



## MEMORANDUM

Date: August 1, 2022

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: Jan Leshner   
County Administrator

Re: **Status Update Community Bond Program**

At the June 7, 2022 meeting, the Board of Supervisors received an update on the Community Bond Program by Justice Services Director Kate Vesely. At that time, Supervisor Grijalva requested staff also develop an "in-house" model, as an alternative to the outside vendor service originally approved by the Board. Additionally, Supervisor Christy also requested an estimated cost comparison of the various options. The attached memorandum from Justice Services provides a response to both these queries and a status update on this issue.

In summary, the original Community Bond Program design approved by the Board of Supervisors included plans to procure an outside vendor, via Request for Proposal (RFP), to develop the program, procedures and implement operations. The first solicitation was canceled earlier this year after no valid proposal was received.

The RFP was revised, and pending a final Procurement Department review will be published the next week. Under optimal conditions selection will take place in September, and a contract would be available for Board approval in October. It is difficult to estimate the cost value of the responses we will receive, but the Board should know that in the prior spoiled procurement effort the only proposal received was valued at approximately \$350,000.

Simultaneously, Justice Services and its partners have developed an in-house program model that could be brought to the Board at a subsequent date consideration and action. This has to undergo final review by Finance and Risk Management, Superior Court, Pretrial Services, the Pima County Attorney's Office and the Sheriff.

Conceptually, a self-replenishing fund of up to \$2.5 million could be set up to cover the bond amount for eligible participants. Under this model, County staff would be responsible for all program components. Given the 365 days a year (including evenings, weekends, and holidays) nature of this process, total staffing may be as much as six (6) full time positions. Total personnel and operational costs under this scenario may be as much as \$500,000 annually.

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The Honorable Chair and Members, Pima County Board of Supervisors

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The complexity of designing and operating a Community Bond Program was substantially underestimated by staff. I believe we are now well on our way to delivering two detailed options for the Board to review for potential approval and funding. I will provide a detailed update in September.

JKL/dym

Attachment

c: Francisco García, MD, MPH, Deputy County Administrator and Chief Medical Officer  
Carmine DeBonis, Jr., Deputy County Administrator  
Steve Holmes, Deputy County Administrator  
Kate Vesely, Director, Justice Services

# MEMORANDUM

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**Date:** August 1, 2022

**TO:** Jan Leshner  
County Administrator

**From:** Kate Vesely  
Director, Justice Services



**RE:** Update to Community Bond Program Item, with In-House Option

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On June 7, 2022, a status update on the Community Bond Program (CBP) was presented to the Board of Supervisors. Supervisor Adelita Grijalva made a request for an “in-house” County-operated program option to be created, as an alternative to the outside vendor model originally approved by the Board. Supervisor Steve Christy also requested an estimated cost comparison of the various options. The purpose of this memorandum is to present an additional program model for Board consideration, as well as projected costs for each option (based on information available at this time).

Please note that these programs are presented with data available to us at this time; and cost estimates of each option may change based on new information.

## Summary

The original Community Bond Program design approved by the Board of Supervisors included plans to procure an outside vendor, via Request for Proposal (RFP), to develop the program and procedures and implement operations. The first solicitation was canceled earlier this year after no valid proposal was received. The memorandum pertaining to the CBP status agenda item from June 6, 2022 is included for reference as **Attachment 1**.

While the RFP process has already been reinitiated and is ongoing, Justice Services is simultaneously developing an in-house program model, which will be presented for Board consideration after vetting by County Administration, Finance, Superior Court, Pretrial Services (PTS), Pima County Adult Detention Complex (PCADC), Risk Management, and the Pima County Attorney’s Office (PCAO) Civil Division. After significant financial, statutory, and programmatic research, in conjunction with Public Defense Services (PDS), it is the opinion of both Dean Brault, Director of PDS and original author of the CBP, and myself that an in-house option is the most feasible path forward (both in terms of operational costs and timeline to implementation). However, until we have the program design vetted by the above agencies, we do not recommend ending the RFP solicitation. This will provide us a back-up option, should the in-house option be unable to move forward.

No Board action is required at this time. We will continue to provide to you updates on the status of the RFP process, as well as the progress on the in-house model. It is my objective to provide to you a vetted in-house program model, to include projected operational and Community Bond Fund costs, within 60 days. Board action may be requested at that time, to include final program design approval and funding.

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Option 1 – Request for Proposal (RFP)

The RFP process is currently underway. Procurement estimates contract implementation (if the process is successful and there are no delays in the RFP process) as early as October 18, 2022 with an expedited timeline (included as **Attachment 2**).

While minimal modifications have been made to the original RFP specifications, Justice Services has strategies to increase awareness of the RFP with the intention of attracting new bidders, as well as preparing a marketing plan that may better appeal to local community service agencies. Justice Services is also prepared to provide technical assistance to vendors on the bail bonds process, including licensure with the Arizona Department of Insurance. However, significant challenges exist in pursuing bond agent licensure, for both a contracted vendor as well as the in-house option and this strategy may be abandoned in favor of posting the full cash bail.

It is challenging to estimate costs for a contracted vendor to implement the CBP program. Proposals, if received, may vary significantly if additional wrap-around resources and services (like transportation after release from custody or temporary housing) are included in a proposal, or if the proposal identifies economies of scale with other services the vendor provides which may lower costs to the County. The sole response provided to the previous RFP included operational costs of approximately \$350,000. If this RFP solicitation results in a vendor (and program design) the County wishes to implement, the Board action will be requested to approve the contract and related funding, as a budget was not included in prior Board action.

**Estimated Cost:** Unknown until RFP responses are received.

**Benefit:** Potential advantages to this option were outlined in the previous memorandum, and include risk reduction and potential synergy with other wrap-around resources. If multiple RFP responses are received, there is also the potential benefit of competition among multiple proposals for best program design and/or lowest costs.

**Risk:** The risk of continuing the RFP process, if no proposals are received, the implementation timeline for this program will be even further extended while the County works to implement an alternative option. Responses may include operational costs higher than a County-operated program. Utilizing a contracted vendor will also limit our ability to realize economies-of-scale cost savings, if this option is able to utilize some existing County-funded staff to offset resources required for the program.

“In House” County Operation

It is unclear at this time whether the Arizona Department of Insurance will issue a bond license to a governmental entity or employee(s). The benefit of being a bond agency is that, instead of paying the full cash amount of the bond, a licensed bond agent (with sufficient assets in reserve) can agree to pay a portion of the bond along with a promise to pay the remainder of the balance if the individual does not appear for court. The Arizona Department of Insurance, by licensing an individual or agency, verifies that

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this entity is able to pay the remainder of the bond balance – thereby requiring less cash to be needed up front, at the time of release.

The amount of funding required to be available for the bail fund will vary significantly, based on the result of this inquiry. We estimate that, if County employees can be licensed bond agents, approximately \$500,000 to \$750,000 cash would be required to fund bail. This fund would remain self-replenishing, as all bonds – whether forfeit or returned with successful case completion – would be repaid to the fund. This amount was estimated based on the estimated number of detainees with eligible cases, the average bond amount (approximately \$6,500 per person), and average amount of time until case resolution.

If the Arizona Department of Insurance does not agree to license County employees as bond agents, the program can continue – in light of our research, there are many reasons why it would indeed be preferable (and more cost-effective, operationally) to proceed without bond agent licensure. However, the County will be required to front the full cash amount of bail. While the fund would continue to be self-replenishing, PDS estimated the amount of cash needed on hand would increase to approximately \$2.5 million. Efforts to make a more exact fund estimate are in progress.

**Important to Note** – Regardless of fund size (the \$750,000 fund with bond agent licensure, or up-to \$2.5 million for the full cash bond), funds will never leave County cost centers. When a bond is posted it is essentially held in “escrow” in one County account; whether a person successfully appears for Court or absconds and their bond is forfeit – in both scenarios, the cash in escrow (still within the County accounts) is then moved back to the Community Bond Fund cost center. Funding is shifted around, but total value of all accounts will never decrease.

### *County Staffing Estimates*

This model attempts to replicate the RFP as closely as possible, using Pima County employees. Total staffing is estimated to include 6.0 FTEs: a Community Bond Program Manager, four Justice System Navigators, and Social Services Navigator. This model assumes in-person appearance at each Initial Appearance hearing (twice-day, 365 days a year including evenings, weekends, and holidays). However, in our planning of the County-operated program, we are exploring with our justice system partners the possibility of utilizing existing staff to provide certain elements of the CBP program. For example, we have approached Pretrial Services (PTS) to explore the possibility of using PTS staff at the jail to explain the CBP program to eligible individuals and have participant contracts signed. If we are also able to identify a mechanism where a Justice Services staff member can remotely determine program eligibility and electronically post the bond, this will significantly reduce the amount of FTEs required for the County-operated program. Pretrial Services and Superior Court are internally reviewing the feasibility of this option and will respond shortly.

The CBP Program Manager would oversee and administer the program, monitor bond funds and activity, and provide supervision for the Justice System and Social Services Navigators. They would also be responsible for maintaining the hearings schedule, ensuring coverage at all times, and maintaining operations and outcome data.

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The Justice System Navigators would be responsible for appearing at Initial Appearance, identifying eligible individuals, meeting with the detainees to explain the program and obtain signatures for release contracts, and then posting the bond. These employees would also coordinate with Public Defense Services, Pretrial Services, and other justice system entities. To ensure maximum utilization of staff time, they may also provide additional services like court-reminder phone calls and other efforts to encourage court appearance. As referenced above, if some elements of the in-person work may be shifted to PTS or other existing staff already located in the jail, the FTEs for this function will be reduced.

Assuming the County-operated program intends to post bail for eligible individuals promptly after Initial Appearances, the timing of these hearings presents a challenge with staffing by County employees. Hearings occur twice-daily (9 am and 8 pm), seven days a week, 365 days a year. It is estimated that at least four individuals will be required to maintain coverage for all hearings. A variety of classifications may be equipped to perform the required tasks of the bail process; for purposes of estimation, we have used the classification of Program Coordinator as its requirements more closely align with the requirements of a bond agent.

Finally, the Social Services Navigator would have experience with community resources, treatment, housing, employment, transportation, and other resources. This staffer can assist participants with enrollment in services and programs, be a conduit to other resources, and provide ongoing support throughout the participant's proceedings.

Effective Title	Job Classification	Hourly	Base Salary	Base w/ ERE
CBP Manager	Program Manager Unclassified	\$27.86	\$57,948.80	\$78,230.88
Social Services Navigator (4)	Special Staff Assistant Unclassified	\$19.23	\$39,998.40	\$53,997.84
Justice System Navigator	Program Coordinator Unclassified	\$24.71	\$51,396.80	\$69,385.68
	<i>Total for 4.0 FTE Program Coordinator</i>			\$277,542.72
			<b>Total Staff</b>	<b>\$409,771.44</b>

Approximately \$90,000 in operational costs are needed to cover overtime or holiday pay, mileage, training, bond agent licensing costs, and office supplies.

**Cost:** Total estimated operational cost of in-house program is \$500,000 annually. However, if economies of scale can be identified, such as utilizing existing staff currently operating in the jail to perform some of the tasks required for CBP, operational costs will be reduced. If the Board approves the In-House option, it will be our recommendation to not pursue bail agent licensure and instead post the full cash bond. PTS has recommended \$2.5 million for the CBP full cash bond, however a smaller amount may initially be approved with additional funding added as needed until equilibrium can be achieved. Once an amount necessary to always have resources available to post bonds (until existing bonds are returned to the cost center), the fund will continue to be self-sustaining. No cash will leave County cost centers with this option.

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**Benefit:** The in-house operational costs may be comparable, or possibly less, than an outside contractor's proposal. Further, if existing staff can be utilized to offset some in-person tasks, operational costs can be further reduced. The County will retain operational oversight, and have the ability to continuously make the programmatic adjustments that will be needed in launching this "first of its kind" project (as opposed to contractual modifications with an outside vendor). Staff for this program may also be utilized to support other initiatives, such as re-entry coordination, justice system navigator, and connectivity to community services (such as housing, transportation, employment, and treatment). Finally, a County-operated program can collect data from multiple intercepts, enabling program evaluation (i.e. analysis of court appearance rates) and assessment of cost savings to the County.

**Risk:** A County-run program may involve higher costs than a contracted outside vendor, depending on proposals received and the array of supplemental services included in their design. The County may assume additional risk operating the program internally as opposed to contracting the work.

If a viable in-house program design can be created, the revised CBP will be presented to the Board for review and consideration. If approved, the Board will also be required to approve the proposed budget.

### Conclusion

After extensive research and discussion, our opinion is the County-operated program is not only viable but also preferable to contracting with an outside vendor. However, until the program design can be completed and vetted with all appropriate County departments and system partners, Justice Services will simultaneously pursue the RFP solicitation. This will ensure no time is lost towards program implementation, if it is determined at any point that the in-house option is not viable.

CC: Dean Brault, Director – Public Defense Services  
Terri Spencer, Director – Procurement  
Monica Perez, Chief of Staff – County Administration

### **Attachments:**

1. June 2, 2022 Memorandum to Board of Supervisors "Status of Community Bond Program"
2. Expedited Procurement Timeline for Community Bond Program RFP

# ATTACHMENT 1



# MEMORANDUM

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**Date:** June 2, 2022

**TO:** Jan Leshner  
County Administrator

**From:** Kate Vesely  
Director, Justice Services



**RE:** Status of Community Bond Program

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The Pima County Board of Supervisors approved the Community Bond Program (CBP) in December 2020, which included contracting with a vendor via Request for Proposal (RFP) procurement process. The purpose of this memorandum is to provide a timeline of events, the status of the project, and potential alternatives to program implementation for Board consideration.

## Summary

The Community Bond Program was created to reduce the number of individuals held in the Pima County Adult Detention Complex (PCADC) due to their inability to pay for bond. After Board approval of the program, it was determined that oversight of the RFP process should be seated with a county entity other than Public Defense Services (PDS) – ultimately resting with the Justice Services department in July 2021.

After completing the required procurement process, the RFP was posted in September 2021. However, after extending the submission deadline an additional month, only one proposal was received. Ultimately it was determined the applicant was ineligible due to a conflict of interest, and a notice of cancellation was issued in March 2022.

A new procurement has been initiated, with an anticipated posting date of mid-summer. Justice Services is working with PDS to increase awareness of the opportunity with potential vendors, provide technical assistance with the bail bond agent licensure process, and market the opportunity for local non-profit/social service providers for synergy with their other programming.

## Background

Dean Brault, Director of Public Defense Services, first proposed the concept of the Community Bond Program. The original white paper submitted to the Board in August 2020 is included as **Attachment 1**. After Board approval in December 2020, work began designing RFP specifications to procure an outside agency (ideally a non-profit or organization already working in social services) to administer the program.

Oversight of the RFP process was transitioned from PDS to former Assistant County Administrator Wendy Petersen in May 2021, who then transferred responsibility to the Justice Services department upon her retirement that following July. The RFP was posted in September 2021, with a deadline of October 26, 2021 for responses. However, by mid-October, Procurement had received no notice from any potential

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**Re: Status of Community Bond Program**

**June 2, 2022**

vendor that there was intention to submit a bid. The deadline was extended to November 30, 2021 and one proposal was received.

