

**CITY OF KIRKLAND
REQUEST FOR QUALIFICATIONS**

Job Number 45-16-CMO

CONFLICT CASE PUBLIC DEFENDER SERVICES

The City of Kirkland is requesting a statement of qualifications from law firms or individual lawyers interested in providing conflict case public defender services on a contractual basis. The Conflict Public Defender will provide legal representation for all indigent criminal defendants charged under ordinances of the City or the Revised Code of Washington who qualify for appointed counsel and cannot otherwise be represented by the City's contracted Public Defender. Qualifications are requested for firms and individuals that can provide Conflict Public Defenders December 1, 2016. The City presently contracts with outside counsel for public defender services and contracts with various firms for conflict cases. The City anticipates entering into a one or two year contract with multiple firms that are available to serve on a roster for conflict public defender services upon completion of the request for qualifications process.

City Profile

The City of Kirkland is located four miles east of Seattle. Incorporated in 1905, Kirkland has grown to an area of 17 square miles with a population of over 83,000. The Kirkland Police Department currently has 98 commissioned Police Officers. The City of Kirkland is a Council-Manager form of government.

The Municipal Court

The Kirkland Municipal Court began operating in 1995. Kirkland also provides Court services to Medina, Clyde Hill, Yarrow Point, and Hunts Point and, beginning January 2, 2017 for the City of Woodinville. This request for qualifications does not include public defender services for these cities and towns. The following table shows the total number of criminal cases filed in Kirkland Municipal Court:

<u>Year</u>	<u>Criminal Non-Traffic</u>	<u>Criminal Traffic (including DWI)</u>
2013	686	1,671
2014	594	1,471
2015	660	1,266
2016 (January through August)	427	745

As of August 31, 2016, 46 cases have been referred to a conflict public defender.

Services Requested/Qualifications

- **General Description** - All indigent criminal defendants charged under ordinances of the City who qualify for appointed counsel are referred to the Public Defender. In instances where the City's contracted Public Defender has a conflict, the City will refer defendants to one of a roster of public defense firms. The Conflict 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 the Superior Court or Washington Court of Appeals. Whenever the Conflict Public Defender is counsel of record for an individual who is jailed on a City matter, the Conflict Public Defender shall be available to appear in Court before such individual has been in custody for 24 hours; except that, this does not require the Conflict Public Defender to be available to appear in Court on Saturdays, Sundays, or City holidays. The Conflict Public Defender may withdraw upon completion of the case as allowed by the Rules of Professional Conduct.
- **Screening** - Determination of indigency for eligibility for public defender services will be determined by a screening process established by the City. The City will be responsible for the costs of and handling the screening process. Should the Conflict Public Defender determine a defendant is not eligible for assigned counsel, the Conflict Public Defender will advise the Court and move to withdraw from the case, subject to the Conflict Public Defender's professional duties under the Rules of Professional Conduct.
- **24-Hour Telephone Access** - The Conflict Public Defender shall provide to the Kirkland Police Department the telephone number or numbers at which the Conflict Public Defender can be reached for "critical stage" advice to defendants during the course of police investigations and/or arrest 24 hours each day.
- **Reporting** – The Conflict Public Defender shall file quarterly reports with the City which include each client who has been appointed to the Conflict Public Defender, the charge(s), cause number(s), disposition, bench or jury trial, and whether an appeal was filed. The report is due on or before the 30th day after the end of each quarter as to clients represented in the previous quarter.
- **Associated Counsel** – The Conflict Public Defender may employ associated counsel to assist at the Conflict Public Defender's expense. The Conflict Public Defender and all associated counsel shall be licensed to practice law before the courts of record for the State of Washington. The Conflict Public Defender shall be responsible for overseeing and approving services performed by other attorneys. The Conflict Public Defender must immediately report to the City any change affecting the maintenance of membership in good standing of the Washington State Bar Association. No legal interns shall be used unless agreed to in advance by the City.
- **Public Defense Standards** – All public defense services will be provided in accordance the Washington State Supreme Court rules for Indigent Defense Standards Order No. 25700-A-1004.

The Conflict Public Defender provides discovery, manages cases, and issues subpoenas as needed. Public defender services also include representing indigent criminal defendants in appeals under the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ).

