

# The ABCs of RFPs and Contracts

North Carolina Office of Indigent Defense Services

Presented by [Tom Maher](#), Executive Director & [Danielle Carman](#), Assistant Director



## This Presentation Will Cover:

- 2011 Legislation Requiring Requests for Proposals (RFPs) and Contracts
- National Reports & RFPs and Contracts in Other Jurisdictions
- Overview of New IDS Contracts
- The Impact of RFPs and Contracts on IDS and Private Assigned Counsel (PAC)
- IDS' Planned Approach to RFPs & the Application and Selection Process
- Implementation and Administration of Contracts

## 2011 Legislation Requiring RFPs and Contracts

### 2011 Appropriations Act (and Technical Corrections bill)

[IDS] shall issue a request for proposals from private law firms or not-for-profit legal representation organizations for the provision of **all legal services** for indigent clients in **all judicial districts**. [IDS] shall report on the issuance of this request for proposals to the Joint Legislative Commission on Governmental Operations by October 1, 2011. In cases where the proposed contract can provide representation services **more efficiently than current costs** and **ensure that the quality of representation is sufficient to meet applicable constitutional and statutory standards**, [IDS] shall use private assigned counsel funds to enter into contracts for this purpose. In selecting contracts, [IDS] **shall consider both the cost-effectiveness of the proposed contract and the ability of the potential contractor to provide effective representation for the clients served by the contract.**

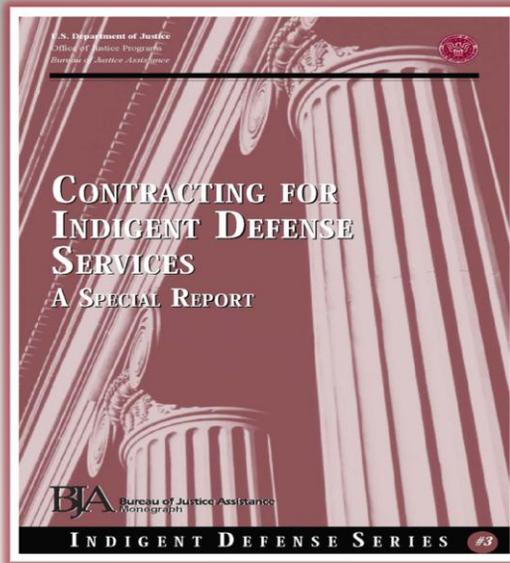
## The Special Provision

- 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

## National Reports & RFPs and Contracts in Other Jurisdictions

## National Reports

- There are numerous national reports, guidelines, and recommendations on the use of RFPs and contracts for indigent defense services, including:
  - The National Legal Aid and Defender Association's ("NLADA") Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services
- The reports, guidelines, and recommendations describe features of deficient and effective contract systems
  - Helped IDS identify best practices and pitfalls to avoid in the RFP process



[www.ncjrs.gov/pdffiles1/bja/181160.pdf](http://www.ncjrs.gov/pdffiles1/bja/181160.pdf)



## RFPs and Contracts in Other Jurisdictions

- A number of other jurisdictions utilize the RFP and contract process to provide indigent defense services, including:
  - Missouri, New Hampshire, New Mexico, Oregon, and Wisconsin
  - Some counties in Arizona, California, North Dakota, and Washington
  - New York City

## New Mexico

- New Mexico contractors are paid flat fees per case
  - Paid at time of appointment
  - Additional payment negotiated for extraordinary work



