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TRINITY COUNTY
SUPERIOR COURT

**TRINITY COUNTY GRAND JURY
2016-2017**

**FINANCIAL and ADMINSTRATIVE COMMITTEE
FINAL REPORT
FAR 2016-2017-001**

COUNTY CONTRACTS

Approved June 2, 2017

*Reviewed 6/23/17
Judge [Signature]*

Financial and Administrative Committee
FAR 2016-2017-001
Final Report

County Contracts

SUMMARY

The Grand Jury is charged with investigating complaints and concerns raised by the citizens of Trinity County and when appropriate, report on findings and recommendations upon completion of said investigations.

The Grand Jury received several complaints related to County employees' personal use of County vehicles, recruitment of a County Administrative Officer (CAO), County Counsel/County Administrative Officer roles and responsibilities, and the County Employee Classification and Compensation study.

The Grand Jury found that the concerns raised had merit and warranted investigation. It was determined that a review of County contracts related to these areas of concern would be the most beneficial approach to determining compliance.

The Grand Jury interviewed County officials charged with various aspects of contract oversight, namely, the County Auditor, the County Personnel Analyst and County Counsel as the acting/interim County Administrative Officer-Clerk of the Board (CAO-CC). In addition, numerous relevant contracts, policies and procedures were reviewed.

The Grand Jury commends the proactive approach taken by the County Auditor to ensure conservative use of precious County dollars with regard to County employee vehicle usage. We urge continued vigilant oversight to ensure prompt completion of contracted services in the area of the Employee Classification and Compensation study. Finally, we expect the Board of Supervisors (BOS) to significantly increase its efforts regarding CAO recruitment, including specifying a competitive compensation package.

BACKGROUND

The Grand Jury routinely receives citizen complaints and evaluates the need to investigate based on factors including but not limited to having financial impact, potential malfeasance, level of concern and inefficiency. As a result of our research, the citizens of Trinity County have the opportunity to learn where improvements are needed and be advised of successful County operations.

METHODOLOGY

Grand Jury members interviewed the County Auditor, County Personnel Analyst II, and the CAO-CC.

We also reviewed policies and procedures, ordinances, Staff Reports (written reports for agenda items prepared by County staff advising the BOS of the County staff's conclusions and recommendations), Board Agendas and Minutes, and contract agreements related to vehicle usage, employee classification and compensation and employee recruitment.

DISCUSSION

While performing research and interviews relevant to the concerns mentioned in this report, the Grand Jury had the opportunity to review the procedures and management tools in place related to contract oversight at the Auditor level. The process appears to be running efficiently, with comprehensive documentation and departmental access to ensure that contract agreements are up-to-date and inclusive of necessary insurance and deadlines. The Auditor's office is making good use of all available resources to minimize misuse of County resources. Although some issues regarding contract agreement expiration lapses are present, this is the responsibility of the department initiating the contract agreement, not the Auditor.

- **County Vehicle Use**

At the time the complaint regarding potential misuse of County vehicles was received by this Grand Jury, the issue was already in the research phase by the County Auditor when the Grand Jury conducted its interview with her. County staff informed us that changes to County procedures were targeted to go into effect in January 2017. Follow-up showed that the County Auditor had issued a memorandum advisory explaining new procedures for reporting, and withholding payroll taxes on, applicable fringe benefits. These include meal reimbursements, tool allowances, uniform/boot allowances, personal use of County vehicles, and road inspections (BOS only).

Effective January, 2017 County vehicles that the BOS and Department heads authorize for commuting purposes will be treated as a fringe benefit and taxed appropriately to the employee.

On April 18, 2017, the BOS approved a vehicle allowance/stipend of \$10,000 for the Director of Transportation. While this circumvents the issue of potential improper use of County vehicles complaint, it does not provide a complete picture of the supporting argument in the Discussion area of the Staff Report where the term "Historically" is explained. The public is not informed of what encompasses the history of the Director of Transportation's vehicle use. Since County Ordinance 2.56.040 provides for a vehicle to be used for commuting to and from home for this position, if "home" is outside the county, the savings to the County, as supported in the Staff Report, may be skewed and the Staff Report recommendation faulty. Also, the following verbiage from the aforementioned Staff Report does not fully explain when "personal vehicle" and "vehicle" is to be used for travel outside of California or within California south of Sacramento: "In exchange, the Director will be expected to use a personal vehicle and not be permitted to use a County vehicle for anything other than emergency purposes directly related to a special use, such as assisting in plowing a county road or as a passenger. Vehicle use would only be allowed for travel outside of California or within California south of Sacramento. No additional mileage reimbursements will be provided."

