

County of Ventura
AUDITOR-CONTROLLER
MEMORANDUM

To: Michael Powers, County Executive Officer

Date: August 6, 2019

From: Jeffrey S. Burgh

Subject: **AUDIT OF THE ADMINISTRATION BY THE COUNTY EXECUTIVE OFFICE OF THE CONTRACT BETWEEN THE SUPERIOR COURT OF CALIFORNIA AND CONFLICT DEFENSE ASSOCIATES REGARDING ANCILLARY EXPENSES**

We have completed our audit of the administration by the County of Ventura ("County") County Executive Office ("CEO") of the contract between the Superior Court of California, County of Ventura ("Court"), and Conflict Defense Associates of Ventura County ("CDA") regarding ancillary expenses. Ancillary expenses include costs for investigation, experts, and witnesses for open and qualifying cases in CDA's defense of eligible indigents. The audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing* promulgated by The Institute of Internal Auditors. Our findings are summarized below with details provided in the attached report.

EXECUTIVE SUMMARY

While the total contract amount was paid to CDA as required by the contract, overall, we found that improvements were needed in CEO's administration of the CDA contract regarding ancillary expenses. Although our audit procedures focused on CEO's administration of the CDA contract during fiscal year ("FY") 2013-14, the findings noted in our report continued into FY 2018-19. During our audit, we noted that:

- CEO should discuss with the Court whether the ancillary expense amount could be explicitly stated in future CDA contract amendments to facilitate CEO's monitoring of ancillary expenses.
- CEO has not reviewed ancillary expenses for reasonableness and necessity, and CEO has not performed procedures to identify unexpended ancillary funds that should be returned to the County.
- CEO could take a more proactive approach with reviewing CDA's accounting reports to help ensure the reports capture all of CDA's ancillary expenses.

CEO management initiated corrective action to address our findings. Corrective action is planned to be completed by July 22, 2019, except for written policies and procedures expected by December 31, 2019.

We appreciate the cooperation and assistance extended by you and your staff during this audit.

Attachment

Michael Powers, County Executive Officer

August 6, 2019

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cc: Honorable Steve Bennett, Chair, Board of Supervisors
Honorable Kelly Long, Vice Chair, Board of Supervisors
Honorable Linda Parks, Board of Supervisors
Honorable Robert O. Huber, Board of Supervisors
Honorable John C. Zaragoza, Board of Supervisors

County of Ventura
Office of the Auditor-Controller



**AUDIT OF THE ADMINISTRATION BY THE COUNTY EXECUTIVE OFFICE
OF THE CONTRACT BETWEEN THE SUPERIOR COURT OF CALIFORNIA AND
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**Jeffery S. Burgh
Auditor-Controller**

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BACKGROUND

California Penal Code Section (“PC §”) 987.2 authorizes the Superior Court of California, County of Ventura (“Court”), to appoint private attorneys for indigent defense services in criminal cases in which the Public Defender has a conflict of interest or is unable to act. PC § 987.2 authorizes the Court to contract with attorneys for such representation, although the “sum for compensation and for necessary expenses” is paid out of the county general fund.

The Court has contracted with Conflict Defense Associates of Ventura County (“CDA”) for indigent defense services since 1981. The contract dated July 12, 1999, is the current governing contract and has been renewed numerous times with amendments that revised certain terms and amounts. Although the County of Ventura (“County”) is not a party to the contract, the County Executive Office (“CEO”) is responsible for the administration of the CDA contract.

The 1999 CDA contract stated that the County shall pay attorney fees/operating costs of \$1,384,000 and ancillary expenses of \$316,000, for a maximum “Total Contract Amount” of \$1,700,000.¹ Examples of ancillary expenses provided in the contract included “costs for investigation, experts and witnesses, CDA telephone located at the Government Center, and appropriate storage.” Contract requirements included:

- the County to advance one-fourth of the maximum total contract amounts for attorney fees/operating costs and ancillary expenses to CDA on a quarterly basis;
- ancillary funds to be used only for the payment of ancillary expenses actually incurred for services provided during the contract year for an open and qualifying case included in CDA’s caseload;
- ancillary funds to be placed in an interest bearing legal trust fund for this sole purpose;
- the County to pre-approve and review ancillary expenses for reasonableness and necessity; and
- all unexpended ancillary funds to be returned to the County at the end of the fiscal year.

