

C O U N T Y A D M I N I S T R A T O R



SUSAN S. MURANISHI
COUNTY ADMINISTRATOR

April 3, 2020

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, CA 94612-4305

Dear Board Members:

**SUBJECT: APPROVE AN AGREEMENT WITH THE STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES, OFFICE OF
ADMINISTRATIVE HEARINGS FOR ADMINISTRATIVE LAW
JUDGE SERVICES IN THE MAXIMUM AMOUNT OF \$25,000**

RECOMMENDATION:

- A. Approve a sole source agreement with the State of California Department of General Services, Office of Administrative Hearings to provide Administrative Law Judge services for the County's Workers' Compensation Program for the term of April 24, 2020 through April 23, 2025, in an amount not to exceed \$25,000.
- B. Delegate authority to the County Administrator to sign and execute the agreement, upon review and approval as to form by County Counsel and submit an executed copy of the agreement to the Clerk of the Board for filing.

SUMMARY/DISCUSSION:

The County Administrator's Office-Risk Management Unit (CAO-RMU) is responsible for providing comprehensive Workers' Compensation and risk management services that promote the health, wellness and safety of County of Alameda employees and the public; reduce the County's loss exposures; and minimize the total cost of risk to the County. The County's Workers' Compensation (WC) claims are self-insured for benefits and administrative costs. The program is managed by CAO-RMU and includes coordination of Alameda County Employees' Retirement Association (ACERA) and California Public Employees' Retirement System (CalPERS) benefits.

Claims are funded through the County's WC reserves (self-insurance) and participation in the California State Association of Counties Excess Insurance Authority (CSAC-EIA) program. The CAO-RMU contracts with a third-party claims administrator who is responsible for reviewing, accepting claims, and paying benefits.

The State Department of General Services, Office of Administrative Hearings (OAH) is responsible for providing services of Administrative Law Judges and case management staff to the requesting local agency (County), for the purpose of conducting hearings and a variety of proceedings, including personnel and

disciplinary hearings, and labor arbitration. OAH performs all case management and hearing services for CalPERS members' disputed WC cases. OAH also provides a court reporter and is responsible for electronic recording of all hearings and record retention of all decisions and documents on behalf of the County.

The current contract with OAH will expire on April 23, 2020. In order to avoid any potential disruption of hearing services related to the County's WC program, your Board is requested to approve a new five-year Standard Agreement with OAH to provide administrative law judge and case management services and approve forwarding of the agreement to OAH for final processing.

SELECTION CRITERIA/PROCESS:

The County Administrator's Office-Risk Management Unit submitted a Sole Source procurement request to General Services Agency (GSA)-Procurement Department, citing an approved exception to the County Competitive Policy requirement which falls under Section V. Approved Exceptions to the County Competitive Procurement Policy – Item J. State or Federal Mandated Product or Services. On April 1, 2020, GSA-Procurement approved the request and issued a Finding Memo of Non-Competition, Sole Source No. 6535. On April 1, 2020, the GSA-Office of Acquisition Policy issued a Small, Local and Emerging Business (SLEB) waiver for the agreement (Reference No. 18974, expiration date 4/23/25).

FINANCING:

Appropriations for this contract are included in the CAO-RMU Fiscal Year 2019-20 Approved Budget and will be included in future budget requests. No additional appropriations are required, and there will be no increase in net County cost as a result of your Board's approval of the contract.

VISION 2026 GOAL:

Approval of this item supports the Vision 2026 Operating Principle of **Fiscal Stewardship**.

Very truly yours,



Susan S. Muranishi
County Administrator

SSM:LA:APR:msd

c: Melissa Wilk, Auditor-Controller
Donna Ziegler, County Counsel
Amy Costa, Deputy County Administrator
Lucretia Akil, Director of Risk Management

