



Board Agenda Item 31

DATE: January 28, 2025

TO: Board of Supervisors

SUBMITTED BY: Paul Nerland, County Administrative Officer

SUBJECT: Resolution for Amendment No. 2 to Public Defense Pilot Program

RECOMMENDED ACTION(S):

Adopt a resolution accepting and authorizing the County Administrative Officer to execute, subject to approval as to legal form by County Counsel, and subject to approval as to accounting form by the Auditor-Controller/Treasurer-Tax Collector, Amendment No. 2 to the Public Defense Pilot Program (PDPP) with the Board of State and Community Corrections (BSCC) for post-conviction defense, effective March 1, 2022 through December 31, 2026, total not to exceed \$3,466,977, in order for BSCC to fully execute Amendment No. 2 and release Year 3 funds.

There is no additional Net County Cost (NCC) associated with the recommended action which will accept the amendment to the PDPP Grant in order for BSCC to fully execute Amendment No. 2 and release Year 3 funds. The recommended action will also authorize the County Administrative Officer (CAO) to execute the Amendment No. 2 for the extended term, subject to approval as to legal form by County Counsel, and subject to approval as to accounting form by the Auditor-Controller/Treasurer-Tax Collector. BSCC is requesting a Resolution to acknowledge the change in terms of the Agreement (22-month extension) and the additional funds (maximum increased by \$1,077,406). This item is Countywide.

ALTERNATIVE ACTION(S):

Your Board may choose not to approve the recommended action, in which case the amendment will not be executed by BSCC and the awarded funds for Year 3 and extension in term length will not be authorized. Your Board may also choose not to delegate authority to the CAO to execute the Amendment No. 2, in which event the Amendment No. 2 will need to come before your Board for approval and execution.

FISCAL IMPACT:

There is no increase in NCC associated with the recommended action. The additional BSCC funding will be included in the FY 2024-25 budget for the Public Defender's Office Org 2880 and Alternate Indigent Defense (AID) Org 2875, if needed, and future budget request up until the term end date. Budget Resolutions will be brought to the Board once funds are released by BSCC, if needed.

DISCUSSION:

The Budget Act of 2021 (Senate Bill 129) established the Public Defense Pilot Program and allocated funds that must be utilized for indigent defense providers, including public defenders, alternate defenders, and other qualifying entities that provide indigent defense in criminal matters, for the purposes of workload associated with the following eligible case types:

- PC 1172.6 - Felony murder resentencing
- PC 1170 (d)(1) - Resentencing of inmates
- PC 1473.7 - Vacation of convictions due to defendant's inability to understand possible adverse immigration consequences, newly discovered evidence of actual innocence, or a conviction or sentence was obtained on the basis of race, ethnicity, or national origin.
- PC 3051 - Youth Offender Parole Hearing for prisoners 25 years old or younger at time of offense (aka Franklin Hearing)

On April 5, 2022, your Board approved the retroactive submittal of the Public Defense Pilot Program grant application to BSCC for post-conviction defense, effective March 1, 2022 through March 1, 2025 (\$1,204,165). This item authorized the County Administrative Officer to execute the retroactive Grant Award Agreement and any extensions or amendments with BSCC throughout the period of March 1, 2022, through March 1, 2025, not to exceed \$1,204,165.

On February 7, 2023, your Board approved Amendment No. 1 to Agreement No. 22-249 with Fitzgerald, Alvarez, & Ciummo (FAC) to increase the maximum compensation amount due to available BSCC grant funds, increasing the maximum by \$124,499. FAC is the County's vendor which provides AID services. Amendment No.1 added Year 1 funds earmarked specifically for AID within the Public Defense Pilot Program grant. Of the total amount awarded for Year 2, \$151,556 was earmarked for Professional Services, which is currently being utilized to help reimburse the County's AID subcontractor FAC for their submitted invoices pertaining to the casework related to the four Penal Codes mentioned above.

On April 25, 2023, your Board approved Amendment No. 1 to the Public Defense Pilot Program Grant. Amendment No. 1 did not change the length of the term of the original Grant agreement, but did increase the maximum by \$1,185,405, to a total of \$2,389,571. BSCC did not request a Resolution before providing the additional funds for Amendment No.1.

On December 12, 2024, BSCC reached out to CAO staff to request a new resolution before BSCC could fully execute amendment No. 2 and release funds. The Amendment No. 2 adds twenty-two months to the term of the grant agreement, with a new end date of December 31, 2026, and increases the contract amount by \$1,077,406, with the new contract amount total rising to \$3,466,976.69. CAO staff may return at a later date, once BSCC executes Amendment No. 2 and releases funds, to increase budgets if needed. If current budgeted amounts within the FY 2024-25 budgets for Orgs. 2880 and 2875 are sufficient until next Fiscal Year, these funds may not get distributed until FY 2025-26 Budgets are submitted to your Board for approval.

Of the total amount awarded for Year 3, \$150,000 is earmarked within Professional Services, which will help reimburse FAC for their submitted invoices pertaining to the casework related to the four Penal Codes mentioned above.

REFERENCE MATERIAL:

BAI #23, April 25, 2023
BAI #24, February 7, 2023
BAI #30, April 5, 2022

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Resolution

CAO ANALYST:

Salvador Espino