

Q&A: Request for Proposals #084

Attorney for the Child Services, Juvenile Defense

1. If the applicant has the capacity to handle 100% of the caseload in the RFP, but in practice we know that conflicts would reduce that number, would you like us to indicate that, and, further, how would you like us to estimate the percentage of cases we might conflict off of in the future?

The applicant should submit its estimated caseload capacity without factoring in potential case conflicts. Awarded caseloads may differ from the successful applicant's caseload capacity bid to account for conflicts and other factors.

2. Is there a requirement that the service provider maintain an office in the county(ies) where a bid is submitted? If so:
 - a. how much discretion is given for selecting which town the agency would be located?
 - b. could an office sit on the border between two counties that the agency has contracts and still satisfy the requirement?
 - c. would the office location have to be identified prior to submission of the bid?

The RFP does not specify office locations. However, applicants should describe how services will provided in any given county.

3. Are these bids intended to augment current relationships with the current providers (e.g. Legal Aid Society) or are these bids possibly going to supplant the current provider(s)?
There is no specific intention to do either; the awards that result from this procurement will be stand-alone awards for the specific services in each county.

4. Are bids considered exclusively with each individual county or with a view to covering an entire district/region ? Meaning, does each bid stand on its own or if multiple counties are bid upon will the collective bids be reviewed together ?

The bids in each county will be evaluated independently and compared only against one another pursuant to the Award Selection Criteria defined in the RFP.

5. Please confirm that this RFP only considers funding for JD/PINS cases and/or JO/AO cases.

Correct. This RFP is ONLY for Juvenile Defense Attorney for the Child services outside of New York City.

6. Will there be a separate RFP for the balance of AFC Services? If so, what is the timing of that RFP?

For agencies that handle child protection and custody cases in addition to juvenile justice cases, are we to expect two separate contracts for the fiscal 2021-22 budget year? Is there a separate RFP contemplated for these practice areas?

This RFP and any contracts resulting from it are solely for Attorney for the Child – Juvenile Defense services outside of New York City.

UCS intends to issue an RFP for other (subject child) Attorney for the Child services in the near future which does not have an impact on this bid process.

7. How much funding is available per agency, per county in the RFP?

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Awards in each county will be dependent upon caseload and cost per case bids submitted by qualified applicants. UCS reserves the right to decline to issue an award in any given county and case type based on its final determination, in consultation with the respective Appellate Divisions of the Supreme Court, of need, cost, and relative quality to existing services.

8. If another program within our organization already handles Youth Part cases, do we only request funding for JD/PINS?

The AO/JO representation procured through this RFP is for cases removed from the Youth Part. Prospective providers should file applications for any and all cases they wish to handle in a given county, regardless of what organizations currently handle such cases.

9. If applicants are proposing to serve more than one county, does an entire separate application need to be submitted? (one proposal for each county; or one proposal that can be for multiple counties).

If applying for multiple counties do we need to submit separate bids?

A separate Caseload Capacity and Cost Per Case (Bid) must be filed for each county and case type in which an applicant proposes providing services. The narratives described in Article VIII(A) and VIII(B) need only be completed once per applicant.

10. The contract term is listed as five years, for this RFP are we submitting a budget for fiscal 2021-22 or for the complete five years.

UCS intends to award contracts for a five-year term comprised of individual budget periods (generally, annual periods). Each budget period will be subject to available appropriations and may be adjusted based on fiscal or programmatic factors including but not limited to caseload fluctuations.

The RFP does not require a line item budget submission. The RFP requires a budget narrative that briefly describes the expenses associated with the program plan (for the initial annual period).

It is important to note that applicant responses on the Cost Proposal and Caseload Capacity Chart for Applicant Estimated Capacity and Cost per Case will be used for the purpose of determining awards, but that awardees will not be reimbursed on a case basis, but rather for actual expenditures incurred against a line item budget to be developed post-award. Applicants should propose Costs per Case Bids sufficient to provide appropriate representation.

