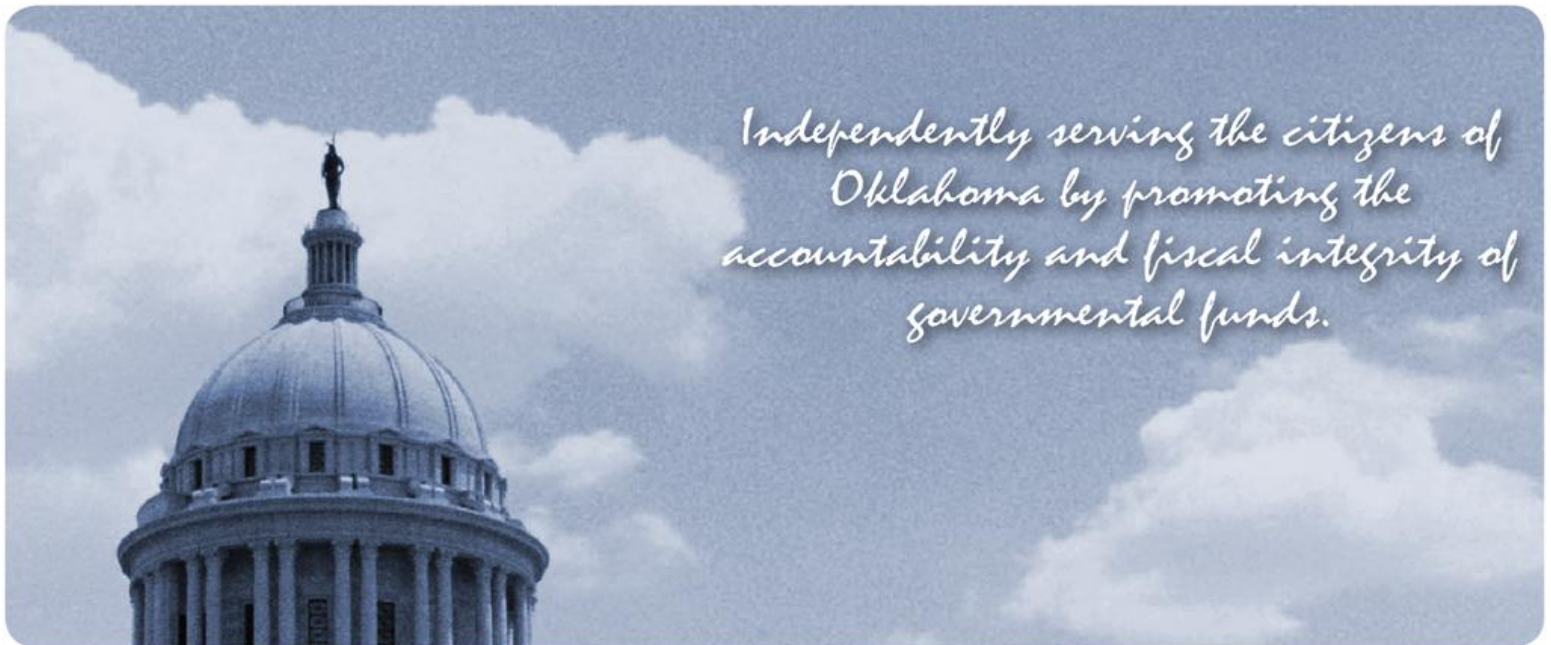


INVESTIGATIVE REPORT

KAY COUNTY BOARD OF COUNTY COMMISSIONERS

July 1, 2012 through June 30, 2014



Oklahoma State
Auditor & Inspector
Gary A. Jones, CPA, CFE

KAY COUNTY, OKLAHOMA

BOARD OF COUNTY COMMISSIONERS

INVESTIGATIVE AUDIT REPORT

JULY 1, 2012 – JUNE 30, 2014

This publication, issued by the Oklahoma State Auditor and Inspector's office, as authorized by **74 O.S. § 212(H)** was not printed, but is available on our agency's website (www.sai.ok.gov) and in the Oklahoma Department of Libraries Publications Clearinghouse Digital Collection, pursuant to **74 O.S. § 3105(B)**. This report has been released for publication by the District Attorney, District 4.



Report Highlights

This audit was performed in response to a District Attorney request in accordance with 74 O.S. § 212(H).

WHY WE CONDUCTED THIS AUDIT

The Honorable Mike Fields, District Attorney for the 4th District of Oklahoma, requested the assistance of the Oklahoma State Auditor and Inspector in conducting an audit of the Kay County Board of County Commissioners in connection with allegations of improper bidding and vendor preference.

KEY FINDINGS

- Kay County awarded more than \$5 million in public construction and reconstruction projects in apparent violation of the Public Competitive Bidding Act. (Pg. 4)
- Kay County utilized term-bid contracts to circumvent the Public Competitive Bidding Act. Of ten contracts reviewed, ranging from over \$13,000 to \$1.9 million, all had been awarded through the County's term bids or through no bids at all. (Pg. 4)
- Commissioner Dee Schieber, BIA Regional Roads Engineer Tom Simpson, and River Ridge Construction collaborated in the execution of the \$1.7 million North Pecan Road project. Commissioner Schieber entered into an agreement without bids and outside of his statutory authority. Kay County did not obtain a contract from the vendor, failed to obtain proof of bonding or insurance from the contractor, and paid \$350,000 in projected "mobilization" costs to "cover up-front expenses". (Pg. 8)
- Kay County overpaid River Ridge Construction more than \$500,000 as part of the Blackwell Wind Farm Roads project. (Pg. 17)
- In 2014, Commissioner Tyson Rowe and River Ridge Construction's owner circumvented purchasing laws in Kay County's acquisition of a \$180,000 vibratory pile driver. After acquiring the pile driver, the County continued to allow River Ridge Construction to use it on county projects. (Pg. 21)
- Commissioners Tyson Rowe and Dee Schieber appeared to have manipulated the bidding process to purchase, trade, finance, and sell trailers. Over the course of a year, Kay County, Irwin Trailer, and River Ridge Construction participated in the buying and selling of almost a dozen belly-dump trailers. (Pg. 25)
- Commissioner Tyson Rowe's private business subcontracted with River Ridge Construction to perform work for Kay County on two projects totaling nearly \$20,000, in apparent violation of the Oklahoma Constitution. (Pg. 40)



Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

December 2, 2015

The Honorable Mike Fields
District Attorney, District 4
114 W. Broadway
Enid, Oklahoma 73701

District Attorney Fields:

Pursuant to your request and in accordance with the requirements of **74 O.S. § 212(H)**, we performed an investigative audit of the Kay County Board of Commissioners. Transmitted herewith is our investigative report. This investigation focused on the period July 1, 2012, through June 30, 2014, although, when the examination warranted, this scope was expanded.

The objectives of our investigation primarily included, but were not limited to, the areas noted in your request. Our findings related to those objectives are presented in the accompanying report.

Because an investigative audit does not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of Kay County for the period July 1, 2012 through June 30, 2014.

The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide services to the taxpayers of Oklahoma is of utmost importance.

This report is addressed to, and is for the information and use of, the District Attorney, as provided by statute. This report is also a public document pursuant to the **Oklahoma Open Records Act** in accordance with **51 O.S. §§ 24A.1, et seq.**

Sincerely,

A handwritten signature in blue ink, which appears to read "Gary A. Jones", is positioned above the printed name.

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

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KAY COUNTY OFFICIALS

County Commissioners

| | |
|------------|--|
| District 1 | Dee Schieber (January 1995 – January 2015) Vance Johnson (January 2015 – present) |
| District 2 | Steve Austin (March 2008 – March 2014) Jason Shanks (April 2014 – present) |
| District 3 | Tyson Rowe (January 2011 – January 2015) Paul Skidmore (January 2015 – present) |

County Clerk

Tammy Reese

District Attorney

Brian Hermanson

INTRODUCTION

In a letter dated June 9, 2014, the Honorable Mike Fields, District Attorney for the 4th District of Oklahoma, requested the assistance of the Oklahoma State Auditor and Inspector in conducting an audit of alleged improper bidding by the Kay County Board of County Commissioners. The Oklahoma Attorney General assigned District Attorney Fields to investigate after the District Attorney of Kay County disqualified his office.

A “Citizen Complaint Form” filed with the Oklahoma Attorney General’s Office on February 20, 2013, documented complaints against the Kay County commissioners, particularly Dee Schieber of District #1 and Tyson Rowe of District #3. The complaint alleged, in part, that the commissioners had been violating competitive-bidding laws for several years, with the past year showing “flagrant” violations. Specific allegations suggested that the commissioners had not properly bid construction projects exceeding \$50,000 and, instead, used six-month term bids to direct work to a specific contractor.

As a result of the above complaint and request, the primary objectives in our investigation were to determine if the commissioners complied with statutes pertaining to bidding of road, bridge, and construction projects and if River Ridge Construction, LLC, a local company, received preferential treatment in the awarding of construction-related contracts. The results of our investigation are documented in the following pages of this report.

SUMMARY OF STATUTES

County bidding and purchasing processes are governed by **Title 19**, **Title 61**, and **Title 69** of the **Oklahoma Statutes**. Assessment and evaluation of these statutes was paramount in determining the County's compliance with bidding; purchasing; and road, bridge, and construction project criterion.

Title 19 O.S. §§ 1501-1505, titled "Purchasing", outlines procedures for single purchase-order bidding and defines *term bids*, bidding contracts not to exceed one year. **Section 1505** defines specific applications of this law and applies when the County acquires supplies, materials, equipment, and information technology. This statute includes procedures for the County to follow when it purchases items to be used through "force account", when county employees perform road- and bridge-construction work.

This Title does not apply to road-construction projects in which contractors perform the construction work. This statute would not apply when the County contracts with vendors to perform large-scale construction, reconstruction, or repair work to county roads.

Section 1505(B)(4) requires that the lowest and best bid be selected. The statute confers discretion on the county commissioners as to selection of the lowest and best bidder. The commissioners must responsibly exercise such discretion without being arbitrary or capricious or while ignoring relevant facts in the process. When the lowest bid is not considered the best bid, all reasoning *must* be properly documented.

In determining the lowest and best bid, the commissioners may consider the availability of material and the transportation cost to a job site as well as the bidder's skill, judgment, general integrity, experience, and reputation for satisfactory work. They may also consider the quality of goods to be furnished, their conformity to specifications, the purpose for which they are required, and delivery terms. A majority of the commissioners must accept, in an open meeting, any contract with a vendor for materials, supplies, or equipment.

Title 61 O.S. §§ 101-138, the Public Competitive Bidding Act of 1974, requires counties to competitively bid public construction contracts for any public improvements, construction, or repairs exceeding \$50,000. Every such contract is to be let and awarded in an open meeting to the lowest responsible bidder, after solicitation of sealed bids, with no work commencing until a written contract is executed and all required bonds and insurance are provided by the contractor.

The Act also defines purchasing and bidding requirements for public construction contracts of less than \$50,000, requiring such contracts be let and awarded to the lowest responsible bidder through written bids or on the basis of competitive quotes. Construction contracts for less than \$5,000 may be negotiated with a qualified contractor. All projects under this section of the Act must be awarded in an open meeting and commence in accordance with the purchasing policies of the County.

SUMMARY OF STATUTES – continued

Title 69 O.S. § 633, part of the Oklahoma Highway Code of 1968, requires the County, in order to ensure sound engineering practices, to have engineering plans and specifications for any culvert or bridge constructed or reconstructed at an estimated cost of \$150,000 or more or for any grade-and-drainage project or reconstruction, replacement, or major repairs at an estimated cost of \$400,000 or more.

Such projects shall be advertised for bids pursuant to **Section 1101**, and the contract shall be let only after notice at a public letting. If the construction work can be completed for a cost below or equal to the estimate of the engineer or below any bid submitted at a public letting, the County may document such cost and utilize its force account for construction labor.

