



County Administrative COUNTY OF TULARE AGENDA ITEM

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One

PETE VANDER POEL
District Two

PHILLIP A. COX
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: December 13, 2011

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>

CONTACT PERSON: Debbie Vaughn PHONE: 636-5005

SUBJECT: Approve award of Conflict Public Defender contract and approve amendment to Agreement No. 22970 with Jay W. Powell.

REQUEST(S):

That the Board of Supervisors:

1. Approve the recommendation to award Jay W. Powell the Conflict Public Defender contract for the County of Tulare.
2. Approve an amendment to Tulare County Agreement No. 22970, extending the term through January 31, 2012.
3. Authorize the Chairman to sign four (4) copies of the Amendment.

SUMMARY:

In certain criminal and other cases where the Public Defender would normally be appointed but has declared a conflict of interest, a Conflict Public Defender is appointed. The current Conflict Public Defender contract expires on December 31, 2011.

On September 28, 2011 the County Administrative Office issued a Request for Proposal (RFP) for Conflict Public Defender services. A vendor conference was held on October 13, 2011 to answer potential proposers' questions and to review the RFP. Two responses to the RFP were received by the due date of October 31, 2011. The proposals were reviewed by a committee consisting of representatives from County Counsel, the Public Defender and the County Administrative Office. Proposals were also provided to the County of Tulare Superior Court for comment. Interviews were conducted with both proposers on November 17, 2011 to clarify questions arising from the review process. Both proposals met the RFP

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requirements and both proposers were responsive and professional throughout the RFP process and considered to be viable candidates for the Conflict Public Defender process.

The proposals differed in their proposed strategies, business structures and levels of service coverage. Based on a complete and thorough review of the proposals, the review committee determined that Jay W. Powell's proposal would provide the most comprehensive court coverage, including coverage for death penalty cases, with the least amount of delay and interruptions to the criminal defense process and implementation of the contract. Therefore, the recommendation is to award Jay W. Powell the Conflict Public Defender contract.

At this time, the County Administrative Office is in the process of drafting the formal written agreement for execution by Mr. Powell and the Board of Supervisors. In order to continue providing conflict defender services for the indigent, an amendment to the original conflict defender agreement is being requested. The original Agreement was approved by the Board of Supervisors on December 16, 2006. It was reviewed by County Counsel and was approved as to form December, 2006. The only change to the original Agreement would be to extend the date to January 31, 2012, or until a new Agreement is executed under this RFP, whichever occurs earlier.

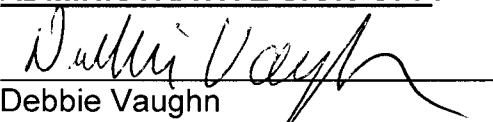
FISCAL IMPACT/FINANCING:

The Conflict Public Defender contract amount is included in the Miscellaneous Criminal Justice Fiscal Year 2011/12 budget.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five year strategic plan includes the Organizational Performance Initiative. The Conflict Public Defender contract aligns with this initiative through the provision of defense services in an effective and fiscally responsible manner.

ADMINISTRATIVE SIGN-OFF:


Debbie Vaughn
Senior Administrative Analyst

Cc: Auditor-Controller
County Counsel
County Administrative Office (2)

Attachment(s) Amendment to Agreement 22970

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF APPROVE AWARD OF)
CONFLICT PUBLIC DEFENDER) Resolution No. _____
CONTRACT AND APPROVE) Agreement No. _____
AMENDMENT TO AGREEMENT NO. 22970)
WITH JAY W. POWELL

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JEAN M. ROUSSEAU
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

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2. Approved an amendment to Tulare County Agreement No. 22970, extending the term through January 31, 2012.
3. Authorized the Chairman to sign four (4) copies of the Amendment.

2444 Main Street, Ste. 130
Fresno, CA 93721
559-486-1780

12/2/2011

Jean M. Rousseau
County Administrative Officer
County of Tulare Office of Administration
2800 W. Burrell Avenue
Visalia, CA 93291-4582

RE: Formal Protest of RFP for Tulare County Indigent Criminal Legal Defense Services

Dear Mr. Rousseau,

I am formally filing a protest with your office over the solicitation of the RFP for Tulare County Indigent Criminal Legal Defense Services issued on September 28, 2011. Specifically, I am protesting the unfair and restrictive manner in which potential, qualified bidders were excluded from the RFP process due to the County's inadequate and almost non-existent publication of the RFP to the public. This failure to adequately publish is an apparent impropriety in the solicitation process that not only prejudiced potential bidders that were excluded, but also harmed the county by limiting competition among bidders who could provide services more efficiently and cost effectively for the benefit of the county. We are highly qualified bidders that wanted to participate in the competitive process and were constructively denied.

The specific relief that I am requesting is that the RFP be withdrawn, prior to the announcement of a winning bidder, and reissued and solicited in a fair and nonrestrictive manner. I also request that evaluation of the current bids be suspended, and that the County of Tulare withhold the contract award until this protest is resolved.

BACKGROUND ON PROTEST

The Law Offices of Earl Carter is a large criminal defense firm that has been handling both private cases and Indigent defense cases since 1975. For over 17 years, I have administered a contract for Indigent Defense with the County of San Bernardino separate from my private firm. Through this contract, we have handled tens of thousands of cases, including over 100 murder trials taken to verdict. I also have a large private criminal defense firm that expanded into the Central Valley 3 years ago. I am told by others in the Tulare Courts that my office handles more private criminal cases

than any other firm or sole practitioner. I have been interested in bidding on the contract in question for quite a while now.

