

PUBLIC DEFENSE SERVICES COMMISSION

REQUEST FOR PROPOSALS

FOR

TRIAL-LEVEL AGGRAVATED MURDER, MURDER & DEATH
SENTENCE POST-CONVICTION RELIEF
PUBLIC DEFENSE MITIGATION INVESTIGATIVE SERVICES
CONTRACTS

BEGINNING JANUARY 2012

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PART I – GENERAL INFORMATION

1.1 Request For Proposals (RFP) Description

The Public Defense Services Commission (PDSC) is seeking contract proposals to provide effective and efficient mitigation investigative services to persons determined by the state courts to be financially eligible and entitled to court-appointed counsel at state expense.

PDSC is accepting proposals for trial-level aggravated murder, murder and death sentence post-conviction relief cases. The contracts awarded may have a one- or two-year term beginning January 1, 2012, or other such length of term and beginning date as determined by PDSC. The basic services required are mitigation investigative services as necessary to provide adequate and effective legal representation that meets established professional standards of practice.

This RFP contains the applicable procedure, instructions and requirements for proposals. It is organized in four parts:

- Part I General Information
- Part II Proposal Application Instructions and Requirements
- Part III Proposal Application Summary and Proposal Outline
- Part IV Contract Terms

1.2 Applicable Contracting Procedure

ORS 151.216 authorizes the PDSC to adopt policies and procedures for the contracting of public defense services. As part of the Judicial Branch, PDSC is not subject to the Department of Administrative Services administrative rules and procedures that govern contracting for personal services contracts. The PDSC adopts the policies, procedures, instructions, requirements and other provisions of this RFP as the PDSC procedures for contracting for personal services. The model rules of the Oregon Attorney General do not apply to PDSC contracting but will be reviewed each time the Attorney General modifies them to determine whether PDSC should modify the policies and procedures contained herein.

1.3 Authority

ORS 151.219 authorizes the PDSC executive director to contract for legal services for financially eligible persons in proceedings in which:

- 1) a state court or magistrate has the authority to appoint counsel to represent the financially eligible person, and
- 2) PDSC is required to pay compensation for that representation and the related expenses.

PDSC may contract with individual mitigation investigators for these services.

Awarding these contracts is a proprietary function of PDSC. All such contracts are:

- 1) subject to PDSC's express approval under ORS 151.216(1)(d), and
- 2) contracts with independent contractors for personal services.

PDSC reserves the right to reject any or all proposals received by reason of this RFP or to negotiate separately in any manner necessary to serve the best interests of the PDSC and the state. PDSC reserves the right to seek clarifications of proposals and to award a contract(s) without further discussion of the proposals submitted. PDSC reserves the right to amend or cancel this RFP without liability if it is in the best interest of the state and public to do so.

1.4 Funding Source

Under ORS 151.225, the Public Defense Services Account in the General Fund is continuously appropriated to PDSC to pay attorney compensation and other expenses related to the legal representation of financially eligible persons for which PDSC is responsible, including contract payments under ORS 151.219.

1.5 Minorities, Women and Emerging Small Businesses

Pursuant to ORS 200.035, PDSC shall provide timely notice of RFPs and contract awards to the Advocate for Minorities, Women and Emerging Small Businesses if the estimated value of the contract exceeds \$5,000.

Responses to RFPs shall include a certification, on a form provided by PDSC, that the applicant has not and will not discriminate against a subcontractor in the awarding of any subcontract because the subcontractor is a minority, woman or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.

1.6 Schedule of Events

| | |
|--|--------------------|
| Release of RFP | May 6, 2011 |
| Proposal Submission <u>Deadline</u> (Received via email by 11:59pm) | June 13, 2011 |
| Commission review of statewide plan | July 28, 2011 |
| Notice of intent to award contracts | September 8, 2011 |
| Commission review of proposals and award of contracts | September 15, 2011 |

PDSC presently intends to award public defense legal services contracts according to the above time schedule. By publishing this schedule, PDSC does not represent, agree, or promise that any contract will be awarded on a specified date or any other time in any particular county or judicial district. PDSC intends, however, to adhere to these time frames as closely as possible.

PDSC will provide notice of its intent to award contracts to all applicants at least seven (7) days before the award of contracts, unless exigent circumstances require a shorter period of notice.

1.7 General Proposal Review Procedures

The instructions and information necessary to prepare and submit proposals are found in Part II of this RFP. PDSC will evaluate proposals based on the contents of the applications and any other information available to PDSC. Applicants must submit a completed application using the forms and format provided. Applications **MUST** be received by PDSC by 11:59 p.m. on the submission deadline date. The following events will then occur.

A. Inadequate Proposals

PDSC may immediately reject proposals that do not meet the minimum RFP requirements. If a proposal is unclear or appears inadequate, PDSC may give the applicant an opportunity to further explain or provide additional information. If PDSC finds the explanation or additional information inadequate, PDSC's decision to reject the proposal will be final and not subject to appeal.

