

DEPARTMENT OF HUMAN RESOURCES
REQUEST FOR PROPOSALS (RFP) FOR
LEGAL SERVICES FOR CECIL COUNTY DEPARTMENT OF SOCIAL SERVICES

QUESTIONS AND RESPONSES #1

Question 1: Will the Department consider changing the bid structure to call for a fixed price, per child, per year, for Child in Need of Assistance (CINA) and Termination of Parental Rights (TPR) cases, and Adult Guardianship cases, plus an hourly rate for other legal work?

Response: No, CEDSS will not change the Pricing Proposal.

Question 2: Will DHR amend the RFP to expressly state what legal services are not included because they will be handled by the Maryland Office of the Attorney General?

Response: Please see Amendment #1 for a list of excluded services.

Question 3: The previous 2010 Cecil RFP contained the following exclusions:

- a. Child Support Enforcement or Collection
- b. Findings in child abuse and neglect investigations, including contested case hearings arising from those findings
- c. Criminal investigations or prosecutions pertaining to child abuse or neglect
- d. Medicare or Medicaid eligibility, and/or recovery of any payments made to third party providers
- e. Appeals of matters which are the subject of this contract.

Will the RFP be amended to state that these exclusions still apply?

Response: Please see Amendment #1.

Question 4: Is it the intent of the current RFP to expand the scope of services beyond that which has historically been provided?

Response: No.

Question 5: Should "child protective services" be deleted from the Scope of Work?

Response: **No. That term appears in sentence 2 of RFP Section 3.1 as part of a general description of CEDSS. There are no requirements in the RFP regarding child protective services. CEDSS will not remove the term from Section 3.1.**

Question 6: Please define the term “income maintenance” as it appears in the Scope of Work?

Response: **The term “income maintenance” in Section 3.1 refers to an activity of the Family Investment Division of CEDSS. That division is responsible for determining eligibility for food stamps and medical assistance. The Contractor is not responsible for performing income maintenance.**

Question 7: Should “child support enforcement” be deleted from the Scope of Work?

Response: **No. The term “child support enforcement” in sentence 2 of section 3.1 is part of a general description of the CEDSS. DHR/CEDSS will not remove that term.**

Question 8: What is intended to be included in the term “among others” in the Scope of Work, as in “. . . adult and child protective services, foster care, income maintenance and child support enforcement, among others, to the citizens of Cecil County”?

Response: **The term “among others” in sentence 2 of RFP Section 3.1 is part of a general description of CEDSS. The term indicates that CEDSS performs functions other than those specifically stated in Section 3.1 (such as operate a Domestic Violence/Rape Crisis Center).**

Question 9: Could the Scope of Work under the RFP possibly require representation of the Cecil County Department of Social Services in any court other than the Circuit Court for Cecil County? If the answer is yes, could some examples be provided of when this might occur?

Response: **Yes, the Contractor may have to represent CEDSS in courts other than the Circuit Court for Cecil County. However, this would be extremely rare. Past examples that have necessitated**

this representation include: 1) CEDSS sharing custody of an individual with another jurisdiction; and 2) a case being transferred due to a possible conflict of interest (case involving a child of a CEDSS employee).

Question 10: Rather than attempt to specify all exceptions, would the Department consider revising the scope of work to state as follows:

- a. Representation of the Department before the Circuit Court for Cecil County on CINA and TPR cases.
- b. Representation of the Department before the Circuit Court for Cecil County on adult public guardianship cases.
- c. General legal advice and assistance to the Department on matters related to CINA, TPR and Adult Guardianship cases.
- d. Other legal representation as the contractor may agree to accept on a specified hourly rate.

Response: No. CEDSS has stated the exceptions that apply to this RFP in Amendment #1.

Question 11: The current contractor for Cecil County is responsible for the preparation of all court orders in all CINA and TPR cases. This is a significant effort. It is known that in Harford County, which operates under a similar arrangement for legal services, all court orders are prepared by a full time employee of the Harford County Department of Social Services, who also provides substantial other support for CINA/TPR legal matters, such as preparation of subpoenas for testimony at hearings, and other trial preparations. Would Cecil County also be willing to provide this type of litigation support?

Response: No, CEDSS will not provide the type of litigation support referenced in the question.

Question 12: If CEDSS will not provide the litigation support provided by Harford County DSS, will it revise the RFP to expressly state that no litigation support will be provided to the contractor?

Response: No, CEDSS will not amend the RFP to address litigation support.

