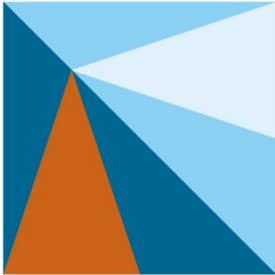


## **Michigan Indigent Defense Commission**



### **REQUEST FOR PROPOSALS**

## **Michigan Public Defense Caseload Standards Study**

**Issued: March 6, 2017**

**Submission Deadline: May 1, 2017**

**Contact:**

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## 1. Introduction

The Michigan Indigent Defense Commission (MIDC) is requesting proposals from qualified vendors to assist MIDC in determining the appropriate numerical caseload/workload standards for criminal cases for providers of indigent legal representation in the state of Michigan.

The MIDC seeks to procure the services of a vendor to conduct a study, to be performed in consultation with the MIDC, which can be used as a basis for stipulating numerical caseload/workload standards for adult criminal cases in Michigan courts. The selected vendor will work in consultation with the MIDC at all stages of the study, including the conduct of the study itself. The study must result in the production of recommended caseload standards for defense providers that accounts for (a) variation in counties and courts, and (b) variation in delivery models.

The MIDC requests proposals from qualified vendors which may include, but are not limited to, private sector firms, not-for-profit organizations, and public or private institutions such as universities or colleges with expertise in conducting research similar to research described in Sections 4 and 5 of this RFP.

This RFP also outlines the terms and conditions, and all applicable information required for submission of a proposal. Proposers should pay strict attention to the proposal submission deadline to prevent disqualification. To ensure compliance with these requirements and to prevent possible disqualification, Proposers should follow the format and instructions contained in this document.

### *Key Dates*

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

**Table 1. Timeline for This Request for Proposals\***

<b>RFP Release Date</b>	March 6, 2017
<b>Questions Due By</b>	March 20, 2017
<b>Questions Answered By</b>	April 3, 2017
<b>Proposal Due Date</b>	May 1, 2017
<b>Award Announcement</b>	June 1, 2017
<b>Tentative Contract Start Date</b>	TBA by the MIDC and Bidder

\*The MIDC reserves the right to change any of the dates stated in this RFP. If such change occurs, the MIDC will notify all Bidders who received the RFP from the MIDC.

## 2. Background and Motivation For The Project

In 2011, Governor Rick Snyder established the Michigan Advisory Commission on Indigent Defense after a series of lawsuits and research reports documented widespread concerns with the delivery and practice of indigent defense in the State of Michigan. The Advisory Commission investigated and made recommendations for improvements to the system of providing legal representation for indigent criminal defendants. The Advisory Commission concluded that

Michigan's counties offer an "uncoordinated, 83-county patchwork quilt" of public defense systems that fail to provide the type of quality legal representation mandated by the Supreme Court in *Gideon v Wainwright*.<sup>1</sup>

The Commission further found that local courts are not held accountable by data collection or any statewide standards ensuring constitutionally adequate defense counsel. These recommendations served as the basis for legislation and resulted in the passage of Public Act 93 of 2013, which established the Michigan Indigent Defense Commission (MIDC).

The MIDC is responsible for improving representation of indigent defendants through several steps. First, the MIDC proposes minimum standards to the Department of Licensing and Regulatory Affairs (LARA). After LARA adopts the standards, the MIDC works with local indigent defense systems to develop compliance plans to meet the minimum standards. Finally, the MIDC helps local systems secure state funding for reform and then monitors compliance with minimum standards over time.

With the MIDC's first set of standards submitted to LARA for review and the second set of standards currently in development, the MIDC is moving ahead ambitiously with systemic reform across the state. The MIDC believes that a weighted caseload study setting forth indigent defense caseload standards is a next critical step in the MIDC's efforts to provide a statewide framework for quality legal representation. The MIDC Act provides explicit impetus for a weighted caseload study in the following section:

"The MIDC shall implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the constitution of the United States and section 20 of article I of the state constitution of 1963. In establishing minimum standards, rules, and procedures, the MIDC shall adhere to the following principles: ... Defense counsel's workload is controlled to permit effective representation. Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided. The MIDC may develop workload controls to enhance defense counsel's ability to provide effective representation" (MCL §780.991 *et. seq.*).

The results of the weighted caseload study will be used to immediately and directly inform a caseload standard for trial-level indigent defense attorneys in Michigan.