B. Facially Adequate Proposals

PDSC will evaluate proposals that meet the administrative and contractual minimum requirements as set forth in Part II of the RFP. PDSC will evaluate each proposal based on its total characteristics and any other information available to PDSC. During the evaluation period, PDSC may:

- 1) request additional information from applicants to clarify information or material in the proposal; and
- 2) consult with public defense attorneys and others who have knowledge of the applicant to aid in the review of the proposal's merits; and

C. Negotiations

PDSC must ensure that each contract is compatible with:

- 1) the needs of the public defense legal services providers for the types of cases covered by the contract; and
- 2) budget allocations.

During negotiations, PDSC may discuss adjustments to proposed costs, case types, coverage, level of services, or service providers necessary to meet these objectives.

D. Contract Awards

Award of any contract will be final only when the applicant and the PDSC have properly completed and executed the contract documents.

E. Contract Terms

PDSC will offer all applicants the same standard contract provisions. Successful applicants will enter into a contract substantively similar to the contract document in Part IV of this RFP, unless otherwise specifically agreed by PDSC.

An applicant may request in the proposal to amend standard terms of the contract. PDSC must approve any change. Applicants who do not otherwise accept the standard contract terms in Part IV may be disqualified.

1.8 Proposal Evaluation Criteria

PDSC shall evaluate proposals based on the criteria listed below. PDSC reserves the right to reject any proposals that do not comply with the RFP requirements. PDSC shall be the sole determiner of the relative weight given any criterion. Although price is an important criterion, the intent is to provide financially eligible persons with effective mitigation investigation. The applicant with the lowest cost proposed will not necessarily be awarded a contract. PDSC reserves the sole right to make this determination.

CRITERIA:

- 1) The proposal and any modification is complete and timely, in conformance with the RFP.
- 2) The proposed plan for delivery of services is adequate to ensure effective mitigation investigation. Among the factors PDSC may consider are the quality of services and the experience of the applicant.
- 3) The applicant has the ability to perform the contract effectively and efficiently and to provide services in the types of cases proposed. PDSC may consider the applicant's qualifications and experience providing public defense mitigation investigative services.
- 4) The cost for services is reasonable.
- 5) The proposal is consistent with the needs and best interests of the legal services providers involved. Among the factors PDSC may consider are the other service methods and service providers available and the applicant's ability to work with public defense legal services providers and other providers.
- 6) The proposal is consistent with the needs and best interests of the state as a whole. Among the factors PDSC may consider are the other service methods and mix of service providers available, and the applicant's ability to work with other groups affected by the contract, legislative mandates, or other directives that affect the entire statewide contracting patterns or terms.

In addition to the criteria listed above, PDSC will evaluate the available workload, the current number of contractors or hourly-paid providers, and the relative cost of administering current contracts and/or new contract proposals. PDSC has the sole discretion to apportion or not to apportion workloads between applicants AND to award or not to award contracts.

1.9 Proposal Records

Materials submitted by applicants will not be available for public review until all contracts awarded pursuant to this RFP have been fully executed.

Written inquiries on preparing applications may be directed to Kathryn Aylward, Director of the Contract and Business Services Division at:

kathryn.aylward@opds.state.or.us

PART II -- PROPOSAL APPLICATION INSTRUCTIONS AND REQUIREMENTS

This part of the RFP contains the instructions and requirements for preparing and submitting proposals for public defense mitigation investigative services contracts.

2.1 Submitting Proposals

The applicant is responsible for any costs incurred in preparing or delivering the proposal. The applicant is responsible for ensuring that the proposal is received timely by the Public Defense Services Commission.

There is no implied promise to award a contract to any applicant based upon the submission of a proposal.

A. Form of Submission

Proposals MUST be submitted as an email attachment in a searchable Portable Document Format (PDF). The PDF must not be password protected nor copy protected.

Any text in the body of the transmitting email will not be reviewed and will not be considered to be part of the proposal.

The email should be sent to: mail@opds.state.or.us

B. Deadline

Proposals MUST BE RECEIVED by PDSC no later than 11:59 p.m. on the submission deadline date.

The submission deadline for proposals is June 13, 2011.

If the applicant fails to submit the proposal(s) in accordance with the deadline to PDSC, PDSC will disqualify the proposal(s), unless authorization for late submission is granted in writing by PDSC.

2.2 Application Format

Applicants must use the attached application format for submission of all proposals and must answer all questions or state the reason why a specific question is not relevant to the particular proposal. PDSC may disqualify any proposal that is not in the required format or is incomplete.

2.3 Acceptance of RFP and Contract Terms

A. Applicants are responsible for reviewing the terms and conditions of the RFP and the standard terms of the contract.

- B. By signing and returning the application form, the applicant acknowledges that the applicant accepts and intends to abide by the terms and conditions of the RFP. Further, the applicant accepts the standard terms and conditions of the contract contained in Part IV, unless and only to the extent that the applicant proposes exceptions as described below.
- C. The applicant must clearly state in the proposal any proposed exceptions to the general terms of the contract, including reasons to support the exceptions and estimated efficiencies and/or cost savings. PDSC reserves the right to accept, reject, or negotiate exceptions to the contract terms.
- D. Any changes to the standard terms of the contract proposed by PDSC will be provided, in writing, to each applicant.