STANDARD AGREEMENT

AGREEMENT NUMBER

1. This Agreement is entered into between:

LOCAL AGENCY'S NAME

County Of Alameda, County Administrator's Office, Risk Management Unit

CONTRACTOR'S NAME

Department of General Services / Office of Administrative Hearings

2. The term of this Agreement is:

Upon the date of approval and execution by all parties through five years

3. The maximum amount of this Agreement is:

\$ 25,000.00

Twenty Five Thousand Dollars and No Cents

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work 5 pages

Exhibit B – Budget Detail and Payment Provisions 2 pages

Exhibit C – General Terms and Conditions 1 pages

Exhibit - Service Revolving Fund (SRF) Directive – Payment By Wire Transfer Form 1 pages

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By

Print Name

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME

Office of Administrative Hearings

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Phoenix Lawson, Staff Services Manager I

ADDRESS

2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833

LOCAL AGENCY

LOCAL AGENCY NAME

County Administrator's Office, Risk Management Unit

BY (Authorized Signature)

DATE SIGNED(Do not type)

4/30/20

I declare under penalty of perjury that I have full authority to execute this agreement on behalf of the Local Agency.

PRINTED NAME AND TITLE OF PERSON SIGNING

Susan S. Muranishi, County Administrator

ADDRESS

1221 Oak Street, Room 555, Oakland, CA 94612

EXHIBIT A

SCOPE OF WORK

1. Upon request of County Administrator's Office, Risk Management Unit (hereinafter referred to as "Local Agency"), the Office of Administrative Hearings (OAH) agrees to furnish the services of Administrative Law Judges (ALJs) and case management staff to the Local Agency, for the purpose of managing cases and conducting hearings under Government Code section 27727 when required personnel are available by OAH. The assignment of ALJs for hearings will be at the discretion of the Director and/or Presiding Administrative Law Judges, who may elect to hear the matter themselves.

2. Project Representatives

The project representatives during the term of this agreement will be:

Office of Administrative Hearings

Alan R. Alvord, Presiding Administrative Law Judge, General Jurisdiction Division

Phone: 619-525-4475

Email: Alan.Alvord@dgs.ca.gov

Local Agency: County Administrator's Office, Risk Management Unit

Name: Maria Songco-Daluz

Title: Workers' Compensation Administrator

Phone: (510) 272-3646

Email: msdaluz@acgov.org

Direct all inquiries regarding this agreement to:

Office of Administrative Hearings

Tim Dean, Contract Analyst

2349 Gateway Oaks Dr. Suite 200

Sacramento, CA 95833

Phone: 916-263-0791

Email: tim.dean@dgs.ca.gov

Local Agency: County Administrator's Office, Risk Management Unit

Attention: Maria Songco-Daluz

Address: 125 12th Street, 3rd Floor, Oakland, CA 94607

Phone: (510) 272-3646

Email: msdaluz@acgov.org

All invoices and billing shall be to directed to:

Local Agency: County Administrator's Office, Risk Management Unit

Attention: Maria Songco-Daluz

Address: 125 12th Street, 3rd Floor, Oakland, CA 94607

Phone: (510) 272-3646

Email: msdaluz@acgov.org

The Project Representative and Agreement and Billing Representative may be changed through written confirmation to the other party. This change shall not require an amendment to this agreement. It may take up to two billing cycles for a change to the Local Agency Billing Contact to be in effect.

3. Services to be Performed:

- a. The Local Agency shall provide OAH a written request to set a matter for hearing or mediation with all pleadings, documents, papers, or other materials that have been provided to the other party. The Local Agency agrees to provide OAH copies of all applicable laws and ordinances governing the hearing at the time the request for hearing or mediation is made. The Local Agency agrees that OAH will not be able to schedule a hearing or mediation until these materials are provided. The Local Agency shall indicate in the request to set a matter for hearing if OAH is to issue a proposed or final decision in the matter. If a proposed decision is required, Local Agency shall provide the name and contact information for the decision-maker who is responsible for making the final decision.