The Kirkland Municipal Court currently holds the following monthly calendars at which the attendance of the Conflict Public Defender **will be required as the Conflict Public Defender deems necessary:**

	Mon	Tue	Wed	Thu	Fri
WEEK 1	8:45 PTR 9:45 PTR 1:00 Jail 1:30 BW walk-in	8:45 ARR 1:00 MOT/BT <hr/> 1:00 Jail 2:00 Non-Pro Rev	8:45 PTR 9:45 PTR 1:00 Jail 2:00 MOT/BT <hr/> 8:45 PTR DWLS 9:45 PTR DWLS	8:45 Probation Reviews 1:00 Jail <hr/> 8:45 Spanish Criminal 9:45 Spanish Infraction	8:30 Jail
WEEK 2	8:45 PTR 9:45 PTR 1:00 Jail 1:30 BW walk-in 1:45 Bond Co 2:00 EXP BW	8:45 ARR 1:00 MOT/BT <hr/> 1:00 Jail 2:00 Non-Pro Rev	8:45 Readiness 1:00 Jail 2:00 MOT/BT <hr/> 8:45 Readiness	8:45 Probation Reviews 1:00 Jail <hr/> 8:45 Interpreter-Non-Spanish	8:30 Jail
WEEK 3	9:00 Jury Trial 1:00 Jail <hr/> 9:00 Jury Trial	8:45 ARR 1:00 Jail 2:00 SEN <hr/> 9:00 Jury Trial	9:00 Jury Trial 1:00 Jail <hr/> 9:00 Jury Trial	9:00 Jury Trial 1:00 Jail <hr/> 9:00 Jury Trial	8:30 Jail 9:00 Jury Trial
WEEK 4	8:45 PTR 9:45 PTR 1:00 Jail 1:30 BW walk-in	8:45 ARR 1:00 MOT/BT <hr/> 1:00 Jail 2:00 Non-Pro Review	8:45 PTR 9:45 PTR 1:00 Jail 2:00 MOT/BT <hr/> 8:45 PTR DWLS 9:45 PTR DWLS	8:45 Probation Reviews 1:00 Jail	8:30 Jail

PTR = Pretrial
MOT/BT = Motions
ARR – Arraignment
BW Walk-in = Bench Warrant
Non-Pro = Non-probation

This schedule is subject to change.

All Respondents must designate an attorney who will be accountable for contract performance. The Conflict Public Defender must have prior work experience in criminal law. At least one year’s criminal trial experience is strongly preferred. The contractor must provide continuity of representation while at the same time ensuring effective back-up coverage.

Any lawyer who may be called on as a back-up attorney must have current awareness of the Kirkland public defense cases the Conflict Public Defender has received so that she or he is fully prepared to provide public defender services in the event of an unanticipated absence. The

contractor must ensure that availability of attorneys and support staff is consistent with efficient delivery of public defender services. The contractor needs to be able to involve more than one attorney in the delivery of public defender services if efficient case management so requires.

The Conflict Public Defender must be responsive to the Police Department, the Prosecutor, and witnesses. For example, the City expects phone calls to the Conflict Public Defender to be returned in a timely manner. The City anticipates that a caller would get a response from someone who is familiar with pending deadlines and legal issues in the case by the end of the next business day.

Compensation

The City will pay a flat rate of \$300 per case assigned for conflict public defender services plus a flat rate fee of \$500 for each jury trial and a flat fee of \$500 for each case appealed from the Municipal Court. Reasonable costs incurred may also be reimbursed as identified in the contract.

Requirements of the Proposal

Please include the following in presenting your proposal:

- **Experience** - summarize experience relevant to public defender services. Identify the attorney who would be the contract manager. Include resumes of all attorneys who will provide public defender services.
- **Method of Service Provision** - describe method of service delivery, philosophy and approach to public defender services.
- **Insurance** - Discuss how your insurance meets the City's requirement to provide a minimum of \$1,000,000 per occurrence or claim in both liability and errors and omissions coverage.
- **References** - Identify three references who can attest to your experience and capabilities as they relate to services requested. The references must include contact name, address, and telephone number.

Proposal Modifications and Clarifications

The City will not reimburse the Respondents for the Request for Qualifications (RFQ), for any costs involved in the preparation and submission of qualifications, or for attendance at subsequent interviews. Furthermore, this RFQ does not obligate the City to accept or contract for any express or implied services. The City reserves the right to negotiate regarding the terms and compensation for any proposal. The City reserves the right to request any Respondent to clarify their response or to supply any additional material deemed necessary to assist in the evaluation, and to modify or alter any or all of the requirements herein.

