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July 3, 2014

Helen D. Haskins, Court Administrator
22nd Judicial Circuit Court of Missouri
10 N. Tucker Blvd, Room 412
St. Louis, MO 63101

RE: Clean-Tech Company (Project # 2014-CN05)

Dear Ms. Haskins:

Enclosed is the Internal Audit Section's report on the contract review of Clean-Tech Company. The review covered the period of July 1, 2012 through June 30, 2013. A description of the scope of our work is included in the report. Fieldwork was completed on January 27, 2014.

There was a scope limitation, from the Contractor, that prevented Internal Audit Section (IAS) from verifying certain documentation. Responses to the observations and recommendations noted in the report were received on June 30, 2014, and have been incorporated in the report.

This review was made under authorization contained in Section 2, Article XV of the Charter, City of St. Louis, as revised and has been conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*.

If you have any questions, please contact the Internal Audit Section at (314) 657-3490.

Respectfully,

Mohammad Adil, CPA
Internal Audit Supervisor

Enclosure

cc: Jonathan Campbell, President, Clean-Tech Company
Burton Garland, Attorney at Law, Ogletree Deakins, Nash, Smoak & Stewart, P.C.



CITY OF ST. LOUIS

22ND JUDICIAL CIRCUIT COURT OF MISSOURI

CONTRACT REVIEW

CLEAN-TECH COMPANY

JULY 1, 2012 THROUGH JUNE 30, 2013

INTERNAL AUDIT PROJECT # 2014-CN05

DATE ISSUED: JULY 3, 2014

**Prepared by:
The Internal Audit Section**



OFFICE OF THE COMPTROLLER

HONORABLE DARLENE GREEN, COMPTROLLER

CITY OF ST. LOUIS
22ND JUDICIAL CIRCUIT COURT OF MISSOURI
CONTRACT REVIEW
CLEAN-TECH COMPANY
JULY 1, 2012 THROUGH JUNE 30, 2013

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INTRODUCTION

Background

The contract was awarded to Clean-Tech Company (the Contractor) on August 1, 2012. The contract was approved by the 22nd Judicial Circuit Court of Missouri. The Contractor was paid a monthly fee of \$110,562.86 per month or \$1,326,754.32 annually.

Purpose

The Internal Audit Section (IAS) selected this contract to review based upon the results of our annual risk assessment. The purpose was to determine if the Contractor complied with the terms, conditions, and various provisions of the contract.

Scope and Methodology

On September 30, 2013, the Auditor-in-Charge received an email, from the Contractor's CFO, authorizing their lawyer to represent them. On October 9, 2013 the Auditor-in-Charge received a letter, from the Contractor's lawyer, restricting the scope of our audit effort. The letter states "Therefore, Clean-tech will not provide any of its confidential and proprietary information as part of this audit. Moreover, even if such information ultimately is not subject to disclosure pursuant to a Freedom of Information Act (FOIA) request, my client still would not provide such confidential and proprietary information absent a specific legal obligation to do so".

Due to the restriction in our scope, on-site fieldwork was not conducted with the Contractor. Because of the lack of on-site fieldwork and lack of complete access to records, the Auditor-in-Charge did not have adequate documentation to make an independent review of the Contractor's compliance with contract terms. The Auditor was not given sufficient documentation to verify the City's voucher payroll records to the Contractor's payroll records to test if the voucher records are accurate.

Inquiries were made regarding the Contractor's contract compliance to the contract approved by the 22nd Judicial Circuit Court of Missouri. The scope of the review was from July 1, 2012 through June 30, 2013.

Exit Conference

The Contractor and the 22nd Judicial Circuit Court was offered an opportunity to attend an exit conference. Both parties have declined our invitation as of January 27, 2014.

Management's Response

Management's response to the observation and recommendation noted in the report was received on June 30, 2014 and has been incorporated into the report.

SUMMARY OF OBSERVATIONS

Conclusion

The Contractor did not fully comply with the requirements of the Contract.

Status of Prior Observations

This Contractor has not been previously reviewed by Internal Audit Section (IAS).

Summary of Current Observations

- 1) Opportunity to revise the language of the contract.
- 2) Opportunity to comply with contract requirements for pest prevention and extermination services.

DETAILED OBSERVATIONS, RECOMMENDATIONS AND MANAGEMENT'S RESPONSES

1) Opportunity To Revise The Language Of The Contract

Internal Audit Section (IAS) has met with the City Attorney's office and it appears that the contract is ambiguous and contains conflicting provisions. The first provision in the contract states "The Contractor shall be paid for the work and services performed in accordance with the Specifications for General Cleaning Requirements a monthly fee of \$110,562.86 per month or \$1,326,754.32 annually. This contract is for a fixed price of \$1,326,754.32." This section of the contract implies that this is a fixed price contract.

The second provision in the contract states "The hourly rate of \$20.05 will be used as the rate deducted for all personal shortages. If for any reason, the Contractor is required to perform work at any site for less than a full month, the Contractor will be paid for the actual number of days worked based on the number of working days of the affected month(s)." The monthly required hours per the contract are 4,014 hours.

