RFPs and Contracts: A Short Primer for Judges

North Carolina Office of Indigent Defense Services

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This Presentation Will Cover:

- 2011 Legislation Directing IDS to Issue Requests for Proposals ("RFPs")
- Overview of New IDS Contracts
- The Impact of RFPs and Contracts on the Courts
- IDS' Planned Approach to RFPs
  - Staggering by case type and geography

2011 Legislation Requiring RFPs and Contracts

2011 Appropriations Act
(and Technical Corrections bill)

- The special provision directs IDS to:
  - Issue RFPs for all indigent services
  - Issue RFPs in all districts
  - Consider both **cost** and **quality**
- The special provision does **not** direct IDS to:
  - Issue RFPs for cases handled by public defender offices
- Legislative intent is to replace PAC rosters
- § 15.16(c) of S.L. 2011-145, as amended by § 39 of S.L. 2011-391

Overview of New IDS Contracts

"Caseload Units"

- IDS will offer "caseload units" to interested attorneys
- Each "unit" will represent a group of cases that will take roughly 20% of one attorney's billable time (or approximately 360 billable hours per year)
  - Based on 3 fiscal years of data on PAC time claims
- Actual amount of time spent will depend on actual case assignments and efficiency of the contractor and the courts
- RFPs will specify the number of units available for each contract category, such as high- and low-level felonies, in each county

20% Units

- IDS will evaluate:
  - Each county's caseload based on 3 years of data — to calculate the approximate number of 20% units required to cover cases
  - Court schedules — to determine the number of different attorneys needed and, thus, the maximum number of units that can be concentrated in one attorney
- Individual attorneys will be free to bid on:
  - One unit (and spend roughly 20% of time on indigent cases)
  - Up to five units (and spend 100% of time on indigent cases)
    - As long as all court schedules can be covered and there are a sufficient number of contractors to handle each other's conflicts

Number of Cases and Monthly Compensation

- RFPs will specify range of annual disposed cases that each unit will represent
  - Based on IDS' case data
  - E.g., for low-level felonies, 56-68 cases per year
- For most case types, IDS will seek qualifying offers only and pay a set monthly fee per unit
  - Monthly pay will cover attorney time and routine expenses
  - Amount of monthly pay per unit will be in the RFPs
  - Per unit pay will be uniform throughout the state

Unit Compensation

- Contracts will allow for adjustments to the amount of monthly pay if actual number of disposed cases is significantly higher/lower than projected
- Contractors will be permitted to seek extraordinary pay for extraordinary cases and extraordinary expenses
- IDS will continue to fund pre-approved expert services outside of the contracts

Session Compensation

- In some limited case types where courts often operate on a per session basis, IDS will seek qualifying offers and per session price offers
  - Treatment courts
  - Child support contempt
  - Others, e.g., Wake County Probation Violations

Different than Roster System

- Unlike the current case-by-case system of appointing from a rotational roster, contractors:
  - Cannot go on and off the indigent lists
  - Are expected to handle their percentage of covered cases during the contract period
  - Because contractors are being paid up front for an expected number of dispositions, they must complete all assigned cases at the conclusion of all contracts
    - *Should not file motions to withdraw at end of contract!!*

The More Things Change

- The more they stay the same:
  - To the extent possible, IDS is not seeking to change the way local courts operate
    - Possible exception: child support contempt
- We will be contacting local court system actors for input on a number of issues when we reach your county or district, such as:
  - Specialized courts and local practices
  - Court schedules
  - Minimum number of contractors needed to cover court sessions and conflicts

Judicial References

- IDS intends to seek feedback from all resident judges on the qualifications of all offerors in their county or district
  - Judicial Standards Commission is aware of this, and has told IDS it is okay to ask judges to rate each offeror as highly qualified, qualified, or unqualified
- We will let you know when to expect to hear from us and will give all judges 2-3 weeks to respond

The Impact of RFPs and Contracts on the Courts

Case Assignments

- Judges, Clerks, and PD Offices will still assign individual cases to contractors, but assignments will be from a list of contractors rather than rotational case-by-case appointments of PAC
- As IDS enters into contracts, IDS will prepare appointment instructions for local system actors to replace the current local indigent appointment plans
  - Will address extent to which judges can appoint off list in special cases
- IDS staff will also work with local system actors to ensure that each contractor receives the contracted-for percentage of the local caseload