## New Mexico: Flat Fees

**C. RATE SCHEDULES**

JUDICIAL DISTRICT	FELONY RATES:			
	1 <sup>st</sup> Degree	2 <sup>nd</sup> Degree	3 <sup>rd</sup> Degree	4 <sup>th</sup> Degree
1st Judicial District	\$700.00	\$650.00	\$595.00	\$540.00
2nd Judicial District	\$700.00	\$650.00	\$595.00	\$540.00
3rd Judicial District	\$700.00	\$650.00	\$595.00	\$540.00
4th Judicial District	\$700.00	\$650.00	\$595.00	\$540.00
5th Judicial District	\$750.00	\$730.00	\$700.00	\$650.00
6th Judicial District	\$700.00	\$650.00	\$595.00	\$540.00
7th Judicial District	\$700.00	\$650.00	\$595.00	\$540.00
8th Judicial District	\$700.00	\$650.00	\$595.00	\$540.00
9th Judicial District	\$750.00	\$730.00	\$700.00	\$650.00
10th Judicial District	\$750.00	\$730.00	\$700.00	\$650.00
11th Judicial District	\$700.00	\$650.00	\$595.00	\$540.00
12th Judicial District	\$700.00	\$650.00	\$595.00	\$540.00
13th Judicial District	\$700.00	\$650.00	\$595.00	\$540.00
JUDICIAL DISTRICT:	JUVENILE	MISDEMEANOR*		
1st Judicial District	\$250.00	\$180.00		
2nd Judicial District	\$250.00	\$180.00		
3rd Judicial District	\$250.00	\$180.00		
4th Judicial District	\$250.00	\$180.00		
5th Judicial District	\$300.00	\$180.00		
6th Judicial District	\$250.00	\$180.00		
7th Judicial District	\$250.00	\$180.00		
8th Judicial District	\$250.00	\$180.00		
9th Judicial District	\$250.00	\$180.00		
10th Judicial District	\$250.00	\$180.00		
11th Judicial District	\$250.00	\$180.00		

## New Mexico: Extraordinary Cases

### p. Additional compensation in extraordinary cases

Because varying amounts of work are required on assigned cases, it is assumed that flat fee compensation on contract cases balances out during the term of the contract and results in an overall fair rate of compensation. Therefore, only in exceptional cases requiring extraordinary additional work may a contractor be compensated in amounts exceeding the contract rate. If, at the completion of a case, the contractor believes he/she is entitled to additional compensation, and provides appropriate documentation of the claim, the contractor may submit a written request to the Deputy Chief Public Defender for review. Additional compensation will be awarded only upon sufficient appropriations from the Legislature of New Mexico. Decisions of the Deputy Chief Public Defender regarding additional compensation shall be final.

The determination will be based on:

- i. the efficient use of time spent on the case
- ii. whether case went to trial and the length of trial
- iii. complexity of issues
- iv. seriousness of the offense
- v. documented proof of the hours spent on the case
- vi. the availability of funds for this purpose
- vii. previous fees paid on the case

## Oregon

- Oregon seeks cost/price offers supported by detailed budgets
  - Proposals must set out the caseload to be covered and provide detailed budgets showing the resources that will be devoted to the representation
  - Contractors are generally large entities, overseen by a Board



# Oregon: Covered Caseload

**CASELOAD INFORMATION**

**A. Case Types Covered** All case types as defined in the general terms of the contract document that are subject to this RFP excluding \_\_\_\_\_

**B. Complete the section below:**

Case Types	Value	# of Cases	Total Value
First Year	\$ _____	_____	\$ _____
	\$ _____	_____	\$ _____
	\$ _____	_____	\$ _____
	\$ _____	_____	\$ _____
First Year Total	_____	_____	\$ _____
Second Year	\$ _____	_____	\$ _____
	\$ _____	_____	\$ _____
	\$ _____	_____	\$ _____
	\$ _____	_____	\$ _____
Second Year Total	_____	_____	\$ _____
Contract Total	_____	_____	\$ _____

(Add additional years if necessary.)

**A. METHODOLOGY, EXPLANATIONS AND ESTIMATES**

- Service Cost Basis:** For the types of cases, extent of coverage, and services proposed, explain how costs were projected and the premises underlying the projection.
- Case Costs:**

Explain:

  - how the various case types were weighted;
  - how the cost varies by case type; and
  - how staff investigator, paralegal, and/or interpreter costs were factored.

Estimate:

  - what percentage of each case type is disposed by jury trial, court trial, plea, dismissal, withdrawal, and bench warrant.

# Oregon: Budgets

**APPLICANT'S PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS**

Directions: Provide estimated cost information for all applicable categories. If a category is not applicable, list "N/A". Add any necessary categories not listed below. Prorate all estimated expenses for part-time attorneys or staff by the percentage of time they will spend on contract work. (Use additional pages if needed for longer term proposals.)

