



Wisconsin State Public Defender

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State Public Defender

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March 2011

To: All interested parties
From: Deborah M. Smith, Assigned Counsel Division Director
Re: Request for proposals – flat rate contracting

We are currently planning to continue flat rate contracting into the 2011-2013 biennium. The State of Wisconsin, Office of the State Public Defender, is inviting proposals to contract for misdemeanor cases at a flat rate. The attached Request for Proposals contains detailed information regarding technical specifications and response requirements.

Cases will be paid at a flat or fixed fee per case. The term of the contract will be for one (1) year and is anticipated to begin as near to July 1, 2011 as possible and run through June 30, 2012. The contracts may be extended for the 2013 fiscal year.

Please be sure to review the Request for Proposal materials carefully. Please make every effort to make your RFP submission complete.

Significant changes from the last contracting period are:

1. In some counties the rates have gone up and in some the rates have gone down.
2. There are fewer cases available in some counties.
3. The requirement of a dedicated fax line has been eliminated.
4. The contract now allows reimbursement for some parking expenses.

Questions regarding this Request for Proposal process should be directed to Sue Lalk, Assigned Counsel Division, 608.267.1771. All proposals must be received at the Office of the State Public Defender, 315 N Henry St, 2nd Flr., Madison, Wi, by 4:00 p.m. on April 15, 2011.

FLAT RATE/FIXED FEE CONTRACTING IS CONTINGENT UPON OSPD RECEIVING FINAL APPROVAL FROM THE DEPARTMENT OF ADMINISTRATION (DOA) AND GOVERNOR SCOTT WALKER.

REQUEST FOR PROPOSALS
for
PRIVATE BAR FIXED-FEE CONTRACTING

Issued by the
STATE OF WISCONSIN
Office of the State Public Defender
Assigned Counsel Division

March 2011

Proposals must be received no later than
4:00 p.m. C.S.T. on April 15, 2011

For further information regarding this RFP,
contact Contract Administrator Sue Lalk at (608) 267.1771

**LATE PROPOSALS AND PROPOSALS SUBMITTED
BY FAX MAY BE REJECTED**

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PART I

GENERAL INFORMATION

All parties who are interested in being considered for a contract must apply at this time under this Request For Proposals (RFP).

1.1 DEFINITIONS

A. Adjunct Attorney

If there are multiple attorneys within the same law firm contracting to furnish professional services under one contract, all attorneys who are not designated as the lead attorney are adjunct attorneys.

B. Contract

The written legal agreement to provide services pursuant to this RFP (incorporates this RFP and the successful contract group's proposal).

C. Contract Group or Proposer

All attorneys (lead and adjunct) performing work under the contract.

D. Extension

Upon mutual agreement of both parties to the contract, the contract may be extended (with or without modifications) for an additional period of time, not to exceed one year.

E. Law Firm

A business entity composed of one or more attorneys, commonly related as partners or associates, who are ethically obligated by SCR 20:5.1 and 20:5.2. This does not include office sharing or other arrangements of convenience.

F. Lead Attorney

If there are multiple attorneys contracting to furnish professional services under one contract, the contract group will need to designate a lead attorney who is to manage, supervise and direct all other attorneys under said contract in accordance with SCR 20:5.1 and 20:5.2, and to execute all writings on behalf of the contract group. He/she shall assume responsibility for the execution and performance of all requirements under the contract and will be directly and personally responsible thereunder. Said lead attorney will receive the contract payments from the OSPD under his/her social security number, or the firm FEIN#. If there is a sole attorney contracting to furnish professional services under one contract, that attorney is the lead attorney with no adjunct attorneys.

G. Online billing

Submission of invoices through the OSPD web site.

H. OSPD

Office of the State Public Defender.

I. Proposal

The response to this RFP to be used in determining the award of contracts.

1.2 INTRODUCTION

The OSPD is soliciting proposals from attorneys interested in contracting for the provision of legal representation to indigent defendants on misdemeanor cases. The annual contracts are to commence effective July 1, 2011, or as near to that date as is possible. Contracts awarded for FY 12 may be extended for an additional year upon mutual agreement of the parties. Proposers must be certified for misdemeanor appointments by the date of the submission of their proposal. Attorneys who are provisionally certified may not be a lead attorney on a proposal.

Sec. 977.08(3), Wis. Stats., requires that the State Public Defender enter into as many contracts as possible for the provision of legal representation, up to a maximum of 33% of annually appointed cases. The law requires contracts to be for a fixed-fee that is less than would be received under the rotational appointment system.

1.3 SCOPE OF SERVICES

A. General

Under the terms of the contract, the contract groups shall provide competent professional legal representation in accordance with chapter 977, Wis. Stats., Ch. PD 4 Wis. Admin. Code, the Wisconsin Supreme Court rules, and the OSPD Minimum Attorney Performance Standards. Representation shall commence from the time a case is appointed and shall be consistently maintained by the contract group to completion as is set out by the terms of the contract. A sample contract is attached hereto and incorporated by reference as Attachment G for further definition of Scope of Services.

Contract groups may be required to assume intake responsibilities for approximately four (4) hours per month per attorney which would include attending intake training, making eligibility determinations in accordance with agency guidelines and following eligibility verification procedures as set forth by the OSPD. This responsibility also will entail being available for emergencies and short notice interviews with incarcerated persons requesting OSPD services.

The contract group will be expected to timely and accurately complete necessary paperwork, to comply with case opening and closing requirements, and to protect the confidentiality of attorney-client information.

B. Number of cases

Attachment C lists the projected availability of cases in each county. Availability may be affected by a variety of factors (e.g., the number of cases issued by the county district attorney, proposed legislation which would decriminalize current criminal conduct, elimination of authorization to provide representation on some case types for which the OSPD is currently authorized to provide representation, mandated higher caseloads for OSPD staff, conversion of conduct from misdemeanor to felony, and other management reasons). For these reasons, the OSPD cannot guarantee the contract groups' appointment of an exact number or any number of cases. Contract groups selected under this RFP will not be appointed more than a maximum of 250 misdemeanor cases per attorney. If adjuncts leave a contract and are not replaced the maximum number of misdemeanors under the contract will be reduced to no more than 250 misdemeanors per remaining attorney.

C. Payment Rate

Attachment C lists the fixed fee rates for each county. The fixed fee rate is based on the average cost of a rotational misdemeanor.

D. Other OSPD Work

Contract attorneys shall be omitted from the standard misdemeanor rotational private bar appointment process during the period of their contract, except as deemed necessary by the Assigned Counsel Division Director. Contract attorneys may be appointed on other case types, for which they are OSPD certified, through the rotational private bar appointment process. However, the number of contract cases assigned will be counted for SPD consideration of overall attorney workload.

1.4 PROPOSAL CONTENT/CONTRACTUAL OBLIGATIONS

A. Proposal Content

Proposals submitted in response to this RFP shall respond to the specifications stated herein. Failure to respond to any specification may be a basis for a proposer being eliminated from consideration during the selection process. The OSPD reserves the right to reject any or all proposals and to award contracts based on its sole and exclusive discretion and judgment.

