



REQUEST FOR PROPOSAL

For Public Defender Services

Deadline: Friday, October 21, 2022

I. PURPOSE OF REQUEST

The City of Mukilteo, Washington requests proposals to provide Public Defender services for indigent criminal defendants for an initial term of three (3) years commencing January 1, 2023, with the option to extend the Contract with the mutual agreement of the parties for an additional three-year period. Proposals are sought from private law firms, not-for-profit entities and public agencies.

The City will pay the Public Defender for representational services, including lawyer services and appropriate support staff services, sentencing advocacy, investigatory, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at court proceedings. Necessary and reasonable expert witness and investigative services will be paid directly to the expert or investigator when authorized by the Court or, depending on the proposal, investigatory and other similar services may be included as a part of a monthly fee.

II. INSTRUCTIONS TO PROPOSERS

A. All proposals should be sent to:

Kara Johnson, City Clerk
City of Mukilteo
11930 Cyrus Way
Mukilteo, WA 98275

B. All proposals must be in a sealed envelope and clearly marked in the lower left-hand corner: "RFP– Public Defender".

- C. **All proposals must be received by Friday, October 21, 2022, at 4:30 p.m.**, at which time they will be opened. Three (3) copies of proposals must be presented. No faxed, e-mailed, or telephone proposals will be accepted.
- D. Proposals should be prepared simply and economically, providing a straight forward, concise description of the provider's capability to satisfy the requirements of the request. Special bindings, colored displays, promotional materials, etc. are not desired. Emphasis should be on completeness and clarity of content. Use of both sides of paper sheets for any submittals to the City is desirable whenever practicable.
- E. The City will attempt to schedule interviews, if desired, during early November, 2022. Proposers should take note that a selection may be made by the City based on the written proposals submitted, and should plan accordingly.
- F. The firm(s) or attorney(s) selected will be notified by early or mid-November, 2022. The Mukilteo City Council must ratify a Contract with the selected firm or attorney as appropriate. The anticipated start date is January 1, 2023.
- G. All proposals must include the following information:
1. The names of individuals who are proposed to provide public defense services and their areas of responsibility.
 2. A resume of all attorneys who will provide legal services, or supervise the provision of legal services by others, illustrating the attorney's specific experience in criminal defense.
 3. A proposed outline of tasks necessary to represent eligible indigent defendants under current defense standards, including the number of hours required to complete each task. The City screened approximately 205 perspective indigent defendants in 2021, with about 204 appointments. The City is seeking to contract for an unweighted case count of approximately 450 cases per year.
 4. Tasks relating to managing the caseload (include recommendation for transition of current cases from previous law firm, if applicable). A description of your case management system is required along with your capability to provide accurate monthly reports of the information referred to in Section 1.9 *et seq* of the attached agreement for public defense services.
 5. A description of the means by which the attorneys providing legal services may be reached by defendants after normal office hours, and how attorneys will communicate with non-English speaking clients.

6. References.
7. Types of insurance (self insurance or policy coverage) and level of insurance coverage.

H. Please provide additional information in the proposal as follows:

1. Experience in Providing Defense Services and Contract performance:

- a) How long has your firm been in existence? How many years has it practiced criminal defense?
- b) Has your firm handled indigent clients through a public defense contract? Describe the types of cases in which you have represented such clients.
- c) How many attorneys currently employed by your firm would be involved in public defense under the proposal? Resumes and references must be provided for each attorney.
- d) How many staff employees does your firm employ? How many staff will be assigned to the public defense services contract(s)?
- e) Does any employee of the firm have or could reasonably be anticipated to have any conflict of interest with the City and if so, how will that conflict be addressed?

2. Contract performance:

- a) If your firm has previously provided or is providing contract services for a city or county, please provide documents, if any exist, which outline or evaluate the quality of contract compliance under these contracts.
- b) Please note specifically any termination for cause of such a public contract in whole or in part. Please note any corrective action required under such public contracts.
- c) Has any attorney employed by the firm been disciplined by the Washington State Bar Association, or any other mandatory bar association of any other state?
- d) Has any attorney employed by the firm been removed from a case because of a court finding of ineffective assistance of counsel?

- e) Has any attorney in your firm been monetarily sanctioned by a court for any reason? Please provide a summary of the sanction, including the court and date sanction was imposed.
- f) Has any attorney in your firm had an action for malpractice filed in any court? If so, what is the status or disposition of the filing?

