



September 25, 2017

The Honorable J.S. Hermanson
Presiding Judge, Superior Court
County of Amador
500 Argonaut Lane
Jackson, CA 95642

RE: Response of the Amador County Board of Supervisors 2016-2017 Grand Jury Report

Dear Judge Hermanson:

The Board of Supervisors is disappointed in this year's Grand Jury Report. It appears that the Grand Jury missed a good opportunity to take a look at the contracting policies and practices of the county and to offer well-grounded suggestions to open the contracts of the county up to a wider pool of participants, increasing competition and allowing for potential cost savings. Instead, when it came to the investigation of activities by the HHS Departments, it appears that the Grand Jury decided on its findings before the investigation began and refused to fairly consider or include as part of the report the testimony by those who might offer factual evidence contrary to the preordained conclusions. The Grand Jury offers its best recommendation when it receives the most evidence and considers the most facts – not by discounting facts or refusing to interview those that might contradict what the Grand Jury wants to believe.

Nevertheless, the Board appreciates the thoughts of this Grand Jury and understands that there are some good suggestions made within this report. The Board knows that both the Grand Jury and the Board of Supervisors are working to improve the lives of the citizens of Amador County and has seriously considered the finding and recommendations contained within the 2017 Grand Jury Report. The Board's responses the two requested sections are as follows:

Bark Beetle Infestation in Amador County

Findings

F1. Tree mortality will continue because bark beetles are here to stay.

The respondent agrees with the finding, although the Bark Beetle has always been a part of the Amador County landscape. It will always be here, but the effects that it causes will vary from year to year, and have been exacerbated by a four year drought. Those effects appear to be ebbing right now.

F2. Amador County was awarded a \$5 million grant to remove trees that could potentially damage important county infrastructure and utilities.

The respondent agrees with the finding.

F3. In November 2016, the Amador Resource Conservation District (ARCD) was awarded two grants valued at \$400,000 from the CAL FIRE Tree Mortality Program.

The respondent agrees with the finding. Those grants were to assist in the removal of trees from private property.

F4. Grants to provide financial assistance to seniors and low income households are available to down trees killed by drought and bark beetles.

The respondent agrees with the finding. Those grants are not available through the county, but are available through the Fire Safe Council, ARCD and other local grant providers.

F5. Other outlets for the abatement of dead trees are being investigated by organizations, such as Ampine Corporation, Buena Vista Biomass Power, and lumber mills.

The respondent agrees with the finding, although the Buena Vista Biomass Power plant has closed due to an ongoing lawsuit over the purchasing of the power.

F6. Amador County Board of Supervisors is consulting with other counties to see what they are doing to solve the issue.

The respondent agrees with the finding

F7. PG&E is working with contractors to down trees.

The respondent agrees with the finding

F8. A list of registered foresters, tree service companies, and timber operators is available through the Amador County Tree Mortality Task Force.

The respondent agrees with the finding - and the list is also available through the Amador County website.

F9. Licensed timber operators from out of state are downing the infected trees and hauling them back to their place of business to process.

The respondent agrees with the finding. There are many contractors working on the effort, both from within California and from outside. There are also many ways that these trees are being processed, and this is only one of them.

F10. Caltrans has a public information line which can be utilized if a tree poses a hazard to a state highway, or personal property that is near a state highway.

The respondent agrees with the finding.

F11. There are some grants available for private property owners; grants are funded through fire protection fees collected each year.

The respondent agrees with the finding. Those grants are not available through the county, but are available through the Fire Safe Council, ARCD and other local grant providers

F12. In summary, the Amador County Board of Supervisors has been doing a thorough job in keeping the community informed and up to date as to resources and finances available for dead tree abatement. Their establishment of the Amador County Tree Mortality Task Force has been key to assisting the community with the burden of dealing with the crisis, especially on private property.

The respondent agrees with the finding. This is a significant threat, and Amador County's approach to the hiring of the contractors has been to be as minimally restrictive as possible. As a result, the costs associated with the removal of trees that are a threat to county infrastructure has been significantly lower than originally estimated.