In the event of a contract award, the contents of this RFP (including all attachments), RFP addenda and revisions, and the proposal from the successful proposer will become contractual obligations. The OSPD reserves the right to negotiate the maximum number of misdemeanor cases to be appointed and the total contract cost based on cases appointed with the selected proposer prior to entering into a contract. The maximum number of misdemeanor cases to be appointed may be increased during the contract period upon agreement of both parties.

This contract may not be amended or altered without the express written consent of all parties hereto.

B. Contractual Obligations

The contract group is responsible for the accuracy and completeness of the information contained in all documents and reports submitted during the term of the contract.

1.5 CONTRACT TERM

A. Commencement

The anticipated contract term is July 1, 2011, through June 30, 2012. Contracts awarded pursuant to this RFP may be extended for an additional year upon mutual agreement of the parties. The effective date will be determined by the contracting parties during contract negotiations.

B. Termination

A contract may be terminated by either party for any reason.

However, the termination of a contract does not abrogate the contract group's duty to complete any and all cases in which representation has begun under the terms of the contract.

1.6 ISSUING AGENCY

This RFP is issued for the State of Wisconsin by the OSPD. The OSPD is the sole point of contact in the State of Wisconsin during the selection process.

1.7 INCURRING COSTS

The State of Wisconsin is not liable for any costs incurred by any proposer in replying to this RFP, nor any costs not otherwise expressly provided for in this contract.

1.8 REPORTS BY CONTRACT GROUP

Contract groups must keep records pursuant to the terms of the contract attached hereto and incorporated as Attachment G.

1.9 EVALUATION

Evaluation of the work performed under the contract may be conducted by the OSPD, pursuant to the terms of the sample contract attached hereto and incorporated as Attachment G.

1.10 CLIENT CONFIDENTIALITY/RIGHT OF PRIVACY

The contract group shall be responsible for ensuring the confidentiality of all records associated with the performance of the contract. See sample contract, Attachment G.

1.11 INDEPENDENT CONTRACTOR

Attorneys in a contract group are at all times deemed to be independent contractors. The contract does not in any way create the relationship of attorney and client or employee and employer, either between the contract group/contract attorney and the State of Wisconsin, or between the contract group/contract attorney and the OSPD. The contract group exclusively assumes the responsibility for the acts of his/her associates and employees as they relate to the services provided within the scope of the contract. The contract group shall be solely and exclusively responsible for any and all professional errors and omissions that may arise in the course of representing clients under the contract.

1.12 INSURANCE

The contract groups selected under this RFP are considered independent contractors, not state employees; and, therefore, are responsible for obtaining any and all insurance that is needed in their law practice including liability insurance.

1.13 STANDARD TERMS AND CONDITIONS

The State of Wisconsin reserves the right to incorporate standard state contract provisions into any contract negotiated with any proposal submitted in response to this RFP. The Standard Terms and Conditions (DOA-3054), as well as the Supplement to the Standard Terms and Conditions, are attached hereto and incorporated by reference as Attachment E and Attachment F.

1.14 SUBSEQUENT CONTRACT PROPOSALS

Contract groups' performance throughout the life of this contract may be used in evaluating subsequent proposals.

1.15 PUBLIC INFORMATION

It is the intention of the State to maintain an open and public process in the submission, review and approval of contract awards. All material submitted by proposers will be made available for public inspection after the Notice of Intent to Award is issued. This information will be available for public inspection, under supervision, during the hours of 8:00 a.m. - 4:00 p.m., for five business days from the date of said notice, in the Office of State Public Defender, 315 N. Henry St., 2nd Floor, Madison, Wisconsin. No proposal submitted to the OSPD can be marked as confidential, and

any materials so marked, by being included in the proposal, will be considered public information. Final scores for all proposals also will be open for public inspection.

1.16 SUBMITTAL OF PROPOSAL

1. All proposals must be typed in 12-point font.
2. Number of Copies. Proposers must submit one (1) original and one (1) copy of the proposal to the OSPD.
3. Proposals must not exceed six typed pages, in addition to the forms and tables included in the Request for Proposals.
4. Closing Date. The closing date for the receipt of all proposals under this solicitation is April 15, 2011. Proposals sent by FAX will not be accepted. A proposal will be accepted and considered received on time if received by, and stamped in to, the OSPD by 4:00 p.m., Central Standard Time, on April 15, 2011. Proposals not so stamped may not be accepted. Receipt of a proposal by the mail system does not constitute receipt of a proposal by the OSPD, for purposes of this RFP.
5. Proposals must be mailed or hand delivered to:

Sue Lalk, Contract Administrator
Assigned Counsel Division
Office of State Public Defender
315 N. Henry St., 2nd Floor
P.O. Box 7923
Madison, Wisconsin 53707-7923
Phone: 608.267.1771

Proposers are cautioned to allow sufficient time for delivery by the U.S. Post Office, since it can sometimes take two or more days to receive mail from outlying areas. All proposals that are received after the closing date of April 15, 2011, will not be reviewed and will be returned to the proposer. NO EXCEPTIONS WILL BE ALLOWED.

1.17 SUPPLEMENTAL INFORMATION

No additional information will be accepted from a proposer after the deadline for submittal of proposals, unless requested by the OSPD.

1.18 WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn by written notice. Proposals may be withdrawn in person by the proposer or his/her authorized representative, provided that his/her identity is made known and he/she signs a receipt for the proposal.

1.19 TECHNICAL ASSISTANCE

If additional information is required to enable a proposer to interpret the requirements, address such questions to:

ATTN: Sue Lalk, Contract Administrator
Assigned Counsel Division
Office of State Public Defender
315 N. Henry St., 2nd Floor
P.O. Box 7923
Madison, Wisconsin 53707-7923
Phone: 608.267-1771

The deadline for questions is April 8 at 4:00 p.m. Central Standard Time. You may be asked to put your request in writing. The OSPD reserves the right to send its response to your request for additional information to all proposers and to anyone who requests it.

1.20 WAIVER OF INFORMALITIES

The OSPD reserves the right to accept or reject any or all responses to this RFP, waive minor informalities, and to accept only the most qualified offer in the sole and exclusive judgment of the OSPD. The determination of whether an RFP condition is substantive or an informality shall reside solely with the OSPD.

1.21 SELECTION PROCESS - AWARD EVALUATION CRITERIA

All proposals submitted in response to this RFP will be evaluated by the OSPD, which will make the final decision on the selection of contract groups. The award will be made to the proposers who best meet the needs of the OSPD and its clients.

A. Mandatory Provisions

The following provisions are mandatory. Failure to comply will result in ineligibility of the proposal or termination of the contract.

1. All proposers must have a valid, active license to practice law in the State of Wisconsin.

2. All proposers must be SPD-certified to handle misdemeanor cases.
3. All proposers must agree to accept misdemeanor contract cases at the applicable county rate. See County Rate Table attached hereto and incorporated by reference as Attachment C.
4. All proposers must submit only proposals for contracting in the county of their primary office, or the lead attorney's residence.
5. The lead and adjunct attorneys in each proposal must be members of the same law firm.
6. If proposals for more than one county are being submitted from members of a single law firm, the proposals must designate the same lead attorney. Multiple county contracts are discouraged.
7. All proposers must be in compliance with the OSPD and Wisconsin Supreme Court rules regarding continuing legal education.
8. All proposers must have and utilize a working, dedicated business phone line other than a cell phone.
9. All proposers must submit invoices online and must have internet access and valid email account.
10. All proposers must be free of any office phone blocks that would preclude incarcerated clients from telephonically contacting their attorney.

