

**In addition the questions and comments OPDC received from individuals, ODCA submitted a letter with its questions and comments. OPDC's responses to those are listed below.**

**1. Hourly Rate Not Enumerated**

The proposed contracts do not explicitly identify the hourly rate for providers operating under hourly compensation. We request that annual and hourly compensation schedules be clearly incorporated as an exhibit and as a publicly posted rate sheet.

**Answer:** Tier 1 Murder, JLAW, Measure 11, AFEL, BFEL, Appeals, Habeas Corpus, Mandamus, Post Conviction Relief and all Juvenile cases: \$155/hr.

Tier 2 All other case types: \$140/hr.

**2. Separate Contracts for Consortia**

Numerous provisions throughout the proposed contract appear to have been drafted with employee-based non-profit organizations or in-house provider models in mind. For example, Section 5 restricts subcontracting, and Section 6 requires the contractor to provide all equipment, staff, and office resources. These provisions reflect employment-based models, not the operational structure of consortia, collaboratives or co-operative firm-based models. The agency should consider developing a separate contract for consortia, or the existing contract should contain clear provisions that are applicable only to specific provider types.

Answer: OPDC endeavored to produce one contract to cover multiple types of entities. It may be beneficial to have a consortia specific contract for the 27-29 contracting cycle. The current language in Section 6 would not require a consortium to purchase equipment for members. From Section 6 of the contract: "Contractor agrees that all persons listed in the ROC have secured or will secure at their own expense, employees, office space, and equipment required to perform the Services completed/required under this Contract"

**3. Subcontracting Restrictions (Section 5)**

The removal of an opt-out provision for subcontracting and the restriction in Section 5 against assigning duties places consortia at risk. Agency staff has indicated that this is intended to prevent sub-subcontracting by individual providers (not consortia), it appears to be an artifact of the agency's previous legislative direction to ban subcontracting. The plain language reads as prohibitive of internal delegation among known and qualified firm members. Clarity is needed to distinguish administrative delegation from impermissible subcontracting. We recommend restoring the opt-out mechanism or, preferably, revising the language to explicitly permit internal delegation among consortia and affiliated attorneys or firms.

**Answer:** The intent was never to preclude consortia from working with their members. Section 6 of the contract: “Contractor may subcontract with any person or entity listed in the roster and costs (ROC). If Contractor wishes to subcontract with anyone **NOT** listed in the roster and costs, contractor shall submit a request in writing to OPDC. OPDC will review the request and respond in writing within 30 days. The subcontractor shall meet the provisions of this contract. It is the contract administrator’s responsibility to ensure the subcontractors are meeting the contract requirements.”

#### **4. Training and Record Requirements (Sections 8-11)**

The CLE and recordkeeping requirements in Section 8, while aligned with quality goals, impose additional burdens on firms without associated funding. Contractors must maintain extensive records for up to ten years (twenty in murder cases) that they may not be entitled to hold under the subcontracting relationship, and fulfill 12 hours of public-defense-specific CLE within each contract period without compensation for this training in the form of training supervisors available to some contractors but not others.

These mandates create staffing, training, and compliance costs that exceed current service levels. OPDC should seek additional funding or scale expectations accordingly. We recommend the agency work with OCDLA to seek funding for CLE training for all providers in the next legislative session.

**Answer:** Record keeping is consistent with OSB regulations regarding file maintenance. Currently, Oregon lawyers are required to complete CLE credits every 3 years. Completing 12 credits every 2 years is below the OSB requirement of 45 credits every 3 years.

#### **5. Reporting Deadlines and Penalties (Section 12)**

The new monthly reporting deadline—changed from the 20th of the month to the 10th—and the imposition of a 5% penalty for late submissions are administratively burdensome. This has previously been considered and rejected by the commission because there is not sufficient data accuracy in terms of how quickly cases are processed by the courts. As a result, contractors are unable to produce accurate data within the first week due to calendaring constraints, internal review, or court lag. We strongly recommend reinstating the prior deadline or, at a minimum, moving it to the 15th of the month with no penalty for submissions within that window. We believe this position is consistent with feedback from multiple criminal justice stakeholders.

**Answer:** OPDC’s budget is driven by the forecast. Timely reporting is essential to the forecast. Inaccurate and untimely reporting causes underweight forecasts that could result in reduced funding or budget shortfalls. OPDC cannot provide oversight without receiving more timely and accurate reports. OPDC cannot address jurisdictional capacity needs and ensure prompt payments to providers without receiving more timely and accurate reports.

