



MEMORANDUM
COUNTY EXECUTIVE OFFICE
ADMINISTRATION
County of Placer

TO: Honorable Board of Supervisors
FROM: David Boesch, County Executive Officer
By: Bekki Riggan, Deputy CEO
DATE: June 21, 2016
SUBJECT: Indigent Defense Services

ACTION REQUESTED

1. Receive an update on the Request for Qualifications (RFQ) process for Primary Indigent Defense Services and provide staff direction regarding the following options:
 - a. Negotiate with the Law Office of Dan Koukol for Primary Indigent Defense services or;
 - b. Further evaluate and develop an implementation plan for establishing a Placer County Office of the Public Defender.
2. Approve and authorize the County Executive Officer to sign a six-month extension from July 1, 2016 through December 31, 2016 in the amount of \$2,415,623 (no cost increase) with six additional one month options in the amount up to \$402,604 per month with Richard A. Ciummo and Associates for Primary Indigent Defense services.
3. Approve and authorize the County Executive Officer to sign a two-year contract extension in the amount of \$3,188,105 (an increase of \$122,619 or 4%) for First Level Conflict Indigent Defense services with the Law Office of Mark A. Berg for the period of July 1, 2016 through June 30, 2018.
4. Approve and authorize the County Executive Officer to sign a two-year contract extension in the amount of \$636,000 (no cost increase) for Second Level Conflict Indigent Defense services with the Law Office of Dan Koukol for the period of July 1, 2016 through June 30, 2018.

BACKGROUND

In the State of California, counties are mandated to provide for legal representation of criminal defendants who are unable to pay for legal assistance. Across the State, counties typically provide this service through one of three service models: (1) a county department, where the attorneys and support staff are public employees; (2) assigned counsel, where cases are assigned directly by the court and are paid either a flat fee or hourly; and (3) contract indigent defense counsel, where private sector law firms provide indigent criminal defense services. Placer County has used a contract services model for primary public defender services since 1971.

Placer County currently contracts with three separate firms to provide criminal defense services to indigents; a Primary Public Defender, a First Level Conflict contract, and a Second Level Conflict contract. Primary Public Defender services have been provided by Richard Ciummo

and Associates since July 1, 2006. When a conflict exists with the Primary firm, those cases have been assigned to the Law Office of Mark A. Berg as the First Level Conflict firm. If a conflict exists for both the Primary and the First Level Conflict firms, those cases have been assigned to the Law Office of Dan Koukol as the Second Level Conflict firm.

The County has periodically solicited proposals to ensure that services to clients are provided in compliance with the constitutional mandates of effective counsel, while maintaining best practices of governmental efficiency, economy and accountability. In 2015, the County commenced a competitive process for selection of a contract provider for primary public defender services. Because the County has not established an Office of Public Defender, a contract for primary public defender services necessarily requires the cooperation of the local Superior Court. Under Penal Code Section 987.2, in counties in which there is no public defender, it is the responsibility of the Superior Court to appoint and set the reasonable compensation of indigent criminal defense counsel. Therefore, the RFQ/RFP process was a partnership between the County Executive Office and the Superior Court.

On November 20, 2015 a Request for Qualifications (RFQ) solicited proposals for these indigent defense services. Firms were requested to submit proposals for a variety of service delivery models for consideration and review by the panel, including felony cases only, misdemeanor cases only, or a combination of the two. Proposals were submitted by four firms: Richard Ciummo and Associates, for both misdemeanor and felony defense services; Law Office of Dan Koukol, who submitted proposals for both misdemeanor and felony services, as well as separate proposals for a misdemeanor defense services and felony defense services; Boldin Law Group submitted a proposal for misdemeanor defense services and second level conflict defense services; and Law Offices of Michael J. Sullinger submitted an approach for both felony and misdemeanor defense services.

The proposals were reviewed and initial interviews conducted by an evaluation panel consisting of a CEO representative, a representative from County Counsel, a representative from the County's Department of Health and Human Services, two Superior Court judges who handle criminal calendars, a representative of the Court Executive Office, and representative from the Nevada Public Defender Office. At the conclusion of the initial review and interview process, full proposals were requested from the top two ranked firms, Richard Ciummo and Associates and the Law Office of Dan Koukol. Both firms were again interviewed and scored and the Law Office of Dan Koukol was the highest scored proposal. However, there was a significant variation in the two firms' cost proposals, with the Koukol bid costing \$7.1 million more than the Ciummo bid over the initial 4-year term of the contract.