Unfortunately, one of the owners of the responding company was a Pima County employee at the time of submission, who failed to complete the required “notice of substantial interest” as a part-owner of the company. The matter was forwarded to the Pima County Attorney’s Office (PCAO) on December 28, 2021, for a conflict of interest opinion. On January 20, 2022, PCAO notified Procurement that there was a conflict of interest with their office to review the matter; therefore, it was contracted to outside counsel for a finding. On February 24, 2022, Procurement was notified that outside counsel had determined there was a conflict of interest, and the RFP process was canceled on March 4, 2022 due to failure to receive a qualifying proposal. Included with this memorandum are a detailed timeline (**Attachment 2**) and the original RFP (**Attachment 3**).

Internal discussion immediately began between PDS and Justice Services to explore modifications to the RFP specifications and/or other strategies that may increase interest in submitting a proposal. Feedback from potential vendors (that ultimately declined to submit a proposal) included concerns about not understanding the bail process or how to become licensed as a bond agent, and that the scope of the project was not more directly related to their primary mission as social service entities. Among our strategies for the re-posted RFP are marketing how social service agencies could utilize engagement at the jail to refer an individual to their other services. For example, while participation in after-care services could not be a requirement for release, the CBP vendor could use the opportunity at release to connect the individual to benefits enrollment, treatment, housing, transportation, and other resources.

The revised RFP specifications has been resubmitted to Procurement, officially launching the new process. A flowchart of the Procurement process is included as **Attachment 4**.

#### Contracted Vendor vs. In-House Operation

When Mr. Brault was crafting the program design, it was necessary to garner stakeholder input and support. This included County departments like Finance, as well as the Courts (as the approval of Superior Court is needed for Pretrial Services to be utilized to provide supervision of program participants). At the initial stakeholder meeting, some stakeholders expressed concern with the program if the County operated it. However, consensus among stakeholders was achieved if CBP were to be administered through an outside vendor.

As the originator of the CBP concept, Mr. Brault provided insight into the benefits of utilizing an outside vendor to implement the program (preferably a non-profit, but not required). He advises that:

- It may help ease the potential optics of “self-dealing” or conflict of interest,
- It significantly reduces the potential for complications from the process of getting the program administrator(s) licensed from the Arizona Department of Insurance as a professional bondsperson,

- The concept of a professional bonding agency not profiting off the organization is novel, but not precluded by any known statutes or rules,
- Utilizing County personnel to administer the program and become licensed as professional bonding agents, however, is a significantly more complex potential problem and could be unattainable,
- The vendor selected to implement CBP would be covered by insurance that is required pursuant to the Request for Proposal, thus helping shield the County from any potential liability.

Mr. Brault also advised that if the County cannot get an employee licensed by the State of Arizona Department of Insurance as a professional bonding agent, this would not necessarily preclude the program from advancing but it may require significant program modification. Utilizing a professional bonding agent allows for the use of secured bonds, which do not involve the transfer of actual funds unless and until the bond is forfeited following a hearing. This procedure would dramatically reduce the amount of capital necessary to be encumbered in this system.

If the County could not proceed as a professional bonding agent, it could still run the program but bonds would instead need to be posted in cash. The funds would not be lost if forfeited as they are ultimately returned to the County; however, more capital would be required.

Should the County wish to explore operating CBP internally, program design and stakeholder approval would need to be revisited.

#### Options for Board Consideration

- Proceed with the current program design, which includes an RFP to select a program vendor. Once a procurement process starts, it takes approximately four months to complete the process (assuming no significant delays), followed by a period of time for program implementation. A successful RFP process would result in the benefits expressed above. The potential risk to this option would be that if no submissions are received in the second RFP process, the program launch would continue to be significantly delayed.
- Direct County staff (PDS and/or Justice Services) to revisit program design as an in-house operation, to provide a revised program design for Board approval. This approach may expedite program implementation, but has the risk of greater capital required for the bond fund (only if the County cannot be licensed as a bond agent) and may present increased liability. Additional time would be required to redesign the program and obtain stakeholder approval.

#### Recommendation

It is our recommendation that the original Board-approved design be continued and that the RFP be re-issued. Justice Services will work closely with Procurement to measure interest in proposal submissions among potential vendors. If it seems probable that there will be limited or no responses to the

***Memo to J. Lesher***

***Re: Status of Community Bond Program***

***June 2, 2022***

solicitation, Justice Services and PDS will revise the CBP proposal to include an in-house alternative, to be presented for consideration to system stakeholders and Board. Stakeholders may be more open to exploring a County-operated program if it becomes clear there is limited interest among outside agencies to administer the program.

Attachments

1. Community Bond Program White Paper by Dean Brault (August 2020)
2. Detailed CBP Timeline
3. 2021 Request for Proposal documentation
4. Procurement RFP flow chart

CC: Dean Brault, Director – Public Defense Services  
Monica Perez, Chief of Staff – County Administration

# **ATTACHMENT 1** *(to June 2, 2022 Memo*



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# MEMORANDUM

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Date: August 24, 2020

To: The Honorable Chairman and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator

A handwritten signature in dark ink, appearing to read "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Community Bond Program**

I am attaching a report prepared by Public Defense Services Director Dean Brault, including a memorandum from Farhang & Medcoff, PLLC regarding Permissibility of Pima County's Funding of a Non-Profit Bonding Agency. The report discusses the possibility of the County implementing a Community Bond Program (CBP) to help reduce the number of individuals who are held in the Adult Detention Complex because of the inability to pay for a bond or cash bail.

I understand that some in the reform community prefer a system that eliminates cash bail or bonds all together. Such is desirable but not permitted because of current Arizona law. Reform and/or modification to Arizona Law will have to occur by approval of the legislature and governor. Until that time occurs, the CBP may be a reasonable substitute.

It should also be noted that the Criminal Justice Reform Advisory Commission has ranked as one of its top reform priorities, the elimination of cash bail or bonding.

CHH/lab

Attachment

c: Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement  
Dean Brault, Director, Public Defense Services

# Safely Reducing the Jail Population Using Pre-trial Risk Assessments and a Community Bond Program



By Dean Brault



August 2020

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## List of Abbreviations

ADCRR	Arizona Department of Corrections Rehabilitation and Reentry
COR	Conditions of Release
IA	Initial Appearance
PCAO	Pima County Attorney's Office
PDS	Public Defense Services
PSA	Public Safety Assessment
PTS	Pre-Trial Services
RFP	Request for Proposal
ROR	Release on Own Recognizance

## Abstract

The vast majority of inmates at the Pima County Adult Detention Complex are held pending resolution of a criminal case. At initial appearances, Pretrial Services makes recommendations of Conditions of Release to the court for each defendant on felony cases. Those recommendations are followed about 86% of the time in Pima County. Data from 2017 shows that almost one in 10 defendants are held on a bond despite a recommendation for release from Pretrial Services. Over 76% of these defendants were subsequently released while their case was pending, but only after spending days, weeks or months in jail. This paper proposes funding a Community Bond Program as a solution that will stabilize the lives of these defendants by releasing them quickly, which will prevent tens of thousands of unnecessary days in jail and the millions of dollars of related expenses every year.

## Statement of the Problem

Individuals who are incarcerated pre-trial are mostly confined not because they were denied bail or were a flight risk or a were a danger to the public, but rather because they could not muster the financial resources needed to secure their freedom<sup>1</sup>. An individual's inability to afford monetary bail is not an indicator of that individual's guilt, an accurate predictor of the risk of danger that individual poses to others, or an indicator of whether that individual will show up for a scheduled court proceeding. The incarceration of individuals who cannot afford money bail without meaningful consideration of other alternatives is a violation of due process and equal protection.

Individuals who are incarcerated pre-trial are more likely to plead guilty, be convicted of a felony, receive longer sentences, and be offered less attractive plea agreements<sup>2</sup>. Indigent defendants who cannot post a cash bond are especially prone to losing employment, housing, vehicles, and even their children without adequate community support and resources, even if jailed for a relatively short period of time<sup>3</sup>.

Evidence-based pre-trial assessment of a defendant's likelihood to appear in court and remain arrest-free while awaiting trial can increase successful pre-trial release outcomes and diminish racial disparities without imposing unnecessary financial conditions, impairing the judicial process, or jeopardizing public safety<sup>4</sup>. Despite these facts, the court often does not follow recommendations for release utilizing evidence-based pre-trial assessments and holds many defendants on bonds that they cannot afford.

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<sup>1</sup> Reaves, Brian A., U.S. Dep't of Justice, *Felony Defendants in Large Urban Counties*, 2009, at 15 (2013).

<sup>2</sup> Lowenkamp, Christopher T., et al., *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (2013); Phillips, Mary T., N.Y. City Criminal Justice Agency, *A Decade of Bail Research in New York City*, 115-17 (2012).

<sup>3</sup> *Pretrial Justice: How Much does it cost?*, 2 (Pretrial Justice Inst. 2017); Melissa S. Kearney et al., *Ten Economic Facts about Crime and Incarceration in the United States*, THE HAMILTON PROJECT 13 (2014).

<sup>4</sup> Arifuku, Isama, National Council on Crime & Delinquency, *Racial Disparities at Pretrial and Sentencing and the Effect of Pretrial Services Programs* (2013).

## Background

Pretrial Services (PTS) is a division of the Pima County Superior Court that screens defendants at the Pima County Adult Detention Complex and makes recommendations to the Tucson City Court Magistrates who conduct initial appearances (IAs) and set conditions of release (COR). IAs happen at 9 a.m. and 8 p.m. every day of the year. Data has consistently shown that in Pima County the agreement rate between PTS's recommendation and the court's COR is approximately 86%.

Defendants who cannot post their bond remain in jail until their charges are dismissed, their case is resolved, or the court modifies their COR which requires defense counsel to file a motion and a hearing. Such motions are usually heard four weeks or more after the arrest. Even a short time in jail can have profound impacts on the lives of defendants with pending cases, all of whom are constitutionally presumed to be innocent. Indigent defendants who cannot post their bond can lose their job, their housing, their vehicle, as well as their children if they do not have adequate financial or community support. These impacts are especially frustrating in cases where the pre-trial assessment suggests the defendant may be successfully released on personal recognizance or be supervised, and yet the court set a bond. Most of these defendants are ultimately released, but only after being in custody for several days, weeks, or months.

### Initial Proposal

In June of 2018, staff at Public Defense Services (PDS) approached me with an idea to reduce the population of the Pima County Adult Detention Complex. The idea was that Pima County could reduce its jail population by posting bonds for any individuals that received a release recommendation from PTS.

In researching the feasibility of this idea, I first noted that it is possible for an agency to use secured bonds, which do not require the movement of money, if licensed as a professional bondsman per Rule 7.1(h) of the Arizona Rules of Criminal Procedure. This is required if the agency concurrently posts five or more secured bonds.

I then explored the possibility of Pima County creating a professional bonding agency. After weeks of research, I concluded that Pima County does have the legal capacity to create a department that could become a surety and employ professional bondsmen. My original proposal was to create such a department that would hire employees who would become professional bondsmen. They would contract with defendants and then post a bond in all cases where PTS recommended release and the court set a bond, excluding homicide, sex, and child exploitation cases and cases with a bond over a set amount. Defendants with a hold from any jurisdiction would also be excluded. My proposal for the bond amount limit was \$30,000, which would cover the vast majority of cases and prevent the court from moderately increasing the

bond amounts in order to further detention. The \$30,000 limit would also exclude cases with charges sufficiently serious that would warrant a bond exceeding that amount.

Based on my experience reviewing PTS reports when assigning cases, my knowledge of when Motions to Modify Conditions of Release are typically heard, and the frequency of those motions being successful, I initially estimated that this plan would save more than 20,000 jail bed days per year. Given the known cost of second and subsequent jail bed days, this initial estimate showed potential savings of approximately \$2,000,000 per year. I also confirmed that there would be no risk of the County losing the bonds that are posted because all bond forfeitures are ultimately deposited into the County's general fund. While researching other community bond foundations, I learned that no other jurisdiction has a program similar to this proposal.

On June 22, 2018, I presented this idea to Chuck Huckelberry, Pima County Administrator, at a meeting with the Criminal Justice Reform Unit. On July 2, 2018, I followed up with a memorandum to the County Administrator, outlining the details of this proposal and suggesting the appointment of outside counsel to advise on its feasibility. On July 10, 2018, I met with many of the relevant stakeholders. At that meeting, the group expressed interest in the project, but believed that a non-profit it should administer it. At that meeting, then Deputy County Administrator Tom Burke disagreed that outside counsel was necessary and indicated he would obtain legal advice from the Civil Division of the Pima County Attorney's Office (PCAO). At that meeting, Pima County Superior Court Administrator Ron Overholt approved of a data request I made to quantify the actual impact of such a program.

At a meeting on August 24, 2018 to follow up on the progress of this proposal, I learned that the PCAO had declared that they did have a conflict of interest. On October 3, 2018, Andy Flagg, Chief Civil Deputy of the PCAO, indicated in an email that to obtain outside counsel, a request was first needed to be made for the PCAO to review the project. Once the PCAO received the request, he confirmed that it would then be referred to outside counsel because he confirmed that a conflict did exist. Assistant County Administrator Wendy Petersen began exploring the proper procedure to obtain outside counsel.

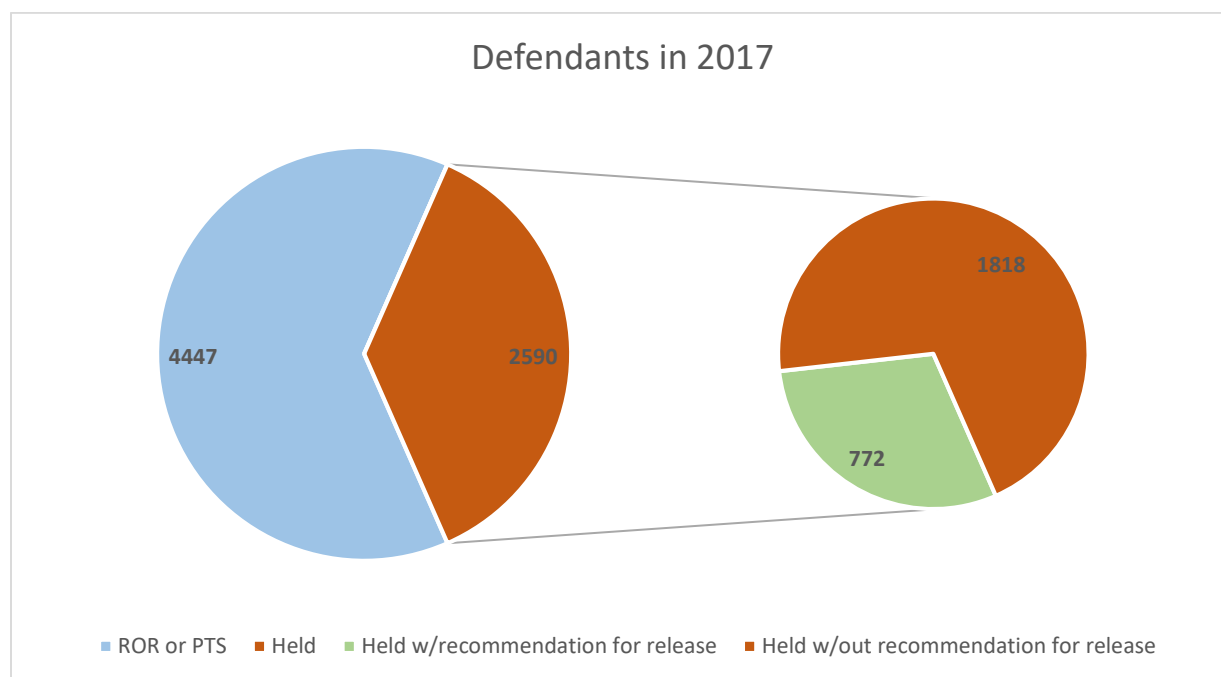
### *Data Analysis*

In the following months, PDS obtained data from PTS for the calendar year of 2017 to calculate the impact of this proposal to fund a non-profit community bond agency. Multiple queries needed to be run to obtain the necessary data. It then took several months to process the data to avoid making improper assumptions to ensure accurate results.

