

New Hampshire Judicial Council
Request for Proposals for
Public Defender Services Pursuant to RSA 604-B

February 22, 2019

Issued by:

New Hampshire Judicial Council
25 Capitol Street, Room 424
Concord, New Hampshire 03301

Contact:

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1.0 OVERVIEW

1.1 Introduction

Pursuant to RSA 604-B:4, the State of New Hampshire, acting through the New Hampshire Judicial Council, (hereinafter “the Council”), and with the approval of the Governor and the Executive Council, shall contract with any organization or group of lawyers approved by the board of governors of the New Hampshire Bar Association to operate a public defender program and to provide indigent-defense representation. The representation shall include capital murder cases and civil commitment of sexually dangerous persons pursuant to RSA 135-E. The public defender program shall also provide such other representation of indigents as is necessary and consistent with normal criminal defense as required by the New Hampshire and United States Constitutions, and as may be required by subsequent acts of the Legislature.

Bidders are required to submit proposals to provide indigent defense services in all New Hampshire courts and in each New Hampshire county. As noted above, approval of any Bidder’s proposal shall be further dependent upon the separate approval of the Governor and Executive Council and the organization or group of lawyers by the New Hampshire Bar Association Board of Governors.

1.2 Background

In 1977, a Public Defender Program was established in New Hampshire as an independent entity under RSA 604-B. Consistent with Part I, Article 15 of the New Hampshire Constitution, the program was established to provide a cost-effective means of delivering the constitutionally mandated right to the assistance of appointed counsel to citizens who were unable to afford the cost of legal representation in those criminal cases in which their liberty is at stake.

The Journal of the Constitutional Convention in 1964, at which the resolution proposing the amendment to Article 15 was adopted, indicates that the resolution was proposed in response to the March 16, 1963 decision of the United States Supreme Court in Gideon v. Wainright. In Gideon, the court extended to the States a defendant’s right to counsel in felony cases through the fourteenth amendment to the United States Constitution. RSA 604-A, adopted in 1965, extended the right to counsel to certain misdemeanors and, for the first time, appropriated state funds to provide counsel to indigent defendants in criminal cases. It also relieved the counties of this responsibility. With the passage of the amendment to the State Constitution in 1966, the right to counsel in New Hampshire was extended to all crimes “punishable by deprivation of liberty.”

Beginning in 1977 the Legislature has directed that it shall be the policy of this State to continue a public defender program for representation of indigent criminal defendants in Belknap, Merrimack, Hillsborough and Rockingham Counties and to extend that program to the remaining counties in the State. Currently public defender services are available in all counties of the State.

By virtue of legislation enacted in 1977 and 1985, responsibility for overseeing and administering the indigent-defense delivery system was vested in the New Hampshire Judicial Council through RSA 604-B:4, 604-B:5; 604-A:2-b and 494:3.

1.3 Communication

This Request for Proposals (RFP) is issued by the State of New Hampshire, acting through the Council. From the issue date of this RFP until a contractor is selected, approved by the Governor

and Executive Council, and approved by the N.H. Bar Association Board of Governors, Bidders shall not communicate with any Council staff, volunteers or elected officials, other than the identified contact person, or her designee, as it relates to this RFP process.

Bidders may send written questions to the contact person by mail, e-mail or FAX no later than March 22, 2019. Failure to comply with this communication restriction may result in a Bidder being deemed non-compliant with the RFP.

Bidders should submit all communication to the designated contact person: Sarah T. Blodgett, Executive Director, New Hampshire Judicial Council, 25 Capitol Street, Room 424, Concord, New Hampshire 03301.