The RFQ/RFP process demonstrated that there is not a readily available market of private law firms able to take on a contract of this size. Although cost is not the primary factor in selecting a provider for these services, the cost of the successful proposal calls into question the rationale for continued contracting of these services. Moving to a department would allow for the

development of institutional knowledge, while some argue that staying with the private sector allows for cost-effective counsel in compliance with constitutional mandates. As set out in the Placer County Charter, the Board may contract for services typically provided by County employees whenever it is more economical to do so. In this case, the higher cost of the Koukol proposal necessitated staff to evaluate the costs of a contractor as compared to the cost of providing the services through a County department with a County appointed Chief Public Defender.

A cost comparison of the existing contract model and results of the RFQ process are shown below.

Indigent Defense Cost Comparison			
Fiscal Year	Current Primary Contract	Ciummo RFQ Proposal	Koukol RFQ Proposal
2015-16	\$4,831,246	--	--
Start Up Cost	--	--	\$405,000
2016-17	--	\$4,950,000	\$6,550,000
2017-18	--	\$5,073,750	\$6,750,000
2018-19	--	\$5,200,593	\$6,900,000
2019-20	--	\$5,330,607	\$7,100,000
Annual Contingency Costs**	--	--	--
4 -Year Totals		\$20,554,950	\$27,705,000

Based upon a staffing model similar to the proposals, a County department has estimated costs of \$6,108,991 in FY 2016-17, with a 4-year total of \$30,702,691. Specific cost assumptions and first year cost factors are listed below:

- 43 total staff.
- Standard 5% step increases.
- Anticipated costs for PERS for Non-Safety and Safety (Investigators Only).
- Anticipated costs for employee health insurance.
- A-87 costs are not applicable until FY 2018-19 due to two year look-back period.

- Commercial lease office space/costs consistent with the Koukol proposal.
- One-time start-up costs for furniture, fixtures, and IT equipment.
- Operating costs and services are modeled using common assumptions from the County District Attorney's Office and County Counsel appropriations.
- Contingency costs are estimated for potential variances to assumed position allocations (\$200,000), and for unknown services or increases to the number of positions (\$300,000).

A County department would involve greater budget predictability. For example, the Contract costs above do not include death penalty murder cases directly funded by the County. Two death penalty cases that fall under this category are active in Placer County Superior Court: People vs. Baker has accumulated costs in excess of \$800,000 with an additional \$600,000 projected; People vs. Smith is projected to accumulate costs of \$600,000. County defense costs for these cases will be well over \$2 million dollars. Should your Board direct staff to develop an Office of Public Defender, these costs would be handled within the Office, rather than through outside counsel, and represent significant cost avoidance with the County Department model. A County Office of the Public Defender would clarify the roles of the Courts, the County, and the Public Defender by limiting the Court to appointing counsel when conflicts arose in a case. Finally, a County department would provide an institutional voice for criminal defense issues.

Should your Board direct staff to negotiate with the Law Office of Dan Koukol for Primary Indigent Defense services or to develop an implementation plan for a County Office of the Public Defender, an extension with the current service provider for up to one year would be necessary to ensure defense services remain intact throughout the transition process. Thus, staff is requesting a contract extension with Richard Ciummo and Associates for Primary Indigent Defense services.

Two-year contract extensions are requested for First Level Conflict and Second Level Conflict defense services. The contract extension with the Law Office of Mark Berg to provide First Level Conflict Indigent Defense totals \$3,188,105, an increase of \$122,619 or 4.0% over the current contract due to rising health insurance premiums and other operating costs. The contract extension with the Law Office of Dan Koukol for Second Level Conflict Indigent Defense services totals \$636,000, no cost increase over the current contract.

FISCAL IMPACT

Indigent Defense Services are fully funded by the County General Fund. The FY 2016-17 Proposed Budget includes \$7,320,000 to fund Indigent Defense contracts and additional County funded costs that may occur with capital murder cases.

Based on direction received from your Board, staff will return for approval of a negotiated contract for Primary Indigent Defense (public defender) services, or with an implementation plan for developing a County Office of the Public Defender. The Law Office of Dan Koukol has proposed services in the amount of \$6,955,000 in FY 2016-17, with a 4-year total of \$27,705,000. A County Office of the Public Defender has estimated costs of \$6,108,991 in FY 2016-17, with a 4-year total of \$30,702,691.

The requested FY 2016-17 contract extension with Richard A. Ciummo and Associates for Primary Indigent Defense services has a six-month cost of \$2,415,623, with a full year cost of up to \$4,831,246 if additional one-month extensions are required. As a transitional service contract, the six-month cost would be in addition to the negotiated contract with the Law Office of Dan Koukol, while it is already assumed in the County Office model.

The two-year contract extension with the Law Office of Mark Berg to provide First Level Conflict Indigent Defense totals \$3,188,105, an increase of \$122,619 or 4.0% over the current contract. The two-year contract extension with the Law Office of Dan Koukol for Second Level Conflict Indigent Defense services is \$636,000, no cost increase over the current contract.

Contracts on file with Clerk of the Board of Supervisors