### **3. The Structure of Michigan's Indigent Defense System**

Michigan is composed of 83 counties and 161 circuit and district courts. Until this point, counties and courts have received very little state-level oversight with regards to their indigent defense practices. With indigent defense historically funded entirely at the county-level, each county has

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<sup>1</sup> Michigan Advisory Commission on Indigent Defense (2012). "Report of the Michigan Advisory Commission on Indigent Defense;" *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963).

made independent decisions about the structure and delivery of its indigent defense services. As such, the state really is an “uncoordinated, 83-county patchwork quilt.”<sup>2</sup>

The structure and authority of Michigan counties and courts are highly complex. At the circuit court level, the 83 counties are composed of 57 circuits. Some circuits are composed of just a single county; for instance, the 3<sup>rd</sup> Circuit Court encompasses only Wayne County. Other circuits include multiple counties. The 32<sup>nd</sup> Circuit Court, for example, is composed of two counties, Ontonagon and Gogebic. At the district court level, there are 104 courts spread out among the 83 counties. Some counties have just a single district court while others have as many as 20. Several smaller counties share district courts, such as the 77<sup>th</sup> District Court, shared by Mecosta County and Osceola County. Like many states, the counties in Michigan also vary widely with respect to demographics, docket volume, politics, and local customs.

The delivery of indigent defense services across the state reflects the complexity of this structure. The majority of Michigan courts provide indigent defense services through a combination of assigned counsel and contract defender systems. At the time of writing, courts in eight Michigan counties (Washtenaw, Muskegon, Kent, Lenawee, Bay, Chippewa, Wayne, and Berrien) provide at least a portion of their representation through a public defender office. Each county sets forth its own compensation mechanisms, and so attorneys are compensated through a wide range of contracts and fee schedules.

The variation across courts in delivery systems and payment schemes offers critical motivation for a weighted caseload study that can provide meaningful and objective standards for quality representation across the state. For more information on the structure of Michigan’s trial courts, please see the State Court Administrative Office’s [directory](#). For more information on the delivery of indigent defense services in Michigan’s trial courts, please see the MIDC’s report on the agency’s [first survey of courts](#).

#### **4. Previous Caseload Studies**

Studies in states including Texas, Missouri, Massachusetts, Louisiana and New York have recently addressed the best ways to develop caseload standards. These studies were based on empirical research, took account of their unique state-level legal frameworks, and drew upon the expertise of local defenders and other stakeholders. While the details of any particular study may differ from what is required in this RFP, they may provide bidders with guidance when completing the study defined in this RFP.

These studies often involve two phases. The first phase begins with timekeeping where defenders track in detail their work, which allows the researchers to quantify how much time defenders put into specified activities in different classes of case. In other words, this first phase answers the question, “*What is?*” The second phase convenes a meeting of experts and key stakeholders, commonly called a Delphi Panel, which is tasked with developing recommendations for the final caseload standards, and, pursuant to Delphi principles, participate in a series of iterative discussions whereby meeting members are repeatedly polled until they reach consensus on ideal caseload limits. The second phase answers the question, “*What should be?*”

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<sup>2</sup> Michigan Advisory Commission on Indigent Defense, *supra* note 1.

## 5. Expectations of Current Study

Bidders on this RFP may plan a study drawing on some version of the two phases mentioned above, although the MIDC is also interested in new and innovative approaches. Bidders should be aware that while the studies performed by other states or prior to the issuance of this RFP may provide insight into the area being studied or the methodologies used, they should not unduly direct or influence the conduct of the study to be completed as a result of this procurement. The selected bidder is to conduct a new, empirically-based, methodologically-sound, and objective study of appropriate caseload/workload standards in the state of Michigan.

Given the diversity of Michigan counties and courts, bidders will be expected to identify a strategy in their proposal for selecting a representative sample of counties and courts in which to conduct the caseload study. Study sites should be selected to represent the full range of counties and courts described in Section 3.

Through the study, bidders will be expected to produce the following:

- (a) The appropriate numerical caseload/workload standards for each provider of mandated representation, whether public defender, assigned counsel program, or contract defender;
- (b) Recommendations for the means by which those standards will be implemented, monitored, and enforced on an ongoing basis, consistent with the MIDC Public Act 93;
- (c) An accessible template by which courts, counties, defense providers, or other stakeholders can determine the number of additional attorneys, investigators, and other non-attorney staff, as well as the amount of other necessary in-kind resources, to comply with the caseload/workload standards.