Recommendations

R1. The 2016-2017 Amador County Grand Jury recommends that the Amador County Board of Supervisors continue their efforts to alleviate the impact of tree mortality and excess tree debris.

The respondent agrees with the finding. The county will continue working on the trees that threaten county infrastructure. It is anticipated that the project will be complete in the first half of 2018, and will be well within the original budget. The county is experiencing delays due to additional requirements from BLM prior to getting a permit to complete the work.

Health and Human Services Contracts

Findings

F1. Prior to the release of the RFP, ATCAA was sole source for programs which the County put out for bid.

The respondent disagrees wholly with the finding. General Services has no evidence of ATCAA being a sole source for the programs let out for RFP. Of the nine (9) contracts made available in 2014 ATCAA did not respond to two (2) of them, leaving seven (7) open and ATCAA was awarded four (4) of those seven (7). In addition, of the nine (9) contracts let out for RFP, four (4) separate and distinctly different firms responded to various contracts; being non-responsive to two contracts and having other firms respond to various contract is evidence ATCAA is not a sole source .

In addition, the use of the word “Bid” used throughout this report is incorrect as there are distinct differences, processes and laws governing an “RFP” versus a “Bid”. These differences were explained to the Grand Jury and emphasis was added to make sure the Grand Jury did not confuse the two procurement methods because the fundamental differences are critical to understand if you are to elevate matters with any sense of accuracy.

F2. County employees willingly worked with Principals to subvert ATCAA, a JPA formed by Amador and Tuolumne Counties.

The respondent disagrees wholly with the finding. There has been no demonstration of this in the report and the Grand Jury is jumping to a conclusion that is not based in fact. Subvert is a word that is quite caustic and not constructive to this report. This is an extremely significant accusation that is made with absolutely no evidence of maliciousness on the part of staff. There are allegations of bid rigging, and despite the testimony and evidence given to the Grand Jury to show otherwise and a confirming investigation by the District Attorney, the Grand Jury still insists that there was wrongdoing by county staff.

F3. Personal relationships with Principals led to favoritism.

The respondent disagrees wholly with the finding. There has been no demonstration of this in the report and the Grand Jury is jumping to a conclusion that is not based in fact. There has not even been a demonstration of any personal relationships. Staff is familiar with the personnel associated with Nexus through professional contact ONLY. The Board is still not aware of any evidence to the contrary.

F4. The HHS Director did not justify the existence of actual competition, which resulted in an RFP process for contracts being served by a sole-source JPA.

The respondent disagrees wholly with the finding. The county should always default towards encouraging competition amongst contractors, regardless of whether the county knows that there are other entities that are going to pursue the contracts or not. The HHS Director should not need to justify this before going out to bid. The burden of proof lies in the contention that any provider is a sole-source. That contention was not being made, so no justification was required.

F5. The HHS Director selected nine contracts for RFP, not based on need, but rather were “cherry picked” at the request of Nexus’ principal staff.

The respondent disagrees wholly with the finding. The contracts that were bid are the ones that were available to bid.

F6. The HHS Director, being aware of the intent by Nexus principals to undermine and create Nexus while still employed by the JPA, failed to report this to the ATCAA ED or Amador County Supervisors on the ATCAA Board.

The respondent disagrees wholly with the finding. The Board agrees with the statement that staff did not intervene in an internal issue between ATCAA and its staff. The county has no responsibility to interfere in internal issues based on rumor or innuendo, and would be best positioned if it did not - which is what happened.

F7. The HHS Director and GSA Director did not take action after being made aware of potential concerns with the proposals that had been submitted.

The respondent agrees with the finding. Staff did not have the authority to reject a proposal because of a claim by a competitor of anything other than considerable evidence of collusion. That claim was not made. The concerns that were brought forward consisted of an internal issue between Nexus and ATCAA and did not involve the county’s contracting. ATCAA did file a bid protest, but withdrew that protest, indicating to the county that they accepted the results of the bid. Staff acted appropriately given the information that they were given.