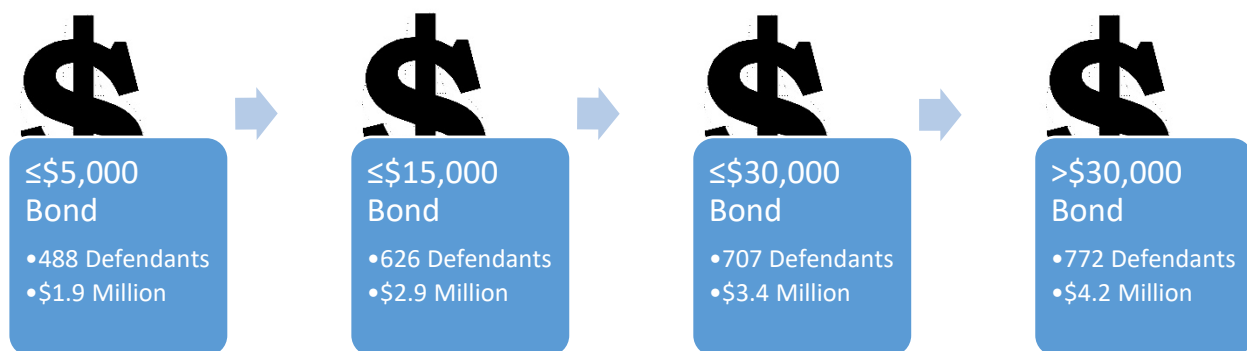
On February 27, 2019, I sent an email to Assistant County Administrator Wendy Petersen and Deputy County Administrator Tom Burke with final numbers of the impact a Community Bond

Program would have had on the 2017 calendar year for their review. On March 13, 2019, I met with Mr. Burke, who accepted the validity of the data after reviewing the results.

PDS analyzed the data released by PTS to determine the exact number of days that defendants who would be eligible to participate in the Community Bond Program actually spend in jail before being removed from the jail in any manner. The PTS data indicated that in calendar year 2017, there was a total of 7,037 defendants. Of these, 4,447 were Released on Recognizance (ROR) or to the third-party custody of PTS and 2,590 were held in custody. There were 772 people held on bond despite a PTS recommendation for release, which comprised 11.0% of the total number of defendants who had an initial appearance that year. Of those held on bond with a recommendation for release, 29.5% of those cases were dismissed prior to indictment.



We analyzed this data to identify cases that had a PTS recommendation for release that had bonds set at \$5,000 or less, \$15,000 or less, \$30,000 or less, and over \$30,000. The number of people released that year under a Community Bond Program with those limits would have been 488, 626, 707 and 772, respectively. Jail bed day savings on those cases would have been collectively, 19,420, 28,709, 34,124 and 41,962, respectively. Using the current rate that the jail charges agencies other than Pima County for second and subsequent days of incarceration, these jail bed days would represent collective savings of \$1,937,922, \$2,864,871, \$3,405,234 and \$4,187,388, respectively. The jail population would have decreased by 2.9%, 4.4%, 5.2%, and 6.4%, respectively. The average number of days these defendants spent in jail after the day of their initial appearance was 39.8, 45.9, 48.3 and 54.4, respectively.



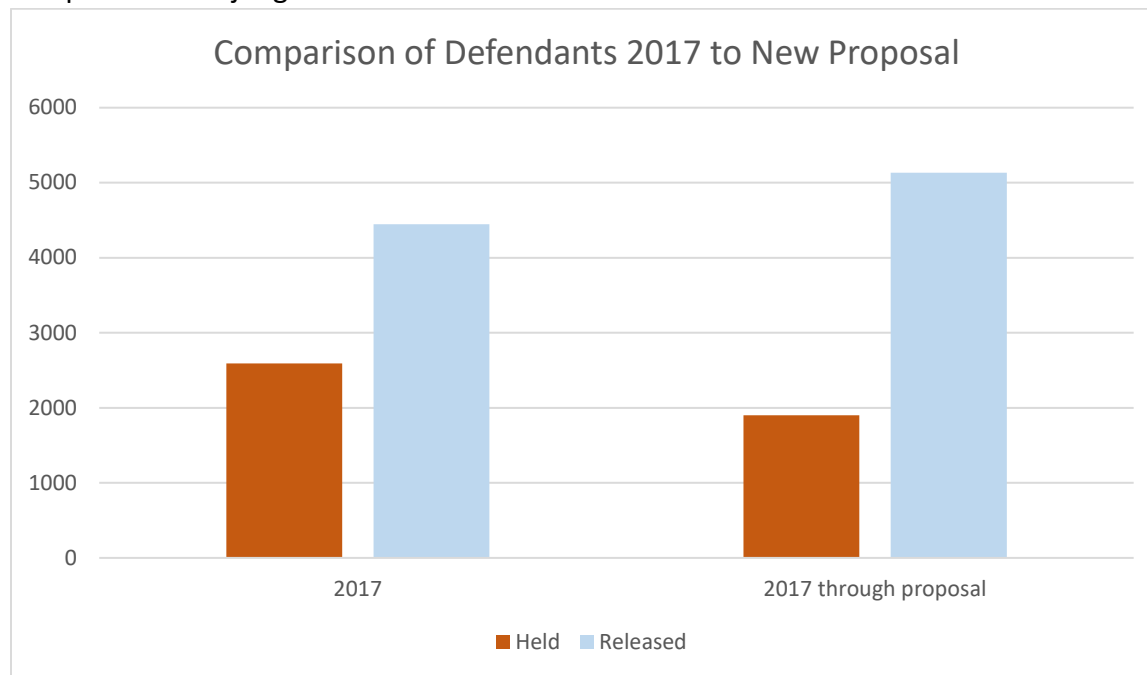
Analysis of the 2017 PTS data showed that of the 772 defendants who were held on a bond despite a recommendation by PTS for release, 228 had their charges dismissed pre-indictment, of which 130 did not post the bond that was set and 98 did post their bond. There were 214 defendants who were indicted that posted their bond at some point. There were 141 defendants who were indicted and filed a Motion to Modify Conditions of Release that was granted by the court. The data also showed that there was a total of 189 defendants who either never filed a Motion to Modify Conditions of Release, or that motion was denied. Of this total, there were 161 that had bonds set at \$30,000 or less that initially appeared to meet the proposed requirements of the Community Bond Program.

Because this number seemed to be higher than expected, I subsequently researched every eligible case where no motion was filed or one was not granted. I discovered that seven of these cases would not meet the requirements of the program due to the type of charges. Another six would have been excluded because of existing holds placed on the defendant. There were also six cases that were erroneously included in this category because they were released after posting a bond or having a Motion to Modify Conditions of Release granted, and for some reason were not properly identified. This reduced the number of defendants eligible for the program who did not file a successful Motion to Modify Conditions of Release from 161 to 142.

These new figures would reduce the total number of defendants released under this program from 707 to 694. This reduction of 1.8% would impact the calculation of the number of bed days and the associated estimated savings. This would still result in a savings of approximately 33,497 bed days at an estimated cost of \$3,342,620 under the proposed conditions. The original calculation of bed days saved was 34,124 with a calculated cost of \$3,405,234.

The 694 defendants that would have been released under this program would constitute a 26.8% reduction in the total number of defendants who were ordered to be held in the jail at initial appearances. These defendants who would be eligible for this program represent 9.9% of the

total number of defendants in 2017 who had an initial appearance on felony charges in Pima County. Analysis of this data also showed that the overall success rate of Motions to Modify Conditions of Release on these cases was 93.0%, which confirmed anecdotal evidence that the vast majority of defendants with recommendations for release are getting released after seeing a Superior Court judge.



Further analysis of this group of 142 defendants who did not file a Motion to Modify Condition of Release showed that 10 of them had their charges dismissed post-indictment. It also showed that only 1.1% of the total number of defendants in 2017 would have been released under the program and then need to go back into custody after being sentenced to the Arizona Department of Corrections Rehabilitation and Reentry (ADCRR). Despite the fact that defendants who are sentenced to ADCRR and get credit for the time they serve, the County is required to pay for any pre-sentence incarceration. It is also important to note that defendants get community supervision credit of one day of every seven days of their sentence once they are sentenced to ADCRR. Defendants do not earn such credit for pre-sentence incarceration, which means that defendants who get sentenced to ADCRR ultimately spend more time in custody if they have been incarcerated pre-trial.

After the initial analysis of this data, on May 2, 2019, the County Administrator requested that the Board of Supervisors appoint outside counsel. Pima County appointed the law firm of Farhang and Medcoff as outside counsel to provide a legal analysis of the permissibility of funding a non-profit bonding agency. On July 2, 2019, Kristen Wendler, a partner at Farhang and Medcoff, drafted a memorandum concluding that this program is not prohibited by current federal and state law. See Attachment 1.

## *Modified Proposal Adjusting Supervision and Including Misdemeanors*

Since July 10, 2018, the plan was for the agency administering the Community Bond Program to supervise all the defendants released under that program. The intent was to have PTS share their standards of supervision with the non-profit agency, who would attempt to mirror the level of supervision of PTS. I frequently discussed this program with Domingo Corona, the Director of Pretrial Services, and encouraged him to explore the idea of PTS providing the supervision of the program participants.

On May 5, 2020, Domingo Corona notified me that Pima County Superior Court Administration had agreed that Pretrial Services could perform the supervision portion of the Community Bond Program. The non-profit would still be the agency running the program, but the contract that participants would sign with them would be to follow the conditions of release established by PTS.

Having PTS conduct the supervision was a significant development that has many advantages. First, it will mean that the program has lower expenses. The non-profit will only need funding for a director and a very small staff to get the contracts with the participants reviewed, signed, and processed instead of needing additional staff to perform the supervision of the participants. The County could incur a minimal expense for additional PTS staff if needed because of a higher than expected the number of program participants. This modification would also create a consistent and uniform level of supervision, which will strengthen the data collected when measuring performance and effectiveness. It will also be neutral regarding judicial decision making, which could have been impacted if there was any actual or perceived differential in the quality of supervision.

In meetings with Procurement, I learned that we cannot limit a Request for Proposal (RFP) to be available to only non-profit agencies. However, given that there will be no opportunity to profit from administering this program, the reality is that only non-profits are likely to respond to the RFP. The conditions in the RFP would be tailored to prioritize the organizational structure of a non-profit that serves our community. Nonetheless, I have and will refer to the community bond agency as the non-profit for simplicity. It is also worth noting that, as part of the RFP process, PDS cannot be the administrator of the program because of a conflict of interest, hence my suggestion that Grants Management and Innovation administer the program. It is also possible to select another department of the County.

On June 22, 2020, I was asked by the County Administrator to address the impact of the Community Bond Program on the misdemeanor population at the jail. The Community Bond Program, as originally proposed, would have no impact on the misdemeanor population because it requires the use of PTS reports that are based on Public Safety Assessment (PSA) scores and other structured factors used by PTS to arrive at a release recommendation. Notwithstanding that, I explored potential changes to the program where misdemeanors could be included.



On June 25, 2020 I met with Ron Overholt, the Pima County Superior Court Administrator, and Domingo Corona and Michelle Moore from PTS where we discussed options that could make the Community Bond Program applicable to misdemeanor cases.

On misdemeanor cases, by administrative order, PTS now releases many defendants charged with misdemeanors prior to booking into the jail. On the misdemeanor cases that are booked into the jail, PTS does not calculate a PSA score or draft the same kind of report as generated for felonies. On these misdemeanors, PTS currently only provides a report to the court that makes a recommendation for or against Release on Recognizance (ROR), which includes recommended conditions, any status, any holds, and identifies the current charges.

There are several types of misdemeanor cases that are ineligible for pre-booking release. Defendants charged with Domestic Violence are statutorily required to be seen by a judge at an initial appearance. Some defendants with prior failure(s) to appear after having been released pre-booking will be seen by a judge. Cases where a misdemeanor court issues a suggested bond of \$999, which is a signal that the court issuing the warrant wants to set stricter conditions of release that will secure the defendant's presence in court, will always be seen by a judge. Defendants who are unwilling or unable to interact with PTS are also ineligible for pre-booking release.

PTS had been exploring for some time the possibility of using the PSA and filing reports on misdemeanor cases. PTS is now interested in making that transition, which would then allow misdemeanor cases to be included in the Community Bond Program.

Currently, for multiple reasons, PTS does not provide supervision for any misdemeanor cases. I propose that the program requirement that all defendants released under the program be supervised by PTS be changed to all defendants be supervised at the release level recommended by PTS. This proposal would also have the benefit of eliminating over-supervision in felony cases, which would have happened in some cases under the initial proposal. This would also prevent additional days in jail for defendants who would prefer to wait to post their bond in order to not be required to report to PTS.

Because PTS does not provide supervision on misdemeanor cases, their recommendation would continue to only be either ROR or No ROR on misdemeanor cases. There would be no loop hole that would result in having misdemeanor defendants be supervised by PTS, and hence no excessive strain on the supervision resources of PTS. This proposal would also increase the number of felony defendants who are ROR, which would decrease the stress on PTS supervision staffing. This would also eliminate the criticisms that this program would lead to any over-supervision as expressed by local and national community bond organizations.

On June 26, 2020, I drafted a memorandum to the County Administrator addressing the impact of the Community Bond Program on the misdemeanor population as originally proposed. I included the proposed change to use the supervision level recommended by PTS, which would address over-supervision and allow the program to include misdemeanor cases.

## **Solution**

Pima County can fund an organization to operate a Community Bond Program. That organization would offer, at no charge, to bond out any defendant who was held on a bond of \$30,000 or less when Pretrial Services recommended release on any case except those with homicide, sex, or child exploitation charges or if the defendant has a hold from any jurisdiction. The defendant would agree to be released on whatever conditions of release were recommended by Pretrial Services.

The organization, which would almost certainly be a non-profit, would likely create a sub-entity that would act as the community bonding agency. They could rely on the parent non-profit for organizational structure and support. The director and other relevant employees would need to take the course offered by the Arizona Department of Insurance in order to be certified as a professional bondsman. There is a \$166 fee to register and the agency would be required to post a \$10,000 bond with the State of Arizona. A Memorandum of Understanding would need to be executed between the non-profit and the Superior Court establishing that the non-profit would post the bonds in eligible cases where the defendant signed the contract and that PTS would provide the supervision for those defendants where they recommended release to PTS.

The assets necessary to secure any bonds posted would be a grant of funds that, by contract with the non-profit, could only be used to cover any bond forfeitures or to post cash bonds for program participants. The RFP would require strict accounting protocols and regular reporting.

Part of the proposal would fund a separate operational account to cover the expenses of the director and employees who administer the contracts with participants. This expense, as stated earlier, will be much smaller without needing to staff to supervise defendants given that PTS will be supervising them.

