

## **25-27 Contract Question and Answers Part 2.**

**Question 1:** Section 1: Duration - Because the legislative sessions wrap up in late June, it would make more sense to extend the contracts through September 30, 2027, to allow time for the agency to assess the legislature's investments and use that information to inform the next round of contracting. In both 2023 and 2025 providers received extension contracts at the end of June that took us through September 30. It would make sense to acknowledge that reality and implement that timeline now.

**Answer:** OPDC is currently exploring this option for the 27-29 contract cycle with Department of Administrative Services Chief Financial Office and will consult Legislative Fiscal Office. OPDC did consider this option for the current contract period, however because of all the changes with this contract and the lengthy process, the agency felt it could provide a stronger case in the 2027-2029 contract planning cycle which will commence as early as November 2025.

**Question 2:** Section 2: Rules - Why is Marion County the jurisdiction that parties shall bring suit or action under this contract?

**Answer:** The seat of the Executive Branch resides in Marion County.

**Question 3:** Section 3: Definitions - I don't see a definition for the term "vacancy", and I think that may be helpful to define.

**Answer:** Vacancy - When an individual that is funded and referenced in the ROC, either permanently or temporarily discontinues Services. We will be adding this language to Section 3 of the contract.

**Question 4:** Section 7: Performance Requirements - There is again a tension/inconsistency here. The contract simultaneously requires attorneys to follow ethical and ABA guidelines, but also enforces a caseload standard that will make it impossible to do -- especially for attorneys handling misdemeanors and minor felonies. Evidence-based studies designed to determine an ethical and constitutionally appropriate caseload have demonstrated that the MAC numbers for misdemeanors and minor felonies are too high. The contract should make clear that the ethical and constitutional standards are the expectation, and that MAC will not be enforced in a way that impairs those standards

**Answer:** OPDC currently offers two types of contracts, a MAC contract, and an hourly contract. If an attorney or entity feels that they cannot fulfill the terms of the capacity-based contract, OPDC encourages them to discuss transitioning to an hourly contract.

**Question 5:** Section 10: Contract Modifications & Adjustments - What criteria would OPDC rely on in the third scenario if not the first and second? Because the operation of non-profit offices depends solely on OPDC funding, and there is no guidance in this section. It makes it extremely difficult to determine whether an office will be able to remain in operation throughout the contract period if the agency can, upon its own decision, without warning or basis, adjust the FTE of an entity.

**Answer:** Exhibit B requires contract administrators to monitor case assignments. OPDC has a tool available to assist contract administrators in calculating mixed caseloads so that utilization can be

monitored. Please contact your program analyst if you would like the calculator. Additionally, there is a public facing dashboard available that displays entities monthly utilization rates. That dashboard can be found here: [Caseload Dashboard](#).

**Question 6:** Section 10: Contract Modification & Adjustments - The current contracts are based on six months of information. "Two distinct occurrences" is vague and undefined. I presume it means two months, but do they have to be consecutive? Can they be any two months during the contract period? As OPDC is aware, case filings can fluctuate, but the workload continues to increase every year due to several factors including but not limited to: adding/increasing volume of body camera footage; cellphone and computer extractions; surveillance video; forensic/expert issues; increasing mental health issues etc. Two occurrences or two months is an insufficient measure. Further, OPDC should be considering quality and consistency of representation when making any determination to decrease FTE. Recruitment and retention is becoming increasingly difficult in Oregon and it is punitive to contract with an entity for a certain number of attorneys and then have OPDC potentially decrease attorney FTE on the vague determination of two occurrences.

**Answer:** Yes, "if there are two distinct occurrences where Contractors **monthly** caseload increases or decreases by 15%..." OPDC will reach out to schedule a meeting to discuss the change. OPDC strives to maintain the health of the state public defense system and would only make the decision to reduce or increase a Contractor's capacity after consulting all system partners when the number of available cases increase or decreases substantially.

**Question 7:** Section 12: Contractor Reporting & Inspection - Ten Calendar days may not be sufficient to figure out what went wrong in the case of inaccurate reporting and to rectify the inaccuracy. Providers will typically make every effort to correct and resubmit reports as soon as possible. If as much as 60 days have already passed, what is the reason for giving providers only 10 days to provide the corrected information? Especially, in light of the fact that they will still have to provide the routine reports while using outdated systems and being inadequately funded.

**Answer:** OPDC will change the language to allow Contractor up to 30 days to respond.

**Question 8:** Exhibit A - For the second 60 days, overhead funding only is vague. Contractors are required to have a 0.5 support person per attorney. Is the cost of that employee included in overhead? We cannot fire a support staff person if we cannot fill an attorney vacancy within 60 days. Often times, attorneys provide only 30 days' notice of a resignation. We do not have a waitlist of attorneys to hire and there are limited qualified applicants to hire; therefore, it usually takes 2-4 months to replace someone. 60 days at 50% is not sufficient. Overhead needs further definition. Agency discretion to fund the second 60 days needs more definition. OPDC should specify that factors it will consider include but are not limited to: quality of representation being provided by the provider; number of cases the provider absorbed due to the resignation that increased the remaining employees workloads; the expense of the required support staff person for that attorney position; and demonstrated efforts to replace the vacancy and demonstrable challenges in recruitment.