While this \$10,000 vehicle allowance/stipend only covers the cost of mileage, not insurance, the question begs to be asked “What is the insurance obligation of the employee and is there a County employee policy in place?” This question is answered in County policy 2002-02(P):

In order to operate a County vehicle, or to operate a private vehicle on County business, an individual must have in his or her possession proof of current private automobile insurance satisfying the minimum standards of the Financial Responsibility Law of the State Vehicle Code. He or she shall provide proof of private automobile insurance to his or her supervisor.

In the instance of the Director of Transportation, his supervisor is the CAO, which is County Counsel, per Resolution No. 2015-128.

- **County Administrative Office Contract Agreement**

While the Grand Jury commends the BOS on recognition of the need to hire a contractor having expertise with executive recruitments, the fact that the CAO position has been vacant for over a year due to the resignation of its CAO in December 2015, remains a vital concern and leaves the County deficient in all areas requiring strong, consistent leadership.

On December 15, 2015 the BOS adopted Resolution No. 2015-128 delegating the responsibilities of the CAO. The Resolution assigned all areas of responsibilities of the CAO to various Department Heads. County Counsel, who was also delegated the responsibility of Clerk of the Board, was assigned the responsibility of

1. accepting direct reports of the CAO position,
2. meet and confer issues,
3. matters concerning leasing or sale of County property or the negotiation of leases on behalf of the County as a lessee,
4. and citizen complaints.

The BOS first entered into a contract agreement with Prentice & Epperson LLP (Firm) on January 16, 2015 to perform legal services for the County consistent with the role of a County Counsel. This contract agreement specifically stated “review and evaluation shall be in accordance with specific criteria developed jointly by County and Firm.” In addition to this requirement, “County shall provide Firm with a summary written statement of the findings of the County and provide an adequate opportunity for Firm to discuss its evaluation with the Board of Supervisors.”

This contract agreement stated “Firm shall act as an independent contractor...In no respect shall Firm, its agents, employees, experts or consultants, if any, be considered employees of County.”

The Brown Act provides for closed sessions regarding the appointment, employment, evaluation of performance, discipline or dismissal of a public employee. (§ 54957.) Also, referring to <https://www.irs.gov/taxtopics/tc762.html>, Topic 762 - Independent Contractor vs. Employee, Firm is considered an Independent Contractor, not a public

employee, and should be reviewed and evaluated the same as any other contract agreement submitted for open session and approval.

When the BOS contracted with Prentice, Long & Epperson, PC to incorporate the additional duties for County Counsel, it is unclear if they did so in accordance with Government Code Section 31000, which states: "The board of supervisors may contract for special services on behalf of the following public entities: the county, any county officer or department, or any district or court in the county. Such contracts shall be with persons specially trained, experienced, expert and competent to perform the special services."

While the Staff Report recommending this Resolution made clear this is a temporary measure pending successful recruitment of the new CAO, the contract agreement expiration was not set, nor an alternative plan presented in case the recruitment was not successful.

- **County Administrative Officer Recruitment Contract Agreement**

On March 15, 2016 the BOS agreed to enter into a contract agreement with Cooperative Personnel Services (CPS HR) for the recruitment of a CAO in the amount of \$23,500 concluding 12-14 weeks from commencement of the contract agreement, which was awarded on April 2, 2016 and signed by the BOS on April 5, 2016 with a contract agreement start date of March 22, 2016.

The contract agreement proposal expressly included "Should the initial recruitment efforts not result in a successful appointment, CPS HR will extend the aggressive recruiting efforts and screen qualified candidates until an offer is made and accepted."

CPS HR also states in its brochure that the position is open until filled, yet its website lists a filing deadline of July 1, 2016. Trinity County's website includes the listing with a referral to CPS HR.

CPS HR's recruitment brochure stated the Ideal Candidate's specific qualifications are as follows:

"The ideal candidate will possess no less than five years of increasingly responsible experience performing complex budgetary, financial, policy and organizational analysis duties including experience working directly with an elected board or council. A broad background in planning, monitoring and executing programs and general local government operations is preferred. A Bachelor's degree in business, public administration or a related field is desirable with a Master's degree preferred."

The above is similar to County Code 2.08.020 - Qualifications and recruitment, which states:

“The county administrative officer shall have five years of increasingly responsible management experience in budgetary, financial, personnel and organizational duties in a local government agency, and the demonstrated ability to perform duties as outlined in the job description for this position. The county administrative officer shall have completed college course work equivalent to a bachelor's degree in public or business administration or a closely related field, with a master's degree preferred. Vacancies in this position shall be filled through statewide recruitment measures. (Ord. 1115 §1(part), 1988).”

However, it is incongruent with the CAO job description of May 2002 which only requires the following:

“Any combination of training and experience which would likely provide the required knowledge and abilities is qualifying.”