It appears that the contract contains conflicting provisions. The first provision, in the Contract, asserts that the fixed fee of \$110,562.86 per month was the amount that the parties always intended to be paid because it is a fixed price contract, regardless of the number of hours on the monthly invoice, unless the Court found the Contractor in breach of its duties under the contract.

The Second provision, in the Contract, asserts that \$20.05 will be deducted if the Contractor does not work the full month of 4,014 hours per the contract. The Court further states that if extrinsic evidence were to be adduced, the Bid Evaluation Form submitted by the Contractor in response to the Court's Request for Proposal noted that "Hours are monthly averages, periodic project tasks will increase or decrease monthly over a twelve month period." The Court did not expect monthly invoices to total 4,014 hours each month. This is further evidenced by the Court's performance in paying each installment in full, pursuant to the "fixed contract" language, and without ever invoking any provision to reduce that fee for breach of performance by the Contractor."

Recommendation

It is recommended that the Court consider revising the contract and removing any conflicting provisions. In addition, it is recommended that the 22nd Judicial Circuit Court of Missouri reviews the invoices from Years 2009 through Year 2013 to ensure that only allowable expenditures were paid.

Management's Response

As in the Twenty-Second Judicial Circuit of Missouri's Management Response of January 24, 2014, the Court again concurs that the contractual language cited in the initial Draft Report can be interpreted as stated by the Internal Audit Section. However, in accordance with our Management Response of January 24, 2014, the Court continues

to state that the contractual language cited in the initial draft report was never intended to be interpreted in this manner. On March 27, 2014, the City Counselor's office opinion stated that "the parties performed pursuant to the "fixed fee language," and that the Court did not expect monthly invoices to total the same 4,014 hours each month, as evidenced by the language in the Bid evaluation form: hours are monthly average, periodic project tasks will increase or decrease monthly over a twelve month period. The City Counselor's Office opinion also stated that the Court's performance in paying each installment in full, pursuant to the "fixed fee" language, without ever invoking any provision to reduce that fee for breach of performance on the part of Clean-tech was further evidence that the contractual language in question was never intended to be interpreted in this manner.

The contractual language at issue was never intended to be a tally for a reduction in the monthly contract price, to be used to recoup the difference between man-hours bid and actual man-hours, or to be reconciled at the end of a fiscal year. The intent was that this contractual provision would be used if the court determined, on any given day, that an area of the Court was not cleaned the night before, and the Contractor didn't have proper manpower on site as a result of inadequate staffing. The Court could then require the Contractor to deduct the monetary equivalent of this failure by multiplying the hours not provided/worked by the hourly rate of \$20.05. The Court has never used this contractual provision.

In any event, the ambiguous language in the Court's current (FY15) Clean-tech contract was removed. The ambiguous language will not be found in future cleaning contracts.

The Court reviews all monthly invoices at time of receipt, and previously reviewed all monthly invoices during FY 2009 through FY2013.

2) Opportunity To Comply With Contract Requirements For Pest Prevention And Extermination Services

The pest prevention and extermination services for the contract were reviewed. It was noted that the Contractor did not meet the requirement of receiving the signature of the 22nd Judicial Circuit Court of Missouri for the services rendered. As of June 2013, the number of signatures received was:

- Carnahan Courthouse – 1 out of 12 signatures were received.
- Civil Court – 0 out of 12 signatures were received.
- Family Court Annex – 4 out of 6 signatures were received.
- Family Court Juvenile Records - 25 out of 25 signatures were received.
- Field Unit A - 22 out of 22 signatures were received.

Contract #64520 page 25 states “A delivery ticket is to be signed during each visit to be used as verification of service.”

Inadequate internal controls of ensuring the signing of the delivery ticket for Pest prevention services may result in the 22nd Judicial Circuit Court of Missouri being charged for services not receive.

It appears the Contractor did not have procedures in place to ensure that all of the delivery tickets were signed.

Recommendation

It is recommended that the Contractor implement a policy that ensures that all pest service tickets are signed by an authorized employee of the 22nd Judicial Circuit Court of Missouri.

The management response has been summarized below:

Clean Tech’s Management’s Response written by their Attorney

This section states that some Pest Prevention and Extermination delivery tickets were not signed during each visit for service. Clean-Tech employees and supervisors will be reminded that delivery tickets must be signed as a verification of service, and tickets will be reviewed to ensure compliance. Clean-Tech is willing to consider any other recommended procedures recommended by the auditor or the Court to assure that delivery tickets are signed in the future.

22nd Judicial Court’s Management Response

The court agrees with the Internal Audit Section’s recommendation that the Contractor implement a policy that ensures that all pest service tickets are signed by an employee of the Twenty-Second Judicial Circuit.

The Court appreciates the work performed by the Internal Audit Section and thanks them for their time and effort in ensuring that City of St. Louis taxpayer funds are appropriately expended.