1.4 RFP Time Schedule

The procurement schedule is as follows:

RFP Release:	February 22, 2019
Question Submission Close Date:	March 22, 2019
Proposal Receipt Date:	April 5, 2019 by 5:00 P.M.
Evaluation Completion Date:	No later than April 26, 2019
Contractor Selection:	No later than April 30, 2019
Contract Start Date:	July 1, 2019*

*or on the date of approval of the Governor & Executive Council, whichever is later

2.0 STATEMENT OF THE WORK

2.1 Scope of Services

The successful Bidder shall provide statewide legal representation at all stages of criminal proceedings, for all criminal defendants, juveniles in delinquency cases and respondents in involuntary commitment proceedings under RSA 135-E, qualifying as indigent. Such other services as are necessary to assure constitutionally-effective assistance for the indigent criminal defendants shall be provided as part of this representation. Legal representation must comply with the Rules of Professional Conduct.

The Bidder will provide criminal defense representation in the Family, District, Superior and Supreme Courts. The Bidder will also staff the court calendars for incarcerated felony arraignments, Drug Court, Mental Health Court, Veterans Court, New Hope Court and other specialty courts that may be established unless such representation is a violation of the Rules of Professional Conduct.

Bidder is expected to accept appointment to capital cases and must appoint appropriately qualified attorneys to represent indigent clients in such cases. Representation in trial-level capital cases will require additional funding.

Bidder must accept all court appointments except in those cases in which the Rules of Professional Conduct would bar the representation and except in those cases in which caseload limits – as defined in a Council approved caseload management plan – have been exceeded.

2.2 Subcontracting

Bidder must describe if its work plan or business plan includes the use of subcontractors. Bidder must:

- a. Specify the role subcontractors will play and how subcontractors will be used, assigned cases, monitored, evaluated, supervised, and paid.
- b. Describe the methods it will use to ensure quality control among its subcontractors.
- c. Include a copy of the written agreement that will be used to hire or retain subcontractors.
- d. All subcontractors are to carry professional liability insurance covering all services to be performed pursuant to this Agreement in an amount of not less than \$100,000 per claim and \$300,000 aggregate.

2.3 Specifications

A contract will be awarded to the Bidder deemed to be the most capable, reliable and cost effective means of providing to the State an efficient system for the delivery of indigent defense services and to assist the state in meeting its requirement to provide constitutionally-effective representation of indigent defendants in all criminal cases where incarceration may result.

The successful Bidder will be responsible for communication with the Council in a timely fashion and to provide the Council with quarterly and annual reports, including caseload data. The successful Bidder must provide answers to inquiries by the Council and provide additional information in such form as the Council shall from time to time require.

These services for indigent defendants shall be provided in all ten counties of the State, in offices located throughout the state enabling appropriate client-attorney meetings. The location of such offices shall not be modified during the execution of the contract without the written approval of the Council.

No portion of this contract may be subcontracted, except as authorized or noted in the original agreement, without the specific approval of the Council by and through the Executive Director, and in all cases any subcontracting shall be consistent with the provisions of RSA 604-B:4.

The Bidder must provide detailed plans and assurances in its proposal addressing the following:

- A. The Bidder shall provide a clear and satisfactory description of its supervision and management plan, including the management and oversight structure and procedures; hiring qualifications and procedures; employment conditions; educational and experience requirements; and employee evaluation.
- B. The Bidder must provide a detailed plan for accepting all available cases except where the Rules of Professional Conduct preclude acceptance. This plan, which must be approved by the Council, shall establish caseload limits for public defender attorneys in accordance with professional standards under the code of professional responsibility. Adherence to standards of the American Bar Association and the National Association of Criminal Defense Attorneys should be part of the proposed caseload plan. The plan will describe expected case levels by type and will detail the proposal for handling appellate cases.
- C. The Bidder must detail the number of attorneys to be employed, and must describe in detail the necessary administrative, investigative and support staffing to be employed. The minimum assignment of attorneys by county must be part of the proposal.

