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State House Annex - Room 120
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September 5, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Judicial Council to enter into a Cooperative Project Agreement (CPA) with the University of New Hampshire (Vendor # 177867), Durham, NH, in an amount not to exceed $56,904 to provide training for indigent defense providers effective September 22, 2023 upon Governor and Council approval through June 10, 2024. 100% Federal Funds.

Funds are available in the following account in Fiscal Year 2024, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

02-07-07-070010-24430000 Indigent Defense ARP

Class/Account	Class Title	FY 2024
067-500557	Training for Providers	$56,904

EXPLANATION

Pursuant to RSA 604-A:2, in every criminal case in which the defendant is charged with a felony or a class A misdemeanor and appears without counsel, the court must appoint counsel if the defendant is financially unable to obtain counsel. Whenever the court appoints counsel in an indigent defense case, the court first appoints the public defender program under RSA 604-B. However, if the public defender program is not available, the court must appoint a contract attorney under RSA 604-A:2-b (the "contract attorney" program), and in the event that neither the public defender program nor a contract attorney is available, the court may appoint any qualified attorney (the "assigned counsel" system).

Pursuant to RSA 494:3, it is the duty of the Judicial Council (hereafter the "Council") to administer the indigent defense delivery system and ensure its quality and cost effectiveness, pursuant to RSA 604-A and RSA 604-B. The Council, on behalf of the state, oversees the contract attorney program and the assigned counsel system. Contract attorneys and assigned counsel must be qualified to provide criminal defense representation and the Council has established eligibility standards to ensure constitutionally adequate representation in such cases.

Over the past three years, the number of lawyers participating in the contract attorney program has decreased approximately 45%. This reduced number of contract attorneys results in a greater reliance on the assigned counsel system, which itself faces a demand for more participating lawyers.

In October of 2021, the Council requested to accept and expend federal funds from the American Rescue Plan Act of 2021 (ARPA), State Fiscal Recovery Funds (SFRF), "to facilitate recruitment and training of attorneys taking on new cases through contract and assigned counsel programs." As the requested action noted, the pandemic "highlighted the lack of criminal training available to new attorneys who are not hired by [the public defender program]." Providing training to lawyers not experienced in criminal defense practice "would also help sustain the contract and assigned counsel programs by providing invaluable experience and training to future practitioners in an area of law with a constant need."

The Council now seeks to increase the number of lawyers and law firms participating in the contract attorney program and assigned counsel system by providing training to lawyers who (1) are admitted to the New Hampshire Bar but do not have substantial experience providing criminal defense representation, (2) are recently admitted to the New Hampshire Bar and may lack substantive experience in New Hampshire courts, (3) are recent law school graduates who, with adequate training and mentoring, could provide adequate defense representation in misdemeanor and certain felony level cases, or (4) would otherwise benefit from an intensive trial skill training in the area of indigent defense representation.

To this end, the Council seeks to enter into a CPA with the UNH Franklin Pierce School of Law to provide criminal defense and legal skills training to lawyers who agree to participate in the contract attorney program or assigned counsel system for at least one year. Professors Melissa Davis and Julian Jefferson, the lawyers who will be administering the program, have extensive experience representing persons in indigent criminal and juvenile delinquency cases, are knowledgeable and experienced in the instruction of lawyers (Professor Davis serves as the Director of the UNH Criminal Practice Clinic), and possess the necessary resources and facilities to develop and provide a structured, high-quality, legal skills training and mentoring program.

Pursuant to the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, the state and the University of New Hampshire may enter into a CPA for the purpose of undertaking a project of mutual interest. UNH's proposed Trial Skills Academy will provide day-long intensive training on 12 different dates over a 10 month period, and offer mentoring to participating lawyers during that period. Lawyers who participate in the training agree to accept at least 2-4 misdemeanors or 1-2 felonies per month during the program, and will be eligible to accept additional court-appointed cases upon successful completion of the program.

REQUEST FOR PROPOSALS AND REVIEW PROCESS

The Judicial Council developed a detailed Request for Proposals (RFP) for training of providers and made the RFP available on the Judicial Council website. The availability of the RFP and the opportunity to submit proposals were also publicized in a statewide newspaper (Union Leader). In addition, the RFP was listed on the Department of Administrative Services, Procurement and Support Services' website for Statewide Bids and Proposals. Notice regarding the availability of the RFP also appeared on the New Hampshire Bar Association's classifieds website.

Other than UNH, no group or individual submitted a proposal for consideration. The proposal submitted by UNH was reviewed thoroughly by the Judicial Council's Indigent Defense Subcommittee and was found to be compliant with the Judicial Council's Request for Proposals.