Question 13: The RFP requires the selected contractor to carry Commercial General Liability (CGL) insurance. As noted, CGL insurance covers

loss from “Bodily Injury, Property Damage, and Personal and Advertising Injury.” It is difficult to imagine any losses of these types resulting from the provision of legal services requested under the RFP. Would the Department consider eliminating this requirement as was done in the past?

Response: **CEDSS will not eliminate this requirement, but will lower certain insurance limits. Please see Amendment #1.**

Question 14: Would the Department consider lowering the CGL limit to \$1,000,000 in the aggregate?

Response: **Yes. Please see Amendment #1.**

Question 15: The RFP requires that the contractor obtain employee theft insurance. This requirement has been dropped from the Child's Counsel RFP after it was pointed out that the insurance industry has specific requirements for such policies that cannot be practically met by a small legal office. Would the Department consider dropping this requirement from the Cecil County RFP?

Response: **CEDSS has removed this requirement. Please see Amendment #1.**

Question 16: The RFP requires automotive insurance. Does this apply to the personal vehicle of a sole proprietor?

Response: **Yes.**

Question 17: The RFP requires an annual SOC 2 Type II Audit. Could the Department provide a list of Maryland firms who are known to have actually prepared and submitted such an audit to the State?

Response: **This question is irrelevant. Please see the response to Question 18 and Amendment #1.**

Question 18: Given that the SOC 2 Type II Audit is not being required of Child's counsel under the pending RFP, would the Department consider eliminating this audit from the Cecil County RFP as well? There would appear to be no difference in that Child's counsel will be provided with the same data as Department's counsel regarding

any open CINA or TPR case. The audit will most likely be a substantial annual cost that will just be passed through to the Department, with little to no real benefit to anyone.

Response: **CEDSS will remove this requirement from the RFP. Please see Amendment #1.**

Question 19: Please provide copies of the Technical and Financial Proposals submitted by the successful bidder for the Harford County DSS Legal Services contract awarded under Solicitation No. HADSS/SSA/12-001-S issued on or about October 24, 2011.

Response: **Offerors seeking this information must submit a Maryland Public Information Act (PIA) request to DHR.**

Question 20: In accordance with the two-year extension of the contracts for children's counsel approved by the Board of Public Works in 2013, it is known that CAPES (Child Advocacy Project of the Eastern Shore, Inc.) is receiving \$1,050.00 per year for each CINA case, and \$1,050.00 per year for each TPR case in Cecil County, plus \$125.00 for each Shelter Hearing, plus \$1,800.00 for each appeal. Please provide the actual total amount paid to CAPES for legal services to children in Cecil County in Calendar Year 2014.

Response: **CEDSS believes this question is irrelevant. The services required under this RFP differ from the services required by the contracts referenced in the question. That said, Offerors can obtain this information by submitting a PIA request to DHR.**

Question 21: The RFP allows for minimal qualifications that have little to do with child welfare practice. Most general practice attorneys can claim two years experience in family law or related legal fields, which would be enough to satisfy the minimum qualification set forth in RFP section 2.1.1. However, this demonstrates no experience in CINA/TPR matters, which are unique legal proceedings governed by different federal and state law provisions. By contrast, the Child's Counsel RFP requires "a minimum of two years of Maryland-specific child welfare legal experience." Will the Department consider revising the minimum qualifications to require MD-specific child welfare practice?

Response: **No, CEDSS will not revise the minimum qualifications. The Contractor will perform multiple services under the contract that results from this RFP. In addition to CINA/TPR proceedings, the Contractor will represent CEDSS in other legal proceedings and provide general legal advice.**

Question 22: The RFP contains no provisions regarding the payment of litigation costs. Previous RFP's have expressly provided that the Department would be responsible for costs associated with legal representation, such as court fees, witness fees, and transcripts. See, 2010 Cecil RFP, section 2.10. Other examples of typical costs include service of TPR papers by the Sheriff or by private process servers, and publication costs for parents who cannot be located. Will the Department consider revising the RFP to provide that all actual out-of-pocket costs related to any litigation will be paid by the Department?

Response: **No. As stated in the Financial Proposal Instructions (Attachment F), Offerors are to propose a fully-loaded fixed unit price. This price shall include all costs/expenses associated with the provision of services as required by the RFP.**

Question 23: The Legal Services Contract provided as Attachment A contains indemnity provisions that are fundamentally flawed. Under Section 10, the contractor is required to indemnify the State of Maryland for any damages, etc., that arise from the performance of the contractor under the contract (unless due to the sole negligence of the State), and the State of Maryland is not required to defend the contractor in the event of any lawsuit related to the contractor's performance. These provisions are completely illogical, and possibly constitute a violation of the Professional Code of Ethics. A lawyer is not permitted to assume financial responsibility for the outcome of a case.

