



Contra
Costa
County

To: Board of Supervisors

From: LEGISLATION COMMITTEE

Date: July 30, 2019

Subject: State Legislative Advocacy Contract

RECOMMENDATION(S):

CONSIDER the recommendations of the Legislation Committee at its July 22, 2019 meeting and determine whether to:

1. RESCIND the Board of Supervisors' action of June 11, 2019, which authorized the execution of a contract with Nossaman LLP in the amount of \$630,000 for state legislative advocacy services for the period July 1, 2019 through June 30, 2022; and
2. DIRECT staff to conduct a procurement process for state legislative advocacy services.

☒ APPROVE

☐ OTHER

☐ RECOMMENDATION OF CNTY
ADMINISTRATOR

☒ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **07/30/2019** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

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: July 30, 2019

Contact: L. DeLaney,
925-335-1097

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

By: , Deputy

cc:

RECOMMENDATION(S): (CONT'D)

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FISCAL IMPACT:

There is no fiscal impact anticipated from rescinding authorization for the contract. However, if the Board elects to direct staff to conduct a procurement process and obtain short-term state legislative advocacy services during the procurement process, there could be a fiscal impact to engaging short-term legislative advocacy services.

BACKGROUND:

On June 11, 2019, the Board of Supervisors approved a contract for state legislative advocacy services with Nossaman LLP, subject to approval as to form by County Counsel. A copy of the board order is attached as Attachment A.

On June 26, 2019, before contract negotiations were complete, the County received a letter from Nossaman advising the County that Nossaman has an ongoing commitment to provide legal services to the Kern County Water Agency, the Coalition for a Sustainable Delta, and other unnamed clients. According to the letter, all of these clients may, at times, have interests that conflict with those of the County. A copy of the letter is attached as Attachment B. The nature of the potential conflicts is described on page 2 of the letter. The letter goes on to request that the County formally waive the conflict.

On July 8, 2019, a second letter was received from Nossaman, a copy of which is attached as Attachment C. In the second letter, Nossaman reports that it has concluded that no conflict currently exists and that a conflict waiver is not required. Nossaman concludes the letter by asking the County to acknowledge that the firm has disclosed to the County that the firm represents the Kern County Water Agency and the Coalition for a Sustainable Delta, and that those clients have adverse, or potentially adverse, positions to the County with regard to State water project operations and the Delta conveyance project.

Law firms owe clients a duty of undivided loyalty. When a client's interests are adverse to another client's interests, the firm's representation of those clients may be affected.

Nossaman proposed mitigating the potential conflict with the creation of an "ethical wall" between the professionals who represent the Kern County Water Agency and the Coalition for a Sustainable Delta on the one hand, and the professionals who will represent the County on the other hand. The "wall" would be necessary because Nossaman reports that, if the County were to enter into a contract with Nossaman for state legislative advocacy services, Nossaman would continue to represent both the Kern County Water Agency and the Coalition for a Sustainable Delta with respect to endangered species and water supply issues in the Delta, including with respect to the

Delta conveyance project. A draft of Nossaman's proposed internal memo related to the "ethical wall" is attached as Attachment D.

At its July 22, 2019, meeting, the Legislation Committee considered the disclosures and requests made by Nossaman in its letters to the County of June 26, 2019 and July 8, 2019. After discussion and input from a representative of Nossaman, the Legislation Committee directed staff to recommend to the Board of Supervisors that the Board rescind the contract authorization granted on June 11, 2019. While acknowledging there may be no present conflict, and expressing the view that the recommended action is not a reflection on the capabilities and capacities of the Nossaman staff proposed to serve the County, the Legislation Committee concluded that the potential for conflict was too great to proceed with contract negotiations.

The Legislation Committee further directed staff to recommend to the Board that the Board direct staff to conduct a procurement process to identify a substitute provider of state legislative advocacy services.

If the Board adopts the recommendations made by the Legislation Committee, staff requests direction from the Board with respect to the following:

1. The contract period for the party eventually identified through the procurement process.
2. The procurement process period.
3. The process to be followed in conducting the outreach/notification of the contracting opportunity.
4. The composition of the review panel.

CONSEQUENCE OF NEGATIVE ACTION:

The County will not receive state legislative advocacy services.

CLERK'S ADDENDUM

Public speakers: Ashley Walker, Michelle Rubalcava.

Rescind approval of the Nossaman contract and enter into a new short term contract with Nielson.

ATTACHMENTS

Attachment A
Attachment B
Attachment C
Attachment D