



## Legislation Details (With Text)

**File #:** 2019-0371  
**Type:** Consent Calendar Item **Status:** Passed  
**File created:** 3/13/2019 **In control:** County Counsel  
**On agenda:** 4/9/2019 **Final action:** 4/9/2019  
**Title:** Indigent Defense Services Agreement  
**Sponsors:** County Administrator, County Counsel  
**Indexes:**  
**Attachments:** 1. Summary Report-Indigent Defense Services Agreement.pdf, 2. Conflict Administrator Agreement.pdf

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
|------|------|-----------|--------|--------|

**To:** Board of Supervisors

**Department or Agency Name(s):** County Counsel, County Administrator

**Staff Name and Phone Number:** Jeff Berk, Deputy County Counsel 707-565-2443; Nikki Berrocal, CAO Analyst 707-565-3085

**Vote Requirement:** 4/5th

**Supervisory District(s):** Countywide

**Title:**

Indigent Defense Services Agreement

### Recommended Actions:

Authorize the Chair to execute a three-year agreement with Kristine Burk to provide for indigent defense services for July 1, 2019, through June 30, 2022, at a cost of \$2,418,629 for FY 19-20, increasing by 2% per year through the term of the contract. (4/5<sup>th</sup> Vote Required)

### Executive Summary:

The County is obligated by law to pay for the costs associated with the representation of indigent defendants. In most cases, the Public Defender's office provides indigent defense. However, when representation of a defendant by the Public Defender results in a conflict of interest, outside counsel is appointed by the Court and the costs are charged to the County. One method of providing fair, adequate and efficient representation is to retain attorneys under a fixed-price to insure availability and cost containment. If there is no contract, the Court would appoint attorneys at an hourly rate, which would be significantly more expensive and very unpredictable. This item is requesting approval of an agreement with Kristine Burk to provide indigent defense services for a term ending June 30, 2022. Ms. Burk is the administrator of a pool of approximately 20 attorneys that she contracts with to provide these services.

### Background:

The County has contracted with Harry Allen since October 1, 2005 to provide these services. At the time we entered into the current three-year agreement, we knew Mr. Allen was approaching retirement and we asked him to provide a transition/succession plan. Kristine Burk, a former Chief Deputy Public Defender for Sonoma County, has been working with Mr. Allen for the last few years and County Counsel and the CAO recommends approval of the new three-year agreement with her.

The success of this agreement is largely dependent on recognition by the Courts that the services provided by the Contractor are appropriate. If the Courts were to find that the services were inadequate, they have the authority to appoint private attorneys to represent indigent defendants, and the County would be responsible for the costs of such appointments. We have confirmed the Presiding Judge, Criminal Division-Supervising Judge and the Court Executive Officer's support of this agreement.

Like the earlier agreements, the agreement negotiated with Ms. Burk for your Board's consideration provides coverage for most conflicts arising with felony, misdemeanor and juvenile courts. However, some situations, though rare, still will arise where the Court will appoint an attorney, not under the contract, on an hourly basis.

#### Agreement

County Counsel and County Administrator's staff negotiated and reached a tentative agreement with Ms. Burk on a three-year contract ending June 30, 2022. The cost for fiscal year 2019-2020 is \$2,418,629. The contract provides that this annual amount will increase 2% for years two and three.

#### Request for Qualifications

A RFQ was conducted in 2012. Other than the proposal submitted by Harry Allen, the County only received one proposal, and it was not a viable option for several reasons - it did not follow the current model, it did not specify a cost, and it did not identify the attorneys who would be used. Staff intends to conduct an RFQ during this next contract period.

#### Agreement Features

Annually, the Public Defender currently declares a conflict in about 450 felony cases, 1500 misdemeanors, 80 juvenile cases and 15 civil contempt cases. As with the previous agreement, this agreement states that if any one of these caseload increases by more than 15% or decreases more than 10%, a re-opener would occur.

