

COMMISSION ON INDIGENT DEFENSE SERVICES REQUESTS FOR PROPOSALS AND CONTRACTS FOR LEGAL SERVICES

SUBMITTED TO THE NORTH CAROLINA GENERAL ASSEMBLY
PURSUANT TO SESSION LAW 2014-100, § 18B.1(k)
ON
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Section 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391, directed the Office of Indigent Defense Services (“IDS Office”) to issue a request for proposals (“RFP”) for the provision of all legal services for indigent persons in all judicial districts and, in cases where a proposed contract would provide cost-effective and quality representation, use private assigned counsel (“PAC”) funds to enter into contracts. Section 18A.4 of Session Law 2013-360, and § 18B.1(k) of Session Law 2014-100, revised the special provision by including a dispute procedure. § 18B.1(k) of Session Law 2014-100 further revised the special provision by directing IDS to report on the issuance of the RFPs to the Chairs of the House of Representatives Appropriations Subcommittee on Justice and Public Safety and the Senate Appropriations Committee on Justice and Public Safety and to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by October 1 of each year.

Snapshot of IDS RFP System

*To date, IDS has issued **six** full competitive RFPs for offers to handle all adult criminal cases and several specialized per session courts, such as drug treatment courts, in **12 districts that include 18 counties**.*

*IDS currently contracts with a total of **143 unique attorneys**.*

During FY20-21, RFP contract attorneys disposed of 573 high level felony, 7,071 low level felony, and 12,635 misdemeanor cases.

I. CURRENT RFP DESIGN

Apart from some low-cost, high-volume cases, IDS seeks technical offers about the offerors' qualifications and experience ("qualifying offers"). This eliminates the risk of bids that are so low that the quality of representation cannot meet applicable constitutional and statutory standards.

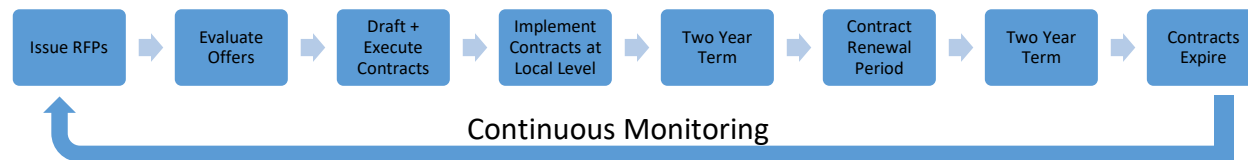
To ensure that the quality of representation provided by contract attorneys is sufficient and to provide the attorneys sufficient support, IDS includes the following in its requests:

- ⇒ quality and evaluation criteria,
- ⇒ key personal requirements, and
- ⇒ external references for offerors.

Individual offerors can seek a waiver of specific requirements, although IDS considers the inability to meet all requirements material to the evaluation.

IDS has sought price offers in some low-cost, high-volume categories of cases that are often handled by attorneys for the day or session (*e.g.*, treatment courts), because those case types tend to require less out-of-court work than other case types, the amount of in-court time that is required is more predictable, and it is more difficult for contractors to cut corners on the representation if they submit a price bid that is too low

RFP Cycle.



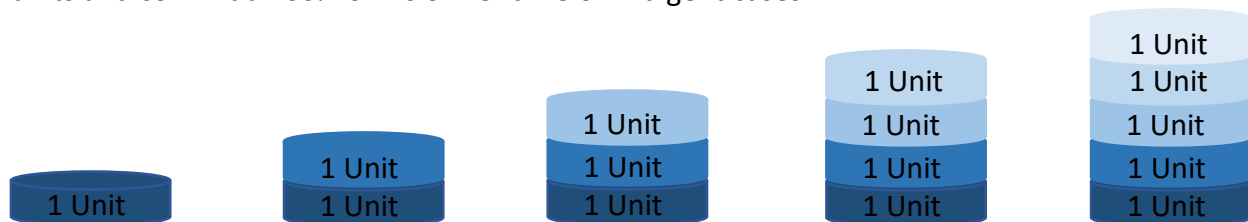
IDS issues a full request for proposal every four years. While, the standard contract is for two years, contractors have the option to renew for one additional two-year term. At the end of that second two-year term, IDS issues a new RFP by soliciting competition and public advertising.

IDS monitors demand (units available in each district) and conducts an end of term assessment during the disposition and renewal phase. The end of term assessments and continuous

monitoring allow IDS to forecast how many unique attorneys each district needs to meet demand and account for conflicts.

II. CURRENT TERMS AND CONDITIONS

The Unit. IDS pays a flat monthly payment for ranges of cases. This range of cases represents a “case load unit” or “unit.” Using statewide average hours data and an 1,800 billable hours year, IDS set the volume for each case load unit to represent approximately 20% of an attorney’s billable time (or 360 billable hours). Individual attorneys are free to offer to handle up to five units and commit a 100% of his or her time on indigent cases.



