



County of Santa Cruz

BOARD OF SUPERVISORS

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RYAN COONERTY
THIRD DISTRICT

GREG CAPUT
FOURTH DISTRICT

BRUCE MCPHERSON
FIFTH DISTRICT

September 24, 2019

The Honorable John Gallagher
Santa Cruz Courthouse
701 Ocean Street
Santa Cruz, CA 95060

RE: RESPONSE TO THE 2018-19 GRAND JURY REPORT
"2018-2019 SANTA CRUZ COUNTY'S PUBLIC DEFENSE – HOW
COMPLEX CONTRACTS MISLEAD COUNTY LEADERS"

Dear Judge Gallagher:

The purpose of this letter is to formally transmit the response of the Santa Cruz County Board of Supervisors to the 2018-2019 Grand Jury Report, titled "Santa Cruz County's Public Defense –How Complex Contracts Mislead County Leaders."

Sincerely

RYAN COONERTY, Chair
Board of Supervisors

RC:jb
Attachment

cc: Clerk of the Board
Santa Cruz County Grand Jury



**The 2018–2019 Santa Cruz County Civil Grand Jury
Requires that the
Santa Cruz County Board of Supervisors
Respond to the Findings and Recommendations
Specified in the Report Titled
Santa Cruz County’s Public Defense Contracts
How Complex Contracts Mised County Leaders
by September 25, 2019**

When the response is complete, please

1. Email the completed Response Packet as a file attachment to grandjury@scgrandjury.org, and
2. Print and send a hard copy of the completed Response Packet to

The Honorable Judge John Gallagher
Santa Cruz Courthouse
701 Ocean St.
Santa Cruz, CA 95060

Instructions for Respondents

California law PC §933.05 (included [below](#)) requires the respondent to a Grand Jury report to comment on each finding and recommendation within a report. Explanations for disagreements and timeframes for further implementation or analysis must be provided. Please follow the format below when preparing the responses.

Response Format

1. For the Findings included in this Response Packet, select one of the following responses and provide the required additional information:
 - a. **AGREE** with the Finding, or
 - b. **PARTIALLY DISAGREE** with the Finding and specify the portion of the Finding that is disputed and include an explanation of the reasons therefor, or
 - c. **DISAGREE** with the Finding and provide an explanation of the reasons therefor.
2. For the Recommendations included in this Response Packet, select one of the following actions and provide the required additional information:
 - a. **HAS BEEN IMPLEMENTED**, with a summary regarding the implemented action, or
 - b. **HAS NOT YET BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE**, with a timeframe or expected date for implementation, or
 - c. **REQUIRES FURTHER ANALYSIS**, with an explanation and the scope and parameters of an analysis or study, and a timeframe for that analysis or study; this timeframe shall not exceed six months from the date of publication of the grand jury report, or
 - d. **WILL NOT BE IMPLEMENTED** because it is not warranted or is not reasonable, with an explanation therefor.

Validation

Date of governing body's response approval: _____

If you have questions about this response form, please contact the Grand Jury by calling 831-454-2099 or by sending an email to grandjury@scgrandjury.org.

Findings

F1. The County Administrative Office lacks the resources necessary to be the sole administrator of major contracts such as the public defense contracts.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

The County Administrative Office (CAO) has the resources appropriate for a department its size. This includes the ability to administer the 58 contracts that the CAO oversaw in Fiscal Year (FY) 2018-19. In administering the public defense contracts, the CAO accounts for quality of service and stakeholder requirements using data and other resources available to the office.

F2. Negotiating multi-year, fixed price contracts for public defender services without anticipating the possibility of falling caseloads has cost the County several millions of dollars and created a windfall for public defense contractors.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

Negotiating multi-year, fixed price contracts allows for fiscal predictability while maintaining above adequate services for the County's indigent clients.

While caseloads could be one potential factor in compensation, it is not the only variable that drives cost of service. Other factors have to be considered in assessing a complex service system such as hours per case, the increase in specialty court assignments, the increase in use of digital evidence, and changes to the State and local criminal justice system.

Simply because caseloads have decreased slightly, it does not follow that the public defense contracts could have been cheaper.

F3. No one person or department within County government knows exactly how much total compensation the County pays to the public defense contractors, because payment records commingle some fee payments with cost reimbursements.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**)

Payment records in the County financial system can be sorted by vendor. The County's financial system, ONESolution, can provide reports on how much was paid to any one person, company or legal entity. Payment history is maintained electronically going back to 1998.

F4. The County's portrayal of its public defense services is not transparent.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

This finding stems from the Grand Jury's claim that, "Allowing Mr. Biggam to appear to be the Public Defender makes his contract and County government less transparent."