	First Year	Second Year
<b>1. GROSS SALARIES</b>		
Attorneys (estimated gross income to attorneys after attorneys' overhead and F.I.C.A. self-employment taxes are deducted) _____ # _____ FTE	_____	_____
Secretarial/Reception/Clerical Staff _____ # _____ FTE	_____	_____
Paralegal/Legal Assistant Staff _____ # _____ FTE	_____	_____
Investigation Staff _____ # _____ FTE	_____	_____
Other Staff (identify _____) _____ # _____ FTE	_____	_____
<b>SUBTOTAL:</b>	_____	_____
<b>2. STAFF BENEFITS</b>		
F.I.C.A. Self-Employment Tax (if applicable)	_____	_____
F.I.C.A. (Employer's portion or Social Security only)	_____	_____
Unemployment Insurance	_____	_____
Health and Other Insurance	_____	_____
Workers' Compensation	_____	_____
Retirement Program	_____	_____
<b>SUBTOTAL:</b>	_____	_____
<b>3. STAFF EXPENSES</b>		
Malpractice Insurance (check _____ PIF or _____ NLADA)	_____	_____
Other Professional Insurance (describe _____)	_____	_____
OCCLA-Membership Dues	_____	_____
OSB-Membership Dues	_____	_____
Other Membership Dues Necessary to Contract (explain _____)	_____	_____

## Lessons Learned

- Characteristics of deficient contract systems:
  - Place cost containment before quality; reward low bids rather than realistic bids
  - Incentives to plead cases out early rather than go to trial
  - Lawyers with fewer qualifications handle more work
  - Limited oversight, supervision, performance evaluation, and training
  - Unrealistic caseload limits or no limits at all
  - No case-tracking or case management system

## Lessons Learned

- Characteristics of effective contract systems:
  - Attorney experience and qualification requirements
  - Provisions for handling some costs outside of the contract (e.g., costs of investigators and experts)
  - Caseload and workload caps and, if appropriate, limitations on the practice of law outside the contract
  - Guidelines on notifications of appointment and client contact
  - Case management and tracking requirements
  - Mechanisms for monitoring, oversight, and evaluation
  - Provisions for completing cases if the contract is completed but breached or not renewed

## Overview of New IDS Contracts

### Contract “Units”

- IDS will offer contract “units” to interested attorneys
- Based on an assumption that attorneys bill an average of 1,800 hours per year, one “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)
  - Some adjustments to the size of the % units may be necessary in some counties based on local caseload
- The actual amount of time spent will depend on the actual case assignments and the efficiency of the contractor
- RFPs will specify the number of units available for each case category, such as high- and low-level felonies, in each county

## 20% Units

- IDS will evaluate:
  - Each county's caseload — 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 with 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

## An Example

	1	2	3	4
Serious Felonies	Estimated Superior Court Dispositions	Estimated Superior Court Hours Needed	Estimated District Court Dispositions	Estimated District Court Hours Needed
Non-Capital A	4	91.74	1	12.33
B1/B2	18	380.88	9	101.2
C	74	1096.6	7	53.73
D	66	884.4	3	19.29
Totals	162	2,453.62	20	186.55

- Total hours = 2,640.17 (Column 2 + Column 4)
- Divide by 20% units (360 hours) = minimum of 7 units at an estimated 377 annual hours per unit
- Then look at court schedules to determine needed coverage

## An Example

- Seven 20% units can result in contracts with:
  - Seven attorneys
    - Each attorney handles one unit each
    - Each contractor takes appointments on strict rotation
  - Five attorneys
    - Three attorneys handle one unit each
    - Two attorneys handle two units each
  - Another combination

## How Many Cases?

- RFPs will include target number of annual disposed cases that each unit will represent
  - Based on IDS' case data
- Actual number of cases disposed by a contractor may be higher or lower than the target
  - Will be a percentage limit on the permissible variance without triggering change in pay
  - Permissible percentage variance will be specified in the RFPs and contracts

## Compensation

- Hourly and per case compensation is not feasible with a large-scale contract system
- For case types in which IDS seeks only qualifying offers, IDS plans to pay set monthly fees 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 as uniform as possible throughout the state
- Contracts will include provisions allowing for adjustments in the amount of monthly pay if actual number of disposed cases is significantly higher/lower than projected

## Extraordinary Expenses & Cases

- The need for outside experts will not negatively affect contractors' pay
  - Funding for such services available outside of contracts
- Extraordinary expenses
  - Contractors will be able to apply to IDS for reimbursement of non-routine extraordinary expenses
- Extraordinary cases — Remember the Little Rascals?
  - Contractors will also be able to seek additional compensation for extraordinary cases or a reduction in the target number of disposed cases

