

LINCOLN COUNTY REQUEST FOR PROPOSALS FOR INDIGENT DEFENSE SERVICES

I. PURPOSE OF REQUEST

Lincoln County hereby requests proposals from any firm, as defined by Rule 1.0(c) of the Appendix to SDCL Chapter 16-8, to provide legal services that fulfill its statutory obligations as set forth in SDCL 23A-40-7 and other such instances in which the appointment of legal counsel at the expense of the County has been mandated by statute. The 1-year (1) contract period will commence January 1, 2027, with the option to extend the contract by mutual agreement of the parties for two (2) additional one-year periods.

Lincoln County has begun the process of establishing a Public Defender Office; however, a contract will be necessary to ensure not only a transition period but also appointments for overflow and conflicts.

The Request for proposal contemplates a contract that requires the firm to receive a maximum of 1,000 total files to include felonies and misdemeanors:

Total: 1,000 F: 500 M: 500

(F = Felony; M = Misdemeanor)

II. INSTRUCTIONS TO OFFERORS

A. All proposals shall be sent to:

Lincoln County Auditor
104 N. Main, Ste. 110
Canton, SD 57013

B. All proposals shall be in a sealed envelope and clearly marked in the upper left-hand corner "Proposal – Indigent Defense Contract."

C. All proposals shall be received by 10.00 a.m., June 30, 2026. An original and five (5) copies of proposals must be presented. No faxed, e-mailed, or telephonic proposals will be accepted.

D. Proposals should be prepared simply and economically, providing a concise description of the firm's capability to satisfy the requirements of the request. Special bindings, colored displays and promotional materials are not desired. Emphasis shall be placed upon completeness and clarity of content.

E. Lincoln County will attempt to schedule interviews, if it so desires. The Lincoln County Board of Commissioners may assign a review committee to complete interviews and make a recommendation to the Board. Firms shall take note that Lincoln County shall make an award to the most advantageous responsible offeror.

F. The firms selected will be notified as soon as possible. The Lincoln County Board of Commissioners must approve a contract with the selected firm as appropriate. The start date will be January 1, 2027.

G. All proposals must include the following information:

1. The name of each individual attorney who the firm proposes to provide indigent defense services and his or her area of responsibility.
2. A resume for each attorney who will provide indigent legal services which illustrates the attorney's specific experience providing such services.
3. A statement warranting that each and every attorney proposed to provide legal services shall be licensed to practice law by the State of South Dakota and be a member in good standing with the South Dakota State Bar Association during the contract term.
4. References. Please provide professional references.
5. Insurance. Indicate firm's willingness and capability to maintain professional liability coverage at all times during the contract term. In addition, indicate firm's willingness and capability to indemnify, defend and hold Lincoln County harmless for any and all costs, loss and liability for all injury or damage caused in whole or in part by any negligent act or omission of an attorney providing services under the contract or anyone directly or indirectly employed by or contracting with the firm.
6. Provide information in your proposal addressing the following:
 - a. The firm's experience in providing indigent defense services;
 - b. How long has your firm been in existence?
 - c. How many staff employees does the firm employ? How many staff will be assigned to the indigent defense contract in the event it is awarded to the firm?
 - d. Does any attorney or employee of the firm have or could reasonably be anticipated to have any conflict of interest with Lincoln County? If so, how will that conflict be addressed?
7. Contract Performance
 - a. If the firm has previously provided or is currently providing contract services for a public entity, please provide any documented review of its performance under those contracts.

- b. Please note specifically any termination for cause of any public contract in whole or in part within the last ten years. Please note any corrective action required under any such public contract.
- c. Has any attorney proposed to provide services under the contract been disciplined by the South Dakota State Bar Association or any other bar association of any other state?
- d. Has any attorney proposed to provide services under the contract been sanctioned by a court for any reason? If so, please provide a summary of the sanction, including the date and jurisdiction in which the sanction was imposed.
- e. Has any attorney proposed to provide services under the contract been the defendant in a malpractice suit? If so, what is the status or disposition of the case?

III. PROPOSED DELIVERY OF SERVICES

In light of SDCL Chapter 16-18 and the South Dakota Rules of Professional Conduct, please provide the following information:

- A. Describe your policies and/or guidelines for addressing the needs of indigent clients.
- B. How will you monitor the case load of attorneys providing indigent defense services?
- C. What type of training do the attorneys within your firm receive regarding the practice of criminal law and indigent defense?
- D. Do you have any experience working with the mentally ill or others in need of social service referrals?
- E. Please provide information regarding the firm's ability to report both monthly and annually regarding the assigned case load.

IV. SELECTION CRITERIA

The selection of a service provider will be based upon the ability of the firm to best provide adequate legal representation for those individuals who because of social or economic barriers are unable to afford or secure it. Lincoln County will consider the completeness of the written proposal, the qualifications of the specific individuals proposed to provide services, the firm's history of successfully fulfilling contracts of this type, experience in similar work, and the competitiveness of the fee structure proposed. Each proposal will be independently evaluated on the above-referenced factors.

