

DATA BULLETIN:

**AN EXAMINATION OF COUNTY JAIL COMMUNICATION
SERVICES AND EQUIPMENT CONTRACTS**



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To the People of Kentucky:

The Auditor of Public Accounts (APA) has conducted a survey of county jails across the Commonwealth of Kentucky and examined each county jail's communication services and equipment contracts active between July 1, 2019 and November 15, 2020. These contracts are in place to provide communication services to inmates but serve as a source of financial revenue to the jails and their respective counties. In the ongoing effort to "Follow the Data," we intend to highlight data from time to time that is of interest to the public.

The purpose of this report is to inform the public about the process followed to establish these contracts and disclose the benefits received by the jails in association with these contracts. The information provided is from agencies or officials other than the APA, unless indicated otherwise. Therefore, the data being made available has not been audited by the APA.

While collecting and compiling data for this report, certain matters were identified which we believe may warrant further consideration by the Kentucky Legislature. Because procurement of these contracts has not been specifically addressed in Kentucky law, limited guidance is available to jailers who are establishing communication services and equipment contracts. The General Assembly should consider legislative action to provide direction as to the procurement process for these contracts, to clarify requirements for the use of technology grants and similar funds, and to ensure appropriate transparency in reporting benefits and revenues received in relation to these contracts.

This report is intended to generate further discussion and public interest in county jail operations. As always, the public may share information with our office by contacting 1-800-KY-ALERT.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Harmon".

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Many of Kentucky's jails provide more than a traditional phone line for inmate usage, thus exceeding applicable constitutional and regulatory minimums, such as those established in Kentucky Administrative Regulation, 501 KAR 3:140. One clear benefit of such improvements by Kentucky's jailers is the advancement of opportunities for an inmate to better maintain family ties, enhancing post-release outcomes. Such advanced services may include voice communication, live or recorded combined video and audio communication, and electronic written communications, such as email or texts. To capture an accurate snapshot of the enhanced services in place and how they were procured and accounted for, the APA surveyed the 76 county-operated jails asking a series of questions pertaining to their communication services and equipment contracts in place during the period of July 1, 2019, through November 15, 2020. The survey also asked these jails to identify the total amount of funding they received, and were eligible to receive, in fiscal year (FY) 2020, July 1, 2019 through June 30, 2020, as a result of each contract. In addition to administering the survey, the APA requested all communication services and equipment contracts in effect for this same time period as well as information about how those contracts were procured.

Additionally, the Federal Communications Commission (FCC) contends that “[b]ecause correctional officials typically allow only one provider to serve any given facility...there are no competitive constraints on a provider's rates once it has entered into a contract to serve a particular facility.” The FCC has also observed, “because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions, the competitive bidding process may result in higher rates.” As such, the APA also reviewed per minute rates established by these contracts and inquired of county jails whether the facility charged any additional rates beyond the rate charged by the contractor.

The survey responses were provided by various individuals in each county, including jailers, jail staff, county treasurers, and deputy judge executives. While the APA sent the survey to all 76 county jails, Montgomery County did not respond to the survey. As a result, the total population counts for some observations will be 75 county jails.

Overview of Communication Services and Equipment Contracts

A total of 116 communication services and equipment contracts were identified as being in effect from July 1, 2019, through November 15, 2020 at the 76 county jails. Some county jails reported having only one contract in place during the period, while others reported having as many as three. In addition to the services and products to be provided to inmates, the communication services and equipment contracts included benefits the county jails were eligible to receive, including, but not limited to, commissions, signing bonuses, technology grants, and other benefits.

Vendors

Twelve vendors held active contracts with county jails to provide communication services and equipment during the period July 1, 2019 through November 15, 2020. Of those 12 vendors, three (Combined Public Communications, LLC, Securus Technologies, Inc., and CyberPath Services, LLC) held 75.9% of the contracts in place. Figure 2 provides a breakdown of contracts held by vendor.

Figure 2: Communication Services and Equipment Contracts by Vendor

Vendor	Number of Contracts
HomeWAV, LLC	1
iWebVisit	1
VendEngine	1
Smart Communications Collier, Inc.	2
Global Tel Link Corporation	3
Kellwell Commissary Services	3
Kimble's Commissary Services	3
CareACell	6
Telmate, LLC	8
CyberPath Services, LLC	17
Securus Technologies, Inc.	20
Combined Public Communications, LLC	51

Source: APA, based on county jail communication services and equipment contracts.

Verbal Contracts

Among the 116 contracts identified, 10 contracts were verbal or included verbal terms. While verbal agreements for contracts of less than a year may meet bare legal requirements, they present increased risk for the contracting government due to potential issues in proving the contracts' terms should a dispute arise. Unwritten contracts also raise serious policy issues in obscuring from the county government as a whole, from the county taxpayers, and from any subsequent official the existence and true terms of such an agreement. Verbal contracts for a year or more are not enforceable in court under Kentucky's statute of frauds, KRS 371.010, a situation which may make the legal risk unacceptable. Due to these issues, verbal contracts present an internal control issue that may trigger an adverse audit finding.

Figure 3 presents the nine county jails identified as having verbal contracts or contract terms, along with the associated vendor, description of the services provided under a verbal agreement, and explanation of how the verbal contract or contract terms originated.