Fee Applications & Client Recoupment

- Because contractors will not be paid on a case-by-case basis, judges will no longer have to review fee applications and set fee awards
- However, like public defenders, contractors will still be required to submit recoupment applications in all recoupment-eligible cases
  - Contractors will enter case-specific data into a web-based system for all contract cases, and then print pre-filled recoupment applications in all recoupment-eligible cases

New Resources

- A shift to a contract system requires new infrastructure and IDS staff, which will also provide a new resource for the contractors, courts, and clients
- Four new Regional Defenders (each responsible for two Judicial Divisions):
  - Provide support, training, and oversight to the contractors in their areas
  - Help local officials address problems that may arise
  - Resource for client complaints

IDS' Planned Approach to RFPs

Staggering by Case Type and Geography

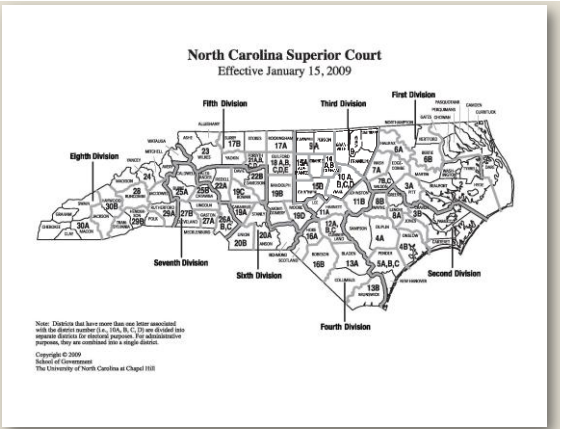
- In FY11, almost 200,000 non-capital trial level cases were handled by PAC on a case-by-case basis
- Due to the number of cases subject to the RFP process, RFPs will be staggered by:
  - Case type
  - Geography

Staggered by Case Type

- First RFP sought offers for adult non-capital criminal cases and treatment courts
  - Issued May 29, 2012
  - Offers due June 26, 2012
  - Award Notification August 31, 2012
  - Anticipated Effective Date December 1, 2012
- Subsequent RFPs will seek offers for specialized case types, e.g., juvenile delinquency, abuse/neglect/dependency, and special proceedings

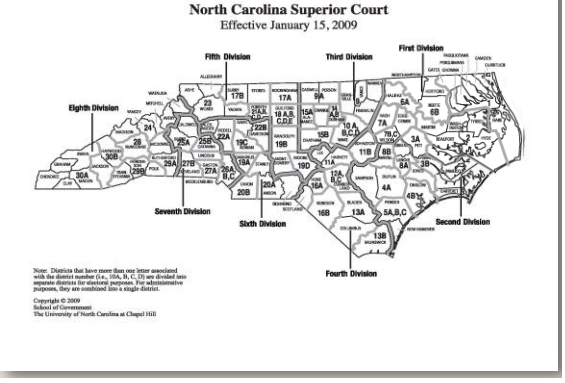
Staggered by Geography

- First RFP covered part of the 3rd Judicial Division:
  - District 9: Franklin, Granville, Vance, Warren
  - District 10: Wake
  - District 14: Durham
- Next RFP will cover rest of the 3rd Judicial Division:
  - District 9A: Caswell, Person
  - District 15A: Alamance
  - District 15B: Chatham, Orange



Staggered by Geography

- Once contracts established in the 3rd Division, IDS will issue next round of RFPs in the 1st Division, which includes:
  - District 1: Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans
  - District 2: Beaufort, Hyde, Martin, Tyrell, Washington
  - District 3A: Pitt
  - District 6A: Halifax
  - District 6B: Bertie, Hertford, Northampton
  - District 7A: Nash
  - District 7B/C: Edgecombe, Wilson



Future RFPs

- IDS will then evaluate success of the first RFPs, take steps to address any problems, and decide where to issue the next series of RFPs
- Tentative plan is to proceed in the following order:
  - 2nd and 4th Divisions
  - 5th and 6th Divisions
  - 7th and 8th Divisions

IDS is moving to a contract system!

Local actors have an essential role to play in helping IDS implement this new contract system across the state. We will be contacting you for your input and we hope that you will assist us in this important transition.

If you have any questions, please visit our website (www.ncids.org) and click on "Information for Counsel" and then "RFPs & Contracts." Or contact us:

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