In doing so, bidders will be expected to develop, in collaboration with the MIDC, a complete list of all relevant categories of cases that may be handled by the attorneys in question. Bidders will also be expected to take into account:

- (a) The qualifications and experiences of the attorneys;
- (b) The distance between courts and attorney offices;
- (c) The time needed to interview clients and witnesses, taking into account travel time and location of confidential interview facilities;
- (d) Whether attorneys work on a part-time basis;
- (e) Whether attorneys exercise supervisory responsibilities;
- (f) Whether attorneys are supervised;
- (g) Whether attorneys have access to adequate staff investigators, other non-attorney staff, and in-kind resources.

Bidders should be prepared to assess attorney time required in activities including the following:

- (a) Client communication;
- (b) Meetings and negotiations with opposing counsel or other officials;
- (c) Requesting, receiving and reviewing discovery materials;
- (d) Investigation of the facts of the case;
- (e) Research into the law and legal issues in the case;
- (f) Drafting of pleadings, motions or correspondence;
- (g) Preparation for trial;

- (h) Time spent in court;
- (i) Identifying and addressing collateral consequences;
- (j) Sentencing research and advocacy;
- (k) Administrative tasks;
- (l) Non case-specific tasks such as traveling, waiting in court, training, supervision, or vacation.

As part of the award process, the proposer and the MIDC will establish a mutually agreed upon final budget and work plan, which become the contract deliverables.

## **6. Application Procedures**

### *Questions*

All questions regarding this request for proposal must be made in writing by March 20, 2017 and sent electronically to the attention of the Research Director of the Michigan Indigent Defense Commission, Jonah Siegel, at the following address: [jsiegel@michiganidc.gov](mailto:jsiegel@michiganidc.gov). All correspondences should use the subject line: Michigan Case-Weighting RFP. Answers to all questions will be publicly posted on the MIDC website ([www.michiganidc.gov](http://www.michiganidc.gov)) by the close of business on April 3, 2017.

### *Format*

All proposals must be single-spaced, with one-inch margins, and use a standard 12-point font (e.g., "Times New Roman"). The proposal shall include an abstract that summarizes the project in 500 words or less. The "Proposal Narrative" shall not be more than 20 pages, and must include capabilities of the responding organization, and the case-weighting plan (including number of participating counties or courts, project length, etc.). All proposals must also include a full budget and a budget narrative that describes every category of expenses listed in the budget. Please see Appendix A for a detailed suggested proposal format.

### *Deadline*

Emailed proposals should be sent to Jonah Siegel at [jsiegel@michiganidc.gov](mailto:jsiegel@michiganidc.gov) with the subject line: "Michigan Case-Weighting RFP." Proposals sent by mail should be marked "Michigan Case-Weighting RFP" on the outside of the package and received no later than 5:00 PM (EST) on May 1, 2017 at the following address: Michigan Indigent Defense Commission, 200 North Washington Square, Lansing, MI 48913.

### *Freedom of Information Act*

All portions of the bidder's proposal and the resulting Contract are subject to disclosure as required under Michigan's Freedom of Information Act, 1976 PA 442. All proposals will be considered the property of the State.

*Selection Criteria*

Priority will be given to applicants that provide a sound and convincing argument for their choice of methodology. The MIDC will give particular weight to bidders with a demonstrated capacity to successfully implement time-tracking among attorneys. Previous experience working in Michigan is preferred but not essential. All rights reserved to not select any of the proposals.

The MIDC will evaluate each proposal based on the following factors (please see Appendix A for recommended structure):

	<b>Evaluation Criteria</b>	<b>Weight</b>
1.	Plan of Action	50
2.	Proposer Capability and Personnel	25
3.	Budget and Cost	25
	<b>Total</b>	<b>100</b>

Proposals receiving 80 or more technical evaluation points will have its pricing evaluated and considered for award.

The MIDC may utilize all proposals, including pricing information, without regard to a proposal's technical score to determine fair market value, when comparing and negotiating prices. The MIDC is not obligated to accept the lowest price proposal. Access to available matching funds is not required but will be considered in the final decision. The price proposal evaluation includes consideration of a qualified service-disabled veteran preference. Information related to qualified service-disabled veteran preference is located at <http://michigan.gov/micontractconnect/0,4541,7-225-48677-123519--,00.html>.

Successful applicant will be notified by June 1, 2017.

## **Appendix A: Suggested Proposal Format**

### **I. PROJECT SUMMARY**

Please include:

1. Identification of the entity requesting funds.
2. Contact person, telephone, fax and email for this Request for Proposals.
3. Fiscal intermediary name and address (identify the department and/or individual responsible for fiscal reporting for this project).
4. Amount of funding requested.
5. A 500-word abstract of the proposed project.

