

AGENDA ITEM

702 JUL 2016

DATE: July 21, 2016
TO: Board of Trustees
FROM: Leah T. Wilson, Chief Operating Officer
SUBJECT: Case Management System Procurement

EXECUTIVE SUMMARY

The State Bar is at a critical juncture with respect to the need to successfully and timely deploy a case management system (CMS) for, at a minimum, the Office of the Chief Trial Counsel (OCTC) and the State Bar Court (SBC). Though two independent consultants recommended that the bar procure a commercial off the shelf (COTS) CMS¹, the State Bar entered into a contract with Sustain Technologies, Inc. (Sustain) for what was effectively a custom-build system in 2012². As of September, 2015, a viable product had not been delivered, and concerns were rampant on the part of both Sustain and the bar regarding expectation and service levels. This untenable situation ultimately resulted in the bar's termination of its contract with Sustain in December, 2015.

Also in December, the bar issued a request for proposals (RFP) for a new CMS for OCTC and SBC, with optional modules for Member Records and Compliance and the Office of Probation. Two proposals were received, one from Trinity Technology Group (Trinity) and one from Tyler Technologies, Inc. (Tyler). After initial scoring was completed, a Notice of Intent to Award was issued to Tyler On May 26, 2016.

Trinity protested the award asserting improprieties in the scoring of cost; the bar's Protest Award Team upheld the protest, and directed that proposals be re-scored. That re-scoring was completed, resulting in Trinity having a one-point advantage over Tyler. Pursuant to the bar's procurement guidelines, the Deputy Chief Executive Officer (Chief Operating Officer) can make a decision to award contracts to the second place vendor in a virtual tie situation. This approach is being recommended to the Board.

Specifically, the Board is asked to approve a contract with Tyler for the procurement of a CMS for OCTC, SBC, and the Office of Probation³. The estimated cost of year 1 deployment and licensing is \$2,703,800. Ongoing licensing costs are projected to total approximately \$180,000

¹ COPLAN and Company (2007 report) and Gartner, Inc. (2000 report), both provided as attachments to the Business Case.

² Though Sustain had a court product, it had not developed or deployed a prosecutorial module at the time of contract with the State Bar.

³ After an initial review of proposals from both vendors with respect to the functional requirements for Member Records and Compliance, it was determined that inclusion of Member Records and Compliance would unnecessarily expand the project scope and timeline. As a result, it was dropped from consideration early on in the process.

annually. In addition, staff seeks approval for additional project costs related to the hiring of a project manager and subject matter expert (SME) backfill staffing, necessary components of a successful CMS launch.

A Business Case, modeled after the California Department of Technology Project Management Methodology (PMM), is provided as an attachment to this memorandum. The PMM specifically satisfies the requirement that the Board consider a written cost-benefit analysis before committing to a project reasonably expected to exceed \$2,000,000.⁴

BACKGROUND

On December 4, 2015, the State Bar terminated its contract with Sustain for the development of a CMS for OCTC. That contract, which was executed on October 25, 2012, was for less than \$200,000 for system development, the lowest bid received for that procurement cycle. Three years after contract execution in September, 2015, a viable case management system had not been delivered. In fact, no product had even been submitted to the State Bar until the summer of 2015; that product was soundly rejected by the client Department (OCTC) as unworkable. Sustain conversely reported that the Department's expectations were unreasonable. Regardless of who was at fault, thousands of staff and contractor hours were wasted in a multi-year initiative that was ultimately unsuccessful. Further, because of the intense IT resource investment that was being made on the Sustain solution, the SBC's well-documented need for a new CMS went unaddressed. SBC had issued a CMS RFP in 2012; proposal review was completed by September of 2013, however the RFP process was abandoned due to capacity concerns stemming from the resource investment in the Sustain effort.

In December, 2015, post termination of the Sustain contract, an RFP for a new CMS was issued. Though significant interest was expressed through the bidder's conference phase, ultimately, only two vendors submitted proposals, Trinity and Tyler⁵.

DISCUSSION

Proposal Review and Evaluation

Tyler

In response to the RFP, Tyler proposed configuring its COTS CMS, Odyssey. Odyssey has been implemented for 11 statewide systems nationwide. In addition, the product has been adopted by the Superior Courts of 26 California counties. Odyssey has the added benefit of being an integrated *justice* case management system, which means that the COTS product is not exclusive to the courts but includes prosecutorial and probation modules which can serve as the foundation to meet OCTC's and the Office of Probation's needs.

⁴. See Agenda Item 147, July 2015

⁵ Technically three bids were received, two from Tyler, one reflecting a locally hosted system (Local) and one reflecting a solution that would be hosted by Tyler (Hosted), and one from Trinity. Both the Business Case and staff analysis has focused on the Tyler (Local) solution as the hosted option was determined to be sub-optimal very early on in the evaluation process.