The contract with the non-profit and the participants would be relatively simple. In exchange for posting the bond for individuals who have a bond set of \$30,000 or less, who are not charged with homicide, sex, or child exploitation charges, and who does not have any kind of hold on them, the participant would agree to abide by whatever conditions of release that were recommended by PTS.

The method of administering these contracts would be for the non-profit to have staff located in the lower level of the jail to work with PTS and jail staff to identify those eligible for participation in this program at initial appearances. Mark Napier, the Pima County Sheriff, has indicated that the non-profit agency will have access to the clients in the lower level. This will greatly expedite releases and reduce the number of defendants being fully booked into the jail.

The Clerk of the Superior Court will facilitate the processing of the bonding agency credentials for the non-profit's employees.

The way professional bonding agencies operate is that when posting secured bonds, no money is actually transferred at the time a bond is posted. With proper credentials issued by the Clerk of the Court, the department at the jail that processes the posting of bonds accepts forms that avow that the agency has the funds to cover the bond in the event of a forfeiture. The paperwork or electronic document is accepted and the defendant is released.

In the event that the defendant fails to appear at court, the judge makes a referral for the forfeiture of the bond. A different judge then makes a determination of whether the defendant failed to appear, considers any reasons for the failure to appear, and then orders that either none, part, or all of the bond posted be forfeited. The bonding agency is then responsible for depositing whatever amount forfeited with the Superior Court. The Superior Court then deposits those funds with the County, which then places them into the general fund. If the defendant appears at all of their hearings, when the case is resolved, the bond is exonerated and that obligation to cover that bond amount is removed.

The benefits of using a bonding agency are that the process is faster and has far fewer administrative costs to the jail and the Superior Court. This project could be accomplished with only posting cash, but the process would be somewhat slower and involve a larger amount of funding to be distributed to the Community Bond Program.

The process detailed above covers secured bonds, which apply to almost all bonds set. Judges, however, have the ability to set "cash-only" bonds. If a judge sets such a bond, the bond must be posted using cash or a cashier's check. The Pima County Jail utilizes a system with professional bonding agencies that allows them to remotely post both secured and cash-only bonds. That system securely links the bank account of the professional bonding agency to the account of the Pima County Jail.

If the system is unavailable or ineffective for some reason, there is an alternative available to address cash-only cases. The Community Bond Program could maintain a supply of cashier's checks in various denominations made payable to the Pima County Adult Detention Complex along with a supply of cash and coins sufficient to post to the exact cent any bond set because the jail will only accept the exact amount of a bond set by a judge. With access to the lower level, a safe would be installed there. Otherwise, the new PTS building would be an alternative location. The cashier's checks would be replaced approximately every 80 days due to expiration dates. This process will ensure rapid releases and not be subject to bank operational hours.

The plan for the RFP is to fund the non-profit's bond fund with a set amount of funding. The mechanism for maintaining that fund would be to have a floor amount, that if reached, would trigger the County distributing an additional set amount. There would also be a ceiling amount where that same set amount would be sent back to the County if the exoneration of cash bonds

increased the balance above that set amount. The transfer of these funds to the Community Bond Program is contingent on bonds being forfeited and the Superior Court continuing to refer Community Bond Program cases for forfeiture, which may be deemed an administrative waste of time given the mechanism of this program.

Since there would be no loss of any money on bonds that are forfeited under this program and the operational expenses would be relatively small, initiation of a Community Bond Program is likely to save Pima County a substantial amount of money. It would meaningfully reduce the population of the jail by saving an average of 48.3 days in jail, which is just short of 7 weeks, per participant.

## **Conclusion**

With approval from the Pima County Board of Supervisors, Pima County can generate a Request for Proposal to establish a Community Bond Program that would rely on an evidence-based pre-trial assessment of a defendant's likelihood to appear in court and remain arrest-free while awaiting trial and diminish racial disparities without imposing unnecessary financial conditions, impairing the judicial process, or jeopardizing public safety. This program would not result in any defendants being subject to an increased level of supervision. It would apply to both felony and misdemeanor cases. The creation of a Community Bonding Program would save Pima County money. More importantly, it would also improve the lives of defendants who would otherwise be unnecessarily incarcerated in jail.

# **Attachment 1**

**MEMORANDUM**

**TO:** Dean Brault, Pima County Public Defense Services  
**FROM:** Farhang & Medcoff, PLLC  
**DATE:** July 2, 2019  
**RE:** Permissibility of Pima County's Funding of a Non-Profit Bonding Agency

This memorandum analyzes whether a political subdivision of the State of Arizona can legally make a grant to a non-profit organization for the purposes of funding a bail bond agency to serve indigent persons. In completing our research, we identified and analyzed four areas which could raise concern: (1) Arizona's Gift Clause; (2) regulations and licensing requirements for surety and bail bond agents; (3) restrictions on a government's ability to make grants to non-profit organizations; and (4) powers afforded to a county under state law.

Based on our comprehensive review and analysis below, we conclude that Pima County's proposed program is not prohibited under our interpretation of current federal and state law.

**Summary of Background Information**

Pima County currently conducts initial appearances for criminal cases twice a day. Pretrial Services ("PTS"), under the direction of the Pima County Superior Court, utilizes an evidence-based, nationally accepted risk assessment tool to evaluate the risk of non-appearance and re-offending. Based on this risk assessment, PTS makes one of four recommendations for an individual: (1) to be released on his or her own recognizance; (2) to be released to the third-party custody of PTS; (3) to be released to the third-party custody of PTS with enhanced supervision; or (4) not to be released on his or her own recognizance. The rate at which the initial appearance judge adopted the PTS recommendation was approximately 86% in 2017.<sup>1</sup>

If the initial appearance judge requires that an individual post a bond as a condition of release and the individual is unable to do so, the individual's attorney will often file a motion to modify the client's conditions of release and seek an accelerated hearing. If an individual is indicted, an average of 24 days or more pass between the date of arrest until the assigned judge may hear the motion to modify. Such motions to modify are almost always granted in cases where PTS recommended some form of release. Individuals whose charges are dismissed pre-indictment and who are unable to post bond, usually remain in jail for an average of 10 days.<sup>2</sup>

This inability to pay the bond has led to an estimated \$2.4 million in unnecessary bed days (assuming a second and subsequent rate of \$95.00 per day). To address this financial burden, Pima County is considering funding

<sup>1</sup> Brault Memorandum, dated July 2, 2018.

<sup>2</sup> *Id.*

a program in which one or more non-profit organizations would serve as a bail bond agency to post bond for individuals (without collateral) who meet certain criteria. Pima County proposes that individuals would be eligible to participate in the program if they have agreed to be bound by PTS's conditions to release and they meet the following criteria: (i) the bond is set at \$30,000 or less, and (ii) the charges were not under A.R.S. Title 13, Chapters 11, 14, or 35.1 (homicide, sex and child pornography cases).<sup>3</sup> By implementing such a program, Pima County estimates that it could save over \$2 million dollars and reduce the jail population by 5.2% (based on 2017 figures).<sup>4</sup>

### **Gift Clause**

Arizona's Gift Clause (the "Gift Clause") provides that "neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation." Ariz. Constr. Art. 9, §7.

Arizona's long-standing jurisprudence holds that "a government body may disburse funds only for a public purpose." *Wisturber v. Paradise Valley Unified School District*, 141 Ariz. 346, 348, 687 P.2d 354, 356 (1984) (citing *Proctor v. Hunt*, 43 Ariz. 198, 201, 29 P.2d 1058, 1059 (1934)). The *Wisturber* Court determined that the transfer of public funds to a private entity does not violate the Gift Clause if (i) the transfer of funds serves a public purpose, and (ii) the consideration paid through public funds far exceeded the public benefit received. 141 Ariz. at 348-50, 687 P.2d at 356-58.

The Arizona Supreme Court upheld the *Wisturber* two-prong test in 2010, confirming that "the primary determination of whether a specific purpose constitutes a 'public purpose' is assigned to the political branches of government, which are directly accountable to the public." *Turken v. Gordon*, 223 Ariz. 342, 349, 224 P.3d 158, 165 (2010) (citing *Wisturber*, 141 Ariz. at 349, 687 P.2d at 357). In so holding, *Turken* clarified that a public purpose would only be found absent in "those rare cases in which the governmental body's discretion has been 'unquestionably abused.'" *Id.* at 349, 224 P.3d at 165 (citing *Glendale v. White*, 67 Ariz. 231, 237, 194, P.2d 435, 439 (1948)).

However, the *Turken* Court clarified that, for all future interpretations of the Gift Clause, the second prong of the *Wisturber* test requires that only direct benefits to the public be included in determining whether proportionate value was received by the public compared to the public funds expended. 223 Ariz. 342, 351-52, 224 P.3d 158, 167-68 (2010) (rejected the inclusion of projected future sales tax revenue and other indirect benefits when calculating value of benefit received).

In analyzing Pima County's proposed program under the *Wisturber* two-prong test, as clarified by *Turken*, it is not likely that the program violates the Gift Clause. Pima County has proposed to make a grant to a non-profit

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<sup>3</sup> *Id.*

<sup>4</sup> Brault Memorandum, dated March 11, 2019.

organization operating a bail bond agency in order to assist its indigent citizens. In making its proposal, Pima County has determined that a public purpose is to prevent the loss of jobs, homes, custody of children, and personal property, which may result from an extended stay in jail.<sup>5</sup> Under the broad discretion afforded the executive branch of the government in *Turken*, we do not believe a court could determine that Pima County “unquestionably abused” its discretion by creating a program which could prevent its constituents from spending unnecessary time in jail as a result of their indigent status. Thus, it is likely a court would find that Pima County’s proposed program meets the first prong of the *Wisturber* test.

The second prong of the *Wisturber* test requires Pima County to receive adequate consideration for its expenditure in order to pass muster under the Gift Clause. In making its proposal, Pima County has quantified actual costs to the public totaling \$2.4 million as a result of unnecessary bed days in jail. These costs, however, are the permissible, direct costs to the public, quantifiable through PTS and jail occupancy records, and do not include any of the indirect costs to the County and the individuals (e.g., prevention of loss of jobs, housing, and personal property as well as preventing custody issues for children who must become wards of the court or who otherwise must enter into the system when their primary caregiver cannot post bond to get out of jail). Even under this more restrictive *Turken* analysis, unless Pima County’s grant to a non-profit agency operating a bail bond company under the proposed program greatly exceeds the demonstrated direct benefit, it would not violate the Gift Clause.

Furthermore, the purpose of Pima County’s proposed disposition of public funds is to fund a non-profit operated bail bond company which would use the public funds as collateral for bond securing an individual’s appearance in court. If the individual appears in court as required, the bond will be exonerated and there will be no loss of public funds. If the individual fails to appear as required, then the bond will be forfeited to the court, but it will remain the property of Pima County, thereby resulting in no loss of public funds.

Although no loss of public funds will actually occur under either scenario, if anyone challenges Pima County’s proposed program, we foresee that challenge arising under the Gift Clause prohibition against a public entity loaning its credit in the aid of a private person or entity. However, this challenge would be governed by the same analysis described above, *i.e.*, was the loan used for a public purpose, as determined by Pima County, and did the loan of public funds greatly exceed the benefit to the public resulting from the loan.

#### **Bail Bond Agent Requirements and Liability**

In Arizona, a criminal defendant who is released on bond may employ a surety to post an appearance bond on that individual’s behalf. A surety is “a person or company, other than the defendant, who executes an appearance bond and agrees to pay the amount of the bond if the defendant fails to comply with its conditions.” 16A A.R.S. Rules Crim. Proc., Rule 7.1(g). A surety is liable for the amount of the bond if the defendant does

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<sup>5</sup> Brault Memorandum, dated July 2, 2018.



not appear in court; however, a surety is not responsible for the actions of the defendant, other than his/her obligations to appear.

A bail bond agent is “any person who engages in a bail transaction on behalf of a surety insurer or representative thereof.” ARIZ. ADMIN. CODE R20-6-601(B)(2). Bail bond agents are regulated by the Arizona Department of Insurance. Under A.R.S. § 20-340 and A.R.S. § 20-281, *et seq.*, a bail bondsman must meet the following criteria: (i) be at least 18 years old, (ii) be an Arizona state resident, (iii) pass the state licensing exam, (iv) possess sufficient funds to pay the licensing fee and fingerprint processing fee, (v) provide proof of citizenship, work permit, or permanent residency, (vi) have no felony crime convictions, (vii) possess sufficient funds to satisfy surety obligations, (viii) not have violated any rules involving court orders within the past two years, and (ix) agree to maintain regular contact with defendants as a service to the court. A “professional bondsman” is “any person who is a surety simultaneously on more than 4 appearance bonds.” 16A A.R.S. Rules Crim. Proc., Rule 7.1(h).

Under the proposed program, neither Pima County (nor any of its employees) would be acting as a bail bond agent (or even a surety). Instead, the non-profit would be responsible for compliance with all Arizona Department of Insurance licensing requirements, on behalf of itself and any bail bond agents it employs. In other words, even though Pima County would be funding the non-profit bail bond agency through a grant, Pima County would not qualify as nor be a bail bondsman. Nonetheless, and in an abundance of caution, we recommend that Pima County independently review and verify the bail bondsmen licensing compliance of any non-profit entity before making a grant to such entity.

### **Restrictions on Grants by Government Entities to Non-Profit Corporations**

We have been unable to locate any federal prohibitions or restrictions on government entities making grants or donations to non-profit organizations. To the contrary, our research indicates that many non-profits rely on grants from federal, state, or local government grants to fund their programs, especially for human service and healthcare.<sup>6</sup> The federal government has created [www.grants.gov](http://www.grants.gov) for organizations to apply for and monitor federal grants. There are currently 26 federal grant-making agencies and more than 900 federal programs within the federal government.<sup>7</sup>

### **County Powers Under State Law**

State law affords counties, through their respective boards of supervisors, officers and agents, broad powers to serve their inhabitants, such as:

<sup>6</sup> Joanne Fritz, How Nonprofits Generate Revenue Streams (Updated February 10, 2019), <http://www.thebalancesmb.com/where-do-nonprofits-get-their-revenue-2502011>.

<sup>7</sup> Heather Stombaugh, Important Steps to Finding Government Grants for Nonprofits (Updated April 12, 2019), <http://www.thebalancesmb.com/government-grants-for-nonprofits-2502170>.

- The power to dispose of or use its property as the interests of the county inhabitants require (A.R.S. § 11-201(A)(4));
- The power to levy and collect taxes for purposes under [their] exclusive jurisdiction as are authorized by law (A.R.S. § 11-201(A)(5)); and
- The power to make and enforce all local, police, sanitary and other regulations not in conflict with general law (A.R.S. § 11-251(31)).

We have been unable to locate any state prohibitions or restrictions on a county making grants or donations to non-profit organizations (aside from our analysis of the Gift Clause, addressed above). Under A.R.S. § 11-201, Pima County is authorized to collect taxes from inhabitants, and use those tax dollars (its property) “as the interests of the inhabitants require.”

Here, Pima County has determined that the “interests of its inhabitants” include providing grants which will be used to support a bail bond agency to assist indigent persons with posting bond. Furthermore, Pima County’s proposed program may have the added benefit of maintaining the tax income of Pima County as individuals may be protected from an extended jail stay and, thus, may be able to maintain jobs (and pay taxes). While this analysis may not pass muster under the Gift Clause analysis because it involves indirect benefits, it can be included within Pima County’s determination to use its tax dollars to further the interests of its inhabitants.