## 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
  - Must complete all assigned cases—pursuant to the contract—at the conclusion of all contracts

## Incentives

- Some concerns that a contract system will make prosecutors less flexible in plea negotiations because defense attorneys will have incentives to plead cases quickly
- Incentives not to take cases to trial will be mitigated by:
  - Possibility of additional pay for extraordinary cases
  - Guaranteed monthly pay
  - No fear of having case-specific hours reduced

## Key Personnel

- Contracts will specify that all attorneys rendering services pursuant to the contract must:
  - Be named in the contract
  - Not make substitutions without advance IDS approval
- Offerors cannot enter into a contract with IDS based on their demonstrated qualifications and experience, and then hire less qualified attorneys to handle the actual cases

## Contracts

- Two-year term contracts
  - Option to renew for additional two-year term
  - After maximum of four years, all contracts subject to competitive bidding
- IDS may impose additional requirements
  - E.g., attendance at specialized CLE programs for less experienced attorneys

## The Impact of RFPs and Contracts on IDS and PAC

### Impact on IDS and PAC

- Implementation of the special provision requires fundamental changes in how indigent services are provided and on relationship between IDS and PAC
  - IDS' current contracts cover a mere 2.7% of the non-capital trial-level cases handled by PAC
  - During FY11, excluding potentially capital cases and appeals, IDS processed almost 200,000 individual PAC fee apps from more than 2,600 different PAC at a cost of approximately \$68.7 million
  - Those fee apps represented more than 60% of the state's indigent trial-level caseload, which is currently handled by PAC pursuant to case-by-case appointments

## Impact on IDS

- IDS currently relies on volunteer indigent appointment committees to:
  - Determine qualifications
  - Provide oversight (esp. in non-public defender districts)
- IDS also relies on:
  - ≈ 400 district and superior court judges to set fee awards
  - ≈ 2,500 deputy and assistant clerks to process a large volume of compensation paperwork

## Impact on IDS

- Under a large-scale contract system, a significant portion of this work will shift to IDS
- By selecting contractors, IDS will be responsible for:
  - Deciding which attorneys are able to handle indigent cases and which attorneys are not
  - Providing oversight
  - Setting compensation
  - Processing associated paperwork

## Impact on PAC

- Rather than applying for the various indigent lists at a local level, PAC must submit offers in response to the RFPs
- Successful offerors awarded contracts
  - Full-time indigent work OR
  - Part-time indigent work
- Unsuccessful offerors **not** awarded contracts
  - Potential to remain on truncated local indigent lists for a small volume of some case types

## Impact on PAC

- IDS anticipates entering into contracts with:
  - Individual attorneys
  - Law firms
  - Non-profits
- We know that many solo practitioners are concerned about large law firms submitting offers for large volumes of work, thereby driving solo practitioners out of work
  - While some new firms and non-profits may be formed as IDS shifts toward a contract system, we don't think North Carolina's existing large law firms will be interested in handling large volumes of indigent work
  - More difficult for large law firms than solo practitioners to cover conflict cases
  - If significant interest in new non-profit development, IDS can work with the School of Government to develop training programs on this topic

## Impact on Solo Practitioners

- The RFPs will accommodate solo practitioners
  - Individual attorneys can submit offers for units of their time ranging from 20% to 100%
  - Contracts will name attorneys who can handle the cases — no substitutions are allowed without IDS approval
- IDS will not seek offers from consortia of attorneys
  - But, as a practical matter, contractors covering a given case category in a given area will be free to treat themselves as consortia
  - Contractors will not be de facto law partners for purposes of conflicts of interest

## New Infrastructures

- A shift to a contract system requires new infrastructure and IDS staff, including:
  - Contracts Administrator
    - Located in central office
    - Responsible for business, reporting, and compensation aspects of contracting
  - Four Regional Defenders
    - Provide support and oversight to the contractors in their areas
    - Each Regional Defender responsible for two Judicial Divisions

## RFPs & Contracts Page on IDS Website

- Dedicated RFPs and Contracts Webpage
  - Go to [www.ncids.org](http://www.ncids.org)
  - Click “Information for Counsel”
  - Click “RFPs & Contracts”
- Page currently includes:
  - RFP and contract policies
  - IDS’ October 2011 report to the General Assembly
  - Non-capital case and cost data for all 100 NC counties
- Page will include:
  - All RFPs when issued