Figure 3: Jails with Verbal Contracts in Effect During the Period July 1, 2019 through November 15, 2020

County	Vendor	Description of Services	How Verbal Contract/Contract Terms Originated
Boone	Combined Public Communications	Inmate Telecommunications System	Services Continued After Contract Ended
Boone	iWebVisit	Inmate Video Visitation Services	Entire Contract
Bullitt	Kellwell Commissary	Email and Text Services	Service Added On After Contract Was Signed
Carter	Kellwell Commissary	Email Services	Service Added On After Contract Was Signed
Fulton	CareACell	Email and Text Services	Service Added On After Contract Was Signed
Greenup	Combined Public Communications	Inmate Telecommunications System	Services Continued for 5 Months Following the End of the Contract Term. New Contract Was Signed in January 2020
Hopkins	CareACell	Email, Text, and Video Visits	Entire Contract and Service Added on After Contract Was Signed
Marshall	CareACell	Email, Text, and Video Visits	Service Added On After Contract Was Signed
Pike	Kellwell Commissary	Video Visits and Video Chats	Service Added On After Contract Was Signed
Webster	CareACell	Email, Text, and Video Visits	Service Added On After Contract Was Signed

Source: APA, based on Jail Communication Services and Equipment Contract Survey responses.

In the majority of these instances, the county jail has verbally agreed to add a particular service or services to a written contract already in place with a vendor rather than drafting an amendment to the contract. In some instances a written contract expired while services provided by the vendor continued. For example, in Boone County, the written contract with Combined Public Communications expired in November 2014, during the previous jailer's term. After taking office in early 2018, the current Boone County Jailer contacted the vendor to inquire if he needed to sign a written contract. The vendor indicated there was no need to sign a new contract unless the current jailer preferred a written contract. The current Jailer chose to continue with the verbal agreement.

Benefits Received

In this survey, county jailers and their staff were asked to self-report the benefits their jails were eligible to receive from communication services and equipment contracts active between July 1, 2019 and November 15, 2020. Because these contracts may have been in place before or continued after this 17-month time period, some benefits may have been received outside of this timespan.

The APA survey presented the following choices in benefit types: incentive payments; commission; signing bonus; line-of-credit; technology grant; free maintenance; free monitoring and archiving of communications; or other compensation, goods, or services of any value.

Despite the relatively small number of vendors involved and the large market share held by just three vendors, auditors observed, through review of both survey responses and related contracts, an inconsistent understanding and use of terminology regarding the discussion of benefits. It was not uncommon for the individual completing the survey to label a benefit one way, while the contract language identified it differently. The vendors themselves also used different terminology for very similar benefits when establishing contracts with different county jails. In order to establish a consistent classification of benefits across the Commonwealth, auditors reviewed each contract and classified the benefits therein using the classification system presented in Figure 4.

Figure 4: Description of Benefit Types

Benefit Type	Description
Commission	A payment made to the jail by a vendor for transacting a piece of business or performing a service. Commissions are often based on a percentage of sales.
Technology Grant	Monetary assistance awarded by the vendor to the jail for offsetting additional expenditures, presumably related to technology advancement. Funding is not linked to a percentage of sales and is not typically required to be paid back to the vendor.
Signing Bonus	A one-time monetary award paid by the vendor to the jail for entering into a contract, renewing a contract, or adding new services to the pre-existing contract.
Incentive Payments	A monetary incentive offered by the vendor to motivate purchaser to use their product or service.
Line-of-Credit	A sum of money that the jail may borrow from the vendor as needed, but must be repaid; purpose is unclear.
Free Maintenance	All or just specific maintenance to be provided by the vendor free of charge to the jail during the term of the contract or for a specified period of time.
Free Monitoring and Archiving of Communication	Vendor will provide the jail access to equipment and reports that monitor inmate use of services provided.
Other Compensation, Goods, or Services of any Value	Any other benefit received that doesn't fall within one of the other categories listed.

Source: APA, based on a comprehensive review of county jail communication services and equipment contracts.

Based on these definitions, each of the 116 contracts reviewed included some form of commission. Figure 5 summarizes the number of contracts eligible to receive each type of benefit during the life of the contract.

Figure 5: Benefit Types within Contracts

Benefit Types	Number of Contracts with Benefit Type	Percentage of Contracts with Benefit Type
Signing Bonus	11	9%
Technology Grant	48	41%
Other	54	47%
Free Monitoring & Archiving of Communication	84	72%
Free Maintenance	106	91%
Commission	116	100%

Source: APA, based on county jail communication services and equipment contracts.

As shown in Figure 5, 54 contracts had one or more benefit that could not be clearly classified into one of the defined benefit types, as such these benefits were categorized as “Other” benefits. Such undefined benefits included the option for courtesy calling cards, pin debit transfers, electronic cigarette bonuses, jail management software, and additional investigative tools. “Other” benefits for two county jails also included an administrative support grant or technology expense reimbursement, both of which seemed similar in nature to a technology grant, but were not identified as such by the vendor.

Additionally, 11 contracts reviewed included signing bonuses; however, none of the 75 county jails responding to the survey reported receiving a signing bonus during FY 2020. The contracts indicated the signing bonuses would be received in the first year of the contract, following the execution of an amendment to a contract, following the installation of a system, or prorated over the agreement of 48 months. In total, \$858,200 in signing bonuses were offered by vendors to county jails through these contracts at some point during the life of the contract. Details pertaining to signing bonuses offered to each county jail through established contracts are presented in Appendix A.

Analysis of Revenue and Benefits Received by Each County Jail

In addition to determining the benefits each jail was eligible to receive based on the contracts, the APA’s Jail Communication Services and Equipment Contract Survey asked specifically how much the facilities were both eligible to receive and received in FY 2020 from applicable benefits. Of the FY 2020 revenues reported as received by county jails from these communication services and equipment contracts, the majority of the revenue came from commissions and technology grants. In FY 2020, total commissions reported by these 75 county jails totaled \$9,686,448. Twenty-nine county jails reported receiving a total of \$1,387,145 from technology grants. Additional analysis of revenues received from contract commissions and technology grants follows.