- b. The Local Agency shall electronically file the request to set a matter for hearing and all other required pleadings and papers with OAH using the secure electronic filing system offered by OAH or otherwise in accordance with OAH requirements.
 - c. The Local Agency shall inform OAH if the hearing is to be electronically recorded or if a court reporter is required. If a court reporter is required, the Local Agency shall indicate at the time the request a hearing if they will be providing a court reporter or if OAH should provide one. Unless the Local Agency or OAH determines a court reporter is required by statute, ordinance, or regulation, the hearing will be electronically recorded by OAH.
 - d. OAH shall perform all case management and hearing services that OAH, in its sole discretion, deems necessary to the proper handling and adjudication of the case.
 - e. The Local Agency agrees to inform OAH 30 days prior to the hearing if any accommodations or interpreters are required. Local Agency shall be responsible for the costs of accommodations or interpreters. If OAH incurs costs for providing reasonable accommodations, interpreter or translation services for any matter under this agreement, those costs shall be borne by the Local Agency.
 - f. Record Retention: OAH shall retain all records in accordance with its current record retention schedule. If the Local Agency requests OAH to issue a proposed decision, the exhibits will be returned to the Local Agency Project Representative along with the proposed decision at the conclusion of the matter, and the Local Agency shall be deemed the custodian of the administrative record.
4. Service Location: The services shall be performed at a location convenient for OAH and all parties. The Local Agency shall file a request for mediation or hearing directly with the local OAH office which is handling the matter.
5. Record of the Proceeding:
- a. If a Court Reporter is not used, OAH shall be responsible for electronic recording of all hearings, and shall impose a recording fee not to exceed the amount set by the Department of General Services through the Price Book. The current Price

Book is located at: <https://www.dgs.ca.gov/OFS/Price-Book>. The electronic recording fee shall only be imposed following the actual recording of a proceeding and shall not be included as part of the filing fee.

- b. If OAH provides a Court Reporter, the Local Agency is responsible for all costs associated with the Court Reporter, in accordance with the current contract rates. Current contract rates, including Court Reporter and transcription costs, can be found at: <https://www.dgs.ca.gov/OAH/Case-Types/General-Jurisdiction/Resources/Page-Content/General-Jurisdiction-Resources-List-Folder/Find-Contract-Information-to-Obtain-OAH-Court-Reporter-Services>.
- c. OAH shall arrange for transcription of hearing recordings upon the request of any party to the proceeding or the Local Agency Project Representative and upon receipt of payment for transcription costs. OAH may use a vendor for transcription services.
- d. OAH will charge a requesting party the actual cost of preparing the administrative record. If the requesting party has been declared in forma pauperis, or has received a waiver of court fees from a court of competent jurisdiction in a case arising out of the OAH matter, and is seeking judicial review of the case before OAH, the Local Agency shall pay the full costs for preparing the administrative record and/or transcript. OAH will notify the Local Agency of the associated costs prior to preparing such records.
- e. OAH will not include within its administrative record any records or hearing exhibits the custody of which has been transferred to the Local Agency. OAH may prepare a clerk's record upon request and payment of associated fees in these circumstances.

6. Rates

- a. In consideration of the performance of such services by OAH, the Local Agency agrees to pay to OAH the full cost of rendering such services at the rate established at the time the services are rendered. The Local Agency is responsible for the filing fee for each case filed, ALJ (including Presiding Administrative Law Judge, and Division Presiding Administrative Law Judge)

time billed at an hourly rate, an electronic recording fee if the proceedings are electronically recorded, the cost of all accommodation or interpreter services requested, and the full cost of any preparation of the clerk's record or transcript at the current contract rates.

- b. In the event a calendared case is taken off-calendar, or needs to be re-calendared, other than by OAH, and OAH is unable to schedule the ALJ for work on another case, the Local Agency agrees to pay OAH for the original hearing time or until the ALJ is assigned to another case, whichever occurs first. Every effort will be made to promptly reassign the scheduled ALJ in the event a calendared matter is cancelled, taken off-calendar, settled, re-calendared or continued.
 - c. The costs of OAH's services include filing fees, ALJ hourly rates, any reasonable costs related to any requested accommodations, and translator/interpreter fees as required. All costs associated with providing a record of the hearing (reporter/transcription, etc.) shall be billed directly to the requesting party or the Local Agency in accordance with Section 5 above. ALJ hourly rates and filing fees charged by OAH will be the rates set forth in the Department of General Services' Price Book at the time the services are rendered. Rates for court reporters will be the current contract rates at the time the services are rendered, which vary by geographical location. Fees for translator/interpreters and transcription services will be based on current contract rates at the time the services are rendered. All rates are subject to change annually. The current contract rates for these services can be found on OAH's website.
 - d. The Local Agency agrees to be responsible for the full costs of any service provided by OAH on a Local Agency case, regardless of any agreement the Local Agency may have with a third party or any other cost-sharing provision.
7. The contract is effective upon approval and execution of all signatures to this contract. The term of this contract is five years from the effective date of the contract. This contract may only be amended for term and amount upon mutual agreement of the parties.