11. Are the “Projected Annual caseload” numbers identified on pp. 2-6 of the RFP meant to refer to annual pending caseload or annual intake?

All caseload projections are estimates only and are not to be considered as definitive. The estimated are premised on intakes.

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12. If the caseload numbers on pp. 2-6 refer to total annual intake, do those numbers refer to total cases filed/prosecuted or total arrests?

- a. Does the total number of PINS/JD cases refer only to cases actually filed, or does it also include young people who are in the Probation adjustment phase or who have been referred to Corporation Counsel and Corporation Counsel declines to prosecute them? (This could be both young people who had prior cases, or have new cases.)

The estimated JD/PINS cases are based on historical original court filings.

- b. Does the total number of AO/JO cases include only cases that are removed from the youth part and then filed in family court? Or does it also include cases that are removed from the Youth Part but a young person is in the adjustment phase (no delinquency matter filed) or for whom corporations counsel declines to prosecute?

The estimated AO/JO cases includes cases that are removed from the Youth Part and referred to probation intake and those filed in family court.

- c. In arriving at a cost-per-case or budget for annual intakes, should a bidder presume that it would provide attorney representation and social work support to youth during the adjustment period?

For matters removed from the Youth Part, the applicant may propose providing representation during the Probation adjustment phase, including ancillary support. Such representation would be a reimbursable expense under the awarded contract.

- d. Does the total number of AO/JO cases include cases that remain in the Youth Part and are not removed?

No.

13. Do the caseload numbers on pp. 2-6 “caseload” refer to matters or clients? I.e. if a young person we represent has two pending cases, is that 2 cases, or 1 case, with respect to the pending caseload numbers referred to on pp. 2-6?

Caseload estimates are premised on original court filings.

14. Does OCA have data on average case length (from filing to disposition) for the categories of cases identified on pp. 2-6 by county and case type?

Does OCA have data it can share on percentage of violations filed, by county?

Does OCA have data it can share on percentage of AO’s removed from the Youth Part by county?

Does OCA have data it can share on the percentage of AO’s removed from the Youth Part but that are not ultimately filed in Family Court? (this would give bidders a sense of the workload involved in representing youth during the adjustment process or cases where there is a Decline to Prosecute).

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Does OCA have data on the number of cases where there are multiple AO's/Respondents by county; and/or an average conflict rate on cases in both PINS/Delinquency and JO/AO categories?

The New York State Division of Criminal Justice Services publishes data on these topics at:

<https://www.criminaljustice.ny.gov/crimnet/ojsa/stats.htm>

15. Do the categories of cases identified on pp. 2-6 include violations of disposition proceedings? Or is a violation considered a separate case and so included in the projected annual caseload numbers? Or, is a violation considered a continuation of a pending case so not a new case?

Violations are included in the estimated caseload numbers.

16. Do the categories of cases identified on pp. 2-6 include extensions of placement proceedings? Or is an extension considered a separate case and so included in the projected annual caseload numbers? Or, is an extension considered a continuation of a pending case, so not a new case?

Extensions of placement are included in the estimated caseload numbers.

17. Additional case definition questions:

- a. Shall the AFC interpret a case to include any Juvenile Delinquency matter processed during the night, weekend or holidays Family Court session?

Yes.

- b. Shall the AFC interpret a case to include any matter originating in the Youth Part and subsequently removed to Family Court that is not assigned a Family Court docket number? For example, when an AO matter is removed to Family Court (without protective order) and the youth is scheduled to meet with the Department of Probation, is that matter considered a case, within USC's [UCS'] definition of a case?

Yes.

- c. If an AO case is removed from the Youth Part, and referred by the Department of Probation then referred to Corporation Counsel, but no petition is immediately filed in court, is that matter considered a case?

Yes.

- d. If youth is detained prior to JD filing in court in a precinct, and seeking legal representation prior to interrogation, line up or questioning by police or prosecutor, does USC [UCS] consider that matter a case?