CONSTRUCTION-PROJECT BIDDING

Background

The three-person Board of County Commissioners must review and approve all expenditures of the County and is responsible for the bidding, awarding, and approving of all contracts for the County.

As previously discussed, construction contracts are governed by the **Public Competitive Bidding Act**, as defined in **61 O.S. §§ 101-138**, and **69 O.S. § 633**, and both must be followed to the extent necessary. If there is a conflict between the requirements, the most stringent standards would apply.

Finding

Kay County awarded over \$5 million of public construction and reconstruction projects in apparent violation of the Public Competitive Bidding Act and, in some instances, in violation of 69 O.S. § 633.

In an effort to address the allegations of improper bidding practices we reviewed the bidding and purchasing procedures utilized by the County in the following ten projects. None of the ten projects were bid in compliance with statute.

| District | Project | Amount |
|----------|--------------------------------------|-----------------------|
| 3 | 44 th Street | \$1,942,653.11 |
| 1 | North Pecan Road | \$1,883,297.55 |
| 3 | Tonkawa Tribal Roads and Parking Lot | \$700,466.89 |
| - | Courthouse Parking Lots | \$325,698.27 |
| 1 | Oakland Avenue | \$155,286.20 |
| 1 | Bridge 105 on Hubbard Road | \$73,427.06 |
| 3 | Bridge 136 on North Avenue | \$60,866.37 |
| 3 | Bridge 114 on Hartford Avenue | \$51,938.30 |
| 3 | Bridge 22-A on Bender Road | \$46,861.90 |
| 1 | Headwalls on Traders Bend Road | \$13,251.57 |
| | Total | \$5,253,747.22 |

All of the contracts reviewed fell within the bidding requirements of the **Public Competitive Bidding Act** and should have been bid accordingly, in an open meeting to the lowest responsible bidder, after solicitation for sealed bids, with no work commencing until a written contract was executed, and after all required bonds and insurance had been provided by the contractor.

Instead, the County awarded the projects and components of the projects to contractors through the County's term bids (e.g. six-month bids per **19 O.S. § 1505(B)(1)**) or through no bid process at all. In some instances, parts of the projects were documented on the purchase orders as awarded through term bids, but the contractors that were awarded the projects were not on the bid list or were not the approved lowest or best bidders from the list.

Title 19 O.S. § 1505 does not apply to road construction projects where the construction work is performed by the contractor. Therefore, counties should not contract with construction companies to do large-scale construction, reconstruction, or repair work to county roads and bridges under term bids.

Finding

When construction projects were awarded through six-month term bids, contracts, bonding, and insurance were not obtained.

Section 113(A) of the **Public Competitive Bidding Act** requires counties to execute with successful bidders contracts that "embody the terms set forth in the bidding documents". In addition, **Section 113(B)** requires counties to obtain bid bonds or irrevocable letters of credit from all bidders and to obtain performance bonds, payment bonds, and maintenance bonds, or irrevocable letters of credit, from all winning bidders.

Because the County does not generally comply with the **Public Competitive Bidding Act** and advertise for bids for the majority of its construction, reconstruction, or bridge projects, it has not obtained contracts or required proof of bonding from the companies that have performed the work. Entering into large construction projects without contracts and bonds from the contractors places the County in apparent violation of law, exposes the County to liability, and gives the County little to no recourse for substandard work.

Finding

Some projects entered into by the County without proper bid procedures appeared to be directed to a favored vendor.

The specific cost to the County of not properly bidding construction projects in accordance with statute, directing work to a vendor without bidding, or using term bids in lieu of project bidding could not be determined.

We analyzed some construction, reconstruction, and bridge projects to assess if the process of using the lowest term bids versus no bid at all was

financially beneficial or detrimental to the County and if such work appeared to be directed to a favored vendor.

The analyzed construction, reconstruction, and bridge projects all included work done in part by River Ridge Construction.

One example of what the results would have been if a project had been granted to contractors using the lowest awarded term bids versus a higher bidder or no bid at all is shown in the table below. The Oakland Avenue project was awarded to River Ridge Construction through Purchase Order 52, dated July 1, 2013, for \$155,286.20. If the materials and services for which the County paid would have been awarded to the lowest bidders per the six-month term bids, the County would have paid approximately \$38,903.70 less than it did.

| Oakland Avenue Project – Purchase Order 52 | | | | | |
|---|--------------------|-------------------|---------------------|---|--------------------|
| Line Item | Low Bidder | Awarded To | Cost | Cost if Low Six-Month Bid was Used | Variance |
| Concrete | PC Concrete | River Ridge | \$72,912.00 | \$72,912.00 | \$0 |
| Forming/Stringline | Hembree & Hodgson | River Ridge | \$14,940.00 | \$11,786.00 | \$3,154.00 |
| Foreman & Superintendent | Hembree & Hodgson | River Ridge | \$2,915.00 | \$2,199.50 | \$715.50 |
| Small Bobcat | Hembree & Hodgson | River Ridge | \$4,368.00 | \$3,920.00 | \$448.00 |
| 772D Grader | River Ridge | River Ridge | \$3,200.00 | \$3,200.00 | \$0 |
| Bobtail Dump Truck | Hembree & Hodgson | River Ridge | \$2,625.00 | \$2,450.00 | \$175.00 |
| Pour and Finish | Davidson Brothers | River Ridge | \$35,280.00 | \$8,820.00 | \$26,460.00 |
| Truck Tractor with Lowboy | Evans & Associates | River Ridge | \$3,045.00 | \$2,755.00 | \$290.00 |
| 1,600-Gallon Water Truck | River Ridge | River Ridge | \$6,120.00 | \$6,120.00 | \$0 |
| Concrete Saw | Evans & Associates | River Ridge | \$2,590.00 | \$2,220.00 | \$370.00 |
| 10% Administrative Fee | (not bid) | River Ridge | \$7,291.20 | \$0 | \$7,291.20 |
| Totals | | | \$155,286.20 | \$116,382.50 | \$38,903.70 |

The calculating of these savings is an arguable point since the project should not have been completed using term bids at all. However, in discussions with the county commissioners, their reasoning for utilizing six-month term bids instead of bidding projects in their entireties was that the process saved the County money. Commissioner Dee Schieber stated that the County saved approximately 40% by using six-month bids instead of complete-project bids.

Additionally, the concrete work completed by River Ridge Construction in September 2013 on the Oakland Avenue project had begun to crack as of September 2014. According to an official of the Oklahoma Department of Transportation, the road has no base underneath it, which is causing the cracking, and will eventually need to be redone. The County completed this project under term bids, obtaining no bond, leaving the County to deal with substandard work.



The following pages of this report disclose several activities and transactions that give evidence that the County favored a specific vendor during the awarding of additional construction and bridge projects and other varied transactions.

NORTH PECAN ROAD PROJECT

Background

On July 18, 2011, the U. S. Bureau of Indian Affairs (BIA), in conjunction with the Kaw Nation, awarded Kay County \$1,500,000 for the reconstruction of five miles of North Pecan Road. The county was to provide \$200,000, for a total initial project cost of \$1,700,000.

Finding

Kay County did not bid the North Pecan Road project as required by the Public Competitive Bidding Act and 69 O.S. § 633.

Title 61 O.S. §§ 101-138, the Public Competitive Bidding Act, requires counties to competitively bid public construction contracts for any public improvements, construction, or repairs exceeding \$50,000. All such contracts are to be let and awarded in an open meeting to the lowest responsible bidder, after solicitation for sealed bids, and no work is to commence until a written contract is executed and all required bonds and insurance are provided by the contractor.

Title 69 O.S. § 633 requires counties to competitively bid, and have engineering plans and specifications for, any reconstruction, replacement, or major repairs at an estimated cost of \$400,000 or more. The County did not obtain engineering plans for the North Pecan Road project.

In the process of completing the North Pecan Road project, the County Commission solicited and canceled bids twice, and issued and canceled purchase orders twice before directing the project to River Ridge Construction without bidding. The following timeline details the transactions that led to the improper administration of this project.

| | |
|---------------|---|
| November 2011 | Purchase Order 2065 was encumbered for \$180,000 to River Ridge Construction for completion of headwalls and boxes in preparation of the North Pecan Road project. The final amount invoiced under this purchase order was \$167,402.38. This portion of the project was not bid. |
|---------------|---|

| | |
|------------|---|
| March 2012 | Purchase Order 3419 was requisitioned on March 19, 2012, for \$1,000,000 to Evans & Associates for the “Pecan North Project”. |
|------------|---|

August 2012 Purchase Order 3419 was canceled on August 9, 2012, at the request of Commissioner Dee Schieber.

September 2012 On September 4, 2012, the Commission voted to “go out for bid for five miles of roller compacted concrete.” The Invitation to Bid was issued on the same day, specifically stating:

| |
|---|
| <p><u>DESCRIPTION:</u></p> <p>ROLLER COMPACTED CONCRETE PAVEMENT (RCC)</p> <p>½ MILE ON OAKLAND</p> <p>½ MILE ON “T” STREET</p> <p>4 ¼ MILES ON PECAN ROAD</p> <p>PER BID SPECIFICATIONS ATTACHED</p> |
|---|

On September 24, 2012, bids were opened, with a low bid received from Duit Construction. On Commissioner Schieber’s motion, the Commission voted to table the bids at this meeting.

October 2012 On October 1, 2012, the Commission voted to reject the bid from Duit Construction. The minutes reflected that “Schieber said changes in specifications and provisions in the bid packet were needed; he said he would go back out to bid on October 15, 2012, with a start date of March 1, 2013.” The October 15, 2012, minutes read, “No action was taken on going out for bid on Roller Compacted Concrete Pavements, Dist#1.”

January 2013 On January 28, 2013, the Commission approved soliciting bids for roller-compacted concrete and soil stabilization. Commissioner Schieber requested that the bids extend through June 2013 (making it a term bid).

February 2013 On February 11, 2013, the Commission opened the bids for roller-compacted concrete and soil stabilization, but on both February 11 and February 19, the issue was tabled on Commissioner Schieber’s motion.

On February 25, 2013, once again, Duit Construction’s bid was accepted as the low bid.

| | |
|---------------|---|
| May 2013 | On May 6, 2013, Commissioner Schieber requisitioned Purchase Order 3828 to Duit Construction for \$1,700,000 for the Pecan Road project. |
| August 2013 | On August 19, 2013, more than three months later, Purchase Order 3828 to Duit Construction was canceled. |
| February 2014 | <p>On February 14, 2014, the North Pecan Road project was requisitioned through Purchase Order 3096 to River Ridge Construction for \$1,700,000.</p> <p>River Ridge Construction was paid \$1,715,894.24 on Purchase Orders 3096 and 4533 for the work on North Pecan Road:</p> <ul style="list-style-type: none">• \$1,053,796.54 – concrete slip-form paving• \$350,000.00 – mobilization• \$192,047.70 – stabilization• \$120,050.00 – concrete kiln dust |

Finding

Commissioner Dee Schieber, the owner of River Ridge Construction, and Tom Simpson of the BIA collaborated in the improper planning and awarding of the North Pecan Road project.

As discussed in the timeline above, the North Pecan Road project included a progression of postponements and delays over a two-year period, with the project eventually given to River Ridge Construction in February 2014 for \$1,700,000.

According to Tom Simpson, the supervisory roads engineer for the regional office of the BIA, the first purchase order encumbered for the project, Purchase Order 3419 for \$1,000,000 to Evans & Associates was canceled because the vendor could not complete the work in a timely manner. Mr. Simpson also later stated that the purchase order was canceled because he and Commissioner Schieber decided to use concrete instead of asphalt. This transaction was not bid.