The proposed agreement continues the features provided in the earlier contracts, including 9 levels of coverage each for felony, misdemeanors and juvenile cases. The need for levels of coverage exists due to possible multi-defendant cases and/or when attorneys under contract with Ms. Burk have a cognizable conflict of interest which must be declared. Due to the number of multi-defendants cases and significant number of repeat offenders, this level of coverage insures that only in the most unusual of circumstances will there be a conflict or outside attorney appointments. To accomplish this, Ms. Burk sub-contracts with approximately 20 attorneys. This type of fixed-price works like an insurance policy to cover most County defense obligation situations and avoids the Court appointing attorneys at an hourly rate, which would be more expensive. Some years ago, a single incident resulted in the arrest of seven individuals. The Public Defender was appointed to represent one, a second retained private counsel, and the other 5 were represented by attorneys through this

contract. There are few conflict appointments outside the contract because, unlike the attorneys in the Public Defender's office, the contracted attorneys are all separate from one another with regard to conflicts of interest. This system also makes the budget for these appointed attorneys more predictable. As required by State Bar Guidelines, these contracted attorneys are paid about the same (not including benefits) as public defenders, although on a part-time basis. The agreement also provides for retentions for investigative service and expert witness costs which, if not utilized, will be returned to the County.

The proposed contract continues the provisions to address unique issues that arose some years ago in a five-defendant murder trial. Because of its unusual complexity, including the use of a Grand Jury and thousands of pages of documentary evidence, the contract/subcontracting attorneys were compensated outside of the contract for extraordinary circumstances. This was justified by the fact that assigned attorneys were unable to take on the significant workload of this extraordinary case in addition to their other active cases. In this type of unusual circumstance, the Court may order the County to pay additional sums ("extraordinary costs") to the attorneys if the Court orders that additional compensation is required to provide adequate representation. There are also special provisions for Capital Cases and cases that result in a change-of-venue.

In the current and proposed new agreement, the County and Contractor set aside funds for future, possible, "extraordinary" cases, like the one mentioned above. If an attorney believes they have an extraordinary case, they would submit a detailed request to the Contractor and the County explaining the basis for that request. If agreement is reached between the parties, costs are shared between the County and the Contractor. If there is no agreement, the matter is heard by the Court. The County will be given notice and has an opportunity to oppose the request. As part of the contract amount, for each fiscal year of the agreement, the County will place \$24,406 into a retainer account and the Contractor will place \$12,203 into the retainer account. Funds shall be paid out on a shared basis. If costs exceed the available balance, the County shall pay the additional costs. Any funds contributed by the County which are not expended shall be returned to the County at the end of the contract.

Also as part of the contract amount, the contract provides for funds for Investigation services, forensic expenses including expert witness fees and interpreters, and law clerk services in the amount of \$209,640 that are held in a retention account. The contract administrator must provide the County with a Quarterly accounting of these funds, and any remaining funds which are not expended shall be returned to the County at the end of the contract.

The contract includes the provisions required by the Living Wage Ordinance.

**Discussion:**

NA

**Prior Board Actions:**

May 7, 2013, and June 21, 2016: Approved 3 year agreement with Harry Allen for indigent defense services.

**FISCAL SUMMARY**

| <b>Expenditures</b>                | <b>FY 18-19<br/>Adopted</b> | <b>FY19-20<br/>Projected</b> | <b>FY 20-21<br/>Projected</b> |
|------------------------------------|-----------------------------|------------------------------|-------------------------------|
| Budgeted Expenses                  | \$2,345,562                 | \$2,418,629                  | \$2,467,002                   |
| Additional Appropriation Requested |                             |                              |                               |

|                           |                    |                    |                    |
|---------------------------|--------------------|--------------------|--------------------|
| <b>Total Expenditures</b> | <b>\$2,345,562</b> |                    | <b>\$2,467,002</b> |
| <b>Funding Sources</b>    |                    |                    |                    |
| General Fund/WA GF        | \$2,345,562        | \$2,418,629        | \$2,467,002        |
| State/Federal             |                    |                    |                    |
| Fees/Other                |                    |                    |                    |
| Use of Fund Balance       |                    |                    |                    |
| Contingencies             |                    |                    |                    |
| <b>Total Sources</b>      | <b>\$2,345,562</b> | <b>\$2,418,629</b> | <b>\$2,467,002</b> |

**Narrative Explanation of Fiscal Impacts:**

Funds for this contract will be included in the General Fund 2019-20 recommended budget and subsequent future budgets.

| <b>Staffing Impacts:</b>        |  |                               |                               |
|---------------------------------|--|-------------------------------|-------------------------------|
| <b>Position Title (Payroll)</b> | <b>Monthly Salary Range (A - I Step)</b> | <b>Additions<br/>(number)</b> | <b>Deletions<br/>(number)</b> |
|                                 |  |                               |                               |
|                                 |  |                               |                               |
|                                 |  |                               |                               |

**Narrative Explanation of Staffing Impacts (If Required):**

NA

**Attachments:**

Conflict Administrator Agreement

**Related Items "On File" with the Clerk of the Board:**

NA