All matters assigned to an attorney for the child pursuant to Family Court Act Section 249 are considered cases. It is important to note that applicant responses on the Cost Proposal and Caseload Capacity Chart for Applicant Estimated Capacity and Cost per Case will be used for the purpose of determining awards, but that awardees will not be reimbursed on a case basis, but rather for actual expenditures incurred

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against a line item budget. Applicants should propose to provide appropriate representation within the bounds of requested funding.

18. Given that only one contract will be awarded in each county, does OCA have a minimum and maximum percentage of cases it expects to continue to have handled by solo assigned counsel?

No.

19. Page 12 of the RFP indicates that a bidder should be able to represent a youth “at the earliest practical opportunity in the proceeding...and provide initial services to the client at the earliest possible opportunity....assume representation of each client at the earliest practical opportunity in the proceeding....and where feasible, prior to the client’s first court appearance.” With respect to the “Juvenile /Adolescent Offender” category: to adequately represent an AO youth, a provider should be available at the arraignment of the youth, especially where the DA does not consent initially to a removal. To be effective, defense counsel needs to take advantage of the days between arraignment and any removal by doing an investigation, possibly referring the young person or his/her family to services, motion practice (if the DA seeks to have a non-violent felony remain in the Youth Part) and otherwise preparing for the day when the court will decide whether the case will be removed. Even if it is known that the AO youth will be removed at the point of arraignment, to represent the youth well during adjustment and in the days following the removal, the provider should be present to meet the youth at arraignment as the removal order is made. We have the following questions related to this:

- a. Will OCA ensure that a new provider is assigned by relevant judges to necessary arraignment shifts in the Youth parts to assure this aspect of the program?

No.

- b. When AO/JO’s are arraigned before an Accessible Magistrate on a weekend or evening and then the youth is sent to the Youth Part, will the provider be expected to assure continuity of representation by appearing in the Accessible Magistrate’s part through the Youth Part and possibly to family court?

Applicants must speak to their plans to promote continuity of representation in Section VIII(B). The RFP does not specify the method by which continuity shall be achieved.

- c. Will OCA provide funding through this contract or another means to insure that a provider that is new to the county (or who does not have a current criminal defense contract and/or another means to get paid to do criminal work) can support staffing to be available at the point of arraignment of youth in the Youth Parts before the removal order?

No.

- d. Will OCA provide funding through this contract or another means to insure that a provider that is new to the county (or who does not have a current criminal defense contract and/or another means to get paid to do criminal work) is able to

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appear in weekend or evening arraignments (before Accessible Magistrates) where the presiding judicial officer then sends the case to the Youth Part for the next available appearance during business hours?

No.

20. In terms of the requirement on page 16, that a provider have a plan to ensure representation at after-hours arraignment, does that requirement apply to JO/AO program descriptions or just to apply to a JD program description?

Section VIII(B) question 7 applies only to JD/PINS applicants. Attorney for the Child representation for JO/AO clients begins at the point of removal from the Youth Part.

21. For both AO/JO and Delinquency/PINS cases, will OCA ensure that new providers are assigned at least some primary intake shifts so that it can staff in a cost-effective manner? (Being only a conflict provider usually means that a provider may not pick up any cases on a given intake day.)

No.

22. In Nassau, Suffolk and Westchester counties, do attorneys who now provide representation for AO/JO's and JD/PINS youth have regular daily intake shifts where they appear in court even if no arraignments happen, or are they contacted by court personnel on an as-needed basis when there is an arraignment?

The statewide Office of Court Administration does not regulate such matters. Practices vary locally.

23. On page 16, Project Description #8, regarding continuity of representation, how does UCS define continuity? What does UCS mean by a plan for continuity? Does it include representing a youth who the provider currently represents on a JD case who then gets a new arrest that brings that youth to the Youth part? To a weekend or evening arraignment before an Accessible Magistrate? Is the provider expected to continue representation of the youth should the subsequent case not be removed?