The first bid for the project was awarded to Duit Construction for roller-compacted concrete. This bid was rejected with Commissioner Schieber stating that “changes in specifications and provisions in the bid packet were needed”.

The second bid was again awarded to Duit Construction for roller-compacted concrete. Purchase Order 3828 was requisitioned to Duit Construction in May 2013 for \$1,700,000, and the purchase order was canceled in August 2013. According to Commissioner Schieber, he decided that he did not want Duit Construction to complete Pecan Road after its roller-compacted work on the 44th Street project was not satisfactory.

After bids had been solicited and canceled twice, communication began in November 2013 between River Ridge Construction, Commissioner Dee Schieber, and BIA Roads Engineer Tom Simpson on a plan to award the North Pecan Road project to River Ridge Construction.

A document submitted on November 6, 2013, by the owner of River Ridge Construction reflected a notation that the submission was a “bid” for the Pecan Road Paving project with a total suggested amount to complete the project of \$1,705,124.80. This “bid” was not submitted as part of an official process of the County.

| |
|--|
| River Ridge Construction L.L.C. 4637 N Pleasant view RD Newkirk, OK 74647 580-362-1300 Office 580-362-1304 Fax Project: Kay County Oklahoma Bid# 2013 Pecan Road Paving District# 1 |
|--|

On January 20, 2014, a River Ridge Construction employee e-mailed Mr. Simpson in reference to a proposal for the North Pecan Road project. The “numbers” presented by River Ridge Construction totaled \$1,831,670.90 with a \$50,000 “mobilization” cost.

| |
|--|
| Tom, here are the numbers for pecan road you requested. Please see attachment! |
|--|

| Kay County North Pecan Road (Newkirk to Kildare) | | | | |
|---|-----------------------------------|-------|----------|----------------------------|
| Item No. | Description | Units | Quantity | Cost/Unit |
| 201 (A) | Clearing and Grubbing | LS | 1 | 50,000.00 |
| 202 (H) | Earthwork | LS | 1 | 50,000.00 |
| 641 | Mobilization | LS | 1 | 50,000.00 |
| | 6" Subgrade Stabilization | SY | 65,600 | 304,327.86 |
| | Kiln Dust @10% | Tons | 1800 | 56000.00 |
| 509 (A) | Concrete (6") (slip form paving) | SY | 60,600 | 1,321,343.04 |
| | | | | TOTAL: 1,831,670.90 |

On January 22, 2014, at 2:43 p.m., the same River Ridge Construction employee e-mailed Mr. Simpson again:

Tom, I spoke with [REDACTED] to start the process of the fabrication of the Aluminum box culverts to for Pecan Rd. I have some concerns on the delivery time of 4 weeks due to fabrication

We were planning on starting the Pecan road project in march witch dose not leave the time needed for hauling in the stock piles for the project, my question is if we prove the purchase and a delivery time of these boxes will you give us a PO to start hauling materials for Pecan road. Tom as soon as the boxes hit the ground i will have them installed before we turn a tap on the paving i just need the material in place in order to maintain the schedule of Pecan rd. If you still do not want to issue a PO until we have the boxes complete i will need to push the start of the project back until sometime in April. [REDACTED]

This e-mail discussed the plan for beginning the Pecan Road project and continued the discussion of work being completed before a purchase order would be issued. On the same day, at 3:10 p.m., Mr. Simpson replied to the River Ridge Construction employee:

I would suggest that you modify the proposal (spreadsheet) that you submitted for the construction on Pecan Road (see attached). If you reduce the amount for concrete and increase the amount for Mobilization we can effectively pay for the hauling of the aggregate stockpile prior to the start of the subgrade stabilization. For example; increase the mobilization \$300,000 and reduce the total for the concrete placement by \$300,000 and modify the cost/unit price accordingly. The total of the project will stay the same at \$1,748,992 but we can provide more funding to cover your up-front expenses through your "mobilization" line item and pay less later on in the project when you start paving.

The next day, the River Ridge Construction employee e-mailed Mr. Simpson, "Tom, attached are the revised pay items." An attached spreadsheet reflected the following:

| Item No. | Description | Units | Quantity | Cost/Unit | Total |
|----------|--------------------------------|-------|----------|-------------|----------------|
| 201(A) | Clearing and Grubbing | LS | N/A | 0 | |
| 202 (H) | Earthwork | LS | N/A | 0 | |
| 641 | Mobilization | LS | 1 | \$50,000.00 | \$350,000.00 |
| | 6" Subgrade Stabilization | SY | 65,600 | 2.99 | \$196,327.86 |
| | Kiln Dust @ 10% | Tons | 1800 | \$70.00 | \$126,000.00 |
| 509 (A) | Concrete (6") slip form paving | Sy | 60,600 | \$23.54 | \$1,076,664.64 |
| Total | | | | | \$1,748,992.50 |

Later that day, Mr. Simpson e-mailed the River Ridge Construction employee an attached note and spreadsheet that reflected the following:

I looked over your last submittal and revised a couple of errors. The "cost/unit" for the mobilization was changed to \$350,000 and to make the totals work out the "cost/unit" for the concrete had to be lowered to \$17.77 per SY. The total price at the bottom will not change but the unit prices had to be revised to make the spreadsheet work out.

If it looks OK to you please sign at the bottom and take it to Dee for his signature.

Give me a call if you have any questions.

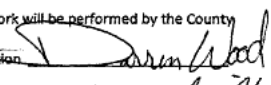
TOM

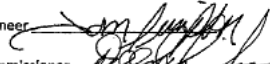
Four days later, Commissioner Schieber and the owner of River Ridge Construction signed their approval of the spreadsheet:

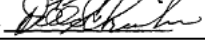
| Item No. | Description | Units | Quantity | Cost/Unit | Total |
|----------|--------------------------------|-------|----------|--------------|----------------|
| 201(A) | Clearing and Grubbing* | LS | N/A | 0 | |
| 202 (H) | Earthwork* | LS | N/A | 0 | |
| 641 | Mobilization | LS | 1 | \$350,000.00 | \$350,000.00 |
| | 6" Subgrade Stabilization | SY | 65,600 | 2.99 | \$196,144.00 |
| | Klin Dust @ 10% | Tons | 1800 | \$70.00 | \$126,000.00 |
| 509 (A) | Concrete (6") slip form paving | SY | 60,600 | \$17.77 | \$1,076,862.00 |
| Total | | | | | \$1,749,006.00 |

Project is approximately 4.3 miles long. Subgrade stabilization is 26' wide. Concrete is 24' wide. The price for concrete includes all labor and incidentals.

* All Clearing, Grubbing, and Earthwork will be performed by the County

Submitted by: River Ridge Construction  Date: 1-27-14

Approved: Tom Simpson, BIA Roads Engineer  Date: 1/23/14

Approved: Dee Schieber, Kay County Commissioner  Date: 1-27-14

Not bidding the North Pecan Road project was an apparent violation of the **Public Competitive Bidding Act, 69 O.S. § 633**, and the BIA Cooperative Agreement.

In addition, the transacting of business by an individual commissioner outside the authority of the Commission would make the agreement illegal, unlawful, and void. **Title 19 O.S. § 3** states, in relevant part:

It is hereby declared to be contrary to law, and against public policy, for any individual county commissioner, or commissioners, when not acting as a board, to enter into any

contract, or to attempt to enter into any contract, as to any of the following matters...

(c) To do or transact any business relating to such county, or any commissioner's district, or districts thereof, or to make any contract or agreement of any kind relating to the business of such county, or any commissioner's district, or districts thereof;

And none of such acts or attempted contracts as above set forth, done or attempted to be done, by an individual county commissioner or commissioners, when not acting as a board, shall ever be subject to ratification by the board of county commissioners, but shall be illegal, unlawful and wholly void.

Additionally, under **21 O.S. § 424**, when two or more people conspire to commit any offense against a county or to defraud a county, in any manner or for any purpose, and if one or more of them does any act to effect the object of the conspiracy, all of the parties are guilty of such conspiracy.

Finding

The County advanced funds to River Ridge Construction as part of the North Pecan Road project.

River Ridge Construction was paid \$350,000 for "mobilization" as part of the North Pecan Road project. Mobilization is defined as "activation of a contractor's physical and manpower resources for transfer to a construction site until the completion of a contract"¹.

| Invoice Number | Invoice Date | Amount of Mobilization Charge |
|----------------|--------------|-------------------------------|
| 21117 | 2/14/2014 | \$150,000 |
| 50114-2 | 5/1/2014 | \$100,000 |
| 52814-5 | 5/28/2014 | \$100,000 |
| Total | | \$350,000 |

In an e-mail discussing the North Pecan Road project budget, Mr. Simpson recommended to River Ridge Construction that it increase its mobilization charge by \$300,000 and reduce its concrete charge by \$300,000. According to Mr. Simpson, by making this adjustment, the BIA could provide more funding to cover River Ridge Construction's "up-front expenses" through a "mobilization line item".

¹ Definition per www.businessdictionary.com

In an interview, Mr. Simpson stated that he approved the mobilization fees because he considered them to be a “pre-purchase” of materials and because the owner of River Ridge Construction had told him that the company was going to set up a concrete batch plant on site, which it did not do. However, according to the e-mail exchange between Mr. Simpson and River Ridge Construction, he not only “approved” mobilization but also suggested its increase by \$300,000. The discussion of and change to the mobilization charge at the suggestion of Mr. Simpson suggests that the charge was not a defined expense of River Ridge Construction in mobilization of their manpower but a “plugged” number to cover upfront expenses of the company.

Mobilization payments appear to be an advance of funds in violation of **Article 10, Section 17, of the Oklahoma Constitution**, which states, in relevant part, “The Legislature shall not authorize any county ... to loan its credit to any corporation, association, or individual.” The Cooperative Agreement entered into between Kay County and the BIA states that “Invoice should be based on construction progress...”

Further, because the County did not require the contractor to provide a performance and payment bond, as required by **61 O.S. § 1(B)**, the advance of \$350,000 for mobilization put the County’s funds at risk. A performance bond would have insured the recovery of the County’s funds if the contractor failed to complete the project.

Finding

Kay County District 1 submitted a payment-reimbursement request to the BIA that included an estimated invoice.

On April 22, 2014 at 9:43 a.m., Commissioner Schieber’s secretary e-mailed an invoice for \$322,144 to Mr. Simpson for the County’s reimbursement of work done on the North Pecan Road project. This invoice included supporting documentation from River Ridge Construction, Invoice #40556, dated April 14, 2014.

On that same morning, Commissioner Schieber’s secretary communicated with River Ridge Construction’s sub-contractor concerning previously-requested reports documenting the *actual* amounts of product utilized by River Ridge Construction in its work on the Pecan Road project.

On April 22, 2014, at 10:53 a.m., Commissioner Schieber’s secretary again e-mailed Mr. Simpson, writing that she had received a report detailing the actual “kiln dust” used by River Ridge Construction, confirming that the River Ridge Construction invoice submitted earlier that day was estimated.

On May 8, 2014, Commissioner Schieber's secretary e-mailed a second invoice to Mr. Simpson requesting reimbursement of \$309,995.73. This invoice was back-dated to April 14, 2014, and included a "corrected" River Ridge Construction Invoice #40556 as supporting documentation. The new invoice #40556 reflected an adjusted cost for stabilization and an actual per-unit cost for kiln dust. This request was paid by the BIA.

The County and the BIA should not have accepted, and River Ridge Construction should not have submitted, *estimated* invoices for official reimbursements. According to the Cooperative Agreement between Kay County and the BIA, all invoices submitted for payment should be official invoices based on "construction progress". The Agreement states:

| |
|--|
| B. The County will submit an official invoice to the Branch of Finance, Southern Plains Regional Office, P.O. Box 368, Anadarko, OK 73005. After the invoice is reviewed and approved, payment will be processed. Invoice should be based on construction progress and should not be submitted more than once a month. |
|--|

BLACKWELL WIND FARM ROADS PROJECT

Background

On March 29, 2012, the County and Blackwell Wind, LLC, entered into a “Road Maintenance/Repair Agreement”. Under the agreement, the County agreed to make modifications and improvements to 20 miles of “primary roads” to handle Blackwell Wind’s anticipated truck weights and vehicle traffic in connection with the development of a wind-powered electric-generating facility in Kay County.