Commissions

The 75 county jails responding to the survey reported that, between July 1, 2019 and June 30, 2020, over \$9.6 million was received in commission from vendors. In an effort to confirm the commission totals reported by jail officials, the APA compared those amounts to the amounts reported by county treasurers in their FY 2020 fourth quarter financial receipts report to the Department for Local Governments (DLG). Of the 73 counties that reported commission in both the survey and in the fourth quarter receipts report, only the commission totals in the following counties agreed: Ballard, Floyd, Grayson, Jessamine, Kenton, Laurel, Lincoln, Marion, Ohio, Russell, Shelby, Wayne and Whitley.

Fayette and Jefferson counties are not required to report receipts to DLG like other county governments due to the how their governments are formed (urban county government and a consolidated local government, respectively). As such, after removing commissions reported by these two counties from the survey total, the net difference between the fourth quarter reporting and responses to the survey totaled \$19,285. Appendix B compares the commissions reported in the fourth quarter receipts report by county treasurers to the total amount of commission each county jail reported in the survey receiving in FY 2020 from all reported inmate communication services and equipment contracts, along with the differences.

Not all commissions received from communication services and equipment contracts involving the county jail are sent to the county treasurer for deposit in the Jail Fund. Vendors sometimes send commission checks to the county jailer rather than the treasurer, or the vendors send a check to both offices. Additionally, commissions related to communication services and equipment sold through the commissary are deposited in the jail commissary (canteen) account, a separate account controlled by the jail, rather than the Jail Fund maintained by the county treasurer. Only commissions linked to commissary goods and services should be retained in the canteen account, as all other commissions are required to be submitted to the county treasurer.

The APA conducted follow-up with the 23 county jails that reported a commission of \$5,000 or more than the treasurer reported to DLG in its fourth quarter receipts report to determine the cause for the discrepancy. These 23 county jails determined discrepancies in commission amounts were based on commissions deposited in the canteen account not being included in the county treasurer's fourth quarter receipts report, different approaches as to when commissions were recognized (cash versus accrual basis), mathematical errors and mistakes concerning the amounts submitted by both officials, or two or more of these reasons. As it was the most common explanation, the following observations were made concerning commission(s) deposited in the jail's canteen account.

- Boyd and Nelson counties stated all commissions are deposited by the jail in the jail canteen account.
- Six counties indicated the jail's portion of the commission is deposited in the jail's canteen account, and the fiscal court deposits their portion into their account. These six counties include Allen, Graves, Hardin, Meade, Taylor, and Union.
- Two commission checks are received in nine counties from two separate vendors, with one vendor's commission check going to the fiscal court for deposit and the other vendor's

check deposited in the jail's canteen account. These nine counties include Boone, Carter, Daviess, Fulton, Madison, Mason, McCracken, Webster, and Woodford.

- In Hopkins County, commission checks from one vendor are sent directly to the fiscal court for deposit in the Jail Fund, and commissions from another vendor for communication services offered through the canteen are given as a credit on monthly invoices paid out of the canteen account.
- In Pulaski County, tablet commissions are deposited by the fiscal court in the Jail Fund, while phone service commissions for communication services sold through the canteen are used by the jail to reduce the monthly amount paid to the vendor from the canteen account for those services.
- In Logan County, commission checks are deposited in the jail's canteen account, and then the jail writes a check to the fiscal court for their portion to be deposited in the Jail Fund.

Although KRS 441.135 requires jailers to “keep books of accounts of all receipts and disbursements from the canteen and...annually report to the county treasurer on the canteen account,” there is a gap in transparency as the county treasurer may not be aware that a portion of the commission receipts collected for the year and deposited in the canteen account are attributable to communication services provided to inmates through jail canteen contracts.

Other Observations Concerning Commissions

Auditors also observed that some jails had their monthly commission applied as a credit to their monthly bill or towards repayment of funds provided previously to the jail by the vendor. For example, Warren County Regional Jail's contract with Securus Technologies, Inc. includes a Capital Improvement Grant that the jail views as an incentive payment. However, the grant is more like an interest-free line-of-credit than a true grant in that there are expectations that it be paid back through a cost recovery deduction that reduces the amount of commission the jail receives each month until the amount is repaid.

Additionally, eight contracts reviewed identified a guaranteed minimum amount of commission to be received on a periodic basis (usually monthly). However, these same counties occasionally received less than the documented minimum due to decreases in the average daily population (ADP) of inmates below a certain threshold stated in the contract. Failure to meet the ADP threshold was particularly common during the last quarter of FY 2020 as county jails across the Commonwealth faced a decline in inmate population due to the Coronavirus pandemic.

Technology Grants

Among other benefits, the survey asked if the county jails were eligible to receive or received a technology grant through a communication services and equipment contract during FY 2020. Twenty-nine county jails reported receiving a technology grant during FY 2020. Ten county jails acknowledged being eligible to receive a technology grant in FY 2020, but stated they did not receive any of the funds. Finally, eight did not report being eligible to receive or receiving a technology grant in FY 2020, though the contract indicated that a grant was offered over the term of the contract. It is possible these technology grant funds were received by the counties earlier in the term of the contracts. It should be noted that the Montgomery County Regional Jail's contract

with Combined Public Communications included a technology grant; however, the Montgomery County Regional Jail did not respond to the survey and is not included in the 47 county jails discussed in this paragraph.

The term “technology” can be interpreted to mean many different things, and often the contracts do not establish a meaningful definition or restriction on the use of such funds. This could lead to a mistaken assumption that these funds are to be used for technology upgrades at the jail when in fact they can often be used for nearly anything. Technology can include electronics, but has also been interpreted by some jailers to include items such as Covid-19 Supplies, clothing, portable buildings, and storage racks. Because many of the contracts also include technology services as an acceptable use of funds, the grants may be used to contract or pay the salary of individuals with technical knowledge.