2.4 Multiple Proposals

An applicant may submit more than one proposal. Each proposal must be complete in itself. The proposal must state whether it is in addition to or an alternative to other proposals submitted by the applicant.

2.5 Modification of Proposals

A. When Permitted

Applicants may not modify proposals after the submission deadline, unless PDSC agrees thereto, upon written request by applicant. Until that date, an applicant may modify its proposal(s) in writing. Modifications must be:

- 1) prepared on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) must state whether the new document supersedes or modifies the prior proposal.

B. Delivery

Applicants must deliver any modifications in the same manner as required by Section 2.1.A for original proposals.

C. Included in Proposal File

All documents relating to the modification of proposals will be made part of the proposal file.

2.6 Mistakes in Submitted Proposals

A. When Corrections Permitted

PDSC will permit applicants to correct mistakes on a proposal only to the extent correction is not contrary to PDSC's interest or to the fair treatment of other applicants.

PDSC has sole discretion to allow an applicant to correct a mistake. PDSC will notify the applicant if and when PDSC allows corrections to proposals.

B. Procedure When PDSC or Applicant Discovers Mistake

If PDSC or the applicant discovers a mistake before the proposal deadline, the applicant may amend the error using the procedures for proposal modification in Section 2.5 above.

PDSC will proceed as follows when PDSC discovers or is notified of mistakes in proposals after the submission deadline but before contract awards are made:

1) Minor Inaccuracies

PDSC may waive or correct minor inaccuracies or insignificant mistakes. Minor inaccuracies are:

- a) matters of form rather than substance that are evident from the proposal documents; or
- b) insignificant mistakes that do not prejudice other applicants; e.g., the inaccuracy or mistake does not affect price, quantity, quality, delivery, or contractual conditions.

2) Mistakes Where Intended Correct Proposal is Evident

If the mistake and the intended correct proposal are clearly evident on the face of the proposal or can be determined from accompanying documents, PDSC may consider the proposal. Examples of mistakes that may be clearly evident on the face of the proposal are typographical errors, transposition errors, and mathematical errors.

3) Mistakes Where Intended Correct Proposal is Not Evident

PDSC may not consider a proposal in which a mistake is clearly evident on the face of the proposal but the intended correct proposal is not evident or cannot be determined from accompanying documents, including requests for correction or modification under Sections 2.5 and 2.6.

C. Included in Proposal File

All documents relating to correcting a mistake will be made part of the proposal file.

2.7 Withdrawal of Proposals

A. Request to Withdraw

An applicant may withdraw a proposal at any time by written request. Requests to withdraw a proposal from consideration must be:

- 1) on the applicant's letterhead;
- 2) signed by an authorized representative(s); and

- 3) submitted to PDSC in the same manner as required by Section 2.1.A for original proposals.

B. Included in Proposal File

All documents relating to the withdrawal of proposals will be made a part of the proposal file.

2.8 Evaluation of Proposals

PDSC will begin to evaluate proposals upon receipt, subject to the procedures and criteria described in Part I.

2.9 Categories of Cases Available for Contract

A proposal for public defense mitigation investigative services may include coverage of all, some, or any of the following categories of cases for which financially eligible persons have a right to appointed counsel in state court at state expense:

- Aggravated Murder
- Murder
- Death Sentence Post-Conviction Relief

2.10 Cost of Services

A. Expenses Included in Contract Price

Public defense contractors are responsible for all reasonable and necessary expenses that are considered overhead.

PDSC bears the costs outside of any public defense contract for:

- 1) copies;
- 2) long distance telephone expenses;
- 3) in-state mileage;
- 4) non-routine case expenses that are preauthorized such as out-of-state travel.

Applicants should not include these case-related expenses in calculating the cost of providing contract services.

B. Reasonable Expenses

Applicants should project the cost of contract expenses at rates no greater than customary for the community and the type of service or expense. PDSC will not pay premium rates. PDSC expects contractors to provide facilities reasonably adequate to ensure an environment conducive to providing effective and efficient services.

2.11 Proposal Application Format (Part III of RFP)

The application format consists of:

- 1) Application Summary;
- 2) Certification Form; and
- 3) Proposal Outline divided in the following sections:
 - a) Service Delivery Plan
 - b) Proposed Contractor Certificate of Compliance with Applicable Oregon Tax Laws
 - c) Proposed Contractor Independent Contractor Certification Statement

THE FOLLOWING PAGES APPL. 1 THROUGH APPL. 5 ARE THE RFP APPLICATION AND PROPOSAL OUTLINE.