Under the agreement, Blackwell Wind agreed to pay the County an aggregate of \$1,200,000, \$900,000 at the time of the execution of the agreement and \$300,000 upon commercial operation of the wind farm. If the County and Blackwell Wind decided to designate additional county roads as “primary roads”, Blackwell Wind would pay the County \$60,000 per additional mile.

On March 12, 2012, two weeks before the County signed the agreement with Blackwell Wind, the County Commission voted to solicit bids for “32 miles of road construction work for Blackwell Wind Farm”. There was no explanation of the “32 miles” of road in the minutes of the meeting, and the bid solicitation did not reference the number of miles of road construction. The bid solicitation stated the following:

Blackwell Wind Farm Project

Kay County District #3 is going out to bid for the following:

- Clean ditches if needed
- Compact and lay 1,000 tons 1-1/2 inch crusher run rock
- Bid will be by the mile
- Bidder will be responsible for all construction signage as well as rock purchases

The County Clerk stated that bid solicitations are typically sent to the companies that the individual commissioners request. According to the County Clerk’s affidavit of mailing, bid solicitations for this project were sent to three companies, River Ridge Construction, Evans & Associates, and Diemer Construction.

On March 26, 2012, the Commission accepted a bid from River Ridge Construction, which was the only bid submitted. The bid was for a total of \$955,500 and included the following 32-mile breakdown:

WIND FARM ROAD PROJECT

DITCH CLEANING BY THE MILE

w/ Rock & Compaction

| ROAD NAME | MILE #1 | PRICE | MILE #2 | PRICE | MILE #3 | PRICE | MILE #4 | PRICE |
|------------------------|-----------|-------|-----------|-------|-----------|-------|-----------|-------|
| CANTEEN ROAD | # 28,300 | | # 28,300 | | # 33,500 | | # 31,000 | |
| BRAKE ROAD | # 33,500 | | # 33,500 | | # 32,000 | | # 20,500 | |
| ADOBE ROAD | # 33,500 | | # 32,000 | | # 31,500 | | # 28,300 | |
| 156 TH ROAD | # 28,300 | | # 33,500 | | # 28,300 | | # 31,500 | |
| 140 TH ROAD | # 28,300 | | # 28,200 | | # 28,300 | | # 28,300 | |
| 124 TH ROAD | # 28,300 | | # 32,000 | | # 32,000 | | # 20,500 | |
| 108 TH ROAD | # 28,300 | | # 33,500 | | # 33,500 | | # 28,300 | |
| 92 ND ROAD | # 28,300 | | # 33,500 | | # 28,300 | | # 28,300 | |
| TOTALS | # 236,800 | | # 254,600 | | # 247,400 | | # 216,700 | |

GRAND TOTAL
\$ 955,500

ROCK HAULED BY THE TON \$
18⁰⁰

LAY & COMPACT- 1,000 TON OF ROCK BY THE MILE \$
2,500⁰⁰

Finding

The County paid River Ridge Construction \$516,000 more than was allowable under the project bid.

As shown above, the “grand total” bid of \$955,500 reflected an itemization of 32 miles of road work. River Ridge Construction invoiced the County \$603,900 for 20 miles of completed road work, which appears to have encompassed all of the work required. As a result, \$603,900 would have been the total amount due to River Ridge Construction under the bid.

In addition to the \$603,900 paid for 20 miles of road work, the County paid River Ridge Construction \$470,700 for 26,150 tons of rock. Based on the bid-solicitation statement that the “bidder will be responsible for all construction signage as well as rock purchases”, the purchase of rock should have been incorporated into River Ridge Construction’s bid and would not appear to have been an allowable separate cost.

An additional unallowable cost was requisitioned on April 5, 2012, through Purchase Order 3663 to River Ridge Construction for \$34,800 for “labor-mobilization”. The bid for the Wind Farm project did not include mobilization, and payment of this amount would not appear to be an allowable cost.

Also, on two of the purchase orders requisitioned and paid to River Ridge Construction, \$10,500 was billed in excess of the amounts bid for the corresponding road mileage.

The total unallowable costs for the project were \$516,000.

| Unallowable Costs | |
|-------------------------|------------------|
| Rock | \$470,700 |
| Mobilization | \$34,800 |
| Road Mileage Overcharge | \$10,500 |
| Total | \$516,000 |

Finding

The County advanced funds to River Ridge Construction as part of the Wind Farm project.

As noted above, Commissioner Tyson Rowe requisitioned Purchase Order 3663 for \$34,800 for “labor-mobilization”. River Ridge Construction submitted an invoice to the County with the same date and amount for “mobilization for wind farm project”. Neither the purchase order nor the invoice included information regarding any work done or materials provided. As noted above, the bid did not include mobilization.

Mobilization, defined as “activation of a contractor’s physical and manpower resources for transfer to a construction site until the completion of a contract”², appears, in this instance, to be an advance of funds in violation of **Article 10, Section 17, of the Oklahoma Constitution**, which states in relevant part, “The Legislature shall not authorize any county ... to loan its credit to any corporation, association, or individual.”

Purchase Order 3700 for 17,000 tons of rock at \$306,000 was requisitioned on April 10, 2012, more than three weeks prior to the invoicing for the accompanying road work. Payment of this rock purchase prior to its use in the project also appears to be an advance of funds in violation of law.

Finding

In the awarding of the Wind Farm project the County did not properly advertise the bid solicitation, execute a contract with River Ridge Construction, or receive documentation of bonding, all required by the Public Competitive Bidding Act.

Title 61 O.S. § 104 requires that all proposals to award public construction contracts be made equally and uniformly known by an awarding public agency to all prospective bidders and the public, with the first publication to be at least 20 days prior to the date set for opening bids.

² Definition per www.businessdictionary.com

The County published the Wind Farm bid solicitation on March 14, 2012, with a bid opening date of March 26, 2012, which was only a 12-day period.

Title 61 O.S. § 113 requires the awarding public agency and the successful bidder to execute a contract embodying the terms set forth in the bidding documents. For a contract exceeding \$50,000, the statute additionally requires the successful bidder to provide to the awarding public agency a bond or irrevocable letter of credit and proof of public liability and workers' compensation insurance.

We found no evidence that River Ridge Construction entered into a contract with the County for the Wind Farm project or provided a bond or letter of credit as part of its project documents.

PURCHASE OF VIBRATORY PILE DRIVER

Background

On January 27, 2014, the County accepted a bid from River Ridge Construction for the purchase of an HMC SP-80 vibratory pile driver. The following is a timeline regarding the purchase:

- On January 2, 2014, a territory manager for Hercules Machinery Corporation (HMC) e-mailed River Ridge Construction the specifications for an HMC-manufactured SP-80 vibratory pile driver. On that same date, the owner of River Ridge Construction e-mailed the specifications to Commissioner Tyson Rowe.
- On January 6, 2014, the County Commission voted to advertise for bids for an HMC SP-100 vibratory pile driver.
- On January 13, 2014, the Commission voted to rescind the motion to advertise for bids for the HMC SP-100 vibratory pile driver, and Commissioner Rowe presented a new motion to advertise for bids for an HMC SP-80 vibratory pile driver.
- On January 21, 2014, a requisition/ purchase order was encumbered to River Ridge Construction for a 2012 pile driver for \$180,000, six days *before* the opening of the bids.
- On January 27, 2014, the Commission opened Bid #2014-18 for the HMC SP-80 vibratory pile driver. River Ridge Construction submitted the only bid for \$180,000. The Commission voted to accept the bid.
- On January 31, 2014, Commissioner Rowe's secretary signed a receiving report as accepting delivery of the pile driver. Another employee of Commissioner Rowe's signed the receiving report as having delivered the pile driver.
- On February 3, 2014, the Commission approved payment for the pile driver to River Ridge Construction for \$180,000.

Finding

Commissioner Tyson Rowe rescinded and modified a bid for a vibratory pile driver, placing the bid specifications in alignment with the exact model of equipment owned by River Ridge Construction.

On January 6, 2014, at the request of Commissioner Rowe, the County Commission voted to advertise for bids for an HMC SP-100 vibratory pile driver. On January 13, 2014, the Commission voted to rescind the motion for the original bid and advertise for bids for a new or used HMC SP-80 vibratory pile driver, which was the specific model that River Ridge Construction owned.

Commissioner Rowe acknowledged that, after the initial bid submission, he spoke with the owner of River Ridge Construction concerning which model of pile driver his company owned. After this conversation, Commissioner Rowe rescinded his first bid request and submitted a second bid request for an HMC SP-80 vibratory pile driver, the model that River Ridge Construction owned.

Finding

Purchase Order 2807 for the purchase of a vibratory pile driver was issued in apparent violation of statute.

Six days *before* sealed bids were opened, and *before* a specific vendor should have been known, Purchase Order 2807 was issued to River Ridge Construction for a 2012 vibratory pile driver in the amount of \$180,000. The purchase order was issued on January 21, 2014, *prior* to the sealed-bid opening date of January 27, 2014.

Title 19 § O.S. 1505 requires the county purchasing agent to give to the county clerk sealed bids received from vendors, the county clerk to forward the sealed bids to the County Commission, and the Commission to open the sealed bids in an open meeting and select the lowest and best bid.

According to **19 O.S. § 1505(C)**, *after* selection of a vendor, the county purchasing agent is to prepare a purchase order and submit it, with a copy of the requisition, to the county clerk, and the county clerk is to then encumber the amount stated on the purchase order and assign a sequential number to the purchase order.

The purchase-order register maintained by Commissioner Rowe's secretary reflected that Purchase Order 2807 was recorded on January 21, 2014, six days before the bid opening.

| Date | Date to | Account # | P.O. # | Blanket | Vendor | Purpose | Amount |
|------|------------|-----------|--------|---------|-------------|-----------|-----------|
| 1-21 | Courthouse | 40 | 2807 | | River Ridge | Vibratory | \$180,000 |

The county purchasing agent also maintains a written log, which also reflected that Purchase Order 2807 was requisitioned on January 21, 2014.

| PURCHASE ORDER CALENDAR FY2013/2014 | | | | |
|--|------|---------------------|---------|----------|
| DATE | PO# | VENDOR | AMOUNT | ACCOUNT |
| 1-21-14 | 2801 | SWBurstum | 300.00 | G0400-20 |
| | 2802 | WALMART | 1000.00 | ↓ |
| | 2803 | Bankers Credit Card | 1000.00 | ↓ |
| | 2804 | Zee Medical | 230.92 | G2000-20 |
| | 2805 | Zee Medical | 119.77 | ↓ |
| | 2806 | Bank of the West | 7910.13 | 40000-20 |
| | 2807 | River Ridge | 180,000 | #3103-40 |
| | 2808 | JACKSON MECHANICAL | | G2000-20 |
| 1-22-14 | 2809 | PC News | | G0400-20 |

On January 27, 2014, the Commission opened bids for the HMC SP-80 vibratory pile driver. The only bid received was from River Ridge Construction for a *used* pile driver at \$180,000. This bid was accepted.

According to the HMC territory manager, the estimated fair-market value of a used, two-year-old HMC SP-80 vibratory pile driver would be approximately \$100,000-\$120,000, plus installation costs. He also stated that, had he received his invitation to bid, he would have bid the sale of a new pile driver at \$169,500 with a six-month warranty. The County's affidavit of mailing reflects that HMC was mailed a bid packet. However, according to HMC's territory manager "it never showed".

