

The Virginia Indigent Defense Commission
Budget Committee Meeting
1604 Santa Rosa Road, Suite 200
Richmond, Virginia
April 28, 2014

Budget Committee Chair, David Lett, called the meeting to order at 11:00 am. Other Commission members in attendance were Kristen Howard, Judge Edward Hanson, and Tom Chaffe. Committee members not present were Judge Rosenblatt and Delegate Minchew. Administrative staff included Executive Director, David Johnson; Deputy Director, Maria Jankowski; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

The first order of business is to approve the previous meeting minutes.

Judge Hanson made a motion approving the November 18, 2013 Budget Committee meeting minutes. Mr. Chaffe seconded the motion. The motion carried.

The next order of business is the FY14 update.

Ms. Jankowski said that in the meeting materials is the FY14 budget projection. Our projections for the end of the year are pretty much in line and we will end the year with \$957,895. There are still some outstanding expenses related to the opening of the two satellite offices that were approved by the Commission in December.

The Winchester/Front Royal satellite office opened the second week of April.

The Staunton/Lexington Satellite office has not opened because we are still in the process of looking for office space.

The \$20,000 for fellows is an estimate. Their tenure expires in May. That will be the end of the first round of the fellows program.

This also takes into account the prepayment of four months' rent for next year. The majority of the \$957,895 is the cast of last year's prepaid four months of rent.

Mr. Johnson added that there are two reasons for prepaying rent. One is to help spend down money if leftover and the second is if there are money problems during the coming year we can use some of that savings and not prepay as much. We have prepaid anywhere from two to four months.

Ms. Jankowski said the \$800,000 for rent is closer to \$860,000. The cost per month is about \$215,000. Take the \$860,000 from the \$957,895 and it is only about \$100,000 difference.

A big part of the \$957,895 is the rent prepayment from the previous year.

This end of the year projection does not take into account any of the items that were in dispute at the last Commission meeting. It does, however, take into account items that were approved by the Commission in December and March. They have already been worked into the budget.

Our largest line item is Sub-object code 1124, Full Time Salaries. Included in that is a \$550,000 reversion for which we have already gotten billed. This is the only place we have room to work it in.

There are some items that have been requested and have not been paid but are worked in and scheduled to be paid before the end of the year.

There was discussion regarding the Front Royal satellite office expenses.

Mr. Johnson explained that the monies expended for opening the Front Royal office include the actual move, other costs like wiring and rent from the day they move in through June 30th.

For the Staunton/Lexington satellite office we have not found space so we are uncertain of the exact costs.

The cost of the Front Royal office is about \$2000 less than what was projected.

The fellows or interns project expires the end of May. We had nineteen fellows and the total cost will be less than we anticipated.

Mr. Johnson said that we have three fellows who have been hired in the public defender offices who will be starting later this summer. They will be attending boot camp next month so we will have them trained before they start.

We will be ending the year with money left over and this is the side we want to be on.

The next item on the agenda is the status of the proposed retention bonuses.

Since the last Commission meeting Mr. Johnson has spoken with Michael Jay who is with House Appropriations and Ms. Jankowski has spoken with Reginald Thompson who is with the Department of Planning and Budget (DPB).

Ms. Jankowski said that she and Mr. Johnson are of the opinion that we should not proceed with the retention bonus at this time. The logic behind this decision is that the state does not have a budget and the level of uncertainty is concerning. To do anything in the form of a bonus would just not be prudent.

The policy argument in favor of not going forward with this right now is that in September we could coordinate a bonus with the employee annual reviews. Any type of bonus could coincide with the annual evaluations. We would know by then if we will have a reversion. There is a lot of uncertainty.

Mr. Johnson said that the Governor has a budget of a couple hundred million dollars in expenditures based on the premise that we are going to get money from the expansion.

In June we are planning to ask the Commission for permission to ask the Department of Planning and Budget (DPB) to do a compensation study for us and help to come up with a plan to use existing resources to do something for our employees.

The people we know in state government have sent us a message and we need to listen to the message.

Ms. Howard arrived.

Mr. Johnson gave Ms. Howard a recap on what has been covered so far.

Mr. Chaffe made a motion to take no further action on the retention bonus for FY14. Judge Hanson seconded the motion. The motion carried.

The budget balance is \$80,895 for FY14.

Mr. Johnson said this balance is left after we pay for the two new satellite offices, the fellows program, and the prepayment of four months' rent. We prepaid four months' rent last year and this gives us some flexibility if there is a reversion.

There was discussion regarding turnover and vacancy.

The next item on the agenda is the proposed budget for FY15.

Ms. Jankowski said that the second spreadsheet in the meeting materials is the proposed FY15 budget.

Line item 1124 on the first page is salaries; this is our biggest line item. Within the \$30,054,391 is a \$300,000 reversion, this is based on what the House had done. We do not know if that is what we will end up with, it could be more. We will hopefully know by June. We went with what we believe we know and obviously will adjust if necessary. Within that number is also a one percent turnover and vacancy that equates to about \$408,000.