PUBLIC DEFENSE SERVICES COMMISSION
REQUEST FOR PROPOSALS
FOR
PUBLIC DEFENSE MITIGATION INVESTIGATIVE SERVICES CONTRACTS

PART III

PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE

(TO BE COMPLETED AND SUBMITTED TO PDSC)

**PART III
PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE**

3.1 APPLICATION SUMMARY

| | |
|---|------------|
| APPLICANT INFORMATION | |
| County or Counties to be served: _____ | |
| Formal Name of Applicant: _____ | |
| Contact Person for Proposal: _____ | |
| Address: _____ _____ | |
| Telephone: _____ | Fax: _____ |
| Email (required): _____ | |
| Fed. I.D. No.: _____ or S.S.N.: _____ | |
| DPSST P.I. License No.: _____ | |
| Type of Organization (<i>check one</i>): | |
| <input type="checkbox"/> Sole Practitioner <input type="checkbox"/> Partnership or P.C. | |
| <input type="checkbox"/> Other (<i>describe</i>) _____ | |

CASE TYPE AND WORKLOAD INFORMATION

- A. List all case types for which services will be provided:

- B. Identify the percentage of FTE hours (1800/year) being proposed (e.g. 100%, 50%): _____

3.2 CERTIFICATION FORM

I hereby certify that I have the authority to submit this proposal on behalf of the applicant and that I have read and understand the standard terms and conditions of the contract.

Signature

Date

Typed or Printed Name of Authorized Representative

Title or Representative Capacity

Applicant Name

3.3 PROPOSAL OUTLINE

The following is an outline of the information each applicant MUST provide. ALL questions must be answered and all requested information must be completed. If a certain question or requested information is "Not Applicable" to the applicant's proposal, please note "NA."

A. SERVICE DELIVERY PLAN

The purpose of a public defense mitigation investigative services contract is to provide cost-effective delivery of services that will allow counsel to meet constitutional, statutory, and other legally mandated standards of representation. Please describe, in detail, applicant's service delivery plan and how it will ensure effective and efficient service. Include information on the following:

1. Case Services. Describe the workload and case types to be covered. Include any limitations in coverage by case type, county or region.
2. Service Delivery. Describe how applicant will provide timely, effective, and efficient case-related services. Include how applicant will comply with ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases, June 2008 (available at www.oregon.gov/opds);
3. Equipment. Describe equipment or information systems applicant has or will obtain to improve the provision of services under the proposal. If applicant uses or will use a computer system, please specify hardware and software to be used.
4. Professional Development Plan. Describe plans for professional development and training methods to maintain current awareness of new developments regarding mitigation services in capital murder and murder cases.
5. Readiness Status. Describe what applicant needs to do to be ready and able to begin services on the proposed contract effective date. If more time is needed, explain why and when applicant will be available.
6. Other Information. Include any other information you believe is important or relevant to PDSC's review of the service delivery plan.
7. Contract Terms. Include any requests to modify the standard terms of the contract. Explain the purpose of and need for modification and how it will affect the service delivery plan and cost. Again, PDSC has sole discretion to allow modification of any contract term.

B. PROPOSED CONTRACTOR CERTIFICATE OF COMPLIANCE WITH APPLICABLE OREGON TAX LAWS

Must be provided for a consortium (corporation) as well as for each consortium member.

I, the undersigned, being first duly sworn,

Mark only one: (X)

_____ hereby certify under penalty of perjury that I am not in violation of any Oregon tax laws.

_____ authorized to act in behalf of _____,
(name and address of firm, corporation, or partnership [Please type])

_____ hereby certify under penalty of perjury that _____
(name of firm, corporation, or partnership [Please type])

is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, "Oregon tax laws" are ORS chapters 118, 119, and 305 through 324; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Federal ID # or
Social Security #: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires: _____

C. PROPOSED CONTRACTOR INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapters 316, 656, 657 and 670:

1. You provide labor and services free from direction and control, subject only to the accomplishment of specified results.
2. You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law.
3. You furnish the tools or equipment necessary to do the work.
4. You have the authority to hire and fire employees to perform the work.
5. You are paid on completion of the project or on the basis of a periodic retainer.
6. You filed federal and state income tax returns for the business for the previous year, if you performed labor or services as an independent contractor in the previous year.
7. You represent to the public that you are an independently established business, as follows:

YOU MUST MEET FOUR (4) OR MORE OF THE FOLLOWING:

- A. You work primarily at a location separate from your residence.
- B. You have purchased commercial advertising, business cards, or have a trade association membership.
- C. You use a telephone listing and service separate from your personal residence listing and service.
- D. You perform labor or services only pursuant to written contracts.
- E. You perform labor or services for two or more different persons within a period of one year.
- F. You assume financial responsibility for defective workmanship and breach of contract, as evidenced by performance bonds or liability insurance coverage.

I hereby certify that the above information is correct.

