

Section One – Introduction and Instructions

1.01 Purpose of the RFP

The North Dakota Court System is soliciting proposals to conduct a statewide study and audit, and two post-study evaluations, of juvenile court compliance with the Indian Child Welfare Act (ICWA) in formal juvenile court proceedings. The findings from the initial study and audit will be used as a baseline measure for ICWA quality assurance efforts. Target improvements will be set and annual audits conducted thereafter.

1.02 Contact Person, Telephone, Fax, E-Mail

The Program Administrator is the point of contact for the RFP. The Program Administrator for this RFP is:

Louie Hentzen
Assistant State Court Administrator for Trial Courts
Office of the State Court Administrator
Mailstop 180
600 E. Boulevard Avenue
Bismarck, ND 58505-0530
Phone: 701-328-4216
Fax: 701-328-2092
E-mail: lhentzen@ndcourts.gov

1.03 RFP Schedule of Events

This schedule of events represents the best estimate of the schedule that will be followed for this RFP. The schedule is subject to change by the North Dakota State Court Administrator. In the event a change is made to any component of this schedule, the rest of the schedule will be adjusted by an equal number of days. Should this occur an amended schedule will be posted on the court's website at: www.ndcourts.gov/rfp.

The schedule for this RFP is:

RFP Issued: July 16, 2012
Deadline for submission of questions/objections: August 6, 2012
Response to questions/objections: August 12, 2012
Proposals due by: August 31, 2012
Contract Issued by: September 28, 2012
Contract start: November 1, 2012

1.04 Return Mailing Address and Deadline for Receipt of Proposals

Three (3) electronic copies of the proposal must be received in the North Dakota State Court Administrator's Office by 5:00 p.m. central time, on August 3, 2012 at this address:

Office of the State Court Administrator
Attn: Louie Hentzen
Request for Proposal (RFP): ICWA Study/Audit
Mailstop 180
600 E. Boulevard Avenue
Bismarck, ND 58505-05330

1.05 Assistance to Vendors with a Disability

Vendors with a disability who need an accommodation should contact the Program Administrator listed in Section 1.02 sufficiently in advance of the deadline for receipt of proposals so that reasonable accommodations can be made without impacting the vendors ability to respond to the RFP within the deadline for responses.

1.06 Deadline for Receipt of Questions and Objections

Vendors must carefully review the solicitation and all attachments for defects, questionable, or objectionable material. All questions must be submitted in writing to the email address provided in Section 1.02 and cite the subject RFP in the title. All questions are due by the deadline specified in Section 1.03.

1.07 Approved Vendor Registration Requirements

Proposals will be accepted from vendors that are not currently approved vendors on the State's bidder list. The successful vendor will be required to register as a vendor with the State of North Dakota Office of Management and Budget department.

1.08 Amendments to the RFP

If an amendment to this RFP is issued, it will be provided to all vendors that were mailed a notice of the RFP and to those who have requested a copy of the RFP from the Assistant State Court Administrator for Trial Courts.

1.09 Electronic Posting of RFP

The RFP, any amendments to the RFP, any questions submitted by vendors and the responses to those questions will be posted on the following website: <http://www.ndcourts.gov/rfp>. Vendors are encouraged to check the website periodically for any updates related to this RFP. Questions can be directed to the Assistant State Court Administrator for Trial Courts (lhentzen@ndcourts.gov).

Section Two – Background Information

2.01 Background Information on the North Dakota Court System

The North Dakota court system is a unified state court system consisting of one Supreme Court, a temporary, intermediate appellate court that can be called into session as needed, and 53 district courts with general jurisdiction. The district courts also serve as the juvenile courts in the state and have exclusive and original jurisdiction over any minor who is alleged to be unruly, delinquent, or deprived. This includes minors who meet the definition of “Indian Child” under ICWA.

While district court judges may hear formally processed cases in juvenile court, the vast majority of formal cases are heard by judicial referees. Judicial referees are assigned by the presiding judge in their district to hear specifically identified classes of cases, including juvenile court cases.

Children enter the juvenile court system via referral by law enforcement, schools, or agencies. Juvenile court officers screen the referrals to determine how each should be processed, making detention or emergency shelter care decisions on some, preparing court recommendations on those that proceed formally, and processing the majority via an informal adjustment conference. On average, the juvenile court files 1360 formal cases per year, of which approximately 12% qualify as ICWA or potential ICWA cases. The enabling statute for the juvenile court is found at North Dakota Century Code, Chapter 27 (<http://www.legis.nd.gov/cencode/t27.html>). These statutes along with a Juvenile Court Best Practices Manual form the basis for most activities undertaken by the juvenile court as an entity and by individual court staff.