There were five common contractual provisions for the use of the technology grants, as follows:

- A specific purchase such as a body scanner or maintenance fees;
- Payable to a third-party vendor or county jail upon receipt evidencing a technology purchase;
- A fund that may be drawn from to pay for technology services or equipment purchased;
- Customer’s discretion for budget expenditures; and
- No restrictions of use specified.

The amounts available to receive for the 48 contracts reviewed offering a technology grant ranged from \$5,000 to \$400,000 over the term of the contract. Eight county jails were eligible to receive up to \$20,000, 34 jails between \$21,000 and \$200,000, and six jails over \$201,000 in technology grants. See Appendix C for a full list of technology grants offered to county jails.

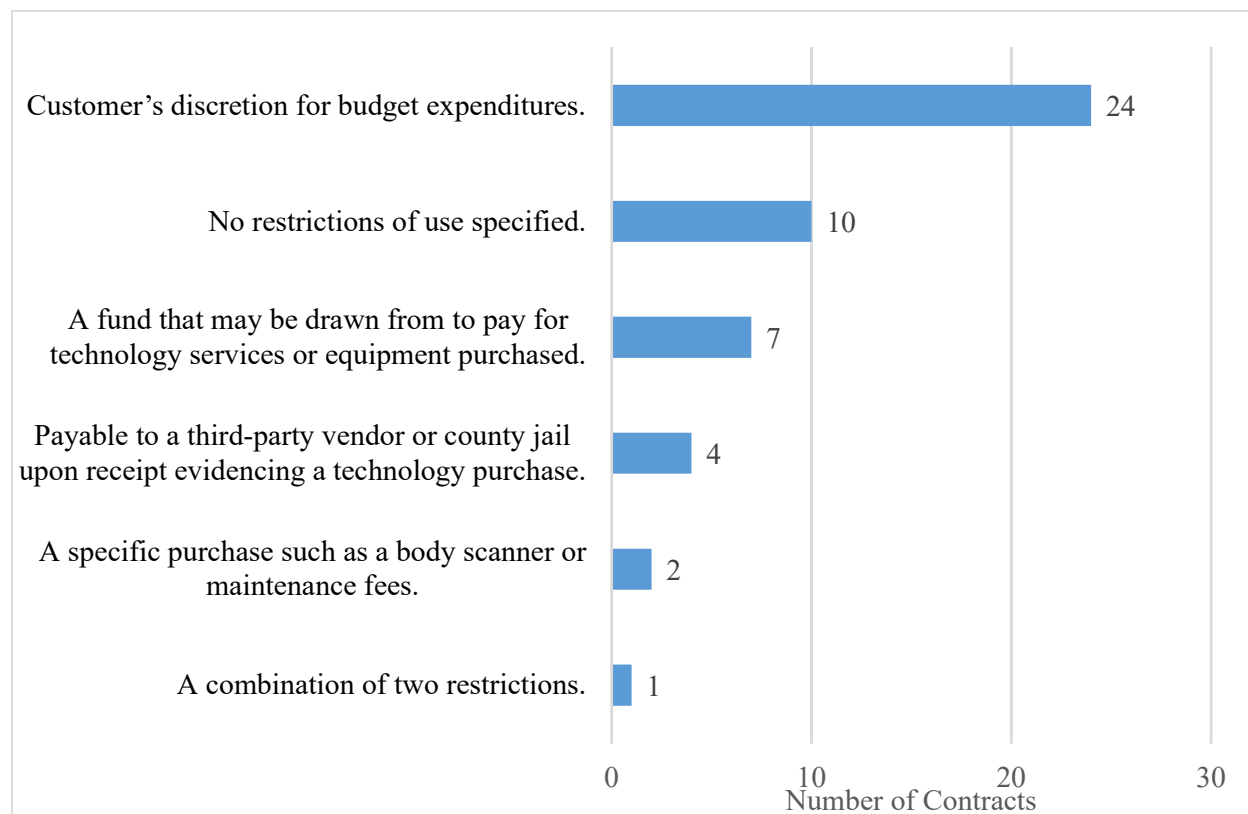
County jails reported in the survey a total of \$1,387,145 technology grants were received in FY 2020. Of the 48 contracts reviewed offering a technology grant, 18 county jails responded in the survey that they had not received any of the technology grant funds available to them during FY 2020: Allen, Bell, Boyd, Franklin, Grayson, Greenup, Hardin, Marion, Marshall, McCracken, Meade, Nelson, Ohio, Pike, Russell, Scott, Taylor, and Union.

The Nelson County Jail had two contracts with the same company during the period under review, Combined Public Communications. Under the first contract signed May 3, 2017, the jail was eligible to receive a \$25,000 technology grant to be allocated over 48 months. In the second contract signed July 3, 2019, the contract identified that the jail had used the full \$25,000 grant from its first contract and, as part of this contact renewal, the jail is eligible to receive an additional \$14,000 technology grant available 24 months after the renewal agreement’s commencement date. The Nelson County Jail reported receiving in FY 2020 \$8,925 of the \$14,000 technology grant provided in the second contract.

The Muhlenberg County Detention Center has a combination of two technology grant types. Their contract with Combined Public Communications includes a technology grant of \$75,000 towards the funding of a body scanner and an additional technology grant of \$275,000 allocated over five years to be used at the customer’s discretion for budget expenditures. Figure 6 presents the number

of contracts with specific types of contractual provisions restricting the use of technology grant funds.

Figure 6: Number of Contracts with Specific Contractual Provisions Restricting the Use of Technology Grants



Source: APA, based on county jail communication services and equipment contracts.

Analysis of the communication services and equipment contracts offering county jails a technology grant shows the majority, or 33 of the 48 contracts, were held by Combined Public Communications, LLC. The Combined Public Communications contracts accounted for all 24 contracts identified in Figure 6 as allowing the customer's discretion for budget expenditures and eight of the 10 contracts identified in Figure 6 with no restrictions on the use of the funds specified.