### **Conclusion**

Beyond the legal analysis discussed above, we have not analyzed the possible non-legal concerns raised by the proposed program, including:

- Is there public and/or political support for such a program?
- Could there be negative publicity for Pima County if program participants who are released on bond commit subsequent crimes?
- Will there be an expensive legal challenge to the proposed program by the bail bond industry?
- Will the program cause animosity between Pima County and its local judges whose may feel that their judgment is being overridden through the proposed program?

These questions raise legitimate business determinations as opposed to the legal issues addressed in this memorandum. In summary, based on the legal analysis above, we conclude that Pima County’s proposed program is not prohibited by our interpretation under current federal and state law. We are available to address any additional questions or concerns arising from your reading or interpretation of this memorandum. We are also available to discuss or present our findings to the appropriate people at Pima County, keeping in mind our desire to preserve and protect the attorney-client privilege to the full extent of the law (to that end, please do not forward this memorandum to anyone without consulting with us first or ensuring the recipient does not waive the privilege).

# ATTACHMENT 2 (*to June 2, 2022 Memo*

### Pima County Community Bond Program - Timeline

Time Frame	Activity
August 2020	County Administrator C. H. Huckelberry forwards to the Board of Supervisors a white paper by Dean Brault, Director of Public Defense Services, which outlines a proposed Community Bond Program (CBP)
December 2020	Board of Supervisors approves CBP
May 2021	Assistant County Administrator Wendy Petersen is requested to oversee the procurement process; begin working on the Request for Proposal (RFP)
July – August 2021	Ms. Petersen retires; transitions RFP work to Justice Services (JS) staff. JS works with Dean Brault and Procurement to draft the RFP.
September 3, 2021	RFP is finalized and sent to Pima County Attorney's Office (PCAO) for review
September 13, 2021	PCAO approves RFP
September 20, 2021	RFP approved by Procurement and published with a due date of October 26, 2021
September 30, 2021	Pre-proposal meeting (opportunity for potential bidders to ask questions about the proposal)
October 22, 2021	After no RFP submissions received, Amendment 1 to RFP is published which extends the due date to November 30, 2021. Procurement files note: "Procurement officer repeatedly attempted to engage potential vendors. [Potential Vendors] stated that they were interested in the project, but were impeded from participating due to their respective capacities to take on the program at the time of the procurement."
November 30, 2021	One proposal is received by deadline; it is noted however that one owner of the proposing company was a current Pima County employee
December 10, 2021	Initial contact to the Clerk of the Board's office to inquire whether a notice of substantial interest was filed, as required by Arizona Revised Statute and County Procedure
December 17, 2021	The Clerk of the Board's office determines that no notice of substantial interest by the proposing company was received
December 28, 2021	Request to PCAO for conflict of interest review
January 10, 2022	PCAO advises Procurement that the matter was being referred to outside counsel for review
February 24, 2022	Opinion received from outside counsel, who determined that there was a conflict of interest by proposer at time of application
March 3, 2022	Procurement informs JS of the conflict of interest opinion, and that the RFP will be canceled due to no other applicants. Kate Vesely expressed her desire to re-open bid process and asked Procurement for direction
March 4, 2022	Notice of cancellation issued – proposal deemed non-responsive due to conflict of interest and respondent's failure to comply with A.R.S. § 38-503 to disclose the conflict in the official records of the public agency
March 10, 2022	Procurement provides direction to Justice Services and PDS on process for re-issuing RFP. Justice Services and PDS confer on options to move forward and potential RFP modifications
April 2022	After consultation with Dean Brault, JS notifies Procurement of intention to repost the RFP with minor modifications, including reducing the value of prior experience in the area of bail bonds in scoring the applications
May 19, 2022	JS finalizes Spec Development Form (RFP) for review and approval. Justice Services also developed communication to stakeholders and potential vendors to outline expectations, potential synergy with other social services an applicant might provide, and information on how to become a bond agent.
May 29, 2022	Revised RFP is completed; JS also develops a plan to include a presentation during the pre-proposal conference which will include information on how to become a licensed bond agent, and how this service may be incorporated into other services provided by proposer (i.e. enrollment in Medicaid, referral to treatment, housing, and/or other social services)
June 1, 2022	Spec Development form submitted to Procurement. Projected RFP posting early July.

# **ATTACHMENT 3** *(to June 2, 2022 Memo*



## PIMA COUNTY NOTICE OF REQUEST FOR PROPOSALS (RFP)

**Solicitation Number:** RFP-PO-2200009

**Title:** Community Bond Program

**Issue Date:** September 20, 2021

**DUE IN AND OPENS:** October 26, 2021 AT OR BEFORE 1:00 P.M. LOCAL TUCSON, AZ TIME (MST)

**Submit Proposal to:**

Pima County Procurement Department  
150 West Congress, 5<sup>th</sup> Floor  
Tucson, Arizona 85701

**Pre-Proposal Conference:**

September 30, 2021 1:00 P.M. LOCAL TUCSON AZ TIME (MST)  
Pima County Procurement Department  
150 West Congress, 5<sup>th</sup> Floor  
Tucson, Arizona 85701

**Microsoft Teams Only**

[Click here to join the meeting](#)

**SOLICITATION:** Pima County ("County") is soliciting proposals from Offerors qualified, responsible and willing to provide the following Goods and/or Services in compliance with all solicitation specifications and requirements contained or referenced herein.

**GENERAL DESCRIPTION/BACKGROUND:** County is seeking a Contractor to propose and implement a Community Bond Program, per the specifications called for herein.

You may download a full copy of this solicitation at <https://vendors.pima.gov> by selecting the solicitation number. Offerors are required to check this website for amendment(s) prior to the closing date and time of the solicitation to assure that the proposal incorporates all amendment(s). Prospective Offerors may also pick up a copy, Monday through Friday excluding legal holidays, 8 A.M. to 5 P.M. LOCAL TUCSON ARIZONA TIME (MST), at the address listed above.

County will hold a Pre-Proposal Conference for the purpose of clarifying requirements and answering prospective Offeror questions via Microsoft Teams. It is the responsibility of Prospective Offerors to familiarize themselves with all requirements of the solicitation and to identify any issues at the conference. Attendance is optional and encouraged. Participation is also available via conference call by dialing 1-213-279-1657, Conference ID: 482 118 741#

**PROPOSAL OPENING:** County will publicly via a Microsoft Teams meeting, open proposals immediately after the Due In and Opens date and time at the location as stated above or as subsequently changed by a solicitation amendment. The County will read each respondent's name. County will open proposals so as to avoid disclosure of the contents of any proposal to competing Offerors during the evaluation process. County invites all interested parties to attend the opening.

[Click here to join the meeting](#) . Participation is also available via conference call by dialing 1-213-279-1657, Conference ID: 689 719 537#

Offerors must submit proposals to the location indicated above and as defined in the Instructions to Offerors, in accordance with all solicitation documents, including the contract, either referenced or included herein. Failure to do so may be cause for County to reject a proposal as *non-responsive*.

Offerors must complete those forms identified in Instructions to Offerors, Section 2, Proposal Documents; and submit those documents in accordance with Section 3. Proposal Submission Requirements.

Offerors may not withdraw proposals for sixty (60) days after opening except as allowed by Pima County Procurement Code.

***OFFERORS ARE REQUIRED TO READ THE ENTIRE SOLICITATION, INCLUDING ALL REFERENCED DOCUMENTS, ASSURE THAT THEY ARE WILLING AND ABLE TO COMPLY, AND TO INCORPORATE ALL ASSOCIATED COSTS IN THEIR PROPOSAL.***

**County will not accept verbal requests for clarifications or interpretations.** Offerors must submit any questions or deviation requests in writing to County's Procurement Department, Attention Kelsey Braun-Shirley, email: [Kelsey.Braun-Shirley@pima.gov](mailto:Kelsey.Braun-Shirley@pima.gov).

All submittals must reference the Solicitation Number and Title. County may not answer any Questions that Offerors submit within 8 days of the solicitation Due Date/Time.

**Deliver proposals to the following address:** Pima County Procurement Department, 150 W. Congress, 5<sup>th</sup> Floor, Tucson, AZ 85701.

## **INSTRUCTIONS TO OFFERORS**

### **1. PREPARATION OF RESPONSES:**

Offerors must make all proposals using the forms contained in this solicitation. Offerors must print or typewrite all notations. **No erasures are permitted.** Offerors may cross out errors and print in ink or typewrite corrections adjacent to the error and the person signing the proposal will initial any such correction. Pima County ("County") prefers typewritten responses.

### **2. PROPOSAL DOCUMENTS:**

Offerors must complete and submit their proposals utilizing the forms provided by this solicitation without modification. Offerors must provide requested information, supporting documents and data in the precise manner that County requests. Failure to comply may cause County to improperly evaluate the proposal or to reject the Offeror's proposal as **Non-Responsive and/or Non-Responsible**.

**NOTE:** Insurance certificate documents will be required from the winning Offeror within two (2) business days after the Notice of Recommendation for Award is posted on the Procurement website. The following forms are required for proposal submission:

**2.1. Attachment 1: Proposal Certification Form** (1 page), complete and provide the requested information which may include, but not be limited to, legal name of the contractor (as registered with the Arizona Corporation Commission and Pima County Vendor Record), vendor contact information, acknowledgement of solicitation Amendments, and signature by an authorized representative.

**2.2. Attachment 2: Minimum Qualifications Verification Form** (1 page). Offeror must certify that they possess the qualifications specified in this form and provide the information and/or supporting documentation stipulated by these Minimum Qualifications to substantiate meeting the qualifications and for the County to determine responsibility.

**2.3. Attachment 3: Questionnaire Form** (1 page), in a separate document, Offeror should respond to all inquiries as guided by the questionnaire.

**2.4. Attachment 4: Sample Professional Services Contract** (9 pages), Although changes to the sample contract may be required prior to finalization and an award of contract, a sample of the resultant contract is provided. Information highlighted in yellow will be completed by County prior to award. Contractor should thoroughly review, including **Exhibit A: Scope of Services** (3 pages) and list and requested deviations or exceptions in a separate document as specified in section 4.2 below.

### **3. PROPOSAL SUBMISSION REQUIREMENTS:**

**3.1. Submission:** Offerors are to complete, execute and submit **one (1) original and three (3) digital copies on thumb drives** (Offeror should submit 3 thumb drives each with one complete copy of all proposal documents, excluding the budget proposal) of the required forms and supporting documents. The submittal must include all information requested by the solicitation, and utilize without modification the forms provided by the solicitation. Offeror should index (tab) the proposal in the order as indicated above (see section 2. Proposal Documents).

**3.2. Signature:** An authorized agent of the Offeror must sign proposal documents and submit them in a sealed package/envelope marked or labeled with the Offeror's firm name, solicitation number, title, solicitation due date and time, to the location and no later than the Due Date and Time specified in the Request for Proposal document.

**3.3. Timely Receipt by the County:** County must receive and time stamp proposals at the specified location at or before the Due In and Opens date and time as stated in the *Request for Proposals*. The County's "time-stamp" will be the official time used to determine the timeliness of the submittal. County will not accept or will return unopened any proposals or modifications that County receives after the Due In and Opens date and time. County will open and record timely submittals promptly after the Due In and Opens date and time.

**3.4. Contractor Record Maintenance:** By submitting a response to this solicitation, the Contractor agrees to establish and maintain a complete Pima County Contractor record, including the provision of a properly completed and executed "Request for Taxpayer Identification Number and Certification" document (Form W-9), prior to the solicitation's due date. The Contractor also agrees to update the information within ten calendar days of any changes made and prior to the submission of any invoice or request for payment. The preferred method for creating or updating this record is via the Vendor Self Service (VSS) portal.

The registration requires that the Contractor establishes and maintains email functionality. In addition to providing the means for a Contractor to create and maintain their own record, the portals also provide for email notice to the Contractor regarding solicitations published by Pima County for commodities of interest as defined by the Contractor record.

The Vendor Self Service (VSS) portal link is <https://vendors.pima.gov/webapp/VSSPROD1/AltSelfService>

**3.5. Unfair Competition and other Laws:** Proposals must comply with Arizona trade and commerce laws (Title 44 A.R.S.) and all other applicable County, State, and Federal laws and regulations.

**3.6. General Specifications:** Items and Questionnaire responses included in Offeror's proposal must meet the specifications and requirements set forth by the solicitation. The specifications included in this solicitation intend to identify the kind and quality of goods and/or services to be provided without being unnecessarily restrictive, and to allow Offeror to provide the information needed for the development of consistent and comprehensive proposals.

Failure to perform appropriate research, discovery, examine any drawings, specifications, and instructions will be at the Offeror's sole risk.

**3.7. Waiver:** Each Offeror, by submission of a proposal or bid waives any and all claims for damages against County or its officers or employees when County exercises any of its reserved rights.

**3.8. Fraud and Collusion:** Each Contractor, by submission of a proposal, certifies that no officer or employee of County or of any subdivision thereof: 1) has aided or assisted Contractor in securing or attempting to secure a contract to furnish labor, materials or supplies at a higher price than that proposed by any other Contractor; 2) has favored one Contractor over another by giving or withholding information or by willfully misleading the bidder in regard to the character of the material or supplies called for or the conditions under which the proposed work is to be done; 3) will knowingly accept materials or supplies of a quality inferior to those called for by any contract; 4) has any direct or indirect financial interest in the proposal or resulting contract. Additionally, during the conduct of business with County, Contractor will not knowingly certify, or induce others to certify, to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or supplies that has been actually received. If County finds at any time that Contractor has in presenting any proposal(s) colluded with any other party or parties for the purpose of preventing any other proposal being made, then County will terminate any contract so awarded and that person or entity will be liable for all damages that County sustains.

**3.9. Documents Marked Confidential:** Disclosure. Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to this solicitation, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

Records Marked Confidential; Notice and Protective Order. If Offeror reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Offeror must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Offeror of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Offeror has, within that period, secured an appropriate order from a court of competent jurisdiction enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

Any information marked as CONFIDENTIAL must be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a Public Record and will not include any information considered confidential.

The Offeror agrees to waive confidentiality of any price terms in the event of an awarded contract.

#### **4. INQUIRIES AND DEVIATION REQUESTS:**

**4.1. Inquiries:** No oral interpretations or clarifications made to any respondent as to the meaning of any of the solicitation documents will be binding on Pima County. If a prospective respondent believes a requirement of the solicitation documents to be needlessly restrictive, unfair, or unclear, the respondent will notify the Pima County Procurement department either prior to or during the Pre-Proposal Conference, but prior to the date set for receipt of the bid or proposal. Notice will be provided in writing identifying the solicitation number, page and paragraph number and clearly stating the issue and suggested solution. County will respond by written amendment sent to



all known potential respondents. County may not answer questions or address deviation requests that are not submitted within 8 days prior to the closing date and time of the solicitation.

- 4.2. Deviation Requests:** Requests for changes submitted with proposal must specifically document and clearly illustrate the deviation to the particular specification or the requirement set forth by this solicitation and fully explain the requested deviation's impact on the end performance of the item. Acceptance or rejection of deviation request is at the sole discretion of County in accordance with the Pima County Procurement Code.

County may consider conditional proposals that do not conform to or that request exceptions to the published solicitation and amendments as non-responsive and County may not evaluate them.