Finding

After purchasing the pile driver, the County allowed River Ridge Construction to continue using the equipment on bridge projects.

Article 10 Section 17 of the **Oklahoma Constitution** states, in relevant part:

The Legislature shall not authorize any county ... to become a stockholder in any company, association, or corporation, or to obtain or appropriate money for, or levy any tax for, or to loan its credit to any corporation, association, or individual.

In addition, **21 O.S. § 424** prohibits two or more persons from conspiring to commit an offense against any county or to defraud any county in any manner or for any purpose.

After the County purchased the pile driver for \$180,000 from River Ridge Construction, the County allowed River Ridge Construction to use it for county bridge projects.

As of July 2014, the owner of River Ridge Construction acknowledged that he was still using the pile driver to work on county projects. In September 2014, Commissioner Rowe also acknowledged that the County did not own the equipment necessary to use the pile driver and that River

Ridge Construction was using it in completion of County-funded bridge projects.

Officials of both River Ridge Construction and the County stated that River Ridge Construction agreed to pay for the attachment of the pile driver to a County excavator. However, as of October 2014, the County had not purchased the necessary equipment to attach the pile driver to its excavators, and River Ridge Construction continued to use the pile driver.

The owner of River Ridge Construction confirmed that, after he sold the pile driver to the County in January 2014, he continued to use it, but he claimed that he was discounting the cost charged to the County for driving bridge piling. There was no evidence that discounts had been given to the County for the use of its own pile driver until after the purchase was questioned by the State Auditor's Office.

PURCHASES AND SALES OF TRAILERS

Background

On April 15, 2013, at Commissioner Tyson Rowe's request, the County Commission voted to solicit bids for purchasing "a 2013 55 Ton Detach Lowboy Trailer with a 2012 55 Ton Lowboy Detach Trailer as trade-in".

On May 6, 2013, the Commission opened the bids and accepted a bid from Irwin Trailer, LLC, to trade a 2012 trailer for a 2013 trailer, as reflected in the minutes of the meeting:

Motion was made by Rowe and seconded by Austin approving and accepting Irwin Trailer, LLC bid in the amount of \$54,450.00 sell/\$54,450.00 trade in on Bid#2013-18 Detached Lowboy Trailer, D#3. Other bids received were opened as follows: G. W. Van Keppel Co.-\$74,850.00 with no offer on trade in; Yellowhouse Machinery Co.,-No Bid; Frontier Equipment-No Bid. Motion carried: Rowe, aye; Schieber, aye; Austin, aye.

The County originally acquired the 2012 trailer through a lease-purchase agreement with Irwin Trailer in January 2012. The specifications for the purchase of the new 2013 trailer, as defined in the April 15, 2013, invitation to bid, were provided by Irwin Trailer.

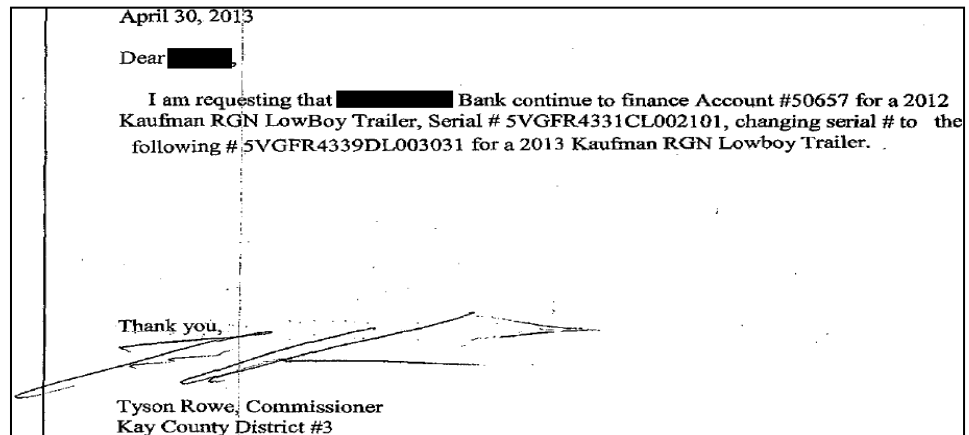
Finding

Commissioner Tyson Rowe purchased, traded, and financed two trailers in apparent violation of statute.

Title 19 O.S. § 1505 requires a county to keep bids *sealed* after they are received from the vendors. The county clerk is to forward the *sealed* bids to the board of county commissioners, which is to open the *sealed* bids in an open meeting.

According to **19 O.S. § 1505(C)**, *after* selection of a vendor in an open meeting, the county purchasing agent is to prepare a purchase order and submit it, with a copy of the requisition, to the county clerk.

On April 30, 2013, six days before the Commission opened the trailer bids and before a vendor should have been known, Commissioner Rowe wrote to the bank that held the financing on the 2012 trailer that was to be used for "trade-in". He requested that the financing be continued under the current account but be applied to a "2013 Kaufman RGN Lowboy Trailer", a trailer that had not yet been acquired through the bid process.



On June 24, 2013, the title for the 2013 trailer was issued to the bank that had held the financing on the 2012 “trade-in” trailer. The 2013 trailer, now being financed under the 2012 lease-purchase account, had the same VIN as the one to which Commissioner Rowe referred in the letter written to the bank before the bids were opened by the Commission.

The County and bank did not open a new account to make payments on the 2013 trailer but, instead, continued to pay off the lease-purchase account of the 2012 trailer, a trailer no longer owned by the County, eventually paying off the account in January 2014.

Disposition of the 2012 Trade-In Trailer

On May 13, 2013, the Commission voted to declare the 2012 trailer as surplus for the trade-in toward the 2013 trailer purchase. On the same day, the title of the 2012 trailer was transferred directly to a private company from the bank that held it as the provider of the lease-purchase agreement with the County. According to the company owner, he compensated Irwin Trailer \$35,000 along with a 1989 Atoka trailer valued at \$19,000 in exchange for the 2012 trailer.



According to the general manager of Irwin Trailer, on May 24, 2013, Commissioner Rowe purchased the 1989 Atoka trailer that Irwin Trailer had received in the transaction with the private company that had purchased the County’s 2012 lowboy trailer. Commissioner Rowe wrote a personal check to Irwin Trailer for the Atoka trailer for \$20,000.

Finding

Commissioner Tyson Rowe sold, through Irwin Trailer, a personally-owned trailer to the County.

On February 3, 2014, at Commissioner Rowe's request, the Commission voted to solicit bids for purchasing a "Three Axle Trailer (used) with a 50 ton rear fold up ramp with full width neck". A few days earlier, Commissioner Rowe requested that the County Clerk's Office put the issue on a meeting agenda and had written on his request, "Please send to [the general manager] @ Irwin Trailers".

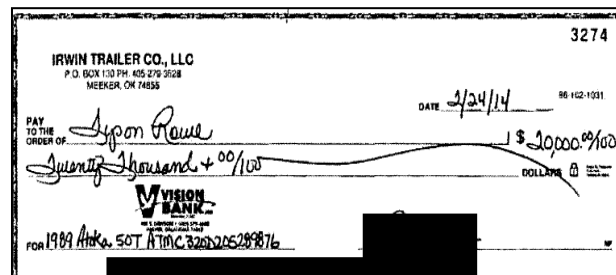
On February 24, 2014, the Commission accepted a bid from Irwin Trailer to buy a 1989 Atoka lowboy trailer for \$20,500. Four other companies submitted no-bid responses.

Bid#2014-21, Trailer, Dist#3 was opened as follows: Yellowhouse Machinery Co.-No Bid; Frontier Equipment-No Bid; Kirby-Smith Machinery, Inc.-No Bid; The G. W. Van Keppel Co.-No Bid; Irwin Trailer, LLC-\$20,500.00. Motion was made by Rowe and seconded by Schieber approving and accepting Irwin Trailer, LLC-\$20,500.00 on Bid#2014-21, Trailer, Dist#3. Motion carried: Rowe, aye; Schieber, aye; Austin, aye.

The County paid Irwin Trailer \$20,500 for the 1989 Atoka lowboy trailer on Warrant #1457, dated March 5, 2014.

According to the general manager of Irwin Trailer, Commissioner Rowe wanted to sell his 1989 Atoka trailer to the County after his personal company no longer needed it. Commissioner Rowe asked Irwin Trailer to buy the trailer and then sell it to the County because he could not directly sell it to the County.

On February 24, 2014, Irwin Trailer wrote a check to Commissioner Rowe for \$20,000 for the purchase of his 1989 Atoka trailer. The 1989 Atoka trailer, the same trailer that Commissioner Rowe had purchased previously for personal use, was then sold by Irwin to the County.



The communications and transactions that took place between Commissioner Rowe and Irwin Trailer appear to have violated **21 O.S. § 424**, which prohibits two or more persons from conspiring to commit an offense against any county or to defraud any county in any manner or for any purpose.

These transactions also appear to violate **Article 10, Section 11, of the Oklahoma Constitution**, which prohibits county officers from profiting from the use of public funds in their hands.

Belly-Dump Trailers

Background

During the period April 2012 through March 2013, the County purchased 11 belly-dump trailers, all from Irwin Trailer, and sold 10 belly-dump trailers.

In April 2012, four trailers were sold to a business that subcontracted with River Ridge Construction to haul rock as part of the Blackwell Wind Farm project. The individual who purchased these trailers stated that his bid amounts were based on prices provided by the general manager of Irwin Trailer.

Four of the trailers were sold to River Ridge Construction in December 2012. In the sale of these four trailers, the County's invitation to bid was mailed to River Ridge Construction, Irwin Trailer, Wells Construction (the owner of which co-owns a business with the owner of River Ridge Construction), and Cascade Trucking (whose invitation to bid was returned as undeliverable).

| Trailers Bought and Sold | | | | |
|--------------------------|----------------|------------|----------|-----------|
| Trailer VIN | Date Purchased | Date Sold | District | Time Held |
| 0611 | Feb 2008 | April 2012 | 1 | 4 years |
| 0613 | Feb 2008 | April 2012 | 1 | 4 years |
| 0620 | Feb 2011 | April 2012 | 3 | 1 yr 2 mo |
| 0621 | Feb 2011 | April 2012 | 3 | 1 yr 2 mo |
| 0617 | May 2005 | May 2012 | 2 | 6 years |
| 0618 | May 2005 | May 2012 | 2 | 6 years |
| 0830 | April 2012 | Dec 2012 | 1 | 8 months |
| 0831 | April 2012 | Dec 2012 | 3 | 8 months |
| 1039 | April 2012 | Dec 2012 | 3 | 8 months |
| 1042 | April 2012 | Dec 2012 | 1 | 8 months |
| 0220 | May 2012 | - | 2 | - |
| 0221 | May 2012 | - | 2 | - |
| 0014 | Dec 2012 | - | 1 | - |
| 0015 | Dec 2012 | - | 1 | - |
| 0033 | Dec 2012 | - | 3 | - |
| 0034 | Dec 2012 | - | 3 | - |
| 0052 | March 2013 | - | 3 | - |

Finding

The County did not purchase two trailers from the low bidder.

In April 2012, the County purchased four belly-dump trailers, two for District #1 and two for District #3. The purchases were initiated through “Invitation to Bid #2012-20 – Belly Dump Trailer” issued on March 19, 2012, with a bid-opening date of April 2, 2012.

On April 2, 2012, the County received three bids for the purchase of belly-dump trailers. Irwin Trailer’s bid reflected an amount of \$30,425.00; a second vendor’s bid reflected an amount of \$32,477.40; the third and final bid was \$35,011.20. The Commission voted to table the bid selection at that time.

