



Board Agenda Item 30

DATE: June 21, 2022

TO: Board of Supervisors

SUBMITTED BY: Paul Nerland, County Administrative Officer

SUBJECT: Agreement with Fitzgerald, Alvarez & Ciummo, A Professional Law Corporation, for Alternate Indigent Defense Services and Lease for Office Space

RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute an Agreement with Fitzgerald, Alvarez & Ciummo, A Professional Law Corporation, for the provision of Alternate Indigent Defense Services for legal representation of indigent defendants in the event of unavailability or conflict of the Public Defender, effective July 1, 2022, not to exceed five consecutive years, which includes a three-year base contract and two optional one-year extensions, total not to exceed (\$29,564,952); and**
- 2. Approve and authorize the Chairman to execute a Lease Agreement with Fitzgerald, Alvarez & Ciummo, A Professional Law Corporation, under County Ordinance 13.28.030(a) for use of 1,200 square feet of County owned office space located at 3333 E. American Ave, Fresno, CA 93726, which property is not required for County use at this time, for the provision of Alternate Indigent Defense Services for legal representation of indigent juvenile defendants in the event of unavailability or conflict of the Public Defender, effective July 1, 2022, not to exceed five consecutive years, which includes a three-year initial term and two optional one-year extensions (Revenue 5 years - \$93,908).**

There is an increase in Net County Cost associated with the first recommended action. However, the increase will be included in the FY 2022-23 Recommended Budget and future recommended budgets. Alternate Indigent Defense services are mandated legal defense services for indigent criminal defendants when the Public Defender declares a conflict of interest. Appropriations for court appointed attorneys and ancillary defense services in capital cases under Penal Code Section 987.9 are also included in the recommended agreement. The current agreement for Alternate Indigent Defense (AID) ends June 30, 2022. A Request for Proposal (RFP) was issued to prospective bidders on March 2, 2022. One proposal was submitted, and a review committee evaluated and rated Fitzgerald, Alvarez & Ciummo, A Professional Law Corporation's (FAC) proposal as responsive and meeting the County's needs and administrative requirements for AID Services. After the committee evaluated the proposal and provided their recommendation, staff initiated negotiations with FAC, and is now presenting the recommended agreement for AID Services for your Board's consideration. Approval of the second recommended action will lease County office space to FAC, to provide AID services to juveniles at the Juvenile Court, which is within the Juvenile Justice Campus (JJC). This item pertains to a location in District 4.

ALTERNATIVE ACTION(S):

Non-approval of the first recommended action will leave the County without an agreement in place for AID services, as the current agreement is set to expire June 30, 2022. Your Board may direct staff to go out for

RFP again, but this will disrupt the ability of the County to provide statutorily mandated services. If the second recommended action is not approved, FAC will have to look for other office space off the JJC campus, which may cause delays in providing AID services to juvenile clients at the JJC.

FISCAL IMPACT:

The first recommended action results in a Net County Cost increase of 13% (\$596,279) for FY 2022-23 AID services over the current fiscal year cost. The recommended agreement provides for an increase of 3% (\$160,987) for year two, and an additional 3% (\$165,818) in year three. The two optional one-year extensions provide for increases as follows: 4% (\$227,722) in year four and 4% (\$236,831) in year five with a maximum cap of \$28,664,952 for the five-year term of the agreement. In addition, the recommended agreement includes funding for ancillary expenses in the amount of \$900,000 (\$180,000 per year), which is an increase of \$60,000 per year over the current agreement. Total costs for the entire agreement shall not exceed \$29,564,952 during the entire 5-year term. Ancillary costs are paid out on a reimbursement basis. Sufficient appropriations will be included in the FY 2022-23 Recommended Budget for Org 2875 and in future recommended budgets.

The AID RFP requested an hourly rate in the event the Public Defender declares unavailability. FAC proposed a rate of \$60 per hour (25% less than Court's rate of \$80 per hour for appointed attorneys). This option is included in the recommended agreement, and could result in FAC charging the County for additional time, but is unlikely based on prior history. Therefore, no costs associated with this option are included in the recommended agreement. However, should this occur, an amendment to the recommended agreement may be necessary to fund these additional costs.

There is no net County Cost associated with the second recommended action. FAC will pay rent to the County at \$1,504 per month (\$1.25 per square foot) for the first 12 months, and the rent will increase by 2% each year thereafter, for a total rent of \$93,908 for 5 years. Rent revenue will be deposited into Internal Services Department - Facilities Services Org 8935, account 3404.

DISCUSSION:

Penal Code section 987.2 requires that the County pay a reasonable sum for compensation and for necessary expenses, out of the County general fund, for assigned counsel for indigent defendants, including one or more responsible attorneys contracted for by the County in the event of the unavailability or conflict of the Public Defender.