Contract amendments increased the “annual amount of compensation” paid to CDA beginning in fiscal year (“FY”) 2001-02 to \$1,836,000 and in FY 2005-06 to \$1,971,000. The “annual compensation amount” was increased in FY 2014-15 to \$2,071,000 and in FY 2017-18 to \$2,121,000.

SCOPE

Our overall objective was to evaluate CEO’s administration of the CDA contract during FY 2013-14 regarding ancillary expenses. Specifically, we determined whether:

- CEO adequately fulfilled the administrative and funding responsibilities for ancillary expenses detailed in the contract;
- CDA should have returned any unexpended ancillary funds to the County for FY 2013-14;

¹ The “Total Contract Amount” excludes ancillary costs for capital murder cases, pursuant to PC § 987.9, which were not included in the scope of this audit.

- CEO controls were sufficient to prevent attorneys contracting individually for indigent legal services from submitting CDA ancillary expenses for County reimbursement; and
- CDA's monthly report to CEO fulfilled contract requirements and was reliable for the County to apply for appropriate statutory reimbursement from the State of California.

Our audit did not include review of administration of attorney fees/operating costs, as the County is only responsible for paying the contracted amount of attorney fees/operating costs without any further administrative responsibilities. We also did not review the detail of ancillary expenses charged by CDA due to the findings below. The audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing* promulgated by The Institute of Internal Auditors.

FINDINGS

While the total contract amount of \$1,971,000 was paid to CDA as required by the contract for FY 2013-14, overall, we found that improvements were needed in CEO's administration of the CDA contract regarding ancillary expenses. Although our audit procedures focused on CEO's administration of the CDA contract during FY 2013-14, the findings noted below continued into FY 2018-19.

Specifically, we found that the ancillary expense amount has not been explicitly stated in any CDA contract amendments, which called into question the annual ancillary expense amount for nearly 20 years. CEO has not reviewed actual ancillary expenses for reasonableness and necessity, and CEO has not performed procedures to identify unexpended ancillary funds that should be returned to the County. We also found that CEO could take a more proactive approach with reviewing CDA's accounting reports to help ensure that the reports capture all of CDA's ancillary expenses.

Following are details of the areas where improvements were needed. CEO management initiated corrective action during the audit as noted.

1. **Ancillary Expense Amount.** The annual amount for ancillary expenses required by the CDA contract amendments was unclear. The 1999 CDA contract identified \$316,000 as the annual ancillary expense amount, separate from the amount for attorney fees/operating costs. Subsequent amendments increased the total contract amount by 25 percent through FY 2018-19.² However, the amendments did not break down the total contract amount between ancillary expenses and attorney fees/operating costs. Therefore, the amendments were not explicit as to whether the amount for ancillary expenses:
 - was included in the total contract amount, although not restricted to a specific amount;
 - was included in the total contract amount as a constant \$316,000 annually over the past 20 years;
 - was deemed to be zero because the ancillary expense amount was not mentioned; or
 - increased proportionally to the 25 percent total contract amount increases through FY 2018-19.

Clarifying the separate cost categories in contract amendments was necessary for CEO to properly monitor whether any unexpended ancillary funds should be returned to the County as noted in Finding 2(B) below.

² For purposes of our calculation, we compared the "Total Contract Amount" in the 1999 governing contract, comprised of attorney fees/operating costs and ancillary expenses, to the "annual compensation amount" cited in the FY 2018-19 contract amendment.

Recommendation. CEO should discuss with the Court whether future CDA contract amendments could clearly distinguish the total amount of ancillary expenses from attorney fees/operating costs to facilitate CEO's monitoring of ancillary expenses.