I. Proposed Delivery of Services

Taking into account the standards for service adopted by the City as well as the case limits adopted by the Washington Supreme Court, please provide the following information or proposals:

1. Please describe your firm's general policy guidelines when addressing the needs of indigent misdemeanor clients.
2. How will you monitor the caseload of attorneys providing indigent defense services?
3. What type of training do the attorneys in your firm receive which would be relevant to practice in criminal law and public defense? How will you supervise and monitor the attorney(s) who provide services under this contract?
4. What is your firm's capacity for working with non-English speaking clients?
5. Does your firm have any experience working with ex-offenders, the mentally ill or other clients who are in need of social service referrals?

III. SELECTION CRITERIA.

The selection of a Public Defender will be based upon the ability of the proposer to best meet the guidelines established by the 2021 Bar Association revision which states:

The objects of these guidelines is to alert the attorney to the course of action that may be necessary, advisable, or appropriate and thereby assist the attorney in deciding the particular actions that must be taken in a case to **ensure that the client receives the best representation possible.**

In its evaluation process, the City will consider the completeness of the written proposal, the qualifications of the specific individuals proposed for assignment to act as Public Defender, the proposer's history of successfully fulfilling contracts of this type and experience in similar work. In evaluating the cost of services, the City will seek value. "Value" means the best qualified attorney(s) at a price typical for the provision of

defense services in Snohomish County, Washington. Each proposal will be independently evaluated on these factors.

IV. TERMS AND CONDITIONS

- A. The City reserves the right to reject any and all proposals, and to waive minor irregularities in any proposal.
- B. The City reserves the right to request clarification of information submitted, and to request additional information from any proposer.
- C. The City reserves the right to award any Contract to the next most qualified proposer, if the successful proposer does not execute a Contract within thirty (30) days after the award of the proposal.
- D. Any proposal may be withdrawn up until the date and time set above for opening of the proposals. Any proposal not timely withdrawn shall constitute an irrevocable offer, for a period of sixty (60) days to provide to the City, the services described in the attached specifications, or until one or more of the proposals have been approved by the City administration, whichever occurs first.
- E. The Contract resulting from acceptance of a proposal by the City shall be in a form supplied or approved by the City, and shall reflect the specifications in this RFP. A copy of the Contract is attached for review. The City reserves the right to reject any proposed Contract or Contract that does not conform to the specifications contained in the RFP, and which is not approved by the City Attorney's office.
- F. The City shall not be responsible for any cost incurred by a firm in preparing, submitting, or presenting its response to the RFP.
- G. Support Services. By submitting a response to this RFP, the Public Defender warrants that adequate staff services and facilities will be established to enable the effective provision of legal services in accord with the draft Contract. (See attached). This warranty shall continue through the term of the Contract.
- H. Term. Public Defender services will commence on January 1, 2023, for an initial term of three (3) years, terminating on December 31, 2025. The Parties may mutually agree to extend the resulting Contract for an additional term of three years, terminating on December 31, 2028.
- I. Screening. Determination of indigency for eligibility for appointed counsel for this Contract will be determined by the Everett Division of the Snohomish County District Court. The Public Defender will not be responsible for screening potential clients. Should the Public Defender determine a defendant is not eligible for assigned counsel, the Public Defender will so inform the court and move to withdraw from the case.

- J. **Reporting.** The Public Defender shall file monthly reports with the City delineating each client who has been appointed to the Public Defender, in the format directed by the City. See Contract Section 1.9 *et seq.* The format shall not include any attorney client privileged information. The report shall designate whether the client was “conflicted” to another attorney for representation or the client hired another private attorney. The report is due on or before the tenth (10th) day of the following month for services of the prior month. An option for use of the Defender Data Software system is included in the Contract (See Section 2.5.6)
- K. **Case Count.** Case counts will be determined on an unweighted basis in accord with Supreme Court Standard 3, irrespective of any subsequent reappointments pursuant to failure to appear (hereinafter “FTA”). Cases will be counted at the time of first appointment. Cases subsequently conflicted, or where a private attorney is hired, will be noted on the next report and will not be counted as a Public Defender case. Post-trial conviction status: Cases where a defendant was previously represented by the Public Defender, that were previously counted when they were in a pre-trial status, will not be counted again unless they FTA at a post-conviction hearing. Post-conviction cases where defendants’ FTA and are subsequently reappointed to the Public Defender will be counted again; however, this will occur only once. No matter how many times a Defendants’ FTA and the Public Defender is reappointed when the case is in a post-conviction status, the case will be recounted only once. Coverage at arraignment calendars and post-conviction calendars when the Public Defender appears without a client will be counted at 0.22 case per hour.
- L. **Associated Counsel.** Any counsel associated with or employed by the Public Defender shall have the authority to perform the services called for herein when approved by the City and the Public Defender may employ associated counsel to assist at the Public Defender’s expense. The Public Defender and all associated counsel hired pursuant to this section shall be admitted to practice pursuant to the rules of the Supreme Court of the State of Washington. Sufficient counsel shall be provided to represent defendants during vacation and illnesses.
- M. **Attorney Conflict.** In the event the Public Defender must withdraw from a case because of a conflict of interest, the Public Defender shall refer the defendant to another attorney approved by and under contract with the City. The cost of conflict counsel shall be paid by the City and not by the Public Defender.
- N. **Twenty-Four Hour Telephone Access.** The Public Defender shall provide to the City police department the telephone number or numbers at which the Public Defender can be reached for critical stage advice to defendants during the course of police investigations and/or arrests twenty-four (24) hours each day.
- O. **Washington Supreme Court Rules.** The Public Defender will comply with court policy consistent with Washington Supreme Court Rules as now or hereafter