Proposal Submittal Instructions

Qualifications must be received by no later than **3:00 pm PDT on Friday, October 21, 2016.**

We encourage that the statement of qualifications be submitted by email. Emailed documents should include "Qualifications-Job # 45-16-CMO" in the subject line and be addressed to: purchasing@kirklandwa.gov. (Emailed qualifications must be in MS Word or PDF format and cannot exceed 10MB).

As an alternate to email, a statement of qualifications can be mailed or delivered to:

City of Kirkland
Attn: Barry Scott – Job #45-16-CMO
123 5th Avenue
Kirkland, WA 9803

Statement of Qualifications Submission and Contractor Selection

Submission Requirements

1. A summary of the firm's qualifications as they relate to the scope of work.
2. A list of personnel who would be assigned as conflict public defenders and resumes and references for each especially.
3. A list of references knowledgeable of your firm's work. Please include telephone numbers and addresses.

All submissions must be prepared in accordance with the requirements set forth in this RFQ. The Submittal shall not exceed ten (10) pages (5 double-sided sheets of paper). The front cover, the back cover, and a maximum two-page cover letter, may be in addition to the ten (10)-page limit.

Evaluation Criteria

Qualifications will be evaluated according to the following criteria, listed in order of importance:

1. Experience and technical competence of the firm and its personnel considering the scope of work.
2. Recent experience and expertise with similar work.
3. Capacity to perform the work (including any specialized services) within the time limitations, considering the firm's current and planned workload.
4. Past record of performance on and with private industry, including such factors as control of costs, quality of work, ability to adhere to schedules, cooperation, responsiveness and ability to communicate with a range of participants.

Selection Process

An evaluation team shall review the qualifications and discuss and assess the capabilities and experience of respondents to act as a Conflict Public Defender. The evaluation team will determine which firms should be contacted for further consideration.

Selected firms will be contacted for an interview by the City to discuss their qualifications and to answer specific questions. The purpose of the interviews will be to evaluate the experience and fit of the firms and to clarify and assure understanding of the requirements of the contract.

Following interviews, references will be checked on finalist firms.

The City of Kirkland reserves the right to accept or reject qualifications submitted, to waive informational and minor irregularities and to request additional information required to fully evaluate all qualifications.

Qualifications will not be publicly opened and will be kept strictly confidential during this process to the extent allowed by law. All aspects of the evaluations and any negotiations, including documentation, correspondence and meetings, will be kept confidential by the Evaluation Committee to the extent allowed by law. No information regarding any qualifications or its evaluation will be discussed with other companies.

Confidentiality of qualifications is considered by Kirkland as an essential element of maintaining fairness during the evaluation process. However, confidentiality cannot be guaranteed under the Public Records Act, Chapter 42.56 RCW.

If a member of the public demands in writing to review portions of qualifications which have been marked or identified as confidential, proprietary or business secrets, Kirkland will notify the affected proposer prior to releasing such portions. The proposer shall take such legal actions as it deems necessary to protect its interests. If the proposer has not commenced such actions within five (5) calendar days after receipt of the notice from Kirkland of a demand to review such portions of its qualifications and provided Kirkland written notice of the actions, Kirkland may make such portions available for review and copying by the public as Kirkland deems necessary to comply with state law.

The proposer asserting that portions of its qualifications are legally protectable shall bear all costs of defending such assertion, including indemnifying and reimbursing Kirkland for its administrative, expert and legal costs and judgments involved in defending itself in actions arising from such assertions by the proposer including (without limitation) any assessments under RCW 42.56.550(4). By submitting a qualifications with portions marked confidential, proprietary, business secrets or the like, the proposer has thereby agreed to the provisions of this section, including the defense and reimbursement obligations.

Contract Requirements

The City of Kirkland plans to use the attached Conflict Public Defense contract. Firms with significant concerns about the sample agreement should not submit on this RFQ.

The City will choose as many firms as deemed necessary to compose a roster of conflict public defenders to meet the City's needs.

Questions

Questions regarding the RFQ process are to be addressed to Barry Scott, Purchasing Agent, by email to bscott@kirklandwa.gov.

