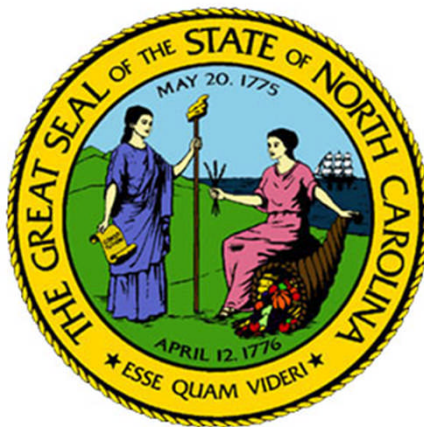


RFPs and Contracts: Report to JPS Oversight

January 12, 2012

North Carolina Office of Indigent Defense Services

Presented by Thomas Maher, IDS Executive Director



This Presentation Will Cover:

- 2011 Legislation Requiring Requests for Proposals (RFPs) and Contracts: Scope of Change
- IDS' Goals for New Contract System
- Overview of Planned IDS Contracts
- Timeline for Issuing RFPs and Entering into Contracts
- Future Challenges with a Contract System

2011 Legislation Requiring RFPs and Contracts: Scope of Change

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 handled by Private Assigned Counsel (PAC)
 - Issue RFPs in all districts
 - Consider both cost and quality
- Intended to shift current case-by-case PAC roster system to large-scale contract system

Scope of Change

- Implementation requires fundamental changes in how indigent services are provided in North Carolina
 - IDS' current contracts cover a mere 2.7% of the non-capital trial-level cases handled by PAC
 - Current contracts are individually negotiated to meet a need in a specific county or district
 - During FY11, excluding capital cases and appeals, IDS processed more than 200,000 individual 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

Scope of Change

- IDS currently relies on local 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
- Significant portion of these administrative and oversight functions will shift to IDS with a contract system

IDS' Goals for New Contract System

New Process for IDS and Attorneys

- IDS has no experience with RFPs or a large-scale contract system, so:
 - Reviewed laws and procedures governing state-issued RFPs
 - Reviewed national reports and systems in other jurisdictions that use RFPs and contracts
 - Identified best practices and pitfalls to avoid in RFP process
- Working to implement special provision in way that balances needs to contain costs and ensure quality

Designing a System for NC

- Developing system that will:
 - Work in North Carolina
 - Allow both law firms and solo practitioners to participate
 - Encourage efficiencies while providing sufficient resources to provide competent representation
- Striving to incorporate best features from other contract systems, such as:
 - Attorney experience and qualification requirements
 - Caseload and workload management
 - Case tracking requirements
 - Mechanisms for monitoring, oversight, and evaluation
 - Provisions for handling some costs outside of the contract (e.g., costs of investigators and experts)

Overall Goals

- Ensure sufficient number of qualified contractors to cover court schedules and conflict cases
- Contain long-term costs
 - Should be more stable and predictable over time
- Enhance efficiencies
 - But many inefficiencies are beyond control of the defense
- Maintain or enhance data collection
 - Continue to make informed decisions about resource allocation
 - Enhance ability to project future demand
- Maintain or enhance quality
 - Enhance ability to screen qualifications, train, and monitor performance
 - Poor quality increases costs in long-term as mistakes and IAC have to be corrected on appeal and in post-conviction

Overview of Planned IDS Contracts

Contract “Units”

- IDS will offer contract “units” to interested attorneys, law firms, and nonprofits
- 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 size of % units may be necessary in some counties based on local caseload
- Actual amount of time spent will depend on actual case assignments and efficiency of contractors
- RFPs will specify the number of units available for each case category, such as high- and low-level felonies, in each county
 - E.g., ~ 26 low-level felony units in Wake County in FY11

20% Units

- IDS is evaluating:
 - 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, law firms, and nonprofits will be free to bid on:
 - One unit per attorney (and spend roughly 20% of time on indigent cases)
 - Up to five units per attorney (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

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 somewhat higher or lower than the target
 - Will be % limit on the permissible variance without triggering change in pay
 - Permissible % variance will be specified in RFPs and contracts

Compensation

- For most case types, 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 RFPs
- Setting per unit prices will:
 - Ensure uniformity across the state and avoid the problem of paying different attorneys different amounts for same work
 - Minimize logistical problems associated with paying widely varying amounts to large number of contractors
 - Eliminate risk of bids that are so low and unrealistic that quality of representation cannot meet constitutional and statutory standards

Compensation

- Contracts will allow for adjustments in amount of monthly pay if actual number of disposed cases is significantly higher/lower than projected
- Contracts will also include provisions governing extraordinary cases and extraordinary expenses

Different than Roster System

- Unlike current case-by-case system of appointing from rotational roster:
 - Two-year contracts (with one option to renew), so contractors cannot go on and off indigent lists
 - Contractors expected to handle their percentage of covered cases during contract period
 - Contractors must complete all assigned cases—pursuant to the contract—after contracts end
 - Contractors will receive more regular payments, allowing for more predictable budgeting
- Contract system will likely concentrate the indigent caseload in a smaller number of attorneys