adopted. Proposers should take into account the Supreme Court's review of CrR 3.1 and CrRLJ 4.1 as well as the Standards for Indigent Defense Representation adopted by the City, as the same exist or are hereafter amended.

- P. Rule of Professional Conduct 3.2. The Public Defender will comply with RPC 3.2 by expediting litigation consistent with the interests of the client. The Public Defender must establish reasonable office hours in which to meet with clients prior to the day of hearing or trial and within seventy-two hours of appointment, provided, however, that the Public Defender shall meet with in-custody defendants within twenty-four to forty-eight hours of appointment except in emergent circumstances. The Public Defender shall ensure that all client communications occur in an appropriate confidential setting.
- Q. Interpreters. The Public Defender shall be responsible for ensuring the Public Defender's ability to properly communicate with clients. Many clients will speak English as a second language, or not at all.
- R. Professional Liability Coverage. During the term of the Contract, Contract terms shall require the Public Defender to provide Professional Liability Insurance of a minimum of one million dollars (\$1,000,000), in a for acceptable to the City; or alternatively, if the proposer is a public agency, shall provide proof of self-insurance with terms acceptable to the City. Additional detail is provided in the attached Contract. Written proof of the insurance policy for calendar year 2018 shall be filed with the City at the inception of this Contract, no later than January 1, 2018, and by December 1 preceding each succeeding year of the Contract. The Public Defender shall provide the City with proof of insurance for "tail coverage" no later than January 1, 2018. The purpose of "tail coverage" is to provide insurance coverage for all claims that might arise from occurrences during the term of the Contract or extension(s) thereof, but not filed during the term of the Contract. The Liability Insurance provided to the City shall be primary to Liability Insurance of each respective City and shall list the City as an additional insured. Without proof of coverage, no payment will be made to the Public Defender until such proof of insurance has been received by City.
- S. Indemnification. The Public Defender shall indemnify the City as provided in the Contract.
- T. Discovery Provided. The City shall provide to the Public Defender at no cost to the Public Defender or the defendant one (1) copy of all discoverable materials concerning each assigned case with the exception of audio and video tapes which shall be made available for inspection in accordance with rules for discovery. The Public Defender will receive electronic copies of discovery, or may request hard copies be provided.
- U. The City shall reimburse the Public Defender for reasonable investigation and expert witness fees if the court orders an investigator or expert witness upon

motion of the Public Defender. See Contract for additional provisions regarding expenses.