Sample of Technology Grants Used

Ten county jails were contacted to determine how the technology grants they received in FY 2020 were used: Adair, Calloway, Carroll, Daviess, Hart, Henderson, Madison, Muhlenberg, Simpson, and Wayne. Figure 7 summarizes the amounts available and restrictions in place, according to the contract, as well as the amount each of the ten county jails reported receiving during FY 2020 and how funds were used. Appendix C lists all technology grants identified.

Figure 7: Technology Grants Received by Ten County Jails

County Jail	Amount Available per Contract	Restrictions per Contract	Amount Received in FY 2020 per Survey	How Technology Grants Were Used
Adair County Regional Jail	\$ 40,000	Customer's discretion for budget expenditures.	\$ 10,000	Mats and clothing for inmates, and other miscellaneous expenses
Calloway County Jail	200,000	Customer's discretion for budget expenditures.	185,000	Body scanner
Carroll County Detention Center	85,000	Customer's discretion for budget expenditures.	25,000	Video system
Daviess County Detention Center	200,000	Customer's discretion for budget expenditures.	50,000	Received \$25,000 in September 2019 and \$25,000 in April 2020, both were added to the telephone commissions account in Jail Fund. Nothing specific budgeted into telephone commissions revenue line item
Hart County Jail	80,000	Fund that may be used to purchase technology services or equipment from third-party vendors.	20,000	Medical services for inmates, which is how the jail typically uses this grant each year
Henderson County Detention Center	400,000	Fund that may be drawn from to pay for technology services or equipment purchased.	100,000	Reimbursement of Assistant County Attorney salary and benefits, desktop scanners, inmate mail scan, laptops, desktops, upgraded & expanded video court, TV's and mounts, cameras, booking intake camera, security boxes for cameras, storage racks, DVRs, wall mounts and carts, upgraded and expanded video surveillance, and building (portable) for processing vegetables
Madison County Jail	53,000	Fund to pay for certain technological enhancements.	53,000	Funds were used for general inmate needs or if something is needed for the Jail. Nothing specific, no specific projects
Muhlenberg County Detention Center	350,000	\$75,000 towards the funding of a body scanner. An additional \$275,000 to be used at customer's discretion for budget expenditures.	135,000	Various operating expenditures, including K-9, jail vehicle, weapons, mats for inmates, IT maintenance, laptop, printers, inmate phone cards, Class D showers, COVID 19 supplies, and roof
Simpson County Jail	275,000	Customer's discretion for budget expenditures.	68,750	Upgrades to command center
Wayne County Detention Center	24,000	Customer's discretion for budget expenditures.	24,000	Upgrades to command center

Source: APA, based on county jail communication services and equipment contracts, survey responses, and follow-up with county jails.

As identified in Figure 7, the reported use of technology grant funds provided to county jails in FY 2020 varied. In two instances, the funds were reportedly used to upgrade a jail command center, while in another the funds were used to cover miscellaneous expenses such as mats and clothing for inmates. For the three county jails with a fund to draw from to pay for technology

services or equipment purchased, one noted the funds were used for the payment of medical services for inmates, which is typically how the jail uses the technology grant funds. Another county jail, the Henderson County Detention Center, reported using the technology grant toward a number of expenses including reimbursement to the county for the salary and benefits of the Assistant County Attorney who serves as the jail site administrator. The Daviess County Detention Center did not identify any specific budgeted use for the \$50,000 it received but noted that the technology funds were added to the telephone commission account in the Jail Fund, maintained by the county treasurer.

In utilizing mechanisms such as technology grants to acquire goods and services, jailers and procurement officers should recognize that the grant funds are a public asset, and exercise caution to ensure that applicable laws and procurement rules are followed, including requirements in the Department for Local Government's (DLG) *County Budget Preparation and State Local Finance Officer Policy Manual*.

Given the magnitude of the revenues that may be provided to county jails through these contracts, coupled with the unrestricted nature of these funds, it is increasingly important that the process for establishing communication services and equipment contracts be transparent. In an effort to better understand how the contracts are established, the APA made inquiry of each county jail to determine how goods and services for the jail are procured, the process followed by each county jail in establishing these contracts, and any requirements that may exist to report or disclose these contracts to their respective county fiscal court.

Contract Procurement

The Jail Communication Services and Equipment Contract Survey asked each county jail to identify the criteria upon which procurement decisions for the county jail were based and to identify the process followed when selecting each vendor. Because jail communication services and equipment contracts typically do not involve the expenditure of funds, the statutes and processes that routinely apply to county procurement are not readily applicable to these contracts.

Some counties have adopted the local model procurement code under KRS Chapter 45A, while other counties follow the traditional KRS 424.260, both of which require most contracts involving an expenditure of \$30,000 or more to be publically advertised for bid. A county may also set a lower threshold amount for requiring competitive bidding in its local administrative code, which is adopted by ordinance.

An expenditure analysis is not the final point of inquiry as to whether Kentucky law requires competitive bidding for the award of these contracts. Section 164 of the Kentucky Constitution sets forth criteria and prohibitions as to the granting of a franchise or privilege, including the making of any contract in reference thereto. First, such an agreement may never be for a term longer than 20 years. Second, and of particular importance for this survey, the constitution requires that the government, "...shall first, after due advertisement, receive bids therefor publicly, and award the same to the highest and best bidder..." with the county retaining the right to reject any or all bids. The courts have recognized, "[t]he purpose of this section is to give information to anyone who has an interest in the privilege to be sold, to allow citizens of the community to protect

their rights, and to enable the governmental entity to receive value for the privilege granted. City of Princeton v. Princeton Electric Light & Power Co., 166 Ky. 730, 179 S.W. 1074 (1915).” By way specific applicability, reference may be made to Eastern Kentucky Resources v. Arnett, 934 S.W.2d 270 at 275 (1996), “In all these cases, this Court has specifically acknowledged that a franchise is a right or privilege granted by a sovereign power to a party to do some act which such party could not do without a grant from the government.” As no party has a right to provide communications services to a jail or its inmates without the agreement of the jail or county, contracting officers should exercise great care in analyzing offers, solicitations, procurements, or contracting in consideration of the potential application of Section 164 of the Kentucky Constitution.