Management Action. CEO management stated:

"CEO received a memo dated May 2, 2019, from CDA to explain why the Court, CDA, and CEO did not follow the original 1999 contract. CEO also received an email from the Courts, confirming agreement with the memo from CDA. The main argument of the memo is all parties met several times soon after the original contract execution and deemed the ancillary expense provisions were totally unworkable for many reasons as outlined in the memo. Subsequently, the first amendment and all amendments thereafter to the contract did not mention a separate payment or accounting for ancillary expenses; thus effectively eliminating the need for a separate trust account, invoices submitted for approval, and CEO monitoring costs for unexpended revenue. The CEO and Court Administration continue to confirm such provisions would harm CDA's ability to provide timely and adequate defense services.

"Contract has now been amended, effective retroactively since 1999, to accurately reflect current practice."

2. **Contract Compliance.** CEO and CDA have not been following all of the contract provisions for ancillary expenses. We were informed that, shortly after the 1999 contract was executed, the ancillary expense process delineated in the contract was deemed to be too onerous and was abandoned in practice. Instead the contract has been administered as a flat fee combining both attorney fees/operating costs and ancillary expenses, and CDA has been expected to manage all cases to fit within that combined flat fee budget. As a result, ancillary expenses have not been subject to CEO's review and any unexpended ancillary funds have not been returned to the County.

A. **Review of Expenses.** Invoices for ancillary expenses were not submitted to or reviewed by CEO, in noncompliance with the contract. Section III, Paragraph 12, of the governing 1999 contract required:

- CDA to submit invoices for ancillary expenses to the County for review at least 2 days before CDA paid the invoices. However, because of pressing court dates, CDA could not always wait the 2 days after submitting an expense before paying for ancillary expenses.
- The County to review the invoices for ancillary expenses within 2 days of receipt and inform CDA of any invoice determined not to be reasonable or necessary. However, CEO could not always approve or deny the ancillary expenses within the 2-day limit, and CEO was not comfortable determining whether an expense was appropriate.

Currently, CDA incurs ancillary expenses and pays the invoices without submitting any documentation to CEO for review. Without review of CDA's ancillary expenses, the County could be paying for expenses that are not covered by the contract.

Recommendation. CEO should discuss with the Court whether the current CDA contract provision can be revised for practicality. For example, CEO could review CDA's ancillary expenses after-the-

fact on a quarterly basis rather than within the 2 days as currently required. CEO should document and implement procedures to ensure that the review includes whether:

- the expense meets the definition of an ancillary expense from the contract provision;
- the expense was actually incurred for services provided during the contract year by reviewing a receipt/invoice; and
- the expense was for an open and qualifying case included in CDA's caseload.

Management Action. CEO management stated:

"CEO discussed with Court Administration & CDA regarding the potential to implement new provisions to monitor ancillary expenses. All parties agreed any new provisions would be unnecessary and impractical for the following reasons:

"1. Court cases do not follow a convenient fiscal year schedule – some last several years and could start or end on the last or first days of any fiscal year, making it very difficult to reconcile invoices with actual expenses.

"2. Ancillary expenses can fluctuate greatly depending on the nature of each case. Also, requiring CEO fiscal staff to determine whether an expense fits a contract definition of ancillary is inappropriate. If imposed, it would result in CEO having to pay for legal assistance from subject matter experts, as there are typically about 1200 active cases a month, with most held over from prior months, and multiple requests per case. Any denial for ancillary costs can be contested to a judge, resulting in more costs for legal counsel. Thus, CEO believes it is more practical to view ancillary expenses globally as part of the total operating costs and allow CDA to operate their budget like an enterprise fund.

"3. For the past 20 years, the Auditor-Controller has calculated a 25% increase in total compensation, averaging 1.25% gain per year and even less than that on a compounded basis. Attorney salaries, expert witnesses and other ancillary costs, and workload have risen much faster over the same period. This indicates CDA has implemented efficiencies and managed their budget well. They established a reserve to smooth out the fluctuations in ancillary expenses so they would not have to ask the County to address these fluctuations. In each occasion, rate increase proposals or any amendment to the contract requested by CDA are analyzed by program staff and vetted through Courts and County management.