For the SBC, Odyssey appears to provide a majority of the court's requirements "out of the box" - that is ready to implement - including an integrated document management system. Additionally, Tyler provides Session Works Judges Edition that judicial officers can use on a tablet device on the bench. For OCTC, Odyssey will likely require more configuration than for the SBC. Although Odyssey has been deployed in many district attorneys' offices across the country, the functions of OCTC are not exactly parallel to those of a criminal prosecutorial agency. Feedback received from prosecutor's offices where Odyssey has been deployed – including a scripted demonstration of Odyssey functionality – reassured the State Bar evaluation team that Odyssey could be deployed primarily through configuration with some amount of customization required. The following entities provided the evaluation team candid responses regarding their implementation experience with the Tyler team:

- Santa Clara Superior Court
- San Bernardino Superior Court
- Fresno Superior Court + Session Works demo
- Colin County, Texas District Attorney's office
- Fort Bend County, Texas District Attorney's office
- Williamson County Texas, District Attorney's office

Reference checks with each of these entities indicated that Tyler can deliver on the representations made in its bid and meet the demands of the State Bar. Each of the references listed above described a successful implementation of the Odyssey Court and Prosecutorial CMS.

Trinity

Trinity begins the presentation of its bid by asserting that its technology solution is “built upon a proven commercial off-the-shelf (COTS) platform” and goes on to state that “on a scale from 1 to 5, where a custom-built solution represents a 5, our COTS solution is a 1.0.” Upon closer review of the Trinity proposal, however, State Bar staff came to the conclusion that the Trinity bid actually reflects a custom build solution, rather than a COTS.

Trinity's proposal is based on Microsoft Customer Relationship Management (CRM) system. A CRM has the ability to exercise considerable control over development, workflow functionality, and the ability to react quickly to requirement changes. A CRM can be configured and customized to manage data and information. The flexibility inherent in the technology, however, makes a CRM more akin to a development platform than to a true COTS product. Further, while Trinity has deployed its product for agencies that receive and investigate complaints, arguably similar (though not equivalent to) OCTC, it has never developed a CMS for a court; in other words, there is no “off-the-shelf” version that would be configured as part of a State Bar deployment.

As a result, Bar IT staff concluded that in fact Trinity offers a *custom* solution, that deployment of the system would require a significant commitment of State Bar staff resources to participate in development sessions, and represents overall a much riskier proposition for the bar than does Odyssey. Given the nature and unique characteristics of the Bar's discipline system, and as

evidenced by the failed effort with Sustain, it is inherently difficult to manage requirements inflation during the progression of a custom-build implementation schedule. Change orders can significantly extend project timelines and cost.

While Trinity has no experience working in the judicial branch or developing solutions for branch entities, the following entities listed below were provided by Trinity as references:

- California Department of Business Oversight (DBO)
- California Department of Insurance (DOI)
- California Hospital Association
- California Department of Social Services

The evaluation team conducted reference checks and demonstrations for the DBO and DOI; the other two entities were not able to serve as references due to availability. Both DBO and DOI were pleased with the implementation and support services provided by the Trinity team. DOI is a licensing agency for insurance agents and brokers, and a consumer protection agency for investigating and prosecuting insurance fraud. The demonstration of the DOI CMS was limited to the public facing application; this is the portal by which the public can access licensing and fraud information. This application is built with ADX Studio, a third party add-on to the CRM. The demonstration was further limited by the fact that the DOI continues to use Oracle Forms, rather than SharePoint, the add-on document management system contemplated by the Trinity CMS. In addition, DOI's investigative unit solution was unavailable for demonstration pending a CRM upgrade.

The DBO licenses and regulates financial services providers and serves as a consumer protection agency for entities including banks, credit unions and brokers. At the time of the State Bar's reference check with DBO, the project manager indicated that a CRM is designed to be a customer relationship management tool and that DBO did not use any of those features. What Trinity had developed instead was a customized licensing, examinations, enforcement, and complaint system. DBO indicated that they needed additional enhancements, therefore requiring several Trinity staff and an additional contract to continue to provide customization services post-implementation.

Importantly, these reference checks illustrated that in addition to the CRM platform, deployment of the Trinity solution requires third-party add-ons, namely ADX Studio, for the public interface, and SharePoint for document management functions. The bar's current IT resources would need to be significantly augmented to support these new platforms and applications.

At the end of the initial round of scoring, Tyler was in first place with 82.1 points. A notice of intent to award to Tyler was issued on May 26, 2016. On May 31, 2016, Trinity submitted a protest, specifically regarding the scoring of cost. Initial round scores are provided as Attachment B.