2.02 Background and Purpose of this Request

The purpose of the project is to conduct a statewide study and audit of juvenile court compliance with ICWA in formal court proceedings of cases that reached disposition from 2009 through 2010. At minimum, the project must measure compliance with the following: notice given to parents; notice given to the tribe for each proceeding; parents informed of the right to appointed counsel for each proceeding; court findings that ICWA applies; court findings regarding active efforts; use of a qualified expert witness at applicable proceedings; and court findings that culturally relevant services were offered or provided. The audit findings will be used as a baseline measure for ICWA quality assurance efforts. Other ICWA measurements may be added, as necessary. Target improvements will be set and statewide ICWA compliance audits will then be conducted on an annual basis.

The ICWA Subcommittee of the Court Improvement Project (CIP) Committee (http://www.ndcourts.gov/court/committees/Ct_Impr/committee.asp) conducted an initial statewide study and audit of ICWA compliance in 2010. The study reviewed formally filed ICWA

cases that reached disposition throughout North Dakota in 2009. The CIP Committee's major concern about the validity of the 2010 audit was inconsistency in audit terms used throughout the state and discrepancy in reviewer interpretation.

2.03 Scope of Work

The project will result in a baseline measure of juvenile court ICWA compliance throughout the state. Benchmarks will be established and target improvements will be set from the initial audit. Annual ICWA compliance audits will then be conducted to measure the benchmarks and target improvements.

The vendor will be asked to:

- Develop consistent audit terms and interpretation of ICWA data based on federal statutory and case law and North Dakota statutory and case law. The audit terms and interpretations will be subject to final approval by the ICWA Subcommittee prior to conducting the study and audit.
- Adhere to the established audit terms and interpretations.
- Develop a study and audit process to collect and review existing data contained in juvenile court files of juveniles identified as "Indian children" under ICWA. The process must include files from each judicial district within the state, so benchmarks and target improvements can be created for each district. At minimum, the study and audit must measure compliance with the notice given to parents, notice given to the tribe for each proceeding, parents informed of the right to appointed counsel for each proceeding, court findings that ICWA applies, court findings regarding active efforts, use of a qualified expert witness at applicable proceedings, and court findings that culturally relevant services were offered or provided. Additional ICWA relevant measurements may be added during the development process, at the request of the ICWA Subcommittee, CIP Committee or vendor.
- Conduct the study and audit via a court file review of juveniles identified as "Indian children" under ICWA.
- Regularly provide progress reports to the Program Administrator assigned to the project. Provide progress reports, as requested, to the ICWA Subcommittee and CIP Committee. Progress reports should include feedback on areas of concern that need to be immediately addressed prior to the final report.
- Submit a report on the study and audit, which includes analysis of the study and recommendations for benchmarks and targeted improvements.

- Provide a plan for conducting an annual ICWA compliance audit based on the benchmarks and targeted improvements resulting from the initial study and audit.
- Conduct the first and second annual ICWA compliance audits with completion of the second annual audit prior to September 30, 2015.

Section Three – Proposal Format and Content

To aid in the comparative evaluation of proposals, all grant applications must be submitted in writing and contain the following information in the order listed.

3.01 Applicant Information

These items must be included on the coversheet of the proposal:

- Name of the organization
- Principal address of the organization;
- Nature of the organization (corporation, private company, non-profit, etc.)
- Name, title, email address, phone number, and mailing address of the person submitting the proposal, if different from the principal address of the organization
- Contact information, including an e-mail address for the project director or primary person to be contacted on matters involving the proposal, if different from the person submitting the proposal

3.02 Introduction

Proposals must confirm that the vendor will comply with all provisions in this RFP. The proposal must disclose any instances where the organization or any individuals working on the contract has a possible conflict of interest, and if so, the nature of that conflict.

3.03 Experience and Qualifications

Vendors must describe the experience of their organization in conducting and completing the kind of research and analysis described in this document including evaluation, multi-site project coordination, collaborative research strategies, and use of qualitative and quantitative research methods. Additionally, vendors must provide information specific to the personnel assigned to accomplish the work required. Vendors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed:

- a) title;
- b) resume;
- c) description of the type of work the individual will perform on this project; and
- d) number of estimated hours for each individual named above.