B. Evaluation Criteria

Proposals meeting the mandatory provisions will be evaluated according to the following criteria:

1. Qualifications/Experience 35 points
 - a. criminal law experience and training
 - b. publications/teaching
 - c. experience handling OSPD cases (# and types of cases)
 - d. OSPD certification history
 - e. trial and motion practice
 - f. criminal law related CLE's attended over last three (3) years
2. Professional Record/Reputation 25 points
 - a. responsiveness to clients
 - b. SCR violations
 - c. judicial findings of ineffective assistance of counsel
 - d. investigations and disciplinary actions by the Assigned Counsel Division
 - e. reputation in the legal community
 - f. awards and honors from, as well as contributions to, the profession
3. Working Relationship with the OSPD 20 points

- a. years actively participating in the OSPD private bar program
 - b. compliance with OSPD policies and procedures
 - c. compliance with OSPD Continuing Legal Education requirements
 - d. cooperation and responsiveness to local OSPD offices
 - e. cooperation and responsiveness to Assigned Counsel Division
- 4. Operational Capacity** 20 points
- a. private practice caseload and areas of practice
 - b. ability to meet intake responsibilities
 - c. ability to find/use expert, investigative, interpretive and client services resources
 - d. record keeping and report preparation
 - e. staffing and physical resources
 - f. office sharing arrangements
 - g. location
 - h. space
 - i. accessibility

The points stated above for each category identified shall be the maximum amount awarded for each category.

Proposals from certified Minority Business Entities may have points weighted by a factor of 1.00 to 1.05, to provide up to five percent (5%) preference to these individual minority attorneys or law firms seeking an award. If you feel you qualify as a Minority Business please contact the Bureau of Minority Business Development, Department of Commerce, P.O. Box 7970, Madison, WI 53707, (608) 267-9550.

Local OSPD attorney managers will be completing a Proposer Assessment Form which will be used in the scoring of the Professional Record/Reputation and Working Relationship with the OSPD portions of the above evaluation criteria. A copy of the form is attached hereto as Attachment D.

References listed by proposers may be contacted. Results of any such contacts with references will be used in the determination of final scores.

1.22 AWARD PROCEDURES

The OSPD may, at the conclusion of each step in the evaluation process, negotiate with all proposers who have been determined as being best able to provide quality legal services under the terms of the contract.

1.23 NOTIFICATION OF AWARD

Each proposal will be reviewed by the OSPD. Each proposer will receive written notice as to whom the OSPD intends to award the contracts.

1.24 APPEAL PROCESS

The appeals procedure applies only to those requests for proposals that are \$25,000 or greater.

A proposer who is aggrieved by the Intent to Award a contract may protest to the OSPD. Protesters should make their protests as specific as possible and shall identify Wisconsin State Statutes and Wisconsin Administrative Code provisions that are alleged to have been violated. Notices of intent to protest and protests must be made in writing.

The written Notice of Intent to protest the Intent to Award a contract must be filed with the Office of State Public Defender, 315 N. Henry Street, 2nd Floor, P.O. Box 7923, Madison, WI 53707-7923, and received in that office within five (5) working days after the Notice of Intent to Award is issued.

The written Protest must be received by the OSPD no later than ten (10) working days after the Notice of Intent to Award is issued.

The protester may appeal the decision of the OSPD to the Secretary of the Department of Administration within five (5) working days of issuance of the OSPD decision, with a copy of such appeal filed with the OSPD. The appeal must allege a violation of a statute or a provision of the Wisconsin Administrative Code.

PART II

TECHNICAL SPECIFICATIONS

Proposers are advised to carefully read the RFP, particularly the evaluation criteria (sec. 1.21(B)), before beginning to write a proposal. Please limit your answers to the forms provided (or electronically replicated) plus a maximum of six additional pages.

2.1 IDENTIFICATION PAGE

The first page in your proposal package must be the Identification Page attached hereto as Attachment A or one that has the same information in a similar format.

2.2 QUALIFICATIONS AND EXPERIENCE (35% of total score)

In this section, the proposer must provide information about the lead and adjunct attorneys' qualifications for providing services under the contract.

- ❖ For the lead attorney and each adjunct attorney describe their legal education, training and experience, particularly as they relate to criminal law practice. For each attorney, indicate the level of trial experience and motion practice, specifying any particularly complex or unique issues litigated.
- ❖ Provide a copy of one original (non-boilerplate) motion that was filed in a criminal case by the lead attorney in the last two years. The motion should be a good example of the proposer's experience and should be one which lays out the legal issue on its face. A copy of any supporting affidavit which accompanied the motion should be included. Do not send briefs.
- ❖ List the dates and titles of all legal publications and where published. List the dates and titles of all law related courses taught and name of school.
- ❖ List all criminal law or law office management CLE programs attended in the last 3 years.
- ❖ For the lead attorney, provide two letters of reference. One letter of reference must be from a judge.

2.3 PROFESSIONAL RECORD/REPUTATION (25% of total score)

In this section, the proposer must fully discuss the following, relating to either the lead attorney, an adjunct attorney or the law firm:

- any findings of a violation of a disciplinary rule by the Office of Lawyer Regulation (formerly the Board of Attorneys Professional Responsibility);
- any incidents or circumstances which resulted in open or public admonishment by a judge for allegedly inappropriate, unprofessional or unethical conduct;
- all cases on which a court found ineffective assistance of counsel.

Indicate any legal organizations, boards or committees on which you currently serve or have served on in the past, and any acknowledgements, awards or commendations you have received in recognition of your contributions to the legal profession or your community.

2.4 WORKING RELATIONSHIP WITH OSPD (20% of total score)

In this section, the proposer must indicate the lead and adjunct attorneys' length of participation in the OSPD private bar program, understanding and compliance with OSPD policies and procedures, and satisfaction of OSPD Continuing Legal Education requirements. Also discuss the proposer's relationship with the respective county's local OSPD trial office, other OSPD offices, and the Assigned Counsel Division. In discussing these relationships, include your responsiveness to requests for information, acceptance of appointments, and timely submission of forms (e.g., expert requests, closing forms, vouchers).

2.5 OPERATIONAL CAPACITY (20% of total score)

Discuss the impact of contract misdemeanor cases on your current practice and practice-related resources, as well as your plan for handling the additional cases and intake responsibilities if awarded a contract. Discuss your means of client contact, including how regular contact should/will be made.

Proposers must complete the Operational Capacity Form, attached herein as Attachment B, or provide the same information in a similar format.

ATTACHMENTS

ATTACHMENT A: Identification Page

- A.** Name of Law Firm:
* all lead and adjunct attorneys must be members of the same law firm

- B.** Primary Location of Firm: (street)
(P.O. box)
(city, state, zip)
(telephone #)
(fax #)
(e-mail) **online billing is required, valid email account necessary**

- C.** Name of Lead Attorney:

- D.** Name of Adjunct Attorneys:
 - 1.
 - 2.
 - 3.
 - 4.

