

**CITY OF BURLINGTON  
CITY OF MOUNT VERNON**

**REQUEST FOR PROPOSAL  
FOR PUBLIC DEFENDER SERVICES**

**PURPOSE OF REQUEST.**

The City of Burlington and the City of Mount Vernon (“Cities”) are requesting proposals for the purpose of contracting for Public Defender services for indigent criminal defendants.

**TIME SCHEDULE.**

The Cities will follow the subsequent timetable, which should result in a selection of a firm by approximately December 1, 2008. Proposals will be accepted until 4:30 p.m. on November 7, 2008.

**SCOPE OF SERVICES.**

General Description. Pursuant to Chapter 10.101 RCW, all indigent criminal defendants must be provided with effective legal representation. Mount Vernon and Burlington have adopted standards for the provision of public defense services as required by state law. **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.** Assignments to represent clients in the Washington appellate courts will be made through the State OPD system. The Public Defender, or subcontractor of the Public Defender, will attend all court hearings required by the Washington Court or Local Court Rules now or hereafter adopted, shall attend all hearings and trials involving defendants on whose behalf the Public Defender has been appointed, and will be available to talk with and meet, in person, with indigent defendants, at the Skagit County jail, and/or a location in either the City of Burlington or the City of Mount Vernon.

**To ensure consideration of your RFP, response to the RFP must be received by 4:30 p.m., November 7, 2008.**

# **City of Burlington City of Mount Vernon**

## **REQUEST FOR PROPOSAL for PUBLIC DEFENDER SERVICES**

### **I. PURPOSE OF REQUEST.**

The City of Burlington and the City of Mount Vernon are requesting proposals for the purpose of providing Public Defender services for indigent criminal defendants for a period of two years commencing January 1, 2009, with the option of the Parties extending the Contract for an additional two year period. This RFP seeks proposals for one or more of the following alternates: (1) providing Public Defender services solely to the City of Burlington; (2) providing Public Defender services solely to the City of Mount Vernon; and (3) providing Public Defender services to both the City of Burlington and the City of Mount Vernon under a Contract entered with each City. While the Cities will not consider more than one response from a Proposer under the same or different names, the Cities are prepared to consider, and encourage the submittal of, a single response that provides a proposal for more than a single alternative. Proposals are sought from both private law firms and public agencies. As used in this RFP, the term “applicable City” shall refer to either Burlington, Mount Vernon, or both Burlington and Mount Vernon as the context so dictates.

The services for which the applicable City is to pay the Public Defender are representational services, including lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at court proceedings.

### **II. INSTRUCTIONS TO PROPOSERS.**

A. All proposals should be sent to:

City Administrator (Note: City Administrator is Contract Manager)  
City of Burlington  
833 South Spruce Street  
Burlington, WA 98233-1945

- B. All proposals must be in a sealed envelope and clearly marked in the lower left-hand corner: "RFP – Public Defender".
- C. **All proposals must be received by Friday, November 7, 2008, at 4:30 p.m.,** at which time they will be opened. Three (3) copies of the RFP must be presented. No faxed, e-mailed, or telephone proposals will be accepted.
- D. Proposals should be prepared simply and economically, providing a straight forward, concise description of 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 both sides of paper sheets for any submittals to the City is desirable whenever practicable.
- E. Interviews, if desired by Cities, will be scheduled during the week of November 10, 2008. Proposers should take note that a selection may be made by the Cities based on the written proposals submitted, and should plan accordingly.
- F. The firm or attorney selected will be notified on or about December 1, 2008. The City Council of each City must ratify a Contract with the selected firm or attorney as appropriate.
- G. All proposals must include the following information:
  - 1. The names of individuals from those firms who will be providing public defense and their areas of responsibility.
  - 2. A resume of all attorneys that will provide legal services, or supervise the provision of legal services by others, illustrating the attorney's specific experiences in criminal defense.
  - 3. A proposed outline of tasks, including the number of hours required to complete each task. The number of defendants appointed to the Public Defender for Burlington in 2006 was an average of 31 cases per month; however the actual caseload that may be on a court docket for a new calendar would be approximately 98 cases in 2006 and 117 in 2007. These would be cases that have already gone through arraignment and been referred to the Public Defender's office. The actual case load for Mount Vernon in 2006 was an average of 62 cases per month. The actual case load for Burlington in 2007 was an average of 28 cases per month, and the actual case load for Mount Vernon in 2007 was an average of 68.5 cases per month.

