

Johnston, Marian <marian.johnston@crc.ca.gov>

PRA request of CIFJJ dated June 27, 2011

1 message

Johnston, Marian <marian.johnston@crc.ca.gov>

Thu, Jul 14, 2011 at 4:43 PM

To: [REDACTED]

Attached please find the only two documents responsive to the PRA request from Thomas W. Hiltachk. Thank you for your interest in the Citizens Redistricting Commission.

--
Marian M. Johnston
[REDACTED]

2 attachments

 **Baretto Contract.doc**
145K

 **Deviation memo.docx**
23K

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER

CRC - 115 - 11

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Citizens' Redistricting Commission

CONTRACTOR'S NAME

University of Washington

2 The term of this Agreement is: June 16, 2011 through 8/31/2011

3. The maximum of this Agreement is: \$ 60,000 Sixty Thousand Dollars and 0/100 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	2 page(s)
Exhibit A1	Dates/Locations of Public Input Meetings	3 page(s)
Exhibit B	Budget Detail and Payment Provisions	2 page(s)
Exhibit C* - General Terms and Conditions		GTC 610
Check mark one item below as Exhibit D:		
<input checked="" type="checkbox"/>	Exhibit - D Special Terms and Conditions	3 page(s)
<input type="checkbox"/>	Exhibit - D* Special Terms and Conditions	
Exhibit E - Additional Provisions		1 page(s)

* Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
 These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

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

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

University of Washington

BY (Authorized Signature)



PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

Univ. of WA, Seattle, WA, 98195

STATE OF CALIFORNIA

AGENCY NAME

California Citizen's Redistricting Commission

BY (Authorized Signature)



PRINTED NAME AND TITLE OF PERSON SIGNING

Daniel Claypool, Executive Director

ADDRESS

901 P St., Suite 154A, Sacramento, CA 95814

California Department of General Services Use Only

Exempt per:

**EXHIBIT A
 (Intergovernmental Agency Agreement)**

SCOPE OF WORK

1. Contractor agrees to provide to the Citizen's Redistricting Commission (Commission) racially polarized voting analyses as described herein:

The Contractor's services will be used to assist the Commission and the Commission's legal counsel in evaluating whether draft district lines are in conformance with the requirements of the Federal Voting Rights Act. As such, all facets of the Contractor's work must conform to applicable professional guidelines and technical considerations for performing the required studies. In addition, impartiality as to the results of a study and the reporting of those results is strictly required. The Contractor may contribute recommendations and/or provide guidance as to the studies under consideration (reliability of data, appropriate statistical methods, etc.), but will not develop or perform studies independent of those requested specifically by the Commission and the Commission's legal counsel.

2. The services shall be performed at the Contractor's primary place of business with work products provided in electronic and/or hard copy format as required by the Commission and the Commission's legal counsel. The Contractor may also be required to present their findings at a public meeting of the Commission.
3. The work to be performed will occur on an as needed basis, by request of the Commission and the Commission's legal counsel. The Contractor shall be ready to begin performing a study requested by the Commission within twenty-four (24) hours of notice by the Commission to begin work. It is anticipated that Contractor may need to work full time in June and July. It is possible that some work will be performed in August; the final maps must be certified by the Commission by August 15, 2011.
4. The project representatives during the term of this agreement will be:

State Agency: Citizens Redistricting Commission	Contractor: University of Washington
Name: Daniel Claypool	Name: Prof. Matt A. Barreto
Phone: [REDACTED]	Phone: [REDACTED]
Fax: [REDACTED]	Fax: [REDACTED]

Direct all inquiries to:

State Agency: Citizens Redistricting Commission	Contractor: University of Washington
Section/Unit:	Section/Unit: Dept. of Political Science
Attention: Daniel Claypool	Attention: Prof. Matt A. Barreto
Address: 901 P St, Suite 154A; Sacramento, CA 95814	Address: PO Box 353530, Univ. of Washington, Seattle, WA 98195
Phone: [REDACTED]	Phone: [REDACTED]
Fax: [REDACTED]	Fax: [REDACTED]

EXHIBIT A
(Intergovernmental Agency Agreement)

5. The Contractor will have sole responsibility for the following:
- a. All necessary computerized equipment necessary to perform the studies required by the Commission; and
 - b. Any and all equipment required to produce the reports desired by the Commission; and
 - c. Any and all equipment required to produce and project the results of studies including their impact on maps under review (for audience viewing), and to print the same, as desired by the Commission.