Timeline for Issuing RFPs and Entering into Contracts

Work Already Done

- Enormous amount of planning and preparation already done:
 - Meetings with local bars around the state
 - Online virtual CLE program released
 - ABCs of RFPs and Contracts
 - IDS Commission has approved:
 - Governing policies
 - Draft model RFP
 - Draft standard terms and conditions of contracts
 - Hired full-time Contracts Administrator
 - To replace prior ½-time position

Work Underway

- Analyzing historical case-by-case PAC disposition and cost data by county and case category to convert it to cost-effective “pay as we go” contract system for units of cases
 - Challenging conversion, so analyzing data in numerous ways to control for large number of variables
 - Assessing historical variability in volume, mix of cases, and cost across years and counties
 - Estimating future volume by contract category and county
 - Intent is to set per unit prices that are cost-effective and that allow for modest spending on new infrastructures needed to support large-scale contract system

Work Underway

- Designing and developing web-based data reporting system for contractors so IDS will not lose data currently collected from individual fee apps
 - Contractors will not be paid until they submit their monthly reports
 - Financial penalties for repeated failure to report
 - Contractors will still have to report their time on each contract case for recoupment purposes
 - System will allow contractors to print pre-filled fee applications to submit to judges in all recoupment-eligible cases

Staggering by Case Type and Geography

- In FY11, more than 200,000 trial level cases handled by PAC and paid by IDS on 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

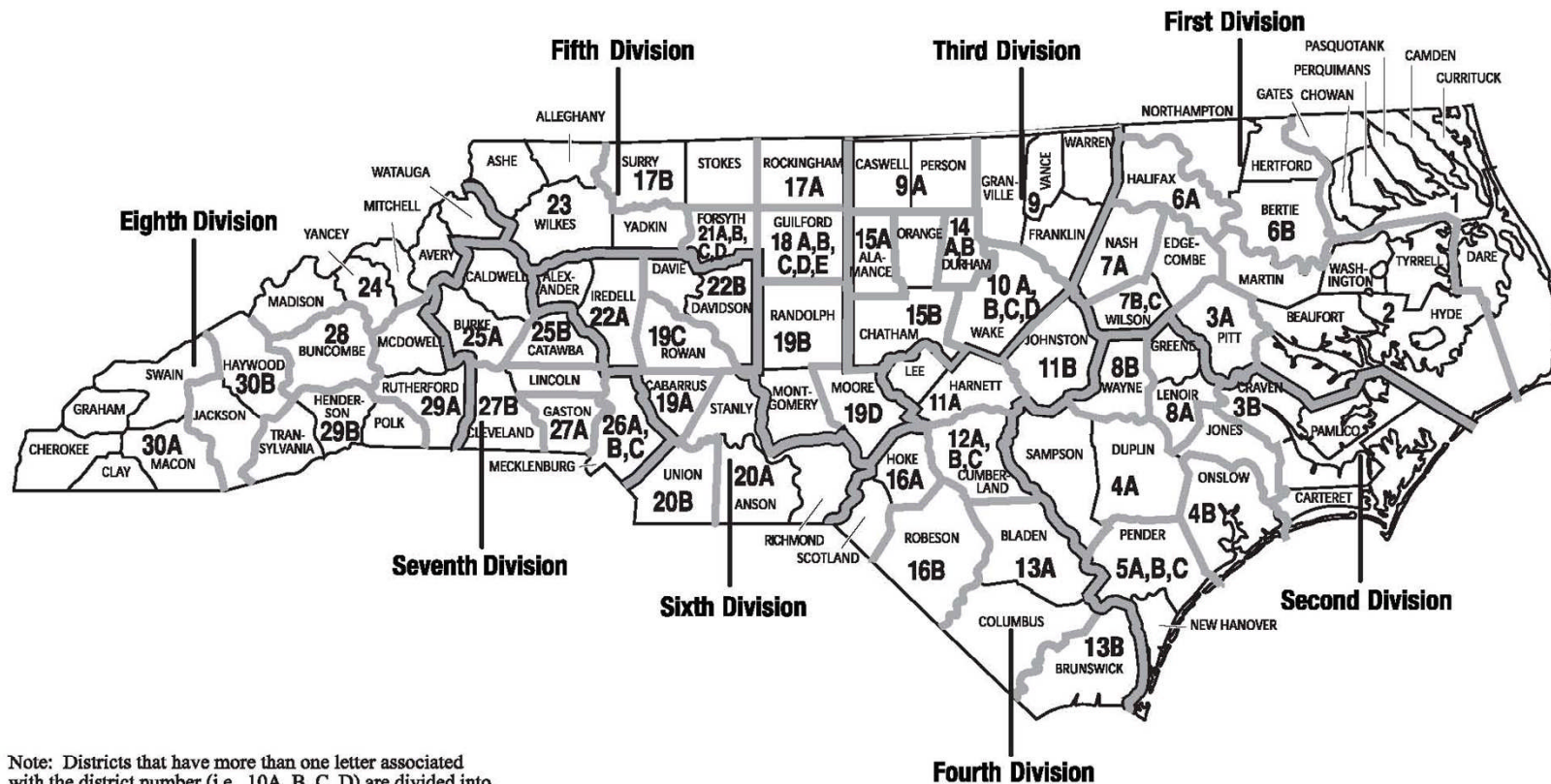
- Initial RFPs will seek offers for non-capital trial-level case types
 - Includes public defender conflict cases
 - May exclude some lower-volume case types from the initial RFPs depending on local data
- After contracts for non-capital trial-level cases are established, IDS plans to issue RFPs for: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