- E.** County for which you are submitting this proposal:
 - only one county per proposal
 - only the county of the law firm’s primary office or lead attorney’s residence

- F.** Fixed cost per case (see County Rate Table at Attachment C):

- G.** Annual number of cases you propose handling: Minimum number: _____
Maximum number: _____

- H.** Total cost (fixed cost per case x number of cases):

- I.** For each attorney intended to work under the proposed contract:
 1. Fill in the Attorney Table below or provide all of the requested information in a similar format.
 2. Provide a resume that includes: home address, home telephone, legal experience, publications or teaching experience, education, and training.

Attorney Table

Name of Attorney	Social Security #	State Bar #	Firm Affiliation (partner, associate)	Years of Criminal Law Practice	Estimated % of contract workload

J. Date and Signature of Lead Attorney: _____

ATTACHMENT B: Operational Capacity Form

1. List the areas of law practiced by you and the relative percentage your total work.

2. List what percentage of your total clientele and revenues would be represented by the proposed contract.

_____ % of total clientele
_____ % of total revenues

3. List the job titles and number of full and/or part-time support staff (including investigators). Also, report the amount of turnover among support staff since July of 2008.

4. List the name and firm affiliation (e.g., partner, associate) of each full and/or part-time attorney. Also, report the amount of turnover among attorneys since July of 2008.

5. Describe any present or anticipated office sharing arrangements.

6. Provide the names and phone numbers of at least 1 investigator and 2 experts with whom you have worked on criminal cases in the last 3 years.

7. List and explain any legal action taken against the proposer for failure to comply with the terms of a contract.

8. List any proceedings by, or against, the proposer or proposer's firm under the bankruptcy laws of the United States.

9. List and explain any placement of liens or other encumbrances against any practice-related payment obligations owed by the proposer.

10. Describe the proposer's law office proximity to the contract county's courthouse and bus stops, as well as the accessibility of the office to the disabled.

ATTACHMENT C: County Rate Table

County	Rate	Estimated Available Cases
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Counties with current contracts.

Bayfield	\$413	30
Dane	\$322	800
Jefferson	\$235	30
Milwaukee	\$410	2700
Outagamie	\$313	500
Racine	\$325	750
Rock	\$384	500
Waukesha	\$409	500
Winnebago	\$248	300

Other Counties: At least 100 cases available

BROWN	\$334	650
EAU CLAIRE	\$225	200
FOND DU LAC	\$218	100
KENOSHA	\$326	300
LACROSSE	\$385	350
MANITOWOC	\$237	125
MARATHON	\$266	300
PORTAGE	\$413	125
SAWYER	\$365	200
SHEBOYGAN	\$317	200
WOOD	\$326	200

Other Counties: please request case availability and rate

RFP FY12

ATTACHMENT D: Proposer Assessment Form

Date: March 2011

To: OSPD First Assistants and Deputy First Assistants
 From: Deborah M Smith, Assigned Counsel Division Director
 Re: Assessment of Proposers for Fixed-Fee Misdemeanor Contracts

Please provide your assessment of the Proposers, listed as seeking a contract in your county.
 Scale: **Excellent = 4 Good = 3 Adequate = 2 Inadequate = 1 Poor = 0**
Unknown = ?

Proposers by County	Lead or Adjunct	Assessment of Proposer's Quality of Representation	Assessment of Proposer's Working Relationship with Local SPD Office	Assessor's Last Name
_____ County				
Proposer Name				
Proposer Name				
Proposer Name				
Proposer Name				
Proposer Name				
Proposer Name				
Proposer Name				
_____ County				
Proposer Name				
Proposer Name				
Proposer Name				
_____ County				
Proposer Name				
Proposer Name				
_____ County				
Proposer Name				
Proposer Name				
Proposer Name				
Proposer Name				

For all scores indicating inadequate or poor, please provide a brief explanation.

STATE OF WISCONSIN STANDARD TERMS AND CONDITIONS

Attachment E

ANTITRUST ASSIGNMENT: The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

APPLICABLE LAW AND COMPLIANCE: This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats. and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

CANCELLATION: The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

WORK CENTER CRITERIA: A work center must be certified under s.16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped.

INSURANCE RESPONSIBILITY: The contractor performing services for the State of Wisconsin shall:

Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.

Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

The state reserves the right to require higher or lower limits where warranted.

NONDISCRIMINATION / AFFIRMATIVE ACTION: In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Wis. Stats., sexual orientation as defined in s.111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

Contracts estimated to be over twenty-five thousand dollars (\$25,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than twenty-five (25) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for

approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.

The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.

PATENT INFRINGEMENT: The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

PAYMENT TERMS AND INVOICING: The State of Wisconsin normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.

Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.

A good faith dispute creates an exception to prompt payment.

REFUND OF CREDITS: The contractor agrees to pay the state within 60 days, at the state's request, any credits resulting from the order which the state determines cannot be applied to future invoices.

TAXES: The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

TERMS AND CONDITIONS: The Standard Terms and Conditions (DOA-3054) or the Standard Terms and Conditions for State of Wisconsin Printing (DOA-3604) shall apply to all orders. Copies of these terms and conditions are available upon request from the State Bureau of Procurement.

VENDOR TAX DELINQUENCY: Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

ATTACHMENT F: Supplement To Standard Terms And Conditions

1.0 Certification Of Independent Price Determination

By signing this proposal, the respondent certifies, and in the case of a joint proposal, each party thereto certifies as to its own law firm, that in connection with this procurement: no attempt has been made or will be made by the respondent to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

Each person signing this proposal certifies that: he/she is the person within the respondent's law firm responsible for the decision as to the price being offered herein and that he/she has not participated, and will not participate, in any action contrary to the above section.

1.1 Disclosure Of Independence And Relationship

Prior to award of any contract, a potential contract group shall certify in writing to the OSPD that no relationship exists between the contract group and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision in writing, if those activities of the potential contract group will not be adverse to the interests of the State.

Contract groups shall agree, as part of the contract for services, that during performance of the contract the contract group will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the OSPD or has interests that are adverse to the OSPD. The Department of Administration may waive this provision in writing, if those activities of the contract group will not be adverse to the interests of the State.