3.04 Method to Complete the Project

An overall plan with time estimates for completion of all work is required. Elements of the plan should include:

- A description of the vendor's approach to meeting the Purpose of the RFP and Scope of Work as described in Sections 2.02 and 2.03 of this RFP.
- A description of any data collection instruments and methods to be used in collecting data.
- A description of any supplemental tasks (data collection, information dissemination, staff assignment to project oversight committees, etc.) that it is expected the North Dakota Court System will need to perform to assist the vendor in achieving the Purpose of the RFP as described in Section 2.02 of this RFP.
- A proposed timeline for the project.
- A description of the final product to be delivered to the North Dakota Court System.

3.05 Cost Proposal

Vendors should carefully consider the resources needed to successfully implement the proposed project and present a realistic budget that accurately reflects project costs. The proposal should include a line item budget showing costs for personnel, travel, equipment, supplies, other costs, and indirect costs.

Section Four – Evaluation Criteria and Vendor Selection

4.01 Evaluation Criteria

In evaluating the proposals, cost will be an important but not the sole factor in awarding a contract. The North Dakota Court System will evaluate all proposals using the following criteria:

- a) Responsiveness to the described work plan;
- b) Vendor experience in similar assignments;
- c) Experience and expertise of staff to be assigned to the project;
- d) Vendor ability to meet timing requirements to complete the project;
- e) Comments received from references and current or former users of the product who are known to the court but who may not be listed as a reference in the RFP; and
- f) Reasonableness of cost projections.

4.02 Clarification of Proposals

In order to effectively evaluate each proposal, communications by the Program Administrator or the proposal evaluation committee are permitted with a vendor to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the

RFP requirements. Clarifications may not result in a material or substantive change to the proposal. The initial evaluation may be adjusted because of a clarification under this section.

4.03 Interview

It may be necessary to interview one or more vendors to clarify aspects of their submittal or to select from two or more vendors. If interviews are conducted, they will take place by telephone, interactive video or web conferencing.

4.04 Right of Rejection

The North Dakota State Court System reserves the right to reject any or all proposals, in whole or in part. Proposals received from barred or suspended vendors will be rejected. Any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP may be rejected.

The North Dakota Court System reserves the right to waive any minor irregularities in the proposal or request for proposal process that do not have a substantive bearing on the RFP process.

The North Dakota Court System may decline to make any award if it determines it to be in its best interest to do so.

Section Five – General Contract Information

5.01 Contract Term

The North Dakota State Court Administrator intends to enter into a contract with an effective period of November 1, 2012 to September 30, 2015. The contract will be renewable up to two (2) one-year terms, thereafter, if mutually agreed. Contract renewal is contingent upon continued substantial availability of Court Improvement Project grant funding.

5.02 Contract Type

The contract is a Firm Fixed Price contract.

5.03 Standard Contract Provisions

The successful vendor will be required to sign a contract similar to the one attached to this RFP (Attachment 1). The vendor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the vendor's proposal. No alteration of these provisions will be permitted without prior written approval from the North Dakota State Court Administrator. Vendors are instructed to contact the Program

Administrator, in writing and by the deadline set for questions, with any concerns regarding the contract provisions.

5.04 Proposal as Part of the Contract

Part or all of this RFP and the successful proposal may be incorporated into the contract.

5.05 Additional Terms and Conditions

The North Dakota State Court Administrator reserves the right to add, delete, or modify terms and conditions during the contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

5.06 Contract Approval

This RFP does not, by itself, obligate the North Dakota Court System. The North Dakota Court System obligation will commence when the North Dakota State Court Administrator approves the contract. Upon written notice to the vendor, the State Court Administrator may set a starting date for the contract that is different from the proposed starting date set forth in this RFP. The North Dakota Court System will not be responsible for any work done by the vendor, even work done in good faith, if it occurs prior to the contract start date set by the North Dakota State Court Administrator.

Section Six – Standard Proposal Information

6.01 Authorized Signature

An individual authorized to bind the vendor to the provisions of the RFP must sign all proposals.

6.02 State Not Responsible for Preparation Costs

The State will not pay any cost associated with the preparation, submission, presentation, or evaluation of any proposal.

6.03 Conflict of Interest

Vendors must disclose any instances where the organization or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict. The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the vendor's proposal. Determination regarding any questions of conflict of interest will be made by the North Dakota State Court Administrator and is final.

6.04 Vendor's Certification

By signature on the proposal, a vendor certifies that it complies with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

6.06 Subcontractors

Work proposed to be performed under this contract by the Vendor or its employees shall not be subcontracted without prior approval of the North Dakota State Court Administrator.

