



Board Agenda Item 36

DATE: January 23, 2018
TO: Board of Supervisors
SUBMITTED BY: Daniel C. Cederborg, County Counsel
SUBJECT: Retroactive McCormick Barstow Legal Services Agreement

RECOMMENDED ACTION(S):

- 1. Make a finding that it is in the best interest of the County to suspend the competitive bidding process consistent with Administrative Policy No. 34 for unusual or extraordinary circumstances for specialized legal services for the District Attorney's office; and**
- 2. Approve and authorize Chairman to execute a Retroactive Agreement for Specialized Legal Services with the McCormick Barstow law firm to represent employees of the District Attorney's Office in two separate complaints made to the State Bar of California and any additional complaints as such may arise, which provides for an approximately two year term, effective December 11, 2017, with total compensation not to exceed \$100,000.**

ALTERNATIVE ACTION(S):

Should your Board opt not to execute the Agreement, the District Attorney employees named in complaints with the State Bar would need to seek alternate resources to pay for their continued representation by the McCormick Barstow law firm or another provided of legal services. The County would be required to pay for all legal services and costs rendered through the date of this item

SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:

County Counsel's request to suspend the competitive bidding process is consistent with Administrative Policy No. 34 in that McCormick Barstow, which has a proven track record of providing outside legal services to the County, is one of a handful of local law firms specializing in the unique practice area involving attorney misconduct complaints made to the State Bar. The Internal Services Department-Purchasing concurs with County Counsel's request that your Board waive the competitive bidding process due to the need for counsel with specialized expertise to handle these types of matters.

RETROACTIVE AGREEMENT:

Your Board previously determined to provide specialized outside legal representation to one Deputy District Attorney with regard to a complaint made to the State Bar of California arising out of the criminal case. Due to an immediate need for legal services to respond to a pending discovery request from the State Bar in that matter, the item is coming to your Board retroactively.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended action. Costs are estimated not to exceed \$35,000 per complaint. Sufficient appropriations are included within the District Attorney's FY 2017-18 Adopted Budget Org 2860 and will be included in subsequent budget years should additional complaints arise during the contract term.

DISCUSSION:

Two separate complaints have recently been lodged with the State Bar of California against two Deputy District Attorneys employed by the Fresno County District Attorney's Office. The complaints allege that each Deputy District Attorney engaged in misconduct in criminal cases they handled. The District Attorney's Office believes that both complaints are without merit. Both complaints are in the investigative stage and no proceedings have been set.

The law firm of McCormick Barstow has an extensive history of competently representing and advising attorneys with regard to complaints made before the State Bar. County Counsel recommends enlisting McCormick Barstow to represent the above-mentioned Deputy District Attorneys and any other Deputy District Attorneys named in other State Bar complaints that may arise during the term of this agreement ending on December 31, 2019. While it is anticipated that the legal costs for each of the two existing complaints will not exceed \$35,000, the contract maximum of \$100,000 allows for the handling of any additional complaints that may arise during the contract term.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Agreement
Suspension of Competition Acquisition Request

CAO ANALYST:

Ronald Alexander