## EBlast Registry

- In addition to the RFPs and Contracts webpage, all RFPs will be advertised via:
  - IDS listservs
  - IDS’ EBlast system
- If you/your colleagues are not on IDS listservs, register for EBlasts — it takes less than one minute to register!
  - Go to [www.ncids.org](http://www.ncids.org)
  - Click “EBlast Registry”

## **IDS' Planned Approach to RFPs & the Application and Selection Process**

### **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

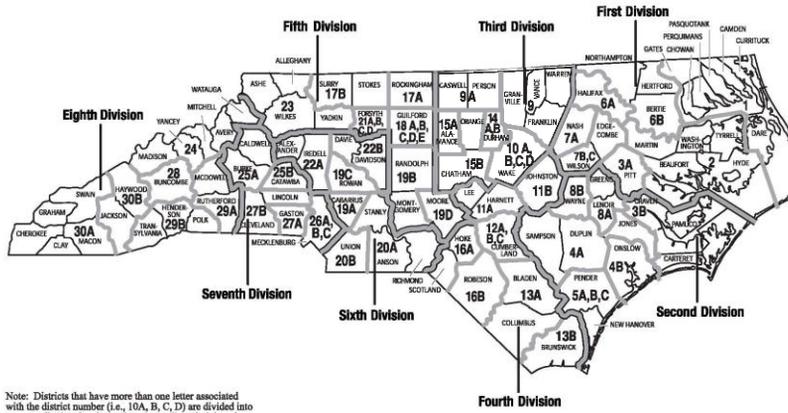
## Staggered by Case Type

- Initial RFPs will seek offers for non-capital trial-level case types
  - Includes public defender conflict cases
  - May exclude some lower volume case types from the initial RFPs depending on local data
- After contracts for non-capital trial-level cases are established, IDS plans to issue RFPs for:
  - Trial-level capital cases
  - Direct appeals
  - Capital and non-capital post-conviction cases

## Staggered by Geography

- We plan to issue the first RFPs this winter in some portion of the 3<sup>rd</sup> Judicial Division, which includes:
  - District 9: Franklin, Granville, Vance, Warren
  - District 9A: Caswell, Person
  - District 10: Wake
  - District 14: Durham
  - District 15A: Alamance
  - District 15B: Chatham, Orange

**North Carolina Superior Court**  
Effective January 15, 2009



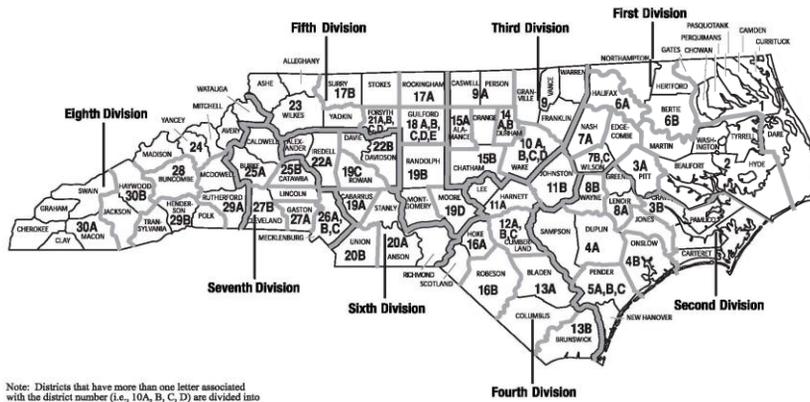
Note: Districts that have more than one letter associated with the district number (i.e., 10A, B, C, D) are divided into separate districts for electoral purposes. For administrative purposes, they are combined into a single district.

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## Staggered by Geography

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

**North Carolina Superior Court**  
Effective January 15, 2009



Note: Districts that have more than one letter associated with the district number (i.e., 10A, B, C, D) are divided into separate districts for electoral purposes. For administrative purposes, they are combined into a single district.