Cost Scoring

Section E of the bar's RFP evaluation methodology has traditionally been used for cost, and has assigned points proportionally as follows:

- Lowest bidder receives full points for Cost category (100 percent)
- Other proposals are benchmarked against the price of the lowest bidder
 - For example, the lowest bid = \$100,000. This proposal receives 100 points for Cost
 - The next lowest bid = \$120,000. This proposal receives 83 points (\$100,000 is 83 percent of \$120,000)
 - The next lowest bid = \$150,000. This proposal receives 67 points (\$100,000 is 67 percent of \$150,000)

While this methodology has the benefit of being quantitative with no *facially* subjective component, it is fundamentally flawed.

First, there is nothing that allows an organization to take into account the reasonableness of a cost proposal. For example, Bid 1 = \$1, and Bids 2-10 = \$100,000-\$300,000. Bid 1 would receive 100 percent of available points simply because it is the lowest dollar value; clearly, an aberrance in pricing of this degree should suggest that something is problematic about Bid 1 pricing, but such an observation or concern could not be reflected in Cost scoring under the traditional methodology.

Second, the practice of scoring the Cost of proposals proportionately against one another, as opposed to discretely, is arbitrary. Other methodologies include review committees establishing a range of reasonable pricing, with all proposals within that range receiving a full award of Cost points, and only those bids falling above (or below) being penalized on Cost scoring.

Concerns regarding the Bar's standard practice of scoring cost motivated the decision to bifurcate the Cost Scoring component into Categories E1 and E2, with E1 being afforded 10 of 30 points, and scored as follows: *Assessment of proposed cost relative to scope of work, implementation factors, and impact to the organization*. The thought behind the establishment of this sub-category was that while still ultimately reflecting overall Cost, it allowed for implementation factors, including the impact of the organization of the various solution models proposed (e.g. custom-build versus off-the-shelf), to be taken into account.

The Protest

Trinity's protest centered around the bi-furcation of the cost category into two components, E1 and E2. Pursuant to Section 5.505 E of the State Bar's General Procurement Manual, an Award Protest Team was established to consider these concerns; the team was comprised of the Executive Director, Deputy General Counsel, and Finance Director/Chief Financial Officer⁶.

⁶ Section 5.05 E provides: the Award Protest Team will consist of the Executive Director, the Chief Financial Officer, and the General Counsel, or their designees. No member of the Evaluation Team can be designated to serve on the Award Protest Team.

On June 30, 2106, the Award Protest Team noticed Tyler and Trinity of its decision to uphold the protest. Based on the remedies available under these circumstances, the Team determined that recalculation of the bids was warranted, excluding Category E1. The results of that re-calculation are provided as Attachment C; as reflected in that attachment, this adjustment gave Trinity a one-point advantage over Tyler, a virtual tie.

Section 4.08 E. of the Procurement Manual addresses virtual tie situations as follows:

A comprehensive evaluation plan must be developed and finalized. All rating and scoring factors to be used must be included in the posted RFP, criteria for calculating costs must be developed, and the evaluation plan must provide for a fair and equitable evaluation of all proposals. In the case of a virtual tie (top 2 scores within 2 total points of each other) the Final Award may be decided by the Deputy CEO to minimize potential service interruptions.

Staff concludes that of the two bids, Tyler Technologies' CMS, Odyssey, offers the most benefits with the fewest risks to the Bar, and the greatest likelihood of timely and successful implementation. In light of consultant reports going back at least 16 years outlining numerous problems with the status quo legacy system, and a three-year failed effort with Sustain, a custom solution, the bar cannot afford to take the risk that engaging Trinity represents. The likelihood of continued delays in CMS implementation is too great, as is the risk of unanticipated cost escalation. Odyssey is a COTS system which makes the staff recommendation consistent with the findings of the studies conducted by COPLAN and Company and the Gartner Group. Both of these reports concluded that:

- the status quo is unacceptable and would fail to meet the needs of OCTC or the SBC;
- a custom-build solution is excessively risky and offered uncertain benefits for the Bar;
- a COTS option provides the optimal balance of benefits while mitigating the risks inherent in the acquisition and deployment of a large IT system.

Similarly, and equally important, recent experience with Sustain provides the bar with concrete evidence of the time and resource drain associated with a custom-build solution; the Bar simply cannot afford to take a risk on an unproven vendor given this history.