**Answer:** When the original amount of \$72,150 was calculated it was based on .5 support staff and an amount for overhead. OPDC intends to collect staff and overhead information to determine if it needs to be adjusted in the 27-29 contract cycle.

**Question 9:** Exhibit B: - This weighting and credit system pits an attorney's own interests against those of their clients. In cases where a client would like to have a release hearing w/in 48 hours of arraignment, some attorneys may decline to work on them in situations where they may thereafter need to withdraw and not get any credit for the not insubstantial work that goes into those hearings. The only reason an attorney should get zero credit for a criminal case is a circumstance where that attorney didn't work on that case or did de minimis work on it. The extraordinary case weighting system doesn't work. It is arbitrary, unreviewable, unfair, and does not adequately provide credit when it is due.

**Answer:** Most ECC requests are approved. If you believe you have a case where ECC was denied or improperly applied, reach out to the assigned Resource Counsel or the Trial Support Division Manager to explain why you disagree with the decision.

**Question 10 –** Exhibit B - OPDC should not consider an attorney who is out on any protected leave to constitute a vacancy. Anyone out on protected leave is an employee of the provider. If OPDC is requiring notification, then OPDC must keep that information confidential.

**Answer:** OPDC recognizes that this is a very important and sensitive topic. While the agency does ask for notification, it does not ask for anything specific, and does honor confidentiality. As an agency, OPDC experiences the same challenge, with its employees, of balancing workload under these circumstances. To be clear, attorneys under contract who are on protected leave have an employee employer relationship with the provider and not OPDC. OPDC is not responsible for paying protected leave for non-employees.

**Question 11:** Exhibit B – Supervision: Will consortia be permitted to qualify. OPDC/OPDS has consistently said consortia do not provide mentoring and supervision, cannot do it, and OPDC/OPDS will not fund any such programs for consortia. Is OPDC going to provide the funds to consortia to do this?

**Answer:** The current draft has supervision available to any contract entity with at least 3 attorneys. OPDC is working on developing a procedure to evaluate supervision requests. Please see the specifics of this programs here: [Supervisor Funding](#).

**Question 12:** Exhibit B - What happens if an attorney inadvertently goes over the 100% MAC case weight (a case comes back after a warrant is issued, for example)

**Answer:** Exhibit B, section B states that contractor shall distribute case assignments accepted under the contract relatively evenly each month while allowing for normal fluctuations in an attorney's caseload. OPDC recognizes that caseloads fluctuate and is no longer limiting to monthly prorates. If a Contractor exceeds caseload limits one month, it is up to them to equalize in subsequent months.

**Question 13:** - Exhibit B - Sub H - Why are you continuing to penalize consortia. Under this process a PD's Office will never get conflict cases. They get to withdraw but if a consortia attorney withdraws the case goes to another consortia attorney. PD office can dump their "problem" clients/cases but never have to get any. Again - tilting things in favor of PD offices

**Answer:** Cases should be reassigned within Public Defender offices if the substitution is due to a breakdown in attorney/client relationship. The partial case weight for subsequent attorneys would apply.

**Question 14:** - Exhibit B - Sub J - should the "and" at the end of 1. be an "or" or do you really mean a case must be delayed for over a year AND there is either a hung jury or an appeal?

**Answer:** OPDC is correcting this. It should be "or".

**Question 15:** - Exhibit B - The State of Washington has adjusted the number of misdemeanor cases to 10 per month, where Oregon is 25 per month.

**Answer:** Yes, the Supreme Court issued a ruling on what it believes is the right caseload limit for Washington lawyers. However, that is not expected to happen for a decade. The Court's interim order is linked. [Order 25700-A-1644.pdf](#)

**Question 16:** - Exhibit B - It would be helpful to reward practitioners who recruit experienced out-of-state lawyers with similar reductions for that new-to-Oregon lawyer's first year. These lawyers may take on more serious cases, like minor felonies, which are the bulk of the unrepresented crisis in Multnomah County. They still have steep learning curves. Providers are incentivized to target murders and Jessica's Law case pickup under exhibit B. Expanding this provision to out-of-state lawyers would incentivize providers to recruit more felony lawyers outside of Oregon who can target minor felony case pickup.

**Answer:** The reduced caseload program in Exhibit B allows anyone that's in their first year of licensure by OSB to participate in the program. While the program contemplates a year, contractors can opt out of the program at any time if the attorney is ready to take on cases above a misdemeanor.

**Question 17:** Exhibit B - I would suggest adjusting the policy to say "Be in their first year of licensure by OSB, or have less than one year of experience of direct representation of public defense clients as a licensed attorney." We sometimes hire clerks (new attorneys who work for a judge for one year after law school graduation) from the circuit court as new attorneys. They may be in their second year of OSB licensure, but they have no experience representing clients post-graduation. They are similarly situated to brand new graduates and would also need a reduced caseload in their first year.