Mr. Biggam's firm has held the County contract for public defense services for over 30 years. Every year the County publishes, and has a hearing for, the budget that supports the entire public defense system of the County, including the contract for main public defense services. Additionally, the contract and all subsequent extensions and amendments were approved by the Board.

As the Grand Jury report states, we agree that Mr. Biggam's status leads to no specific harm or confusion by clients or the public.

The Grand Jury claims that a 1978 memo from County counsel proves that Mr. Biggam is not the Public Defender. The scope of the memo speaks only to the firm's ability to provide services outside Santa Cruz County, and says nothing as to whether Mr. Biggam is, or is not, the Public Defender.

F5. The County's accounting for separate overhead subsidies has for years caused the County to understate the compensation of the County's public defense contractors in line-item budgets and in reports to the Board of Supervisors.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

The budget for the Public Defender includes all costs associated with the required services.

F6. The County's duty to fund public defense services does not require the County to provide public defense contractors with free office space.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

F7. When the County provides free office space to a contractor, the Controller's Office does not know to ask whether the cost of the office space should be included in the contractor's compensation for tax purposes.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

The County rents various facilities throughout the County for which the Auditor-Controller's Office makes the lease payments. The Auditor-Controller did not have a process in place to review each of these leases to determine if any IRS fringe benefit rules would apply for the person or party using the leased space.

Such a process will be in place prior to the issuance of 2019 year-end 1099 forms to County vendors. The review process will include seeking legal assistance to review the IRS Fringe Benefit Exclusions instructions to determine if these areas are included or not and what retroactive reporting to the IRS will be required.

F8. The County's contract policies and standard forms are not integrated with each other, are difficult to use, are not available to the public, are incomplete, and in some cases are poorly written.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

The County's policies and procedures are updated twice per year through an open and transparent Board process, and County staff are regularly trained on contracting policies and standard forms.

F9. The County's public defense contracts violated written County policies without consequences.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

The primary Public Defender contract was originally written many years ago. Over the years, the County policies have changed, and although the contract has been revised there may be elements of updated contract requirements that are not included.

However, no County policies were violated. The County does have a standard Independent Contractor Agreement (ICA) that is the preferred medium for professional service agreements. When contracts deviate from this standard, the contract is reviewed by the County Risk Manager and County Counsel, and approved by the Board. Multi-year contracts such as the ones for public defense services are approved annually on the Continuing Agreements List (CAL). The County retains the right to enter into various types of agreements with vendors that provide the desired services.

F10. Standard forms are an excellent way to implement some County policies, but they must be used to be effective.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

F11. County leaders misinterpret the meaning of County Counsel's approval of a contract "as to form."

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

County leaders understand that County Counsel is not providing legal advice on a contract when it is "Approved as to form".

F12. The County lost potentially valuable information when the County destroyed copies of contracts with, and reports submitted by, the public defense contractors.

AGREE

PARTIALLY DISAGREE – explain the disputed portion

DISAGREE – explain why

Response explanation (required for a response other than **Agree**):

The Auditor-Controller's Office complies with *Accounting Standards & Procedures for Counties* record retention policies as issued by the State Controller. There is a potential benefit to permanently keeping all forms of documentation the County produces, however, the risk-benefit analysis performed at the State level provides the Auditor-Controller with guidance for record retention.

Recommendations

R1. The Board of Supervisors should within the next 60 days instruct the County Administrative Officer to transfer responsibility for initiating and administering any major contract for delivery of services to County residents to a department or comparable organizational unit with the human resources to actively manage the contract. (F1)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

Response explanation, summary, and timeframe:

The CAO will continue to have responsibility for initiating and administering contracts within the office's responsibilities, including public defense services.

R2. The Board of Supervisors should condition approval of any future proposal to pay a public defense contractor additional compensation, whether because a case involves special circumstances or otherwise, upon the presentation of evidence demonstrating that in the absence of additional compensation, the total compensation paid to the contractor would be inadequate. (F2)

HAS BEEN IMPLEMENTED – summarize what has been done

HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE – summarize what will be done and the timeframe

REQUIRES FURTHER ANALYSIS – explain scope and timeframe
(not to exceed six months)

WILL NOT BE IMPLEMENTED – explain why

Response explanation, summary, and timeframe:

In order for special circumstances to be awarded there is an established process:

“The Public Defender shall petition the Court making the appointment for a determination as to the existence of extraordinary circumstances. Specific authorization for extraordinary compensation or expenses by the Court shall be presented and approved by the Board of Supervisors prior to the expenditure of funds. Extraordinary compensation shall be billed at a rate authorized by the Superior Court for 4th party appointments.”

Additional compensation for special circumstances cases are approved at the discretion of the Board of Supervisors.