Court schedules are also evaluated to determine the number of different attorneys that are needed and, thus, the maximum number of units that can be concentrated in one individual attorney. An individual attorney is free to offer to handle one unit (and spend 20% of his or her time on indigent cases) up to five units (and spend 100% of his or her time on indigent cases), as long as the various court schedules can be covered and there are a sufficient number of contractors to cover conflicts. This approach requires IDS to work with the clerks and judges to develop systems for handling the actual assignments to individual cases, which can be more complicated than rotating case-by-case appointments.

Despite continuous monitoring, the Covid-19 pandemic and its impact on the courts system have made it difficult to assess current demand, much less confidently forecast future demand. In response, IDS has elected to extend, first by six and then by twelve months, the three current contract cohorts. The last of the three cohorts (17-001R) is scheduled to expire on November 30, 2022. At this time, IDS does not anticipate extending it beyond 2022. For a detailed distribution of the work by county and contract category see “Appendix A: Distribution by County/District and Contract Category.”

Set Monthly Fees.

IDS treats contractor payments like employee payroll—i.e., funds are set aside to continue to pay contractors even if the funds available for case-by-case PAC fee awards have been depleted for the year. Regularity of payment, combined with a guaranteed volume of cases and enhanced efficiencies, has enabled contractors to accept payments that are more cost effective than the case-by-case hourly PAC rates.

Contract Category	Expected Range of Annual Dispositions (Units)	Annual Pay (issued in monthly increments)	Per Case Pay @ Median
Adult Misdemeanor	102-124	\$17,500	\$154.86
Adult Low-Level Felony	56-68	\$20,100	\$324.19
Adult High-Level Felony	21-25	\$27,100	\$1,178.26

The standard terms of the contract provide that a contractor may apply to IDS for reimbursement of extraordinary expenses, such as expenses associated with necessary case-related out-of-state travel, expenditures for out-of-county lodging necessitated by case-related travel, and other necessary case-related expenses that cumulatively exceed \$100 in one contract case. The contracts also provide that IDS will continue directly funding pre-approved expert and support services.

Support and Recruitment.

To date, IDS has hired two regional defenders and one full time staff attorney also administers the contractor program in addition to her other field support duties. The regional defenders are full-time IDS employees. A background in criminal defense is required and a background in other indigent case types (such as civil cases with a right to counsel and juvenile delinquency) is a plus. By offering training, support, and case consultations to the attorneys and by providing services to the courts and clients at a local level, the Regional Defenders have proven to be an invaluable resource for the attorneys, judges, clerks, and clients.

The regional defenders also work with the School of Government (SoG) to identify the additional training programs that need to be developed and provided in a large-scale contract system. Currently, IDS and SoG provide extensive training for public defenders and assistant public defenders. The sheer number of private assigned counsel makes it impossible to offer them as many, high-quality programs. The work of the regional defenders with the SoG has helped IDS reach more private assigned counsel with targeted, high-quality training.

III. CONCLUSION

In 2021, the IDS Commission and Office undertook an evaluation of the unit-based RFP system. While a planned, well run, and properly resourced and supported contract system can lead to quality improvements while containing costs, IDS found that these benefits are not evenly realized across all contract categories or in all districts.

Accordingly, IDS staff is working on some revisions to the contract system that will ensure that contracts for every case category and every district are cost-efficient and promote quality representation.

One aspect of a large-scale contract system that benefits all contract categories and in all districts is the regional defender system, which as noted above, provides IDS the ability to monitor quality and provide support to private assigned counsel. Regardless of the design contract system design,

the IDS Commission and Office strongly recommend continuing these field positions and support the creation of two additional Regional Defender positions.

Appendix A: Distribution by County/District and Contract Category

District	# of Unique Contract Attorneys by District		# of Contract Attorneys by Category	
		Contract Category		
Pitt	5	Adult Misdemeanor		4
		Adult Low-Level Felony		3
		Adult High-Level Felony		1
Greene Lenoir	12	Adult Misdemeanor		8
		Adult Low-Level Felony		6
		Adult High-Level Felony		6
Wayne	11	Adult Misdemeanor		6
		Adult Low-Level Felony		6
		Adult High-Level Felony		2
Franklin Granville Vance/Warren	20	Adult Misdemeanor		19
		Adult Low-Level Felony		24
		Adult High-Level Felony		11
Caswell Person	4	Adult Misdemeanor		5
		Adult Low-Level Felony		5
		Adult High-Level Felony		2
Wake	45	Adult Misdemeanor		30
		Adult Low-Level Felony		30
		Adult High-Level Felony		6
Harnett Lee	18	Adult Misdemeanor		12
		Adult Low-Level Felony		12
		Adult High-Level Felony		6
Johnston	14	Adult Misdemeanor		11
		Adult Low-Level Felony		8
		Adult High-Level Felony		6
Durham	9	Adult Misdemeanor		5
		Adult Low-Level Felony		6
		Adult High-Level Felony		3
Alamance	15	Adult Misdemeanor		11
		Adult Low-Level Felony		8
		Adult High-Level Felony		5
Chatham/ Orange	1	Adult Misdemeanor		
		Adult Low-Level Felony		
		Adult High-Level Felony		2