6.06 Right to Submitted Material

All responses, inquiries, or correspondence in relation to or in reference to the RFP, and all reports, charts, displays, schedules, and other documents submitted by the vendor shall become the property of the North Dakota Court System when received.

Sample Service Agreement

THIS AGREEMENT IS made between the North Dakota Court System (hereinafter referred to as COURT) and _____, (hereinafter referred to as CONTRACTOR).

The parties agree to:

I. Term. The work under this Agreement shall commence on _____, and the project shall be completed on or before _____, unless the time for completion is extended by mutual agreement of the parties, in writing, as hereinafter provided.

II. Services to be Performed by CONTRACTOR. CONTRACTOR shall perform the services described in the Request for Proposals and in the manner proposed in CONTRACTOR'S proposal, except as hereafter amended by the mutual agreement of the parties.

III. Compensation.

- (a) For the performance of services hereunder, the COURT shall pay CONTRACTOR _____, based upon the budget outlined in CONTRACTOR'S proposal.
- (b) CONTRACTOR agrees that its records which relate to compensation payable to COURT for the services rendered shall be available for review by COURT or its authorized representative during normal business hours with prior notice. Such records shall be retained by CONTRACTOR for a period of three years from the date of the termination of this Agreement during which period they will remain available for review.
- (c) All invoices and statements for services rendered should be mailed to COURT as follows:

Office of the State Court Administrator
Mailstop 180
600 E. Boulevard Avenue
Bismarck, ND 58505-0530

IV. Independent Contractor Status. CONTRACTOR'S status for conduct of tasks described herein shall be as an independent contractor, not as an agent or employee of the COURT. Any and all employees of CONTRACTOR while engaged in performance of any work or service required by COURT under this Agreement shall be considered employees of CONTRACTOR only. Any and all claims that may arise under North Dakota Worker's Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of CONTRACTOR'S employees while so engaged in any of the work or services so provided to be rendered herein shall be the sole obligation and responsibility of CONTRACTOR.

V. Acceptance Procedure. CONTRACTOR shall render the reports and deliverables described in the Request for Proposal, under the terms and conditions thereof. COURT shall have a maximum of twenty (20) working days from the delivery of the final draft of the completed project to respond in writing to such delivery. If COURT believes the completed project does not conform to the requirements of the Agreement, it shall notify CONTRACTOR in writing thereof, within the above-mentioned twenty (20) days and shall indicate with particularity in what manner the project fails to conform. In the absence of such notice of non-conformance, acceptance of the work products will be presumed.

VI. Covenant against Contingent Fees. CONTRACTOR warrants that it has not employed or retained any company or person other than bona fide employees to solicit or secure this Agreement and that it has not paid or agreed to pay any company commission, percentage, brokerage fees, gifts, or other consideration contingent upon or resulting from the award of making this Agreement. For breach or violation of this warranty, COURT shall have the right to annul this Agreement without liability or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

VII. Nondiscrimination in Employment. During the performance of this Agreement, CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability or national origin.

VIII. Contingencies. In the event that, due to causes beyond the control and without the fault or negligence of CONTRACTOR said CONTRACTOR fails to perform under this Agreement, such failure shall not constitute a default in performance, and COURT and CONTRACTOR shall make such other agreements as shall be necessary and possible to facilitate contract completion.

IX. Termination by COURT.

(a) Failure of CONTRACTOR to Fulfill Obligations. If for any reason other than the causes set forth in paragraph VIII above CONTRACTOR shall fail to fulfill its obligations under this Agreement, COURT may terminate this Agreement upon written notice to CONTRACTOR, effective thirty (30) days following receipt, provided however that CONTRACTOR shall be provided a reasonable time within which to remedy such deficiencies. CONTRACTOR shall have the right to receive just and equitable compensation for any satisfactory work completed prior to the date of such termination.

(b) Failure of COURT to Secure Funding. In the event that the Court Improvement Project grant funding is substantially reduced or eliminated at any point during the contract term, this Agreement will automatically terminate and CONTRACTOR shall have no right to enforce the remaining term of the Agreement. CONTRACTOR shall have the right to receive just and equitable compensation for any satisfactory work completed prior to the date of such termination.

X. Termination by CONTRACTOR. CONTRACTOR may terminate this Agreement at any time for failure of COURT to comply with any material terms or conditions of this Agreement, upon written notice to COURT, effective thirty (30) days following receipt, provided however, that COURT shall be provided a reasonable time within which to remedy such deficiencies.