Questions regarding the scope of work or timeframe are to be addressed to Marilynne Beard, Deputy City Manager, by email to mbeard@kirklandwa.gov.

Estimated Timeline

<u>Task</u>	<u>Date</u>
RFQ issued	10/7/16
Questions submitted by noon	10/14/16
Qualifications due by 3:00 pm PDT	10/21/16
Interviews	Week of 10/31/16
Firm(s) selection Completed	11/10/16
Contract Execution	11/30/16



CONFLICT PUBLIC DEFENSE CONTRACT

THIS CONTRACT is entered into by and between the City of Kirkland, a municipal corporation, ("City,") and _____, ("Contractor.")

1. Scope of Services and Warranty. In cases assigned by the Kirkland Municipal Court, Contractor will provide indigent defense services in accordance with the standards in RCW 10.101.030 adopted by the Kirkland City Council with the passage of Resolution R-4949. Contractor warrants that every attorney employed by Contractor to perform services under this Contract has read and is fully familiar with Washington Supreme Court standards and the standards adopted by the City ("Standards"). Compliance with these Standards goes to the essence of this Contract. Contractor, and every attorney performing services under this Contract, have knowledge of the Standards, will comply with the Standards, and shall certify compliance as needed with the Kirkland Municipal Court. Contractor shall provide legal representation for each defendant assigned from the time of assignment through trial, sentencing, post-trial appearances and appeals to the Superior Court, if necessary. If Contractor is counsel of record for an individual who is jailed on a City matter, Contractor shall be available to appear in court before such individual has been in custody for 24 hours; except that, this provision does not require the Contractor to be available to appear in Court on Saturdays, Sundays, or City holidays. Contractor may withdraw upon completion of the case or the Contract as allowed by the Rules of Professional Conduct.
 - A. Contractor, at the earliest possible time following appointment (within three days if the defendant is in custody) shall review with the Defendant the elements of the offense, the presumption of innocence, the prosecutor's burden to prove each element beyond a reasonable doubt, the right to a jury trial, the right to a speedy trial, the right to present a defense, the maximum penalties, any mandatory minimum penalties, that it is solely the client's decision to enter a plea of guilty or proceed to trial, and any other witness or investigative issues.
 - B. Contractor, at the initial meeting, shall also assess the client's ability to understand English and need for an interpreter, competency, literacy, and citizenship and/or immigration issues. Additionally, Contractor shall provide contact information for the Contractor to the client and check for conflicts.
 - C. Contractor will provide training and supervision in accordance with City and Washington State Bar Association Standards to every attorney employed by Contractor to perform services under this Contract.
2. Applicant Screening. Determination of indecency for eligibility for appointed counsel under this Contract shall be determined by a screening process established by the City.

The City shall be responsible for handling the screening process. Should Contractor determine the defendant is not eligible for assigned counsel, Contractor shall withdraw from the case and so advise the Court and the City of the withdrawal and the reason therefor, subject to Contractor's professional duties under the Rules of Professional Conduct.

3. Associated Counsel. Contractor may arrange for other attorneys to perform services under this Contract at Contractor's expense. Contractor may delegate the authority to perform Contract services to an attorney who is licensed to practice law before the courts of record for the State of Washington, unless City objects to services by that attorney. In any event, Contractor shall be responsible for overseeing and approving services performed by other attorneys. Contractor must immediately report to the City any change affecting the maintenance of his or her membership in good standing of the Washington State Bar Association.
4. Proof of Professional Liability Insurance. Contractor will, at Contractor's sole expense, obtain and maintain during the life of this Contract, a policy of comprehensive general liability and professional liability insurance. Said policy shall have limits of not less than One Million Dollars (\$1,000,000) per occurrence and be placed with an insurer authorized to do business in the State of Washington. Certificates issued by the insurance carrier showing such insurance to be in force shall be filed with the City not less than ten days following signing of this Contract.
5. Indemnification.
 - A. Contractor shall defend, indemnify and hold the City, its elected officials, officers and employees harmless from any and all claims, losses or liability, including attorney's fees, whatsoever arising out of Contractor's performance of obligations pursuant to this Contract, including but not limited to claims arising by reason of accident, injury or death caused to persons or property of any kind occurring by the fault or neglect of the Contractor, his agents, associates or employees, or occurring without the fault or neglect of the City.
 - B. With respect to the performance of this Agreement and as to claims against the City, its officers, agents and employees, Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees, and agrees that the obligation to indemnify, defend and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of any employee of Contractor. This waiver is mutually negotiated by the parties. This paragraph shall not apply to any damage resulting from the sole negligence of the City, its agents, and employees. To the extent any of the damages covered by this paragraph were caused by or resulted from the concurrent negligence of the City, its agents or employees, this obligation to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of the Contractor, its officers, agents and employees.