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. The Office of Administrative Hearings is a reimbursable entity as detailed in Government Code section 11370.4. Notwithstanding any other provision of law, the total cost of services provided by the OAH shall be collected from the Local Agency entering into this agreement.
2. Parties shall keep apprised of the balance of this agreement at all times. Local Agency agrees to notify OAH when the expended amount is close to exhausting the funds in this agreement.
3. For services rendered in accordance with the Scope of Work, the Local Agency shall compensate the OAH for the full cost of services and actual expenditures incurred in accordance with the rates specified herein. Compensation for services rendered by OAH pursuant to this agreement shall not be dependent on the decision rendered by the ALJ in a hearing involving the Local Agency. OAH charges shall include the following: filing fees, electronic recording fees, Administrative Law Judge hourly charges, and translator/interpreter fees as required. Additionally, all costs associated with providing a record of the hearing (reporter/transcription, etc.) shall be billed directly to the Local Agency.
4. Invoices shall be paid promptly and delays in payment may result in OAH's discontinuation of services.
5. ALJ hourly rates and filing fees charged by OAH will be the rates set forth in the Department of General Services' Price Book at the time the services are rendered. Rates for court reporters will be the current contract rates at the time the services are rendered, which vary by geographical location. Fees for translator/interpreters and transcription services will be based on current contract rates at the time the services are rendered. All rates are subject to change annually. Any training required of the ALJs by the Local Agency to conduct these hearings will be paid out of the contract funds by the

Local Agency at the prevailing ALJ hourly rate. The Price Book is available at <http://www.dgs.ca.gov/ofs/Pricebook.aspx>.

6. OAH shall be paid not more frequently than monthly, in arrears, upon issuance of an invoice by the Department of General Services which details charges, expenses, direct and indirect costs.
7. Payment may be completed through direct transfer, in accordance with Service Revolving Fund Directive, SRF #1025, attached hereto as Exhibit D. For questions about establishing a wire transfer process with OAH/DGS, the Local Agency shall contact DGS at SRFFISCALSERVICES@dgs.ca.gov or the OAH Project Representative.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties.
2. AMENDMENT: Except as noted in Exhibit A, Paragraph 2, no amendment or variation of the terms of this Agreement shall be valid, unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. CANCELLATION/TERMINATION:
 - A. This agreement may be cancelled or terminated without cause by either party by giving 30 calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.
 - B. Upon receipt of a notice of termination or cancellation from the Local Agency, OAH shall take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
 - C. OAH shall be entitled to payment for all allowable costs authorized under this agreement, including authorized non-cancelable obligations incurred up to the date of termination or cancellation, provided such expenses do not exceed the stated maximum amounts payable.
4. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
5. SETTLEMENT OF DISPUTES: In the event of a dispute, the Local Agency shall file a "Notice of Dispute" with the Director of OAH within 10 days of discovery of the problem. Within 10 days, the Director of OAH may meet with the Local Agency for purposes of resolving the dispute. The Director of OAH shall make the final administrative decision regarding a dispute.

EXHIBIT D

Service Revolving Fund (SRF) Directive – Payment By Wire Transfer Form

SERVICE REVOLVING FUND (SRF) DIRECTIVE

Number: SRF # 1025	Subject: PAYMENT BY WIRE TRANSFER	Date Issued: REV 10/2018
References: SAM Section <u>8091</u>		

PURPOSE

To outline the process for a private company to set up wire transfer documents with their banking institution in making payments to the State of California, Department of General Services (DGS).