XI. Renewal. This contract will not automatically renew.

XII. Access to Information and Facilities. COURT recognizes that convenient and timely access to relevant data, information, personnel, and facilities is necessary to the performance of this Agreement, and shall assist or otherwise aid CONTRACTOR in the procurement of such data or information or access to personnel and facilities as requested by CONTRACTOR.

XIII. Publication. CONTRACTOR may publish information, interim and final reports produced in the conduct of this project, with the written permission of COURT.

XIV. Copyright. COURT retains all rights, title and interest in and to all data, report materials, reports, copyrights, artwork, illustrations, and other original materials that are compiled or result from this project.

XV. Governing Law. The laws of the state of North Dakota shall govern the validity, construction, interpretation and effect of this Agreement.

XVI. Conflicts in Documents. Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Agreement, the document must control in this order of precedence: (i) this Agreement; (ii) Request for Proposal dated _____; (iii) CONTRACTOR'S proposal in response to the Request for Proposal dated _____; (iv) written correspondence between the parties to this Agreement which contains reference to this Agreement, the Request for Proposal, or CONTRACTOR'S proposal.

XVII. Modification. This Agreement constitutes the final, integrated expression of the Agreement of COURT and CONTRACTOR. No amendments or changes may be made to the terms and conditions of this Agreement without the mutual written consent of the parties.

(a) Changes in Work: CONTRACTOR shall make no changes in services unless in pursuance of a written request from COURT authorizing the change.

(b) Notification of CONTRACTOR work involving extra cost: If CONTRACTOR believes that any changes or instructions proposed by COURT involve extra work, extra cost, or an extension of time that was not contemplated by the parties when entering in this Agreement, CONTRACTOR shall so notify COURT, in writing, within five days of such discovery. CONTRACTOR shall not proceed to execute such work until making this notification and receiving written approval to proceed with such work.

XVIII. Waivers. The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this Agreement shall be taken and construed as cumulative, that is as being in addition to every other remedy provided by operation of law.

XIX. Severability. If any term of this contract is declared to be illegal or unenforceable by a court having jurisdiction, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

XX. Representatives of Contracting Parties. The following designated parties, notwithstanding conflicting provisions found in the Proposal incorporated herein, shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing COURT:

Office of the State court Administrator
Mailstop 180
600 E. Boulevard Avenue
Bismarck, ND 58505-0530
Phone: 701-328-4216

(b) Representing CONTRACTOR:

XXI. Maintenance, Access and Examination of Records. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

XXII. Confidentiality. Absent a court order, CONTRACTOR agrees not to use or disclose any information it receives from COURT under this Agreement that COURT has previously identified as confidential or exempt from mandatory public disclosure, except as necessary to carry out the purposes of this Agreement or as authorized in advance by COURT. Absent a court order, COURT agrees not to disclose any information it receives from CONTRACTOR that has previously been identified as confidential or proprietary and which the COURT determines in its sole discretion is protected from public disclosure. The duty of the COURT and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

XXIII. Insurance. CONTRACTOR represents and warrants that it now maintains and will continue to maintain with responsible insurance carriers, (i) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (ii) adequate insurance against liability on account of damage to persons or property; and (iii) adequate insurance under all applicable worker's compensation laws. CONTRACTOR will furnish such certificates with respect to its insurance as COURT may from time to time require, however, that COURT shall not request evidence of insurance under this Agreement more than two times during the Term of this Agreement.

XXIV. Prohibition Against Assignment. Notwithstanding any other provision of this Agreement, CONTRACTOR warrants that it shall not transfer, pledge, or otherwise assign this Agreement, or any interest therein, or any claim arising thereunder to any party or parties, bank, trust, company or other financing institution.

XXV. Indemnity. CONTRACTOR agrees to defend, indemnify and hold harmless COURT, its agencies, officers and employees from any claims of any nature, including all costs, expenses and attorney's fees, which may in any manner result from or arise from CONTRACTOR'S performance of this Agreement, except for claims resulting from or arising out of the COURT'S sole negligence arising from professional errors and omissions. The legal defense provide by

CONTRACTOR to COURT under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for COURT is necessary. CONTRACTOR also agrees to defend, indemnify, and hold COURT harmless for all costs, expenses and attorney's fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

XXVI. Attorney Fees. If a dispute arises under the terms of this Agreement or if any payment required by this Agreement is not paid when due and the matter is turned over to an attorney, the prevailing party in the dispute will be awarded by the court its reasonable attorney fees in addition to other damages and costs.

CONTRACTOR

BY: _____

TITLE: _____

DATE: _____

COURT

BY: _____

TITLE: STATE COURT ADMINISTRATOR

DATE: _____