V. TERMS AND CONDITIONS OF THE SELECTION PROCESS

- A. The County reserves the right to reject any and all proposals and to waive minor irregularities contained therein.
- B. The County reserves the right to request clarification of information submitted and to request additional information from any firm.
- C. In the event a prior selection fails to result in the execution of a contract within thirty (30) days after such contract has been awarded, Lincoln County reserves the right to award any contract to the next most qualified firm.
- D. Any proposal may be withdrawn up until the date and time set for opening of proposals. Any proposal not timely withdrawn shall constitute an irrevocable offer to provide Lincoln County the services described herein for a period of thirty (30) days or until a contract is executed, whichever occurs first.
- E. Lincoln County shall not be responsible for any costs incurred by a firm in preparing, submitting, or presenting its response to the RFP.

VI. CONTRACT TERMS

- A. Duration. Indigent defense services shall commence on January 1, 2027 for an initial term of one (1) year, terminating on December 31, 2027. The parties may mutually agree to extend the resulting contract for two additional one (1) year terms, terminating on December 31, 2030.
- B. Duties. The firm shall represent those individuals appointed counsel under the following circumstances:
 - 1. Individuals appointed counsel in accordance with SDCL Chapter 23A-40.
 - a. The firm shall accept appointments to represent criminal defendants, whether formal charges have been filed or not, involving a felony or misdemeanor, up to a class 2 felony.
 - b. In the event unusually complex legal issues arise during the course of such representation, the firm may request assistance for additional counsel to be appointed by the court, and in such event, the firm shall not be responsible for the cost of providing additional legal assistance.
 - c. Representation for appeals to the South Dakota Supreme Court or habeas corpus proceedings shall not be included in the proposal or final contract. The firm will be expected to provide representation on intermediate appeals filed during the pendency of any court appointed action.
 - 2. Upon appointment by the court, the firm shall represent indigent persons with regard to an appeal from a final judgment based upon a public offense, the

prosecution of which was properly commenced in Lincoln County, South Dakota, in accordance with SDCL Chapter 23A-16.

3. The firm shall provide representation for habeas corpus proceedings to those individuals appointed counsel by a court of competent jurisdiction, provided that the prosecution of the underlying public offense was properly commenced in Lincoln County, South Dakota, in accordance with SDCL Chapter 23A-16.
- C. Compensation. Offerors shall clearly designate proposed compensation for the initial term of the contract as well as proposed compensation for the additional one-year terms. Compensation shall only be one of the factors considered by the Board as the Board reserves the right to select the proposal that is the most advantageous to the County. The responsible offeror will be paid one-twelfth (1/12) of the respective annual sum for each calendar month the contract is performed. Payment shall be at a regular meeting of the Board of County Commissioners which is scheduled for payment of claims, but in no event less frequently than once a month. In the event this contract is terminated by mutual agreement or good cause prior to the end of the month, Lincoln County shall pay the firm for all services rendered to the date of termination on a pro-rata basis.
- D. Expenses. The firm shall assume responsibility of all expenses related to the completion of its duties. Said expenses include but are not limited to those incurred for mileage within the Second Judicial Circuit, telephone, fax, copying, and postage.
1. Notwithstanding the foregoing, Lincoln County shall be responsible for the payment of all reasonable transcript expenses, subpoena expenses, witness fees, mileage outside of the Second Judicial Circuit and filing fees incurred by the firm during the course of its representation.
 2. Lincoln County shall also be responsible for the payment of investigative expenses and expert witness expenses if incurred by the firm in accordance with the Rules for Compensation of Court Appointed Counsel in the Second Judicial Circuit of South Dakota.
- E. Independent Contractor. The firm shall at all times remain an independent contractor as that term is defined by statute and interpreted by case law. Attorneys that provide services under the contract understand and agree that at no time will attorney, his or her partners, associates, personnel or agents be considered an employee of Lincoln County. The manner in which the firm provides legal services, in addition to all decisions related to case management, shall lie within the sole discretion of the firm. The firm shall be responsible for the payment of income taxes, FICA, withholding and other wage related obligations. The firm, its partners, associates, personnel or agents shall not be considered employees of the State of South Dakota or Lincoln County for purposes of retirement, insurance programs or other benefits.