Staggered by Geography

- Plan to issue first RFPs in a portion of the 3rd Judicial Division:
 - District 9: Franklin, Granville, Vance, Warren
 - District 10: Wake
 - District 14: Durham
- Hope to release those initial RFPs in February
- Will give IDS experience in urban PD districts and rural non-PD districts
- Once contracts established throughout the 3rd Division, IDS will issue next round of RFPs in the 1st Division

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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New Infrastructures

- A shift to a contract system requires modest expansion of IDS staff:
 - Full-time Contracts Administrator
 - Located in central office
 - Responsible for business, reporting, and compensation aspects of contracting
 - Four Regional Defenders
 - Provide support and oversight to contractors in their areas
 - Monitor contractors' efficiency and ensure spending is appropriate and on track
 - Each Regional Defender responsible for two Judicial Divisions
 - Hired as IDS reaches the applicable Divisions

Tentative Schedule for 1st RFPs

Event	Target Date
Release of RFPs	2/13/12
Deadline for Questions (Statewide)	3/9/12
Answers to Questions Posted on IDS Website and/or Release of Amended RFPs	4/2/12
Deadline for Sealed Offers	4/30/12
Public Opening of Offers	5/1/12
Notification of Awards/Start Roll-Out of 2 nd Wave of RFPs	6/15/12
Execution of Contracts	8/15/12

- Will take time to respond to questions (at least with initial RFPs) and to evaluate offers and accommodate protests to the IDS Commission
- Will know more about how long process takes by early next FY

Evaluation Committees

- Role of evaluation committees:
 - Review offers
 - Identify the best overall offers based on criteria listed in the RFPs
- Composition of evaluation committees:
 - One or two members of the central IDS staff
 - One chief public defender from the division
 - Applicable 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 reference process

Awarding Contracts

- Based on the Evaluation Committees' review, IDS will award contracts to the best overall offerors based on the criteria set forth in the RFPs



Protest Procedures

- Governing policies give right to seek review by Committee of IDS Commission if not awarded a contract
 - Process will be time-consuming (full process requires 55 days)
 - 15 days from notification to submit written protest
 - 30 days for Committee to meet and reach decision
 - 10 days for Committee to send written summary of decision to full Commission
 - But will be crucial to ensure transparent process and to help protect against lawsuits

Future Challenges with a Contract System

Shift to “Pay as we go”

- Current system is to pay for work done at end of case
 - PAC have one year from disposition to submit fee app
- Contracts for monthly pay to handle units of cases will shift timing of those costs to a “pay as we go system”
- Because it will take time to convert the entire state, costs of both systems will be concentrated in same time period
 - Additional reason IDS needs to stagger roll-out of contract system

Ensuring Accountability

- Developing ways to ensure that contractors are accountable during the entire contractual term for accepting and resolving the expected number of cases
- Before monthly payments will issue, contractors will be required to:
 - Enter basic data about all newly assigned contract cases during the prior month; and
 - Enter data about all disposed and withdrawn contract cases during the month preceding the prior month
- Should enable IDS to spot any problems, such as far fewer case assignments or dispositions than expected, at an early stage in a contract and to make any appropriate adjustments to the amount of contractors' monthly pay

More Complex 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
- If contractors handle different numbers of units, local case assignments could be more complex to administer
- As IDS enters into contracts, IDS staff will work with local system actors to ensure that each contractor receives the contracted-for percentage of local caseload

Insufficient Volume in Some Areas

- In some areas of the state, especially rural areas, there may be an insufficient volume of some case types to support a contract system
- Particularly true because a contract system has to include enough attorneys to cover conflict cases and court schedules

Recoupment

- Impact on recoupment (\$12.76 million in FY11)
 - Civil judgment/set-off debt process is triggered by submission of fee apps
 - Contracts will require contractors to print fee apps from the web-based reporting system and submit them to judges in recoupment-eligible cases
 - But difficult to enforce and, because contractors will not be paid by the case, they will not have a financial incentive to comply

Nurturing the Next Generation

- It will be challenging to nurture the next generation of indigent defense attorneys in a contract system
 - Without local rosters, it will be harder for new attorneys to get experience to meet qualifications for less serious case types
 - It will also be harder for, e.g., misdemeanor attorneys, to get the trial experience they will need to qualify for a felony contract
- IDS will have to work with local bars to meet this challenge through training and mentoring initiatives

Conclusion & Questions

- Questions, suggestions, or concerns? Contact:
 - Thomas Maher, IDS Director: Thomas.K.Maher@nccourts.org
 - Danielle Carman, IDS Assistant Director/General Counsel: Danielle.M.Carman@nccourts.org
 - Central IDS Office: 919.354.7200