During the April 9, 2012 board meeting, the commissioners discussed the fact that Irwin Trailer’s lease-purchase bid of \$30,425 did not include interest. The minutes reflected that the total bid price should have been \$32,661.60, although that amount was also in error. The bid documents that Irwin Trailer submitted showed that the price with interest for trailers with manual tarps was \$32,661.60. The bid documents showed that the price with interest for trailers with electric tarps, which were what the County actually purchased, was \$32,910.00.

During the April 9 meeting, the Commission approved the purchase of two belly-dump trailers for District #1 from Irwin Trailer without properly calculating and documenting the actual lowest bidder. Accepting Irwin Trailer’s bid for these two trailers of \$32,910.00, instead of the lower bid of \$32,811.06, appeared to have placed the County in violation of **19 O.S. § 1505(B)(4)**, which requires the board of county commissioners to select the lowest and best bid. Any time that the lowest bid is not considered to be the best bid, the reason for such conclusion is to be recorded.

The final “Lease Purchase Agreement for Equipment” approved by the County on April 16, 2012, showed the final purchase price of these trailers as \$32,800.20, an amount lower than the lowest bid amount and not an amount provided by Irwin Trailer during the bid process.

OTHER BIDDING AND PURCHASING ISSUES

BUREAU OF INDIAN AFFAIRS COOPERATIVE AGREEMENTS

Background

The County contracts with the U. S. Bureau of Indian Affairs (BIA) through the Federal Indian Reservation Roads Program to receive funds on behalf of Native American tribes for the construction/reconstruction of public roads that are located within, or provide access to, reservations or trust land within the County. The County and the BIA enter into “Cooperative Agreements” that define the objectives, funding, and responsibilities of each party for the projects. The construction responsibilities of the County include directives to advertise for construction bids, issue bid proposals, receive and tabulate bids, and award construction contracts in accordance with applicable laws.

Finding

The County is in apparent violation of Cooperative Agreements with the BIA.

The County did not advertise or award bids or contracts for the following six construction or reconstruction road or bridge projects funded by the BIA:

- 44th Street
- North Pecan Road
- Tonkawa Tribal Roads and Parking Lot
- Oakland Avenue
- Bridge 105 on Hubbard Road
- Headwalls on Traders Bend Road

These projects were completed from materials and services awarded through the six-month-bid process or through materials and services that were not bid, both in apparent violation of law.

The County was also required to provide “County Funds” for each of these projects. According to Tom Simpson, the supervisory roads engineer for the regional office of the BIA, the County traditionally provides its funding through its own labor force. We found no evidence that this funding was ever provided.

BIDDING ISSUE

Background Under the Public Competitive Bidding Act, **61 O.S. § 103**, “No work shall be commenced until a written contract is executed...” When the County does not properly bid projects or receive written contracts for the work to be performed, it is subject to charges that are not defined, agreed upon, or approved.

Finding **The County paid “Administrative Fees”, “Office Costs”, and “Profits” as part of the costs invoiced by River Ridge Construction.**

River Ridge Construction charged the County a “10% administrative fee” on some of its invoices. The fees appeared to have been based on materials, costs, or labor. For example, on Purchase Order 52, the Oakland Avenue project, the invoice included a charge of \$7,291.20.

| | |
|--|----------|
| 10% Administrative Fee for Concrete Materials. | 7,291.20 |
|--|----------|

On River Ridge Construction’s invoices for Purchase Orders 2592 and 2952, part of the 44th Street Reconstruction project, the County was charged a “7.5% office costs” fee and a “5% profits” fee, totaling \$9,443.42.

The County should not have paid charges that were not for any definable work and that were not bid.

PURCHASING PROCESS

Background **Title 19 O.S. § 1505** specifically defines the process of bidding and purchasing materials, supplies, equipment, and information technology. In this statute, the procedures are defined for bidding needed or commonly-used items, typically through six-month bids, and for the requisition, purchase, lease-purchase, and receipt of these items.

In the process of completing our investigation into possible bidding violations, we observed other, more general purchasing issues that were in apparent violation of statutes. These issues are addressed below.

Finding **The County Clerk’s Office has the access to modify purchase orders after they are created.**

Internal controls are not currently in place to ensure that purchase orders cannot be modified after their initial creation. Also, the purchasing

software does not include an audit log, which could be used for review of any changes made by employees.

Finding **The County Clerk's Office occasionally issues purchase-order numbers out of sequence.**

Title 19 O.S. § 1505(C)(2) states, in relevant part, "After selection of a vendor..., the county purchasing agent shall prepare a purchase order in quadruplicate and submit it with a copy of the requisition to the county clerk, and the county clerk shall then encumber the amount stated on the purchase order and assign a sequential number to the purchase order."

On occasion, purchase orders are issued and subsequently canceled. Sometimes when this occurs, purchase-order numbers are reused, out of numerical sequence.

In a well-maintained internal-control environment, maintaining the sequential numbering of documents allows for the tracking of issued requisitions and purchase orders and for the accountability of all canceled and unused items. Maintaining sequential numbering should help ensure that unauthorized purchases are prevented, that nonessential purchases do not occur, and that statutory requirements are followed.

Finding **The County has accepted six-month bids for services and labor that are not allowed under 19 O.S. § 1505, and the County has accepted multiple bids for items for which only one bid should have been accepted.**

The County has routinely accepted *all* six-month bids received for multiple items, including culvert pipe, grader blades, janitorial supplies, concrete pouring/finishing, and heavy-equipment rentals.

According to **19 O.S. § 1501(A)(3)(j)**, the County may accept all bids received for processed native materials for road and bridge improvements, with the lowest and best bid from those accepted to be selected at the time of opening of any construction project.

As reflected in **19 O.S. § 1505(B)(4)**, for all other items, the lowest and best bid should be selected. If the lowest bid is not considered the best bid, the reason for such conclusion should be recorded. **Title 19 O.S. § 1505(B)(4)** specifically states:

"The board of county commissioners, in an open meeting, shall open the sealed bids and ... select the lowest and best

bid based upon, if applicable, the availability of material and transportation cost to the job site within thirty (30) days of the meeting... The board of county commissioners shall keep a written record of the meeting as required by law, and any time the lowest bid was not considered to be the lowest and best bid, the reason for such conclusion shall be recorded.”

The language in the County Commission meeting minutes and the documenting of the County’s “Notice to Successful Bidders” reflected that bids were awarded to all vendors without the lowest or best vendors being documented.

Finding **The County does not always utilize receiving reports as required by statute.**

Title 19 O.S. § 1505(E) defines the procedures for the receipting of items purchased by the County. Under Subsection 5 of this statute, the receiving officer is directed to complete a receiving report that states the quantity and quality of goods delivered. The person delivering the goods is to acknowledge the delivery by signature.

The County sometimes completes receiving reports without obtaining the signatures of the individuals delivering or providing the goods purchased. In these instances, there is no verification of the goods received.

Finding **Several instances were noted of the County not properly encumbering funds prior to purchases being made or work being completed.**

Title 19 O.S. § 1505(C) requires that a purchase order be prepared and funds be encumbered prior to a purchase. We noted several instances in which a purchase order, receiving report, and vendor invoice were all dated with the same date. For some purchases, the vendor invoice detailed work that had taken place over an extended period of time, confirming that the purchase order was not requisitioned or encumbered prior to purchase.

For example:

- Purchase Order 3862 was requisitioned on May 9, 2013. The accompanying receiving report and vendor invoice were also dated May 9, 2013. The vendor invoice for 100 hours of piling sand confirmed that the work was performed before the purchase order was encumbered.

- Purchase Order 1040 was requisitioned on September 9, 2013. The accompanying receiving report was dated September 12, 2013, and the delivery was signed as “unable to make contact”. The invoice submitted was also dated September 12, 2013, and included billing for 120 hours of “driving bridge pilings”. For the purchase order to have been in compliance with statute, it should have been encumbered at least 120 hours prior to September 12, 2013.
- Purchase Order 416 was requisitioned on July 25, 2013. The accompanying receiving report and vendor invoice were also dated July 25, 2013. The vendor invoice included related bridge-construction labor of up to 96 hours, again confirming that the work was performed before the purchase order was requisitioned and encumbered.

Encumbering purchases before incurring costs provides budgetary control over purchasing, helps guard against over-expending, and assists the County in maintaining compliance with applicable laws.

CONFLICTS OF INTEREST

Background

During the course of the investigation, information came to our attention of personal business transactions that had taken place between River Ridge Construction and Commissioners Tyson Rowe and Dee Schieber. These transactions were reviewed as potential conflicts of interest, situations that have a potential to undermine the impartiality of elected officials in the course of their fiduciary duties.

Finding

When elected officials conduct personal business with vendors that have been awarded significant work from the county, conflicts of interest may arise, even if just in appearance, that could be detrimental to public trust.

- On May 15, 2012, Commissioner Rowe and River Ridge Construction entered into a contract for the construction of a hay barn on Commissioner Rowe's personal property.

The contract stipulated that Commissioner Rowe would pay River Ridge Construction \$53,752.81, which included \$36,752.81 for "delivery of building kit" and an undocumented amount for "concrete work-labor in exchange for various equipment".

7. PAYMENT SCHEDULE. The Contract Price shall be paid in progress payments, which do not include finance charges of any kind, according to the following schedule:

| | | | |
|----|-----------|-------------------------------|--|
| \$ | - | upon signing this Contract; | |
| \$ | 36,752.81 | upon delivery of Building Kit | |
| \$ | | upon | |
| \$ | | upon | |
| \$ | | upon | Concrete work-labor in exchange for various equipment, see Attachment. |

All payments will be made within 30 days after billing. Overdue payments will bear interest at the rate of 18 % per month from the date on which payment is due.

According to a representative of the company that supplied the building kit, the kit was sold to Commissioner Rowe at a "contractor's discount" for \$36,752.81, the amount that River Ridge Construction paid for the purchase of the building materials, plus freight.

The balance traded was documented in a note signed by Commissioner Rowe and the owner of River Ridge Construction. The note attached to the contract listed seven items valued at \$17,000 total, and it stipulated that the equipment was to be traded for work on Commissioner Rowe's hay barn.

5-14-2012

The following Equipment to be traded for
Lobster and Crab work on Tyra Rowe
contract for New Hwy Barn

| | |
|--------------------------|------------------------------|
| various concrete tools - | 2500 ⁰⁰ |
| Power Trench - | 500 ⁰⁰ |
| 4 post truck lift - | 4000 ⁰⁰ |
| metal break - | 1900 ⁰⁰ |
| Concrete forms/molded - | 1500 ⁰⁰ |
| Open for New structure - | 8000 ⁰⁰ |
| 1998 Chevy 3/4 truck - | 4500 ⁰⁰ |
| | total \$17,800 ⁰⁰ |

- On May 23, 2012, River Ridge Construction wrote a check for \$30,000 to Commissioner Rowe. According to the memo line, the check was for an "LS190-Skid Steer". Supporting documentation for this transaction was requested from the owner of River Ridge Construction, but was not provided.

| | | | |
|---|-------------|---|--------------------|
| RIVER RIDGE CONSTRUCTION, LLC 707 E 6TH PM, 480-082-1300 NEWARK, OK 74647 | | CENTRAL NATIONAL BANK AND TRUST COMPANY OF OKLA BLACKWELL, OK 74631 | 12221 86-191031 |
| PAY TO THE ORDER OF | Rowe Tyson. | 5/23/2012 | \$ 30,000.00 |
| Thirty Thousand and 00/100 | | | DOLLARS |
| Tyson Rowe | | | |
| MEMO LS190-Skid Steer | | | |

- On October 3, 2012, River Ridge Construction wrote a check for \$3,500 to Commissioner Schieber. Nothing was written on the memo line of the check. According to Commissioner Schieber, the check was for a pickup truck that he sold to River Ridge Construction. The title of the truck was transferred to River Ridge Construction on October 22, 2012.
- According to Commissioner Schieber, the owner of River Ridge Construction built a gate over his personal driveway in exchange for pipe. Commissioner Schieber stated that, for the work, he traded 175

feet of four-inch pipe that he owned prior to being elected as the county commissioner.