Mr. Johnson said we know every year that we have turnover and vacancy. You might recall you approved previously the addition of a couple of positions to the field offices to address their workload. We are paying for this with turnover and vacancy savings. We know we are going to have more than one percent turnover and vacancy. That is sort of a funding mechanism that we have to include in the budget.

Ms. Jankowski said we opted for one percent because that is what we budgeted in FY14 and that was pretty close to what we realized for FY13. It could be higher.

Mr. Johnson said that he came to the agency when we had millions of dollars left at the end of the year. We started budgeting four percent for turnover and vacancy. That was on the recommendation of the Auditor of Public Accounts. They were budgeting seven percent. Even in this economy you will not have everyone on the job every day in every position.

Ms. Jankowski said that line item 1535 is building rentals; this is only \$1,600,000. It covers eight months of rent because we are prepaying four months.

Looking at FY11 through FY13 there is a gradual increase in our rents but there has never been an adjustment in our general appropriation to cover the increase. This is one of those escalating costs that we do not get money to cover.

Mr. Johnson said we are in the same place as most state agencies where most commercial leases have escalated anywhere from three to four percent per year. If we have been in a building for twenty years, we are paying a lot more rent than was originally funded. That is just life as a state agency.

There was discussion regarding the budget spreadsheet and a suggestion to budget for twelve months at more than 100 percent.

Mr. Johnson said everything that supports the positions is also presuming the positions will be filled 100 percent of the time and they will not but we have to budget for it. He suggested budgeting at 101.25 percent.

Ms. Jankowski said it is important to understand that when the Commission is asked in the June Commission meeting to vote on the budget, it will look like we are budgeting in a deficit due to the rent prepayment.

At the bottom of the page of the proposed budget for FY15 is a list of additional expenditures. These are worked into the budget but we brought them out to highlight for you. Some of these are a done deal and costs that we have to expend. For example, it includes the \$300,000 reversion.

There was discussion about not seeing a deficit in the budget and changing the term “salary increases” which is actually new positions that have previously been approved.

Ms. Jankowski clarified that the \$376,424 includes the new positions that have already been filled and it also includes asking for a salary increase. You are well aware of the trouble we have had trying to fill the ISO position, it has mainly been hampered by the fact that no one has applied for it. She talked with the current IT Director and VITA about making the IT Director also the ISO.

Mr. Johnson added that VITA keeps putting out new security standards and the old standard explicitly stated that the IT Director could not also be the ISO, and that was missing from the new standard. We found out that there are some things we can do to combine the positions. With Mr. Ernouf, our IT Director retiring, this might allow us to get someone who has the certifications to also be the ISO. With a qualified IT Director who can also double as the ISO would eliminate that position we could never fill anyway.

This would fix the problem for us. We need to have an ISO; it is one of the mandates.

We could reword it to read “approved new positions” and “reclassified IT Director with added ISO responsibilities”.

Ms. Jankowski said we have advertised for an IT Director and we included in the qualifications the certifications required to meet the ISO standard.

Mr. Johnson said that in order to mitigate the risk for having the same person is a conflict; we will need to have an outside auditor come in every year to check on it. This is much less expensive than having two employees on staff.

Ms. Jankowski added that the current IT Director’s salary is \$104,496 not including benefits. The salary range for this position is \$110,000 to \$130,000. This budget takes into consideration the highest end of that salary and the average benefit package. We cannot know what benefit package the new employee would select.

Mr. Johnson said that the salary difference for this new position would be somewhere from \$5,000 to \$25,000 more than what we are currently paying for that position. Plus we have to pay for the audit every year.

Combining the positions will cover the requirements.

VITA gave us the nod if we mitigate the conflict with the outside audit.

Mr. Johnson said as the Executive Director, understanding there are risks, because of our mission we have to accept some level of risk. It is not possible to accomplish our mission and mitigate in a bubble. At some point there is a business function. VITA is satisfied with the steps we have taken to mitigate those positions.

VITA could change their standards, because they always do, and at some point we may be out of compliance, but we have made the good faith effort. Hiring a part-time person without the qualifications might not pass the good faith effort test but this will. This is a much safer way to go.

Ms. Jankowski said at the last meeting the Commission approved a business impact analysis and risk assessment that has already started. The outside consultants looked at all of our business processes and all of our systems. They will then do a risk assessment of their findings. The funds will be expended in FY14.

We merged the IT Director position with the ISO position so that practice would be in place as the business impact analysis and risk assessment were being done so they could see it in that form and possibly call attention to points of conflict or issues so, if the issues are serious enough, they can be mitigated against. The operations person has to know security to effectively run the operation. The security person needs to know the operations to be able to know what the reasonable security risks are. When you put them all in the same title it is like the fox watching the hen house. The reviews that are required by VITA could normally be done internally, we can contract out and that provides mitigation to the conflict.

The additional expenditures are perceived estimated costs to mitigate this conflict. \$30,000 is for the outside IT contractor to do the annual reviews and audits. Something that has already been approved is the 24/7 network monitoring at \$135,000.