Signature _____

Date _____

Entity _____

PUBLIC DEFENSE SERVICES COMMISSION
REQUEST FOR PROPOSALS
FOR
PUBLIC DEFENSE MITIGATION INVESTIGATIVE SERVICES CONTRACTS

PART IV

CONTRACT GENERAL TERMS

**PUBLIC DEFENSE MITIGATION INVESTIGATION CONTRACT
BETWEEN PUBLIC DEFENSE SERVICES COMMISSION AND**

CONTRACTOR NAME

**GENERAL TERMS
AND
SPECIFIC TERMS**

AGGRAVATED MURDER/MURDER CASES

JANUARY 1, 2012 TO DECEMBER 31, 2013

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GENERAL TERMS

1 DEFINITIONS

1.1 Interpretation of Terms

Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directive.

1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit involving any question of construction arising under this contract in an appropriate court in the State of Oregon.

1.3 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

- (a) the remaining terms and provisions shall remain valid; and
- (b) the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

1.4 Public Defense Services Commission

Public Defense Services Commission (PDSC) and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of PDSC and State of Oregon.

1.5 Contractor

"Contractor" includes Contractor's agents, employees, members, officers, representatives, successors, and subcontractors.

1.6 Client

A "client" is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.7 Case

A "case" is any action in this state in which court-appointed counsel has been appointed to represent a client.

2 MUTUAL RIGHTS

2.1 Waiver

Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

2.2 Attorney Fees

If a party brings any action, suit, or proceeding to enforce

this contract or to assert any claim arising from this contract, the prevailing party shall be entitled to such additional sums as the court may award for reasonable attorney fees and costs incurred as a result of the action, suit, or proceeding, including any appeal.

2.3 Termination

The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, PDSC may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts

Contractor shall not subcontract for or delegate any of the services required under this contract without obtaining PDSC's prior written consent. PDSC shall not unreasonably withhold consent to subcontract. Under this contract, PDSC incurs no liability to third persons by making contract payments to Contractor.

3.2 Assignment of Contract

Contractor shall not assign Contractor's interest in this agreement without PDSC's prior written consent. PDSC shall not unreasonably withhold consent to assignment. Under this contract, PDSC incurs no liability to third parties, including subcontractors, for making contract payments to Contractor.

3.3 PDSC Powers for Failure to Obtain Workers Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide PDSC with a certificate of exemption, PDSC may:

- (a) withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) suspend this agreement until Contractor complies; and
- (c) terminate this contract:
 - (i) for willful or habitual failure to comply; or
 - (ii) for failure to comply within 30 days after PDSC suspends this contract.

3.4 De Minimis Changes in Contractor Reports/Documents

At any time and by written instructions, PDSC may make de minimis changes to the terms and conditions of this contract regarding any one or more of the following:

- (a) format or content of any report or other document to be submitted by Contractor;

- (b) number of copies of any report or other document that Contractor must submit; and
- (c) time in which, or place at which, Contractor must submit any required report or other document. (See Section 6.1)

3.5 Termination by PDSC for Cause

3.5.1 Reasons for Contract Termination

PDSC may terminate this contract for cause, for the following reasons:

- (a) Contractor's material breach of this contract including material misuse of contract funds;
- (b) Contractor's willful or habitual disregard of the procedures required by the courts in which Contractor provides services;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's willful failure to abide by minimum standards of performance and rules of professional ethics; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate mitigation investigation under this contract or fulfill the obligations of this contract.

3.5.2 No Acceptance of Cases After Notice

When Contractor receives PDSC's notice of termination for cause, Contractor shall not accept any further cases under the contract unless PDSC otherwise agrees in writing.

3.6 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably believes that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

3.7 Increasing Workload: Renegotiation at PDSC Option

The parties may renegotiate this contract to increase the total work to be performed by Contractor under this contract at additional cost to the state, if:

- (a) the workload will increase substantially due to the number of available cases; and
- (b) PDSC determines that renegotiation is in the state's interest.

PDSC will not pay Contractor for hours in excess of the maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor performing the work.

3.8 Review, Verification and Inspection of Records

3.8.1 Request

PDSC may review or verify Contractor's records that relate to the performance of this contract:

- (a) on reasonable written notice; and
- (b) as often as PDSC reasonably may deem necessary during the contract term.

3.8.2 Access to Facilities and Provision of Records

PDSC may conduct fiscal or performance audits to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval.

Contractor shall keep such data and records in an accessible location and condition. Notwithstanding any other provisions of this section, no constitutional, statutory, or common law right or privilege of any client or Contractor employee are waived by Contractor.

3.8.3 Other Information

Upon the PDSC's determination that a significant question exists of Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.3, 4.4 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests as needed to ensure proper disbursement of state funds.

3.8.4 Timely Reports by PDSC

When PDSC undertakes a review of Contractor, PDSC shall provide Contractor a draft review report for comment, clarification or rebuttal information. PDSC shall issue a final report to Contractor. Draft and final reports shall be provided in a timely manner.

3.9 Use of Equipment Purchased with Contract Funds

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this contract. Any equipment Contractor acquires with funds expressly provided by this contract shall be used for these purposes.