Thank you for your consideration. This Agency will remain at your service to answer any questions you may have regarding the proposed contract and its importance to the orderly administration of justice.

Respectfully submitted,

Richard E. Samdperil
Acting Executive Director

Attachments

State of New Hampshire
Judicial Council

SCORING SHEET

Project ID# RFP JC 2024-01

Project Title Training for Indigent Defense Providers

Bidders: (1) University of New Hampshire Franklin Pierce School of Law
(2) [none]
(3) [none]

Evaluation Criteria	Maximum Points Available	UNH (University of New Hampshire Franklin Pierce School of Law)
Bidder Background and Experience (weight: 50%)	50	50
Detailed Response and Scope of Work offered by the Bidder (weight: 30%)	30	27
Completeness and thoroughness of the proposal (weight: 10%)	10	9
Demonstrated experience and knowledge in the provision of indigent defense representation pursuant to RSA 604-A and current American Bar Association's Criminal Justice Standards for the Defense Function (weight: 10%)	10	10
TOTAL POINTS	100	**96**
TOTAL PROPOSED VENDOR COST (*price limitation*: not to exceed $60,000 per RFP)		**$56,904**

Reviewed by:

Richard E. Samdperil, Acting Executive Director, Judicial Council

John E. Durkin, Esquire, Judicial Council member, Indigent Defense Subcommittee (chair)

Philip Utter, Esquire, Judicial Council member, Indigent Defense Subcommittee

COOPERATIVE PROJECT AGREEMENT
between the
STATE OF NEW HAMPSHIRE, **JUDICIAL COUNCIL**
and the
University of New Hampshire of the UNIVERSITY SYSTEM OF NEW HAMPSHIRE

A. This Cooperative Project Agreement (hereinafter "Project Agreement") is entered into by the State of New Hampshire, **acting through the Judicial Council**, (hereinafter "State"), and the University System of New Hampshire, acting through **University of New Hampshire**, (hereinafter "Campus"), for the purpose of undertaking a project of mutual interest. This Cooperative Project shall be carried out under the terms and conditions of the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, except as may be modified herein.

B. This Project Agreement and all obligations of the parties hereunder shall become effective on the date the Governor and Executive Council of the State of New Hampshire approve this Project Agreement ("Effective date") and shall end on **6/10/24**. If the provision of services by Campus precedes the Effective date, all services performed by Campus shall be performed at the sole risk of Campus and in the event that this Project Agreement does not become effective, State shall be under no obligation to pay Campus for costs incurred or services performed; however, if this Project Agreement becomes effective, all costs incurred prior to the Effective date that would otherwise be allowable shall be paid under the terms of this Project Agreement.

C. The work to be performed under the terms of this Project Agreement is described in the proposal identified below and attached to this document as Exhibit A, the content of which is incorporated herein as a part of this Project Agreement.

Project Title: **UNH Criminal Defense Academy**

D. The Following Individuals are designated as Project Administrators. These Project Administrators shall be responsible for the business aspects of this Project Agreement and all invoices, payments, project amendments and related correspondence shall be directed to the individuals so designated.

State Project Administrator	**Campus Project Administrator**
Name: Richard E. Samdperil Acting Executive Director	Name: Dianne Hall Grant and Contract Administrator
Address: New Hampshire Judicial Council State House Annex - Room 120 25 Capitol Street Concord, NH 03301	Address: University of New Hampshire Sponsored Programs Administration 51 College Rd. Durham, NH 03824
Phone: 603-271-3572	Phone: 603-862-1942

E. The Following Individuals are designated as Project Directors. These Project Directors shall be responsible for the technical leadership and conduct of the project. All progress reports, completion reports and related correspondence shall be directed to the individuals so designated.

State Project Director	**Campus Project Director**

Campus Authorized Official *KJ*
Date 8/24/23

Name: Richard E. Samdperil Acting Executive Director	Name: Melissa Davis Assistant Professor
Address: New Hampshire Judicial Council State House Annex - Room 120 25 Capitol Street Concord, NH 03301	Address: UNH School of Law 2 White Street Concord, NH 03301
Phone: 603-271-3572	Phone: 603-513-5157

F. Total State funds in the amount of **$56,904** have been allotted and are available for payment of allowable costs incurred under this Project Agreement. State will not reimburse Campus for costs exceeding the amount specified in this paragraph.

Check if applicable

☐ Campus will cost-share % of total costs during the term of this Project Agreement.