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## Future RFPs

- IDS will evaluate success of RFPs and contracts, take steps to address any problems, and decide where to issue the next series of RFPs
- As RFPs issued in each area, IDS will hire additional Regional Defenders to provide support and oversight in the following divisions:
  - 2<sup>nd</sup> and 4<sup>th</sup>
  - 5<sup>th</sup> and 6<sup>th</sup>
  - 7<sup>th</sup> and 8<sup>th</sup>

## What an Offer Will Look Like

- All RFPs will:
  - Clearly state the required information — individual offerors will not have to “reinvent the wheel”
  - IDS will provide forms that all offerors must use to submit an offer (much like a job application)
- All offers must:
  - Be sealed — we will not accept electronic or faxed offers
- Until we issue RFPs in your division, please do not develop or submit an offer

## Qualifying vs. Cost/Price Offers

- A “Qualifying Offer” is an offer that seeks to demonstrate the qualifications required by the RFP
- A “Cost/Price Offer” is an offer that proposes a cost or price for the services required by the RFP

## Most RFPs will Seek Only Qualifying Offers

- For most case types, IDS intends to set the compensation and only seek qualifying offers
- Setting contractual payments directly will allow IDS to:
  - Ensure that payments are more uniform
  - Avoid the problem of paying different attorneys different amounts for the same work
  - Achieve feasible implementation
  - Minimize logistical problems associated with paying widely varying amounts to large number of contractors

## Seeking Only Qualifying Offers

- Potential for a law firm to go out of business if it submits an unrealistically low bid
  - Great cost to law firm and IDS
  - Better to appropriately set pay upfront
- Funding agencies in most other jurisdictions with contract systems do not seek cost/price offers and instead directly set contractual prices
  - Jurisdictions that seek cost/price offers (e.g., Oregon) tend to rely on contracts with—and require budgets from—large established non-profits

## Low-Bid Contracts

- Not accepting cost/price offers will eliminate the risk of bids that are so low and unrealistic that the quality of representation cannot meet constitutional and statutory standards
- Low-bid contract systems:
  - Cost proposed by offerors is the sole or most important criteria to the funding agency
  - Devastate the quality of representation
  - Result in subsequent spiraling costs when errors and ineffective assistance of counsel must be corrected on appeal and in post-conviction

## Dangers of Low-Bid Contracts: Example 1

- According to the BJA report, one county in California awarded a low-bid contract to a firm, which used two associates to plead clients at first appearance in order to make a profit
- Only .5% of the cases went to trial
- When one of the associates moved to continue a felony case because no investigation had been conducted, she was fired and the remaining associate pled the client guilty to all of the charges

## Dangers of Low-Bid Contracts: Example 2

- In Ventura County, California, a firm submitted a bid \$700,000 lower than the cost of the current non-profit provider
- The County examined the history of the firm and discovered that:
  - “The out-of-county firm saved money by using unlicensed investigators, limiting support staff, and using very inexperienced attorneys. A judge in another county had complained that this firm used inexperienced lawyers who were often unavailable in court, did not maintain full-time offices, and seemed more interested in obtaining other contracts than in providing services.”

## Dangers of Low-Bid Contracts

- Low-bid contracts have also been held to violate indigent defendants’ constitutional rights in some other jurisdictions
  - *See, e.g., State v. Smith*, 681 P.2d 1374 (Ariz. 1984)
- The special provision directs IDS to consider both cost-effectiveness **and** quality
  - IDS will **not** seek low bid offers

## Cost/Price Offers and 2-Step RFPs

- In some case types where amount of time required tends to be more fixed and risks of price bidding may be lower (e.g., child support contempt cases and treatment courts), IDS may also seek cost/price offers
  - But price will **not** be the sole criteria in awarding contracts
- For case types in which IDS seeks cost/price offers, IDS plans to use 2-step RFPs
  - IDS will first evaluate the qualifying offers
  - IDS will only open the cost/price proposals from the most highly rated offerors

## Evaluation Criteria for Qualifying Offers

- Demonstration of the required qualifications and experience and a commitment to indigent defense
  - Meets minimum attorney qualifications for the type of cases covered by the offer
  - Ability to adhere to any applicable performance guidelines, including timely client contact and filing necessary and appropriate motions
  - Demonstrated experience with mental health, substance abuse, domestic violence, and forensic issues, as well as non-English speaking clients
  - A plan for handling immediate appointments and an ability to identify conflicts of interest as of the contract's effective date
  - Ability to handle court schedules for the case types covered by the offer

## Evaluation Criteria

- Demonstration of a strong legal practice
  - Adequate and appropriate staffing levels and supervision
    - If staff is minimal, offeror has a plan for providing necessary support services in appropriate cases
  - Ability to prioritize the contract work vis-à-vis retained work and other federal and state appointed work
  - Ability to track and report data in a format and timeframe mandated by IDS
  - Ability to adhere to caseload and workload standards issued by IDS
  - A strong ethical track record and reputation
  - Malpractice insurance