ATTACHMENT G: Sample Contract

**OFFICE OF THE
WISCONSIN STATE PUBLIC DEFENDER**

CONTRACTOR CONTRACT # [contract number]

THIS AGREEMENT is entered into by and between the Office of the State Public Defender (hereinafter referred to as OSPD) and the Contractor identified below in IA (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the OSPD has determined that certain persons are indigent and eligible for representation under Chapter 977 Stats., and

WHEREAS, Contractor represents to possess the legal qualifications, education, and experience to represent such persons (hereinafter referred to as “clients”) under Chapter 977 Stats., and

WHEREAS, Contractor is willing to provide professional legal representation to such clients in accordance with the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration for the promises and commitments hereinafter set forth, the OSPD and Contractor hereby agree as follows:

I. SCOPE OF SERVICES

A. CONTRACTOR SPECIFICS

1. Contractor:
 - a.) Lead Attorney – *[name, social security number and State Bar number]*
 - b.) Adjunct Attorney(s) – *[names, social security numbers and State Bar numbers]*
2. Contractor Address – *[business address]*
3. County – *[contract county]*
4. Maximum Number of (M and N) Misdemeanor and Misdemeanor Traffic Cases Which May Be Appointed – *[number]*
(Alternatively, Maximum Number of (M) misdemeanor cases only which may be appointed) – [number]
5. Rate of Pay Per Appointed Case – *[\$]*

- B. GENERALLY.** Contractor shall provide competent professional legal representation in accordance with chapter 977, Wis. Stats., Wis. Admin. Code PD 4, the ethical standards promulgated by the Wisconsin Supreme Court, and the standards of performance set forth by the Request for Proposals and this contract, to appointed clients, up to a maximum number of misdemeanor cases appointed to the Contractor by the OSPD, in the specific county, and at the rate per appointed case indicated herein at I.A.. Clients shall be appointed to the Contractor using an “Order Appointing Counsel”, each of which shall, upon issuance by the OSPD, constitute appointment of a case and comprise part of this agreement.
- C. PERFORMANCE.** It is expressly understood, intended and agreed that the professional legal services provided to clients by Contractor hereunder shall meet the “Minimum Attorney Performance Standards” which are attached hereto and incorporated by reference as Attachment A.
- D. SERVICES.** For purposes of this agreement, the term “services” shall mean those legal services that, from an objective standpoint, are reasonably required for an experienced, ethical and competent attorney to provide an appropriate and effective legal defense or representation in every appointed case.
- E. CASE.** A “case” is defined as one or more charges or allegations within a proceeding brought contemporaneously against one client in a case category where the OSPD provides representation. In most situations, a case is defined by the charging document. One complaint, no matter how many charges, is defined as one case.
- F. SCOPE.** Representation commences from the time of appointment and continues through sentencing, including notice to the client of appellate rights, filing of the notice of intent to appeal when requested by the client, seeking release pending appeal in all misdemeanor jail cases, obtaining credit for jail time served, and resolution of restitution issues.
- G. CONTINUITY OF REPRESENTATION.** Contractor will ensure that each attorney under the contract represents the same client from the opening of the case through final disposition. The only exception to this policy will be where the client indicates a desire for a different attorney within the contracting group. Under no circumstances may any attorney outside the contract group be substituted without prior written approval of the OSPD.
- H. INTAKE.** Contractor, when requested, shall handle intake in the county up to four (4) hours per month per attorney. During this intake period, Contractor will be expected to accurately administer an indigency evaluation form to each person seeking or referred for Public Defender services, and to complete a case opening form for each person found eligible for such services. Contractor shall promptly submit the indigency and case opening forms to the

local OSPD, identifying any case which, in Contractor's professional opinion, would constitute a conflict pursuant to Wisconsin Supreme Court Rules should the case be appointed to him/her for representation.

- I. CASE CLOSING.** Contractor shall, within twenty (20) working days of final disposition of a case, submit to the Assigned Counsel Division all case closing and billing information through the OSPD online billing system.
- J. VOLUME.** No attorney within the contract group will individually handle an annual caseload under this contract greater than the ABA/NLADA standard of the equivalent of 150 felonies.
- K. CONFIDENTIALITY.** Contractor will protect the confidentiality of attorney-client information and work product in accordance with Wisconsin Supreme Court Rules and applicable case law.
- L. INELIGIBLE.** Contractor will contact the OSPD within forty-eight (48) hours of receipt of information which shows, or tends to show, that the client may no longer meet OSPD eligibility standards.
- M. NUMBER OF CASES.** Contractor understands that he/she is not guaranteed appointment of the exact number of cases set forth above at I.A., but that the number represents an estimated projection based on information available as of the date of signing hereunder.

The OSPD does not guarantee any number of cases will be appointed under this contract. Availability may be affected by a variety of factors (e.g., the number of cases issued by the county district attorney, proposed legislation that would decriminalize current criminal conduct, elimination of authorization to provide representation on some case types for which the OSPD is currently authorized to provide representation, mandated higher caseloads for OSPD staff, conversion of conduct from misdemeanor to felony, and other management concerns).

The maximum number of cases set forth above in I.A. may be increased upon the mutual agreement of the parties.

- N. WITHDRAWAL.** In the event Contractor withdraws from a case prior to the conclusion of representation, Contractor shall immediately return the case to the local OSPD office and complete the case billing and closing information using the OSPD online billing system. Compensation, if any, for a non-completed case shall be determined solely by the OSPD. As cases are counted at time of appointment toward the contract maximum stated above at I.A. cases from which Contractor withdraws may be counted toward that contract maximum. Replacement cases may be appointed.

O. REFUSAL OF APPOINTMENT. In the event Contractor refuses appointment of a case, that refusal may be counted as a case toward the contract maximum stated above at IA. at the sole discretion of the OSPD.

P. REQUEST FOR PROPOSALS. In addition to the terms expressly stated in this contract, the contents of the Request for Proposals (including attachments), RFP addenda and revisions, and the Contractor's proposal are contractual obligations.

II. TERM

A. PERFORMANCE. Performance under this contract is binding upon execution commencing July 1, 2011 and ending June 30, 2012. The ending date of this contract, however, does not abrogate Contractor's duty to complete any and all cases in which representation has begun under the terms of this contract.

B. EXTENSION. This contract may be extended for a period not to exceed one year, with or without modifications, upon mutual agreement of the OSPD and the Contractor. However, no extension or disbursements under an extension will be made by the State of Wisconsin without approval from the Governor.

III. CONTRACTOR PAYMENTS

A. CONTRACTOR PAYMENTS. Subject to the terms and conditions set forth in this agreement, the OSPD agrees to pay Contractor for services rendered at the rate set forth above at I.A. not to exceed the maximum number of cases set forth above at I.A..

B. PAYMENT METHOD. Payment shall be made to Contractor as follows:

1. The OSPD will make reasonable efforts to make payments to Contractor within ten (10) business days after billing and case closing information is submitted using the OSPD online billing system.
2. Payments to Contractor shall be made payable to the Lead Attorney under his/her social security number or FEIN.
3. Upon early termination of this agreement, the OSPD shall be liable only for the pro rata amount of the professional legal services actually performed in accordance with the terms and standards of this agreement by Contractor, through the effective date of termination, less any damages caused by the negligent or non-conforming performance of Contractor.

C. EXCLUSIVE COMPENSATION. No attorney representing clients under this contract may solicit or receive compensation from those clients, or on behalf of those clients, in addition to any compensation which the attorney has received or expects to receive from the OSPD, pursuant to this contract.

IV. EVALUATION

CONTRACTOR PERFORMANCE EVALUATION. On-going evaluation of the work performed under this contract may be conducted. Contractor agrees to cooperate with the OSPD in any evaluation or investigation, including promptly providing case information and other data upon request.

V. CONTRACT COST CONSIDERATION

COST PER CASE. The rate per case paid to Contractor is designed to cover all costs associated with representation of a client under the terms of this contract.

