

MOTION BY SUPERVISOR SHEILA KUEHL

November 13, 2018

Eliminating an Unnecessary Board Policy on IT Contracts

Following a discussion on design, procurement and implementation problems on a \$64 million Department of Health Services information technology (IT) system in 1994, the Board of Supervisors (Board) issued a Board Order to County Counsel to develop a list of independent legal advisors to protect the County from similar and costly issues in future IT procurements. Later in 1994, County Counsel provided an informal protocol directing that outside counsel be retained for all IT procurements in excess of \$5 million and that in-house counsel would be used for smaller IT procurements. This Board Order and IT procurement protocol was never formalized in Board Policy, but has guided IT procurement at the County for the last 25 years.

Based on this informal protocol, the County has engaged outside counsel to assist the County on 29 IT projects between 2008 and the present at an approximate cost of \$7.4 million. Though exact figures are not readily available, the County may have incurred close to \$10.4 million in related expenses between 1994 and 2008, based

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on the rate of spending between 2008 and 2018. This outside counsel review and analysis was particularly useful in the first years of this protocol, when County IT contract negotiation and program expertise was not yet fully developed. To further bolster the County's IT expertise and capacity, the Board and the Chief Administrative Officer (later renamed the Chief Executive Officer) hired the County's first Chief Information Officer one year after this informal protocol was developed.

In the two-and-a-half decades since this 1994 protocol was developed, County Counsel and the Chief Information Officer have expanded their staff and institutional expertise in IT procurement, project development and contract negotiation, as well as IT governance, oversight and project management. Despite these improvements, however, this protocol – and its associated expenses – persist. These costs are added to each individual IT project and result in increased costs, more work and a lengthening of the timeline for IT projects over the \$5 million threshold.

In April of 2018, recognizing that the informal "\$5m Outside Counsel IT Analysis" protocol was no longer serving its intended purpose or consistently adding value to the County's internal processes, County Counsel and the Chief Information Officer (CIO) partnered with the Board to revisit this informal Board protocol. The intention was to develop an alternative policy that would more strategically provide continued quality assurance in IT contract development and project delivery, without a blanket requirement to procure outside legal assistance on any project over a certain dollar-value threshold or a blanket exemption on any project below a certain dollar-value threshold.

In October of 2018, County Counsel and the CIO incorporated this new approach

into a proposed revision to existing Board Policy 5.150, "Oversight of Information Technology Contractors." County Counsel and the CIO jointly proposed amending this policy's title to, "Oversight of Information Technology Contractors and Retention of Outside Legal Counsel for County Information Technology Solicitations and Contracts," and included language establishing a new process by which County Counsel and the CIO will work with County Departments to assess where and when the assistance of outside counsel is warranted. Under this new policy, there will be no dollar-value threshold for outside counsel. Instead, this new process will include an assessment of costs, risks and security needs, the type of technology, software and licensing needed and anticipated exceptions to County terms and conditions, among other factors. After consulting with the CIO and the involved department and weighing the various factors, County Counsel will determine the necessity for retaining outside counsel. For example, County Counsel may retain outside counsel on particularly complex IT projects worth less than \$5 million, or may utilize in-house counsel to advise on straightforward IT projects worth more than \$5 million.

A revised Board Policy 5.150, "Oversight of Information Technology Contractors and Retention of Outside Legal Counsel for County Information Technology Solicitations and Contracts" was presented to and approved by the Los Angeles County Audit Committee on October 17, 2018, and is before the Board under another Agenda Item at today's Board of Supervisors meeting. This item includes the proposed revisions to the outside counsel analysis protocol, but does not expressly rescind the original 1994 Board Order.

I, THEREFORE, MOVE that the Board of Supervisors:

- a. Adopt Agenda Item 14, the Recommendation by the Los Angeles County Audit Committee to approve the proposed changes to Board Policy 5.150, “Oversight of Information Technology Contractors and Retention of outside Legal Counsel for County Information Technology Solicitations and Contracts.”
- b. Rescind Board Order No. 64 of October 11, 1994, which instructed County Counsel to develop and implement the informal board protocol on outside counsel information technology analysis, which will be replaced by the revised Board Policy above.

S: KK/Eliminating an Unnecessary Board Policy on IT Contracts

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- 1. Child Welfare
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- 3. County Services
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