- D. The Bidder must describe the Bidder's capacity to be in a position on the first day of the contract to assume responsibility for all cases currently open and being handled by the prior contractor. Bidder must provide a plan for contacting all clients of the prior contractor with open cases, and all clients of the prior contractor whose cases are closed but who have future case-related obligations, on or before July 14, 2019, so as to ensure unbroken continuity of representation and to ensure that the legal needs of clients are attended to.
- E. Bidders must provide a description of the experience and education of the principal person in charge of the overall execution of the contract. Bidders must provide the names and job descriptions of the key personnel whose resumes are included in the Bidder's proposal under Section 4.1.8 (below).
- F. Bidders must provide a plan of operation showing the schedule for securing the necessary locations throughout the State from which the services required can be delivered. Bidders must provide a plan detailing the organization's anticipated training budget and detailing the specific number and variety of in-house and outside training opportunities provided for its attorneys and, separately, for its support staff, investigators and administration, and in addition, what electronic and paper resources the organization will create and maintain to support the work of attorneys, investigators and support staff.
- G. Bidders must provide a description of its conflict-avoidance policy and the affirmative steps it will take to minimize the incidence of conflict withdrawals, and must describe the organization's plan for employing staff and resources to support a Conflict Case Administrator Office to ensure the speedy distribution of conflict cases to qualified counsel.
- H. Bidders must provide a description of the process in place for dealing with complaints made to the New Hampshire Supreme Court Attorney Discipline Office regarding allegations of attorney professional misconduct.
- I. Bidders must provide assurance that the Bidder will obtain and provide to the Council certificates of insurance for General Liability in coverage amounts of not less than \$250,000 per claim and \$2,000,000 per incident or \$1,000,000 per occurrence and \$1,000,000 umbrella; and certificates of insurance for Professional Liability in coverage amounts of not less than \$100,000 per occurrence and \$300,000 in the aggregate.

2.4 Terms

- 2.4.1 **Effective Dates:** The Contract resulting from the successful award of this RFP shall become effective on July 1, 2019, or on the date of Governor and Executive Council approval, whichever is later, and will run through June 30, 2021, subject to the availability of appropriated funds. The Council, on behalf of the State, shall be under no obligation to reimburse the Bidder for any work undertaken before the award of the contract.
- 2.4.2 **Payments:** In no event shall the State be obligated to make any payments in excess of the actual costs of administration of the public defender over the 2020-2021 biennium and in no event shall the total of payments hereunder exceed the amounts appropriated by the State for Fiscal Years 2020 and 2021. The payment schedule shall be in accordance with state practices or as directed in the budget process.
- 2.4.3 **Compliance with Law:** The contractor agrees to comply with all statutes, laws, regulation

and orders of Federal, State, County or municipal authorities that impose any obligation or duty upon a contractor.

- 2.4.4 **Executed Documents:** In addition to any other requirements in this RFP, the Bidder shall provide all documents that are part of this proposal with original signatures, signed by the corporate officers duly authorized to execute said documents.
- 2.4.5 **Cancellation of Procurement:** The Council reserves the right to cancel this RFP at any time.
- 2.4.6 **Governing Law:** Any legal proceedings against the State of New Hampshire regarding this RFP or any resultant contract shall be brought in State administrative or judicial forums. Venue shall be Merrimack County, New Hampshire.
- 2.4.7 **Conflict of Interest:** The Bidder represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with performance of its services hereunder.
- 2.4.8 **Offer of Gratuities or Kickbacks:** It is a breach of ethical standards for a payment, gratuity, or offer of employment to be made by or on behalf of a contractor. The State of New Hampshire may terminate any contract if it is determined that gratuities of any kind were offered by and/or received by any official, employees or agent of the contractor.

3.0 REQUEST FOR PROPOSAL GUIDELINES

The Bidder's Proposal shall contain the following contents in the following order:

1. A Cover Sheet
2. A Transmittal Letter
3. An Executive Summary of the Proposal
4. The Bidder's Profile
5. The Bidder's Financial Statements
6. Subcontractors' Profiles, (if applicable)
7. The Bidder's Background and Experience
8. The Resumes of Key Personnel
9. A Detailed Response and Scope of Work
10. Three Letters of Reference
11. The cost of the Proposal in Each Year of the Biennium

Specific Proposal Requirements by Section:

1. **The Cover Sheet** will identify the Bidder's name, address, phone and FAX numbers and email address.
2. **The Transmittal Letter** will be signed in ink by an official of the bidding entity who is authorized to bind the Bidder to the provisions of the proposal. The letter shall identify an authorized representative of the Bidder who is responsible for all matters relating to the RFP. The letter shall include the following statement:

“The Bidder acknowledges that the Bidder has read the N.H. Standard Form Contract (Form P-37 1/2009) and all applicable exhibits and forms for a contract resulting from this RFP, understands them, agrees to all terms and conditions (unless otherwise mutually

agreed upon terms supersede them), and if selected will provide all applicable exhibits and forms required to execute a contract with original signatures.”

