



## STATE OF NEW MEXICO SOLE SOURCE REQUEST AND DETERMINATION FORM

A sole source **determination** is not effective until the **sole source request for determination** has been posted for thirty (30) calendar days without challenge, and subsequently approved in writing by the State Purchasing Agent or, for Professional Services Agreements, the Secretary of the General Services Department. The foregoing requirement is regardless of whether the **sole source request for determination** has been signed by the Agency and/or the Contractor.

I. Name of Agency: Law Offices of the Public Defender

Agency Chief Procurement Officer: Theresa Edwards

Telephone Number: 505-490-5106

Agency Contact for this request: Randy M. Chavez

Telephone Number & Email Address: (505) 470-9938, randy.chavez@ccls.lpdnm.us

II. Name of prospective Contractor: The Law Office of Pamela Sullivan

SHARE Vendor Number (must be active): 0000137027

Address of prospective Contractor:

900 Lomas Blvd NW

Albuquerque, NM 87102-1984

Contact Name, Telephone Number and Email Address: Pam Sullivan, (505) 242-3780, [pams@sullivannm.com](mailto:pams@sullivannm.com)

Amount of prospective contract before tax: \$150,000

Estimated tax amount (tax is subject to change): \$11,700

Term of prospective contract: April 1, 2023 through March 31, 2024

Note: For terms longer than one year, Request for Policy Exemption from DFA MUST be included.

III. Agency is required to state purpose/need of purchase and thoroughly list the services (scope of work), construction or items of tangible personal property of the prospective contract (if this is an amendment request to an existing contract, include current contract number issued by SPD):

The purpose of this contract is for Contractor to perform legal services in the 11<sup>th</sup> Judicial District in McKinley County. Contractor will represent indigent clients on behalf of the

Law Offices of the Public Defender (LOPD)/Contract Counsel Legal Services (CCLS) on Misdemeanor, Juvenile, Felony and Murder cases.

In April of 2022, the LOPD/Contract Counsel Legal Services (CCLS) sent out a Request for Proposals (RFP) for attorney contractors interested in representing indigent clients on behalf of the LOPD throughout the State. The start date of the contract period was November 1, 2022. These independent contractors represent clients in situations where there is a conflict with the LOPD or in jurisdictions where there is no LOPD office. McKinley County (11<sup>th</sup> Judicial District) has an LOPD Office; therefore, Contractor will represent clients on cases where there is a conflict with the LOPD. In response to the RFP, CCLS only received one proposal specifically for McKinley County, and he was awarded a contract. Because of the high number of cases being assigned to contract counsel in conflict cases, I specifically had to request for one other contractor who was awarded a contract to consider accepting cases in McKinley County, and she accepted. Therefore, for the first month of the contract period (November 2022), the LOPD/CCLS had two contractors accepting cases in McKinley County. In that same month, the single Contractor who did respond to the RFP and who was awarded a contract, decided he no longer wanted to accept cases in McKinley County; and, as such, sent notice. The LOPD/CCLS was left with only one Contractor to accept conflict cases in McKinley County; thus, the Contractor who is the topic of this Sole Source application agreed to start accepting cases in McKinley County on December 1, 2022. However, the Contractor has a contract for less than \$60,000.00 (Professional Services Contract #23-280-0000-SM101 fully executed November 1, 2022), and will not have sufficient funds to sustain the acceptance of cases for more than a couple of months. At this point in time, she has already invoiced approximately \$30,000.00. Despite the RFP and requests to other contractors, the LOPD/CCLS has been unable to secure another contractor in McKinley County. Currently, each Contractor in McKinley County is averaging 27 case assignments per month. Given the high number of cases being assigned to contract counsel, it is impossible for one Contractor to handle all the cases. Contractor is the sole source which can provide the legal services requested in this Sole Source Application.

- IV. Provide a detailed explanation of the criteria developed and specified by the agency as necessary to perform and/or fulfill the contract and upon which the state agency reviewed available sources. (Do not use “technical jargon;” use plain English. Do not tailor the criteria simply to exclude other contractors if it is not rationally related to the purpose of the contract.)