Section VIII(b) question 8 requires that the applicant describe its plan to ensure continuity of representation for Youth Part matters removed to the Family Court. In instances where the same attorney or firm does not represent the defendant in both venues, the applicant should articulate the plan to promote a smooth transfer of representation.

24. In counties where there is already an institutional provider that can continue to represent youth following the removal order (through Probation adjustment), that provider presumably has funding to do so, but even if not, they certainly have to cover arraignments and the period up to removal, including funds that cover any investigation or referrals by social workers to services a youth might need. During adjustment, it is important to continue to do an investigation (so that witnesses' recollections are not stale

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and so that video and other documentary evidence is available), and it is important to ensure a youth is in services, because this could influence whether a young person succeeds during the adjustment phase. Because existing providers have (and presumably will continue to receive) government revenue to help fund some of this work, it would seem they are better positioned to submit a budget for those cases (or a cost-per-case) that is lower than any provider that currently does not enjoy that city funding. Will OCA scoring on the budget section of the RFP reflect this?

Cost per case will be evaluated solely pursuant to the formula articulated in Section VII, Award Selection Criteria and Method of Award.

25. Page 28 refers to References submitted--can references be submitted as appendices to the proposal documents (as there are page limits for the narrative sections)?

References are not a required submission for this RFP and should not be submitted.

26. Can we submit very brief bios of key staff as appendices to the proposal?

No. Please do not submit any documents not required as part of the bid specifications.

27. Can we submit very brief descriptions of recent accomplishments as appendices to the proposal?

No. Please do not submit any documents not required as part of the bid specifications.

28. What is meant by the phrase “properly reassign conflicts” on page 7 [12] of the RFP?

Does that refer to an applicant’s procedures for ensuring a youth has representation by another qualified person or entity as soon as is practicable after we identify that we can not continue representation because of a conflict?

The required project service “identify conflicts and implement procedures to appropriately re-assign conflicts” refers to the applicant’s ability to identify conflicts and follow local procedures to assure that the case is properly reassigned.

29. With respect to Westchester county, which Family Courts hear delinquency matters and if awarded a contract, to be cost-effective, would the awardee have the ability to limit representation only to one of the family courts?

The RFP does not permit an applicant to submit a bid for only part of the county.

30. Given the likelihood that many youth will have cases in both the Family Court and the Youth Parts as AO’s, will additional points be awarded or considerations taken for applicants who bid on both case types in the same county?

Applications will be scored only according to the criteria set forth in Exhibit 3, Evaluation Tool.

31. Page 13 states “In the event the Applicant Estimated Capacity submitted by an awarded applicant is less than the amount required to fulfill its award percentage, UCS may offer

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awarded applicant the option of increasing its Applicant Estimated Capacity, up to the UCS Estimated Caseload, subject to final approval of UCS.” Should we understand this to mean that UCS might ask a top-scoring applicant to take more cases than it bid on but for the same cost as the original proposal (essentially doing more cases for the same amount of proposed revenue)? In the event that the top scoring applicant does not wish to increase its capacity to the same extent as UCS, will that disqualify the top-scoring applicant from getting a contract? What will happen in this situation in counties where there is only one applicant?

The RFP only states that UCS may offer awarded applicant the option of taking more cases, but is not obligated to make such an offer. Applicants are reminded that the RFP states that contracts will only be awarded for caseloads of 30 cases or more and that UCS reserves the right to decline to issue an award in any given county and case type based on its final determination, in consultation with the respective Appellate Divisions of the Supreme Court, of need, cost, and relative quality to existing services. Awarded applicants will not be disqualified if they decline to accept a caseload greater than number submitted in their bid response.

32. Page 14 of the RFP states: “UCS reserves the right to set aside any award if it is unsuccessful in negotiating a contract with the awarded applicant containing a cost proposal that does not exceed three (3) times the lowest qualified bid for such county and category (“Cost Ceiling”).” For calculation of the cost-ceiling, if there is only one bidder in a county, how will the threshold of three times the lowest bidder be determined? Will a comparison be made with other counties in the state?