- F. Liability. The firm shall at all times maintain professional liability coverage and furnish proof of coverage to Lincoln County if so requested.
1. In addition, the firm shall indemnify, defend and hold Lincoln County harmless for any and all costs, loss and liability for all injury or damage caused in whole or in part by any negligent act or omission of the firm or its attorneys or anyone directly or indirectly employed by or contracting with the firm.
 2. The firm shall further agree to obtain, maintain and pay for such general and/or contractual liability insurance coverage and endorsements as will insure the provisions of this paragraph. The minimum liability limits of such general and/or contractual liability insurance shall be \$1,000,000.00 per occurrence.
 3. The firm shall agree to furnish Lincoln County satisfactory evidence of compliance with its insurance requirements at the time a contract is entered into and to obtain and furnish to Lincoln County an undertaking by the insurance company issuing such policy that the policy will not be cancelled except after a fifteen (15) day notice to County of its intention to do so.
- G. License to Practice Law. All attorneys providing legal services under the contract shall be licensed to practice law by the State of South Dakota and be a member in good standing with the State Bar Association during the term of the contract. Attorney's failure to maintain State Bar membership or license to practice law shall be cause to terminate the contract. If any attorney that is proposed to provide services under the contract has at any time had his or her license to practice suspended, revoked or limited by any means, all facts relating to said suspension, revocation or limitation must be revealed to Lincoln County at the time the firm's proposal is submitted for consideration.
- H. Professional Standards – Rules of Professional Conduct. All attorneys providing legal services under the contract shall provide those legal services in accordance with any applicable professional standards adopted by the South Dakota State Bar Association and/or the South Dakota Supreme Court. Said standards shall include but are not limited to the South Dakota Rules of Professional Conduct found in the Appendix to SDCL Chapter 16-18. Any finding that an attorney has failed to maintain said standards shall be cause to terminate the contract.
- I. Client Billing. The firm shall maintain an itemized expense summary for each client for whom legal services have been provided. The cost of each particular legal service shall be itemized on an hourly basis and according to the statewide rate for court appointed counsel (as established by the South Dakota Supreme Court) then in effect.
1. The firm shall prepare and provide Lincoln County with an itemized "Statement of Account" for each client for whom legal services have been rendered at the conclusion of each case, regardless of the outcome. Such "Statement of Account"

shall include an itemized list of all reasonable attorney fees and expenses incurred as a result of the legal services rendered.

2. The firm shall advise client of the total fee for services performed. Further, the firm shall advise client that the amount of such fee shall become a lien against all property (both real and personal), and as such, the client shall be obligated to repay Lincoln County for the cost of such legal representation, regardless of the outcome of the case.
- J. Conflict of Interest. The firm is responsible for advising the court of any case in which a conflict of interest exists. In such event, the firm shall be excused only upon order of the court. If alternate counsel is appointed as a result of the firm's conflict, Lincoln County shall assume the entire cost of said representation in accordance with the Rules for Compensation of Court Appointed Counsel in the Second Judicial Circuit.
- K. Assignment of Contract. The contract shall not be assigned without the written permission of Lincoln County. The firm shall immediately advise Lincoln County of any changes in the firm's partners, associates or personnel. All changes in attorneys providing services under the contract shall be subject to final approval by Lincoln County.
- L. Termination. The contract may be terminated by mutual agreement of both parties in writing. Further, the contract may be terminated by either party for good cause. Good cause does not include a claim of financial hardship by the firm.
1. In the event the contract is terminated by mutual agreement, by the expiration of the contract, by the firm for good cause as provided, or terminated by Lincoln County without good cause, the firm shall continue to represent all clients to whom it has already been appointed. In such event, the firm shall be compensated in accordance with the contractual provision for compensation for ninety (90) days from the date of termination. Thereafter, the firm shall be compensated at the statewide rate for court appointed counsel (as established by the South Dakota Supreme Court) and in accordance with the Rules for Compensation of Court Appointed Counsel in the Second Judicial Circuit of South Dakota until the conclusion of all cases to which the firm has been appointed under the contract.
 2. In the event the firm terminates without good cause, it shall provide representation to all clients to whom it has been appointed. In this regard, the firm shall be responsible for the legal representation of said individuals after the termination of the contract without further compensation by Lincoln County.

3. In the event the firm terminates the contract without good cause and refuses or is unable to perform the services required herein, the firm shall reimburse Lincoln County for all reasonable attorney fees at the statewide rate for court appointed counsel (as established by the South Dakota Supreme Court) and for all reasonable expenses incurred by the County as a result of the firm's failure to provide services according to the contract.
- M. Non-Appropriation. In the event funds are not budgeted or appropriated for any fiscal year, the contract shall impose no obligation on Lincoln County and shall become null and void except as to actual work performed for which funds have been appropriated or budgeted, and no right of action or damage shall accrue to the benefit of any offeror, contractor, their agents, successors or assigns its successors or assignees, for any further payments or other performance under the contract.
- N. Annual Review and Amendment. The firm shall submit an annual report to Lincoln County which shall serve as the basis for any discussions between Lincoln County and Attorney regarding the need for amending the contract. Any amendment to the contract shall be in writing and signed with the concurrence of Lincoln County and Attorney.
- O. The Terms and Conditions of this Request for Proposal shall be fully incorporated into the terms and conditions of the awarded contract.