## Evaluation Criteria

- Adequate office facilities and legal research capabilities
  - Adequacy and proximity of office facilities or other demonstrated availability to the court and to appointed clients in the county
  - Adequate access to legal research tools, including a law library or online research tools

## “Encouraged” Elements

- While not required for an offer, IDS will give additional, positive weight in the evaluation process to the following elements:
  - Willingness to serve as a trainer at continuing legal education programs or as a mentor for less experienced attorneys
  - Plans to ensure that a contractor renders quality services or self-monitors performance
  - In-house capacity to handle non-English speaking clients
  - Innovative or holistic approaches to representation
  - In-house training or mentoring plans

## Issuing RFPs

- Step 1 — IDS plans to issue two RFPs in each county or district for:
  - Case types in which IDS only seeks qualifying offers
  - Case types in which IDS also seeks cost/price offers

## Question Period

- IDS plans to build in a question period:
  - For the initial RFPs (at least)
  - Before final proposals are solicited
- This period will allow IDS to:
  - Respond to common questions
  - Clarify any ambiguities in the RFPs
- IDS will post all answers to questions from individual attorneys on the RFPs & Contracts webpage and/or issue amended RFPs

## Submitting Offers

- Interested attorneys will prepare offers:
  - In format required by RFP
  - On forms provided by IDS
- Offers should include information showing they:
  - Meet the requirements
  - Can demonstrate their ability to provide the representation required by the contract

## Evaluation Committees

- Role of evaluation committees:
  - Review offers
  - Identify the best overall offers based on RFP criteria
- Composition of evaluation committees:
  - One or two members of the central IDS staff
  - One chief public defender from the division
  - Regional Defender
  - The appropriate statewide defender (in specialized case types)
    - E.g., In juvenile delinquency cases, the Juvenile Defender
- Local input from judges and other system actors will be obtained through the reference process

## Awarding Contracts

- IDS will award contracts to the offerors who submit the best overall offers based on the criteria set forth in the RFPs



## Protest Procedures

- IDS established a decision-protest process for any offeror not awarded a contract
  - Process is set forth in Section .0800 of IDS' "Policy for the Issuance of Requests for Proposals and Establishment of Legal Services Contracts" (available on IDS website)
- Procedures provide for:
  - Informal review by a committee of the IDS Commission

## Implementation and Administration of Contracts

## Case Assignments

- Clerks, Judges, and PD Offices will still assign individual cases to contractors, but the assignments will be from a list of contractors rather than rotational case-by-case appointments of PAC
- As IDS enters into contracts, IDS staff will work with local system actors to ensure that each contractor receives the contracted-for percentage of the local caseload

## Tracking Hours

- Contractors expected to track the time spent on each contract case for:
  - IDS' data collection purposes
  - Recoupment purposes

## Data Collection, Data Reporting, & Client Recoupment

- Contractors must:
  - Submit data in a format and timeframe determined by IDS
  - Report data currently captured via fee applications
- IDS is developing a web-based system for electronic reporting of case and cost data
  - Contractors will enter case-specific data into the system for all contract cases, and then print pre-filled fee applications to submit to judges in all recoupment-eligible cases

## Monthly Pay

- IDS traditionally treats contractor payments like employee payroll
  - Funds are set aside to pay contractors even if funds available for case-by-case PAC fee awards are depleted
- IDS intends to continue this approach with new contractors to the extent possible
- Expect that efficient contractors will accept cost effective payment amounts due to:
  - Regularity of payment
  - Guaranteed volume of cases

## Training

- IDS will collaborate with the UNC School of Government to develop regional training programs for contractors



- We will make every effort to ensure that sufficient training is available at a reasonable cost

## Conclusion & Questions

- New process for you & IDS
- Joint learning experience
- Contract system:
  - Maintains / enhances quality
  - Contains costs
- Questions, suggestions, or concerns? Contact:
  - Thomas Maher, IDS Director  
919.354.7200 or [Thomas.K.Maher@nccourts.org](mailto:Thomas.K.Maher@nccourts.org)
  - Danielle Carman, IDS Assistant Director/General Counsel  
919.354.7200 or [Danielle.M.Carman@nccourts.org](mailto:Danielle.M.Carman@nccourts.org)