



Contra Costa County

To: Board of Supervisors
 From: David Twa, County Administrator
 Date: June 18, 2019
 Subject: Conflicts Program

RECOMMENDATION(S):

APPROVE and AUTHORIZE the County Administrator, or designee, to execute a contract with Independent Counsel, Inc., in an amount not to exceed \$5,250,000 for fiscal year 2019-20, \$5,400,000 for fiscal year 2020-21, and \$5,560,000 for FY 2021-22 to provide mandated criminal conflict defense and other legal services for the period July 1, 2019 through June 30, 2022, subject to County Counsel review and approval.

FISCAL IMPACT:

Costs are budgeted for fiscal year 2019/20 in General Fund Budget Unit 0248 – Conflict Defense Services, administered by the County Administrator. The proposed contract includes an amount not to exceed \$5,250,000 for fiscal year 2019-20, \$5,400,000 for fiscal year 2020-21, and \$5,560,000 for fiscal year 2021-22 to provide mandated criminal conflict defense and other legal services.

BACKGROUND:

For over 30 years, the County has contracted with the Contra Costa County Bar Association (CCCBA) to provide indigent defense services to clients that cannot be represented by the Public Defender's Office. This has involved several tasks: maintaining a list of independent

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **06/18/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I
 Supervisor
 Diane Burgis, District III
 Supervisor
 Karen Mitchoff, District IV
 Supervisor
 Federal D. Glover, District V
 Supervisor

RECUSE: Candace Andersen, District II
 Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 18, 2019

David Twa, County Administrator and Clerk of the Board of Supervisors

By: Laura Cassell, Deputy

Contact: Paul Reyes,
 925-335-1096

BACKGROUND: (CONT'D)

attorneys willing to take cases (mostly misdemeanors) that are referred from the PD, assigning the cases to attorney, verifying 'billable hours' and seeing that the individual attorneys are paid pursuant to rates established by the County. The County, in turn, reimburses CCCBA for its services and those of the independent attorneys.

The relationship with the CCCBA has worked well over the years. However, over time, CCCBA has expressed concerns about potential liability should claims be made against any individual attorneys who are handling the conflicts cases, or the CCCBA itself. After months of negotiation, CCCBA and the County were not able to resolve this issue.

The contract with CCCBA expires on June 30, 2019 and CCCBA was unwilling to extend the existing contract without an indemnification agreement that staff could not recommend to the Board for approval. Because of this, a request for proposals (RFP) was issued on April 23, 2019 to see if another entity would be willing to manage the conflicts panel.

The bidding period closed on May 21, 2019 and two (2) bids were received. The selection committee (review panel) performed a thorough review of the proposals and recommended awarding the contract to Independent Counsel, Inc.

Independent Counsel, Inc., has agreed to the County's standard contract conditions, including the County's standard indemnification provisions. Independent Counsel will also provide a substantive bill review and appeal process which would not be provided under the other proposal. Independent Counsel, Inc., will make improvements in the areas of attorney education and quality assurance through increased education, training, and attention to the panel attorneys' annual renewal applications.

Independent Counsel, Inc., proposes to continue the work of the existing Criminal Conflict Program without interruption, substituting itself for the current contractor. Independent Counsel would continue employing the same staff and would utilize the same panel of attorneys. In addition, the Board of Directors of Independent Counsel offer a wealth of experience and knowledge, which will greatly benefit the Criminal Conflict Program. The Board includes two members with over 22 years of combined experience administering indigent court appointment programs in Contra Costa and Alameda Counties who are prepared to support the work of the current Director, who has almost 4 years of experience himself. All seven Directors have a deep and long-standing commitment to the representation of indigent persons.

CONSEQUENCE OF NEGATIVE ACTION:

Payment of criminal conflict attorney services is a mandated County cost. If the recommended action is not approved, the contract with the Contra Costa Bar Association will terminate as of June 30, 2019 and the County will continue to be obligated to pay the Bar for cases previously assigned to the Bar and still in progress. The appointment and payment of private attorneys for new cases in which the Public Defender and Alternate

Defender are not available will revert to the court-appointed method used prior to the Bar Association contract -- a less efficient and more costly alternative. All active and new criminal and delinquency conflict cases will be referred to the courts for appointment of defense counsel.