**5. EVALUATION & AWARD CRITERIA:**

- 5.1. Evaluation:** County will evaluate proposals to determine which are most advantageous to County considering conformity to the specifications, evaluation criteria stated in the RFP, minimum qualifications, and other factors. Offeror must certify that they possess the qualifications specified in **Attachment 2: Minimum Qualifications Verification Form (1 page)** and provide the information and/or supporting documentation stipulated by these Minimum Qualifications to substantiate meeting the qualification's and for the County to determine *responsibility*.

Pima County will evaluate proposals that are ***Responsive and Responsible*** as defined by the Minimum Qualifications. County will evaluate proposals according to the evaluation criteria set forth below. The evaluation panel will use the evaluation criteria when scoring the Offeror's answers to the questions contained in **Attachment 3: Questionnaire Form (1 page)**. Offeror should respond in the form of a thorough narrative to each specification as guided by the Questionnaire. The evaluation panel will evaluate the narratives along with required supporting materials and award points accordingly.

- 5.2. Evaluation Criteria:** The evaluation committee will assign points to each proposal submitted on the basis of the following evaluation criteria, unless otherwise indicated:

<b><u>Criteria</u></b>	<b><u>Criteria Maximum Points</u></b>
A. Cost	20
B. Firm Experience	25
C. Key Personnel	20
D. Project Plan	15
E. Demonstration (if requested)	20
	100

- 5.3. Evaluation Discussions/Clarifications of Proposals:** The County may conduct discussions with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements and to clarify the Proposal and Agreement details provided that they do not substantially change the intent of the solicitation.

County reserves the right to request additional information and/or clarification. Any clarification of a proposal shall be in writing.

- 5.4. Best and Final Offer:** In the event that County holds discussions and requests clarifications, County will issue a written request for best and final proposals. The request will set forth the date, time, and place for the submission of best and final proposals. If Offerors fail to respond to the request for best and final proposal or fail to submit a notice of withdrawal, County will consider their immediate previous proposal as their best and final proposal.

- 5.5. Award Criteria:** If County makes an award, County will enter into the attached Professional Services Contract with one Contractor that submitted the highest scoring proposal which County determines to be responsible and responsive for providing the required goods or services. County will enter into agreements by executing and transmitting a Master Agreement ("MA") document and executed Professional Services contract that incorporates the Proposal by reference.

County, at its sole discretion, reserves the following rights: 1) to waive informalities in the bid or bid procedure; 2) to reject the response of any persons or corporations that have previously defaulted on any contract with County or who have engaged in conduct that constitutes a cause for debarment or suspension as set forth in County Code

Section 11.32; 3) to reject any and all responses; 4) to re-advertise for bids previously rejected; 5) to otherwise provide for the purchase of such equipment, supplies materials and services as may be required herein; 6) to award on the basis of price and other factors, including but not limited to such factors as delivery time, quality, uniformity of product, suitability for the intended task, and bidder's ability to supply; 7) to increase or decrease the item quantity or eliminate any item of this solicitation prior to the award. Pricing evaluations will be based on pre-tax pricing proposed by Contractor.

**5.6. Recommendation for Award:** If County makes an award it will be to the responsible and responsive Offeror whose proposal County determines to be the most advantageous taking into consideration the evaluation criteria, discussions, and Best and Final Offers in this solicitation.

**6. AWARD AUTHORITY:**

Either the Procurement Director or the Board of Supervisors will make the contract award in accordance with the Pima County Procurement Code.

**7. AWARD NOTICE:**

County will post a *Notice of Recommendation for Award* (NORFA) for RFP on the Procurement website available for review by interested parties. The Procurement Department will maintain a tabulation of the bids or ranking of proposals. County will not provide results of this procurement in response to telephone inquiries.

**8. COMPLIANCE WITH AGREEMENT:**

County will execute the Professional Services Contract with the successful Offeror(s).

The Offeror agrees to establish, monitor, and manage an effective administration process that assures compliance with all requirements of the agreement. In particular, the Offeror agrees that they will not provide goods or services in excess of the executed agreement items, item quantity, item amount, or agreement amount without prior written authorization by revision or change order properly executed by the County. Any items provided in excess of the quantity stated in the agreement will be at the Offeror's own risk. Offerors will decline verbal requests to deliver items in excess of the agreement and must report all such requests in writing to the Pima County Procurement Department within one (1) workday of the request. The report will include the name of the requesting individual and the nature of the request.

**9. PROTESTS:**

An interested party may file a protest regarding any aspect of a solicitation, evaluation, or recommendation for award. Protests must be in accordance with the Pima County Procurement Code, Section 11.20.010.

The Pima County protest procedures are in Chapter 11.20 of the Pima County Procurement Code, available through [http://library.amlegal.com/nxt/gateway.dll/Arizona/pimacounty\\_az/title11pimacountyprocurementcode/chapter1120protests?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:pimacounty\\_az\\$sanc=JD\\_Chapter11.20](http://library.amlegal.com/nxt/gateway.dll/Arizona/pimacounty_az/title11pimacountyprocurementcode/chapter1120protests?f=templates$fn=default.htm$3.0$vid=amlegal:pimacounty_az$sanc=JD_Chapter11.20). The five-day period to file a protest of the award will be measured from the date the Notice of Recommendation for Award is posted on the Pima County Procurement website at <http://www.pima.gov/procure/awards/> **without regard to whether individual notices were issued**. It is the responsibility of Offerors and Proposers to check the website.

**10. COOPERATIVE USE OF RESULTING CONTRACT:**

As allowed by law, County has entered into cooperative procurement agreements that enable other Public Agencies to utilize procurement agreements that County has developed. Participating agencies may contact Contractor with requests to provide services and products pursuant to the pricing, terms, and conditions defined by the County MA, or PO. Minor adjustments are allowed subject to agreement by both Contractor and Requesting Party to accommodate additional cost or other factors not present in the County's agreement and required to satisfy particular Public Agency code or functional requirements and within the intended scope of the solicitation and resulting contract. The parties to the cooperative procurement will negotiate and transact any such usage in accordance with State, County and other Public Agency procurement rules, regulations and requirements. Contractor will hold harmless County, its officers, employees, and agents from and against all liability, including without limitation payment and performance associated with such use. Contractor may view a list of agencies that are authorized to use County contracts at the Procurement Department Internet home page: <http://www.pima.gov/procure> by selecting the link titled *Authorized Use of County Contracts*.

**END OF INSTRUCTIONS TO OFFEROR**

**ATTACHMENT 1: PROPOSAL CERTIFICATION FORM (1 PAGE)**

**CONTRACTOR LEGAL NAME:** \_\_\_\_\_

**BUSINESS ALSO KNOWN AS:** \_\_\_\_\_

**MAILING ADDRESS:** \_\_\_\_\_

**CITY/STATE/ZIP:** \_\_\_\_\_

**REMIT TO ADDRESS:** \_\_\_\_\_

**CITY/STATE/ZIP:** \_\_\_\_\_

**CONTACT PERSON NAME/TITLE:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**CONTACT PERSON EMAIL ADDRESS:** \_\_\_\_\_

**EMAIL ADDRESS FOR ORDERS & CONTRACTS:** \_\_\_\_\_

**CORPORATE HEADQUARTERS ADDRESS:** \_\_\_\_\_

**WEBSITE:** \_\_\_\_\_

**ACKNOWLEDGEMENT OF SOLICITATION AMENDMENTS:**

Contractor acknowledges that it incorporates the following solicitation amendments in its offer and this contract:

Amendment #	Date	Amendment #	Date	Amendment #	Date

**INSURANCE CERTIFICATE** documents will be required from the winning Offerors within two (2) business days after the Notice of Recommendation for Award is posted on the Procurement website.

By signing and submitting Proposal documents, the undersigned certifies that they are legally authorized to represent and bind Contractor to legal agreements, that all information submitted is accurate and complete, that Contractor has reviewed the Pima County Procurement website for solicitation amendments and has incorporated all such amendments to its offer, that Contractor is qualified and willing to provide the items requested, and that Contractor will comply with all requirements of the solicitation.

Conditional offers that modify the solicitation requirements may be deemed non-responsive and County may not evaluate them. Contractor's signature below constitutes a firm offer and upon the execution of the Professional Services Contract issued by the Pima County Procurement Director or authorized designee will form a binding contract that will require Contractor to provide the goods or services described in this solicitation. The undersigned hereby offers to furnish the goods or services in compliance with all terms, conditions, specifications that the solicitation defines or references, which includes Instructions to Offerors, the sample Professional Services Contract, and related attachments or exhibits.

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINTED NAME & TITLE OF AUTHORIZED CONTRACTOR REPRESENTATIVE EXECUTING OFFER** \_\_\_\_\_

**PHONE AND EMAIL:** \_\_\_\_\_

**ATTACHMENT 2: MINIMUM QUALIFICATIONS VERIFICATION FORM (1 PAGE)**

**OFFEROR'S NAME:** \_\_\_\_\_

In order for County to evaluate and consider proposals for award, they must be **Responsive and Responsible**. **"Responsive"** means that the submitted proposal documents conform in all material respects to the requirements in the solicitation. **"Responsible"** means that Offerors document and substantiate their capability to fully perform all requirements of the solicitation. Factors include and may not be limited to experience, integrity, perseverance, reliability, capacity, facilities, equipment, credit and any other matter necessary to provide the performance that the solicitation requires.

Offeror must certify that they possess the minimum qualifications contained herein. Offeror must provide the requested documents that substantiate their satisfaction of the Minimum Qualifications. Failure to provide the information required by these Minimum Qualifications and required to substantiate responsibility may be cause for County to reject the Offeror's proposal as **Non-Responsive and/or Non-Responsible**.

Offeror certifies that they possess the following minimum qualifications and will provide the requested documents that substantiate their satisfaction of the Minimum Qualifications.

Provide documented and verifiable evidence that your firm satisfies the following Minimum Qualifications, and indicate what/if attachments are submitted.

ITEM NO.	MINIMUM QUALIFICATIONS	COMPLIANCE YES/NO (SELECT ONE)	DOCUMENT TITLE AND NUMBER OF PAGES SUBMITTED FOR EACH DOCUMENT
1	Offeror must demonstrate a commitment to social justice and understanding of local and state criminal justice issues, laws, regulations, policies, procedures and reform efforts.  <b>A cover letter to the proposal, which describes the Offerors' responsibility with this requirement must be included with responses.</b>	Yes / No	
2	Offeror must have case management experience or relevant training in effectively ensuring program success for social services.  <b>A reference letter from a current or former client attesting to the Offerors' responsibility with this requirement must be included with responses.</b>	Yes / No	

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

\_\_\_\_\_  
**PRINTED NAME & TITLE OF AUTHORIZED CONTRACTOR REPRESENTATIVE EXECUTING OFFER**

**ATTACHMENT 3: QUESTIONNAIRE (1 PAGE)**

**OFFEROR'S NAME:** \_\_\_\_\_

The evaluation committee will assign points to each answer submitted on the basis of the following evaluation criteria unless otherwise indicated.

**A. Cost: (0 to 20 points)**

Offeror must provide an all-inclusive budget for year one (1) which includes the expenses expected in providing these services and which reimbursement/payment will be sought for. Any expenses not included in the proposal will require approval from County prior to being incurred or reimbursement requested. The successful respondents' proposal will become Exhibit B to the contract. This section will be evaluated and scored by Procurement.

**B. Firm Experience: (0 to 25 points)**

1. Briefly describe your company, including name, address and telephone number and provide a description of the history of your company to include; where your headquarters are and when the company was established.
2. Describe your experience in working with governmental entities, specifically Pretrial Services, staff at the Pima County Adult Detention Center and attorneys from Public Defense Services and local County governments.
3. Describe your firms' familiarity with requirements of Arizona Revised Statutes, Title 20, Chapter 2, Article 3.5 regarding Bail Bond Agents and Bail Recovery Agents.
4. Describe your firms' experience posting bail as a surety or cash for eligible bond participants.
5. Describe your firms' familiarity with Arizona Revised Statutes, Title 13, Chapters 11 (Homicide), 14 (Sexual Offenses) or 35.1 (Sexual Exploitation of Children).
6. Has your firm experienced any breaches of personal information in the last five (5) years? Please explain how your firm can prevent this in the future?
7. Please describe your firms' quality control processes, standards and procedures.
8. Please provide your firms' performance standards including target and actual results.
9. Does your firm have any complaints filed with the Arizona Department of Insurance? If so, please provide a brief description of the complaint.
10. Provide a minimum of three (3) references.

**C. Key Personnel: (0 to 20 points)**

1. Describe the procedure your firm would use to recruit a Bail Bond Agent or qualify an employee as a Bail Bond Agent.
2. How many employees would your firm assign to Pima County to handle the Community Bond Program implementation?
3. What are the location and office hours of key team members?
4. Do you use subcontractors? If so, briefly describe their roles and your screening and training processes.
5. Provide resumes for your key team members.

**D. Project Plan: (0 to 15 points)**

1. Briefly describe how your community bond program would work.
2. Describe the procedure you would use to implement service workflows to ensure the timely identification of and consultation with eligible clients and the posting of bonds.
3. Briefly describe how you would develop a plan to establish a bank account to only administer funds deposited by Pima County constituting the "Community Bond Fund".

**E. Demonstration (if requested): (0 to 20 points)**

In the event the County elects to conduct demonstrations, the Procurement Officer will notify finalists of the date, time, and location. The demonstration will provide opportunity for finalists to present their proposal to the evaluation panel and to exhibit why their firm would be best suited to be selected as the Contractor for this project. County will base points on presenter's knowledge, effectiveness of communication, experience with similar contracts and the quality of the responses to questions that may be provided for incorporation into the presentation at the time of invitation or that may be asked during the presentation.

**END OF ATTACHMENT 3.**

**Pima County Department of Administration**

**Project: Community Bond Program**

**Contractor:** awardee legal name  
awardee address  
awardee city, st zip

**Amount:** \$TBD

**Contract No.:** TBD

**Funding: General Fund**

**PROFESSIONAL SERVICES CONTRACT**

**1. Parties, Background and Purpose.**

- 1.1. Parties. This Contract is between Pima County, a body politic and corporate of the State of Arizona ("County"), and [awardee legal name] ("Contractor").
- 1.2. Purpose. The Pima County Administration Department requires services to implement and manage a community bond program to reduce the number of individuals who are held in the Pima County Adult Detention Center.
- 1.3. Authority. County selected Contractor pursuant to and consistent with County's Procurement Code 11.12.020 Competitive Sealed Proposals;
- 1.4. Solicitation and Other Documents. County previously issued Solicitation No. RFP-PO-2200009 for certain services (the "Solicitation"). Requirements and specifications contained in the Solicitation, all documents included in the Solicitation, and any information and documentation submitted by Contractor in response to the Solicitation, are incorporated into this Contract by reference.
- 1.5. Contractor's Response. Contractor submitted the most advantageous response to the Solicitation.

**2. Term.**

- 2.1. Initial Term. The term of this Contract commences on January 1, 2022 and will terminate on December 31, 2022 ("Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised extension options under Section 2.2. If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.
- 2.2. Extension Options. County may renew this Contract for up to four (4) additional periods of up to 1 year each (each an "Extension Option"). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.

**3. Scope of Services.** Contractor will provide County with the services described in **Exhibit A** (3 pages), at the dates and times described on **Exhibit A** or, if **Exhibit A** contains no dates or time frames, then upon demand. The Services must comply with all requirements and specifications in the Solicitation.