☒ Federal funds paid to Campus under this Project Agreement are from Grant/Contract/Cooperative Agreement No. SLFRP 0445 from US Treasury under CFDA# 21.027 Federal regulations required to be passed through to Campus as part of this Project Agreement, and in accordance with the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002, are attached to this document as Exhibit B, the content of which is incorporated herein as a part of this Project Agreement.

G. Check if applicable

☐ Article(s) of the Master Agreement for Cooperative Projects between the State of New Hampshire and the University System of New Hampshire dated November 13, 2002 is/are hereby amended to read:

H. ☒ State has chosen **not to take** possession of equipment purchased under this Project Agreement.

☐ State has chosen **to take** possession of equipment purchased under this Project Agreement and will issue instructions for the disposition of such equipment within 90 days of the Project Agreement's end-date. Any expenses incurred by Campus in carrying out State's requested disposition will be fully reimbursed by State.

This Project Agreement and the Master Agreement constitute the entire agreement between State and Campus regarding this Cooperative Project, and supersede and replace any previously existing arrangements, oral or written; all changes herein must be made by written amendment and executed for the parties by their authorized officials.

IN WITNESS WHEREOF, the University System of New Hampshire, acting through the **University of New Hampshire** and the State of New Hampshire, **acting through the Judicial Council** have executed this Project Agreement.

Campus Authorized Official *KJ*

Date 8/24/23

RA

By An Authorized Official of:
University of New Hampshire
Name: Karen M. Jensen
Title: Director, Pre-Award
Signature and Date:
Karen Jensen Digitally signed by Karen Jensen Date: 2023.08.24 08:56:53 -04'00'

By An Authorized Official of:
the New Hampshire Judicial Council
Name: Richard E. Samdperil
Title: Acting Executive Director
Signature and Date:

By An Authorized Official of: the New Hampshire Office of the Attorney General
Name: CHRISTOPHER BOND
Title: ASSOCIATE ATTORNEY GENERAL
Signature and Date: 9/5/23

By An Authorized Official of: the New Hampshire Governor & Executive Council
Name:
Title:
Signature and Date:

EXHIBIT A

A. **Project Title:** UNH Criminal Defense Academy

B. **Project Period:** September 22, 2023 through June 10, 2024

C. **Objectives:** To meet the training needs of lawyers seeking to provide constitutionally effective indigent criminal defense representation under the New Hampshire Judicial Council's Contract Attorney program and Assigned Counsel system,

D. **Scope of Work:** University of New Hampshire - Criminal Defense Academy (UNH-CDA) will build and teach a course designed to educate in New Hampshire criminal practice and deliver hands on practical skills training for lawyers who (1) are admitted to the New Hampshire Bar but do not have substantial experience providing criminal defense representation, (2) are recently admitted to the New Hampshire Bar and may lack substantive experience in New Hampshire courts, (3) are recent Law school graduates who, with adequate training and mentoring, could provide adequate defense representation in misdemeanor and certain felony level cases, or (4) would otherwise benefit from an intensive trial skill training in the area of indigent defense representation.

E. **Deliverables Schedule:**

F. **Budget and Invoicing Instructions:** Campus will submit invoices to the state on regular Campus invoice forms no more frequently than monthly and no less frequently than quarterly. Invoices will be based upon actual project expenses incurred during the invoicing period and shall show current and cumulative expenses by major cost categories. The state will pay the Campus within 30 days of receipt of each invoice. The Campus will submit its final invoice no later than 60 days after the Project Period end date above.

Campus Authorized Official *KJ*
Date 8/24/23

EXHIBIT B

This Project Agreement is funded under a Grant/Contract/Cooperative Agreement to State from the Federal sponsor specified in Project Agreement article F. All applicable requirements, regulations, provisions, terms and conditions of this Federal Grant/Contract/Cooperative Agreement are hereby adopted in full force and effect to the relationship between State and Campus, except that wherever such requirements, regulations, provisions and terms and conditions differ for INSTITUTIONS OF HIGHER EDUCATION, the appropriate requirements should be substituted (e.g., OMB Circulars A-21 and A-110, rather than OMB Circulars A-87 and A-102). References to Contractor or Recipient in the Federal language will be taken to mean Campus; references to the Government or Federal Awarding Agency will be taken to mean Government/Federal Awarding Agency or State or both, as appropriate.

Special Federal provisions are listed here: ☒ None or **Uniform Guidance issued by the Office of Management and Budget (OMB) in lieu of Circulars listed in paragraph above.** .

[redacted]

Campus Authorized Official *KJ*

Date 8/24/23