There was discussion regarding a breakdown of expenditures. Mr. Johnson said that one of the additional expenditures is the Alexandria public defender office phone system for \$28,000. That is theoretical, it is going to happen at some point and rather than to reflect it in the budget it is one of those things that when it happens it happens and we deal with it.

We could pull the reversion out because that is theoretical. Part of this is what is appealing to bookkeeping versus how we need it to look. We are like any other agency.

Ms. Jankowski said that the 24/7 monitoring is billed monthly. This is a best practice because bad things do not have a schedule do not happen only during business hours. We can report back to VITA to show that we are doing the monitoring.

If there is a breach, the company notifies the IT Director immediately.

Mr. Johnson said that we might be able to mitigate our security risks in the future by limiting the information we have in our system. For instance, he does not think it is necessary to have the full social security number of our clients. If we make changes like just having their name, birth date, and last four digits of their social security number that will mitigate risks. That is part of the business impact analysis and we hope to get recommendations from that analysis on how to mitigate risks.

Ms. Jankowski said that we only have two systems other than our network. One is our case management system that contains our client information with the only sensitive information being their social security number. The other system is our attorney certification system for the attorneys who do court appointed work and there is no sensitive information in that. It is actually published; it is given to the Secretary of the Commonwealth, the Supreme Court, and the local courts.

Those are our only two systems plus our network but our network is not a repository for sensitive data.

The total agency allocation is \$45,000,000 but the state still does not have a budget.

Mr. Johnson said that two years ago when our Training Director left, we combined Human Resources with Training. Most HR departments are responsible for training but it is a much smaller scale in other agencies because they are mainly training their employees to do their jobs.

Our training is completely different. We sponsor the certification program for attorneys to be certified to do court appointed work. In our agency we have 340 attorneys who have to get continuing education credits.

At the time our hope was to increase Ms. Williams' salary to reflect the added responsibility. With our IT Director and our Budget and Finance Director retiring, the HR Director's salary is already the lowest at \$85,000. We were hoping to increase her salary \$7000. She has been doing double duty for a couple years.

The position has been reclassified without compensation. Mr. Johnson's fear is this will be heightened when we have new directors coming in. Our IT Director is retiring at \$104,000. Our Budget and Finance Director is retiring at \$99,500.

The position reclassification has allowed us to do away with the Training Director position by combining the two positions. This is a salary reclassification.

There was discussion regarding the salaries of the different director positions.

Judge Hanson made a motion to recommend to the full Commission the salary reclassification for the Human Resources and Training Director. Ms. Howard seconded the motion. The motion carried.

Ms. Jankowski said the budget includes the salaries for the IT/ISO Director, the HR and Training Director reclassification salary increase and nothing else. The new attorney positions for several offices had been approved previously.

Ms. Jankowski continued with the additional expenditures for FY15. The continuity of operations disaster plan amount of \$33,000 is the balance that cannot be paid in FY14 to Impact Makers, the folks who are doing the BIA risk assessment. They will bill us as much as they can in FY14 but there is no way this can be billed in its entirety before the end of the year. This is the balance on that contract.

Mr. Johnson added that it is something we try to negotiate on long-term projects. Technically, as a state agency, we are not supposed to pay for any service until the service is rendered, but if we wait until the end of a project that runs in to the next budget year, we ask to be billed for each phase when it is complete.

Ms. Jankowski said that it was agreed to separate the BIA risk assessment from the continuity and disaster recovery so the deadline would be at the end of the fiscal year to get the first half complete. This was the bigger portion, knowing the other portion would come in July.

Mr. Johnson said that to review; we will take the \$300,000 out of the budget because that is theoretical, the \$28,000 for the Alexandria phone system will be taken out, also theoretical. We are also going to decrease the 24/7 network monitoring amount of \$135,000 at least for the first year of the budget because there is no way it will happen before January 1, 2015. Reflect twelve months of rent being paid. This information will be on a separate sheet for the Commission meeting in June.

Ms. Jankowski said that the last item under the additional expenditures in FY15 is another IT cost. This is just a guess estimate of the need as it relates to mitigating the conflict between the ISO and the IT Director to do compliance audits and includes audits of the case management system. This is also to make sure that we and our security program meet the VITA security standards. That is not a perceived ongoing cost.

Mr. Johnson said we are having this done so we know what needs to be fixed.

Ms. Jankowski said that in talking to VITA about making the IT Director the ISO, we drew up a document saying this is what the standard says, however, we are going to do this instead. To mitigate that obvious conflict, we are taking these precautions. Mr. Johnson signed off on it. It is a protection mechanism document. We acknowledge the standard and we are dealing with it in this manner and in order to avoid a conflict, these are the steps we are taking respectively. Because those come with costs, they are worked into next year's budget.

Judge Hanson moved to make the adjustments that have been discussed, and as adjusted, recommend to the full Commission for approval. Ms. Howard seconded the motion. The motion carried.

There was no further business.

Judge Hanson made a motion to adjourn. Ms. Howard seconded the motion. The motion carried.

The meeting adjourned at 12:20pm.

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director