6. Base Compensation.

- A. The City shall pay Contractor for services rendered under this Contract the sum of \$300 per assigned case, which payment shall be made within 30 days after the date the Contractor invoices the City for the assigned case. The City shall also pay to Contractor the flat fee of \$500 for jury trials and \$500 within 30 days after the date any notice of appeal has been filed if the case is appealed from the District Court and the Contractor invoices the City.
- B. Except as expressly provided in Section 7, the cost of all infrastructure, administrative support and systems as well as standard overhead services necessary to comply with established standards is included in the base payment provided in Section 6.A. above.

7. Payments in Addition to the Base Compensation. The City shall pay for the following case expenses when reasonably incurred and approved by the Municipal Court from funds available for that purpose:

- A. The City shall provide to Contractor, at no cost to Contractor or the defendant, one copy of all discoverable material concerning the case. Such material shall include, where relevant, a copy of the abstract of the defendant's driving record.
- B. Non-routine case expenses requested by Contractor and preauthorized by order of the Kirkland Municipal Court. Unless the services are performed by Contractor's staff or subcontractors, non-routine expenses include, but are not limited to:
 - i. medical and psychiatric evaluations;
 - ii. expert witness fees and expenses;
 - iii. interpreters for languages not commonly spoken in the City or interpreters services other than attorney/client communication utilizing CTS Language Link unless otherwise approved;
 - iv. polygraph, forensic and other scientific tests;
 - v. computerized legal research;
 - vi. investigation expenses; and
 - vii. any other non-routine expenses the Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.
- C. Lay witness fees and mileage incurred in bringing defense witnesses to court.
- D. The cost of providing one copy of the client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial.
- E. The cost of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies.

- F. Medical, school, birth, Department of Motor Vehicles, and other similar records and 911 and emergency communication recordings and logs, up to the cost of \$75 for an individual item, unless additional funds are approved by the court.
- G. The cost for the service of a subpoena.
- 8. No Assignment or Subcontracts. No assignment or transfer of this Contract or any interest in this Contract shall be made by either of the parties without prior written consent.
- 9. Contractor Conflict. In the event the representation of the defendant hereunder raises a conflict of interest such that the Contractor cannot represent the defendant, the defendant shall be referred back to the City for further assignment.
- 10. Term of this Contract. Contractor shall provide legal representation for assigned defendants under this Contract through December 31, 2017. The Contract may be extended for additional one year periods at the City's discretion. .
- 11. Termination.
 - A. For Cause. Either party may terminate this Contract in the event the other party fails to perform its obligations as described in this Contract and if such failure has not been corrected to the reasonable satisfaction of the first party in a timely manner after notice of breach has been provided to the second party.
 - B. For Reasons Beyond the Control of Parties. Either party may terminate this Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, acts of nature; war or warlike operations; civil commotion; riot; labor dispute, including strike, walkout or lockout; sabotage; or superior governmental regulation or control. Notice of termination pursuant to this subsection shall be given as far in advance as is reasonable.
 - C. Without Cause. Either party may terminate this Contract at any time without cause upon giving the non-terminating party not less than ninety (90) days prior written notice.
 - D. In the event of termination of this Agreement and to the extent the client can be adequately represented, the case shall be transferred to the new service provider as efficiently and practicably as possible, and within the guidelines and restrictions of the Rules of Professional Conduct.
- 12. Amendment. No modification or amendment of the provisions of this Contract shall be effective unless in writing and signed by authorized representatives of the parties hereto.

13. Entire Agreement. This Contract contains the entire agreement between the parties and may not be enlarged, modified or altered except in writing, signed by the parties and endorsed hereon.

DATED this ____ day of _____, 20__.

CITY OF KIRKLAND

CONTRACTOR

By _____

By _____

Title _____

Title _____