Only 32 contracts in the survey were identified as having been awarded through a bid process. Responses for 30 of those contracts indicated a formal evaluation of the bids received occurred. County jails responded that formal evaluations consisted of scoring criteria including the best bid price submitted, the lowest and best bid price, or other methods. For 81 contracts, the respondents stated either they were not aware of how the contract was procured or the contracts were not bid. Some of the reasons given by respondents for not following a bid process included the contract was already in place when the current jailer took office, the contract was a renewal or extension, or the contract was not required to be bid.

Of 72 county jails that reported following their County’s Administrative Code for procurement of goods or services, 63 were required by their Administrative Code to have all contracts including changes and amendments be authorized or approved by the fiscal court, judge executive, or their equivalents. However, only 44 of these 63 county jails identified in survey responses that they disclosed at least one communication services or equipment contract to the fiscal court. Additionally, survey respondents identified 34 contracts were not signed or otherwise approved by the fiscal court and/or judge executive despite this requirement. In those instances, responses indicated the respective jailer executed the contract.

As a specific caveat, in light of the Constitution’s requirement of an award to the highest and best bidder, interpretational issues may arise as to whether that language steers an award to a bidder that maximizes revenue for the jail, or one that provides the lowest cost services to the jail inmates to assist in the maintenance of family ties, or some balance between those and other potential factors. Due to the lack of interpretational guidance on this specific point by Kentucky courts, this data bulletin takes no position on that issue. The General Assembly may wish to consider legislative action to provide direction and clarity as to the procurement process for these contracts in order to balance these competing policy interests as well as ensure transparency to the taxpayers of the Commonwealth.

Review of Per Minute Rate Restrictions

As noted previously in this data bulletin, the FCC has recognized that certain risks exist when jails select one communications provider to serve their facilities. Specifically, the FCC notes, “there are no competitive constraints on a provider’s rates once it has entered into a contract to serve a particular facility.” In an effort to understand the rates charged to inmates from these

communication services and the county jail itself, the APA performed inquiry of county jails through the survey and performed limited review procedures of the contracts and FCC guidelines. The 116 communication services and equipment contracts were reviewed to determine the interstate long-distance rates for both debit/prepaid calls and for collect calls. Those rates were then compared to the current rate caps set by the FCC. While no contracts reviewed specified higher rates for collect calls than the FCC limits, three contracts did present higher rates for debit/prepaid calls: Casey, Floyd, and Woodford counties. The APA also inquired of jailers in the survey whether they charge inmates any additional per minute rates. County jails responding to the survey unanimously reported that they do not charge any additional rates per minute to their inmates beyond the rates charged by the contractor.

Because the Communications Act of 1934 divides regulatory authority over interstate, intrastate, and international communications services between the FCC and the states, the APA also reached out to the staff at the Kentucky Public Service Commission (PSC) to determine if similar rate caps had been set by that agency. PSC reported that they do not set any rate limitations on inmate calls, as the agency has not regulated rates since the General Assembly passed House Bill 337 in 2006. Also, while inmate calling providers may submit tariffs to PSC, the providers are not required to do so.

Based on extensive analysis of the most recent cost data submitted by inmate calling services providers, the FCC proposed in 2020 to lower the interstate rate caps. After circulation of their proposal for public comment, the FCC adopted this proposal on May 20, 2021. The adopted rates for interstate calls are \$0.12 per minute for calls from all prisons and \$0.14 per minute for calls from jails. However, these rates will not apply to jails with an average daily population of less than 1,000 inmates.

Appendix A – Signing Bonuses Offered to County Jails per Contract Terms

County	Amount Received	Contract Date	Time Period Noted as to be Received
Boyd	\$ 60,000	Contract dated June 25, 2010	Within 30 days after the installation of the System
Boyd	4,200	Second Amendment dated August 15, 2013	On the first day of the month following the Second Amendment Effective Date
Boyd	10,000	Seventh Amendment signed May 25, 2018	On the first day of the month following the Seventh Amendment Effective Date
Carter	100,000	Contract dated October 17, 2016	On the first day of the month following the installation of the System
Carter	130,000	First Amendment signed August 30, 2018	On the first day of the month following the First Amendment Effective Date
Clark	60,000	Contract signed January 9, 2015	Prorated over a 48 month Agreement
Clay	30,000	Contract dated May 27, 2015	On the first day of the month following the Effective Date
Crittenden	40,000	Contract signed October 12, 2018	On or about January 1, 2019
Floyd	25,000	Second Amendment signed January 21, 2016	On the first day of the month following execution of the Second Amendment
Floyd	30,000	Third Amendment signed November 8, 2018	On or about the first day of the month following the Third Amendment Effective Date
Hardin	75,000	Contract dated March 27, 2012	On the first day of the month following the Effective Date
Hardin	150,000	Seventh Amendment signed April 12, 2019	On the first day of the month following the Seventh Amendment Effective Date
Letcher	12,000	Contract dated December 3, 2015	On the first day of the month following the Effective Date
Lewis	25,000	Contract dated August 19, 2014	On the first day of the month following the installation of the System
Logan	100,000	Contract signed April 20, 2017	Prorated over a 48 month Agreement
Scott	7,000	Contract dated June 16, 2013	On the first day of the month following the Effective Date
Total	\$ 858,200		

Source: APA, based on county jail communication services and equipment contracts.

