



Legislation Text

File #: 2022-0428, **Version:** 1

To: Board of Supervisors

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

Staff Name and Phone Number: Joshua Myers 707-565-2421, Marissa Montenegro 707-565-2431

Vote Requirement: 4/5th

Supervisorial District(s): Countywide

Title:

Indigent Defense Services Agreement

Recommended Action:

Authorize the County Administrator to execute a one-year agreement with Indigent Defense Administration of Sonoma County, LLC, operated by Kristine Burk, Esq. to provide for indigent defense services for July 1, 2022 through June 30, 2023 at a cost of \$2,591,832 for FY 22-23. (4/5th Vote Required)

Executive Summary:

The County is obligated by law to pay the costs associated with the representation of indigent people facing incarceration in the criminal courts. The Sonoma County Public Defender's Office provides the first level of representing indigent defendants. When the Public Defender has a conflict of interest, conflict counsel must be appointed and the County is responsible for their fees, as well as necessary ancillary costs.

In April, 2019, the County entered into a 3 year agreement with Indigent Defense Administration of Sonoma County (IDASC), for the term of July 1, 2019 through June 30, 2022. The agreement contains a provision allowing the County the option to negotiate an extension to the agreement for one year. Under this provision, staff have negotiated a one-year extension agreement which includes a 3% increase to the annual amount in addition to updated terms.

This item is recommending Board approval of the extension agreement with IDASC, LLC, to provide comprehensive indigent defense services for the term of July 1, 2022 through June 30, 2023. During this one year, the County will conduct an open solicitation process with the intention of awarding a new three year agreement for indigent defense services with a term of July 1, 2023 through June 30, 2026.

Discussion:

The County is obligated by law to pay the costs associated with the representation of indigent people facing incarceration in the criminal courts. The Sonoma County Public Defender's Office provides the first level of representing indigent defendants. When the Public Defender has a conflict of interest, conflict counsel must be appointed and the County is responsible for their fees, as well as necessary ancillary costs.

Larger counties sometimes operate a County Department for provision of second level representation ("Alternate Public Defender"). Other counties contract with an outside administrator who maintains a list of attorneys and those attorneys are appointed by the Court, but paid an hourly rate by the County. These

attorneys represent defendants at the second and consecutive levels of conflict even in counties with an Alternate PD office. The hourly rates vary based on the seriousness of the case.

Sonoma County has used a hybrid method which has ensured consistent, qualified and effective representation to all indigent defendants who cannot be represented by the Public Defender's Office. The administrator ensures there are sufficient number of qualified attorneys to address the needs of the criminal justice system including cases involving felonies, misdemeanors, juvenile delinquency, contempt, misdemeanor appeals and witnesses who require representation. The fixed-price agreement is sufficiently flexible to adjust to extraordinary circumstances, while ensuring predictability for budgeting purposes, as well as cost containment. Hourly rate programs require substantial administration, frequently resulting in cost overruns and are less consistent in terms of quality.

The County has utilized a fixed-price contract structure since 2005. In 2017, at the County's request, the previous Administrator, Harry Allen, Esq. identified a successor to ensure continuity of services as Mr. Allen's retirement was imminent. Mr. Allen selected Kristine Burk, a well-respected defense attorney and former Chief Deputy in the Sonoma County Public Defender's Office. Between 2017 and 2019, Ms. Burk was a conflict attorney and assistant Administrator for the conflict panel. In April, 2019, a request for proposal process resulted in the County entering into a 3-year agreement with Ms. Burk and Indigent Defense Administration of Sonoma County (IDASC), for the term of July 1, 2019 through June 30, 2022.

The agreement for conflict indigent services is structured such that the County contracts with IDASC, LLC, which then in turn sub-contracts with multiple private practitioners of criminal defense law. Those attorneys, in their individual capacity, accept all Court appointments to represent defendants when the Public Defender has declared a conflict. The subcontractors are not members of a single firm nor are they employees of the IDASC, LLC. This structure avoids the creation of excessive conflicts and allows a relatively small group of attorneys to properly represent more clients without exceeding caseload guidelines.