3.10 Return of Equipment Purchased with Contract Funds

Any equipment purchased with expressly identified contract funds shall accrue to PDSC when this contract is terminated or expires and no new contract is agreed upon within 60 days of termination, expiration, or completion of a negotiated wind-down, whichever occurs last, if:

- (a) Contractor purchased the equipment with separately identified funds from this contract or public defense services contracts with similar provisions or with

insurance proceeds to replace equipment that Contractor had purchased with funds from this contract;

- (b) had an original dollar value of \$500 or more; and
- (c) whose useful life exceeds the term of this contract.

3.11 Limit on Return of Equipment to PDSC

Section 3.10 does not apply to any Contractor that is a nonprofit, tax-exempt corporation whose articles of incorporation require the transfer or distribution of equipment to another nonprofit, tax-exempt corporation that provides public defense services in the event of full or partial wind-down.

4 RIGHTS OF CONTRACTOR

4.1 Termination By Contractor For Cause

Contractor may terminate this contract for cause should PDSC materially breach any duty or obligation under this contract.

4.2 Public Defense Cases Outside Contract

Contractor may accept additional public defense cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional cases do not interfere with Contractor's ability to fulfill this contract. PDSC shall not pay Contractor outside the contract for any services falling within the definition of "mitigation investigation", set forth in Section 7.1, for cases accepted under this contract.

4.3 Client Records

Contractor grants no right to PDSC or designee of PDSC to observe mitigation investigator/client or mitigation investigator/attorney consultations or to review information in case files that is:

- (a) privileged because of the mitigation investigator/client or mitigation investigator/attorney relationship; or
- (b) work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

4.4 Personnel Records

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

5 MUTUAL OBLIGATIONS

5.1 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.2 Compliance with Applicable Law

5.2.1 In General

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and independent contractor status.

5.2.2 Laws Incorporated by Reference

The provisions of ORS 279.312, 279.314, 279.316, and 279.320 are incorporated herein by reference as conditions of this contract and shall govern performance of this contract.

5.3 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall:

- (a) be in writing;
- (b) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;
- (c) become effective for willful breach not less than 14 days from delivery by certified mail or in person; and
- (d) become effective not less than 60 days from delivery by certified mail or in person for non-willful breach.

5.4 Modification or Termination Due to Legislative Action or Court Interpretation

PDSC and Contractor may renegotiate this contract if there is a significant change in workload or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.5 Modification or Termination Due to Decreased Workload

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available.

6 OBLIGATIONS OF PDSC

6.1 De Minimis Changes in Contractor Reports/Documents

PDSC shall not make any change that would cause more than a de minimis increase in cost or time required to perform the contract except by written agreement signed by both parties. (See Section 3.4)

6.2 State Funding Shortfall

If the Emergency Board or legislature does not appropriate sufficient funds, PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers. PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider both cost and the level of representation that meets minimum allowable professional standards. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

6.3 Payments in Addition to Contract Price

PDSC shall pay for case expenses as described in the Public Defense Payment Policies and Procedures and this section of the contract from funds available for the purpose.

Contractor agrees to request reimbursement under this agreement for those types of expenses defined and enumerated herein;

- (a) such case-related expenses that are reasonable and necessary to provide an adequate defense that are defined as expenses under ORS 135.055 AND which are not related to office overhead, salaries, benefits, out-of-state travel, airfare, personal services (such as psychologists, interpreters, expert witnesses). Routine expenses, for the purpose of reimbursement, primarily include in-state travel expenses, audio and video tapes, records and copy services from outside sources;
- (b) such case-related expenses that there would be a significant risk of error in the proceedings if the service were not provided or the expense were not incurred; and
- (c) such case-related expenses that are reasonable. In instances where the policy establishes maximum allowable costs and unless otherwise specifically agreed herein, the presumed "reasonable amount" of an expense is the policy guideline rate. In other instances, a "reasonable amount" is presumed to be the market value of the service or expense or the amount necessary for the provider of the service or expense to recover only its actual cost of providing the service or item. For services or items where there is no opportunity for competitive services or production of items (where the provider is a captive entity) (for example, cost of medical records), Contractor should notify the director of any costs that exceed what Contractor believes is reasonable.

6.3.1 Types of Expenses Subject to Reimbursement

6.3.1.1 In-state Lodging

Reimbursement for in-state lodging is limited to actual costs incurred when Contractor cannot reasonably avoid incurring this expense and the expense is necessary. Contractor shall seek commercial or government rates. The maximum allowable amount for lodging is the current rate for reimbursement according to the policy. Amounts exceeding the lodging expense maximums will be disallowed unless the higher rate has been preauthorized by the director of the Contract and Business Services

Division (CBS) of the Office of Public Defense Services, or the director's designee.