**4. Key Personnel.** Contractor will employ suitably trained and skilled professional personnel to perform all consultant services under this Contract. Prior to changing any key personnel, especially those key personnel County relied upon in making this Contract, Contractor will obtain the approval of County. The key personnel include the following staff:

Name:		Title:	
Name:		Title:	
Name:		Title:	

## 5. Compensation and Payment.

- 5.1. Rates; Adjustment. County will pay Contractor in accordance with the costs and budget submitted by Contractor. Contractor will submit a budget proposal for the term of each subsequent renewal, at least 90 days before the end of the then-existing Term, or at the time the County informs Contractor that the County intends to extend the Term, if that is earlier.
- 5.2. Not-to-Exceed (NTE) Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$**TBD per year** (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.
- 5.3. Sales Taxes. The payment amounts or rates in **Exhibit B** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.
- 5.4. Timing of Invoices. Contractor will invoice County on a monthly basis unless a different billing period is set forth in **Exhibit B**. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.
- 5.5. Content of Invoices. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.
- 5.6. Invoice Submittal. Invoices are to be sent to:  
  
Pima County Finance & Risk Management – Accounts Payable  
P.O. Box 791  
Tucson, AZ 85701
- 5.7. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 23 below, question any payment under this Contract. If County raises a question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.

## 6. Insurance. Contractor will procure and maintain at its own expense insurance policies (the "**Required Insurance**") satisfying the below requirements (the "**Insurance Requirements**") until all of its obligations under this Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Contractor's indemnity obligations under this Contract. The County in no way warrants that the required insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

- 6.1. Insurance Coverages and Limits. Contractor will procure and maintain, until all of its obligations have been discharged, coverage with limits of liability not less than those stated below. Coverage must be placed with insurers acceptable to the County with A.M. Best rating of not less than A-VII, unless otherwise approved by the County.
  - 6.1.1. Commercial General Liability (CGL). Occurrence Form with limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products-completed operations. Any standard coverages excluded from the CGL policy, such as

products/completed operations, etc. shall be covered by endorsement or separate policy and documented on the Certificates of Insurance.

- 6.1.2. Business Automobile Liability. Coverage for bodily injury and property damage on any owned, hired, and/or non-owned autos assigned to or used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 Each Accident.
- 6.1.3. Workers' Compensation and Employers' Liability. Statutory coverage for Workers' Compensation. Workers' Compensation statutory coverage is compulsory for employers of one or more employees. Employers Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each employee – disease.
- 6.1.4. Professional Liability (E&O Insurance). This insurance is required for work from professionals whose coverage is excluded from the above CGL policy. The policy limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The insurance shall cover professional misconduct or negligent acts of anyone performing any services under this contract.
- 6.1.5. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor shall warrant that continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" located in the next section.
- 6.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.
  - 6.2.1. Claims Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
  - 6.2.2. Additional Insured Endorsement. The General Liability, Business Automobile Liability Policies shall each be endorsed to include County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
  - 6.2.3. Subrogation Endorsement. The General Liability, Business Automobile Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
  - 6.2.4. Primary Insurance Endorsement. The Required Insurance policies must stipulate that they are primary and that any insurance carried by County, or its agents, officials, or employees, is excess and not contributory insurance.
  - 6.2.5. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR). Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
  - 6.2.6. Subcontractors. Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.
- 6.3. Notice of Cancellation. For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to County, not less than 30 days advance written notice, if a policy is suspended, voided, or cancelled for any reason, except 10-days prior notice is sufficient when the



cancellation is for non-payment of a premium. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to the County Contracting Representative. Notice shall include County's project or contract number and project description.

#### 6.4. Verification of Coverage.

6.4.1. Contractor must furnish County with a certificate of insurance (valid ACORD form or equivalent approved by County) for each Required Insurance policy, which must specify that the policy has all the required endorsements, and must include County's project or contract number and project description. Each certificate must be signed by an authorized representative of the insurer.

6.4.2. Contractor must provide the certificates to County before work commences. Each Required Insurance policy must be in effect at, or prior to, commencement of work under this Contract. Contractor must provide County a renewal certificate not less than 15 days prior to a Required Insurance policy's expiration date. Failure to maintain the Required Insurance policies, or to provide evidence of renewal, is a material breach of this Contract.

6.4.3. County may at any time require Contractor to provide a complete copy of any Required Insurance policy or endorsement. Note: Contractors for larger projects must provide actual copies of the additional insured and subrogation endorsements.

6.4.4. All insurance certificates must be sent directly to the appropriate County Department.

6.5. Approval and Modifications. County's Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager and does not require a formal Contract amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

**7. Indemnification.** To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnatee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnatee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

#### **8. Laws and Regulations.**

8.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

8.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.

8.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

- 9. Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under County's Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.
- 10. Subcontractors.** Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
- 11. Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.
- 12. Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
- 13. Americans with Disabilities Act.** Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).
- 14. Authority to Contract.** Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.
- 15. Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
- 16. Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
- 17. Termination by County.**
- 17.1. Without Cause. County may terminate this Contract at any time without cause by notifying Contractor, in writing, at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of termination.
- 17.2. With Cause. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.
- 17.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.
- 18. Notice.** Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:

Contractor:

Terri Spencer, Procurement Director  
Pima County Procurement  
150 W. Congress Street 5<sup>th</sup> Floor  
(520)724-3722, [Terri.Spencer@pima.gov](mailto:Terri.Spencer@pima.gov)

TBD

- 19. Non-Exclusive Contract.** Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.
- 20. Remedies.** Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.
- 21. Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.
- 22. Use of County Data.** Unless it receives County's prior written consent, Contractor: (a) shall not access, process, or otherwise use County Data other than as necessary to provide contracted services or products; and (b) shall not intentionally grant any third party access to County Data, including without limitation Contractor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Contractor may disclose County Data as required by applicable law or by proper legal or governmental authority. Contractor shall give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense. Upon termination or completion of the Contract, Contractor will, within 60 calendar days, either return all County Data to County or will destroy County Data and confirm destruction to County in writing. As between the parties, County retains ownership of County Data. "County Data" means data in electronic or paper form provided to Contractor by County, including without limitation personal identifying information as defined in A.R.S. § 13-2001(10).
- 23. Books and Records.** Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
- 24. Public Records.**
- 24.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents submitted in response to the solicitation resulting in award of this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
- 24.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.
- 25. Legal Arizona Workers Act Compliance.**
- 25.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees,

and with the requirements of A.R.S. § 23-214 (A) (together the “State and Federal Immigration Laws”). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.

25.2. **Books & Records.** County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party’s compliance with the State and Federal Immigration Laws.

25.3. **Remedies for Breach of Warranty.** Any breach of Contractor’s or any subcontractor’s warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.

25.4. **Subcontractors.** Contractor will advise each subcontractor of County’s rights, and the subcontractor’s obligations, under this Section 26 by including a provision in each subcontract substantially in the following form:

“Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor’s employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor’s books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract.”

**26. Grant Compliance.** Not applicable to this Agreement.

**27. Written Orders.** County will order services under this Contract by issuing a Delivery Order (DO) document. Order documents will be furnished to Contractor via e-mail or telephone.

Contractor must not perform services pursuant to the contract that are not documented or authorized by a Delivery Order (DO) at the time of provision. County accepts no responsibility for control of or payment for services not documented by a County Delivery Order (DO).

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this Contract. In particular, Contractor will not provide services other than those described in this Contract, in excess of the Maximum Payment Amount, or after the Term of the Contract has ended, without a Contract amendment properly executed and issued by County, as provided below. Any services provided in excess of that stated in this Contract are at Contractor’s own risk.

**28. Counterparts.** The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.

**29. Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. The certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

**30. Amendment.** The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.

**31. Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

***THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK***

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

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IN WITNESS WHEREOF, the parties have approved this Professional Services Contract and agree to be bound by the terms and conditions of the Contract on the dates written below.

**PIMA COUNTY**

**CONTRACTOR**

\_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Authorized Officer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

**ATTEST**

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date

**APPROVED AS TO FORM**

\_\_\_\_\_  
Deputy County Attorney

\_\_\_\_\_  
Print DCA Name

\_\_\_\_\_  
Date

**1. INTENT/BACKGROUND:**

Pima County is implementing a Community Bond Program (CBP) to help reduce the number of individuals who are held in the Pima County Adult Detention Center (PCADC) because of inability to pay for a bond or cash bail. The majority of inmates held at the PCADC are held pending resolution of a criminal case. During the initial appearance phase, Pretrial Services (a division of the Pima County Superior Court) recommends Conditions of Release to the court for each felony defendant. The recommendations are followed 86% of the time. In 2017, one in ten defendants were held on bond despite a recommendation for release. 76% of these defendants were subsequently released while their cases were pending; however, this was only after spending days, weeks or months in jail. The creation of a CBP will stabilize the lives of these defendants by releasing them more quickly, without subjecting them to an increased level of supervision and without impairing the judicial process or jeopardizing public safety and while preventing tens of thousands of unnecessary days in jail and saving millions of dollars of related expenses every year.

Pima County is seeking a Contractor who will provide effective management, coordination and organizational qualities, using successful interpersonal communication skills in working with all levels of staff and with a diverse population to implement the CBP, per the specifications called for herein. The Contractor should show an aptitude to work well independently and on a flexible schedule and have capability of making decisions in a fast-paced and changing environment. Ideally, the Contractor will provide attention to detail, with the ability to critically examine and analyze a variety of factors in determining client eligibility and the capacity to work in and adapt to hurried, high-intensity, complex work environments, independently as well as part of a team of other entities. It would be preferred for the Contractor to demonstrate cultural competence and sensitivity to cultural differences in the target population to be served by the proposed program and to provide culturally and linguistically appropriate services to clients and to provide an interpreter for non-English speaking clients as needed.

**2. GENERAL SPECIFICATIONS:**

**2.1.** Contractor will develop a plan to obtain a bail bond agent license, issued by the Arizona Department of Insurance, and to perform in accordance with the requirements of Arizona Revised Statutes, Title 20, Chapter 2, Article 3.5 regarding Bail Bond Agents and Bail Recovery Agents.

**2.2.** Contractor will develop a plan to establish a bank account in Pima County, Arizona to administer funds deposited by Pima County that will constitute the "Community Bond Fund". These funds would include an initial deposit of \$500,000.00 from Pima County General Funds and would be utilized until nearly depleted;

**2.2.1.** Use of the Community Bond Fund will be restricted to:

- i. Establishing the requirements necessary to act as a surety.
- ii. Posting of cash-only bonds for eligible participants at the Pima County Adult Detention Center and payment of any associated administrative fees.
- iii. Payment to the Pima County Superior Court pursuant to an order forfeiting any bond posted by the Community Bond Project.
- iv. Issuance of cashier's checks made payable to the Pima County Adult Detention Center in order to post cash-only bonds.
- v. Securely maintaining a balance of currency to enable the posting of cash-only bonds of various values or, within the program limits.
- vi. Depositing funds from Pima County to fund the Community Bond Fund or any cash-only bonds exonerated by the Superior Court.

**2.2.2.** Posting bond for anyone not eligible under the Community Bond Program is explicitly prohibited.

**2.3.** Contractor will create a contract (compliant with Arizona Revised Statutes and Pima County requirements) that clearly and fully explains program requirements, program expectations and client responsibilities, that clients will be required to sign in order to participate.

**2.4.** Contractor will implement service workflows to ensure the timely identification of and consultation with eligible clients and posting of bonds.

- 2.5. Contractor must develop a plan to adequately staff the program including contingency plans for employee absences.
- 2.6. Contractor will identify eligible participants, review defendant files and conduct intake interviews to assess clients' eligibility to be released on bond.
  - 2.6.1. Participants are eligible if:
    - i. In their written report, Pretrial Services recommended Release on Recognizance (ROR) or Release to the Third Party Custody of Pretrial Services and,
    - ii. The judge conducting the initial appearance set a bond of \$30,000.00 or less and,
    - iii. The initial appearance was in Pima County, Arizona and,
    - iv. The charges are alleged to have been committed in Pima County, Arizona and,
    - v. The charges do not include any crimes listed in Arizona Revised Statutes, Title 13, Chapters 11 (Homicide), 14 (Sexual Offenses), or 35.1 (Sexual Exploitation of Children) and,
    - vi. The Pima County Adult Detention Complex does not have any hold or detainer placed on the defendant.
- 2.7. Contractor will coordinate and work with Pretrial Services, staff at the Pima County Adult Detention Center and attorneys from Public Defense Services to ensure that all eligible defendants are offered the opportunity to participate after outlining the Community Bond Programs' requirements, program expectations and client responsibilities. Participating clients will be required to sign an agreement (contract) to those terms.
- 2.8. Contractor will provide culturally and linguistically appropriate services to clients and an interpreter for non-English speaking clients as needed.
- 2.9. Contractor will attend all of defendants' initial appearances in Pima County.
- 2.10. Contractor will provide an in-depth explanation to potential clients, outlining program requirements, program expectations, client responsibilities and support services offered or required by Pima County Pretrial Services.
- 2.11. Contractor must travel to Pima County Adult Detention Center and/or Pima County courthouse to post cash bond.
- 2.12. Contractor will post bail as a surety or use cash for all eligible participants who sign the contract.
- 2.13. Contractor shall not discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.
- 2.14. All Community Bond Fund staff must adhere to all applicable laws, rules and regulations regarding privacy and confidentiality.
- 2.15. Contractor will monitor bank account balance, as it becomes nearly depleted, Contractor will need to request replenishment of the account (would occur every six (6) months or so).
- 2.16. Contractor will participate in meetings with stakeholders, which include, but are not limited to, Pima County Adult Probation Office, Pretrial Services, Department of Justice Services, Public Defense Services and community-based partners to evaluate success and address ongoing programmatic issues.

### **3. DATA COLLECTION AND REPORTING:**

- 3.1. Contractor will work with stakeholders to develop necessary protocols, procedures, forms and data tracking.
- 3.2. Contractor will provide monthly demographic data that shows the number of defendants screened for participation and other information as requested by Pima County.
- 3.3. Contractor will provide progress reports, as requested by Pima County, of clients, including but not limited to court appearance rates and other outcome measurements.
- 3.4. Contractor will provide monthly, quarterly and annual statistical data to Department of Justice Services.
- 3.5. Contractor must maintain administrative and fiscal capability to administer the proposed services and to develop internal procedures to:
  - 3.5.1. Establish and maintain a system of financial controls and accounting in conformance with generally accepted accounting principles.

