

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

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| AGENDA TITLE: | Motion to Authorize the City Manager to Execute a Contract for Conflict Public Defense Services with the Law Firm of David O Defense |
| DEPARTMENT: | City Manager's Office |
| PRESENTED BY: | John Norris, Management Analyst |
| ACTION: | <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Discussion |

PROBLEM/ISSUE STATEMENT:

When the City of Shoreline's primary public defender is unable to represent a defendant because of a conflict of interest, the City is required to provide a conflict public defender. Although the City initiated a Request for Proposal (RFP) process for conflict public defense services in 2011, which resulted in a five-year contract with the Law Office of John Rongerude, due to the new public defense standards initiated by the State Supreme Court this year, Mr. Rongerude was compelled to seek an increase in the per case rate that his firm charges the City for conflict public defense services. Given this potential rate increase, staff felt that it was prudent to conduct a new RFP for conflict public defense services so that any potential increase in service costs could be considered against other proposals in a competitive bidding process. As a result of this new RFP process conducted in October and November of this year, two proposals were received – one from Mr. Rongerude and one from the law firm of David O Defense.

RESOURCE/FINANCIAL IMPACT:

In the proposed contract, compensation for conflict public defense services are recommended at a fixed rate of \$250 per case and \$500 per case for appeals cases. Staff recommends an annual estimated contract of \$13,000, which equates to an estimated fifty cases per year and one appeals case per year, and would provide for a total five-year contract amount of \$65,000. As well, based on the recommended contract inflator calculation, if a per case inflator rate of 3.00% is estimated annually for the five year life of contract, the total estimated five year cost of the contract would increase by \$4,018 to \$69,018. Based on this potential increase and to provide some contingency for higher annual caseloads, the do not exceed amount for the total five-year contract will be set at \$75,000.

RECOMMENDATION:

Staff recommends that the City Council authorize the City Manager to execute a contract with the law firm of David O Defense for conflict public defense services for up to five one-year contract terms.

Approved By: City Manager *JU* City Attorney *IS*

BACKGROUND:

Under Washington State law, cities are responsible for providing criminal justice services for misdemeanor and gross misdemeanor offenses. This includes jail, court, prosecution and public defense services. Thus, the City is required to provide the services of a public defender to individuals who are determined to be indigent or nearly indigent and unable to afford representation themselves. This representation must occur at all criminal hearings, motions and trials. When the City of Shoreline's primary public defender is unable to represent a defendant because of a conflict of interest, the City is required to provide a conflict public defender.

Since 2007, the City has contracted with the Law Office of John Rongerude for conflict public defense services. These services are provided on an as needed basis at the King County District Court Shoreline Courthouse. Given that Mr. Rongerude would have reached the cumulative cost threshold of \$50,000 for service contracts by the end of 2011 (the City's purchasing ordinance requires that services go out to bid once the cumulative cost of service provided by a contracted vendor exceeds \$50,000), an RFP for this service was issued on November 4 of that year. In response to this RFP, staff received only Mr. Rongerude's proposal. Based on this, the Council awarded a one year contract with four automatic renewal terms to Mr. Rongerude. This contract began January 1, 2012 and would have ended December 31, 2016 if all renewal terms would have been realized.

However, due to the new public defense standards initiated by the State Supreme Court this year, Mr. Rongerude was compelled in the forthcoming renewal term of the contract to seek an increase in the per case rate that his firm charges the City for conflict public defense services. Given this potential rate increase, staff felt that it was prudent to conduct a new RFP for conflict public defense services so that any potential increase in service costs could be considered against other proposals in a competitive bidding process.

REQUEST FOR PROPOSALS:

Staff issued an RFP on October 12 for this service (RFP #7036), with proposals due back to the City on October 31. As a result of the RFP process, two proposals were received – one from Mr. Rongerude and one from the law firm of David O Defense.

Proposals in response to the RFP were evaluated using the following criteria:

- Related experience, including experience in performing conflict public defense services
- Demonstrated ability to perform the work requested within the established schedule
- Experience and expertise of key personnel assigned to this contract
- References
- Cost to perform requested work

A proposal review panel made up of two City of Shoreline staff members and Shoreline's Police Captain reviewed both proposals. Based on the evaluation criteria, the proposals received, and a check of references provide by the two proposers, the

review panel selected the law firm of David O Defense as the preferred service provider. Although Mr. Rongerude has provided adequate service to the City during the timeframe in which he served as the City's conflict public defender, given the strength of Mr. O's proposal, his high quality references and his lower cost, the review panel felt confident in recommending him as the City's preferred service provider. If, upon Council approval of this contract, staff cannot come to terms on an initial contract with Mr. O, staff will reach out to Mr. Rongerude and follow up with the City Council if additional action is required.

PROPOSED SERVICE CONTRACT:

Following the selection of David O as the preferred service provider, staff negotiated a proposed service contract with Mr. O similar to the City's current contract with Mr. Rongerude. The initial term of the contract, which would begin on January 1, 2013, is for one year, but the contract would automatically renew for up to four (4) additional terms in 1-year increments for a total possible term of five (5) years, unless cancelled in writing by the City. Thus, Council authorization of the contract would be for all five terms, ending December 31, 2017, which would provide the City Manager the authority to enter into the initial term and subsequent renewal terms of the contract. The proposed scope of work of the service contract is attached to this report as Attachment A.

RESOURCE/FINANCIAL IMPACT:

As is identified in that attached service contract scope of work, compensation for services provided are recommended at the fixed rate of \$250 per case and \$500 per case for appeals cases. This is an increase over the City's previous per case rate of \$175. Based on an average annual case load of around fifty cases and one appeals case over the last five years, an estimated annual cost for this contract would be \$13,000. This equates to a total five-year contract amount of \$65,000.

