



Grand Jury <grandjury@scgrandjury.org>

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## ACTTC response to 2019 grand jury report

1 message

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**Edith Driscoll** <Edith.Driscoll@santacruzcounty.us>  
To: "grandjury@scgrandjury.org" <grandjury@scgrandjury.org>  
Cc: Laura Bowers <Laura.Bowers@santacruzcounty.us>

Wed, Sep 25, 2019 at 7:17 PM

Attached please find the completed response packet as an attachment. The CAO's staff is submitting all of our responses, however I wanted to be sure the ACTTC document was submitted today.

Best Regards,

Edith Driscoll

Auditor-Controller / Treasurer-Tax Collector

454-2683

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 **acttc response 2019.pdf**  
375K



**The 2018–2019 Santa Cruz County Civil Grand Jury  
Requires that the  
Santa Cruz County Auditor-Controller  
Respond to the Findings and Recommendations  
Specified in the Report Titled  
Santa Cruz County’s Public Defense Contracts  
How Complex Contracts Mised County Leaders  
by September 25, 2019**

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When the response is complete, please

1. Email the completed Response Packet as a file attachment to [grandjury@scgrandjury.org](mailto:grandjury@scgrandjury.org), and
2. Print and send a hard copy of the completed Response Packet to  
The Honorable Judge John Gallagher  
Santa Cruz Courthouse  
701 Ocean St.  
Santa Cruz, CA 95060

## Instructions for Respondents

California law PC §933.05 (included [below](#)) requires the respondent to a Grand Jury report to comment on each finding and recommendation within a report. Explanations for disagreements and timeframes for further implementation or analysis must be provided. Please follow the format below when preparing the responses.

### **Response Format**

1. For the Findings included in this Response Packet, select one of the following responses and provide the required additional information:
  - a. **AGREE** with the Finding, or
  - b. **PARTIALLY DISAGREE** with the Finding and specify the portion of the Finding that is disputed and include an explanation of the reasons therefor, or
  - c. **DISAGREE** with the Finding and provide an explanation of the reasons therefor.
2. For the Recommendations included in this Response Packet, select one of the following actions and provide the required additional information:
  - a. **HAS BEEN IMPLEMENTED**, with a summary regarding the implemented action, or
  - b. **HAS NOT YET BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE**, with a timeframe or expected date for implementation, or
  - c. **REQUIRES FURTHER ANALYSIS**, with an explanation and the scope and parameters of an analysis or study, and a timeframe for that analysis or study; this timeframe shall not exceed six months from the date of publication of the grand jury report, or
  - d. **WILL NOT BE IMPLEMENTED** because it is not warranted or is not reasonable, with an explanation therefor.

If you have questions about this response form, please contact the Grand Jury by calling 831-454-2099 or by sending an email to [grandjury@scgrandjury.org](mailto:grandjury@scgrandjury.org).

## **Findings**

**F3.** No one person or department within County government knows exactly how much total compensation the County pays to the public defense contractors, because payment records commingle some fee payments with cost reimbursements.

**AGREE**

**PARTIALLY DISAGREE** – explain the disputed portion

**DISAGREE** – explain why

**Response explanation** (required for a response other than **Agree**):

The Auditor-Controller's Office processes payments for all claims against the County. As such, the County's financial system, ONESolution, can provide reports on how much was paid to any one person, company or legal entity. Payment history is maintained electronically going back to 1998.

**F4.** The County's portrayal of its public defense services is not transparent.

**AGREE**

**PARTIALLY DISAGREE** – explain the disputed portion

**DISAGREE** – explain why

**Response explanation** (required for a response other than **Agree**):

The public defense services contracts are very complex, and some have been in place for many years. However, the terms of the contracts are stated, understandable, and accessible.

**F5.** The County's accounting for separate overhead subsidies has for years caused the County to understate the compensation of the County's public defense contractors in line-item budgets and in reports to the Board of Supervisors.

**AGREE**

**PARTIALLY DISAGREE** – explain the disputed portion

**DISAGREE** – explain why

**Response explanation** (required for a response other than **Agree**):

The published budget documents for the Public Defense contractors includes all costs associated with the required service.

**F6.** The County's duty to fund public defense services does not require the County to provide public defense contractors with free office space.

**AGREE**

**PARTIALLY DISAGREE** – explain the disputed portion

**DISAGREE** – explain why

**Response explanation** (required for a response other than **Agree**):

**F7.** When the County provides free office space to a contractor, the Controller's Office does not know to ask whether the cost of the office space should be included in the contractor's compensation for tax purposes.

**AGREE**

**PARTIALLY DISAGREE** – explain the disputed portion

**DISAGREE** – explain why

**Response explanation** (required for a response other than **Agree**):

The County rents various facilities throughout the County for which the Auditor-Controller's Office makes the lease payments. The Auditor-Controller did not have a process in place to review each of these leases to determine if any IRS fringe benefit rules would apply for the person or party using the leased space.