Mr. Richard A. Ciummo provided AID services to the County of Fresno since 1992, formerly as part of Barker and Associates and later, as President of Richard A. Ciummo and Associates. On June 6, 2017, the Board approved the current five-year agreement with Ciummo, which will expire on June 30, 2022. Michael Fitzgerald acquired the stock of the firm in 2018, and the name changed to Fitzgerald, Alvarez, & Ciummo, a Professional Law Corporation in 2020, when Antonio R. Alvarez became a shareholder. Mr. Ciummo remains employed by the firm as a consultant and coordinator of special projects.

On March 2, 2022, the County released RFP No. 22-041, AID Services, with a closing date of March 29, 2022. The County solicited proposals to provide appropriate and competent alternate indigent defense services (conflict counsel) and associated legal defense services to financially eligible persons accused of crime in Fresno County. The Fresno County Public Defender is generally appointed as the attorney of record for qualified indigent defendants, but if it is determined that there is a conflict of interest, the conflict counsel provides up to seven levels of conflict counsel for any single case. The County received one proposal from FAC.

A bid review committee met on April 22, 2022, to evaluate the proposal for compliance with the RFP. The committee was comprised of representatives from the Fresno County Public Defender's office and the Fresno County Administrative Office, with oversight by the Purchasing Division.

The committee found the proposal to be comprehensive, as it described all aspects of the services offered, including detailed descriptions of the roles and responsibilities of administration, management, and each level of Conflict Counsel; personnel qualifications (including resumes); job descriptions; strategies for personnel and caseload distribution; and the oversight of training, fees and reimbursement, and claims payment.

FAC will continue to provide these services through a direct service model, combined with using independent contractor (Wheel) attorneys for seven levels of conflict counsel. The Fresno Office of FAC would continue as the first level of conflict counsel, with the Alternate Defense Office, an attached, yet stand-alone office of attorneys and support personnel, as the second level, and independent or Wheel attorneys providing representation for levels three to seven of conflict counsel.

FAC will provide represent indigent defendants, including adults and juveniles, in covered proceedings including, but not limited to, representation in criminal matters, including all changes, counts or cases pending against a single individual, representation in any misdemeanor or felony matter in the court continuing to final adjudication or disposition, representation of juvenile wards pursuant to Welfare and Institutions Code (WIC) sections 601 or 602, representation of a parent in certain juvenile court proceedings, pursuant to WIC section 634, appeal hearings, and two special circumstance homicide conflict of interest cases per year. The Court will determine financial eligibility or indigence.

The recommended agreement also includes funding for ancillary services that cover such expenses as expert witness fees and specialized services necessary for an adequate defense, which cannot reasonably be provided by FAC. Ancillary funds are drawn down on a reimbursement basis. The recommended increase in funding for ancillary services is based on the current trend in Court-appointed claims. Any funds not utilized from the ancillary service fund within any year revert to the County.

The recommended agreement contains a provision that payments for services, other than Reimbursable Ancillary Services, shall occur within 10 days after the County's receipt of an invoice after the end of each month in which such services were rendered. This provision deviates from the County's standard payment timeline, however, the Department has complied with this provision with no issues during the entire term of the previous agreement and anticipates to remain in compliance with this provision.

FAC, including Barker and Associates and Richard A. Ciummo and Associates, and the County have been working together for over twenty years. The County has been satisfied with the efforts of FAC regarding providing various levels of conflict defense services. The County has had to ensure these mandated services are readily available, and FAC has ensured that the County is compliant. The County is reassured in their selection of FAC due to the previous decades of reliable performance shown by the firm.

The County has available approximately 1,200 square feet of office space at 3333 E. American Avenue, Fresno, CA 93726. FAC has leased this office space at the JJC campus since July 1, 2009, and provides AID services for juvenile clients at this facility. The location of this office space enables FAC to meet with their juvenile clients at their office location, which saves FAC staff time in not having to travel from an offsite location to meet with their juvenile clients. It enables timely and convenient meetings with County departments located at the Juvenile Courts. Only FAC staff representing juvenile clients will use this leased space.

The recommended lease provides approximately 1200 square feet of office space at the JJC, and will bring in rental revenue ranging from \$1503.77 in the first year to \$1627.73 in the fifth year. The County will be responsible for all water, sewer, garbage, gas and electricity, and FAC will pay for its necessary telecommunication services. The County will provide all maintenance for the leased area.

The recommended lease contains a provision that the County may terminate the lease immediate in the event that FAC ceases to provide the AID services to the County's satisfaction.

The County office space is being leased without public auction in compliance with County Ordinance 13.28.030(a).

Notice of this lease was published and posted in accordance with Government Code section 25537.

REFERENCE MATERIAL:

BAI #33 June 6, 2017

BAI #48 June 5, 2012

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Agreement with FAC

On file with Clerk - Lease Agreement with FAC

CAO ANALYST:

Yussel Zalapa