#### **6. Network and Privacy Liability Insurance (Section 17)**

The contract includes a requirement for contractors to obtain \$100,000 in network and privacy liability insurance. This requirement is not defined, lacks identified vendors or cost estimates, and creates significant liability exposure. Many providers have not been able to identify coverage that meets this specification. We request that OPDC either:

- a. Suspend enforcement of this provision until an insurance market solution is identified, or;
- b. Fund the additional cost through direct appropriations or allow waivers on a case-by-case basis.

**Answer:** The current draft has this as optional and not required.

#### **7. Geographic Obligations (Exhibit B, subsection G)**

The contract states that attorneys "shall endeavor" to take clients in other counties. This language introduces open-ended expectations that may be interpreted as mandatory travel or service obligations or require the opening of additional offices without additional funding. We recommend this clause be removed or clarified as aspirational and contingent on resources and geographic feasibility.

**Answer:** The word endeavor makes the section not a requirement, but an aspirational goal. There will be times when it is impractical for an attorney to take clients out of county.

#### **8. Equity in Termination Provisions (Sections 14 & 15)**

OPDC may terminate contracts with 10 business days' notice, while providers must give 30 days. Additionally, the agency is granted 60 days to notify contractors of corrective action, while contractors must respond within 10 days. This imbalance is unnecessary and undermines the principle of contractual fairness. We recommend that both termination and response timelines be made symmetrical.

**Answer:** The 10-day deadline dictates when OPDC has to give notice that an event occurred that could result in the termination and/or suspension of the contract. From there, other timelines are triggered. The whole process could take 40 days or more before true termination of the contract occurs. Contractors have to give 30 days' notice to terminate their contract for cause but do not have to adhere to the same timelines and process that OPDC does

#### **9. Extraordinary Expense Requests (Exhibit B, Section K)**

This language restricts extraordinary funding requests to the beginning or end of cases. This structure may preclude providers from responding to emergent circumstances that arise mid-case. We recommend allowing extraordinary expense requests at any point during the case, subject to appropriate justification and documentation.

**Answer:** From the Exhibit B section C: "Cases that involve extraordinary circumstances and require work well beyond the range of work typically required for the type of Case may be granted additional Case weight, subject to OPDC's discretion. No earlier than

thirty (30) days after being appointed in any particular Case and no later than thirty (30) days after final disposition, an Attorney seeking additional Case weight for extraordinary circumstances may submit such a request using the form provided by OPDC for this purpose.” The attorney may submit as early as 30 days into the case, but no later than 30 days after closure. A submission any time between those dates is acceptable.

**10. Succession and Transition Language (Exhibit C, Section F)**

Requires providers to plan for administrator succession but introduces ambiguity around duties not directly related to succession planning. Language regarding "reasonable steps" to obtain client contact information could lead to release-of-information issues or violate confidentiality obligations. We suggest clearer delineation between administrative planning and client-directed duties, and clarification that no client records may be transferred without informed consent.

**Answer:** The intent of this section is to ensure there is a plan in place for succession. OPDC and the contractor would work in coordination in the event succession is required.

**11. Case Transition and Succession Limitations (Exhibit C, Section F)**

In the juvenile contract, firms are effectively capped at transitioning only six to seven cases per month when an attorney departs. This implies that a provider cannot fully retire or leave their practice without a year-long runway. Such a constraint is impractical and risks client continuity. We suggest a waiver process or increased flexibility for retirement, long-term leave, or medical departure.

**Answer:** The intent of the provision is to ensure there is a plan for every provider in the event they leave the practice. The provision requires the Contract Administrator to facilitate a succession plan and work with OPDC to ensure coverage. Both the agency and the firm would have a mutual obligation to work together to ensure clients were adequately represented.

**12. Closing Warrant Cases (Exhibit B, Section F)**

This section introduces administrative complications around case closure for clients in warrant status. We recommend that cases placed in long-term warrant status be eligible for zero-weight closure, with the understanding that they may reopen and be reassigned without penalty. This aligns with realistic tracking and billing practices.

**Answer:** The intention was not to create a penalty for an attorney upon reappointment. Language to Exhibit B section F. 4 has been amended to read, “If an Attorney closes a Case because a Client has had a warrant issued for 180 days, the date of withdrawal for the purpose of calculating the length of time an Attorney was appointed to the Case is the date that the warrant was issued. If the same Attorney is re-appointed, then that Attorney will receive the balance of the case weight.”