The subject matter of the work here is the removal of children from their parents, temporarily and/or permanently. This is something that can only be done under the Police Power of the State. By agreeing to act as the attorney for such work, the contractor in no way can be asked to assume the full responsibility or liability for any litigation that may arise from these cases. The absurdity of these provisions is easily demonstrated when one realizes that the contractor doing an excellent job, that is, by "winning" a case for termination of parental rights, is the situation most likely to result in

a civil lawsuit. In such a situation, the Office of the Attorney General should clearly assume the full defense of the contractor, including any and all costs of litigation, and the State of Maryland should indemnify the contractor against any damages that may result from the contractor's fully competent performance. These are the same protections that would be afforded to a state employee performing such duties. The contractor here is essentially acting as a "special prosecutor" for the State, and deserves the same protections.

That being said, will the Department consider eliminating the current provisions of Section 10, and substitute provisions that require the State of Maryland to fully defend and indemnify the contractor from any lawsuits or damages arising out of or relating to the services being provided under the contract, unless it is established during the course of such litigation that the damages result solely and directly from a failure of the contractor to properly perform the duties required under the contract?

Response: **No, CEDSS will not alter Section 10 of the sample contract.**

Question 24: The evaluation process and selection criteria in the RFP are fundamentally flawed in that there are no objective criteria by which a bidder can determine the relative value of the various factors. Saying that the contract will be awarded to the proposal which is most advantageous to the State is not particularly helpful. Competitive bidding is supposed to be a process by which definable criteria are established in order to make this decision. It is not sufficient to simply say that the technical proposals will be listed in order of best to worst, and the financial from cheapest to most expensive, and that the selection committee will then somehow magically determine the overall winner (giving equal weight to the technical and financial). An objective, measurable process by which the selection committee will arrive at its decision must be set forth in advance. That being said, will the Department consider revising the RFP to more specifically define the process by which the final selection will be made?

Response: **No. CEDSS lists the technical evaluation criteria in RFP Section 5.2 in descending order of importance. In addition, the selection process is covered in Section 5.5.2 of the RFP; and the award determination is described in Section 5.5.3.**

Question 25: Would the Department consider adjusting the relative value of the technical proposal to 75%? This seems to be more appropriate for the nature of the work involved here. Again, by contrast, the

pending Child's Counsel RFP states that "technical factors will receive greater weight than financial factors."

Response: **No. The Department will not change the weighting of the factors in Section 5.5.3.**

Question 26: Would the Department consider eliminating Economic Benefit to the State as a factor in the RFP? This factor is completely absent in the pending Child's Counsel RFP, which will most likely result in awards that total more than \$75 Million Dollars in state contracts. If Economic Benefit is not deemed to be significant for this amount of money, it is difficult to understand why it would be included in the Cecil County RFP.

Response: **No. The Department will not remove this requirement from the RFP.**

Question 27: Section 4.2 of the material read at the Pre-Proposal Conference stated that the proposals shall contain an original and five (5) copies while section 4.2 of the RFP states the original and four (4) copies. Which is number is required?

Response: **An original and four (4) copies.**

Question 28: Section 1.14 of the script states that confidential material should be identified by page and section number and place after the Title Page and after the Table of Contents, Should this material also appear in the appropriate place in the RFP?

Response: **Offerors should only place this material after the Title Page of their proposals.**

Question 29: Section 1.4.3 (page10) of the RFP refers a transition period described in section 1.4.2 as part of the contract duration. There is no such transition period description in section 1.4.2. What is the transition period?

Response: **This contract does not have a Transition-In period. The Contractor will begin work under the contract on the Go-Live Date. The Contractor will not perform any of the requirements contained in Section 3.2 of the RFP prior to the Go-Live Date.**

Question 30: Section 38.1 (d) of the sample contract refers to maintaining a valid Dun and Bradstreet (DUNS) number. Does this requirement apply to this type of contract?

Response: Yes.

Question 31: What is the Transparency Act referred to in section 38 page 61?

Response: The act referenced in that section is The Federal Funding Accountability and Transparency Act of 2006 (FFATA). However, the Transparency Act does not pertain to the contract that will result from this RFP. Please see Amendment #1.