

TO: Citizens Redistricting Commission

FROM: Tony Bernhard



DATE: February 23, 2011

RE: Draft Invitation for Bids for Redistricting Services and Draft Conflicts Policy

At the February 23, 2011 meeting of the Technical Advisory Committee of the Citizens Redistricting Commission a draft of an Invitation for Bids for Redistricting Services was released along with a draft Conflicts Policy. Overall, staff has done a commendable job. However, I have one significant overriding concern and several other lesser concerns.

Overall, I believe that the goal of the Commission when selecting staff/consultants should be the same as the goal of the Applicant Review Panel when they were selecting Commissioners: identifying individuals who can show relevant analytical skills, an appreciation of the state's diversity AND a commitment and experience with nonpartisan redistricting. I believe the draft contract does a good job of the first two but falls short on the latter.

Given comments at your last meeting at Claremont, impartiality cannot be given enough weight to ensure that the public can maintain confidence in the process. I support the decision of the Committee to recommend applying the criteria contained in the Regulations to the Selection of the Executive Director to the hiring of all staff and consultants.

However, for both the line-drawing and Voting Rights Act counsel, I do not believe these go far enough. **Rather, I believe these criteria prohibiting an individual from applying should include experience and work in other states.** This could be done either by amending the draft invitation or the draft conflicts policy. Unlike Commissioners, your consultants might not come from California. Thus, it is important to make sure that any applicants who served as line-drawers for elected officials or partisans in other states -- and whose technical support for these jurisdictions may limit their ability to be impartial in California -- not be allowed to apply. Put simply, if you served as a partisan line drawer for a state legislator in Arkansas, you cannot meet California's strict standard for impartiality.

This would be consistent with the draft invitation. The draft allows relevant experience to come from jurisdictions outside of California. If experience from outside California can be used to support a bid, it should also be available to identify experience that should disqualify potential bidders.

Thus, I would suggest that under Section VI (3) additional clarification is needed to ensure that bids reflect experiences relevant to your responsibilities. Specifically, line drawing experience where elected officials hold the power of the pen to pick their own voters should not be judged as equivalent to work for independent commissions. Having a demonstrated ability to satisfy elected officials is not the same as having a demonstrated ability to satisfy a nonpartisan Commission or the voters who established it. Thus I would recommend either this provision be amended so that only experience working with independent commissions be considered, or at least that such a criterion be added so that the commission can consider it when scoring a proposal.

I would also suggest that the commission revisit the scoring table to raise the priority of impartiality in evaluating contractors. More specifically: the “ability to remain neutral and objective” is only one criterion among four under the category of “Collaboration and Team Work,” which itself is only assigned 10 points out of 100. Ideally, ability to remain neutral and objective should be moved into a separate category with a significant number of points attached. Minimally I would suggest increasing the number of points assigned to the last category.

In addition, under Section VI (4), I would suggest that the resume requirement include disclosing the partisan registration for the last five years of all management, supervisory, and key personnel. This will allow you to evaluate whether such partisan registration history might interfere with the applicant’s ability to remain neutral and objective. For example, a bid where all staff are registered as Decline to State may be considered to be more neutral than a bid where the manager and staff are all registered with one of the two major parties.

A few more technical points:

- The Scoring Table mentions “Results of Line Drawing (Challenges)” but I do not see such information requested in the application. I believe this is critical to ask for, and it should be given significant weight in your scoring: if all maps drawn by a contractor were challenged in court, it is important to know. The Commission should not be penny-wise and pound-foolish in determining who will draw its maps, and should avoid selecting a contractor who might save it a little money when drawing the district lines but cost the state much more to defend their contested work.
- Section V (2) provides that the contractor shall provide legal assistance in court as deemed necessary by the Commission. I am concerned this provision may inflate costs and create distortions in the bids preventing the commission from effectively comparing bids. In essence the current draft asks vendors to guess how many people will sue. Further, Proposition 11 states, “The Legislature shall provide adequate funding to defend any action regarding a certified map,” so defending the plans is not subject to the same financial constraints. Thus, I would suggest specifying this provision shall apply only through August 15th and possibly adding an optional service of future legal assistance as an hourly rate.
- At several points the draft refers to use of **precinct-level voting data**. The Statewide Database allocates precinct level voting data down to the **census block level and** is probably the knowledge and expertise the Commission requires. This may be a technical error.
- Section VII (2) discussed 14 optional outreach meetings while Section VI (8) mentions 12. This appears to be an error.

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