The past three years have been a tumultuous time in our local court system - from fires to court closure to restructuring. The success of this program largely depends on the confidence the Court has in the services provided by IDASC, LLC. If the Courts were to find that the services were inadequate in anyway, they have the authority to notify the County and could appoint private attorneys to represent indigent defendants at the County's expense. This has not occurred and the Presiding Judge and the Court Executive Officer have expressed support of the extension of the County's agreement with IDASC, LLC.

The proposed agreement provides coverage for all conflicts arising out of felony, misdemeanor, and juvenile courts. Rarely, the Court appoints counsel, in situations not arising out of a conflict, and the County is responsible for compensating that attorney on an hourly basis.

Agreement

County Counsel and the County Administrator's staff negotiated and reached a tentative agreement with Ms. Burk for the term of July 1, 2022, through June 30, 2023. The cost for fiscal year 2022-23 is \$2,591,832 which is a 3% increase to remain comparable with public defender compensation. 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.

During the past three years, the Public Defender declared conflicts in an average of 2,030 cases per year. On average, that was 580 adult felonies, 1230 adult misdemeanors, 200 juvenile cases, and 20 civil contempt/witness/appeals per year.

The proposed agreement continues the features provided in the earlier agreements, including 9 levels of coverage 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 IDASC have a conflict of interest which must be declared. Due to the number of multi-defendant cases and recidivism, this level of coverage almost insures that there will not be a situation when outside attorney appointments are necessary due to a conflict. To accomplish this, Ms. Burk sub-contracts with approximately 17 attorneys. This type of fixed-price program works like an insurance policy to cover most County defense obligation situations and avoids the Court appointing attorneys at costlier hourly rate. A few years ago, two related incidents resulted in the arrest of twelve individuals. The Public Defender was appointed to represent one and the remaining eleven were represented by attorneys through this agreement. There are very few if any conflict appointments outside Ms. Burk's agreement because, unlike the attorneys in the Public Defender's office, the contracted attorneys are all separate from one another regarding conflicts of interest. This system makes the budget for appointed attorneys far more predictable.

The agreement provides for retention funds for all constitutionally necessary ancillary services, including investigators, forensic experts, social workers, criminal immigration advice, and foreign language interpretation. Subsumed within the total contract amount, the Administrator is obligated to transfer \$254,589.36 annually (\$21,215.78/month) into an account for paying ancillary costs. The contract administrator must provide the County with a quarterly accounting of these funds and any remaining funds which are not expended at the end of the agreement shall be returned to the County.

The proposed agreement contains provisions which allow the County and the Administrator to address unusual issues, such as extraordinarily complex 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 extension agreement, an "extraordinary" retention account is maintained by the Administrator and funded by both the County and Administrator in the amounts set forth as follows: County \$26,798.88 annually (\$2,233.24/month) and Administrator \$13,399.44 (\$1,116.62/month). These amounts are included within the monthly contract payments of \$215,986. If the County agrees, then the costs are drawn from the retention account and thereby shared between the parties at a rate of 2/3 from the County and 1/3 from the Administrator. If there is no agreement, the matter heard by the Court. The County shall be given notice so that it has an opportunity to present our position regarding the request. If "extraordinary costs" exceed the available balance, the agreement is that the County shall pay the additional costs. Any funds contributed by the County which are not expended shall be returned to the parties at the end of the agreement.

Strategic Plan:

N/A

Prior Board Actions:

April 9, 2019 Approved three-year agreement with Kristine Burk for indigent defense services.

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

FISCAL SUMMARY

Expenditures	FY 21-22 Adopted	FY22-23 Projected	FY 23-24 Projected
Budgeted Expenses		\$2,591,832	
Additional Appropriation Requested			
Total Expenditures		\$2,591,832	
Funding Sources			
General Fund/WA GF		\$2,591,832	
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources		\$2,591,832	

Narrative Explanation of Fiscal Impacts:

Funds for this contract will be included in the Court Support 2022-23 recommended budget.

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Indigent Defense Agreement

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

N/A