



# COUNTY OF SAN DIEGO

## Independent Redistricting Commission

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### AGENDA ITEM

**DATE:** September 9, 2021

**Item 10**

**TO:** Independent Redistricting Commission

**SUBJECT:** **Discussion And Possible Approval of Special Voting Rights Act Counsel Procurement Proposal And Process, Including Possible Formation Of Ad Hoc Committee**

### OVERVIEW:

At the August 18, 2021 Independent Redistricting Commission (IRC) meeting, the IRC approved retention of Special Voting Rights Act (VRA) Counsel to perform legal services as set forth in the draft Statement of Work presented to the Commission.

As described in the Statement of Work, the required legal services for Special VRA Counsel may include, but will not be limited to, legal support to the Commission, staff, and consultants regarding the redistricting process and the application of the federal Voting Rights Act (VRA). This may include but is not limited to: analysis of Racially Polarized Voting (RPV) data developed by the Commission's demographic consultant's subcontractor to advise the Commission; legal guidance to the Commission with regard to drafting maps to achieve compliance with the VRA; rendering written or oral opinions on the legal sufficiency of maps or portions of maps drafted by the Commission and legal questions relating thereto under the VRA; and preparation of a written opinion on the legality under the VRA of the final map selected by the Commission for adoption, which will be part of the report the Commission is required to issue with the adopted map explaining decisions made in achieving compliance with the criteria described in Elections Code § 21552, including VRA compliance.

As requested by the IRC, this report summarizes three (3) possible options for the procurement of these services and presents the final procurement proposal including the Statement of Work (Attachment A).

IRC General Counsel has advised that the services of Special VRA Counsel are recommended for legal analysis of the Racially Polarized Voting (RPV) study that is currently under development by Dr. Christian Grose, Ph.D., under subcontract with FLO Analytics, IRC Demographic Services Contractor. Further, General Counsel recommends that this legal analysis should be completed by Special VRA Counsel and presented to inform the IRC in connection with developing the

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Commission’s Draft Maps. In addition, General Counsel has recommended that the IRC receive an opinion from a separate qualified independent Special Counsel for these services during the development of draft and final maps Having the Draft Maps take into consideration the opinions and guidance of Special VRA Counsel would also enable the public to take into account the requirements of the VRA when providing input on the Draft Maps. The current planned timeline for IRC map-drawing activities envisions that the Special VRA Counsel legal analysis of the RPV study would be presented to the IRC at the meeting of October 14. Special VRA Counsel would need to be retained before then, contracting matters concluded, and the RPV study provided to special counsel to review and form legal opinions and recommendations for the development of the Draft Maps.

Accordingly, three feasible options for the IRC to retain Special VRA Counsel in the identified time frame are:

1. Augment the IRC’s existing contract with Nielsen Merksamer to add Special VRA Counsel services to be provided through a Subcontractor recommended by General Counsel and approved by the IRC;
2. Augment the IRC’s existing contract with Nielsen Merksamer to add Special VRA Counsel services to be provided through a Subcontractor, recommended by an IRC Ad Hoc Committee, and approved by the IRC.
3. Augment the IRC’s existing contract with Nielsen Merksamer Parrinello Gross & Leoni LLP (“Nielsen Merksamer”) for General Counsel services to add Special VRA Counsel services.

Other procurement avenues through the Department of Purchasing and Contracting and County Counsel were considered; however, to align with and meet the IRC’s requirements within the map-drawing timeline those avenues were not viable due to the increased amount of time that would be needed to complete procurement activities. Below is a summary of the feasible options and the strengths and challenges of each option.

**OPTION 1: AUGMENT NIELSEN MERKSAMER CONTRACT TO ADD SPECIAL VRA COUNSEL SERVICES**

This option would authorize Nielsen Merksamer to provide Special VRA Counsel services as described in the Statement of Work. Staff would work with County Counsel to augment the current General Counsel contract and add Special VRA Counsel services as an amendment. The amendment would provide for Special VRA Counsel services for an amount not to exceed \$50,000.00.

Date	Anticipated Timeline
Friday, Sept 10	Staff work with County Counsel to augment contract.

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Friday, Sept 17	Amended contract is executed.
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Strengths

- No impact to IRC mapping timeline as currently planned.
- General Counsel is familiar with the IRC and vice versa.
- General Counsel is familiar with the 2011 supervisorial redistricting and all elements to date of the current process.

Challenges

- Limits opportunity for IRC to receive an opinion from a separate qualified independent Counsel for these services during the development of draft and final maps.

**OPTION 2: AUGMENT NIELSEN MERKSAMER CONTRACT TO ADD SPECIAL VRA COUNSEL SERVICES TO BE COMPLETED THROUGH A SUBCONTRACTOR**

This option would authorize Nielsen Merksamer to subcontract Special VRA Counsel services on behalf of the IRC as described in the Statement of Work and detailed in the procurement proposal. Nielsen Merksamer would be responsible for the procurement process and would bring forward two recommendations for the selection of Special VRA Counsel to the IRC. Staff would work administratively with County Counsel to amend the current General Counsel contract and add Special VRA Counsel services to be provided through a subcontractor.