6.3.1.2 Meals in Conjunction with Overnight Travel

Contractor is entitled to claim a meal allowance for meal expenses incurred in conjunction with overnight travel. Meal allowance amounts are those set forth in the policy. Receipts need not be submitted when requesting a meal allowance

6.3.1.3 Meals for Day Trips

If Contractor does not incur lodging costs but, due to departure or return times, could justify a lodging expense, Contractor is entitled to claim a meal allowance based upon the following travel times. The amounts allowed are those set forth in the policy for that meal.

- a. If Contractor leaves home before 5:00 a.m., Contractor is entitled to the breakfast allowance amount.
- b. If Contractor leaves home before 5:00 a.m. and does not return until after 2:00 p.m., Contractor is entitled to the breakfast and lunch meal allowance amounts.
- c. If Contractor does not return home until after 9:00 p.m., Contractor is entitled to the dinner allowance amount.

6.3.1.4 Telephone Expenses While Traveling

Contractor may be reimbursed for case-related telephone charges incurred while traveling.

Contractor may be reimbursed for one telephone call per day to Contractor's office to conduct business not related to a contract case when the travel requires an overnight stay. The amount of reimbursement shall be the actual cost of the telephone call not to exceed \$5.00.

Contractor may be reimbursed for one personal telephone call per day when the travel requires an overnight stay. The amount of reimbursement shall be the actual cost of the telephone call not to exceed \$5.00.

6.3.1.5 Routine Expenses Not Related to Travel

- (a) Discovery costs.
- (b) On-line computer research charges.
- (c) Photocopy and printing costs, not to exceed the maximum amounts listed in the policy.
- (d) Postage and delivery costs, if the cost of sending an individual item is \$1.00 or greater and is supported by a receipt.
- (e) Long-distance and collect telephone charges when the cost of an individual call is \$1.00 or greater.
- (f) Potentially relevant medical, mental health, school, corrections, child welfare, internal affairs, and arrest/conviction records;

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- (g) Film and photograph processing;
- (h) Copies of audio or video recordings, logs and photographs, including but not limited to those obtained from law enforcement, prosecution and emergency communication services;
- (i) Service of process fees where counsel documents the necessity of incurring such expenses (rather than utilizing the sheriff's office(s) or case investigators) was outside counsel's reasonable control;
- (j) Materials other than ordinary office supplies for, or items that will serve as exhibits for court proceedings where the cost per item does not exceed \$25 and the total expense for the type of exhibit(s) does not exceed \$100; and
- (k) Other items similar to those described in this section with proper documentation that shows the expense to be both reasonable and necessary and properly payable from public defense funds. Provider should submit a written explanation with any request for payment of an out-of-pocket expense not listed in this section unless the OPDS has preauthorized the expense. An original receipt, invoice or copy of a cancelled check is required if item is obtained from an outside vendor.

6.3.2 Types of Expenses Excluded From Payment Unless Preauthorized

- (a) Expenses not specifically described in the contract that require preauthorization as non-routine expenses or that are presumed to be covered under the base contract as overhead expenses.
- (b) Airfare and vehicle maintenance.
- (c) Non-direct travel expenses, such as dry cleaning or laundry services.
- (d) Direct client expenses, such as haircuts, clothing or glasses.
- (e) Transcripts.
- (f) Expenses required to secure the attendance of an out-of-state witness.
- (g) Computer software programs.

7 OBLIGATIONS OF CONTRACTOR

7.1 Standards of Mitigation Investigation

Contractor shall provide mitigation investigation for the purpose of providing cost-effective delivery of services that will allow counsel to meet constitutional, statutory, and other legally mandated standards of representation. Contractor will provide timely, effective, and efficient case-related services in compliance with the ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases (June 2008).

7.2 Contractor Responsibilities - Financially Ineligible Clients

Contractor shall notify the client's court-appointed counsel if Contractor learns that a client is ineligible for state-funded mitigation investigation under this contract.

7.3 Special Obligations To State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend and hold harmless PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of Contractor's activities.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Neither Contractor nor any of its employees is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone.

7.3.2.1 Ineligibility for Public Employee Benefits

Payment from contract funds does not entitle Contractor, its employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

7.3.2.2 Wages and Taxes

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

7.3.2.3 Workers' Compensation

As an independent contractor Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter 659A and for the entire contract term.

7.3.3 State Tort Claims Act Not Applicable

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265. Contractor accepts responsibility for all actions of its members, officers, employees, parties, agents and subcontractors.

7.3.4 Equal Rights of Contractor's Employees

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

7.3.5 Contractor Insurance To Protect State of Oregon

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide PDSC a copy of the certificate of insurance listing the coverage and additional insured information.

7.3.5.1 General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

7.3.5.2 Casualty Insurance

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

7.3.5.3 Additional Insured

The liability and casualty insurance coverages required for performance of the contract shall include the State of Oregon, PDSC, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities to be performed under this contract.

7.3.5.4 Cancellation or Change

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without notice by Contractor to PDSC. Any failure to comply with the provisions of these insurance requirements, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the State of Oregon, PDSC, and their divisions, officers and employees.