The only special requirement for the position being “possession of, or ability to obtain, a valid California Driver’s license.”

CPS HR’s Brochure listed that the “compensation and benefit package will be competitive and negotiable depending on the experience and qualifications of the chosen candidate. The County is currently undertaking a classification/compensation study that will assist in determining an appropriate salary range.”

The BOS met a total of 16 times on the following dates: June 7, June 21, July 6, Sept 20, Oct 4, Nov 1, Nov 15, Nov 17, Dec 9, Dec 20, 2016; Jan 10, Jan 18, Feb 7, Feb 16, March 21, and April 6, 2017. A Staff report regarding the CAO position was presented by the CAO-CC at each meeting. Minutes available to the public from those meetings did not provide the contents of the Staff reports.

On April 21, 2017 during a public town hall meeting, a member of the BOS announced that the BOS has decided not to hire a CAO, but to train someone for the job. This course of action is not likely to serve our County well.

First, there is no one presently on the BOS or employed by the County qualified to train or mentor a trainee. The CAO’s job is complex. It requires knowledge of and adherence to laws and regulations. It demands observance of a cultural backbone of openness and inclusion. Like most complex employments, it is not something an amateur can do well. It requires both education and experience.

Second, such a plan invites continuation of the BOS’s recent habit of closed meetings where it discusses and directs the public’s business in private.

Third, it is not reasonable to expect to find a suitable candidate willing to accept below-market wages while being trained by people largely unqualified to do so.

The BOS's role is to set policy and monitor adherence to the County budget. The CAO's role is to manage a multi-million dollar government operation. They are separate and distinct. If either party forgets its place in the scheme of things, or fails to perform at a high level, the public suffers.

Failing to hire a qualified CAO, or "training" someone to be the creature of the BOS, will not be good for Trinity County.

- **Classification and Compensation Study**

The Grand Jury applauds the BOS on their recognition of the need to preserve the integrity and currency of the staff classification and compensation structure and for seeking a company with experience to perform a Classification and Compensation Study to complete this goal.

The overall goals of a classification and compensation study is to simplify classification structures, identify paths for career progression, address recruitment and retention needs, review minimum qualifications to facilitate recruitment of talent, to ensure legal compliance (FLSA & ADA), and offer a fair compensation system. Trinity County's last Classification and Compensation Study was completed in 2000.

On June 2, 2015, the BOS approved a contract agreement with Koff and Associates, Inc. to perform a Classification and Compensation Study for the Deputy Sheriff's Association, (DSA), Skilled Trades Unit, Miscellaneous Peace Officers Unit, Management and Confidential Unit, Department Heads and Elected Officials, and Non-Represented Employees. This contract agreement expired on November 25, 2015.

On February 17, 2016, the BOS approved Amendment number 1 to the contract agreement with Koff and Associates, Inc., which had already expired November 25, 2015, adding the General Unit to the study, increasing the maximum cost by \$36,680, and extending the contract agreement term to March 30, 2016.

On June 8, 2016, the BOS approved Amendment number 2 to the contract agreement with Koff and Associates, Inc. which had already expired March 30, 2016, extending the term to October 31, 2016 to conduct a classification and compensation survey, stating that "since execution of the contract an additional bargaining unit had been added to the study."

It is not stated in the written documentation what additional unit was included in the Classification and Compensation Study besides the units listed above in the original contract agreement and Amendment number 1.

On November 1, 2016, the BOS approved Amendment number 3 to the contract agreement with Koff and Associates, Inc. extending the term to December 31, 2016. No explanation as to the reason of the extension was listed in the Amendment.

On April 4, 2017, the BOS approved Amendment number 4 to the contract agreement with Koff and Associates, Inc. effective January 1, 2017 and amended by extending the expiration date to June 30, 2017. No explanation as to the reason of the extension was listed in the Amendment.

Explanations via Staff Reports or Minutes regarding the lapse of the contract expiration dates were not presented to the BOS and, therefore, were not reviewable by the public. Although the cost of the Classification and Compensation Study did not increase, after the first Amendment to the contract agreement, the length of time used to create the study is puzzling, especially as the following verbiage is included in the original contract agreement:

“VII CONTRACT PERFORMANCE TIME: All the work required by this contract shall be completed and ready for acceptance no later than November 25, 2015. Time is of the essence with respect to this contract.”

On July 7, 2015, the BOS reached an agreement with the various County bargaining units to perform a Classification and Compensation Study. The Classification and Compensation Study that County employee bargaining units and the BOS agreed to has yet to be completed. This lack of completion is concerning, as well as how the BOS proposes to implement the results once completed. That said, it is imperative that the BOS honor its commitment to its constituents and employees by promptly completing the Classification and Compensation Study and implementing its results. This would be a benefit to the County in many ways. The most obvious would be a definitive and competitive wage and benefits package to offer for recruitment of a CAO.

