



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: County Counsel
Department No.: 013
For Agenda Of: March 9, 2021
Placement: Administrative
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: County Counsel Michael C. Ghizzoni 568-2950
Contact Info: Anne Rierson 568-2950
SUBJECT: Outside Counsel Contract - Strumwasser & Woocher LLP

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence:

Risk Management

Recommended Actions:

- a) Approve and authorize the Chair to execute an Agreement for Professional Legal Services with Strumwasser & Woocher LLP, with a not-to-exceed amount of \$200,000 and a term ending April 30, 2022, for independent legal counsel to the County of Santa Barbara Citizens' Independent Redistricting Commission; and
- b) Determine that the above actions are not a project under the California Environmental Quality Act (CEQA) pursuant to Section 15378(b)(5) of the CEQA Guidelines, because they consist of administrative activities of government that will not result in direct or indirect physical changes in the environment.

Background:

The County has a need to engage independent outside legal counsel for the County of Santa Barbara Citizens' Independent Redistricting Commission (Commission). On behalf of the Commission, County Counsel issued a Request for Proposals for such counsel and received four proposals. The Commission unanimously selected Strumwasser & Woocher LLP as their legal counsel to recommend to the Board for approval of a contract. The Agreement is for a not-to-exceed amount of \$200,000 with a term ending April 30, 2022. The attorneys primarily responsible for performing the legal services are Fredric Woocher and Andrea Sheridan Ordin. Among other experience, Mr. Woocher served as the lead attorney representing the County of Santa Barbara in the challenges to its 2001 redistricting plan, and Ms. Ordin was formerly the County Counsel for the County of Los Angeles. In addition, the firm has arranged for Professor Justin Levitt of Loyola Law School, who has expertise in redistricting law, to serve as an advisor for this engagement.

Key Contract Risks:

County Counsel was asked whether the Strumwasser & Woocher law firm has any disqualifying conflict from serving as Independent Legal Counsel for the Commission. The Commission itself also considered that question, concerning the Strumwasser & Woocher law firm's representation of former County Supervisor Doreen Farr in the litigation defense of an "election contest" during 2008 through 2013. The County Counsel Office:

- Reviewed the facts of the Strumwasser & Woocher law firm's prior representation of former County Supervisor Doreen Farr. We reviewed the relevant Superior Court orders and appellate actions, and concluded that:
 - On October 14, 2010, the Court of Appeal affirmed the Superior Court's denial of the election contest petition by Contestant Steven Pappas, and that ended further review of the merits of the election contest; and
 - Between then and the end of that litigation on June 10, 2013 (when the United States Supreme Court denied further review), that litigation representation by the Strumwasser & Woocher law firm only involved the collection of attorneys' fees from Contestant Steven Pappas;
- Considered the interaction of the relevant provisions within County Code § 2-10.9A (Citizens' independent redistricting commission), and California Elections Code § 23003;
- Considered Elections Code § 23003(d)(1)(A), which provides that a person shall not be appointed to serve on an Independent Redistricting Commission if, within eight years preceding their application, they served as an officer, employee of, or paid consultant to a campaign committee or a candidate for elective office of the local jurisdiction;
- Since Elections Code § 23003 does not define "paid consultant," considered the definitions of that term within the Government Code provisions and California Code of Regulations provisions that implement the related area of California Constitution Article XXI's "Citizens Redistricting Commission" for the redistricting of Senate, Assembly, Congressional, and Board of Equalization Districts;
- Concluded that the Strumwasser & Woocher law firm does not have a disqualifying conflict from serving as Independent Legal Counsel, largely because providing litigation defense in election contest litigation is "non-political in nature," as opposed to paid consulting services "related to conducting campaign activities or holding office." (2 Cal. Code. Regs., § 60821; California Bureau of State Audits "Memorandum Number 2," dated July 31, 2009, p. 10.); and
- Concluded that the Board of Supervisors therefore may exercise its discretion to approve or not approve this contract for Independent Legal Counsel.

Fiscal and Facilities Impacts:

The Agreement is not-to-exceed \$200,000 which is intended to cover the engagement through next fiscal year. On November 10, 2020, the Board of Supervisors through a 4/5-vote approved Budget Revision #BJE-000752. That Budget Revision increased appropriations in the amount of \$200,000 for redistricting implementation, including: 1) a Services Contract with National Demographics Corporation, with a not-to-exceed amount of \$100,000; and 2) other implementation costs, including the recommended Legal Services Contract. That increased appropriation posted on November 17, 2020 and is anticipated to provide sufficient funding for the recommended Legal Services Contract through the end of the present fiscal year. As part of the budget adoption for FY 2020-21, approximately \$500,000 was set aside for the redistricting process and available for appropriation if needed. Additionally, the recommended FY 2021-22 budget will include appropriations to continue the process. The appropriation status is continually monitored as actual costs to be incurred this fiscal year for services to the CIRC will be directly impacted by the number of meetings and outreach efforts the CIRC schedules and is not yet known.

Special Instructions: Please forward a signed original to County Counsel and a signed copy to Assistant County Executive Officer Nancy Anderson.

Attachments:

A) Agreement for Professional Legal Services

Authored by:

Michael C. Ghizzoni, County Counsel