

MARYANNE MORSE  
THE CLERK OF THE CIRCUIT COURT AND COMPTROLLER  
SEMINOLE COUNTY FLORIDA

***(ADDENDUM TO REPORT)***

FOLLOW UP REVIEW  
OF  
JOHNS EASTERN COMPANY INC. CONTRACT

Report No. 061015



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***Follow up Review  
of  
Johns Eastern Contract Review  
(Report No. 100412)***

***ADDENDUM TO THE REPORT***

On June 11<sup>th</sup>, 2015 the Office of the Clerk of the Circuit Court received a management response (see Attachment A) from Mr. Edward Bass, Resource Management Director.

We appreciate Mr. Bass's response to the report and have included it as an Addendum to this report. We have also included comments from the Office of the Clerk of the Circuit Court and Comptroller's relating to the management response. There is certainly need for clarification on the county's responsibilities for enforcing a binding contract.

**Attachment A** – Management response from Mr. Edward Bass, III Resource Management Director.

**Attachment B** – Office of the Clerk of the Circuit Court and Comptroller's clarification on terms and conditions of the contract and responsibilities for enforcement.

The Office of the Clerk of the Circuit Court and Comptroller welcomes the opportunity to provide insight with the contract administration process. With this being said our office stands by the negotiated contract and will enforce it through out the term of the agreement.

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# ATTACHMENT A

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## MEMORANDUM

**DATE:** June 11, 2015

**TO:** Bill Carroll, Internal Audit, Clerk's Office

**FROM:** Edward Bass, Resource Management Director

**SUBJECT:** Follow Up Review of Johns Eastern Contract Review

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Thank you for the opportunity to respond to your follow up review. A few of the issues presented required meetings with various staff and service providers to fully understand, and I appreciate the extra time afforded for our initial review. I am pleased with your finding the prior corrective action plans have been effectively implemented and look forward to addressing and solving the two new issues you point out. I will address them individually below, along with our assessment and corrective action plan.

### **Finding 1: Contract provides for fixed fee compensation.**

The fixed fee compensation referred to in Section 3 of the contract was meant to refer to claims handling only, providing a per-exposure cost and a combined not-to-exceed annual cost of \$75,000. The scope of services for claims handling includes a multitude of functions (attachment A), but does not include functions typically considered additional allocated expenses.

The vendor's RFP response (attachment B) indicates additional costs for allocated expenses, such as medical management, pre-certification of hospital admissions, loss control services, check writing fees for payment only claims, fees for field investigations, and fees associated with bill review and cost containment services. These allocated expenses are typically bid in this manner, and the other bidders' fees/costs were similarly compared.

The prior contract for third party administrator services clearly referenced all such costs, but for unknown reasons the references were omitted when the contract language was updated. This is clearly an omission. The County did not anticipate any vendor could supply all the associated allocated expenses under one fixed fee compensation umbrella, and the vendors' bid clearly indicates they were bidding with additional costs beyond the claims handling fees. The contract, RFP responses, and bid tabulations will be sent to County legal for review and recommendation for remediation.

Your review did uncover a billing error on the part of Johns Eastern relating to medical billing reduction fees. The errors were in large part due to a software glitch which was not detected by Johns Eastern – or any of their clients – after a change in procedures whereby all medical bills must be reported to the State, even those which are clearly duplicates. The Johns Eastern system should not have billed medical reduction fees on these duplicates. Johns Eastern was unaware of the glitch until your

review, and has since corrected the software and initiated an audit of all such fees during the review period of 01/01/13 to 04/30/15. Their audit discovered 22 such duplicate billings with medical reduction fees (out of 3927 bills), and this will result in a refund to Seminole County in the amount of \$3,364.20 (see attachment C). They have also initiated a review for all of their clients.

Five other cases pointed out in your review occurred due to human error and will result in an additional refund in the amount of \$2,163.84. Both Johns Eastern and Risk Management will endeavor to exercise greater oversight to eliminate such errors, and detect them should they occur. We continue to work with Johns Eastern to determine the best controls to eliminate reoccurrence.

**Finding 2: Some attorney fees are not allowed per the contract.**

We shall send a memorandum to Johns Eastern to reiterate the two areas of concern: (1), compensation for travel to Seminole County and court appearances is not allowed and (2), fees for legal research in excess of one hour must be explicitly pre- authorized. The billings for travel time you pointed out will result in the appropriate fee credits. The billings for legal research merit further discussion.

Regarding the legal research fees, both Johns Eastern and Risk Management are actively engaged with the legal teams and receive periodic updates and provide direction for continued defense. Karen Cullen of Broussard & Cullen provided a detailed response (attachment D) indicating the implicit authorization she feels Johns Eastern provided through their interactions.

Legal research is an activity noted in the litigation guidelines referenced by the review under the heading "Professional Services Requiring Prior Approval," and indeed indicates research in excess of one hour requires prior approval. However, both the opening paragraph of this section and the "NOTE" in bold, all-capital lettering associated with the list of activities indicate approval from the Seminole County adjuster. The Seminole County adjuster is our Third Party Administrator: Johns Eastern Company.

Each activity noted in this section is then outlined further, with some of the sections reiterating the requirement for prior approval through Seminole County. It is staff's belief these approvals flow in and through our Third Party Administrator as the coordinator of all services relating to the claims they are administrating, and as such it is reasonable for the legal providers to assume the research necessarily associated with the defense of the claim was authorized through their communication channel with Johns Eastern. In each case, the research was of the type and necessity commensurate with the defense, and justifiably billable.