F8. The HHS Director did not recuse himself from the evaluation process, until AFTER he had made key changes to the RFP process that directly benefitted Nexus.

The respondent disagrees wholly with the finding. The HHS Director steadfastly indicates that he did not change the scoring criteria. Nevertheless, the scoring should not include current consideration of current facilities. Consideration of current facilities restricts competition to those companies that already have contracts. The scoring criteria are valid, and should be kept in place for future contracts, as well. Ironically enough, what the Grand Jury suggests – that the

County acted inappropriately by opening the proposals to outside companies – is exactly the opposite of what the Grand Jury should be concerned with. The repeated granting of a contract to the same entity without requiring a bid or other competition is an invitation for corruption.

F9. There was purposeful alteration of the normal County RFP criteria, specifically to benefit Nexus.

- **Allowed use of letters of support instead of letters of recommendation**
- **Allowed use of information for personnel that were known to remain working for competitor ATCAA, not Nexus**
- **Changed weighting scores to benefit Nexus by weighing high on staff, but ignoring facility and entity performance history Health and Human Services Contracts**

The respondent disagrees wholly with the finding. There is no proof that the changes were made to solely benefit Nexus. The changes did allow for an outside agency to come in, and they encouraged competition. The scoring as it was originally planned did appear to disproportionately favor ATCAA, and these changes made for a more level playing field. None of these things are inappropriate, and should all be weighed by staff during the scoring process.

If an organization is required to have a facility in place before they are allowed to bid on work, which is the old way of doing things, then there would be no viable competition. It is by encouraging competition that the county encourages innovation and ensures itself that the prices being paid are the best possible use of taxpayer money. Staff would expect the Grand Jury to be upset if staff had NOT made these changes, as the prior scoring was overly restrictive.

F10. The County Proposals use evaluation weighting in which suitability of proposed facilities are no longer a criteria.

The respondent disagrees wholly with the finding. The Board is unsure why the Grand Jury believes that this is such an important criterion. It is also unclear as to exactly what the Grand Jury believes was changed, since there has not been a previous RFP issued for these contracts, so there was no basis established that was changed by staff.

The consideration of facilities actually creates a significant barrier to entry for any entity that is looking to enter the Amador market, as they will not be likely to have a facility until they get a contract. There is nothing inappropriate about this change, despite the insinuation otherwise.

F11. County staff intentionally did not inform a long serving JPA and sole source provider (ATCAA) of intentions to go out to RFP.

The respondent disagrees wholly with the finding. This is factually incorrect. For RFP's 14-12, 14-13 and 14-18 inclusive of the nine (9) contracts let out for competition, ATCAA was notified of all of them via email from General Services. In addition, the County utilizes Public Purchase which is a national web based service for all RFP's, RFQ's and Bids. Individuals and/or firms

register on this site to obtain notification and updates on procurements. Not only is ATCAA registered, it is their responsibility to list whom is to receive notifications of procurements. For RFP 14-12, 14-13 and 14-18, ATCAA registered three different individuals as their designated contacts; this is in addition to other phone calls and email correspondence to ATCAA from General Services. General Services also receives an access report from Public Purchase, these reports verify that ATCAA did download and access all of the RFP's. In fact, on one occasion staff reached a second time, specifically to the Executive Director for ATCAA, to ensure they had received RFP 14-18, and the ED responded affirmatively via email.

F12. The timing of the RFP favored Nexus – it had advance notice. However, other potential bidders were given an unusually short and unreasonable response time.

The respondent disagrees wholly with the finding. General Services has required publishing requirements that are in the form of legal notices published in the paper of general circulation. Depending upon the noticing requirements, other publications may be posted in other papers. These publications are provided to competitors at the same time. In addition, County departments often have known contractors, providers, exchanges or professional organizations they wish to notice specifically to increase notification efforts and stimulate greater competition. The departments often provide a listing of those firms, individuals and/or professional organizations to GSA. Those listed are provided an email the same day legal notices are published, and not before then. There is no evidence whatsoever Nexus was provided advance notice and all respondents had the same amount of time to respond.