- V. Code Provided. The City shall provide the Public Defender with a copy of the Criminal Code and any amendments thereto adopted during the term of this Contract.
- W. Assignment; Subcontractors. No assignment or transfer of the Contract or of any interest in the Contract shall be made by the Public Defender without the prior written consent of the City.
- X. Termination. The Contract shall be terminable only for cause, on the mutual agreement of the parties or the termination of the municipal court. See Contract Sections 3.1 to 3.3.
- Y. Training. Any attorney providing services pursuant to this Contract shall at its cost take training approved by the State Office of Public Defense, including at least seven (7) hours per year of continuing legal education (CLE) credits related to criminal defense.
- Z. Supervision. The Public Defender shall provide appropriate and competent supervision of attorneys, if necessary, depending on their experience, skill and the simplicity or complexity of the cases they are assigned.
- AA. Monitoring. Upon demand by the Contract Administrator, the Public Defender shall provide the reports designated in the Contract, Section 1.9, *et seq.* The Contract Administrator may also monitor public defense services by review and inspection of transcripts, in-court observations, and through solicitation of comments from judges and other defense lawyers and clients to evaluate their skill and effectiveness as criminal lawyers.
- BB. Non-discrimination. The Public Defender in their representations of clients shall not discriminate on the grounds of race, color, religion, national origin, age, marital status, gender, sexual orientation/gender identity, or disability. The Public Defender shall comply with all federal, state, and local non-discrimination requirements.
- CC. Private Practice. The Public Defender shall each year provide a listing of hours worked and billed by the attorney(s) providing service under this agreement for nonpublic defense legal services, including number and types of private civil or criminal cases.
- DD. Case Loads. Contractors holding more than one public defense Contract shall list each Contract. Based upon the City adopted service provision standards and judicial policies such as post-filing diversion; the opportunity to negotiate the resolution of cases as non-criminal violations; and other court administrative procedures that diminish the burden on attorneys providing services pursuant to

this Contract, all attorneys providing services shall maintain caseloads which fully comply with City or Washington State Supreme Court standards, whichever is more restrictive. In the event that these standards significantly change during the term of the agreement, the parties will meet and renegotiate the terms of the contract. A “significant change” is a change beyond the scope of Supreme Court Rules currently published and available for comment, regardless of whether finally adopted. See Section 2.6 of the Contract.

V. SCOPE OF SERVICES.

- A. **General Description.** Pursuant to Chapter 10.101 RCW, all indigent criminal defendants, who are determined to be eligible under Section C below and who are charged under ordinances of the City, will be referred to the Public Defender. The Public Defender will provide legal representation for each of these defendants from court appointment or screening through trial, sentencing, post-conviction review and any appeals to Superior Court or Washington Appellate Courts. Such cases include domestic violence cases. The Public Defender will be available to talk and meet with indigent defendants in the Snohomish County Jail or elsewhere. The Public Defender will be present at the arraignment calendar consistent with Supreme Court Rules CrR 3.1 and CrR 4.1, as now or hereafter adopted.
- B. **Standards for Public Defense Services.** The Public Defender shall at all times comply with the Rules of Professional Conduct (RPC) and all other applicable court rules as the same exist or are hereafter amended. The Public Defender shall maintain the highest standards of conduct and behavior towards the Court, the prosecutor and all parties. Public Defenders shall endeavor to comply with the City Standards for Public Defense Services” as the same exist or are hereafter amended. The Standards are contained in Resolution No. 2014/20.
- C. The Public Defender will attempt to initiate contact with assigned clients within twenty-four (24) hours of assignment. The Public Defender will provide their clients with contact information for availability during office hours. The Public Defender will also return client phone calls or other attempts to contact the Public Defender within forty-eight (48) hours, excluding weekends.
- D. The Public Defender must commit to reviewing each case before the defendants first appearance in court post-arraignment, and discuss the case in a confidential setting with each defendant prior to the first court appearance post-arraignment. It will also be expected that the Public Defender attend arraignment and in-custody calendars.
- E. The Public Defender shall have an office that accommodates confidential meetings with clients and receipt of mail, and adequate telephone services to ensure prompt response to client contact.

F. The Public Defender shall provide for adequate numbers of secretaries, word processing staff, paralegals, and other support services including the provision of adequate and competent interpreter services. Expert witness and investigator services may be provided at an additional cost pursuant to court authorization, with direct payment to the expert or investigator. See Contract Section 2.4.

VI. COMPENSATION. Please Note: The selection of a Public Defender will be based on qualification and value, not the lowest proposed fee structure.

A. Please present detailed information on the firm's proposed fee schedule either on a price-per-case basis or a total yearly/monthly fee, noting any variations for non-routine services. Services covered by this RFP that are not explicitly identified as non-routine will be assumed to be included in the basic fee. Please provide specifics as to definitions of routine versus non-routine tasks, what is fixed as opposed to variable and how costs are adjusted, if at all, according to that classification. Proposers may include the cost of investigative services for separate, authorized payment.

B. If the proposal includes by-case compensation, payment by the City for the services will only be made after the services have been performed (judgment and sentence or dismissal). An itemized billing statement shall be submitted in the form specified by the City and approved by the appropriate City representative. Payment shall be made on a monthly basis, in accordance with the City's accounts payable procedures.