

**CITY OF FEDERAL WAY
REQUEST FOR PROPOSAL
FOR PUBLIC DEFENDER SERVICES**

I. PURPOSE OF REQUEST.

The City of Federal Way (“City”) is requesting proposals for the purpose of contracting for public defender services for indigent criminal defendants. The City’s needs are outlined in the following Request for Proposal (“RFP”).

II. TIME SCHEDULE.

The City will use the following timetable, which should result in a selection of a firm on or before July 18, 2022.

Issue RFP	June 3, 2022
Deadline for Submittal of Proposals	June 24, 2022 @ 4:00pm
Finalist Interviews	July 11 & 12, 2022
Notify Firm Chosen	July 18, 2022
Start Date of Transition	September 6, 2022

III. INSTRUCTIONS TO PROPOSERS.

A. All proposals should be sent to:

City of Federal Way
Attention: Sherri Nelson, Finance Department
33325 8th Ave S
Federal Way, WA 98003-6325
(253) 835-2527

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

C. All proposals must be received by the Deadline for Submittals of Proposals detailed in Section II – Time Schedule. Three (3) copies of the proposal must be presented. Faxed or telephone proposals will not be accepted.

D. Proposals should be prepared simply and economically, providing a straight forward, concise description of provider capabilities 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 recycled paper for requests and any printed or photocopied material created pursuant to a contract with the City is desirable whenever practicable. Use of both sides of paper sheets for any submittals to the City is desirable whenever practicable.

E. The Mayor or designee will notify the firm selected on or before the date stated in Section II - Time Schedule.

F. All proposals must include the following information:

- The names of those who will be working as or managing public defenders and their qualifications.
- Specific experience of individuals relative to providing public criminal defense services.
- A proposed outline of services factoring in the Supreme Court's Order regarding indigent defense standards and the City's case weighting system.
- Costs based on an estimated low end of approx. 1,075 (in 2021) and a high-end case load of approx. 2,201 (in 2018).
- A proposed budget based on the above.
- References.

IV. SELECTION CRITERIA.

<u>Factor</u>	<u>Weight Given</u>
1. Responsiveness of the written proposal to the purpose and scope of service.	40%
2. Price.	20%
3. Ability and history of successfully completing contracts of this type, meeting projected deadlines and experiences in similar work.	40%
Total Criteria Weight	<hr/> 100%

Each proposal will be independently evaluated on factors one through three.

V. 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 contractor, if the successful contractor 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 so timely withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days to sell 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 available for review and shall include requirements to comply with ADA, Civil Rights Act, and EEO requirements. The City reserves the right to reject any proposed agreement or contract that does not conform to the specifications contained in this RFP, and which is not approved by the City Attorney's office.
- F. The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 432 U.S.C. 2000d to 200d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.
- G. The City shall not be responsible for any costs incurred by the firm in preparing, submitting, or presenting its response to the EFP.

VI. SCOPE OF SERVICES. See also Federal Way Revised Code 2.05.130 – 2.05.220 – Public Defense.

- A. General Description. Pursuant to Chapter 10.101 of the RCW, all indigent criminal defendants, determined to be eligible under Section G below and charged under any and all ordinances of the City of Federal Way who qualify for appointed counsel, 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.** The Public Defender, or subcontractor of the Public Defender, will provide criminal defense services at in-custody hearings, and will be available to talk and meet with indigent defendants in the King County Jail, the Fife City Jail, the Kent City Jail, the Issaquah Jail,

SCORE Jail, or other facility used by the City within thirty (30) miles of the City of Federal Way.

- B. Minimum Qualifications. All attorneys shall meet the minimum qualifications pursuant to the Supreme Court's Order No. 25700-A 1008, Section 14.1.