Additional payments may be made by the OSPD to Contractor for the expense of, collect calls from clients, discovery and transcripts with proper receipts, and parking expense other than metered parking. Invoices with calls totaling \$50 or more must include copies of phone bills showing the calls claimed. Parking receipts are required.

Contractor will be reimbursed for necessary experts, investigators, and interpreters. However, such expenses must have prior written approval by the OSPD. Procedures for requesting necessary experts, investigators, interpreters are set forth in Attachment G. The OSPD reserves the right to refuse expense payment for the employment of any of the aforesaid services acquired without prior written approval of the OSPD.

VI. QUALIFICATIONS OF CONTRACTOR

CONTRACTOR ATTORNEY QUALIFICATIONS. Each attorney providing services under this contract must be related in the same law firm (not office sharing) and ethically obligated under SCR 20:5.1, and 20:5.2. Each contract attorney must meet all of the certification requirements contained in Wis. Admin. Code PD 1.04 for the case types covered by this contract. The lead attorney may not be in provisional certification status. Each contract attorney must comply with the CLE requirements set forth by the Supreme Court and the Wisconsin State Public Defender. No reimbursement shall be provided by the OSPD for these courses.

VII. LEAD ATTORNEY

LEAD ATTORNEY. Contractor hereby designates the attorney identified above at I.A. as the Lead Attorney who shall manage, supervise, and direct all attorneys furnishing professional services pursuant to this contract, in accordance with SCR 20:5.1 and 20:5.2, and to execute all writings on behalf of Contractor. The Lead Attorney shall assume responsibility for the execution and performance of all requirements under this contract and will be directly and personally responsible hereunder. All contract communications and notices hereunder shall be sent to the Lead Attorney at Contractor's business office address as shown in this contract at I.A.. Contractor shall keep the OSPD informed at all times of his/her correct address. All contract payments shall be made to the Lead Attorney under his/her social security number or FEIN number.

VIII. TERMINATION

This contract may be terminated by either party for any reason. The following shall justify immediate termination of the contract by the OSPD. The OSPD may impose conditions on the Contractor to continue the contract. Failure to exercise the right of termination shall not constitute waiver of such right, which may be exercised at any subsequent time.

1. The failure of Contractor to comply with any of the terms of this contract or any reasonable direction on the part of the OSPD;
2. Institution of proceedings by, or against, Contractor under the bankruptcy laws of the United States;
3. A finding by the OSPD that this contract was obtained through fraud by commission or omission;
4. Any assignment by Contractor of all or any parts of this contract without prior written approval;
5. Filing of a public complaint with the Wisconsin Supreme Court by the Office of Lawyer Regulation alleging that a contract attorney has violated a disciplinary rule;
6. The commencement of criminal prosecution of Contractor's firm or Contractor's attorneys upon evidence which gives rise to a reasonable concern for the welfare of clients or the financial welfare of the OSPD; or, a conviction of these attorneys for any misdemeanor or felony offense;
7. Loss of any Contractor attorney's license in any state for disciplinary reasons, or in Wisconsin for any reason;
8. The placement of liens or other encumbrances against the payment obligations owed to Contractor under the terms of this contract;
9. Refusal by Contractor to allow OSPD access to or copying of Contractor records or reports associated with this contract;

10. Failure of Contractor to fully, promptly and responsively cooperate with an OSPD investigation of alleged misconduct, ineffectiveness or negligence by Contractor;
11. Failure of Contractor to timely submit case-closing information;
12. Disregard by Contractor of the rights and/or best interests of the clients under this contract;
13. Conduct of the Contractor which threatens or impairs the financial integrity of the OSPD; or
14. A finding of ineffectiveness by any court applicable to any client, contract based or otherwise.

IX. INDEMNIFICATION

SAVE HARMLESS AND INDEMNIFICATION. Contractor shall assume the defense, including paying for all costs associated therewith, indemnify and save harmless the State of Wisconsin, the OSPD, its board members, administrators, employees and staff from all suits, actions, damages, or claims of every name, nature and description that they may be subjected to or put to by reason of claimed injury to persons, property or interests during the performance of this contract, resulting from, or alleged to have resulted from the negligence, carelessness, or willful acts of Contractor or his/her agents, servants or employees, in the performance of this contract.

X. NON-ASSIGNMENT AND SUBCONTRACTING

NO ASSIGNMENT OR SUBCONTRACTING. Contractor shall not assign this contract or assign responsibility or compliance with any part of this contract or assign the right to receive payment under this contract to anyone without the prior written consent of the OSPD.

XI. INDEPENDENT CONTRACTOR

CONTRACTOR AS INDEPENDENT CONTRACTOR. The contract group, as individual attorneys and as a whole, are at all times deemed to be independent contractors. This contract does not in any way create the relationship of attorney and client or employee and employer, either between Contractor and the State of Wisconsin, or between Contractor and the OSPD. Contractor exclusively assumes the responsibility for the acts of his/her associates and employees as they relate to services provided during the course and scope of this contract. Contractor shall defend and hold the OSPD, and individuals associated therewith, harmless against any claims to the contrary.

XII. CONTRACT DISPUTES

All disputes between the Contractor and the OSPD pertaining to the terms of this contract shall be resolved according to the following procedure:

- A. Claim of Dispute:** The Contractor may request resolution of any dispute pertaining to the terms of this contract by filing a Claim of Dispute (“Claim”) with the Director of the Assigned Counsel Division (“Director) within thirty (30) days after the dispute arises. The Claim must be in writing and contain a concise statement of the matter in controversy together with any existing supporting documentation. The Director shall issue an answer to the Claim within thirty (30) days of its receipt. Submission of a Claim to the Director is a prerequisite to resolution by appeal to the State Public Defender.
- B. Appeal to the State Public Defender:** If the Contractor is not satisfied with the answer issued by the Director, the Contractor may file an appeal with the State Public Defender. The appeal must be in writing and received by the State Public Defender no later than fifteen (15) days from the issuance of the Director’s answer. The State Public Defender or his/her designee shall issue a decision within fifteen (15) days of receipt of the appeal. Appeal to the State Public Defender is a prerequisite to resolution by arbitration.
- C. Arbitration:** If the Contractor is not satisfied with the decision issued by the State Public Defender, the matter in controversy may be submitted to arbitration as set forth below and pursuant to the Wisconsin Arbitration Act:
1. **Written Demand.** The Contractor may make a demand for arbitration by filing such a demand, in writing, to the Director. The demand shall be made within fifteen (15) days of the date of issuance of the State Public Defender’s decision on appeal. The Claim’s original statement of the matter in controversy with supporting documentation shall constitute the entire subject matter to be heard by the arbitrator, unless the parties agree to modify the scope of the issue at the hearing.
 2. **Selection of Arbitrator(s).** The arbitrator shall be an attorney selected by the OSPD. The arbitrator shall not be on the current OSPD certification lists or part of a firm with attorneys on the current OSPD certification lists. The Contractor may reject one such selection of an arbitrator by filing a written rejection notice with the Director within ten (10) days of the date of issuance of the notice of arbitrator selection.
 3. **Expenses.** The parties to the arbitration shall each bear their own expenses in the arbitration for their respective attorney’s fees, witnesses and related expenses.
 4. **Cost and Fees.** The losing party shall pay administrative costs and arbitrator fees, unless otherwise divided or awarded by the arbitrator. If, in the arbitrator’s judgement, it is deemed more equitable to divide

the arbitration costs and fees between the parties, the arbitrator shall determine in what portion against each party such costs and fees shall be assessed.