F13. The HHS Director engaged in purposeful communication with Nexus Principals (while still employed at ATCAA) to keep ATCAA senior manager uninformed.

The respondent disagrees partially with the finding. The Board agrees with the fact that county employees communicated with ATCAA employees, and according to the Grand Jury, those employees kept their senior management in the dark. The Board disagrees with the allegation that the HHS Director acted to keep the ATCAA Senior Manager uninformed.

F14. The HHS Director has publicly shown bias by praising Nexus to other agencies and counties, recommending Nexus for additional grants.

The respondent disagrees wholly with the finding. It is not uncommon for a public agency to give a letter of recommendation to a contractor that does good work. In fact, Finding #9 criticizes the county for accepting letters of support rather than simply requiring letters of recommendation. If letters of recommendation are inappropriate, then why does the Grand Jury expect them and how would those letters even exist if government agencies cannot write them?

F15. County employees with a personal relationship were allowed to engage in the RFP process and evaluation.

The respondent disagrees wholly with the finding. There is no proof that there is anything other than a cordial, professional relationship between anyone at the County and any Nexus employees. The Grand Jury believes otherwise, but there is no proof, and the HHS Director vehemently denies anything other than a professional relationship.

F16. County does not have an adequate method in which to quantify, measure, and establish performance for behavioral health and social services contracts.

The respondent disagrees wholly with the finding. The county has specific measurement tools for each of its contracts in these areas - often the specific data gathered is required by the state as part of the allocation of funds. Other measurements are developed based on input from consumer groups and are updated annually. This is an ongoing process and will continue to be adapted and improved as required by state requirements or developed with local consumer input.

Recommendations

R1. County restructure the bid process involving members of other counties to develop a conflict-free formation of Request for Proposals and Evaluations. (Findings 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16)

The recommendation requires further analysis. The Board will discuss the issues raised here at its Administrative Committee and will make a decision regarding this recommendation within the next three months.

R2. Re-establish a formal 3-year contract review process. (Findings 2, 4, 5, 12,)

This recommendation will be implemented within the next six months.

R3. Develop quantifiable measurements of performance for contractors, and use other counties employees to audit. (Findings 3, 14, 16)

The recommendation requires further analysis. The Board will discuss the issues raised here at its Administrative Committee and will make a decision regarding this recommendation within the next three months.

R4. Revise County and Purchasing Conflict of Interest Policies to include periodic review and admonishment of key employees who can influence financial commitments to outside entities. (Findings 2, 3, 5, 6, 8, 13, 14, 15,)

This recommendation will be implemented. Specifically, a timeframe for refreshing the training of those involved in purchasing will be implemented within the purchasing policy within the next six months.

R5. Create a bid justification process and form to justify a decision to use a competitive contract process. (Findings 1, 2, 3, 4, 5)

The recommendation will not be implemented because it is not reasonable. As a matter of practice, the County should default towards putting out a bid whenever a question arises. The real justification is needed if the decision is made to NOT go out to bid when contracts such as this are at question. The encouragement of competition and allowing the free market to offer solutions that the county cannot provide typically results in better service and costs for the taxpayers of the county. When the current contract holder is allowed to routinely retain their contract without having to compete for it, there is no incentive to hold down costs and in the end will typically end up costing the county more in the end.

R6. Revise Purchasing Policy to, as a minimum, notify all chief executives of agencies when going out to bid on a program in which the agency could have a legitimate stake in. Include in policy that this period of time shall be not less than 60 days before release of a Request for Proposal. (Findings 11, 12, 13)

The recommendation will not be implemented because it is not reasonable. Through the Public Purchase website, each interested organization can identify where the notice should go. If each organization would like for the notification to go to their Chief Executive, they are free to enter that information. In this case, ATCAA did not designate their Chief Executive as the person that the notification should go to, so it went to their designee instead – exactly as it should and will continue to until we are notified otherwise. The county would recommend that the entry in public purchase be modified to reflect the wish that all advertisements be sent to the Chief Executive, but this is the responsibility of ATCAA.