Required Studies and Meeting Participation

The required consulting services will include, but will not necessarily be limited to, working with Commission's legal counsel and performing racially polarized voting analyses in specific geographic areas (to be determined).

In particular, the Contractor will:

1. Analyze previous voting studies;
2. Gather evidence of the results of recent elections in specific geographic areas (endogenous and possibly exogenous), and
3. Use that evidence to perform the relevant statistical analyses.

Such analyses will include determining the level of political cohesion among members of the applicable minority group or groups (i.e., the extent to which they vote together for the same candidates and/or issues) and determining whether the majority votes sufficiently as a bloc to enable it to usually defeat the minority's preferred candidate.

The Contractor must perform the studies required by the Commission's legal counsel. The Contractor may be required to attend and participate in Commission meetings where the reports from the Contractor will be a consideration on the agenda.

The Contractor will be responsible for:

1. Performing the required study(s) according to the parameters and timeframes agreed upon by the Contractor and the Commission's legal counsel;
2. Providing the Commission's legal counsel with a detailed written report of each study on an on-going basis; and
3. At the discretion of the Commission, Contractor may be requested to make one or more presentations to the Commission.

**EXHIBIT A1
(Intergovernmental Agency Agreement)**

ADMINISTRATIVE REQUIREMENTS

A. Legal Assistance

At the sole discretion of the Commission, Contractor may be required to provide technical assistance to the Commission in the event any legal action arises relating to the redistricting plans developed with Contractor's assistance. Contractor shall provide technical support for any lawsuits resulting from this contract in state and federal court, as deemed necessary by the Commission.

B. Commission Participation

A Project Manager/Coordinator will be assigned to this project and, along with other key Commission personnel, will be working with the Contractor as active participants to provide project continuity at the operating level. Assignments will be made by legal counsel to the Commission and Contractor's reports will be made to legal counsel. This assignment is to foster support for the project and enhance its chances for success.

Contract Manager

Daniel Claypool, Executive Director
Citizens Redistricting Commission
901 P Street, Suite 154-A
Sacramento, CA 95814

Telephone: [REDACTED] Facsimile: [REDACTED]
Email: daniel.claypool@crc.ca.gov

Contractor will work under the supervision of and receive assignments directly from counsel to the Citizens Redistricting Commission.

C. Period of Performance

The term of this Agreement begins on the date as indicated on the Standard Agreement for Services (STD. 213) through August 31, 2011, with the option for the Commission to extend the term for up to one year at the contract rates. The period of performance must be changed by a written Agreement to the Contract, if the Commission exercises its option to extend services.

D. Information Security

Contractor must employ Information Security Measures conversant with industry standards (ISO/IEC 27002 and CALIFORNIA State Administrative Manual (SAM) Chapter 5300, for example) that will be maintained throughout the course of the contract, in critical areas, such as, but not limited to, the following:

1. Secure data transmission (if applicable)
2. Data monitoring and verification
3. Data storage and back-up
4. Confidentiality practices regarding staff and data handling

EXHIBIT A1
(Intergovernmental Agency Agreement)

E. Staff Support

Contractor shall provide overall staff support to the Commission's redistricting effort necessary to meet project goals and objectives.

F. Professionalism and Collaboration

Contractor, contractor's staff, and subcontractors (if any) must comport themselves at all times in a professional manner when interacting with the public, the Commission, Commission staff, and the Commission's other contractor's. Further, Contractor and contractor's staff and subcontractors (if any), will remain mindful of the diversity of California's citizens and will ensure respectful treatment and interactions with all members of the public. Finally, Contractor and contractor's staff and subcontractors (if any) will work with the Commission, Commission staff, and the Commission's other contractor's in a collaborative and respectful manner at all times.

Contractor must comply with the terms contained in the Commission's Policy and Procedure Manual, and as such will not be permitted to discuss or publish information about the Commission's redistricting activities except as set forth in the Manual. This prohibition shall continue until such time as the maps are certified and litigation challenging the maps, if any, is finally resolved.

G. Software Capability

The software employed by the Contractor must be able to reliably compute the statistics required by the Commission as well as to generate applicable results (quantitative, applicable histograms, plots, etc., and tables) as required by the Commission. The Contractor must also employ software capable of illustrating the results in relation to the maps and/or geographic areas under consideration.