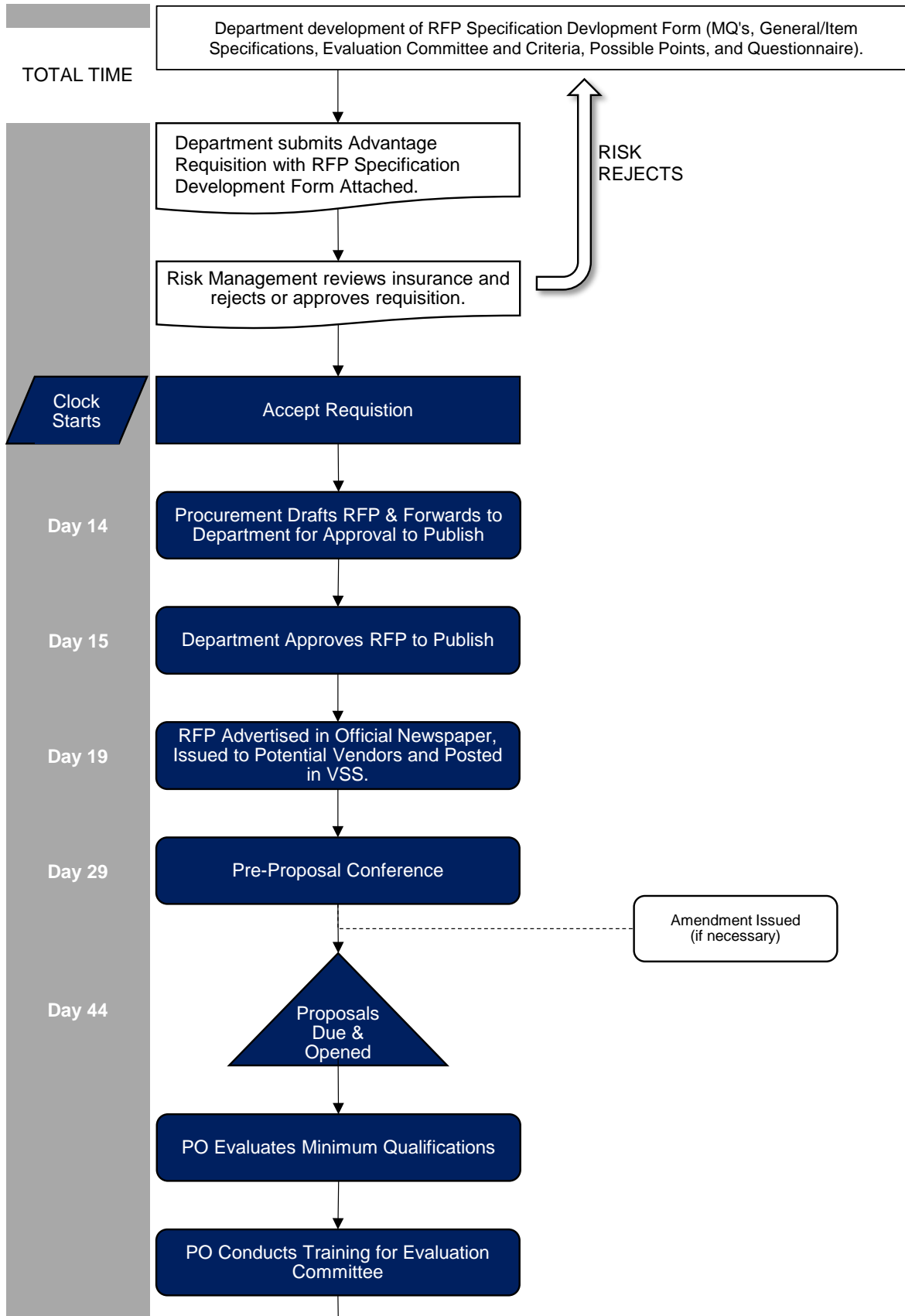


- 3.5.2.** Maintain accurate and complete financial reports for all relevant costs and operating expenses, including but not limited to; subcontracts, invoices, timecards, cash receipts, vouchers, cancelled checks, bank statements and other official documentation indicating in proper detail the nature and propriety of all costs incurred.
- 3.5.3.** Maintain financial records that show funds received are used for their intended purposes consistent with any applicable terms.
- 3.5.4.** Comply with the contractual terms and conditions, including any listed in this RFP and all required reports.
- 3.5.5.** Develop partnerships with community-based organizations for support as appropriate.

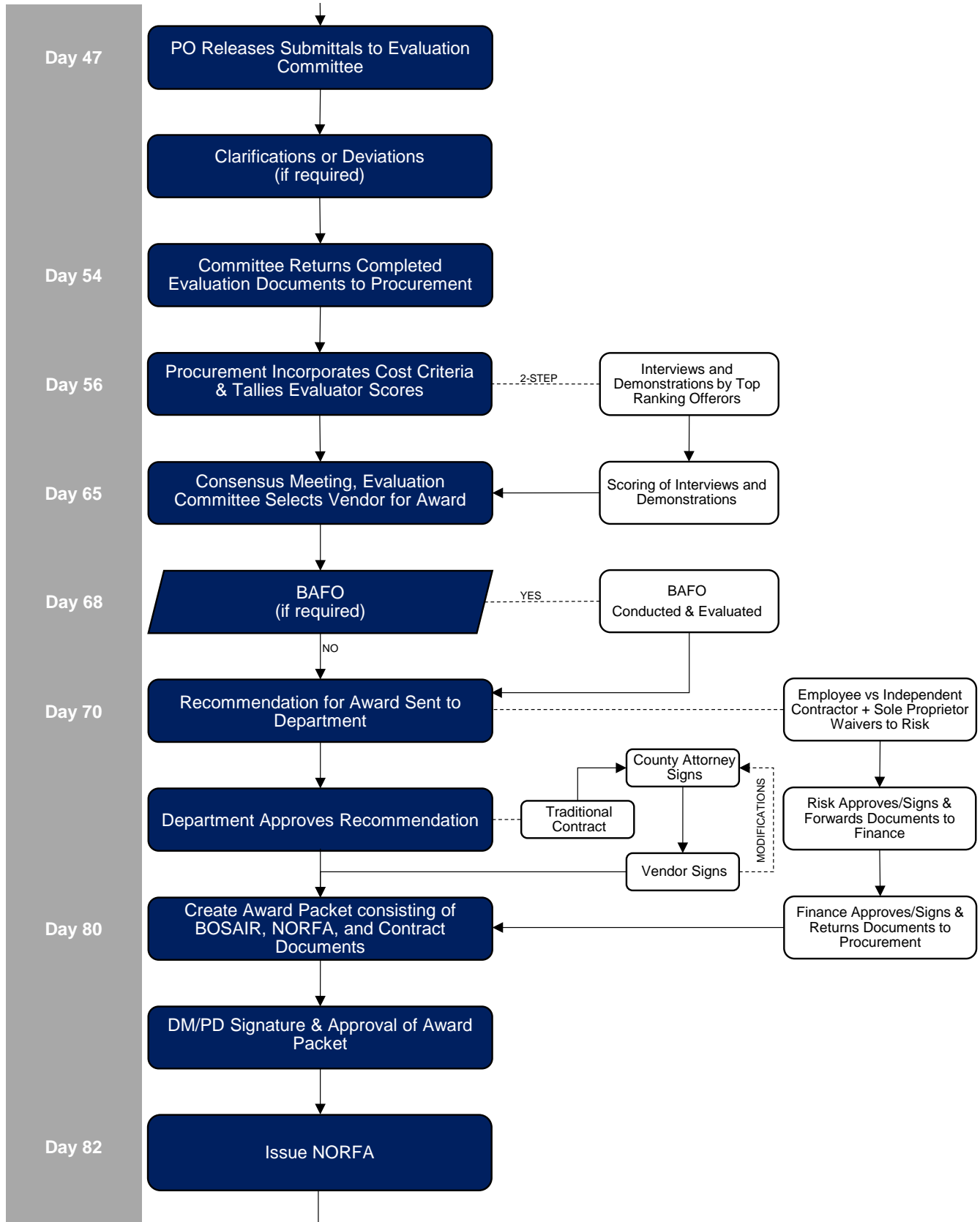
**END OF EXHIBIT A.**

# ATTACHMENT 4 *(to June 2, 2022 Memo*

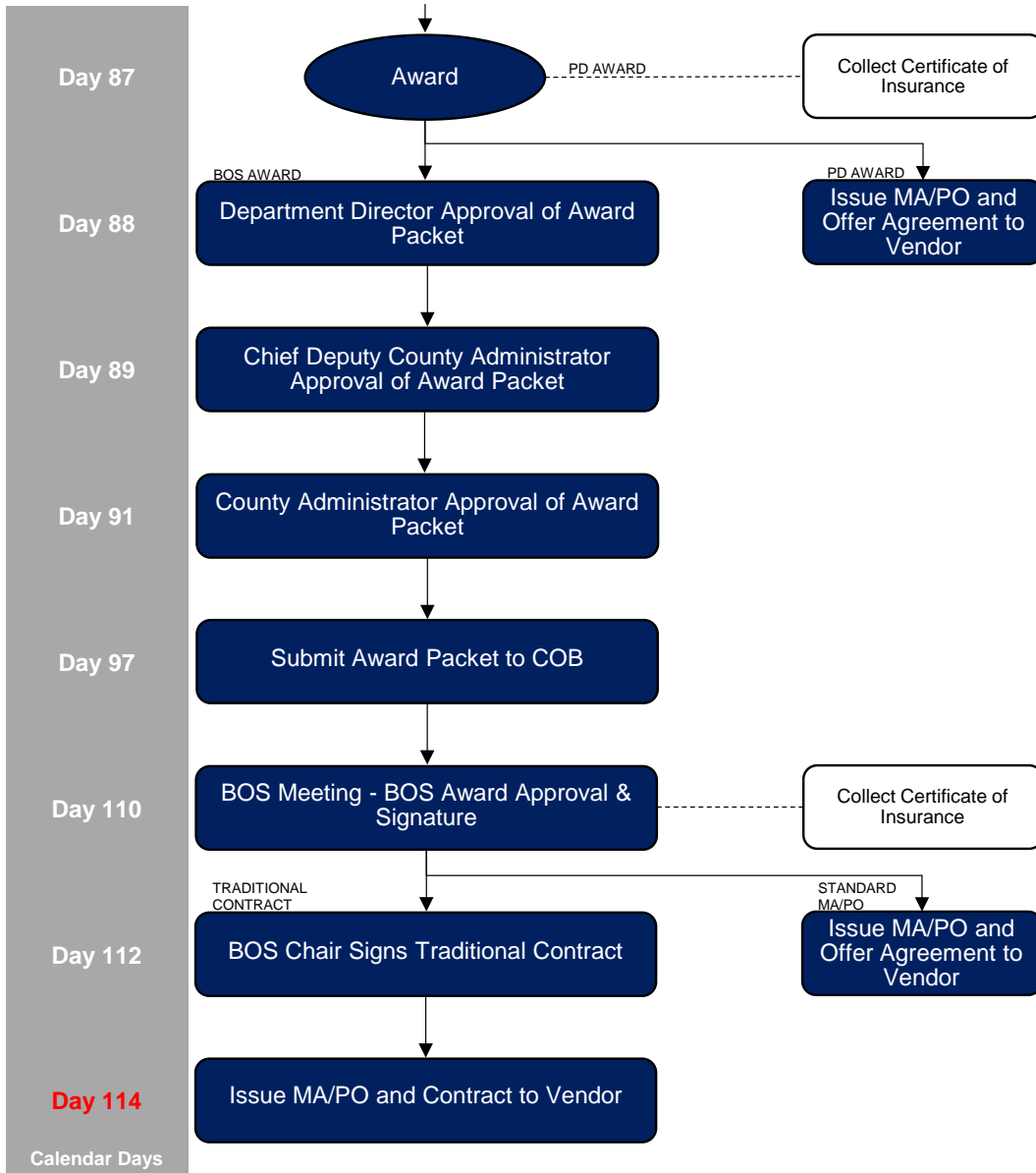
# MATERIALS AND SERVICES (M&S) REQUEST FOR PROPOSAL (RFP) PROCUREMENT PROCESS



# MATERIALS AND SERVICES (M&S) REQUEST FOR PROPOSAL (RFP) PROCUREMENT PROCESS



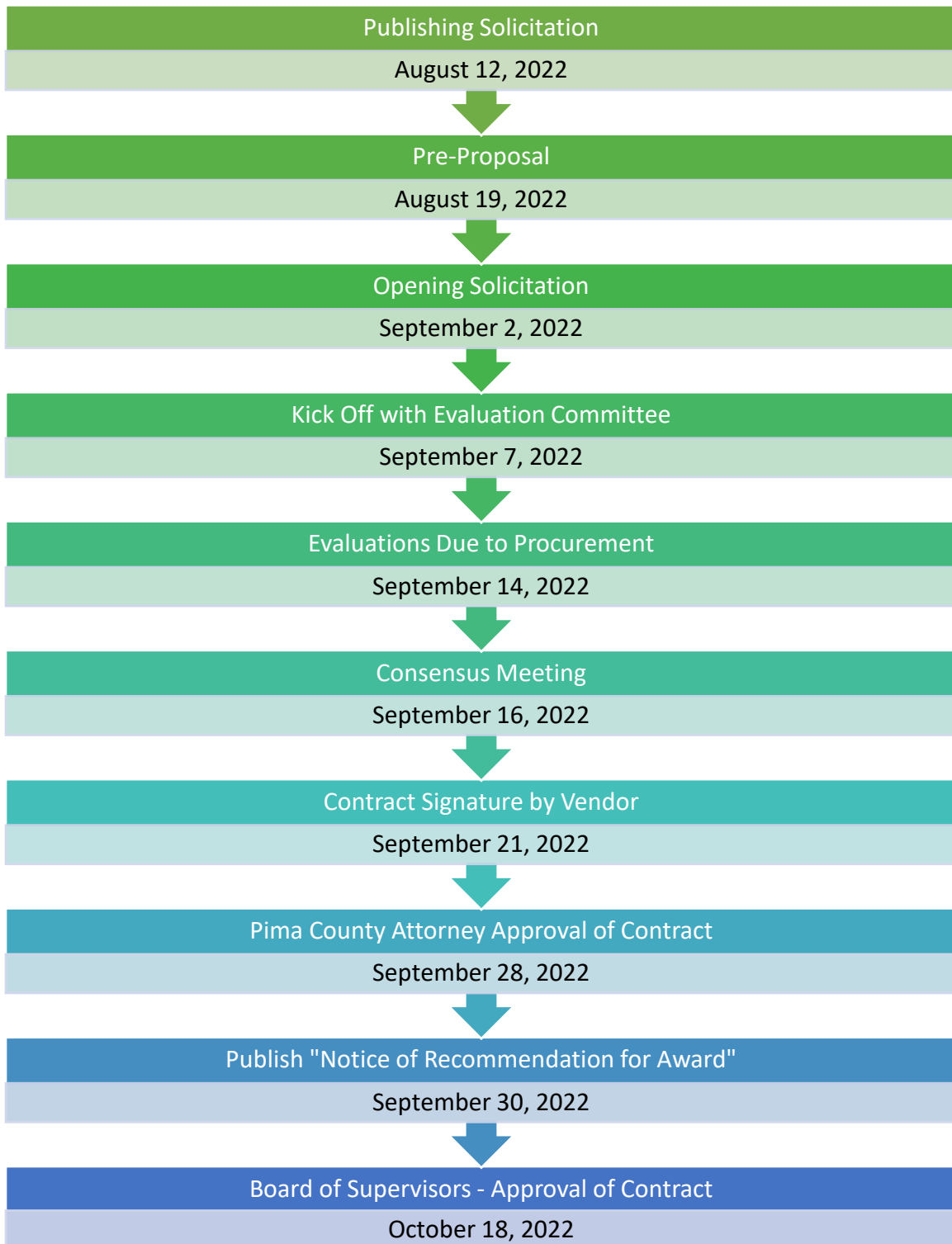
# MATERIALS AND SERVICES (M&S) REQUEST FOR PROPOSAL (RFP) PROCUREMENT PROCESS



# ATTACHMENT 2

**Pima County**  
**Community Bond Program**

*Projected Expedited Procurement Timeline for  
Request for Proposal (RFP) Process*



**Note:** Estimated timeline provided by Pima County Procurement on July 29, 2022. Expedited timeline assumes no delays and prompt vendor proposal submission. Any deviation from timeline or failure to receive timely bids will result in delayed contract implementation.