

Audit of Commission Order 2001-161 and Request for Proposal 2-01

Scope of Audit – To determine compliance of Missouri Revised State Statutes and Clay County Ordinances with the contract relating to Commission Order 2001-161 and Request for Proposal 2-01.

Contract Paragraph Sections followed by Auditor Comments

- **Contract Paragraph 3 – Independent Contractor - Certificate of General Liability Insurance - \$2,000,0000 sum, naming the County as “Additional Named Insured”. Insurance coverage must be written by companies that have an A.M. Best’s rating of “A-VII” or better and are licensed or approved by the State of Missouri to do business in Missouri.**

In analyzing the Certificate of Insurance, the following points are offered by County Auditor.

- 1). The “producer” or possibly in other words, the “broker” is Marsh USA – Denver, Colorado.

Auditor Comments – Per the contract paragraph 8 – Conflicts of Interest - ... “no regular employee or elected or appointed member of the County shall be permitted to obtain any benefit of this Agreement, or to obtain any benefit that may accrue therefrom.”. Commissioner Brown works for Marsh USA – Kansas City office. I am unsure whether this issue represents a “conflict of interest” for Commissioner Brown or not.

- 2) The requirement noted in Paragraph 3 – Independent Contractor requires \$2,000,000 general liability insurance.

Auditor Comments - In reviewing the Certificate of Insurance in section A, there is an amount for “general liability insurance” of \$2,000,000.

- 3) The requirement noted in Paragraph 3 – Independent Contractor requires that “the Contractor will provide the County with a Certificate of Insurance evidencing the same and naming the County as “additional named insured”...”

Auditor Comments – In reviewing the Certificate of Insurance, **I am unable to find where the County is listed as an “additional named insured”**. This alone, in my opinion, represents non-compliance with the contract.

- 4) Are the insurance companies listed on the Certificate of Insurance “Missouri Approved”?

Auditor Comments – The companies are listed on the State of Missouri Web site in the Insurance department as Approved Insurance Companies. **See Attachment A.**

- 5) Research was performed as to whether the insurance companies listed on the Certificate of Insurance were rated as A-VII.

This was copied from the A.M. Best Web page. “**Best’s Ratings** reflect our **opinion** based on a comprehensive quantitative and qualitative evaluation of a company's financial strength, operating performance and market profile. These ratings are **not a warranty** of an insurer's current or future ability to meet its contractual obligations. (Best's Ratings are **proprietary and may not be reproduced without permission from A.M. Best.**)” Because of the cost of obtaining rating information, this task was not performed.

- **Ciber proposal – No Comments per request.**
- **Contract Paragraph 11 – Performance Security Deposit – Either a “performance security deposit” which is 110% of total cost or price for all services accompanied by a cover letter or a “Valid Errors and Omissions Insurance Policy” that must be submitted to the Clay County Purchasing Department prior to performance of service under the contract. A separate cover letter must be provided as well.**

- 1) It appears that a “Valid Errors and Omissions Insurance Policy” was supplied rather than a Performance Security Deposit. The policy must be issued by an Insurance Company authorized to do business in the State of Missouri in an amount not less than \$5,000,000.

Auditor Comments – In reviewing the Certificate of Insurance, there is an “Errors and Omissions Policy” section that appears to comply with requirements of the Contract. I was not supplied with a cover letter as required in Paragraph 11 b) from the Purchasing Agent.

- **Contract Paragraph 31 – Condition Precedent – Provide evidence that all requirements of this paragraph have been satisfied in accordance with Missouri Revised State Statutes section 50.660.**

Auditor Comments – I was not supplied any evidence on this matter. However, upon research, the County Auditor did sign the Commission Order with the following provision or note “per 50.660 but not in accordance with 55.160”. Of special note, the County Auditor also signed the “Emergency Fund Transfer” sheet with the following provision or note “not in accordance with 50.540 (4)”. On Tuesday, April 3, 2001 and on Friday March 30, 2001, various parties including a commissioner and a county counselor visited with me on signing the commission order. It was said that a lawsuit against me may occur to make me sign the commission order. I went ahead and signed the order with the noted provision attached or included by my signature.

The 50.540 (4) statute says “...The budget officer shall provide in his recommendations, and the county commission shall provide in its appropriation order, that an amount equal to not less than three percent of the total estimated general fund revenues shall be appropriated each year as an emergency fund. At any time during the year the county commission in counties of class one may make transfers from the emergency fund to any other appropriation, and in counties of classes two, three and four the county commission may make these transfers on recommendation of the budget officer; but the transfers in all classes **shall be made only for unforeseen emergencies** and only on unanimous vote of the county commission”

- **Provide evidence that all requirements of County Code of Ordinances Section 37.03 (A) (2), Missouri Revised State Statute 50.650, County Code of Ordinances 37.03 (C) (2) (d) and (e) have been satisfied.**

Auditor Comments – I was not supplied any evidence on this matter. Section 37.03 (A) (2) relates to “no contract or order is binding on the county unless it is writing, there are available budgeted funds and there is an unrestricted cash balance certified by the County Auditor. Section 37.03 (C) (2) (d) and (e) relate to a sequencing of events and (d) states “If the purchasing agent determines need, Auditor’s certification is *requested*. If certification cannot be obtained, then sent back to the department/office.” Statute 50.650 says “...Any officer purchasing any supplies, materials or equipment is liable personally and on his bond for the amount of any obligation he incurs against the county without first securing the proper certificate from the accounting officer.”

➤ **Provide evidence that all requirements of County Code of Ordinances Section 37.39 have been satisfied.**

Auditor Comments – I was not supplied any evidence on this matter. Section 37.39 relates to purchasing requirements of “professional services”. The Ciber contract appears to possibly fit this section of purchasing requirements.

➤ **Proof of Newspaper Advertisement for the RFP.**

- 1) A copy of a memorandum from the Purchasing department to at least the Excelsior Springs Daily Standard was faxed to the paper on 2/28/01 with the notice to appear “one time only”. The bill is to be sent to the Purchasing Agent. The ad is to say RFP NO. 2-01 Deadline Submission, Information Technology Services on March 9, 2001.

Auditor Comments – The Commission’s County Code of Ordinances says in section 37.23 – Purchase of \$3,000 and Over and more specifically in section (B) of 37.23 that five to six weeks from the time the bid is advertised to the time the bid is awarded is encouraged to be allowed. The bid was advertised at the earliest on 2/28/01 and the bidders were to have a proposal by 3/9/01. The award was made on 3/30/01. The ad gave local non-RFP receivers at the most ten days to respond. The award was on 3/30/01 approximately 30 days after the fax went out. At best, 4 and one half weeks was allowed.

➤ **Minutes from the Committee selecting this firm (see County Code of Ordinances).**

Auditor Comments – I was not supplied any evidence on this matter. Per County Code of Ordinances Section 37.39 (A) – “a selection committee shall be formed and comprised of the department head, a member of the Commission or their designee and the Purchasing Agent.” I have been verbally informed by a Commissioner that they did not form a formal committee. Hence, there are no minutes from Committee meetings. When I asked the Purchasing Agent on the morning of April 3, 2001, she replied that there was a Committee. According to 37.39 (F), the Committee was to make a recommendation to the County Commission. None of this occurred as mandated by the County Code of Ordinances. There were no postings of the committee meetings as possibly required by Sunshine Laws.