R4. In the interest of transparency, the Board of Supervisors should instruct the County Administrative Officer to prepare and present for approval a document directing County staff (a) to use the term “public defense” instead of “public defender” to refer to the services that private defense contractors and Criminal Defense Conflict Program panel attorneys provide, (b) to refrain from referring to a public defense contractor or any member of their staff as a public defender, deputy public defender, or other “defender,” and (c) to refer to Budget Unit 59 using a word that the County Administrative Officer has determined does not suggest that Budget Unit 59 is a department. (F4)

HAS BEEN IMPLEMENTED – summarize what has been done

HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE – summarize what will be done and the timeframe

REQUIRES FURTHER ANALYSIS – explain scope and timeframe
(not to exceed six months)

WILL NOT BE IMPLEMENTED – explain why

Response explanation, summary, and timeframe:

A & B) As the Grand Jury report states, we agree that Mr. Biggam’s status leads to no specific harm or confusion by clients or the public, and that implementing this recommendation would only cause more confusion and obstacles to the County’s organizational review effort currently underway.

C) The County does not believe that changing the name of budget unit 59 will add clarifying value. The narrative of the budget clearly explains that the services are contracted.

R5. The Board of Supervisors should instruct the County Administrative Officer to prepare and present for approval a request to the County's public defense contractors and the Criminal Defense Conflict Program panel attorneys, with respect and no suggestion of criticism, to refrain from referring to themselves or any peer as a public defender, deputy public defender, or other "defender." (F4)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

Response explanation, summary, and timeframe:

As the Grand Jury report states, we agree that Mr. Biggam's status leads to no specific harm or confusion by clients or the public, and that implementing this recommendation would only cause more confusion and obstacles to the County's organizational review effort currently underway.

R6. The Board of Supervisors should instruct the County Administrative Officer to prepare and present for approval a policy that the County will not reimburse contractors for the cost of separate overhead items such as liability insurance, employee health insurance, or office space as one of the County's obligations to the contractor. (F5, F6)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

Response explanation, summary, and timeframe:

The County will retain the right to negotiate the terms of agreement, including all forms of payment, that provide for critical services to County residents.

R7. The Board of Supervisors should instruct the County Administrative Officer to prepare and present for approval a policy that the County will not provide goods or services to contractors in lieu of cash. (F5, F6)

HAS BEEN IMPLEMENTED – summarize what has been done

HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE – summarize what will be done and the timeframe

REQUIRES FURTHER ANALYSIS – explain scope and timeframe (not to exceed six months)

WILL NOT BE IMPLEMENTED – explain why

Response explanation, summary, and timeframe:

The County's purchasing policy manual section 1.0 provides for the ethical standards for purchasing activities.

R9. The Board of Supervisors should instruct the County Administrative Officer to require, within the next 60 days, the public defense contractors to sign a customary use agreement with the County and, in the case of the alternative public defense contractors, pay reasonable compensation to the County for the use of the space. (F6)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

Response explanation, summary, and timeframe:

Within six months, the County will determine if it is necessary to require a customary use agreement for the office space in Watsonville, and study the alternative contractors' use of the space.

R11. The Board of Supervisors should within the next 90 days instruct the County Administrative Officer to work with the Auditor-Controller, the Purchasing Agent, and County Counsel to propose a timeline for revising the County's policies and procedures generally, including the implementation of the recommendations in this report concerning contract rules that Board of Supervisors decides to implement. (F8–F12)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

Response explanation, summary, and timeframe:

The Board approves changes to the County's policies and procedures twice per year. The CAO will evaluate the specific recommendations contained in the report, and make any necessary changes by the end of FY 2019-20.

Penal Code §933.05

1. For Purposes of subdivision (b) of §933, as to each Grand Jury finding, the responding person or entity shall indicate one of the following:
 - a. the respondent agrees with the finding,
 - b. the respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
2. For purpose of subdivision (b) of §933, as to each Grand Jury recommendation, the responding person shall report one of the following actions:
 - a. the recommendation has been implemented, with a summary regarding the implemented action,
 - b. the recommendation has not yet been implemented but will be implemented in the future, with a timeframe for implementation,
 - c. the recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of the publication of the Grand Jury report, or
 - d. the recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
3. However, if a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a County department headed by an elected officer, both the department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected department head shall address all aspects of the findings or recommendations affecting his or her department.
4. A Grand Jury may request a subject person or entity to come before the Grand Jury for the purpose of reading and discussing the findings of the Grand Jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.
5. During an investigation, the Grand Jury shall meet with the subject of that investigation regarding that investigation unless the court, either on its own determination or upon request of the foreperson of the Grand Jury, determines that such a meeting would be detrimental.
6. A Grand Jury shall provide to the affected agency a copy of the portion of the Grand Jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. **No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.**