Note: Amounts have not been confirmed by the APA as the potential dates to be received fell outside FY 2020.

Appendix B: Comparison of FY 2020 Commission Reported by County Jails in APA Survey and Commission Reported in County Treasurers' Fourth Quarter Receipts Report

County	FY 2020 Commission Totals per Q4 Receipt Report	Commission Amount Received in FY 2020 per Survey	Difference Between Commission Reported in Survey & Q4 Receipts Report	Commission Reported in Survey Agrees to Q4 Receipts Report
Adair	\$ 36,137	\$ 36,000	\$ (137)	No
Allen	9,296	16,998	7,702	No
Ballard	25,059	25,059	-	Yes
Barren	34,692	34,691	(1)	No
Bell	44,263	44,113	(150)	No
Boone	153,449	236,710	83,261	No
Boyd	7,238	80,151	72,913	No
Boyle	65,188	65,187	(1)	No
Breckinridge	80,863	93,600	12,737	No
Bullitt	118,315	115,475	(2,840)	No
Butler	22,748	21,274	(1,474)	No
Caldwell	13,540	5,703	(7,837)	No
Calloway	46,254	49,764	3,510	No
Campbell	327,521	310,588	(16,933)	No
Carroll	44,838	45,143	305	No
Carter	96,193	122,135	25,942	No
Casey	135,860	84,024	(51,836)	No
Christian	393,360	175,311	(218,049)	No
Clark	85,689	86,468	779	No
Clay	88,862	34,282	(54,580)	No
Clinton	1,402	1,501	99	No
Crittenden	84,892	81,000	(3,892)	No
Daviess	168,920	201,524	32,604	No
Lexington-Fayette	*	896,404	896,404	*
Floyd	10,548	10,548	-	Yes
Franklin	253,272	229,140	(24,132)	No
Fulton	184,099	197,134	13,035	No
Grant	81,092	81,091	(1)	No
Graves	22,127	54,817	32,690	No
Grayson	496,762	496,762	(0)	Yes
Greenup	29,325	26,327	(2,998)	No

County	FY 2020 Commission Totals per Q4 Receipt Report	Commission Amount Received in FY 2020 per Survey	Difference Between Commission Reported in Survey & Q4 Receipts Report	Commission Reported in Survey Agrees to Q4 Receipts Report
Hardin	365,273	665,236	299,963	No
Harlan	82,358	62,736	(19,622)	No
Hart	202,082	138,973	(63,109)	No
Henderson	470,302	398,587	(71,715)	No
Hopkins	145,433	200,449	55,016	No
Jackson	22,935	1,000	(21,935)	No
Jessamine	43,461	43,461	-	Yes
Kenton	341,695	341,695	-	Yes
Knox	42,338	217,225	174,887	No
LaRue	47,067	16,787	(30,280)	No
Laurel	510,487	510,487	-	Yes
Leslie	-	57,874	57,874	No
Letcher	16,191	15,313	(878)	No
Lewis	17,014	17,000	(14)	No
Lincoln	46,470	46,470	-	Yes
Logan	27,971	76,706	48,735	No
Louisville Metro	*	624,000	624,000	*
Madison	110,000	135,600	25,600	No
Marion	67,904	67,904	-	Yes
Marshall	92,939	90,981	(1,958)	No
Mason	58,037	65,312	7,275	No
McCracken	227,911	231,614	3,703	No
Meade	42,000	69,262	27,262	No
Montgomery	60,320	NA	NA	NA
Muhlenberg	138,854	93,555	(45,299)	No
Nelson	8,925	48,022	39,097	No
Ohio	12,919	12,919	-	Yes
Oldham	231,523	244,654	13,131	No
Pike	69,509	25,128	(44,381)	No
Powell	128,117	72,504	(55,613)	No
Pulaski	55,499	111,004	55,505	No
Rockcastle	40,701	32,276	(8,425)	No
Rowan	104,658	107,059	2,401	No
Russell	44,443	44,443	-	Yes

County	FY 2020 Commission Totals per Q4 Receipt Report	Commission Amount Received in FY 2020 per Survey	Difference Between Commission Reported in Survey & Q4 Receipts Report	Commission Reported in Survey Agrees to Q4 Receipts Report
Scott	37,538	24,164	(13,374)	No
Shelby	111,471	111,471	-	Yes
Simpson	78,955	76,763	(2,192)	No
Taylor	43,339	76,847	33,508	No
Todd	66,720	50,000	(16,720)	No
Union	7,504	18,201	10,697	No
Warren	533,145	196,544	(336,601)	No
Wayne	56,616	56,616	-	Yes
Webster	90,993	103,440	12,447	No
Whitley	56,956	56,956	-	Yes
Woodford	64,955	70,286	5,331	No
Total	\$ 8,185,332	\$ 9,686,448		

Source: APA, based on Jail Communication Services and Equipment Contract Survey responses and fourth quarter receipts report. Amounts presented in the table may be rounded for presentation purposes.

* Fayette and Jefferson are not included in the fourth quarter receipts report due to how their governments are made up as an urban county government and consolidated local government, respectively.

NA: Figure not available due to lack of response to the survey by jail.