- On February 3, 2014, River Ridge Construction wrote a check for \$15,000 to Commissioner Rowe. Nothing was written on the memo line of the check. According to the owner of River Ridge Construction, the check was for the purchase of a 1995 Peterbilt dump truck. The title of a Peterbilt truck was transferred to River Ridge Construction on February 6, 2014.

SALE OF LAND

Background

On July 18, 2011, the County Commission held discussions on selling 28.9 acres of land near the newly-built County jail facility. Commissioner Steve Austin and Sheriff Everette Van Hoesen suggested not selling the entire 28.9 acres, asking the Commissioners to consider keeping the land for the possible building of a Juvenile Detention Center in the future.

On August 22, 2011, the Board followed through on the sale of the land, voting unanimously to solicit bids for selling a 20-acre parcel and a 7.89-acre parcel.

Motion was made by Schieber and seconded by Rowe approving going out for bid on jail land on a 7.89 acre parcel and a 20.00 acre parcel. Motion carried: Schieber, aye; Rowe, aye; Austin, aye.

Finding

The County sold the jail land without following proper legal procedures.

According to **19 O.S. § 421.1(G)** a County Commission has the authority to sell real property belonging to the County without declaring such property surplus. However, a certified appraisal of the county property is to be performed to determine the market value of the property, and that appraisal must be accepted by the Commission before the sale is allowed.

According to the statute, after acceptance of a certified appraisal, the Commission is to give notice of the sale by publication in a newspaper of general paid circulation in the county for two successive weekly issues. Bids for the property shall be in writing, sealed, and delivered to the county clerk. At the next regular meeting of the Commission, after 15 days from the date of the first publication of notice of the sale, the Commission is to open such bids.

An “Opinion Letter” addressed to Commissioner Dee Schieber from a local appraisal company, dated August 9, 2011, stated, “As per your request, I have personally conducted a physical drive-by inspection of the two legally described parcels”. The letter stated:

The value conclusion listed below is an opinion letter of value and not an appraisal, nor is it to be construed as one. Based upon market sales and research of similar land sales around Newkirk and between Ponca City and Newkirk, it is my opinion that the estimated market value range of the fee simple interest in the subject property as of August 8, 2011 would be:

7.89 Acre Parcel - \$8,000 - \$12,000
20.00 Acre Parcel - \$40,000 - \$50,000

Before voting on the solicitation of bids for the sale of the jail land, the County did not receive a certified appraisal, as required by statute.

Finding

The County sold the jail land after River Ridge Construction expressed interest in purchasing it.

The County Clerk's Office published a bid notice in the Ponca City newspaper on August 24 and August 31, 2011. On September 6, 2011, the Commission opened the following bids on the 20-acre parcel, accepting the bid from River Ridge Construction:

- River Ridge Construction: \$55,000 (\$2,750/acre)
- Rick Leaming Construction: \$50,000 (\$2,500/acre)

The Commission received only one bid for the 7.89-acre parcel, which was from Rick Leaming Construction for \$19,725, or \$2,500 per acre, which the Commission also accepted.

Commissioner Austin and Sheriff Van Hoesen had expressed reservations about selling the land near the jail building. Commissioner Tyson Rowe suggested selling only 14 acres of land. However, according to the July 18, 2011 meeting minutes, Commissioner Schieber said that the person wanting to purchase the land needed more. The meeting minutes stated:

Commissioner Rowe suggested only selling 14 acres, but Schieber said the person wanting to purchase it needed more.

Sheriff Van Hoesen said he didn't want BOCC to get in a hurry to sell the land and mentioned the possibilities of a Juvenile Detention Center being built in the future.

According to the owner of River Ridge Construction, the County sold the land because he wanted to buy it.

R & R DIRT CONTRACTORS

Background

Commissioner Tyson Rowe was co-owner of R & R Dirt Contractors, a business operated as a dozer service from February 2013 to July 2013. A bank account was established on February 7, 2013, under the business name of R & R Dirt Contractors, LLC; the account was closed on July 18, 2013. Oklahoma Secretary of State records did not show an official formation of the company.

Two accounts related to R & R Dirt Contractors were maintained with CATFinancial, one commercial account in the name of R & R Dirt Contractors established as a line-of-credit and one account in Commissioner Rowe's name for the purchase of a D6R dozer.

Finding

River Ridge Construction paid R & R Dirt Contractors, Commissioner Tyson Rowe's company, to perform work for Kay County.

Commissioner Rowe and an employee of Kay County District 3 requisitioned two purchase orders to River Ridge Construction for dozer work, River Ridge Construction then sub-contracted the work to R & R Dirt Contractors, a business owned by Commissioner Rowe.

The other co-owner of R & R Dirt Contractors confirmed that River Ridge Construction sub-contracted two county jobs to R & R Dirt Contractors for "pushing sand" hauled by Kay County District 3, one job near Braman and one job southeast of Tonkawa.

Commissioner Rowe acknowledged that R & R Dirt Contractors sub-contracted and performed county dozer work for River Ridge Construction.

Article 10, Section 11, of the Oklahoma Constitution prohibits county officers from profiting from the use or loan of public funds in their hands or moneys to be raised through their agency for county purposes.

Title 21 O.S. § 424 prohibits two or more persons from conspiring to commit an offense against any county or to defraud any county in any manner or for any purpose.

Details of the two jobs performed are as follows:

The "Braman" job:

- R & R Dirt Contractors issued Statement 749475, dated March 15, 2013, to River Ridge Construction for 40 hours of "Equipment Lease" totaling \$6,000. R & R Dirt Contractors' statement included a notation of "#3185", the County purchase-order number.
- Purchase Order 3185 was encumbered to River Ridge Construction by the County on March 14, 2013, for 60 hours of dozer work at \$9,300.
- River Ridge Construction invoiced the County March 14, 2013, on Invoice 5945 for 40 hours of dozer work at \$6,200.
- The County paid River Ridge Construction \$6,200 with Warrant 1567, dated April 1, 2013. Payment was approved by all three commissioners.
- River Ridge Construction paid R & R Dirt Contractors \$5,580 on April 14, 2013, the amount adjusted from the original statement noted above. R & R Dirt Contractors deposited Check 13875 on April 15, 2013.

The image shows a handwritten document. At the top, it says 'RECEIVED APR 8 2013' with a circled 'OK' and the number '749475'. Below this is a 'Statement' form with 'DATE 3/15/13' and 'TO River Ridge Construction'. A note says 'Newick OK'. Below the form is a table with columns for description, hours, and amount. The first row is '40 hrs Equipment Lease' with '40.00' hours and '\$6,000.00'. Below the table, there are handwritten notes: 'APPROVED INSURANCE 4-2-13', 'KRS', 'non-tax', and '#3185'. There is also a date '4-14-13' and a check number 'CHK # 13876'. At the bottom right, there is a total amount of '\$5,580.00'.

The "Tonkawa" job:

- R & R Dirt Contractors issued Statement 749474, dated March 27, 2013, to River Ridge Construction for 100 hours of "Equipment Lease" totaling \$15,000.
- On May 9, 2013, the County encumbered Purchase Order 3862 for \$15,500 to River Ridge Construction.
- This purchase order was billed and paid against River Ridge Construction Invoice 6025 for \$15,500, also dated May 9, 2013.
- The County issued Warrant 1759, dated May 13, 2013, to River Ridge Construction for \$15,500. This payment was approved by all three commissioners.

- River Ridge Construction paid R & R Dirt Contractors \$13,950 on May 12, 2013. R & R Dirt Contractors deposited Check 14216 on May 14, 2013.

Finding

River Ridge Construction made payments on Commissioner Tyson Rowe's personally owned dozer and on R & R Dirt Contractor's commercial line-of-credit account.

According to the owner of River Ridge Construction, he began making payments to CatFinancial on Commissioner Rowe's dozer in November 2013. As of November 2014, River Ridge Construction had paid to CatFinancial a minimum of \$31,005.76 toward Commissioner Rowe's dozer payments.



Commissioner Rowe purchased a D6R Caterpillar dozer for use in the business conducted by R & R Dirt Contractors. On September 9, 2013, River Ridge Construction made a payment to R & R Contractors for dozer parts and repair and an additional dozer lease payment totaling \$7,913.87.

According to the owner of River Ridge Construction, a verbal agreement existed between River Ridge Construction and Commissioner Rowe in which River Ridge Construction made payments on Commissioner Rowe's behalf to CatFinancial in exchange for use of the dozer. According to the company's owner, River Ridge Construction maintains possession of the dozer and uses it frequently in its business and on County projects. We observed the dozer parked in River Ridge Construction's business yard.

River Ridge Construction also made at least one payment of \$1,501.22 on the "Commercial Account" of "R & R Contractors LLC", a line-of-credit account established in the name of R & R Dirt Contractors.

SMELTER SETTLEMENT AGREEMENT

Background

On November 25, 2013, the County entered into a “Settlement Agreement and Release” in response to litigation in which the County sought recovery for damages arising from the presence of smelter material on the county road system, along with alleged environmental contamination or damage associated with the historical operation of the Blackwell Zinc Smelter.

As part of the agreement, Blackwell Zinc Co. agreed to pay “the total amount of \$1,500,000 to the County for the purchase of the site of the existing barn [...] and for the purchase of road raw materials and to pay its contractors and/or consultants”.

Finding

Commissioner Tyson Rowe expended a portion of the lawsuit settlement funds in apparent violation of law.

Title 19 O.S. § 339.3 states, in relevant part, “The board of county commissioners *shall place all funds received from the sale of land, sites or structures in a special fund* to be used for the purchase or construction of facilities for use by the county” (*emphasis added*).

As stated in the Smelter Settlement Agreement, funds received were partly for the purchase of the site of the existing District #3 warehouse/barn, which, under the above-noted statute, would require such funds to be used for the purchase or construction of facilities.

Prior to the County’s receipt of the settlement money, the county clerk created a “New Barn Construction” account for the funds. Upon receipt of the funds on January 9, 2014, Commissioner Tyson Rowe directed the county clerk to deposit them into the District 3 Highway Capital Outlay account instead of the newly-created account.

On April 7, 2014, Kay County’s district attorney issued a letter to the county commissioners, demanding that the settlement money be placed into a special fund as required by **19 O.S. § 339.3**. The letter further stated that any funds spent inappropriately were to be recovered and also placed in the special fund.

On May 12, 2014, the district attorney issued a follow-up letter, again requesting Commissioner Rowe to transfer into a special fund the unexpended settlement money as well as any money previously expended on items other than costs associated with the barn/warehouse.

The \$1,215,407 Smelter Settlement Agreement funds deposited into the District 3 “Highway Capital Outlay” account (which was \$1,500,000, less attorney fees) were spent as follows:

| Activity (through 7/15/2014) | Amount | Balance |
|---|--|----------------|
| Settlement Funds Received (1/9/14) | | \$1,215,407.00 |
| Lease-purchase payoffs (paid date): 2008 CAT 325DL Excavator (1/22/14) (3) Trailers (1/17/14) (2) 2005 Peterbilt 379 Semi Trucks (1/21/14) John Deere 6430 Cab Tractor (1/22/14) | (\$162,737.35) (\$99,853.52) (\$65,212.34) (\$29,305.48) | \$858,298.31 |
| New equipment purchases (paid date): HMC SP-80 Vibratory Pile Driver (2/7/14) (2) Cab Tractors* (7/9/14) 2015 F450 Ford Pickup Truck* (7/17/14) 2011 F150 Ford Pickup Truck (4/3/14) 1989 Atoka Trailer (3/24/14) Air Conditioning Unit* (5/9/14) Computer (2/5/14) (2) Trimmers* (6/10/14) | (\$180,000.00) (\$59,591.00) (\$42,332.10) (\$21,800.00) (\$20,500.00) (\$4,400.00) (\$2,727.00) (\$859.37) | \$526,088.84 |
| Transfers to Maintenance and Operation Account (net) | (\$97,400.00) | |
| Balance remaining available for barn construction | | \$428,688.84 |
| New barn/warehouse related design and equipment purchases and encumbrances (allowable purpose) | (\$287,964.03) | |
| Balance transferred to H3103-42 “Highway Special Building” Account (5/27/14) | | \$140,724.81 |

*These four transactions were paid after the District Attorney issued the corrective-action letters.