FINDINGS

- F1. The County Auditor requested clarification from Gallina, LLP, the County's external auditors, to ensure IRS compliance regarding fringe benefits provided to some employees, including County vehicle usage.
- F2. On December 21, 2016 the County Auditor issued a memorandum to County department heads, BOS and CAO-CC providing clarification of taxable fringe benefits with regard to vehicle usage effective with the January, 2017 pay period.
- F3. The BOS provided a \$10,000 vehicle allowance/stipend to a County employee based on a Staff Report that did not include complete information necessary for the BOS to make an informed decision.
- F4. County Ordinance 2.56.040 may not be beneficial to the County budget as currently written in its explanation of vehicle use.
- F5. The BOS is not adhering to the terms of the January, 16, 2015 contract agreement with Prentice & Epperson LLP with regard to developing specific criteria needed to review and evaluate the performance of "Firm," the definition of which is Prentice & Epperson LLP as County Counsel.
- F6. The BOS is not adhering to the terms of the January 16, 2015 contract agreement and its subsequent amendments in regard to an annual open session review and evaluation of the contract agreement with Prentice & Epperson LLP.
- F7. The BOS did not adhere to Government Code Section 31000 when a contract agreement with Prentice & Epperson LLP assigning County Counsel to perform additional duties in the absence of a CAO was entered into.
- F8. The BOS contracted with Prentice & Epperson LLP designating County Counsel to perform additional duties in the absence of a CAO without establishing an expiration date.
- F9. The BOS did not create an alternative plan in the instance a CAO is not recruited.
- F10. The CAO position qualifications presented to applicants are not uniform nor in alignment with County Code 2.08.020.
- F11. The County's contract agreement with Cooperative Personnel Services for the recruitment of a CAO is current and ending only when a CAO qualified applicant is made an offer and the offer is accepted.
- F12. BOS amended the original contract agreement with Koff and Associates four times after the contract agreement had expired.

RECOMMENDATIONS

R1. Revise County Ordinance 2.56.040 – Vehicles assigned to department of transportation and general services personnel, to explain the term “home” and whether it encompasses a commute to and from if “home” is outside of the county;

R2 County Code Chapter 2.56.070.C- Emergency situations and authorization for the use of county vehicles states “The immediate family of county employees who are assigned vehicles are not permitted to ride in county vehicles except with the prior approval of the county administrative officer”. When an employee of the County is using their own vehicle for County business, in the process of County business, or on the way to their regular place of County business, specify if and when it is allowable for the immediate family of county employees to be permitted to ride in a personal vehicle.

(Ord. 1234 §1, 1999; Ord.11 83 §3(part), 1993; Ord. 350-1 §1,1976; Ord.350 §4,1975)

R3. Enforce adherence to County Vehicle Usage Procedures and encompassing Ordinances and Codes through training and memorandums and at annual employee evaluations.

R4. Ensure all County employees using personal vehicles for County business submit proof of insurance pursuant to County Policy 2002-02(P) at annual employee evaluations or when employees who use personal vehicles for County business, in the process of County business, or on the way to their regular place of County business change the status of ownership of the vehicle used.

R5. Promptly complete the Classification and Compensation Study.

R6. Publish the Classification and Compensation Study and make it available to the public.

R7. Develop a plan of action to implement the results of the Classification and Compensation Study.

R8. Treat the recruitment and hiring of a competent, experienced CAO as a priority. To that end, offer a competitive compensation package.

R9. Develop a procedure/policy that ensures contract renewals are timely and in accordance with contracted work, and confirms contracts are reviewed monthly by the department implementing the contract.

R10. Develop specific criteria needed to review and evaluate the performance of “Firm”, the definition of which is Prentice & Epperson LLP as County Counsel.

R11. Provide professional qualifications for the appointment of CAO-CC as described in Government Code Section 31000.

R12. Establish uniformity between County Code 2.08.020 and the position description of County Administrative Officer.

COMMENDATION

The Grand Jury appreciates the cooperation and responsiveness of all County employees interviewed. It is apparent that despite significant workloads and in some circumstances limited staffing levels, the citizens of Trinity County are fortunate to have dedicated employees willing to go the extra mile to ensure effective ongoing county operations.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

Required Responses

Trinity County Board of Supervisors

- Findings and Recommendations (all) R1-R12

County Counsel as the acting/interim County Administrative Officer-Clerk of the Board

- Findings and Recommendations (all) R1-R12