist city crews in pouring the floor for the second well house in September 2011. When I called Mr. Opitz on May 14, he said that he did not have anyone who worked for him. He said city employees helped him but nobody else. Wright Construction had gone out of business by the time Hinton needed someone to lay blocks for the second well house so AAA Steam Cleaning was hired for this purpose (Note: They have since moved their operations to Weatherford). I called and talked to the owner of AAA, Mr. Stacy McKinnon, on May 14, 2012. He said that he had contracted to build a well house for Hinton. He said that he owns another company and has all kinds of equipment including dozers. He said that he started the Steam Cleaning business for his high school age son to learn how to run a business. He went on to say that he had done none of the work itself but had sub-contracted the work to Mr. Mascrana of Martin's Details and Construction and provided me his name and number.

I called and talked to Mr. Mascrana. I told him what I needed and asked for a mailing address. He said that it would be better to fax him. I asked for the fax number and he said it was the same number and to call before faxing so they could switch it. I had Susie Lindsay fax the certified payroll forms along with a cover letter that I had prepared. The payroll records were returned showing that two laborers had worked 6 hours each on the job.

Action Electric was hired to wire the second well house and again reported that he did all of the work himself. TK&M Fencing was hired to install fencing around both well houses. I contacted Taylor Brooks on May 9. She reported they did not have employees working on the job because they contract with individuals to assist based on the job. I told her that we still needed the wage information. She said she understood and would get that information to us as soon as she received the forms. I sent the forms on that afternoon but did not receive them back. I tried to contact Ms. Brooks again by phone numerous times with no luck. I left voice messages that were not returned. Finally, I mailed a certified

letter with specific instructions, a copy of a blank Certified Payroll Form, and a Self-Addressed, Self-Stamped return envelope on June 13, 2012, to the following address: TK&M Fencing, 212 East Sky View, Hinton, OK 73047. I received the signed receipt card showing the letter had been delivered and signed for on June 14, 2012, however I still have not received a return as of June 20. I did talk with Keith Wright and he stated that the fencing company was very busy in the oil fields and he could not even get a second bid from them to fence around the second well house.

To the best of my knowledge, I have listed all of the companies that could have been subject to paying Davis Bacon wage rates. With the exception of the fencing company, I have either received copies of certified payroll sheets or have determined that all of the work performed was by the company owner.

Please consider the information provided above along with the brief responses listed below as each of the findings is addressed:

Finding #1: Possible violation of procurement requirements

Response: Based on my interviews and the information provided, I do not believe there was any intention to violate any procurement requirements. The reason for different contractors for engineering or construction appears to be either a lack of procedural understanding or unavailability of the contractor who worked on the first well when the second well was being completed. According to Mr. Keith Wright, Hinton did not think the grant funds would be sufficient to get two (2) wells dug plus construction of two (2) well houses, the pumps and piping, fencing, etc. They opted to go out for bids for one well to make sure they had enough funds to complete at least that much. Once the first well was complete, they wanted to use the remaining funds to drill the second well. They should have gone out for bids for the second well but Mr. Wright was operating under the misunderstanding that he could contract for services without bidding as long as it was under \$25,000. The reason the vendors are not the same for each respective phase of the contract is because the contractors used for the first well were either unavailable, unresponsive, or out of business by the time the second well was drilled.

Finding #2: Failure to identify Federal Requirements in Bid Documents when using Federal Funds

Response: This issue has been addressed earlier in this document. Apparently, neither Mr. Fox nor Mr. Sullivan was made aware that this project was being funded with a CDBG grant.

Finding #3: Lack of information regarding how contractor was selected for second well and for re-bid

Response: There is no publication for Notice of Bids for the second well as explained above. The contractor was hired due to an erroneous misunderstanding by the water superintendent that he was not required to get bids for projects under \$25,000, and a lack of understanding on the new city leaders as to what was required both by law and grant requirements. See final paragraph for explanation of further corrective action taken.

Finding #4: Failure to provide documentation of Davis-Bacon Wage determination requirements

Response: All contractors and sub-contractor were contacted by telephone and copies of the certified payroll forms were mailed to them. One contractor (TK&M Fencing) has failed to respond as of this date.