The following is an explanation of the criteria specified by the LOPD/CCLS as necessary to perform the legal services duties and/or fulfill the contract:

- 1) Contractor must have the ability to meet the Performance Standards for Criminal Defense Representation; including, but not limited to, not have any suspensions or disciplinary action by any state bar association or termination from any legal employment, and must disclose any and all contracts with any other state agency to which Contractor is a party to at the time of this contract;
- 2) Contractor must have criminal law experience; including, but not limited to, Habeas, Appellate and Murder Case experience;
- 3) Contractor must have criminal jury trial and bench trial experience;

- 4) Contractor must have good office organizational skills and a calendaring/docketing system;
- 5) Contractor must have the ability to meet with clients in a confidential setting to form an appropriate attorney and client relationship, both with clients in custody and out of custody;
- 6) Contractor must have the ability to zealously advocate for clients;
- 7) Contractor must possess the knowledge of relevant law, courts and rules;
- 8) Contractor must provide a list of criminal defense trainings attended and the number of CLEs obtained in 2021 and 2022;
- 9) Contractor must disclose all complaints received by the LOPD and the Disciplinary Board within the last ten (10) years;
- 10) Contractor must have the ability to comply with LOPD policies and procedures; including, but not limited to, disclosure of a spouse, parent, children, or siblings, by consanguinity or affinity, who are employed at the LOPD;
- 11) Contractor must have the ability to advocate by writing motions, doing legal research, and have experience in preserving legal issues, etc.;
- 12) Contractor must be in good standing with the New Mexico State Bar; and,
- 13) Contractor must have a positive assessment from the Judiciary.

Contractor will represent clients from case assignment until final disposition. Contractor will:

- 1) Advise client of the right to jury trial and right to speedy trial, advise client the elements of the charge and that the prosecutor must prove each element beyond a reasonable doubt to obtain conviction, advise client of right to present a defense, advise client it is solely the client's decision whether to accept or reject any plea offer, and will discuss with the client any potential witnesses or avenues of the investigation;
- 2) Determine whether the client is competent to proceed to trial, has a sufficient literacy level to understand written court documents such as a guilty plea or sentencing orders, whether the client needs an interpreter, and whether the client is a non-citizen in need of expert immigration advice;
- 3) Respond to information provided by the client and obtain discovery from the prosecution in each case, including pursuing additional discussions with the client on whether additional investigation or a medical evaluation needs to be conducted;
- 4) File motions and argue any motions to the Court on any legal issues identified by the Contractor;
- 5) Advising and discussing with client all possible options regarding possible disposition, including providing the client information on treatment services, a less onerous disposition based on treatment, explanations of plea offers, the consequences of conviction, and possible sentencing;
- 6) Contractor will prepare and represent a client in a trial, if the client decides he want to proceed to trial;
- 7) If the client accepts a plea and disposition agreement or is convicted in trial, Contractor will draft a Sentencing Memorandum, produce witnesses, and otherwise provide allocution in the sentencing hearing; and,
- 8) If client is convicted in trial, Contractor shall file a Notice of Appeal and shall complete a Docketing Statement.

- 4) Provide a detailed, sufficient explanation of the reasons, qualifications, proprietary rights or unique capabilities of the prospective contractor that makes the prospective contractor ***the one source*** capable of providing the required professional service, service, construction or item(s) of tangible personal property. (Please do not state the source is the “best” source or the “least costly” source. Those factors do not justify a “sole source.”)