"However, the CEO agrees with the third bulleted recommendation and has asked CDA to provide a quarterly accounting of ancillary expenses on a case-by-case basis and whether the case is ongoing or ended. CDA and Court have included this new provision in the 13th Amendment to the Contract (item #3). This will assist in evaluating any requested changes in the contract amount."

- B. **Return of Unexpended Funds.** CEO did not monitor whether unexpended ancillary funds should have been returned to the County. Section III, Paragraph 12, of the governing 1999 contract required any unexpended funds advanced to CDA in the quarterly payments to be returned to the County at the end of the fiscal year. However, no unexpended ancillary funds have been identified or returned to the County because:

- No review of ancillary expenses by CEO has occurred as noted in Finding 2(A) above.
- The total contract amount has been administered by CEO as a flat fee combining both attorney fees/operating costs and ancillary expenses although no contract amendments revised the requirement to separately account for attorney fees/operating costs and ancillary expenses.

Comparing the ancillary expense amount identified in the 1999 contract of \$316,000 to the June 2014 year-to-date "Service Fees Paid" in CDA's "Workload/Disposition/Accounting Summary Report" of \$264,787 suggests that \$51,213 should have been returned to the County for FY 2013-14. However, we could not confirm whether any unexpended ancillary funds should have been returned to the County due to Findings 1 and 3 in this report.

Recommendation. CEO should document and implement procedures to ensure that CDA returns unexpended ancillary funds to the County at the end of the fiscal year.

Management Action. CEO management stated: "As stated in our management actions above, CEO and the Courts believe such procedures are unworkable, impractical, expensive, and unnecessary. Instead, we have asked the Court and CDA to make clear how the contract has been administered by retroactively amending the original contract to eliminate Term 12 of the original contract except for the paragraph related to Capital murder cases and Penal Code section 987.9. They have agreed and executed a 13th Amendment and 14th Amendment."

3. **Monthly Accounting Reports.** CEO could take a more proactive approach with review of CDA's monthly accounting reports and discuss potential issues with CDA prior to year end. The "Workload/Disposition/Accounting Summary Report" that CDA submits monthly to CEO includes a monthly and year-to-date summary of "Service Fees Paid" for *Investigation*, *Expert Witnesses*, and *Other*, which were identified to us as CDA's ancillary expenses. However:

- CDA indicated that the reports do not capture all ancillary expenses, and CEO did not know how much more should have been reported. Because CEO relies on the June year-end report to claim reimbursement from the State of California for certain CDA costs, CEO needed to conduct more active reviews. Incomplete reports also affect CEO's ability to monitor whether any unexpended ancillary funds should be returned to the County as noted in Finding 2(B) above.
- We also noted that the monthly reports were submitted an average of 67 days after month end, rather than the 15 days required by the CDA contract. Substantially late reports would delay any CEO monitoring efforts.

Recommendation. CEO should document and implement procedures to actively review CDA's accounting report amounts to ensure accuracy and further promote reliability and timeliness of reports.

Management Action. CEO management stated: "We agree with the above recommendation. The new 13th Amendment converts the monthly report to a quarterly one. Having monthly reports are unnecessary. Quarterly reports will be more meaningful and practical, giving CDA more time to produce accurate reports, and the CEO to effectively review the reports. Since the 13th Amendment begins on

July 1, 2019, the first quarterly report will be for period ending September 30, 2019 and due by October 15, 2019. The report shall be addressed to CEO Fiscal with a copy to CEO Analyst.”

AUDITOR’S EVALUATION OF MANAGEMENT ACTION

We believe that management actions taken or planned were responsive to the audit findings. CEO management planned to complete corrective actions by July 22, 2019, except for written policies and procedures expected by December 31, 2019.