Such a process will be in place prior to the issuance of 2019 year-end 1099 forms to County vendors. The review process will include seeking legal assistance to review the IRS Fringe Benefit Exclusions instructions to determine if these areas are included or not and what retroactive reporting to the IRS will be required.



**F8.** The County's contract policies and standard forms are not integrated with each other, are difficult to use, are not available to the public, are incomplete, and in some cases are poorly written.

**AGREE**

**PARTIALLY DISAGREE** – explain the disputed portion

**DISAGREE** – explain why

**Response explanation** (required for a response other than **Agree**):

The County's standard forms are not integrated in that they are not always reproduced or referenced by form number within the Contract section of the County Policy and Procedures Manual. These Policies and Procedures are updated twice per year through an open and transparent Board of Supervisor's process. Incomplete or poorly written documentation can be reviewed and re-written semi-annually as requested by users.

**F9.** The County's public defense contracts violated written County policies without consequences.

**AGREE**

**PARTIALLY DISAGREE** – explain the disputed portion

**DISAGREE** – explain why

**Response explanation** (required for a response other than **Agree**):

The primary public defense contract was originally written many years ago. Over the years, the County policies have changed. Although the contract has been revised several times, there may be elements of these updated contract requirements that are not included in this older contract.

**F10.** Standard forms are an excellent way to implement some County policies, but they must be used to be effective.

**AGREE**

**PARTIALLY DISAGREE** – explain the disputed portion

**DISAGREE** – explain why

**Response explanation** (required for a response other than **Agree**):

**F11.** County leaders misinterpret the meaning of County Counsel's approval of a contract "as to form."

**AGREE**

**PARTIALLY DISAGREE** – explain the disputed portion

**DISAGREE** – explain why

**Response explanation** (required for a response other than **Agree**):

It is expected professional practice that County Managers approving the contracts understand "as to form" does not mean anything besides "as to form."

**F12.** The County lost potentially valuable information when the County destroyed copies of contracts with, and reports submitted by, the public defense contractors.

**AGREE**

**PARTIALLY DISAGREE** – explain the disputed portion

**DISAGREE** – explain why

**Response explanation** (required for a response other than **Agree**):

The Auditor-Controller's Office complies with *Accounting Standards & Procedures for Counties* record retention policies as issued by the State Controller. There is a potential benefit to permanently keeping all forms of documentation the County produces, however, the risk-benefit analysis performed at the State level provides the Auditor-Controller with guidance for record retention.

**Recommendations**

**R3.** In the interest of transparency, the County Administrative Officer and the Auditor-Controller should work with Lawrence Biggam, the Watsonville landlord, and the Watsonville janitorial and utility providers to implement within the next six months an arrangement by which the County pays Mr. Biggam the amounts due to the Watsonville vendors and Mr. Biggam pays the Watsonville vendors. (F3)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

**Response explanation, summary, and timeframe:**

The Auditor-Controller does not determine with whom the County enters into contracts, however, the Auditor-Controller's Office will review these related vendor payments to determine the correct IRS year-end reporting.

**R4.** In the interest of transparency, the Board of Supervisors should instruct the County Administrative Officer to prepare and present for approval a document directing County staff (a) to use the term “public defense” instead of “public defender” to refer to the services that private defense contractors and Criminal Defense Conflict Program panel attorneys provide, (b) to refrain from referring to a public defense contractor or any member of their staff as a public defender, deputy public defender, or other “defender,” and (c) to refer to Budget Unit 59 using a word that the County Administrative Officer has determined does not suggest that Budget Unit 59 is a department. (F4)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

**Response explanation, summary, and timeframe:**

The Auditor-Controller does not interact with vendors based upon their commonly used title, instead, payments and tax documents are issued using the legal names of vendors.

**R8.** The County Administrative Office and the Auditor-Controller should find a way to present the actual cost of the compensation paid to each public defense contractor on the County budget, beginning with the 2019–2020 fiscal year. (F5)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

**Response explanation, summary, and timeframe:**

The Auditor-Controller's Office has finalized the Budget for 2019-20 per instructions approved by the Board at the end of their weeklong public budget hearings held in June 2019. The budget document has been placed on the Board's agenda to be approved in September 2019. This layout change can be considered for the 2020-21 budget if the County Administrative Office requests the Auditor-Controller to do so, and if the Board approves the modification during the next year's budget hearings.



**R10.** The Auditor-Controller should within the next 60 days take such steps as are appropriate to ensure that the County is reporting to the Internal Revenue Service the provision of office space, utilities, and janitorial services in Watsonville to the public defense contractors, as the law requires. (F7)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

**Response explanation, summary, and timeframe:**

The County rents various facilities throughout the County for which the Auditor-Controller's Office makes the lease payments. The Auditor-Controller's Office did not have a process in place to review each of these leases to determine if any IRS Fringe Benefit rules would apply for the person or party using the leased space.

A process will be in place prior to the issuance of 2019 year-end 1099 forms to County vendors to include any amounts determined to be IRS reportable Fringe Benefits for rents, utilities, and janitorial services. The review will include seeking legal assistance to review the IRS Fringe Benefit Exclusions to determine if these areas are included or not and what retroactive reporting to the IRS will be required.

