

3. There is no provision regarding income tax withholding.

4. There is no assignment of the Merant agreement to Data-Direct. The proposed agreement treats Data-Direct as if it were the original vendor.



**OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM**

RL:ck

Encl

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TO: Sue Hennike, General Services
FROM: Rudy Limon, Principal Legal Analyst *R.L.*
DATE: July 30, 2002
SUBJECT: Data-Direct Technologies Agreement

In June 2000, the county entered into a contract with Merant, Inc. for the purchase of software licenses and maintenance fee for a production server. The Board of Supervisors entered into that contract notwithstanding the fact that both county counsel and risk management disapproved the agreement, a copy of county counsel memo, dated May 31, 2000, is attached for reference.

In November 2001, Data-Direct informed the county that it was a corporate successor to Merant, Inc. However, to our knowledge there has not been any assignment of the contract by Merant, Inc. to Data-Direct.

The proposed agreement, insofar as maintenance is concerned is virtually identical to the Merant agreement and therefore our reasons for disapproving the Merant agreement apply to this agreement as well.

In addition to the fact that this agreement is vague as to a commencement date for the agreement, and other provisions in the agreement, we find troubling the following:

1. We have not been able to verify that Data-Direct is licensed or a foreign corporation to conduct business in California.
2. The agreement contains no insurance provisions whatsoever.

3. There is no provision regarding income tax withholding.
4. There is no assignment of the Merant agreement to Data-Direct. The proposed agreement treats Data-Direct as if it were the original vendor.

RL:clr

Encl

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OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Sue Hennike, General Services
FROM: Rudy Limon, Principal Legal Analyst
DATE: January 23, 2003
RE: GEAC Enterprises Solutions, Inc., Contract No. C-12-048 AMD 1

For the reasons set out below the above-referenced agreement is returned not approved as we believe there are issues involved of which the board of supervisors should be made aware and, in it's discretion, approve the agreement.

Although this transaction appears to continue an existing relationship based upon a 1992 agreement, the vendor will not agree to acknowledge that fact in writing. That is, the vendor will not agree to reference that agreement in the proposed documents. We feel that omission to be of importance because the original agreement contains, for example, the standard county insurance requirement and other county contract requirements.

If you have any questions regarding this memo do not hesitate to call.

RL:km

CONTRACT ROUTING SHEET

Date Prepared: _____

Need Date: _____

PROCESSING DEPARTMENT:

Department: CAO
Dept. Contact: Sue Hennike
Phone #: 5833
Department: _____
Authorization: Bonnie L. Rich

CONTRACTOR:

Name: Geac
Address: 66 Perimeter Center East
Atlanta, GA 30346
Phone: _____

CONTRACTING DEPARTMENT: Information Technologies

Service Requested: Software Maintenance
Contract Term: Perpetual Amendment Value: \$60,086.00
Compliance with Human Resources requirements? Yes: _____ No: _____
Compliance verified by: _____

EL DORADO COUNTY COUNSEL
2004 MAR 15 10:36

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: _____ Date: 3-16-04 By: R.L.
Approved: _____ Disapproved: _____ Date: _____ By: _____

NOTE: APPROVAL BASED UPON Bd OF SUPER APPROVAL OF PRICE DOCUMENTS ALSO DISAPPROVED BY COUNTY COUNSEL

ASSIGNMENT
DATE: 3/16/04
BY: BONNIE L. RICH
DEPT./INDEX NO: 1420

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: Disapproved: _____ Date: 3/17/04 By: D. Cheney
Approved: _____ Disapproved: _____ Date: _____ By: _____

MAR 17 2004

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____



OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Terri Knowlton
Information Services

FROM: Rudy Limon, Principal Legal Analyst *R.L.*

RE: Ascent Solutions, Inc. Contract *pkware*

DATE: November 28, 2000

You have informed me that Ascent Solutions, Inc. absolutely refuses to enter into a contractual relationship with the County unless their contract form is used.

As I informed you the attached contract fails to conform to standard contract standards in almost every respect. Therefore, this office, as a matter of procedure, must disapprove the attached contract in its present form. It will be necessary for your office to obtain Board of Supervisors' approval.

At an absolute minimum, a provision indicating the county employee responsible for administering the contract must be added to the contract as required by the County Charter.

RL/km

Ascent Contract Memo



OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Gary Cloverdale, Information Services
FROM: Rudy Limon, Principal Legal Analyst *R. L.*
RE: KPMG Contract
DATE: July 7, 2000

I am returning to you not approved the above-referenced contract which you recently re-submitted to this office. In our view, this contract is heavily weighted legally in favor of the vendor, and therefore lacks sufficient safeguards to protect the county's interests.

It therefore becomes necessary for your office to explain to the Board of Supervisors why this contract should be approved by them even though not approved by this office.

The reasons for our disapproval include the following:

1. The contract is not in standard county format and therefore does not include provisions required by standard county practice, including the following:
 - a) Does not include insurance requirements;
 - b) Does not include Form 590 language;
 - c) Does not include Year 2000 compliance language;
 - d) Does not contain language dealing with default, for example, bankruptcy by vendor.
 - e) Does not contain "fiscal out" language;
 - f) Contains no indemnity provision indemnifying the county.
2. In addition, the contract contains objectionable language including the following:
 - a) The agreement provides that while the county cannot assign the contract without the written consent of the vendor, the vendor may assign the contract without the consent of the county.
 - b) The arbitration provision (Section 8) severely limits the jurisdiction of an arbitrator.

Gary Cloverdale, Information Services

July 7, 2000

Page 2

- c) The agreement calls for payment in full within 30 days of the anniversary date. This provision thus calls for payment in advance of services which is not a prudent business practice.
3. The most serious objections to the agreement are contained in Sections 1 and 3.
- a) In Section 1 the vendor, with respect to maintenance, in effect, states that it is not obligated to fix programming errors only that it will make "commercially reasonable efforts to correct programming errors" but makes no guarantee that "such efforts will always be successful."
 - b) Section 3 which deals with warranties is almost totally objectionable. In this section, the vendor's disclaimer of any warranty liability is almost total. For example in sub-section (a) it is provided that where the county relies on the vendor's recommendations and the county acts on such recommendations, the implementation "shall be the sole responsibility of the licensee (county)."

Particularly objectionable is the provision in subsection (a) which reads: "In the event of a claim by a third party relating to services rendered by KPMG...the licensee shall indemnify and hold harmless KPMG..."

That provision thus requires the county to indemnify KPMG for work performed by KPMG. As noted earlier, there is no indemnification provision in favor of the county.

We understand that the vendor has apparently taken a rigid posture with respect to terms of the contract and, in effect, taking a "take it or leave it" position. We appreciate that the vendor's services are vital to the county, however, this office is unable to approve the structure and language of the contract.

If you have any questions regarding this memo, do not hesitate to call this office.

RL/km
KPMG.wpd