The following table shows caseload breakdown for Burlington:

Filings	DUI	Crim Traffic	Noncriminal misd.
2008	64	360	654 doubled first six months
2007	63	302	592
2006	78	313	483

The following table shows caseload breakdown for Mt. Vernon:

	DUI	CR	CR MIS
2008	74	494	763 through 9/30/08
2007	81	536	988
2006	117	428	811

4. A price bid, with a proposed budget based on the above outline of tasks, (include recommendation for transition of current cases from previous law firm, if applicable).
5. A description of the means by which the attorneys that will provide legal services may be reached by defendants after normal office hours and who will be available to speak with non-English speaking clients.
6. In the event the bid proposal is to provide Public Defender services to both Cities, the ability to simultaneously staff two active court rooms with a minimum of one qualified lawyer in each courtroom.
7. References.
8. Types of insurance (self insurance or policy coverage, and level of insurance coverage).

H. Additional information to be included in proposal:

Experience in Providing Defense Services and Contract performance:

1. How long has your firm been in existence? How many years has it practiced criminal defense?
2. Has your firm handled indigent clients? Involving what type of cases?
3. How many attorneys are currently employed by your firm that would be involved in public defense?
4. How many staff employees does your firm employ?

5. Does any employee of the firm have any conflict of interest with the City of Burlington or the City of Mount Vernon?

Contract performance:

1. If your firm has previously provided contract services for a city or county, please provide documents outlining the quality of contract compliance under these previous contracts.
2. Please note specifically any termination in whole or in part or any corrective action under these prior contracts.
3. Has any attorney employed by the firm been disciplined by the Washington State Bar Association?
4. Has any attorney employed by the firm been removed from a case because of a court finding of ineffective assistance of counsel?
5. Has any attorney in your firm been sanctioned by a court for any reason?
6. Has any attorney in your firm had an action for malpractice filed in any court? If so, what was the result of that filing?

Proposed Delivery of Services

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

### **III. SELECTION CRITERIA.**

Factor Weight Given

- A. Reputation and qualifications of the specific individuals to be assigned to act as Public Defender, including ability and history of successfully completing contracts

of this type, meeting deadlines, and experience in similar work, with consideration given to references: 45%

B. Completeness of the written proposal: 10%

C. Competitiveness of fee structure: 45%

Total Criteria Weight 100%

Each proposal will be independently evaluated on factors (a) through (c).

#### **IV. TERMS AND CONDITIONS**

- A. The Cities reserve the right to reject any and all proposals, and to waive minor irregularities in any proposal.
- B. The Cities reserve the right to request clarification of information submitted, and to request additional information from any proposer.
- C. The Cities reserve the right to award any Contract to the next most qualified proposer, if the successful proposer does not execute a Contract within thirty (30) days after the award of the proposal.
- D. Any proposal may be withdrawn up until the date and time set above for opening of the proposals. Any proposal not so timely withdrawn shall constitute an irrevocable offer, for a period of sixty (60) days to provide to the Cities, the services described in the attached specifications, or until one or more of the proposals have been approved by the Cities administration, whichever occurs first.
- E. The Contract resulting from acceptance of a proposal by the Cities shall be in a form supplied or approved by the Cities, and shall reflect the specifications in this RFP. A copy of the Contract is available for review. The Cities reserve the right to reject any proposed Contract or Contract that does not conform to the specifications contained in the RFP, and which is not approved by the Cities Attorney's office.
- F. The Cities shall not be responsible for any costs incurred by the firm in preparing, submitting, or presenting its response to the RFP.
- G. Support Services. By submitting a response to this RFP, the Public Defender warrants that adequate staff services and facilities will be established to enable the effective provision of legal services. This warranty shall continue through the term of the Contract.