H. Sources of Study Data

The Contractor's data must consist of the following:

1. The 2010 Census Data used shall be that of the California Statewide Database located at the University of California, Berkeley Law, Center for Research, and
2. The Voting and Elections data associated with the districts shall be that of the California Statewide Database located at the University of California, Berkeley Law, Center for Research.

The population data will consist of the certified 2010 US Census data for the State of California, including the population subgroups of California as enumerated by the 2010 US Census data. In addition, the Commission may also require the use of adjusted 2010 census data for analysis. Voting and elections data associated with the district(s) will be included to demonstrate compliance with the Federal Voting Rights Act of 1965.

In addition, there may be additional data, e.g., survey data from a national polling study that may be applicable to a local study being conducted by the Contractor. Such data will be identified jointly or separately by the Commission's legal counsel and the Contractor and approved by the Commission's legal counsel prior to its use.

**EXHIBIT A1
(Intergovernmental Agency Agreement)**

I. Reports of Study Results

Contractor must issue a report for each study in the form requested by the Commission and Commission's legal counsel. The contents of the report may include:

1. A description of the study parameters and how they were determined (purpose, hypotheses, relevant literature);
2. The data used to perform the study (data source(s), key variables, methods employed to collect/process the data, limitations of the data);
3. The methods used to verify the data and results (examples: examining data plots or frequency histograms to verify characteristics of the distribution, identification of missing values, examining plots of residuals to assess fit of models, etc.);
4. What population groups/sub-groups were used, how these groups/sub-groups were determined, and how they were identified in the data;
5. The methods used to perform the study (analysis methods; key assumptions; tests and significance levels used to judge significance, goodness-of-fit, or degrees of association);
6. The results of the study; and
7. A discussion of the applicability and/or limitations of the study and its results.

J. Additional Work

This agreement represents the best efforts of the Commission to describe the work required of the Contractor. In the event further work is requested by the Commission, that exceeds what is contemplated by this agreement, the Commission and the Contractor shall meet and confer to determine if such work can be performed within the contract price, or if additional payment is necessary

**EXHIBIT B
(Intergovernmental Agency Agreement)**

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the University of Washington for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

MS. Deborah R. Davis, Budget Officer
1130 K Street, Suite 101
Sacramento, CA 95814

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Fixed Hourly Cost

The Fixed Hourly Cost is the sum of all costs associated with the provision of services as required by this contract. It is anticipated that performing the required statistical studies in June and July 2011 will require the Contractor to work "full time" on the project. The Contractor will be a fixed cost per hour for performing the Voting Rights Act related statistical studies with the understanding that the total amount billed for all work, including all travel expenses, shall not exceed \$60,000.

The fixed cost per hour takes all factors into consideration, which may include, but is not limited to, the following:

- Consulting services

**EXHIBIT B
(Intergovernmental Agency Agreement)**

- Managerial and/or administrative support
- Clerical/staff support
- Materials and supplies
- Documents, reports, forms
- Reproduction
- Direct and indirect expenses
- Technical support
- Any other costs

Contractor agrees to provide the services described under this agreement for a fixed cost per hour of \$74.

The Fixed hourly cost will contain all direct overhead costs associated with the execution of this contract, except travel expenses as authorized by the Commission. The Commission will not pay additional fees for any indirect overhead costs.

5. Travel and Per Diem

- a. Travel and per diem rates paid to the Contractor shall be limited to rates published by the Department of Personnel Administration (DPA). Go to the DPA website at www.dpa.ca.gov for rates pertaining to Method of Travel, Meals and Incidentals, Lodging Reimbursement and Personal Vehicle Mileage Reimbursement. Payments for travel and expenses of \$25.00 or more must be supported by receipts.
- b. The total amount of the costs to the Commission shall not exceed \$60,000, including the costs for out-of-State and in-State travel and per diem as billed monthly in arrears.
- c. Contractor's costs for out-of State travel and per diem are approved for this Agreement and will be payable by the Commission.

**EXHIBIT D
(Intergovernmental Agency Agreement)
Agreement)**

CONFLICT AND IMPARTIALITY STATEMENT

Complete, sign (original signature) and return.

(For definitions to terms used in this part, Contractor should refer to California Code of Regulations, Title 2, Administration, Division 10, Bureau of State Audits, and Chapter 1. Redistricting, Sub-Chapter 1, Definitions §60800 – 60829).