Finding #5: Failure to provide evidence of the Fair Housing step for 2010 and 2011

Response: Complete turnovers in city staff resulted in significant breaks in continuity. These steps were inadvertently overlooked due to the new staff not knowing the requirement. This issue has been formally addressed and will be corrected for all future endeavors.

I attended Hinton's May 14 Council Meeting and explained the grant requirements as well as the state law regarding the procurement process. I addressed the sealed bid requirements for projects exceeding \$50,000, appearance of splitting of bids, identifying federal requirements for Davis-Bacon wage determinations, and fair housing. I also addressed additional issues discovered in the course of responding to your letter. These issues were not listed but were formally addressed for corrective action in the same council meeting. They are being reported in this correspondence as good-faith evidence that Hinton did not maliciously or knowingly fail to abide by the requirements of the grant. It is hoped that this self-reporting of issues not discovered earlier will provide reason for mitigating further corrective measures.

Additional #1: Six (6) invoices from Cart's Farm and Home totaling \$877.97 were accidentally double-billed for reimbursement.

Response: A check that includes this amount will be remitted in whatever manner you prescribe.

Additional #2: One (1) invoice for \$1,000 to Sullivan's Engineering was submitted for reimbursement from CDBG.

Response: This invoice should have been paid for by REAP and a Request for Payment will be submitted to ASCOG as soon as this amount has been remitted to ODOC. A check totaling \$1,877.97 (covering both financial reimbursements) will be remitted in whatever manner you prescribe.

Additional #3: Purchasing and contract procurement violations for emergencies

Response: The Council and Mayor were informed that emergency procurements could be made for up to \$25,000 providing they followed the law and called and special council meeting, declared an emergency, and authorized the expenditure. However under no circumstances could they authorize anyone to make emergency procurements unless these steps were taken. Further information was also provided for regular procurements for compliance with state law.

Additional #4: Hiring employees or employees' relatives for contract work

A company owned by one of the city employees was used to perform some electrical work. Another company owned by the son of one of the city employees was hired to lay the block for the well house.

Response: These issues were also addressed in the Council Meeting and a copy of the state law related to this issue was presented. Council has already taken action to ensure these violations are not repeated.

Additional #5: A contract was signed to drill the well before CDBG funds were available.

Response: Town leaders now understand that it is illegal to sign a contract unless there is funding readily available to pay for the services.

Additional #6: Work was begun before a Release of Funds was received.

Response: This is directly related to the turmoil created by the personnel turnovers. It appears that there was some knowledge that a REAP grant had been received and that a CDBG

application had been submitted. However, there was a lack of understanding that work could not commence until the grant had been awarded. Town leaders are now aware of their responsibilities and will not make the same mistakes again.

In conclusion, each issue discovered by you or as a result of this investigation has been addressed to the best of our abilities. It is our earnest plea that you consider the mitigating circumstances presented along with our assurance that every reasonable effort will be made to ensure the mistakes enumerated above are not repeated.

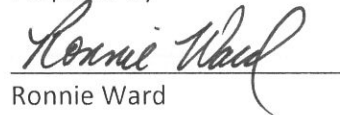
I know you have worked with small communities enough to recognize that learning new roles and responsibilities confronting every new city elected official or employee. Unfortunately, the City of Hinton experienced a complete turnover in a relatively short period of time. The lack of experience and exposure to requirements alien to most outside of local government offer challenges and opportunities that are better met as each member strives to work for the betterment of our communities.

Small communities rely on outside funding to help address expensive projects that are beyond their fiscal capacity to tackle alone. Hinton does not have funds available to pay back the grant without causing severe hardship on the citizens of its small town. Similarly, Hinton can ill afford to have its privilege of applying for future CDBG grants revoked.

It is hoped that the honest, candid response presented will serve as proof that errors made were done so in ignorance and that the formal corrective action taken, coupled with a pledge to ensure future compliance, is sufficient for responding to your findings.

If you have additional questions, please contact me or Mayor Dougherty at any time.

Prepared by



Ronnie Ward
ASCOG CED Director

Reviewed with Concurrence

Marshall Dougherty
Hinton Mayor