7.3.6 Internal Controls

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly receipted, expended, and accounted for.

7.3.7 Protection of Consumer Personal Information

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

7.4 Record Keeping

7.4.1 Service Records

Contractor shall maintain current information on individual cases assigned pursuant to this contract showing services provided and hours of time expended. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection of PDSC, or PDSC's designee or agent.

7.4.2 Financial Records

Contractor shall maintain financial records on an accrual basis. Contractor's records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.

7.4.3 Retention Period

For purposes of this contract only, Contractor agrees to preserve all service records and supporting documentation regarding contract work performed for a period of three (3) years after the expiration of this contract.

7.5 Reports to PDSC

7.5.1 Time Records

Within twenty (20) days of the end of each month, Contractor shall provide to PDSC, in a format specified by PDSC, a reasonably accurate monthly time report for the preceding month. Contractor may submit amended time reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly time report to be amended.

7.5.2 Penalty for Late Reports

Contractor shall submit timely and properly completed reports. If Contractor fails to submit a proper, reasonably accurate report within thirty (30) days of its due date, PDSC may withhold the next monthly payment and subsequent payments until PDSC receives the report and supporting documentation.

7.5.3 Enforceability

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

7.6 Costs and Expenses

Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;
- (b) all other routine expenses related to case preparation and trial, except for those described in 6.4; and
- (c) staff services, unless specifically authorized by PDSC to be paid outside this contract.

Contractor shall not expend contract funds for out-of-state travel or other costs unrelated to a specific case without the express written authorization of PDSC.

7.7 Special Notices

Contractor shall provide PDSC written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

- (a) Contractor's ability to carry out this contract, including changes in office location;
- (b) Contractor's ability to meet financial obligations; and

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- c) matters affecting Contractor's ability to provide services to clients.

7.7.1 Time Requirement for Notices

All notices shall be provided to PDSC within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided.

7.7.2 Specific Notices Required

7.7.2.1 Insurance Cancellation or Change

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 and immediate notice of the cancellation of any such policies.

7.7.2.2 Change in Contractor's Organization

Contractor shall notify PDSC of any change in Contractor's organization that might affect staffing, payment, or tax reporting under the contract. Contractor shall assure PDSC of its continued ability to meet contract requirements or shall propose reductions in caseload and price if Contractor is unable to meet contract requirements because of such organizational change.

7.7.2.3 Events Which Could Impair the Contract

Contractor shall notify PDSC within fourteen (14) days of when Contractor learns that one of the following has occurred:

(a) Criminal Charges

A member of Contractor's staff has been charged with a crime.

(b) Criminal Conviction

A member of Contractor's staff has been convicted of a crime punishable by a term of incarceration of one or more years or involving moral turpitude.

7.7.2.4 Early Quota

Contractor shall notify PDSC immediately upon determining

that Contractor will reach its total contract quota before the expiration of the contract.

7.8 No Dual Payments for Contract Work

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds.

8 MUTUAL RISKS

8.1 Impossibility of Performance

Neither party shall be held responsible for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.

8.2 Tort Liability

Each party shall be responsible for the torts only of its own officers, employees, and agents committed in the performance of this contract.

9 RISKS OF CONTRACTOR - REFUND FOR SHORTAGE

If Contractor's actual workload value, at the expiration or termination of the contract, is less than the workload value Contractor agrees to refund to PDSC the shortage, unless PDSC agrees in writing otherwise.

**CONTRACT BETWEEN PDSC AND CONTRACTOR
PAYMENT SCHEDULE**

| End of Month (Unless noted) | Monthly Payment |
|--------------------------------|--------------------|
| January 2012 | |
| February 2012 | |
| March 2012 | |
| April 2012 | |
| May 2012 | |
| June 2012 | |
| July 2012 | |
| August 2012 | |
| September 2012 | |
| October 2012 | |
| November 2012 | |
| December 2012 | |
| <i>First-Year Subtotal</i> | \$0 |
| January 2013 | |
| February 2013 | |
| March 2013 | |
| April 2013 | |
| May 2013 | |
| June 2013 | |
| July 2013 | |
| August 2013 | |
| September 2013 | |
| October 2013 | |
| November 2013 | |
| December 2013 | |
| <i>Second-Year Subtotal</i> | \$0 |
| <i>Total Payments</i> | \$0 |

**CONTRACT BETWEEN PDSC AND CONTRACTOR
CASELOAD AND CASE VALUE MATRIX**

| | Hourly Rate | Number of Hours | Total Value |
|-------------------|-------------|-----------------|-------------|
| 1/1/12 - 12/31/12 | | | |
| | \$0 | 0 | \$0 |
| | | | \$0 |
| First-Year Total | | 0 | \$0 |
| 1/1/13 - 12/31/13 | | | |
| | \$0 | 0 | \$0 |
| | | | \$0 |
| Second-Year Total | | 0 | \$0 |
| Contract Total | | 0 | \$0 |