Government Code Section 8252 and the regulations found at CCR Title 2, Section 60800 – 60814 set forth certain conflict provisions. With respect to Professor Baretto (Contractor), other persons with a bona fide relationship with Professor Baretto; a member of Professor Baretto's staff and other persons with a bona fide relationship with Professor Baretto's staff as defined in CCR Title 2, Section 60806; Professor Baretto's sub-contractors (if any), and other persons with a bona fide relationship with the sub-contractor(s) as defined in CCR Title 2, Section 60806, please answer the questions below.

Full disclosure is required; however, disclosure of a potential conflict is not an automatic disqualification. Please explain any potential conflict in the space provided below.

Within the 10 years immediately preceding the execution of this contract, all of the parties listed above:

- Have not been appointed to, elected to, or have been a candidate for federal or state office;
- Have not served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office;
- Have not served as an elected or appointed member of a political party central committee;
- Have not been a registered federal, state, or local lobbyist;
- Have not served as a paid congressional, legislative, or Board of Equalization staff;
- Have not contributed two thousand dollars (\$2,000) or more to any congressional, state, or local candidate for elective public office in any year, which shall be adjusted every 10 years by the cumulative change in the California Consumer Price Index, or its successor;
- Have not been staff and consultants to, persons under a contract with, nor are persons with an immediate family relationship with the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization;
- Have no personal, family, financial relationships, commitments, or aspirations that a reasonable person would consider likely to improperly influence someone making a redistricting decision;

Explain any potential conflict below:

**EXHIBIT D
(Intergovernmental Agency Agreement)
Agreement)**

In addition, please respond to the following (additional pages may be attached if needed):

- Has the Contractor, during the past 10 years, received donations or funding from any source, whether in cash or in kind, that are used to support the operations of the person or entity? If Yes, please state the date, nature and amount of donation or funding, and the source of the funding.

YES _____ NO _____

- Has the Contractor, during the past 10 years, performed services of any kind, whether for a fee or on a voluntary basis, for any political party, interest group or other entity that has supported, donated money to, raised money for candidate for public office, taken a position on a ballot initiative or sought to influence the redistricting process? If Yes, please provide the details of the activity below.

YES _____ NO _____

- The Commission will be the sole provider of funds for the services to be provided pursuant to this contract. Will Contractor receive funding from any source other than the CRC, in cash or in kind, to perform services pursuant to this contract? If Yes, please provide the details of such funding.

YES _____ NO _____

**EXHIBIT D
(Intergovernmental Agency Agreement)
Agreement)**

- Does Contractor have any occupational, academic, volunteer, or other life experiences that show an ability to set aside personal interests, political opinions, and group allegiances to achieve a broad objective? If Yes, please provide the details of the activity below.

YES _____ NO _____

Date:
Signature:
Printed Name:
Title:
Organization:
Telephone Number:
Fax Number:

**EXHIBIT E
(Intergovernmental Agency Agreement)**

CONFIDENTIALITY AGREEMENT

Neither Contractor, nor partner, nor employee, nor subcontractor of Contractor, shall make any public statement, by means of any Internet blog, other electronic or print media, or any other means whatsoever, commenting on "redistricting matters" as the term is used in California Government Code Section 8253(a)(3). Such shall include, but not be limited to, the redistricting process being conducted by the Commission, the Contractor's work in support of the Commission, and any knowledge gained by the Contractor in performing work for the Commission, on how California's state electoral districts might or will change on a district specific basis.

These provisions shall continue until such time as the final maps are certified or upon the resolution of any litigation that may result, whichever occurs last, provided, however, with respect to any matter covered by this agreement that is subject to the attorney client privilege, Contractor shall continue to protect and maintain the confidential nature of such information and communications as long as such attorney client privilege exists.

Signature

Date

June 20, 2011

To: Kirk Miller
Marian Johnston

From: Angelo Ancheta

Subject: Population Deviations - State Constitutional Requirements for State
Legislative Districts and Board of Equalization Districts

Questions Presented

1. Does California constitutional law require the Commission to employ a specific figure or range for the total population deviation when drawing congressional, state Assembly, state Senate, or Board of Equalization districts, and, if so, what are the figures or ranges?
2. If there is no state constitutional law requirement that the Commission employ a specific figure or range for the total population deviation, what legal requirements should the Commission consider in setting policies to limit the deviations for its second draft and final maps?