<b>Date</b>	<b>Anticipated Timeline</b>
Friday, Sept 10	Nielsen Merksamer (NM) sends approved Request for Qualifications (RFQ) to list of firms and posts on IRC website.
Monday, Sept 20	Special VRA Counsel RFP submissions are due to NM at 10:00 am. NM begins reviewing proposals.
Tuesday, Sept 21	NM reviews proposals and evaluates them. Selects the top two or three firms for interviews.
Wednesday, Sept 22 – Thursday, Sept 23	NM interviews firms. Selects two firms for recommendation to IRC and begins draft of report to IRC on Special VRA Counsel recommendation.
Friday, Sept 24	NM submits report and PowerPoint presentation to staff for posting for the September 29 IRC Meeting.
Wednesday, Sept 29	<b>SPECIAL MEETING:</b> IRC discusses NM’s recommendation for Special VRA Counsel, ranks the recommended candidates, and authorizes contract negotiations in rank order, anticipating negotiations with the highest ranked candidate will be successful. However, if those negotiations are not successful, negotiations can commence immediately with next candidate in rank order.
Thursday, Sept 30 – Tuesday, Oct 5	Negotiations with selected Special VRA Counsel firm and contract execution.

Strengths

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- Nielsen Merksamer, General Counsel to the IRC, are Subject Matter Experts in redistricting and the VRA, and have a firm understanding of what is required for these services.
- IRC will have the opportunity to review two recommendations for selection.
- Beneficial to the IRC to have an opinion from qualified independent Counsel for these services during the development of its draft and final maps.

Challenges

- Would require an additional IRC Special Meeting
- Due to the tight timeline, if any part of the procurement process is delayed, there will be an overall procurement delay that will impact mapping.

**OPTION 3: AUGMENT NIELSEN MERKSAMER CONTRACT TO ADD SPECIAL VRA COUNSEL SERVICES TO BE COMPLETED THROUGH A SUBCONTRACTOR RECOMMENDED BY AN IRC AD HOC COMMITTEE**

This option would authorize Nielsen Merksamer to subcontract Special VRA Counsel services on behalf of the IRC as described in the Statement of Work and detailed in the procurement proposal. Nielsen Merksamer would be responsible for the procurement process and an IRC Ad Hoc Committee would be formed with a purpose to develop a recommendation to the IRC for selection of Special VRA Counsel. Staff would work administratively with County Counsel to amend the current General Counsel contract and add Special VRA Counsel services to be provided through a subcontractor.

Date	Anticipated Timeline
Friday, Sept 10	NM sends approved Request for Qualifications (RFQ) to list of firms and posts on IRC website. RFQ includes date of Sept 23 for possible interviews by AHC.
Monday, Sept 20	Special VRA Counsel RFP submissions are due to NM at 10:00 am. NM sends proposal submissions to AHC.
Monday, Sept 20 – Tuesday, Sept 21	AHC reviews proposals and evaluates them.
Wednesday, Sept 22	AHC meets for final review of proposals and selects the top two or three firms for interviews.
Thursday, Sept 23	AHC interviews firms.
Friday, Sept 24	AHC selects firm for recommendation to IRC and a second choice, and begins draft of the AHC report on Special VRA Counsel recommendation.
Monday, Sept 27	AHC submits AHC report and PowerPoint presentation to staff for posting for the September 30 IRC Special Meeting.
Thursday, Sept 30	<b>SPECIAL MEETING:</b> IRC discusses recommendations for Special VRA Counsel by the AHC, and authorizes contract negotiations in rank order, anticipating negotiations with the highest ranked candidate will be successful. However, if those negotiations are not successful,

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	negotiations can commence immediately with next candidate in rank order.
Friday, Oct 1- Wednesday, Oct 6	Negotiations with selected Special VRA Counsel firm and contract execution.

Strengths

- AHC provides the Commission with a clear role in forming the recommendation for Special VRA Counsel.
- AHC may consult with IRC General Counsel as the AHC deems helpful.
- Beneficial to the IRC have an opinion from qualified independent Counsel for these services during the development of its draft and final maps.

Challenges

- Would require an additional IRC Special Meeting.
- Would require the AHC to complete the entire process within eight (8) days including the weekend.
- Due to the tight timeline, if any part of the procurement process is delayed, there will be an overall procurement delay that will impact mapping.

**CONCLUSION:**

Based on the research by staff and the timing recommended by General Counsel, the IRC has three (3) possible options for the procurement of Special VRA Counsel to perform legal services as set forth in the draft Statement of Work previously presented to the Commission.

This item presents the IRC with an opportunity to discuss and possibly approve one option for the procurement of Special VRA Counsel services, including the possible formation of an IRC Ad Hoc Committee with a purpose to develop a recommendation to the IRC for selection of Special VRA Counsel.

**ATTACHMENT(S):**

Attachment A – Procurement Proposal