**Answer:** The reduced caseload/workload program was approved by the Commission April 16, 2025. The Contract language is consistent with what the Commission approved.

**Question 18:** Exhibit C - Is OPDC going to fund consortia to have supervisors. If no, and that is why my guess is will happen, why is this provision in the contract - separate contracts are needed for consortia and PD offices.

**Answer:** The current draft has supervision available to any contract entity with at least 3 attorneys. OPDC is working on developing a procedure to evaluate supervision requests.

**Question 19:** Exhibit F - Nonprofits in rural areas are only receiving applications from SPPE provisional licensees, so if we can't hire them to replace attorneys who leave, we will end up closing, unless you increase our funding so that we can pay competitively. In addition, if we are not able to have the person we worked so hard to train become part of our contract, why would we spend so much time and effort

to train them? It is a LOT of work! The provisional licensee cannot accept any MAC weight because they are not attorneys; it is the supervising attorneys who are the attorneys of record who will accept the MAC weight.

Answer: OPDC receives interest cards regularly from attorneys. If you have a vacancy and are having difficulties recruiting, please reach out to your analyst.

## PCRP Q & A

**Question 1:** What does the term Roster of Costs mean?

**Answer:** The Roster and Costs is the breakdown of Contractor's staff roster and associated costs for this Contract, as incorporated into the Contract through Exhibit A.

**Question 2:** Definition J. FTE Attorney is defined as taking a caseload amount.

**Answer:** OPDC is correcting caseload to workload in the PCRP contract.

**Question 3:** Definition K. MAC - does not apply to PCRP contracts.

Answer: You are correct. OPDC is removing references to MAC in the PCRP contract.

**Question 4:** Definition O. Reasonably Accurate - either add the word "Report," after Accurate or eliminate the words "Caseload or Workload." That said, the definition of a Reasonably Accurate Report is actually an accurate report based on this definition. If the intention is for contractors to make best efforts to provide reports that are consistent, factually accurate, complete, auditable, properly formatted, etc., then that is what the definition should say. As written, Reasonably Accurate just means accurate.

**Answer:** OPDC will be adding the word "Report"

**Question 5:** Definition P. Representational Services ("Services") – in other OPDC contracts the term services is used throughout.

**Answer:** OPDC will be changing to "Services".

**Question 6:** Does section 5 mean we cannot utilize the assistance of a case manager to attend FDMs, do home visits, or similar tasks on our behalf?

**Answer:** No, the contract contemplates using case managers and provides that attorneys should use case managers as appropriate to provide comprehensive representation.

**Question 7:** If a contractor drops 15% in February, but regains in the following months, but drops again in May would that cause a meeting with OPDC?

Answer: Yes.

**Question 8:** What would cause OPDC to increase or decrease attorney FTE?

Answer: FTE is linked to the need to for Services. If Service requirements increase or decrease, it could cause OPDC to evaluate FTE requirements in a jurisdiction.

**Question 9:** Given the types of reports (ie time and activity reports) that OPDC is now requiring (which include more than just identifying information), there are ethical problems with that information being

provided to and maintained by the contract administrator if the contract administrator is not within the firm of the provider. This is why then-OPDS moved to individual attorney submission of reports for PCR. You could fix this by requiring that Contract Administrators maintain open case reports rather than "all case reporting."

**Answer:** OPDC will amend Section 19, bullet 8 to reflect that PCR only needs to maintain open reports.

**Question 10:** Section 26 - NOTICE "To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator."

1) Shouldn't this say, "the assigned OPDC analyst," instead of "Agency's Contract Administrator," which I believe is the intent? If not, who is the "Agency's Contract Administrator?" If the intent is for the phone call to be to the, "Agency's Contract Administrator," then that term should be included in the definitions section, which it is not.

**Answer:** OPDC will amend the language in this section.

**Question 11 – Exhibit A - "A. The term, "representational services," is used. Be consistent between the exhibits and the contract. Decide if the term, "representational services," or "Services," is going to be used, and use it consistently rather than interchange the two.**

**Answer:** OPDC will be using "Services" going forward.

**Question 12:** Exhibit B - It is ill-advised to require that once an attorney becomes lesser felony qualified that they would no longer qualify for the RWP. Some new attorneys will have already had a misdemeanor caseload as a certified law student and may be able to become lesser felony qualified more quickly than others. It seems to cut against the reasoning for having the RWP to begin with because at the time the attorney is being appointed more complex cases, they are also having their workload dramatically increase? From an experienced attorney who started out as a certified law student and has helped other less experienced attorneys gain experience and qualification, this doesn't make sense and is a mistake. This also incentivizes attorneys delaying increasing their qualification level and missing out on significant opportunities for learning, training and oversight that comes with the RWP.

**Answer:** The attorney has a choice as to whether to be qualified at the higher level. There is no requirement that an attorney take higher level cases.