Background

Based on U.S. Supreme Court case law, the federal constitution requires population equality for congressional districts, state legislative districts, and Board of Equalization districts. The U.S. Supreme Court has applied a stringent requirement for population equality involving congressional districts, and the federal courts have insisted on absolute equality unless a deviation for a district is necessary to advance a legitimate state interest. *See, e.g., Karcher v. Daggett*, 462 U.S. 725 (1983); *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969).

The Court has permitted higher population deviations for state legislative districts when redistricting bodies have employed legitimate, non-discriminatory districting principles to justify those deviations. *See, e.g., Gaffney v. Cummings*, 412 U.S. 735 (1973); *White v. Regester*, 412 U.S. 755 (1973). The evolution of case law has led to a "safe harbor" figure of up to 10% total deviation. However, adherence to the 10% rule does not guarantee constitutionality. The Court has upheld deviations exceeding the 10% figure where justified by legitimate and non-discriminatory interests, while plans within the 10% range have been struck down when not justified by a legitimate interest. *See, e.g., Brown v. Thomson*, 462 U.S. 835 (1983) (upholding 89% total deviation justified by legitimate interest in assuring each county a legislative representative); *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) (three-judge court), *aff'd*, 542 U.S. 947 (2004)

(holding unconstitutional plan with total deviation below 10% when justified by non-legitimate interests in partisan and regional discrimination).

The Voters First Act, as amended, restates these federal constitutional requirements in Article XXI, section 2(d)(1):

Districts shall comply with the United States Constitution. Congressional districts shall achieve population equality as nearly as is practicable, and Senatorial, Assembly, and State Board of Equalization districts shall have reasonably equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act or allowable by law.

The Commission has adopted policies that implement section 2(d)(1) by setting fixed ranges for the total population deviations on congressional and state maps. For congressional districts, the Commission's policy required a total deviation of 0% (either no deviation or a deviation of 1 person) on preliminary maps. (See Compilation of Resolutions, Apr. 28, 2011) No policy has been adopted regarding congressional districts in the final maps.

For the state districts, the Commission's policies required a total deviation of no more than 5% for the first draft maps, and currently require a total deviation of no more than 1% for the final map. (See Compilation of Resolutions, May 27, 2011) The Commission's motions are silent on any total deviations for state districts in the second draft map.

There remains, however, some uncertainty among Commissioners regarding the legal requirements under state constitutional law to impose a 1% total deviation on state maps. This question is especially important because the Voters First Act, as amended, has not been subject to court interpretation. In order to resolve any ambiguities, the Commission is looking for legal guidance on whether the state constitution mandates a fixed percentage or range on the total population deviation for its final maps.

On the first question presented, relevant case law would include the following:

Legislature v. Reinecke, 516 P.2d 6 (1973)
Wilson v. Eu, 823 P.2d 545 (1992)

There is also the California Attorney General's opinion from 1981, *see* 64 Ops. Cal. Atty. Gen. 597, 613–615 (1981) (cited in *Wilson v. Eu*), that addresses the question as applied to the state's then-existing redistricting criteria, although the opinion itself is not binding as law.

If the state constitution does not mandate a fixed percentage or range, the Commission seeks a clearer understanding of the legal requirements that would inform a revision in the current policy. In particular, the Commission seeks clarification regarding the impact on the Commission's compliance with other districting criteria in the Voters First Act

when the deviations fall significantly below the federal constitutional limits for population deviations.

Put another way, are there any potential legal problems that might arise should the Commission set too low of a deviation? For instance, if the deviation for state districts is set at 0%, would this policy cause conflicts with other state constitutional provisions involving compliance with the federal Voting Rights Act or maintaining, where practicable, the geographic integrity of counties, cities, neighborhoods, or communities of interest? Attaining a 50+% minority CVAP in a potential section 2 district might be more difficult with a lower deviation, or an increase number of city or county splits would likely occur with a lower percentage. What, then, are the legal implications of imposing a deviation limit that may result in these types of problems?

It is not necessary to review in detail the federal constitutional requirements for population deviations. However, in framing some of the discussion of state law, it will be helpful to reinforce the existing federal standards that set upper limits on population deviations.

Commissioner DiGuilio and I have asked Q2 to provide some sample data on the impact of different deviation figures on city and county splits to help clarify some of the potential impacts. Although the data will be very limited, we think it will provide some assistance in addressing the ultimate policy questions.