- H. Term. Public Defender services will commence on January 1, 2009, for a term of two years, terminating on December 31, 2010. The Parties may mutually agree to extend the resulting Contract for an additional term of two years, terminating on December 31, 2012.
- I. Screening. Determination of indigency for eligibility for appointed counsel for this Contract will be determined by the Skagit County District Court. The Public Defender will not be responsible for screening potential clients. Should the Public Defender determine a defendant is not eligible for assigned counsel, the Public Defender will so inform the court and move to withdraw from the case.
- J. Reporting. The Public Defender shall file monthly reports with the applicable City delineating each client who has been appointed to the Public Defender, including the name(s), charge(s), cause number(s), disposition, bench or jury trial, and whether an appeal was filed. The report shall designate whether the client was "conflicted" to another attorney for representation or the client hired another private attorney. The report is due on or before the tenth (10<sup>th</sup>) day of the following month for services of the prior month.
- K. Case Count. A case is counted where: (1) Pretrial: Each pretrial case is counted only, irrespective of any subsequent reappointments pursuant to FTA. They will be counted at the time of first appointment. Cases subsequently conflicted, or where a private attorney is hired, will be noted on the next report and will not be counted as a Public Defender case. (2) Post-trial conviction status: Cases where a defendant was previously represented by the Public Defender, that were previously counted when they were in a pre-trial status, will not be counted again unless they FTA at a post-conviction hearing. Post-conviction cases where defendants FTA and are subsequently reappointed to the Public Defender will be counted again; however, this will occur only once. No matter how many times a Defendant FTA's and the Public Defender is reappointed when the case is in a post-conviction status, the case will be recounted only once.
- L. 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 and illnesses, and settings in more than one courtroom.
- M. Attorney Conflict. In the event the Public Defender must withdraw from a case because of a conflict of interest, the Public Defender shall refer the defendant to another attorney competent and able to provide legal services to indigents. The cost of conflict counsel shall be paid by the applicable City and not by the Public Defender.

- N. Twenty-Four Hour Telephone Access. The Public Defender shall provide to the applicable City police department the telephone number or numbers at which the Public Defender can be reached for critical stage advice to defendants during the course of police investigations and/or arrests twenty-four (24) hours each day.
- O. Court Rule CRrLJ 4.1. The Public Defender will comply with court policy consistent with Court Rule CRrLJ 4.1 as now or hereafter adopted. Any proposal must take into consideration that currently, a proposed amendment is being reviewed by the Supreme Court which provides that counsel will be present at the arraignment calendar.
- P. Rule of Professional Conduct 3.2. The Public Defender will comply with RPC 3.2 by expediting litigation consistent with the interests of the client. The Public Defender must establish reasonable office hours in which to meet with clients prior to the day of hearing or trial.
- Q. Interpreters. The Public Defender shall be responsible for ensuring the Public Defender's ability to properly communicate with clients. Many clients will speak English as a second language, or not at all.
- R. Professional Liability Coverage. During the term of the Contract, Contract terms shall require the Public Defender to provide Professional Liability Insurance of a minimum of one million dollars (\$1,000,000) or self insurance coverage acceptable to the City; or alternatively, if the proposer is a public agency, shall provide proof of self-insurance with terms acceptable to the applicable City. Written proof of the insurance policy for calendar year 2009 shall be filed with the applicable City at the inception of this Contract and again no later than December 1, 2008 and each succeeding year of the Contract. The Public Defender shall provide the applicable City with proof of insurance for "tail coverage" no later than December 1, 2008. The purpose of "tail coverage" is to provide insurance coverage for all claims that might arise from occurrences during the term of the Contract or extension(s) thereof, but not filed during the term of the Contract. The Liability Insurance provided to the City shall list the City as an additional insured. Without proof of coverage, no payment will be made to the Public Defender until such proof of insurance has been received by City.
- S. Indemnification. The Public Defender shall indemnify, defend and hold the applicable City, its elected officials and employees, agents and volunteers harmless from any and all claims, losses or liability, including all costs and attorney's fees, arising out of the Public Defender's performance of obligations 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 applicable 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.