Nonetheless, there is room for improvement in this process. The approvals must be explicit, better documented, and have a clearer indication of the prior approval associated with each. We are working with Johns Eastern to determine which of these charges they believe were pre-authorized; what documentation they have of authorization; and how we can better document the process. We will update you within the next thirty (30) days with our findings.

## **ATTACHMENT B**

Below is the result of Office of the Clerk of the Circuit Court and Comptroller's review of the Management Responses (Attachment A). For illustration purposes, presented below is the original audit finding , management's response, and our assessment of the response.

### **Finding No. 1: The contract provides for fixed fee compensation.**

Before we assess management's comments, here is a brief synopsis of the background for this contract.

The contract is very specific on how the Johns Eastern Company is to be compensated for their services. The contract was officially signed on July 14<sup>th</sup>, 2014 by the Executive Vice President of Johns Eastern Company, Inc, the County Attorney's Office, the County Purchasing and Contracts Department. It was also formally presented to the Seminole County Board of County Commissioners (BCC)

Now, let's high-light important sections of the contract. Per Section 3 Fixed Fee Compensation and Payment:

- (a) COUNTY agrees to compensate CONSULTANT for the professional services called for under this Agreement a Not-to-Exceed amount of: Year 1 – SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00), Year 2 – SEVENTY-SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$76,500.00), Year 3 – SEVENTY-EIGHT THOUSAND THIRTY AND NO/100 DOLLARS (\$78,030.00), Year 4 – SEVENTY-NINE THOUSAND FIVE HUNDRED NINETY AND 60/100 (\$79,590.60), and Year 5 – EIGHTY-ONE THOUSAND ONE HUNDRED EIGHTY-TWO AND 41/100 DOLLARS (\$81,182.41). CONSULTANT shall perform all work required by the Scope of Services, but in no event shall CONSULTANT be paid more than the negotiated fixed fee amount stated above.”

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For emphasis let's highlight that important provision of the contract:

Consultant shall perform all work required by the Scope of Services, but in no event shall Consultant be paid more than the negotiated fixed fee amount stated above.

In Mr. Bass's response he indicates that "the fixed fee compensation referred to in Section 3 of the contract was meant to refer to claims handling only, provide a per-exposure cost and a combined not-to exceed annual cost of \$75,000. The scope of services for claims handling includes a multitude of functions (attachment A), but does not include functions typically considered additional allocated expenses."

This comment is flat out silly. First of all, the Office of the Clerk of the Circuit Court and Comptroller does understand the procurement process. Here is a simple a true life example so we can discuss the proposal process, the negotiation process, and finally the signed agreement. This is presented so everyone can appreciate and understand the process.

**Example:**

Doris needs to have her house painted. She puts an ad in the local newspaper and asks for painters to give her a proposal on how much it will cost (fixed fee) to get her house painted.

One painter who she approves of provides her a written proposal. It is for \$3,000.00 and \$100 per hour to pressure wash her house prior to painting. Doris meets with the painter and enters into a contract for \$2,000.00. The painter finishes the job and sends her a bill for \$4000. The painter argues I proposed \$3,000 and \$100 an hour (10 hours) for pressure washing so you owe me \$4,000 in total.

Doris says "young man I have a contract with you for \$2,000 and that is what I am going to pay".

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Quite frankly, Seminole County needs to administer their contracts in the same fashion. The Office of the Clerk of the Circuit Court and Comptroller stands by the Audit Finding. **(Case Closed)**

**Finding No. 2: Some attorney fees are not allowed per the contract.**

There are two issues involved with this finding:

1. Attorneys are compensated for travel to Seminole County and court appearances. This is an unallowable cost per the contract. Mr. Bass in his response agreed with the audit finding and reimbursement to the county is expected.
2. Fees for legal research in excess of one hour must be explicitly pre-authorized.

Mr. Bass states in his response that “It is staff’s belief these approvals flow in and through our Third Party Administrator as the coordinator of all services relating to the claims they are administering, and as such it is reasonable for the legal providers to assume the research necessarily associated with the defense of the claim was authorized through their communication channel with Johns Eastern. In each case, the research was of the type and necessity commensurate with the defense, justifiably billable.”

We underlined the sentence above because it is ridiculous to state that the bill for charges that required “pre-approval” are justifiably billable. Here is the contract terms and conditions reemphasized for illustration. Per the County’s Litigation Guidelines:

**Legal Research:**

“You must obtain prior approval from SEMINOLE COUNTY before conducting any legal research in excess of one hour.” With that thought process, if the Third Party Administer wants to convey the

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approval from Seminole County that is acceptable. But, approval must come from Seminole County. **Case closed.**

## Final Comment

The Office of the Clerk of the Circuit Court and Comptroller appreciates the commitment from staff to develop good working relationships with those who have contracts with the county.

However, because the issues noted in the report are financial in nature and it involves contract compliance, it is absolutely imperative that the proper parties are working the issues at hand. More specifically, the Office of the Clerk of the Circuit Court and Comptroller and the County Managers Office have a history of managing this contract and emphasis has been made on the expectations of staff.

One such step that was taken was to have a \$100,000.00 deposit on account with Johns' Eastern so that our Seminole County staff could be actively involved with more management over-sight. The steps that have been taken are diminished when selected parties attempt to negotiate the financial terms and conditions of the contract that is not permitted at the county.

Mr. Bass has no authority to attempt to negotiate for the county. If the contact is to be changed, it is the responsibility the Purchasing Department with the approval of the Board of County Commission.

**Case Closed.**

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The Office of the Clerk of the Circuit Court and Comptroller***