



City of Seattle
City Budget Office

MEMORANDUM

Date: May 26, 2011
To: Public Safety and Education Committee
From: Linda Taylor-Manning, CBO Analyst
Subject: Legislation Authorizing Indigent Public Defense Contracts

At the June 1, 2011 meeting of the Public Safety and Education Committee, legislation will be discussed which would authorize the Mayor to execute contracts with two agencies to provide indigent public defense services for a three year period. The current contracts expire on June 30th of this year.

Background:

In December of 2007, Council passed Ordinance 122602 which set a process for reviewing, selecting, and contracting with public defense agencies. The former Office of Policy and Management (OPM) followed this process in 2008 to develop the current public defense contracts. These contracts expire at the end of June, 2011. This contract management function has been staffed in the City Budget Office (CBO) since 2010.

In February of 2011, CBO began the process outlined in Ordinance 122602 to issue a RFP and award new contracts. Following the steps outlined in the Ordinance, the King County Bar Association (KCBA) was contacted and asked to recruit 4 members (and 2 alternates) to serve on the RFP Review Panel along with two City of Seattle staff members. This Panel reviewed the draft RFP and provided comments. Comment was also sought from the public defense agencies, and the Seattle Municipal Court. The RFP was finalized and released on February 16, 2011. Proposals were due a month later, on March 16th.

Two agencies submitted proposals for the Primary contract: Associated Counsel for the Accused (ACA) and Society of Counsel Representing Accused Persons (SCRAP). Both ACA and SCRAP also applied for the Secondary position if not selected as the Primary. Two other agencies, Northwest Defenders Association (NDA) and The Defenders Association (TDA), also applied for the Secondary position. None of the agencies submitted proposals for the Third agency.

Since no proposals were received for the Third agency, we amended the scope of services to just the administration of conflict cases to private attorneys and reissued the RFP for the third agency. Proposals for this work were due on Monday, April 11th. Again, no proposals were

received. The RFP Panel proposed adding this Scope of Services to the contract of either the Primary or Secondary agencies. We added it to the contract for the Secondary agency.

On the recommendation of the RFP Panel, the Primary contract was awarded to ACA, and the Secondary contract was awarded to NDA. Staff from CBO then proceeded to negotiate a contract with each agency and consulted with the Municipal Court and legal counsel from Foster Pepper.

This legislation would authorize the Mayor, or his designee, to execute these two contracts. In addition, this legislation would also authorize the following changes.

- a. Contract authority would move from FAS to CBO to align with the staff managing the contracts.
- b. The requirement of having a third provider would be amended to require two providers; a third agency would be authorized but not required.
- c. Contract duration would remain at three years unless the Council extended the contract length when it authorized the contracts.

Items of Note:

1. Recommendations on contract modifications from the Office of the City Auditor's 2010 follow up audit have been included in these contracts.
2. Compensation of Counsel. In the 2005 and 2008 contracts the City used the King County Kenny Salary Schedule which the County developed as a way for defense attorney salaries to achieve parity with the King County prosecuting attorneys. These contracts compensate defense attorneys using the Assistant City Attorney salary schedule in the Law Department. The difference between the two salary schedules is very small. This change will continue the practice of parity between the defense attorney and prosecutor salaries but will allow for easier annual contract budget updates as King County does not always update its salary schedule every year.
3. Non-salary inflators. Agencies will use actual cost increases for FICA, Unemployment, Medicare, and Workers Comp. Agencies will receive the same healthcare increase calculated by the City. All other costs will be held at the inflation rate tied to the July to June annual average of the CPI-W.
4. The Primary agency annual budget is estimated to be \$3,675,000 and provide 11.0 FTE caseload attorneys, 7.2 calendar attorneys and additional support staff.
5. The Secondary agency annual budget is estimated to be \$1,558,000 and provide 7.25 FTE attorneys and additional support staff.
6. The 2011 appropriation for Public Defense Services is \$6,044,000. This appropriation also pays for the private attorneys defending cases where the Primary and the Secondary agencies have a conflict of interest and includes a reserve in case the actual number of cases is higher than the budgeted level.

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