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June 22, 2020

Elaine M. Howle
California State Auditor
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Sacramento, CA 95814
E-Mail: ElaineH@auditor.ca.gov

Via U.S. Mail and E-Mail

RE: California State Auditor's RFP No. 21-01

Dear Ms. Howle:

We are writing to express our concerns about Request for Proposal No. 21-01 (Line Drawing and Technical Services for Districting), which was released by the California State Auditor on June 15, 2020. Although we greatly appreciate the work of the State Auditor's office in both the candidate selection process and the transition process for the incoming Commission, we believe that the release of RFP No. 21-01 is ill-timed and usurps a key role for the next Commission in fulfilling its constitutional and statutory duties.

As discussed below, we believe that the release of the RFP is inconsistent with the letter and spirit of the Voters FIRST Act that created the Commission. Given the timing of the RFP process, we also believe that it is being released too early in the redistricting cycle: new commissioners may not be adequately prepared to review candidates for a highly specialized position, and members of the general public may not yet be engaged in state redistricting to participate meaningfully. We do not, however, address the merits of the RFP's specific requirements, since we believe it is the 2020 Commission's prerogative to determine the substantive content of any RFP involving the hiring of key staff and consultants.

RFP No. 21-01 solicits proposals for the primary line-drawing consultant for the 2020 Citizens Redistricting Commission. Based on our experience during the 2011 redistricting cycle, this consultancy is among the most important positions to be filled by the Commission. The line-drawing consultant must be highly qualified and experienced – fluent in the legal requirements of redistricting and the technical aspects of geographic information systems and data collection, and capable of working successfully with experts and repeat players, as well as with individuals and groups having only minimal experience with redistricting. The position requires a close working relationship with the full Commission, its staff, legal counsel, and Voting Rights Act counsel; in addition, the consultant serves as an essential point of interface between the Commission and the Statewide Database, as well as members of the public providing input on the mapping process.

California Government Code section 8253, a key statutory provision of the Voters FIRST Act, states in relevant part: "The commission shall hire commission staff, legal counsel, and

consultants as needed. The commission *shall establish clear criteria for the hiring and removal of these individuals*, communication protocols, and a code of conduct.” Cal. Gov’t Code § 8253(a)(5) (emphasis added).

Section 8253(a)(5) further states that “[t]he State Auditor shall provide support functions to the commission until its staff and office are fully functional.” *Id.* Additionally, the statute requires that “[t]he commission shall make hiring, removal, or contracting decisions on staff, legal counsel, and consultants by nine or more affirmative votes including at least three votes of members registered from each of the two largest parties and three votes from members who are not registered with either of the two largest political parties in California.” *Id.*

Taken together, these statutory provisions make clear that it is the Commission’s prerogative to hire the line-drawing consultant and that it alone is responsible for establishing the criteria that must be included in any RFP or similar hiring document dealing with staff, legal counsels, or consultants. The role of the Auditor’s office is to provide support functions until the Commission’s own staff and office are up and running. If the State Auditor’s office were to prepare draft language for an RFP subject to Commission approval, that activity could be properly categorized as a support function. However, it is clear that independently releasing an RFP containing, among other things, a Statement of Work, Contractor Responsibilities and Deliverables, and provisions for Qualifications and Experience goes beyond providing mere support and assumes a role that should be reserved for the full Commission.

Moreover, while regional breakdowns, the schedule of meetings, and the dates for releases of maps remain to be determined by the new Commission, the RFP – informed by the experiences of the Commission during 2011 – attempts to provide likely timeframes, destinations, and numbers of meetings to help guide prospective applicants. Anticipating decisions by the new Commission may be useful for budgeting and resource allocation purposes, but the new Commission may chart an entirely different course for its redistricting tasks, subject to the bounds of the Voters FIRST Act and other applicable laws. We believe the new Commission should be free to develop its own strategies and timelines, and the Commission, not the State Auditor’s office, should be the body to articulate those strategies and timelines in an RFP.

According to its table of Key Action Dates, RFP No. 21-01 was released on June 15, 2020, and proposals are due on August 17, 2020. There is also a Question and Answer period scheduled, with questions due on July 27 and answers to be posted on August 4, 2020. The expectation is that the Commission will engage in a thorough review process during August or September of 2020, including providing adequate opportunities for public comment. The proposal due date falls two days after August 15, 2020, the date by which the full Commission must be seated.

Although we understand the State Auditor’s interests in providing a smooth transition to the new Commission and in helping the Commission achieve an early start in filling key positions, the calendar for the RFP process is problematic for a number of reasons. As we have already noted, the Commission will have had no opportunities to review the content of the RFP, which has already been released; moreover, unless fully seated by July 27, the Commission will have no opportunities to participate in the Question and Answer process.

The new Commission will be under no obligation to complete its review process during August or September; nevertheless, if the current timeline is followed the commissioners will receive a full set of proposals only a few days after having been seated. At that point, it is unlikely that all its members will have received formal training on the applicable laws and technical aspects of redistricting, let alone state hiring and contracting procedures.

Based on the current Commission's experiences during 2010 and 2011, we expect that the new Commission will need to spend a significant amount of its initial time together on creating a leadership structure, strategic plans and timelines, and basic infrastructure. Developing hiring criteria and evaluating contractor proposals, in our opinion, should ideally occur after the commissioners have received full training in the subject matter. If the commissioners themselves lack sufficient knowledge of redistricting law, common practices and procedures, and emerging technologies, then they will be ill-prepared to apply appropriate criteria and to discern between potential consultants who are specialists in the field.

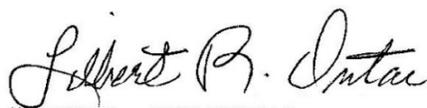
The timing of the RFP process during the Summer of 2020 also poses problems of public participation. The current COVID-19 crisis will no doubt pose ongoing problems for the Commission in obtaining public input, but even under the best of circumstances the Commission should not be expected to engage in significant outreach on the redistricting process by such an early date. Nor should the public be expected to have redistricting already on its calendar. Transparency and public participation remain hallmarks of the Voters FIRST Act, and the hiring process for the line-drawing consultant should be fully accessible to members of the public, even if the subject matter is more technically oriented.

Again, we appreciate your office's exceptional work and professionalism in the candidate selection process and in the transition between the old and new Commissions. Nonetheless, we feel that the new Commission should initiate the RFP process and should adopt its own timeline for selecting the line-drawing consultant. We strongly urge that RFP No. 21-01 be withdrawn and that the new Commission be afforded the opportunity to fulfill its responsibilities under the Voters FIRST Act.

Sincerely,



Angelo N. Ancheta
Chair, California Citizens Redistricting Commission



Lilbert Roy Ontai
Vice Chair, California Citizens Redistricting Commission