Contractor has been a Criminal Defense Attorney for approximately thirty (30) years, and she possesses the requisite knowledge and experience necessary to perform the legal services duties and/or fulfill the contract, as described above in Section IV (above). In 1993, Contractor graduated from the University of New Mexico School of Law. After successfully passing the bar exam, between 1993 and 1997, Contractor was employed as a staff attorney for the LOPD in Albuquerque, New Mexico. Between 1997 and 2001, Contractor was an associate with the law firm, Wade, Kelly & Sullivan, in Alaska. The law firm specialized in criminal defense. In 2005, Contractor became a partner in the same law firm, where she practiced until 2015. During this time period, Contractor was a member of the CJA Panel, and she represented many clients in Federal Court. The law firm continued to specialize in criminal defense. In 2015, Contractor moved back to New Mexico. Between 2015 and 2018, Contractor was employed as a staff attorney with the Law Offices of Alan Maestas in Taos, New Mexico. The law firm specializes in criminal defense. In 2018, she became a Sole Practitioner. Also in 2018, Contractor was awarded a contract with the LOPD/CCLS. She has worked in this capacity since that time. She currently has a contract of less than \$60,000.00 with the LOPD/CCLS. Contractor has always complied with all provisions of the criteria specified by the LOPD/CCLS as necessary to perform the legal services duties and/or fulfill the contract. Contractor is willing to accept cases in McKinley County for the rates described in the LOPD/CCLS contract; therefore, Contractor is the sole source. If this request is not granted, the LOPD/CCLS will have to start declining conflict cases in McKinley County, because, as stated above, one contractor cannot represent all the cases assigned to conflict counsel.

- 5) Provide a detailed, sufficient explanation of how the professional service, service, construction or item(s) of tangible personal property is/are ***unique and how this uniqueness is substantially related to the intended purpose of the contract.***

Given Contractor’s extensive knowledge and experience in representing clients in criminal cases (as described above), Contractor’s abilities are unique and are substantially related to the purpose of representing clients on behalf of the LOPD/CCLS in conflict cases (Please refer to Sections III. and IV. above).

- 6) Explain why other similar professional services, services, construction or item(s) of tangible personal property ***cannot*** meet the intended purpose of the contract.

As stated above, despite the LOPD/CCLS’s attempts to find other contract counsel, this Contract Counsel is willing to accept cases in McKinley County, we have been unable to do so. Simply, there are no other attorneys willing to accept case assignments in McKinley County. There are no other attorneys who can meet the intended purpose of the contract in representing the indigent clients in McKinley County.

- 7) Provide a narrative description of the agency's due diligence in determining the basis for the procurement, including procedures used by the agency to conduct a review of available sources such as researching trade publications, industry newsletters and the internet; contacting similar service providers; and reviewing the State Purchasing Divisions' Statewide Price Agreements. Include a list of businesses contacted (***do not state that no other businesses were contacted***), date of contact, method of contact (telephone, mail, e-mail, other), and documentation demonstrating an explanation of why those businesses could not or would not, under any circumstances, perform the contract; or an explanation of why the agency has determined that no businesses other than the prospective contractor can perform the contract.


When the LOPD/CCLS issued the RFP on April 29, 2022, the RFP was advertised in the:

- 1) Albuquerque Journal (newspaper),
- 2) the Las Cruces Sun (newspaper),
- 3) The Santa Fe New Mexican (newspaper),
- 4) the State Bar Bulletin (which is sent out to all New Mexico Attorneys),
- 5) the LOPD Social Media Pages on Facebook and Twitter,
- 6) the LOPD Website, and
- 7) the New Mexico Criminal Defense Lawyers Association List Service (NMCDL) (which goes out to all members of the NMCDL).

As previously stated in Section III. above, no other contractors expressed any interest in representing clients in conflict cases in McKinley County. During the RFP process, in addition to the one Contractor who agreed to accept assignments in McKinley County, the Director of Contract Counsel inquired of specific contractors whether they were willing to accept cases in McKinley County, and no contractors were willing to do so.


Certified by:

Date: 2/23/2023

  
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Agency Chief Procurement Officer

Agency Approval by:

Date: 2/23/2023

  
\_\_\_\_\_  
Cabinet Secretary/Agency or Entity Head or Designee

APPROVED:

Date: N/A

N/A  
\_\_\_\_\_  
State Purchasing Agent

***If this sole source is being submitted by a governmental agency or governmental entity not under the final authority of the State Purchasing Agent, the State Purchasing Agent's signature is not required. The signature line may be removed from this form or marked as N/A. Hard Copy Documentation for Courtesy Postings do not need to be submitted to SPD for approval.***