Cost ceilings will be calculated per lowest qualified bids per county, irrespective of the number of qualified bids therein.

33. Is there a total amount budgeted for contracts for all counties in the RFP that OCA can share with applicants so that bidders have a sense of the proportion of the total likely to be designated for a county based on data on annual filings per county?

No.

34. We read the RFP to indicate that applicants can bid only on AO/JO cases in a particular county. Is that correct?

No. Applicants may bid for AO/JO and/or JD/PINS cases in any given county or multiple counties.

35. Given that the contracts are to begin on April 1, 2021, will OCA consider applicants who need a ‘start up’ period following April 1, 2021, to secure office space, hire staff, etc. before being obligated to represent youth pursuant to the contract? Will a contractor be able to submit reimbursement for those staff who are working during the start-up on hiring, training and other activities related to preparing to represent youth?

Yes.

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36. How does this splitting this across county lines benefit the AFC program and the representation of juveniles in Family Court? Wouldn't Department-wide uniformity promote efficiency and comparable quality of representation?

This question is not pertinent to this procurement opportunity.

37. The RFP indicates that the winning proponent would have to create a new training program for AFC matters, and that required training topics include adolescent brain development, interviewing and counseling adolescents, handling special populations such as LGBTQ, developmentally disabled, substance abusing youth, etc. I believe the current AFC training by the Fourth Dept. involves 30 hours of CLEs plus shadowing. Would the winning proponent be responsible for a comparable program and required to do all the training for AFCs doing juvenile justice work in the county? In other words, is this expected to be a total replacement of the AFC training program for the juvenile justice cases in the county? Is 4th Dept AFC juvenile justice training going away completely?

Such training may be provided via participation in existing training programs. There is a long history of cooperation between institutional providers and Appellate Division Attorney for the Child offices in delivering quality training programs across the state.

38. Does the proponent's training program have to be approved by UCS?

No.

39. Will the Family Court judges only be allowed to assign our locally-trained AFCs for juvenile justice cases? Or can the judges assign attorneys from the 4th Dept. AFC panel who are not on the proponent's list?

In any county where an institutional provider is awarded a contract, attorneys from the Appellate Division Attorney for the Child panels are also expected to continue to provide services.

40. What about AFCs already qualified by the Fourth Dept.? Must they be retrained under our program or can they be "grandfathered in"?

Attorneys assigned by institutional providers awarded contracts under this RFP must be proficient in juvenile defense practice in the Family Court. Applicants are required to articulate their plans to provide such attorneys in Section VIII(b), which, per subsection 1 thereof, may include prior experience and qualifications.

41. It appears that the bid should include enhanced services for these cases such as social workers, investigators, etc. Are there applicable standards we are expected to follow when selecting the enhanced service providers? Are we expected to identify these potential service providers in the proposal?

No. Applicants are to include any services that promote quality representation in their proposals. Applicants are not expected to specifically identify potential service providers by name but may do so if they are known. The RFP links to the National Juvenile Defender Center's Juvenile Defense Standards, which may be instructive. The link is provided here as a courtesy: <https://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

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42. The RFP awards higher points for the lowest bid, which raises concerns about future funding. Is there a guarantee that this will not turn into an unfunded mandate for the county?

Attorney for the Child services are funded through appropriations to the state judiciary pursuant to the Family Court Act.

43. What about crossover cases where there is abuse/neglect or custody/visitation? Will there be multiple attorneys?

The statewide Office of Court Administration does not regulate such matters. Practices vary locally.

44. Won't this bifurcated process create the possibility of fraudulent vouchers? In other words, one county would have no way to review another county's vouchers from the same attorney.

Awardees will be reimbursed by the Office of Court Administration for actual expenditures incurred against a line item budget rather than through a per case vouchering system. Awarded applicants will be reimbursed in conformance with all contract and legal requirements.