On May 27, 2014, the remaining unencumbered settlement funds of \$140,724.81 were transferred to the “Highway Special Building” Account. As of the date of this report, the funds previously spent for un-allowed purposes had not been reimbursed into this account.

Building Construction

On April 7, 2014, the County Commission accepted bids totaling \$978,758 for construction of the new District 3 barn/warehouse. As of the date of this report, construction of the facility had not commenced.

OPEN MEETING ACT

Background

Section 304(2) of the Oklahoma Open Meeting Act, **25 O.S. §§ 301-314**, defines a *meeting* as “the conduct of business of a public body by a majority of its members being personally together”, which does not include “informal gatherings of a majority of the members of the public body when no business of the public body is discussed”.

Attorney General Opinion 2012-24 opined:

“[... T]he state law term ‘conduct of business’ might well include discussions in which the members of [a] public body are considering information that will aid them in their decision-making, even though those discussions do not necessarily ‘effectively predetermine their official actions’ or cause the members to form a reasonably firm position on the matter at that moment.”

“A public body is thus engaged in the ‘conduct of business’ when a majority of the members are considering discrete proposals or specific matters that are within the agency’s jurisdiction.”

Attorney General Opinion 2012-24 further addressed open-meeting issues by reiterating parts of previous Attorney General Opinions that opined, in part:

“[... T]he ‘conduct of business’ encompasses more than just voting or decision-making.”

“When a majority of the members of [a public body] are performing functions necessary to carry out the responsibilities of the [public body], whether they be executive, administrative, or quasi-judicial, they are ‘conducting business’.”

“[B]usiness [...] should be assumed to include the entire decision-making process, including discussion, deliberation, decision, or formal action.”

“A public body’s discussion of appropriation of funds and discussion with a group of experts to gain insight on a matter before the public body are subject to the Open Meeting Act.”

Finding

Commissioners Dee Schieber and Tyson Rowe have potentially violated the Open Meeting Act.

On March 20, 2012, a meeting regarding a road-reconstruction project was held at the offices of a local company. According to a sign-in sheet, Commissioners Dee Schieber and Tyson Rowe attended the meeting, as did Tom Simpson, the supervisory roads engineer for the regional office of the U. S. Bureau of Indian Affairs, representatives of the local company, and representatives of the Oklahoma State University's Center for Local Government Technology, and the Oklahoma Department of Transportation. There was no evidence of a posted agenda or official minutes documenting any public meeting on that date.

With Commissioners Schieber and Rowe both in attendance at this meeting, a quorum of the county commissioners were together where public business was discussed, which appears to be a violation of the Open Meeting Act.

On February 5, 2013, Commissioner Schieber held a pre-bid meeting at his warehouse office prior to a bid solicitation for roller-compacted-concrete work. According to one company representative, Commissioner Rowe attended the meeting, as did Mr. Simpson. There was no evidence of a posted agenda or official minutes documenting any official, open public meeting on that date.

With Commissioners Schieber and Rowe both in attendance at the pre-bid meeting, a majority of the county commissioners would have been together where public business was discussed, which would appear to be a violation of the Open Meeting Act.

The minutes of the April 1, 2013, Commission meeting referred to a possible meeting that would include Commissioners Schieber and Rowe for the purpose of discussing roller-compacted-concrete projects. The minutes stated:

| |
|---|
| BIA. Schieber and Rowe discussed roller compacted concrete projects they are doing. Schieber noted Tom Simpson would be here tomorrow and suggested Rowe join the two of them and drive to Gunn Bridge. |
|---|

Two county commissioners should not meet if they are considering discussion of information that will aid them in their decision-making. As opined in **2012 OK AG 24**, even discussions that do not necessarily predetermine their official actions or cause them to form a reasonably firm position on the matter at that moment are prohibited.

OTHER ISSUES

ROCK AND HAULING PURCHASES

Background During Fiscal Year 2014, the County paid Wells Built, LLC, \$78,033.91 through four individual transactions:

| Purchase Order | Date | District | Amount Paid | Purpose |
|----------------|----------|----------|-------------|--|
| 1261 | 9/25/13 | 3 | \$28,448.53 | Hauling 1,779.79 tons (89 loads) of material to Braman, OK for "Stockpile" |
| 1565 | 10/10/13 | 1 | \$15,681.08 | Hauling 1,104.44 tons (53 loads) of native material to Ponca City District 1 |
| 1673 | 10/22/13 | 3 | \$14,216.55 | Hauling 916.65 tons (40 loads) of River Rock to Braman, OK |
| 4274 | 5/15/14 | 3 | \$19,687.75 | Hauling 1,308.28 tons (54 loads) of River Run |
| Total | | | \$78,033.91 | |

Finding **The County paid Wells Built for rock and hauling in apparent violation of statute.**

All four purchase orders noted above were executed without following proper bidding procedures. The transactions were not individually bid, and the vendor, Wells Built, was not on the County's six-month-bid list for rock and hauling.

On Purchase Order 1565, a note was made that no bid was obtained because the purchase was for native material. The note reflected "NO BID - NATIVE MATERIAL". **Title 19 O.S. § 1501(A)(3)(f)** states that, "when materials for road or bridge improvements do not exceed \$3.00 per yard or per ton", a county does not have to follow bidding procedures. "Native material" was noted as purchased on Purchase Order 1565 at \$7.00 per ton. "Material" was also purchased on the remaining three purchase orders at \$7.00 per ton. All four purchase orders included materials exceeding \$3.00 per yard or ton, as well as hauling, and all should have been bid.

The owner of Wells Built is a co-owner of M. K. Crushing, LLC, a company jointly owned by the owner of River Ridge Construction.

PESTICIDE/SPRAYING TRANSACTIONS

Background

During Fiscal Year 2014, the County paid Sniper Pest & Herbicide Solutions, Inc., \$40,305 through five separate transactions:

| Purchase Order | Date | Amount | District | Purpose |
|----------------|---------|----------|----------|-------------------------------------|
| 1042 | 9/19/13 | \$455 | 3 | Purchase Of Pesticide |
| 3772 | 4/1/14 | \$11,900 | 3 | Brush Control/Right-Of-Way Spraying |
| 3978 | 4/22/14 | \$1,750 | 3 | Bridge Spraying |
| 4278 | 5/15/14 | \$1,200 | 3 | Weed Control |
| 4572 | 6/9/14 | \$25,000 | 3 | Brush Control 84 Miles |
| Total | | \$40,305 | | |

Finding

Commissioner Tyson Rowe awarded County business to Sniper Pest & Herbicide Solutions, a company co-owned by one of his employees.

January 1, 2014 - June 30, 2014 Six-Month Bid

On November 12, 2013, Commissioner Tyson Rowe requested that the County begin awarding six-month bids for right-of-way spraying, and the County Commission approved doing so.

On November 19, 2013, the County Clerk's Office mailed three bid solicitations for right-of-way spraying, one to Sniper Pest & Herbicide Solutions and two to companies in Texas. At the time of this bid solicitation, the Oklahoma Department of Agriculture, Food, and Forestry's approved "Pesticide Applicators List" included multiple vendors in Oklahoma and some licensed applicators in Kay County. In fact, Kay County District #2 was licensed as a right-of-way pesticide applicator.

On December 9, 2013, the Commission awarded the right-of-way-spraying six-month bid to Sniper Pest & Herbicide Solutions, which submitted the only bid. The bid was awarded at a "price-per-acre" cost of \$70.00 and a "price-per-intersection" cost of \$30.00.

July 1, 2014 - December 31, 2014 Six-Month Bid

On May 9, 2014, the County Clerk's Office mailed one bid solicitation for right-of-way spraying for the six-month period of July 1 - December 31, 2014. That one bid was mailed to Sniper Pest & Herbicide Solutions.

On June 23, 2014, the Commission awarded the right-of-way-spraying bid to Sniper Pest & Herbicide Solutions, which submitted the only bid.

The County stopped bidding right-of-way spraying after Commissioner Rowe left office in January 2015.

Purchase Orders

On April 1, 2014, Commissioner Rowe requisitioned Purchase Order 3772 for \$11,900 to Sniper Pest & Herbicide Solutions for spraying. The receiving report, dated the same day as the purchase order, was signed on behalf of Sniper Pest & Herbicide Solutions by a District #3 employee.

As noted above, the six-month-bid price was submitted as a "per-acre" or "per-intersection" unit price. The invoice for Purchase Order 3772 was submitted as follows:

| Description | Unit Price | Amount |
|--|------------|---------------------|
| Brush Control RIGHT OF WAY RIVER BRIDGES #165 175 192 022 215 171 063 HUBBARD ROAD | | \$10,150 \$1,750 |

On April 22, 2014, Commissioner Rowe requisitioned Purchase Order 3978 for \$1,750 to Sniper Pest & Herbicide Solutions for bridge spraying. The invoice was billed as "Bridge Spraying-Brush Control" for two bridges and was not billed as defined in the six-month bid.

On May 15, 2014, Commissioner Rowe requisitioned Purchase Order 4278 for \$1,200 to Sniper Pest & Herbicide Solutions for spraying. The receiving report was dated the same day, and the invoice was not billed as defined in the six-month bid.

KAY COUNTY, OKLAHOMA
INVESTIGATIVE AUDIT
DATE OF RELEASE: DECEMBER 2, 2015

On June 9, 2014, Commissioner Rowe requisitioned Purchase Order 4572 for \$25,000 to Sniper Pest & Herbicide Solutions for “brush control 84 miles”. The receiving report was dated the same day as the purchase order and was signed on behalf of Sniper Pest & Herbicide Solutions by a District #3 employee.

The invoice submitted for this purchase was also dated the same day as the purchase order and receiving report and was billed for a combined 408 miles of brush control and spraying. Again, the pricing of “mileage” was not in accordance with the six-month-bid price, which was submitted as a “per-acre” or “per-intersection” unit price.

| | | | | |
|--|------------------------|---|-------------------|---------------|
| Sniper Pest & Herbicide Solutions Inc. 16250 W. Chrysler Ave Blackwell, OK 74631 USA Voice: Fax: | | INVOICE Invoice Number: 1112 Invoice Date: Jun 9, 2014 Page: 1 | | |
| Bill To: Kay County District #3 Blackwell, OK 74631 USA | | Ship to: Kay County District #3 Blackwell, OK 74631 USA | | |
| Customer ID | Customer PO | Payment Terms | | |
| Kay County | 4572 | Net 30 Days | | |
| Sales Rep ID | Shipping Method | Ship Date | Due Date | |
| | Airborne | | 7/9/14 | |
| Quantity | Item | Description | Unit Price | Amount |
| 1.00 | | Brush control 84 miles sprayed; intersection, bridges, road signs and culvert spraying - 324 miles; | 25,000.00 | 25,000.00 |

DISCLAIMER

In this report, there may be references to state statutes and legal authorities which appear to be potentially relevant to the issues reviewed by this Office. The State Auditor and Inspector has no jurisdiction, authority, purpose, or intent by the issuance of this report to determine the guilt, innocence, culpability, or liability, if any, of any person or entity for any act, omission, or transaction reviewed. Such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.



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