FISCAL/PERSONNEL IMPACT

Project Cost and Proposed Funding Sources

Implementation Costs

Implementation of Tyler's Odyssey product will total \$2,703,830 million; Trinity's parallel costs total \$2,162,490. These costs will be incurred in 2016 and 2017:

	Trinity	Tyler	Difference
Procurement Costs	\$2,162,490	\$2,703,830	\$541,340

The State Bar will incur other significant implementation costs as related to CMS development and deployment. These costs specifically include project management and SME staffing as follows:

Personnel Expenses	FTE's	Aug-Dec 2016	Jan-Dec 2017	Jan-Jul 2018	Totals
Project Manager	1.0	\$73,100	\$180,700	\$108,600	\$362,400
Subject Matter Experts (SMEs)	8.0	\$352,100	\$1,175,900	\$706,600	\$2,234,600
IT Staff	1.0	\$90,500	\$159,900	\$68,600	\$319,000
Total Personnel Costs	10.0	\$515,700	\$1,516,500	\$883,800	\$2,916,000

Estimated procurement and personnel costs for the recommended Tyler solution total \$5,619,800 over the project period.

Annual Support Costs

In addition to initial procurement costs, each proposal includes annual support expenses. Trinity's annual support totals \$83,251 over the four-year period outlined in the proposal, or an average of \$20,813 per year; Tyler's annual support totals \$723,857 over the same period, or an average of \$181,000 annually:

	Trinity	Tyler	Difference
Annual Support (4 years)	\$83,251	\$723,857	\$640,606

The difference between Trinity and Tyler's Year 1 implementation costs totals \$541,340; when taking into account ongoing annual licensing fees, this cost differential increases significantly. Although it is accurate that the Trinity solution is less costly than Odyssey, staff believes that Trinity costs are understated, in that they specifically do not include the cost of additional State Bar IT staff who will be needed to support the Trinity solution, namely the CRM, ADX and SharePoint platforms that comprise the Trinity CMS. A conservative estimate pegs this cost at 2 FTE, or approximately \$300,000 annually. In addition, and as outlined extensively in the attached Business Case, the risk associated with selection of a system that has never been deployed in a court or prosecutorial environment, and is essentially a custom-build solution, far outweigh the additional cost associated with procuring a proven product widely deployed in court and justice system contexts. Further, maintenance of the status quo is not an option, as the AS/400 platform itself needs upgrading and modification to stay viable, and there is a shrinking pool of professionals available to support it. Staff strongly believes that when considering this Business Case in its entirety, it is clear that Tyler is the best *value* solution for the State Bar.

Proposed Funding Sources

Annual licensing fees will be absorbed in the State Bar's operating budget; as such, funding sources have been identified for only the limited-term costs associated with development and deployment. These costs total \$5,619,800. The project is proposed to be funded as follows:

Funding Source	Fund Balance 6/30/16	Amount to be used for CMS	Amount Remaining
IT Special Assessment Fund ⁷	\$1,215,200	\$1,215,200	\$0
Technology Improvement Fund	\$3,516,800	\$2,004,300	\$1,512,500 ⁸
2016 General Fund Savings	n/a	\$1,000,000	n/a
2017 Proposed Elimination of Bank Processing Fee	n/a	\$800,000	n/a
Future Transfer from Fund 88 ⁹	\$2,800,000	\$600,300	\$2,199,700
Total Costs		\$5,619,800	

With respect to bank processing fees, the bar currently absorbs credit card processing fees associated with online payments; staff will recommend to the Board that the bar cease this practice beginning with the 2017 budget. With respect to the Fund 88 transfer, a recent external audit has determined that this Fund consists of revenues that should be characterized as unrestricted General Fund (the Fund is currently categorized as a Restricted Fund). Staff will bring forward a recommendation to transfer these funds pursuant to that audit at the Board's October meeting.

⁷ The IT Special Assessment Fund was generated by a limited term special assessment of \$10 which expired in 2013. In the 2016 budget, staff proposed a transfer of the balance of this fund to the Technology Improvement Fund. However, subsequent to further discussion with the State Auditor, staff has determined that combining the funds is not advisable. As a result, the transfer has not been effectuated.

⁸ \$1,000,000 of this balance is designated for an Admissions CMS

⁹ Fund 88 is a fund within the Sections Program Fund; its primary activity is the administration of revenue and expenses related to royalties generated by online continuing education programs. The recently completed audit revealed that very little of the fund's balance, or ongoing revenue, is appropriately assigned to the Sections Program Fund.

RULE AMENDMENTS

No rule amendment necessary.

BOARD BOOK IMPACT

None.

BOARD COMMITTEE RECOMMENDATIONS

Staff recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve execution of a contract with Tyler Technologies, Inc. for a case management description for the Office of the Chief Trial Counsel, State Bar Court, and the Office of Probation; and it is

FURTHER RESOLVED, that the Board of Trustees approves the proposed project budget and funding sources.

ATTACHMENT(S) LIST

- A.** Business Case and Cost-Benefit Analysis
- B.** Original Proposal Scoring
- C.** Revised Proposal Scoring