5. **Binding Effect.** Any award rendered in arbitration shall be final and binding on each of the parties and judgement may be entered in any court having jurisdiction.

XIII. PRIVATE PRACTICE

PRIVATE PRACTICE OF LAW. Neither Contractor, nor the named attorneys under this contract, shall be prohibited from engaging in the private practice of law, including the handling of criminal cases.

XIV. TIME SHEETS AND RECORDS

A. TIME AND EXPENSE REPORTS. Contractor shall prepare, and maintain contemporaneous time records and expense documentation for each case appointed to him/her by the OSPD. Time records may be prepared and maintained using the OSPD online billing system. The information to be maintained must include:

1. The date on which legal services were provided;
2. The time actually spent in performing such legal services, calculated to the nearest tenth of an hour;
3. The name of the attorney who actually performed such legal services;
4. With respect to legal research, the specific issues researched;
5. The reason and length of time for every in-court appearance; and
6. Unusual costs incurred in the case, such as, investigator, expert or unusual travel expenses.

CONTRACTOR RECORDS. Contractor shall also make available for inspection and copying: pleadings, briefs (unless confidential by statute), time records, expense records and other documents relating to an appointed case. Contractor shall keep and retain such records for a period of at least six (6) years following the conclusion of an appointed case. Failure to produce such records for inspection and copying by the OSPD may result in forfeiture of Contractor's right to payment under this contract and cancellation of the contract.

XV. AUDITS

AUDIT BY OSPD. All records required by this contract are subject to inspection from time to time by the local OSPD office personnel or an Assigned Counsel

Division representative. The OSPD may approve or reject a bill in whole or in part if the records are incomplete, inaccurate, fraudulent, lack necessary documentation, or do not support Contractor billings.

XVI. WARRANTIES AND REPRESENTATIONS

By signing this contract, Contractor hereby warrants and represents that:

1. After reasonable inquiry, Contractor is not aware of any conflict of interest within the meaning of SCR 20:1.7, 20:1.8, 20:1.9 or 20:1.10 that would preclude Contractor from providing the professional legal services to clients appointed under this agreement;
2. Neither a state public official, as defined in §19.42(14), Stats., nor an organization in which a state public official or a member of that official's immediate family owns or controls a ten (10%) percent interest, is a party to this contract; and
3. If a state public official, as defined in §19.42(14), Stats., or an organization in which a state public official or a member of that official's immediate family owns or controls a ten (10%) percent interest, is a party to this contract, then, this contract shall be voidable by the State and any amounts paid hereunder may be recovered as provided in §16.77(2), Stats. and Wis. Admin. Code ADM 10.10(5), unless appropriate disclosure is made to the State of Wisconsin Ethics Board.

XVII. AFFIRMATIVE ACTION REQUIREMENTS

A. NONDISCRIMINATION. In connection with the performance of work under this contract, Contractor and his/her law firm agree not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, gender, physical condition, developmental disability as defined in §51.01(5), Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, Contractor, and his/her law firm, further agree to take affirmative action to ensure equal employment opportunities. Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

B. AFFIRMATIVE ACTION EFFORTS. Contractor, and his or her law firm, agree to make every reasonable effort to: (1) develop a balanced work force that includes women, minorities, individuals with disabilities, and other persons in protected classifications employed by the Contractor that is

proportional to the percentage of women, minorities, individuals with disabilities and other persons in protected classifications in the relevant labor market based upon data prepared by an appropriate governmental entity; (2) in the absence of reliable government data, ensure that at least two (2) percent of the work force includes qualified individuals in protected classifications; and (3) avoid allocating the work force in a manner which circumvents the intent of this subparagraph. If this contract is for twenty-five thousand dollars (\$25,000) or more, and the annual work force is ten or greater, within fifteen (15) days of the date of this contract, the Contractor and his/her law firm shall submit to the OSPD a written affirmative action plan.

XVIII. ENTIRE AGREEMENT

This contract contains the entire agreement of the parties. Any amendment, modification or alteration hereto must be in writing signed by both parties.

XIX. CHOICE OF LAW; SAVINGS CLAUSE

This agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, including, without limitation, Chapter 977, Stats., Wis. Admin. Code PD 4, and Supreme Court Rules governing the ethical conduct of licensed attorneys. If any provisions of this agreement are determined to be prohibited by or invalid under Wisconsin law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions of this agreement.

XX. VENUE AND JURISDICTION

VENUE, JURISDICTION. Any action relating to the construction, interpretation, enforcement or recovery of amounts owed under this agreement shall be brought and venued in the Dane County Circuit Court in Madison, Wisconsin; provided, that nothing herein shall be construed to waive any sovereign immunity or other defenses that the OSPD may have under applicable Wisconsin law. Contractor hereby consents to personal jurisdiction in the Dane County Circuit Court, and waives any jurisdictional defense that Contractor otherwise might have relating thereto.

XXI. EFFECTIVE DATE

EFFECTIVE DATE. This agreement shall become effective immediately upon acceptance and execution by the OSPD. It is expressly understood between parties to this that terms hereof are not in full force and effect until written

gubernatorial approval has been executed. No work may proceed prior to the Governor's approval.

XXII. REPRESENTATIVE CAPACITY

It is understood, intended and agreed that the OSPD, as an agency, is executing this agreement as an agent and representative of the State of Wisconsin and assumes no direct personal liability hereunder.

XXIII. CAPTIONS

The captions in this agreement are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties have executed this agreement as of the first date set forth above.

OFFICE OF THE WISCONSIN STATE PUBLIC DEFENDER

BY: _____
STATE PUBLIC DEFENDER OR DESIGNEE

DATE: _____

CONTRACTOR

BY: _____
Lead Attorney *[name]*

DATE: _____

Approved Pursuant to Section 20.930, Wisconsin Statutes

Governor or Governor's Designee

Wisconsin State Public Defender
Minimum Attorney Performance Standards for Appointed Private Bar Counsel

The following are the minimum attorney performance standards for appointed private bar counsel adopted by the Wisconsin State Public Defender. These standards require an attorney to do more than merely comply with Supreme Court Rules and stay above the threshold for ineffective assistance of counsel. These standards reflect the commitment in our mission statement to provide high quality legal services.

“Appointed attorney” refers to an attorney in private practice who is certified to take appointments to represent clients from the Wisconsin State Public Defender. Except for those rules which reference issues peculiar to the private bar, e.g. certification, these standards reflect the same expectations the Wisconsin State Public Defender has for staff attorneys.