As well, if the automatic renewal terms of the contract (up to a total of four additional terms) are not cancelled by the City, the per case fixed compensation rates for both regular cases and appeals cases will be inflated by the measure that determines staff Cost of Living Adjustments (90% of the June to June Seattle-Tacoma Area CPI-U), with an annual cap of 3.50%. If a per case inflator rate of 3.00% is estimated annually for the five year life of contract, the total estimated five year cost of the contract would increase by \$4,018 to \$69,018. Based on this potential increase and to provide some contingency for higher annual caseloads, the do not exceed amount for the total five-year contract will be set at \$75,000.

RECOMMENDATION:

Staff recommends that the City Council authorize the City Manager to execute a contract with the law office of David O Defense for conflict public defense services for up to five one-year contract terms.

ATTACHMENTS:

Attachment A: Proposed Conflict Public Defense Service Contract Scope of Work

Attachment A:

EXHIBIT A SCOPE OF WORK

Conflict Public Defense Services

The Attorney agrees to complete assigned cases by providing the following professional services:

- In cases when the City of Shoreline's designated public defender is unable to represent, because of a conflict of interest, indigent criminal defendants whose cases have either been assigned to the King County District Court –Shoreline Court or appealed from the King County District Court –Shoreline Court to King County Superior Court, the Attorney agrees to serve as legal counsel for these defendants and to provide representation through the conclusion of their respective appeals.
- The Attorney's legal representation of each defendant shall include, but not be limited to, conducting interviews as necessary, review of discovery, consulting with agencies or experts, drafts of pleadings, legal research, preparation of briefs, motion hearings, readiness hearings, scheduling and preparing for trials, attending bench and jury trials, preparing for and attending post conviction review hearings and such other work essential to providing legal representation for defendants from receipt of Notice of Appointment or to pursuing the defendant's appeals.
- In the event that a defendant is incarcerated, the Attorney agrees to conduct any in person interviews as may be necessary at either the King County Correctional Facility or the Snohomish County Jail, depending on where the defendant is being held.

Associated Counsel

- The Attorney will provide an adequate number of defense council to efficiently manage the number of conflict cases assigned to them by the Court.
- Any counsel associated with, contracted or employed by the Attorney shall have the authority to perform the services set forth in this Scope of Services. The Attorney and all associates or attorneys who perform the services set forth in this Agreement shall be admitted to the practice pursuant to the rules of the Supreme Court of the State of Washington and will at all times remain members in good standing of the Washington State Bar.
- The Attorney shall be responsible for this Agreement, notwithstanding that other counsel may be employed or associated by the Attorney to perform services hereunder. The Attorney shall actively supervise associated and employed counsel throughout the term of this Agreement and during any renewals or extensions, to ensure that all cases are promptly and effectively handled from the time of appointment until the conclusion of the Attorney's representation of assigned clients. Sufficient counsel shall be provided to represent defendants during vacation, illnesses and settings in more than one courtroom.

Introduction to Clients

The Attorney will also provide at its expense an introduction letter to each client at the beginning of representation. This letter will advise the client of his/her responsibilities, how to contact the attorney assigned to the case and when to do so.

Discovery Provided

The City shall provide the Attorney, at no cost to the Attorney or the defendant, one copy of all discoverable material conserving each assigned case. The material shall include, where relevant, a copy of the abstract of the defendant's driving record and defendant's case history (DCH).

Code Provided

The City shall provide to the Attorney at no cost to the Attorney, a copy of the Shoreline Municipal Code and any amendments to the Code Adopted during term of this Agreement.

Case Loads and Case Weighting

In preparation of implementation of the case load limits identified in the 2012 Washington State Supreme Court Standards for Indigent Defense, which take effect September 1, 2013, the City of Shoreline will likely be weighting certain misdemeanor criminal cases upon City Council approval of a case weighting policy. This is authorized by Section 3.6.B of the new indigent defense standards. Given this case weight, the Attorney will accommodate all in-custody probable cause and releasing hearing cases under the applicable case load limits once the new limits and the City's case weighting policy become effective.

Billing and Consultation

In addition to the billing voucher identified in Section 2.B. of the Agreement and in the form set forth in Exhibit B, the Attorney agrees to submit billing support documentation with monthly billing vouchers showing client name, client offense(s), case number, hearing dates, and invoiced amount, submitted with monthly billings. The Attorney also agrees to:

- Quarterly phone discussions with the City's contract manager, if initiated by the contract manager, to review the number of conflict cases, overall performance of the Agreement, and issues of common concern.
- Attendance at King County District Court – Shoreline Court or City initiated meetings to address any ad hoc or ongoing issues or concerns with conflict cases or Court operations, if necessary.
- In-person discussion with the City's contract manager, if initiated by the contract manager, at the end of each annual term of the Agreement to discuss any issues with the Agreement or services provided over the preceding year.

Compensation

Compensation for services provided will be paid at the fixed rate of \$250 per case. For appeals, services shall be paid at a rate of \$500 per defendant cause number. These fixed per case rates shall be all inclusive, and include costs such as travel, per diem, copy fees, etc. The City will not make reimbursement on these items outside of the

agreed per case rate. Compensation for appeals that are made above the Superior Court level shall be negotiated on a case by case basis.

If the automatic renewal terms of this Agreement (up to a total of four additional terms) are not cancelled by the City, the per case fixed compensation rate and appeals rate will be inflated annually by 90% of the June to June Seattle-Tacoma-Bremerton area Consumer Price Index (CPI-U), with a cap of 3.50%. The City shall notify the Attorney of such increase upon fourteen (14) days written notice. If approved, any rate increase shall take effect as stated and remain in effect for the subsequent annual agreement period.