STATE OF NORTH CAROLINA
JUDICIAL BRANCH, OFFICE OF INDIGENT DEFENSE SERVICES

REQUEST FOR PROPOSALS FOR LEGAL SERVICES CONTRACTS

ADDENDUM TO RFP #12-0001

TITLE:
Indigent Non-Capital Criminal and Treatment Courts: Trial Level Services in Judicial Districts 9, 10, and 14 (Qualifying and Cost/Price Offers)

ISSUE DATE:
Original RFP Issued May 29, 2012; Addendum Issued July 23, 2012

ISSUING AGENCY:
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EXPLANATION OF ADDENDUM:
RFP #12-0001, which requested offers for non-capital criminal cases and treatment courts in Districts 9, 10, and 14, was the first RFP that IDS has issued pursuant to § 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391. Thus, it was the first opportunity for interested North Carolina attorneys to submit contract offers in response to a RFP. A number of offers that IDS received pursuant to the original RFP contained one or more of the following technical disqualifying errors: 1) failure to execute the offer; 2) failure to submit a separately sealed cost/price offer for per session work (*i.e.*, Durham County treatment courts and Wake County probation violation courts); 3) submission of a handwritten offer; and 4) failure to use the final fillable offer forms for Districts 9, 10, and 14.

RFP #12-0001 was IDS' and the bar's first experience with RFPs and, based on that experience, IDS now plans to build into future RFPs a limited opportunity for offerors to cure technical disqualifying errors if that opportunity would not give those offerors an unfair advantage or substantively improve their competitive position, and for IDS to waive other technical errors, including technical disqualifying errors, where allowing the offeror to cure could lead to a substantive improvement in the offeror's competitive position. In addition, the IDS Commission and Office believe it is in the best interests of the clients, the state, and the public that IDS be able to consider offers from all competent, experienced counsel who met the original submission deadline (postmarked or received at IDS by June 26, 2012). Thus, IDS hereby issues this addendum to allow any offeror who met the original submission deadline a limited opportunity to cure a technical error following notice by IDS or to allow IDS to waive a technical error. As a

result, offerors in Districts 9, 10, and 14 will not be penalized because they happen to practice in one or more districts covered by the first RFP.

This addendum does not give attorneys who did not meet the original submission deadline a new opportunity to submit an offer. It also does not allow offerors who met the original submission deadline to submit any supplemental materials unless they are notified by IDS of the opportunity to cure.

AUTHORITY FOR ADDENDUM:

Section 1.4 of RFP #12-0001 provides that "IDS reserves the right to reject any or all offers received or to negotiate in any manner necessary to serve the best interests of the clients. IDS reserves the right to seek clarifications of offers and to award contracts without further clarification. IDS reserves the right to amend or cancel this RFP without liability if it would be in the best interest of the state and public to do so." In addition, Section 11.4 of the standard contract terms and conditions in RFP #12-0001 provides that "[t]he Request for Proposals, any addendum thereto, and Contractor's offer are incorporated herein by reference."

Section 1.6.B. of RFP #12-0001 provides that "IDS may investigate and seek clarification of apparent errors or ambiguities, but shall not conduct such investigation or clarification if it will give an offeror an unfair advantage." Section .0310 of IDS' Policy for the Issuance of Requests for Proposals and Establishment of Legal Services Contracts similarly provides that "IDS may investigate and seek clarification of apparent errors or ambiguities, but shall not conduct such investigation or clarification if it will allow an improvement in the offeror's competitive position."

ADDENDUM:

Effective July 23, 2012, IDS hereby issues the following addendum to RFP #12-0001:

1.6 General Offer Review Procedures

B. Inadequate Offers

IDS will reject unexecuted offers and offers that do not substantially comply with the requirements, qualifications, and instructions set forth in this RFP, unless they are cured by the offeror or waived by IDS in accordance with Section 3.5.B. of this RFP. IDS may investigate and seek clarification of apparent errors or ambiguities, but shall not conduct such investigation or clarification if it will give an offeror an unfair advantage.

C. Facially Adequate Offers

An evaluation committee appointed by the IDS Director will evaluate offers that substantially comply with the requirements, qualifications, and instructions set forth in this RFP, including offers that are cured by the offeror and offers that contain errors that are waived by IDS in accordance with Section 3.5.B. of this RFP. The evaluation committee shall evaluate

each offer based on its total characteristics and any other information available to IDS and the committee.

3.4 Modification of Submitted Offers

A. When Permitted

Offerors may not modify offers after the submission deadline, unless requested to do so by IDS during negotiations or pursuant to the procedure in Section 3.5.B. of this RFP. Until the submission deadline, an offeror may modify an offer in writing. Modifications must be prepared on the offeror's letterhead and signed by the offeror or an authorized representative.

3.5 Errors in Submitted Offers and Opportunity to Waive or Cure

If ~~IDS or~~ an offeror discovers an error before the submission deadline, the offeror may cure~~amend~~ the error using the procedures for offer modification in Section 3.4, above. If IDS discovers or is notified of an error after the submission deadline, but before contract awards are made, IDS shall proceed as follows:

A. Minor Errors Where Intent of Correct Proposal is Evident

In IDS' sole discretion, IDS may waive or correct minor ~~or insignificant~~ errors when the intent of the correct proposal is evident, including matters of form rather than substance, typographical errors, and other minor technical errors, including minor technical disqualifying errors, ~~and errors that do~~ where waiver will not unfairly prejudice other offerors. Minor technical errors that may be waived by IDS include but are not limited to failure to submit a computer generated offer and failure to use the final fillable offer forms for the covered district(s).

B. Technical Disqualifying Errors

In IDS' sole discretion, IDS may provide electronic or other written notification to all offerors who submitted an offer that contained one or more technical disqualifying errors, and give those offerors a specified time period to cure the error(s) and instructions on the manner in which to cure the error(s). Failure to comply with IDS' written instructions shall constitute waiver of the opportunity to cure. Technical disqualifying errors that may be subject to this cure procedure include failure to execute an offer and failure to submit a separately sealed cost/price offer for per session case types for which a cost/price offer was sought. Failure to meet the original submission deadline shall not constitute a technical disqualifying error that is subject to cure, and offerors who failed to meet that deadline shall not be given an opportunity to cure that error.

~~B.~~C. Major Errors Where Intent of Correct Proposal is Not Evident

IDS will not consider an offer with major errors when the intent of the correct proposal is not evident.

METHODS OF PROMULGATING THIS ADDENDUM:

IDS shall notify all offerors of this addendum via the following methods: publication on the IDS website; posting to all IDS listservs and the North Carolina Advocates for Justice Criminal Defense Listserv; and dissemination through IDS' EBlast notification system. In addition, if an offeror complied with the original submission deadline (postmarked or received at IDS by June 26, 2012), but the offer contained one or more technical disqualifying errors that IDS determines are subject to the cure provisions described above, IDS will notify each affected offeror by electronic notice to the email address provided in the offer.

METHOD OF AND DEADLINE FOR CURING TECHNICAL ERRORS:

Offerors who are given an opportunity to cure a technical disqualifying error must do so in accordance with IDS' written instructions.