### **II. PROPOSAL NARRATIVE**

#### **A. Plan of action**

Please answer the following questions about how you would conduct the proposed study. Bidders will be evaluated on the information they provide.

#### **Description of the study**

Describe the process, from start to finish, that you intend to follow in the development of weighted caseload standards, including:

1. An overview of the whole process of the study, including a detailed timeline.
2. Description of strategic approach to selecting relevant sites and attorneys for the study.
3. How will 'quality' representation be conceptualized and operationalized in the study? Refer to specific attorney performance standards in your answer and how they will be used in the study.
4. How would you assess the present caseloads/workloads of providers, including the amounts of time and types of work dedicated to cases? Include a description of any information technology products that will be used, how they will be used, and how you will seek to assure their successful use in this study. Please include a detailed description of how you will seek buy-in from participants.
5. How would you assess the additional time and resources necessary for the providers to provide quality representation? Include a description of any information technology products that will be used, how they will be used, and how you will seek to assure their successful use in this study.
6. How would the study incorporate participation from, and be generalizable to, public defender offices, assigned counsel, and contract defenders?

#### **Accounting for non-case and non-attorney time**

7. How would the study account for tasks or activities not related to specific cases, such as time spent traveling, waiting in court, or reviewing legal developments, and how would such differences be reflected in the numerical caseload standards and weights?

8. How would the study consider and quantify the time required for supervision of attorney and non-attorney staff, and how would such differences be reflected in the numerical caseload standards and weights?
9. How would the study consider and quantify the time required not only of attorneys, but also of non-attorney support staff such as investigators, paralegals, administrators and others, in order to meet standards, and how would such differences be reflected in the numerical caseload standards and weights?

#### **Accounting for local differences in geography, caseload and service providers**

10. How would the study account for geographic and other differences across the selected sites (and across the state generally), and how would such differences be reflected in the numerical caseload standards and weights?
11. How would the standards be applied to assigned counsel attorneys, or other attorneys, who split their time between indigent legal representation and other work?
12. How would the study account for representation performed in specialty courts, e.g. drug courts or veteran courts, and how would such differences be reflected in the numerical caseload standards and weights?
13. How would the study address not only new cases, but also any backlog of cases attorneys are carrying, and how would such differences be reflected in the numerical caseload standards and weights?
14. How would the study account for representation in cases which end prior to disposition – for example because a conflict of interest is discovered, or the person elects to retain private counsel?

#### **Development and application of standards**

15. How would your analysis use the data gathered to produce both numerical caseload/workload standards for providers of indigent legal services, and a weighting scheme for different types of cases?
16. How would those standards and weights be used to calculate the amounts of funding, additional staff (both attorney and non-attorney), and/or in-kind resources providers require to meet standards?
17. What types of data or other resources will be necessary for the MIDC to monitor compliance with caseload standards?

#### **B. Proposer Capability and Personnel**

Please provide qualifications and experience for the lead person(s) responsible for project implementation. Identify other members of the staff who will work on this project, as well as the role and level of involvement of outside participants in the completion of the project. If you are using sub-contractors for any other portion of the project plan, please specify their roles and responsibilities.

#### **C. Budget and Cost**

Proposals will be evaluated and rated on efficient use of funds and overall cost-effectiveness, which includes budget plans that are consistent with the proposed action plan, administrative costs,

justification for each requested budget line, and cost benefit. The decision will not be based on pay rate alone; it will be an evaluation of all of the factors included in the proposal. Please be sure to address the following:

1. *Budget*: Provide a detailed, annualized budget containing reasonable and necessary costs. The budget for the proposed project must be consistent with the terms of the RFP and provide a justification for all expenses.
2. *Subcontracting*: Describe whether the proposed budget will include subcontracting with another service provider in order to complete the terms described in this RFP and, if so, provide a brief description of the purpose of the subcontract.
3. *Matching Funds*. As described above, matching funds are not an essential component of the proposed application but will be considered if available. If matching funds are available, please provide the source, amount, and any stipulations tied to funds.
4. *Budget Justification*: Include a brief narrative for each budget line justifying the budget request and relating the requested line budget amount to the plan of action and expected results. The narrative should be mathematically sound and correspond with the information and figures provided in the Budget Form.
5. The *Budget Justification* must also describe how the proposer will monitor expenditures during the life of the project to ensure that the project stays within the budget.