Generally

1. An appointed attorney shall comply with all Supreme Court Rules, including both the Rules of Professional Conduct in SCR Chapter 20 and the Standards of Courtesy and Decorum in SCR Chapter 62.
2. An appointed attorney shall comply with local court rules in the counties in which s/he practices.
3. An appointed attorney shall comply with statutes, administrative code rules, and State Public Defender policies and procedures related to public defender appointments, certification and billing.
4. In all cases, including, but not limited to, those under Wis. Stats. Chapters 48, 51 and 55, an appointed attorney appointed by the State Public Defender shall function as adversary counsel.
5. An appointed attorney shall maintain an up-to-date client file, detailing all action taken on the case and including copies of all relevant court filings and other papers. The file is the property of the client and must be tendered to the client upon request at the close of the case unless the file is being forwarded to successor counsel.
6. An appointed attorney shall retain all client files not turned over to the client or successor counsel for a minimum of six years and follow all Supreme Court rules regarding the disposal of client files and property.
7. An appointed attorney shall cooperate fully with successor counsel. This includes promptly delivering the client file and answering questions about the earlier representation, unless the client has directed counsel not to do so.
8. An appointed attorney shall cooperate with inquiries from the state public defender regarding the status of appointed cases and performance or billing issues in appointed cases.

**Wisconsin State Public Defender
Minimum Attorney Performance Standards for Appointed Private Bar Counsel**

Competence and Diligence

1. An appointed attorney shall accept only those cases for which s/he can provide competent representation. Certification by the State Public Defender for a particular case type or category is not the same as competency to provide services in any individual case.
2. An appointed attorney shall personally act as an advocate for the client and provide zealous, effective and high-quality representation to the client at all stages of proceedings. An appointed attorney may arrange for another certified attorney to provide coverage of a routine appearance in the event a scheduling conflict that cannot be avoided.
3. An appointed attorney shall know to a reasonably proficient standard all relevant Wisconsin substantive law and procedure and keep abreast of developments in substantive and procedural law.
4. An appointed attorney shall meet all statutory and court-imposed deadlines.
5. An appointed attorney shall meet promptly with the client, in person, whether in custody or not. Ordinarily, the first meeting with the client should take place as soon as practicable after appointment. In appellate matters, an in person meeting may be delayed until the attorney has had a chance to review the file and transcripts.

Communication

1. An appointed attorney shall explain the role of attorney and attorney-client relationship, determine background information and solicit the defendant's version of the facts.
2. An appointed attorney shall consult with the client as often as necessary to elicit the information necessary to build a defense.
3. An appointed attorney shall keep the client reasonably informed about the status of his/her case, defense strategies, tactical choices, consequences of conviction, and explain the nature and purpose of court proceedings.
4. An appointed attorney shall promptly respond to the client's reasonable requests for information, including providing a copy of any motion or brief filed in the client's case upon request of the client.
5. An appointed attorney shall present and consult with the client about all plea negotiations and offers of settlement.

**Wisconsin State Public Defender
Minimum Attorney Performance Standards for Appointed Private Bar Counsel**

6. An appointed attorney shall explain matters to the extent reasonably necessary to allow the client to make an informed decision regarding the case.

Practice Standards – Trial

1. An appointed attorney shall actively represent an in-custody client on the issue of release throughout the case.

2. An appointed attorney shall review and examine the complaint and accompanying papers, information or other charging document and determine the sufficiency of the same.

3. An appointed attorney shall obtain and review all discovery materials, including but not limited to police reports, all written or recorded statements of the defendant, names of witnesses to any written or recorded statements, a copy of the client's criminal record, if any, and statements of witnesses, a copy of the criminal record of prosecution witnesses; and examine physical evidence and/or reports of physical evidence. (This requirement can be waived by the client after being advised of the implications of doing so.)

4. An appointed attorney shall arrange for the client to review discovery materials in so far as it is necessary for the client to make informed decisions about his/her case. An attorney should provide copies of some or all of the discovery as necessary to properly inform the client.

5. An appointed attorney shall cause an investigation of the facts including attempting to interview appropriate defense or prosecution witnesses. (This requirement can be waived by the client after being advised of the implications of doing so.)

6. An appointed attorney shall analyze all legal issues presented in the case. In consultation with the client, an attorney shall decide which issues have merit and make strategic decisions about issues to be pursued. An appointed attorney shall then file and argue appropriate motions.

7. An appointed attorney shall utilize experts, investigators, interpreters and other professional support where appropriate.

8. An appointed attorney shall consider all appropriate available diversion, treatment court, and other alternatives to prosecution.

9. An appointed attorney shall prepare the case for trial or hearing, as appropriate, and advise the client of the procedures to be followed and his/her rights.

10. An appointed attorney shall prepare a plan or argument for sentencing for the client if the client is convicted, and advise the client of the sentencing procedures.

**Wisconsin State Public Defender
Minimum Attorney Performance Standards for Appointed Private Bar Counsel**

11. An appointed attorney shall inform the client of his/her right to appeal, file a notice of intent to pursue post-conviction relief if requested to do so by the client, and make a proper referral to the WSPD appellate division.
12. An appointed attorney assigned to handle cases involving the revocation of probation, ES or parole, rescission of parole, and reconfinement shall do all of the following:
 - a. obtain and review all DOC documents relevant to the administrative or court hearing
 - b. where appropriate, review material held by the DOC including but not limited to the client's file held by his/her agent
 - c. review information regarding the offense(s) underlying the supervision
 - d. coordinate representation with any attorney handling a new criminal matter for the same client
 - e. insure that issues regarding sentence structure and sentence credit are properly resolved
 - f. represent the client through the administrative hearing
 - g. file an administrative appeal unless after consultation with the client the client consents to foregoing the administrative appeal
 - h. review the decision on the administrative appeal and determine if grounds exist for filing a Writ of Certiorari; advise the client whether viable grounds to file a Writ of Certiorari exist, and consult with the client regarding whether to pursue such a Writ if the attorney has determined there are viable grounds; pursue a Writ of Certiorari when appropriate.
 - i. represent the client in the related reconfinement hearing or sentencing after revocation, unless successor counsel is appointed.

Professionalism and Ethics

1. An appointed attorney shall treat the client, the client's family, and other members of the public with courtesy and respect. An appointed attorney should be mindful of the rules related to confidentiality and loyalty to the client when speaking with family members and others.
2. An appointed attorney shall maintain civility and respect towards the courts, courthouse staff, prosecutors, law enforcement, local public defender office staff, and members of the public.
3. An appointed attorney shall maintain a system of conflict checks.
4. An appointed attorney shall maintain his/her skills and keep up with changes in the law and the practice of law. An appointed attorney will report his/her approved CLE credits to the state public defender as required by the administrative code.

**Wisconsin State Public Defender
Minimum Attorney Performance Standards for Appointed Private Bar Counsel**

5. An appointed attorney shall not appear in the workplace, including, but not limited to a courthouse, jail or other correctional facility, treatment or other placement facility, nor meet with a client, the client's family, or a witness in a case while impaired by drugs or alcohol or with a noticeable odor of intoxicants.

6. An appointed attorney shall not accept a case appointment for a client with whom s/he has had a personal or sexual relationship. An appointed attorney shall not accept a case appointment for a client for whom s/he is or was the guardian or protective payee.