R7. Require criteria for suitability of proposed facilities in all Health, Behavioral Health, and Social Services Request for Proposals. (Finding 10)

The recommendation will not be implemented because it is not reasonable. As stated above in R5, the county benefits by encouraging competition. Adding this requirement severely restricts the ability of an outside agency to challenge the current contract holder, as only the current contract holder is likely to have currently operating facilities. The county might as well give a permanent contract if that is going to be a requirement. The Board hopes that everyone can agree that would not be a wise move.

R8. Revise Protest Procedure to include discoveries after release of a Request for Proposal, and after bid awards. (Finding 7)

The recommendation will not be implemented because it is not reasonable. There are no changes needed to this process. ATCAA did submit a bid protest, but did not submit the information that is required as part of the protest. As such, the county had no means to validate any of the rough insinuations that were being submitted by ATCAA despite the requirement that the protest include documentation of the claims. Ultimately, ATCAA withdrew its protest rather than assembling the needed documentation.

R9. Create and apply Conflict of Interest curriculum for periodic training for employees at all levels. Increase frequency of training for employees who have authority to influence greater impact. (Findings 3, 8, 14, 15,)

The recommendation will not be implemented because it is not warranted and is not reasonable. There is no need for the additional costs associated with this. No problem has been demonstrated to this point. A county conflict of interest code already exists and functions adequately.

R10. Remove all parties with a conflict of interest, or any personal relationship to proposers, from evaluation processes before it begins. Include Abort or Mitigation protocols should discovery of conflicted influence be detected. Include detection process. (Findings 3, 8, 14, 15,)

The recommendation will not be implemented because it is not warranted and not reasonable. A conflict of interest is well defined by state and federal law, and the Grand Jury has not identified any actual legal conflict. As such, this recommendation is not supported by the Findings. Further, all of the existing conflict of interest laws and regulations remain applicable, and in the event an actual legal conflict is identified in the future, the county always has the ability to stop an RFP process before a contract is signed.

R11. Set completion date for the aforementioned Recommendations for December 31, 2017.

The recommendation will not be implemented because it is not reasonable. The implementation dates will be as set in the recommendations that are being accepted.

R12. Announce to all known possible competitors of Behavioral Health and Social Services directly, and publicly in early January of 2018, the intention to go to bid on all programs in which ATCAA and Nexus have ever mutually served on for the last five years.

The recommendation will not be implemented because it is not warranted and not reasonable. All nine contracts involved in this complaint have already been rebid. They will be bid again when they expire – the county should not terminate the contracts early, as there is no justification for that. The county always advertises to all known providers of a service when it makes any advertisement for bid or proposal.

R13. Go to RFP for those programs in April of 2018, for fiscal year 2018/2019.

The recommendation will not be implemented because it is not reasonable. All nine contracts involved in this complaint have already been rebid. Several of those contracts have expired and are in the process of being rebid right now.

R14. County to seek assistance from Department of Health Care Services to develop a System Improvement for contract and grant procedures.

The recommendation will not be implemented because it is not reasonable. The county's system complies with state law. The purchasing policy will be reviewed by the Board and changes will be made as indicated above, but this will be kept at a local level.

Thank you for allowing the Amador County Board of Supervisors the opportunity to respond to the 2016-2017 Grand Jury Report.

Sincerely,

A handwritten signature in black ink that reads "Richard M. Forster". The signature is written in a cursive style with a long horizontal flourish at the end.

Supervisor Richard M. Forster
Chairman, Amador County Board of Supervisors

Cc: Chuck Iley, County Administrative Officer
Greg Gillott, County Counsel
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