- 3. The Executive Summary** will summarize the proposed services to be performed by the Bidder and the methods and technology to be employed.
- 4. The Bidder Profile** will provide a general organization overview, number of employees, and an organization chart, if applicable, or a description of the consulting services and work of the Bidder, if the Bidder is not a company or organization.
- 5. The Bidder’s Annual Financial Report** of each of the Bidder’s last two fiscal years shall be included if the Bidder is a corporate or partnership entity, or a copy of Schedule C of a Bidder’s last two tax returns if the Bidder is a sole proprietor.
- 6. Subcontractor Profiles** must be provided if the Bidder proposes to employ a subcontractor or subcontractors to perform part of the work specified in the RFP. This profile shall identify the subcontractor(s) and describe their background and experience in providing the specific part of the work the subcontractor will be employed to perform. The subcontractor profile shall also provide a general organization overview, number of employees and an organization chart, if applicable.
- 7. The Bidder’s Background and Experience** will provide a comprehensive and detailed description of the services offered by the Bidder. The Bidder Background and Experience shall describe the Bidder’s specific background and experience in providing indigent-defense-related representation. It shall include evidence of the Bidder’s capability, including the identification of similar projects, to carry out the performance required by the State of New Hampshire. It shall include evidence of financial ability of the Bidder and any parent organization to perform contracted services. Proposals shall include evidence of the Bidder’s experience in working with government agencies, the courts, or other nonprofit or educational organizations relevant to the tasks required by the RFP. The proposal shall specifically address the following questions:
 - What knowledge and experience does the Bidder have specifically regarding providing indigent defense representation in all levels of case type and complexity?
 - What knowledge and experience does the Bidder have specifically regarding the training, on-going supervision and development of quality control for staff required to provide services within the scope of the RFP?
 - What knowledge and experience does the Bidder have related to identifying and calculating the cost effectiveness of indigent defense representation costs?
- 8. Resumes of Key Personnel** who will have primary responsibility for the delivery of contracted services, day-to-day operations and contract administration must be included with the Proposal.
- 9. The Detailed Response and Scope of Work** will address all of the rules, specifications, plans, descriptions and requirements contained in this RFP (See Section 2, above).
- 10. Three (3) Letters of Reference** must accompany the proposal and must include the name, address and phone number of the individual providing the reference. References should include government agencies including the courts, businesses, or nonprofit or educational organizations currently receiving the services of the Bidder. The Council may contact the references directly

when evaluating the Proposals.

11. The Cost Proposal must fix a firm contract price for services provided up to the completion of the contract on an annualized basis. The Cost Proposal should also specify the portion of the firm fixed price to be billed each agreed upon period for the services specified in the RFP. Failure to submit a Cost Proposal shall disqualify the Bidder.

4.0 Proposal Evaluation

4.1 Evaluation of Proposals

The Council shall conduct a comprehensive, fair and impartial evaluation of proposals received in response to this Request for Proposals, conducted by the Council through its Indigent Defense Sub-Committee in concert with the Executive Director.

The total price of the proposal shall not be the sole determinate factor for the selection of the contractor. Completeness and thoroughness of the proposal, the Bidder Background and Experience and the Detailed Response and Scope of Work offered by the Bidder shall be given appropriate weight as determined by the Council. In addition, demonstrated experience and knowledge in the provision of indigent defense representation pursuant to RSA 604-A shall be given appropriate weight, as determined by the Council.

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