PROCEDURES

The following instructions are for the private company and their banking institution, the DGS Office contact person, and the DGS SRF Receivables Analyst in requesting and processing wire transfers:

A. APPROVAL REQUESTED TO TRANSFER FUNDS INTO DGS ACCOUNT

Either the private company or the DGS Office is to contact SRF Receivable Analyst by E-mail at SRFFISCALSERVICES@dgs.ca.gov to obtain **approval to wire transfer funds into the DGS Account**. The following information is needed along with any pertinent data that would help identify the nature of the payment:

1. Company Name
2. Company Representative (name, phone, e-mail and fax number)
3. DGS Office contact person name
4. Escrow Account Number
5. Reason for payment
6. Amount

If you have any questions regarding the wire transfer process, please contact SRF Receivables Analyst by E-mailing to SRFFISCALSERVICES@dgs.ca.gov or by phone at 916-376-5182.

B. WIRE TRANSFER PROCESS

1) PRIVATE COMPANY & BANKING INSTITUTION

Provide your banking institution with the following information to set up wire transfer payments to DGS (banking customer is responsible for the payment of any processing fee):

ABA Routing Number: 026009593
Account Number: 14360-80784

Department of General Services
OFS - SRF Fiscal Services
707 Third Street, 10th Floor
West Sacramento, CA 95605

2) DGS OFFICE CONTACT PERSON

Provide DGS OFS 2028 Report of Check/Cash Collection to the SRF Receivable Analyst as soon as you know that a wire transfer payment is in process. This will ensure the money is recorded properly in the Financial Information System for California (FI\$Cal) Accounts Receivable Module.

3) DGS SRF RECEIVABLES ANALYST

Once the wire transfer has been made, SRF Receivable Analyst will run the State Treasury Bank of America Report and apply the transfer using the Report of Check/Cash Collection or the E-mail from the private company or the DGS Office to record the transfer of funds in FI\$Cal.



April 1, 2020

TO: Detra Dillon, Procurement Administrator, General Services Agency

FROM: **Bee Srey**, Procurement & Contracts Specialist

SUBJECT: FINDING OF NON-COMPETITION – SOLE SOURCE # **6535**
PURCHASE FROM **STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES, OFFICE OF ADMINISTRATIVE HEARINGS (OAH)** LOCATED IN **SACRAMENTO, CA**

This is to document my finding that competitive bidding is not possible for the purchase of **Judge Services for Administrative hearings** in the amount of **\$50,000.00 (\$25,000 approved per sole source #6431; \$25,000 requesting increase)** for the approximate term from **04/10/2020 to 04/23/2025** for **County Administrator's Office (CAO)**.

The County Administrative Code Section 4.12.010 promotes competition for the purchase of goods and services. There may be instances which require exceptions as noted in the County of Alameda Sole Source Policy: **Section V. Approved Exceptions to the County Competitive Procurement Policy - Item J. State or Federal Mandated Products or Services.**

Per the Departmental Justification to Request a Waiver of County Competitive Bidding Requirement the requested **Services** and supplier cannot be substituted. **CAO is mandated to utilize Administrative Law Judge services from OAH for County related matters pursuant to California Government Code 27727. The required services include administrative hearings, mediation, arbitration, and other dispute resolution processes. The Judge services will be used as-needed. CAO was approved a sole source #6431 to use these services for a three-year term, 4/10/20-4/9/23. This request is for additional two years to extend the contract to 4/23/25.**

The Independent Cost Estimate was completed for \$50,000 based on CAO's analysis of history of needs to prepare for cases that may come up. The pricing offered reflects a downward trend in price increase, only 3% this year compared to last year pricing and 11% and 18% in previous years respectively, due to increase workload projection by OAH in the 2019-20 fiscal year. This procurement is deemed to be fair and reasonable and is recommended for your approval.

County Administrator's Office is to obtain Board approval for services that exceed \$25,000 requesting authorization from the President of the Board to sign the contract or approve the purchase. The Auditor-Controller issues Board signed contracts, Board approved purchase orders and purchase order changes with/without signed contracts.

GSA Procurement:

Approved:

 Detra Dillon

4/1/2020

Detra Dillon, Procurement Administrator

For supporting documentation see salesforce bid waiver record # **6535**

 EB