In August of this year, my attorneys that practice in Tulare County began hearing chatter in the courts that this contract was soon to expire and was finally about to be up for bid. I informed my attorneys that I am very interested in this contract and instructed them to look around the courts for physical postings of the RFP. I also assigned my partner, Christian Schank, to search the internet and contact the County and court offices to inquire of the RFP.

Throughout September, October and November, my Attorneys did not find any posted information about this RFP in the courthouse. Mr. Schank searched for information on the internet exhaustively for the past three months to no avail. Mr. Schank searched State Bar journals where RFP's like this are normally advertised. Mr. Schank also searched for public notices in the local Tulare County papers announcing this RFP and found nothing. Internet searches for RFP information on the Tulare county websites brought up several other RFP's in the Purchasing Departments portion of the county website. Mr. Schank regularly called Purchasing to inquire about the RFP over the past 90 days. Purchasing informed him that they had heard nothing yet about this RFP which was probably still being written up and "must be premature, or we would know about it." Mr. Schank was told to keep checking the website for a posting. Mr. Schank also called the courts and Court Administration. Each time he was told that they had no information about the RFP and to call Purchasing.

On November 30, Mr. Schank once again called Tulare County Purchasing who told him that they knew nothing of this RFP. Afterwards, Mr. Schank called Court Administration, who also knew nothing. However, the person who answered recognized that we have been calling extensively about this and put Mr. Schank on hold to inquire further. After a lengthy hold, Court Administration recommended calling Purchasing, and if they don't have information to contact the CAO's office.

Mr. Schank immediately called the CAO's office and was transferred to Deborah Vaughn who informed him that the RFP closed on 10/31/2011, that bidder interviews were completed before the Thanksgiving holiday and that the award would be announced next week. Mr. Schank explained to Ms. Vaughn that he had been calling and searching the internet for this RFP and that our Attorneys found no posting of it in any of the criminal courthouses. Mr. Schank described all that he had done to try to find this RFP and inquired of Ms. Vaughn as to how the RFP was publicized. She indicated that your office contacted the District Attorney's office and Public Defender's office and "told them to spread the word." Ms. Vaughn added that a copy of the RFP was sent to the local bar association, however she did not know if or how they re-published the RFP. When Mr. Schank inquired about physical and internet postings she informed us that the

RFP was not posted anywhere on the internet, and the only physical posting of the RFP was at the county Law Library.

Mr. Schank requested a copy of the RFP. Ms. Vaughn was very kind and professional and explained that the bidding was closed and would not be re-opened. Mr. Schank again indicated that he would like to see the RFP. Ms. Vaughn was very responsive and emailed it to Mr. Schank within 20 minutes.

Unfortunately, the ability to search all legal publications on the internet has made Law Libraries virtually obsolete, and therefore an inappropriate place to post an RFP. Also, less than half of all practicing attorneys are members of their local bar associations which are exclusive in their very nature. In light of today's technology and the existence of the Tulare county website, it is truly shocking that an RFP for a multimillion dollar contract for Professional services would not be posted anywhere on the Internet. Also, it is common practice for Indigent Defense contracts to be posted at *every* county courthouse, and advertised in the California Bar Journal which is sent at no cost to every licensed California lawyer.

BASIS OF PROTEST

We contend that the failure to adequately advertise the RFP for Tulare County Indigent Criminal Legal Defense Services constitutes an apparent impropriety in the solicitation process. Due to this failure to adequately advertise the RFP, competition in the bidding process was stifled harming both the county and the potential bidders. We are highly qualified bidders that wanted to participate in the competitive process and were constructively denied.

We recognize that the Protest Procedures detailed in the RFP in pages 29-31 only offer relief to "Proposers" who submitted timely bids. Unfortunately, we do not qualify under your Protest Procedures because we did not submit a timely bid. This exclusion is patently unfair as we could not submit a bid for an RFP that was not properly advertised and could not reasonably be found by all bidders. Under Protest Procedures, it states "Tulare County intends to be completely open and fair to all Proposers..." Surely this intention of the County to be completely open and fair applies to potential bidders also. We respectfully request that your office accept this protest although we did not submit a timely bid.

The specific relief that I am requesting is that the RFP be withdrawn, prior to the announcement of a winning bidder, and reissued and solicited in a fair and nonrestrictive manner. I also request that evaluation of the current bids be suspended, and that the County of Tulare withhold the contract award until this protest is resolved.

I further ask that your office allow my firm to submit further information and documentation in support of my position. We have requested copies of any procedures and policies that the County of Tulare has in regards to the solicitation of RFP's. I believe that this RFP violated county policy by the unfair advertisement of this RFP. However, we cannot cite exact violations of county policies until we receive this documentation. Furthermore, we have not had adequate time to research case law relating to this matter. However, due to the timing of the contract award scheduled for next week, we felt compelled to immediately file a formal, yet incomplete, protest.

Christian Schank will be representing my firm on this protest. His contact information is as follows:

Christian Schank
2444 Main Street, Suite 130
Fresno, CA 93721
cschank@aol.com
949-307-0555 Cell
559-486-1780 FAX

Thank you for your attention to this matter.

Sincerely

A handwritten signature in dark ink, appearing to read "Earl Carter", written in a cursive style.

Earl Carter,
Attorney at Law