**R11.** The Board of Supervisors should within the next 90 days instruct the County Administrative Officer to work with the Auditor-Controller, the Purchasing Agent, and County Counsel to propose a timeline for revising the County's policies and procedures generally, including the implementation of the recommendations in this report concerning contract rules that Board of Supervisors decides to implement. (F8–F12)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

**Response explanation, summary, and timeframe:**

The County Board of Supervisors approves changes to the County's Policy and Procedures twice per year via a public hearing. The Auditor-Controller will review any related recommended changes and determine if they can be implemented either as part of the December 2019 or June 2020 update.

**R14.** The Policies and Procedures Manual should include a “readability policy” (i.e., a statement that County policies and contracts should be understandable by the County employees who can reasonably be expected to have to use or understand them) to appear at the beginning of the Policies and Procedures Manual and apply to each Title of the Policies and Procedures Manual. (F8)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

**Response explanation, summary, and timeframe:**

Standard practice for this Manual should include consistent numbering, clear indexing and headings to facilitate user access. County departments are expected to train their staff to work effectively with County Policies and Procedures that pertain to job duties.

Semi-Annual modifications of the Manual allow County Management the opportunity to make changes as needed.

**R15.** A County readability policy should include a requirement to the effect that (a) each paragraph of a policy or contract must have a unique reference number, (b) each paragraph of a policy or contract must have a descriptive heading, (c) each paragraph of a policy or contract should address only one idea, (d) any requirement of a policy or contract to do something must identify a party or person as being responsible for doing the thing, and (e) the organization of any policy or contract should be predictable. (F8)

**HAS BEEN IMPLEMENTED** – summarize what has been done

**HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe

**REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)

**WILL NOT BE IMPLEMENTED** – explain why

**Response explanation, summary, and timeframe:**

The County Board of Supervisors approves changes to the County's Policy and Procedures twice per year. The Auditor-Controller will review any related recommended changes and determine if they can be implemented in the sections the Auditor-Controller has authority over, either as part of the December 2019 or June 2020 update.

**R16.** The County Administrative Office and the Auditor-Controller should work with the Purchasing Agent and County Counsel to rewrite the provisions of Policies and Procedures Manual Title I Section 300 in accordance with a County readability policy and move the provisions into an appropriate place or places in the Policies and Procedures Manual Title III Section 100. (F8)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

**Response explanation, summary, and timeframe:**

The County Board of Supervisors approves changes to the County's Policy and Procedures twice per year. The Auditor-Controller will review any related recommended changes and determine if they will be implemented in the sections the Auditor-Controller has authority over, either as part of the December 2019 or June 2020 update.

**R24.** The County's contract rules should require that, with respect to any contract that provides for payments for different purposes, the department work with the Controller's Office, at the time of contract initiation and each amendment or renewal, to agree upon a set of code phrases to distinguish one payment from the other, require the contractor to identify the appropriate code phrase on the contractor's invoices, and instruct the Controller's staff to include the appropriate code phrase in the description of the payment. (F8)

- HAS BEEN IMPLEMENTED** – summarize what has been done
- HAS NOT BEEN IMPLEMENTED BUT WILL BE IMPLEMENTED IN THE FUTURE** – summarize what will be done and the timeframe
- REQUIRES FURTHER ANALYSIS** – explain scope and timeframe (not to exceed six months)
- WILL NOT BE IMPLEMENTED** – explain why

**Response explanation, summary, and timeframe:**

The Auditor-Controller agrees with the importance of setting up distinguishing identifiers in the form of object codes or project codes prior to issuing a contract's first payment. However, the responsibility for coding should lie with the department submitting the invoice, not the contractor. Contractors should not be relied upon to interpret our internal account coding. We will work with the departments to establish a more standardized description format and will implement changes as possible throughout the 2019-20 year, and fully in the 2020-21 year.

**Penal Code §933.05**

1. For Purposes of subdivision (b) of §933, as to each Grand Jury finding, the responding person or entity shall indicate one of the following:
  - a. the respondent agrees with the finding,
  - b. the respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
2. For purpose of subdivision (b) of §933, as to each Grand Jury recommendation, the responding person shall report one of the following actions:
  - a. the recommendation has been implemented, with a summary regarding the implemented action,
  - b. the recommendation has not yet been implemented but will be implemented in the future, with a timeframe for implementation,
  - c. the recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of the publication of the Grand Jury report, or
  - d. the recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
3. However, if a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a County department headed by an elected officer, both the department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected department head shall address all aspects of the findings or recommendations affecting his or her department.
4. A Grand Jury may request a subject person or entity to come before the Grand Jury for the purpose of reading and discussing the findings of the Grand Jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.
5. During an investigation, the Grand Jury shall meet with the subject of that investigation regarding that investigation unless the court, either on its own determination or upon request of the foreperson of the Grand Jury, determines that such a meeting would be detrimental.
6. A Grand Jury shall provide to the affected agency a copy of the portion of the Grand Jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. **No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.**