- T. Discovery Provided. The applicable City shall provide to the Public Defender at no cost to the Public Defender or the defendant one (1) copy of all discoverable materials concerning each assigned case with the exception of audio and video tapes which shall be made available for inspection in accordance with rules for discovery. The Public Defender may receive electronic copies of discovery, or hard copies may be provided.
- U. The applicable City shall reimburse the Public Defender for reasonable expert witness fees if the court orders an expert witness upon motion of the Public Defender.
- V. Code Provided. The applicable City shall provide the Public Defender with a copy of the Criminal Code and any amendments thereto adopted during the terms of this Contract.
- W. Assignment or Subcontractors. No assignment or transfer of the Contract nor of any interest in the Contract shall be made by the Public Defender without the prior written consent of the City.
- X. Termination. The Contract shall be terminable for cause. Good cause shall include the failure of the attorney to render adequate representation to clients; the willful disregard of the rights and best interests of the client; and the willful disregard of the standards set out in this Contract. Any violation of the Rules of Professional Conduct, as determined by the Washington State Bar Association, will be cause for Contract termination.
- Y. Training. Any attorney providing services pursuant to this Contract shall take training approved by the State Office of Public Defense, including at least seven (7) hours per year of continuing legal education (CLE) credits related to criminal defense.
- Z. Supervision. The Public Defender shall provide for appropriate and competent supervision of attorneys, if necessary, depending on their experience, skill and the simplicity or complexity of the cases they are assigned.
- AA. Monitoring. Upon demand by the Contract Administrator, the Public Defender shall provide necessary caseload and time records. The Contract Administrator may also monitor public defense services by review and inspection of transcripts, in-court observations, and through solicitation of comments from judges and other defense lawyers and clients to evaluate their skill and effectiveness as criminal lawyers.

- BB. Non-discrimination. The Public Defender in their representations of clients shall not discriminate on the grounds of race, color, religion, national origin, age, marital status, gender, sexual orientation, or disability. The Public Defender shall comply with all federal, state, and local non-discrimination requirements.
- CC. Private Practice – The Public Defender shall each year provide a listing of hours billed for nonpublic defense legal services, including number and types of private cases. Contractors holding more than one public defense Contract shall list each Contract. Based upon the Cities jurisdictional policies such as post-filing diversion; the opportunity to negotiate the resolution of cases as non-criminal violations; and other court administrative procedures that diminish the burden on attorneys providing services pursuant to this Contract, all attorneys providing services shall maintain a caseload of no more than 450 misdemeanors, or any combination of misdemeanors and other matters that result in an equivalent workload.

## V. SCOPE OF SERVICES.

- A. General Description. Pursuant to Chapter 10.101 of the RCW, all indigent criminal defendants, who are determined to be eligible under Section C below and who are charged under ordinances of the applicable City, will be referred to the Public Defender. **The Public Defender will provide legal representation for each of these defendants from court appointment or screening through trial, sentencing, post-conviction review and any appeals to Superior Court or Washington Appellate Courts.** Such cases include domestic violence cases. The Public Defender will be available to talk and meet with indigent defendants in the Skagit County Jail or elsewhere. The Public Defender will be present at the arraignment calendar consistent with Supreme Court ruling for Court Rule CRrLJ 4.1 as now or hereafter adopted.
- B. Standards for Public Defense Services. The Public Defender shall at all times comply with the Rules of Professional Conduct (RPC) and all other applicable court rules. The Public Defender shall maintain the highest standards of conduct and behavior towards the Court, the prosecutor and all parties. Public Defenders shall endeavor to comply with the “City of Burlington and City of Mount Vernon Standards for Public Defense Services”.
- C. The Public Defender will attempt to initiate contact with assigned clients within twenty-four (24) hours of assignment. The Public Defender will provide their clients with contact information for availability during office hours. The Public Defender will also return client phone calls or other attempts to contact the Public Defender within forty-eight (48) hours, excluding weekends.
- D. The Public Defender must commit to reviewing each case before the defendants first appearance in court post-arraignment, and discuss the case with each

defendant prior to the first court appearance post-arraignment. It will also be expected that the Public Defender may be required to staff arraignment and in-custody calendars.

- E. The Public Defender shall have an office that accommodates confidential meetings with clients and receipt of mail, and adequate telephone services to ensure prompt response to client contact.
- F. The Public Defender shall provide for adequate numbers of investigators, secretaries, word processing staff, paralegals, and other support services including the provision of adequate and competent interpreter services.

## **VI. COMPENSATION.**

- A. Please present detailed information on the firm's proposed fee schedule either on a price-per-case basis or a total yearly/monthly fee, noting any variations for non-routine services. Services covered by this RFP that are not explicitly identified as non-routine will be assumed to be included in the basic fee. Please provide specifics as to definitions of routine versus non-routine tasks, what is fixed as opposed to variable and how costs are adjusted, if at all, according to that classification.
- B. If the proposal includes by-case compensation, payment by the applicable City for the services will only be made after the services have been performed (judgment and sentence or dismissal), an itemized billing statement is submitted in the form specified by the applicable City and approved by the appropriate applicable city representative. Payment shall be made on a monthly basis, in accordance with applicable Cities accounts payable procedures.