Lead Public Defender. In order to provide high quality and efficient public defender services, proposals should identify one attorney who will be the Lead Public Defender responsible for contract performance, contact, and communication with the Mayor or designee, the conduct and competence of all defense counsel employed by the Public Defender to represent defendants in Federal Way, and managing coverage for all Federal Way Municipal Court calendars (see attached typical calendar schedule). The Lead Public Defender must manage any coverage issues pursuant to Sections E and R below. The Lead Public Defender should have at least three (3) years of criminal defense experience in the State of Washington and should also be one of the attorneys regularly appearing in court on behalf of defendants. The Lead Public Defender will oversee training, supervision, monitoring, and evaluation of attorneys.

Any violation of the Rules of Professional Conduct, as determined by the Washington State Bar Association, will be cause for removal of a specific defense attorney from appearance in Federal Way courts and/or contract termination.

- C. Services Required. 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.

The Public Defender must commit to reviewing each case before the defendant's first appearance in court post-arraignment, and discuss the case with each defendant prior to the first court appearance post-arraignment. It will also be expected that the Public Defender staff arraignment and in-custody calendars (see attached example calendar schedule).

- D. Reporting. The Public Defender shall prepare and make available for City inspection monthly reports delineating each client who has been appointed the Public Defender, including the name(s), charge(s), cause number(s), disposition, bench or jury trial, and whether an appeal was filed.

The Public Defender will also participate in quarterly performance reviews with the Mayor or designee. The Public Defender will be held responsible for correcting any performance shortfalls according to the performance standards set forth in the contract.

- E. Associated Counsel. Any counsel associated with or employed by the Public Defender shall have the authority to perform the services called for herein, 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, illnesses, and settings in more than one courtroom. No legal intern shall be used.
- F. Term. Public Defender services will commence on September 6, 2022, for a transitional period through December 31, 2022. Full services start January 1, 2023, and terminate on December 31, 2025, subject to successful performance, the contract may be extended for an additional two (2) year term to December 31, 2027 by mutual agreement.
- G. Screening. Determination of indigency for eligibility for appointed counsel for the contract will be determined by an independent screening process established by the City pursuant to RCW 10.101. The City will be responsible for the costs of and handling the screening process. Should the Public Defender determine a defendant is not eligible for assigned counsel, the Public Defender will inform the Court and move to withdraw from the case.
- H. Attorney Conflict. The Public Defender shall maintain a written policy explaining how a conflict of interest is defined, and identify conflicts. In the event the Court appoints the Public Defender in open court or to cover a case on an expedited basis before a conflict check can be performed, the conflict check should be conducted as quickly as possible after such appointment.

When the Public Defender determines the firm has been appointed to represent a defendant whom the firm cannot represent because of a conflict of interest; who is currently facing charges and could subsequently become a witness for the City on a separate charge; or due to other professional rules of conduct resulting in ineligibility; the Public Defender must notify the Court and request withdrawal from the assignment.

No payment will be made to the Public Defender for work performed on cases subsequently identified as conflicts.

If a conflict is created or a conflict attorney is appointed by the Court due to conduct of the Public Defender or designee, then the Public Defender may be billed for the cost of the appointed conflict attorney.

- I. Twenty-Four (24) Hour Telephone Access. The Public Defender shall provide to the City's 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.