Appendix C: Technology Grants Offered to County Jails through Term of Contract and Amounts Reported as Received by County Jails in FY 2020

County Jail	Vendor	Amount Available per Contract	Restrictions per Contract	Amount Received in FY 2020 per Survey
Adair County Regional Jail	Combined Public Communications, LLC	\$ 40,000	Customer's discretion for budget expenditures.	\$ 10,000
Allen County Detention Center	Combined Public Communications, LLC	10,000	Customer's discretion for budget expenditures.	-
Bell County Detention Center	Combined Public Communications, LLC	50,000	Customer's discretion for budget expenditures.	-
Boyd County Detention Center	Global Tel Link Corporation	31,250	Payable upon receipt evidencing technology purchase, or payable to the vendor directly after receiving a price quote, invoice, or other document identifying the technology and related pricing.	-
Boyle County Detention Center	Telmate, LLC	25,000	Payable upon receipt evidencing technology purchase, or payable to the vendor directly after receiving a price quote, invoice, or other document identifying the technology and related pricing.	25,000
Breckinridge County Detention Facility	Combined Public Communications, LLC	40,000	NA	10,000
Bullitt County Detention Center	Combined Public Communications, LLC	138,000	Customer's discretion for budget expenditures.	138,000
Calloway County Jail	Combined Public Communications	200,000	Customer's discretion for budget expenditures.	185,000
Carroll County Detention Center	Combined Public Communications, LLC	85,000	Customer's discretion for budget expenditures.	25,000
Christian County Detention Center	Combined Public Communications, LLC	150,000	Customer's discretion for budget expenditures.	10,752
Clark County Detention Center	Combined Public Communications	250,000	Customer's discretion for budget expenditures.	62,500
Clay County Detention Center	Securus Technologies, Inc.	60,000	Fund that may be drawn from to pay for technology services or equipment purchased.	60,000
Daviess County Detention Center	Combined Public Communications, LLC	200,000	Customer's discretion for budget expenditures.	50,000
Franklin County Regional Jail	Securus Technologies, Inc.	20,000	Fund that may be drawn from to pay for technology services or equipment purchased from third-party vendors.	-

County Jail	Vendor	Amount Available per Contract	Restrictions per Contract	Amount Received in FY 2020 per Survey
Grayson County Detention Center	Combined Public Communications, LLC	40,000	Customer's discretion for budget expenditures.	-
Greenup County Detention Center	Combined Public Communications, LLC	125,000	Customer's discretion for budget expenditures.	-
Hardin County Detention Center	Securus Technologies, Inc.	7,051	Fund that may be drawn from to pay for maintenance fees associated with the Jail Tracker System.	-
Harlan County Detention Center	Telmate, LLC	5,000	NA	5,000
Hart County Jail	Securus Technologies, Inc.	80,000	Fund that may be used to purchase technology services or equipment from third-party vendors.	20,000
Henderson County Detention Center	Securus Technologies, Inc.	400,000	Fund that may be drawn from to pay for technology services or equipment purchased.	100,000
Kenton County Detention Center	CyberPath Services, LLC	165,250	Technology grant to go towards the purchase of a body scanner.	165,250
Knox County Jail	Combined Public Communications, LLC	150,000	Customer's discretion for budget expenditures.	36,620
Letcher County Jail	Securus Technologies, Inc.	3,000	Fund to purchase technology services or equipment from third-party vendors.	12,000
Lincoln County Regional Jail	Combined Public Communications	40,000	NA	10,000
Madison County Jail	Global Tel Link Corporation	53,000	Fund to pay for certain technological enhancements.	53,000
Marion County Detention Center	Telmate, LLC	20,000	Annual technology grant payable to either the facility or the vendor listed on the invoice(s) within 30 days of receipt of technology invoice(s) for equipment or services for payment.	-
Marshall County Detention Center	Combined Public Communications, LLC	50,000	Customer's discretion for budget expenditures.	-
Mason County Detention Center	Combined Public Communications	55,000	NA	13,750
McCracken County Jail	Combined Public Communications, LLC	80,000	Customer's discretion for budget expenditures.	-
Meade County Detention Center	Combined Public Communications	60,000	NA	-
Montgomery County Regional Jail	Combined Public Communications, LLC	225,000	Customer's discretion for budget expenditures.	
Muhlenberg County Detention Center	Combined Public Communications, LLC	350,000	\$75,000 towards the funding of a body scanner. An additional \$275,000 to be used at customer's discretion for budget expenditures.	135,000

County Jail	Vendor	Amount Available per Contract	Restrictions per Contract	Amount Received in FY 2020 per Survey
Nelson County Jail	Combined Public Communications	25,000	NA	-
Nelson County Jail	Combined Public Communications, LLC	14,000	Customer's discretion for budget expenditures.	8,925
Ohio County Jail	Combined Public Communications, LLC	10,000	Customer's discretion for budget expenditures.	-
Oldham County Detention Center	Combined Public Communications	100,000	NA	25,000
Pike County Detention Center	Combined Public Communications	125,000	NA	-
Pulaski County Detention Center	Telmate, LLC	50,000	Payable upon receipt evidencing technology purchase, or payable to the vendor directly after receiving a price quote, invoice, or other document identifying the technology and related pricing.	52,784
Rockcastle County Jail	Combined Public Communications, LLC	60,000	Customer's discretion for budget expenditures.	15,814
Russell County Jail	Combined Public Communications	20,000	Customer's discretion for budget expenditures.	-
Scott County Detention Center	Securus Technologies, Inc.	50,000	Fund that may be drawn from to pay for technology services or equipment purchased from third-party vendors.	-
Simpson County Jail	Combined Public Communications, LLC	275,000	Customer's discretion for budget expenditures.	68,750
Taylor County Detention Center	Combined Public Communications, LLC	75,000	Customer's discretion for budget expenditures.	-
Union County Jail	Combined Public Communications	5,000	NA	-
Wayne County Detention Center	Combined Public Communications, LLC	24,000	Customer's discretion for budget expenditures.	24,000
Webster County Jail	Combined Public Communications, LLC	80,000	Customer's discretion for budget expenditures.	20,000
Whitley County Detention Center	Combined Public Communications, LLC	100,000	Customer's discretion for budget expenditures.	25,000
Woodford County Detention Center	Securus Technologies, Inc.	20,000	NA	20,000
Total		\$4,240,551		\$1,387,145

Source: APA, based on Jail Communication Services and Equipment Contract Survey responses and county jail communication services and equipment contracts.