- J. Kite/Letters from Defendants In-Custody. The Public Defender shall review all kites and/or letters from defendants who are in-custody, including those defendants that have not been appointed or assigned counsel, and take appropriate action to address those kites and/or letters as appropriate.
- K. Insurance.
- i. Commercial general liability insurance in the amount of \$2,000,000 for each occurrence and \$2,000,000 general aggregate.
 - ii. Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington.
 - iii. Automobile liability insurance covering all owned, non-owned, hired, and leased vehicles with minimum combined single limits in the minimum amounts required to drive under Washington State law per accident for bodily injury, including personal injury or death, and property damage.
 - iv. Professional liability insurance with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate;
 - v. Alternatively, if the proposer is a public agency, shall provide proof of self-insurance with terms acceptable to the City.
- L. Indemnification. The Public Defender shall indemnify, defend, and hold the City, its elected officials and employees, agents, and volunteers harmless from any and all claims, losses, or liability, including all costs and attorneys' fees, arising out of the Public Defender's performance pursuant to the Contract, including claims arising by reason of accident, injury, or death caused to persons or property of any kind occurring by the fault or negligence of the Public Defender, his or her associates, agents, and employees. To the extent that any of the damages referenced by this paragraph are caused by or resulting from the concurrent negligence of the City, its agents, or employees, this obligation to indemnify, defend, and hold harmless is valid and enforceable only to the extent of the negligence of the Public Defender, its officers, associates, agents, and employees.
- M. Expert Services Fees. The City shall reimburse the Public Defender for reasonable expert witness fees if the court orders an expert witness upon motion of the Public Defender.
- N. Discovery Provided. The City shall provide to the Public Defender at no cost to the Public Defender one (1) electronic copy of all discoverable materials concerning each assigned case with the exception of video tapes which shall be made available for inspection in accordance with rules for discovery.
- O. Code Provided. The City of Federal Way municipal code is available on-line at www.codepublishing.com/WA/FederalWay. At the request of the Contractor, the City will provide one (1) copy of the City of Federal Way Revised Code any amendments thereto adopted during the term of this Agreement.

- P. Assignment of Subcontractors. No assignment or transfer of the Contract nor any interest in the Contract shall be made by the Public Defender without prior written consent of the City.
- Q. Standards for Public Defense Services. The Public Defender shall comply with the standards for public defense services. The City has adopted case weighting pursuant to the Order of the Supreme Court. (A copy is attached).
- R. Staffing Levels. Throughout the term of the contract, the Public Defender must provide a sufficient number of attorneys to adequately staff the City's two to four daily courtrooms at Federal Way Municipal Court, staff possible appearances at District Court, King County Superior Court, and/or the Washington Appellate Courts. The City and the Municipal Court will assume punctuality and preparedness to be a part of providing sufficient staffing levels. (See attached typical calendar.)

VII. COMPENSATION

- A. Please present detailed information on the firm's proposed fee schedule for the specifications proposed and for any variation for non-routine services, inclusive of Washington state sales tax and any other applicable government charges. Please provide specifics as to definitions of routine versus non-routine tasks, what is fixed as opposed to variable, and how costs are adjusted according to that classification.
- B. Payment by the City for the services will only be made after the services have been performed, an itemized billing statement is submitted in the form specified by the City and approved by the appropriate City representative, which shall specifically set forth the services performed, the name of the person performing such services, and the hourly labor charge rate for such person. Payment shall be made on a monthly basis, thirty (30) days after receipt of such billing statement.
- C. As is more fully set forth in Section VI (A) above, the parties understand the Public Defender may subcontract for in-custody bail hearing services for defendants while in custody in SCORE or alternative jail site. The compensation described herein shall include the cost of the subcontracted in-custody hearing services, if any.

- (1) Please indicate quote for base price per case. Quote must be specified on a per case basis.

\$ _____

- (2) Please indicate quote for non-routine services and/or services not included in the base price per case above. Specify quote on a per case basis, if at all possible.

\$ _____

- (3) Please describe the services, if any, in excess of the base price per case which is proposed to be provided, if any, and an explanation as to why excess services should be considered by the City.

- (4) Please indicate hourly quote for services in excess of minimum (if any):

\$ _____

VIII. PUBLICATION

Name of Publication:

Dates:

Federal Way Mirror

June 3, 2022
June 10, 2022

City of Federal Way Website
(www.cityoffederalway.com)

June 3 – June 24, 2022

Transitional Court Calendars from 9/6/2022 – 12/31/2022

The following Transition plan items those calendars that the awardee of this contract will staff until taking on all services after 12/31/2022:

1. Weeks 1 and 2 (9/6 through 9/16)
 - a. Every day PM - In custody arraignments
 - b. Tuesday AM - Out of custody arraignments
 - c. Tuesday AM - DV arraignments
 - d. All calls from police
 - e. Responsible for communicating with all defendants for cases added in weeks 3 through end
2. Weeks 3 through end (9/19 through 12/31)
 - a. All of the above
 - b. Every day PM – All H&C in custody cases
 - c. Monday AM - DV pretrials (including tracking reviews)
 - d. Monday PM – Pretrials (including tracking reviews)
 - e. Tuesday AM – Interpreter pretrials (including tracking reviews) and applicable NCO recalls
 - f. Tuesday PM - Motions as needed
 - g. Thursday AM – Pretrials (including tracking reviews)
 - h. Thursday PM - Readiness as needed
 - i. Responsible for communicating with all defendants for cases added after 12/31
3. After 12/31
 - a. All of the above
 - b. Monday AM – DV Reviews
 - c. Monday AM – Reviews
 - d. Tuesday AM – Interpreter reviews
 - e. Communicate with defendants for cases scheduled after 12/31
 - f. All trials

Summary of Typical Week of Court Calendars

Monday

- *+AM: Courtroom 1 – DV Calendar – 2 Public Defenders required
- * AM: Courtroom 2 – Reviews – 2 Public Defenders required
- * PM: Courtroom 1 – Pre-Trials – 2 Public Defenders required
- PM: Courtroom 3 – In-Custody – 2 Public Defenders required

Tuesday

- * AM: Courtroom 1 – Arraignments – 2 Public Defenders preferred
- *+AM: Courtroom 2 – Interpreter/DV Arraignment and NCO Hearings – 2 Public Defenders required
- PM: Courtroom 1 – Motions – 1 Public Defender at a minimum, but adequate staffing shall be provided to cover whatever motions and other hearings are scheduled
- PM: Courtroom 3 – In-Custody – 2 Public Defenders required

Wednesday

- AM: Courtroom 2 – Jury Trials – Number of Public Defenders depends on the number of trials occurring. No more than two trials can take place each week
- PM: Courtroom 3 – In-Custody – 2 Public Defenders required

Thursday

- * AM: Courtroom 1 – Pre-Trials – 2 Public Defenders required
- PM: Courtroom 2 – Readiness – Public Defenders assigned to the trial(s)
- PM: Courtroom 1 – Therapeutic Community Court and PALS cases – 1 Public Defender required
- PM: Courtroom 2 – In-Custody – 1 Public Defender required

Friday

- PM: Courtroom 3 – In-Custody – 2 Public Defenders required

Zoom appearances by counsel are allowed for all calendars except jury trials, as authorized by the court. There must be at least one attorney or staff member physically present in open court to manage current and prospective clients for calendars with a *.

Explanation of Calendars

Arraignments – First appearance in court on a case. Typical calendar has 40-60 cases.

Pre-Trials – Cases are often negotiated here. Typical calendar has 40 cases.

Readiness/Motions – Cases set for trial have a motions and/or readiness hearing the week prior. Calendar typically 8-15 cases.

Jury Trials – Are scheduled every Wednesday.

Reviews – Review of alleged violations of the terms of probation. Typical calendar has 30-50 cases.

DV Calendar+ – All DV cases at all stages of proceedings from pre-trial through reviews. Typical calendar has 20-40 cases.

Interpreter+ – All cases requiring an interpreter at all stages of proceeding from arraignment through reviews. This includes DV cases and DV arraignments. NCO recalls also on this calendar. Typical calendar has 20-40 cases.

+ Calendars are held in the same courtroom simultaneously, called as ready.

In-Custody – Cases heard while defendant is held in-custody including those who were picked up the previous day on either warrants or new cases and have not posted bail. Calendar generally ranges from 5-25 cases. Client preparation and court hearings are typically done by Zoom, but counsel can choose to appear in open court. Defendants are housed in various jails, and are made available via phone (and Zoom in some cases) for private meetings in advance of the calendar.

Therapeutic Community Court and PALS – These are cooperative court hearings that are staffed by a prosecutor, public defender, and community volunteer mentors. Approx. 10 people appear, but is time intensive due to the significant involvement in each case.