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**IDAPA 61
TITLE 01
CHAPTER 03**

**61.01.03 – RULES GOVERNING CONTRACTS AND CORE REQUIREMENTS
FOR CONTRACTS BETWEEN COUNTIES AND PRIVATE ATTORNEYS
FOR THE PROVISION OF INDIGENT DEFENSE SERVICES**

000. LEGAL AUTHORITY.

Section 19-850(1)(a)(iii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding model contracts and core requirements for contracts between counties and private attorneys for the provision of indigent defense services. (5-1-19)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 61, Title 01, Chapter 03, “Rules Governing Contracts and Core Requirements for Contracts Between Counties and Private Attorneys for the Provision of Indigent Defense Services.” (5-1-19)

02. Scope. These rules establish the standards and guidelines for contracts between counties and private attorneys for the provision of indigent defense services. (5-1-19)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC’s office. (5-1-19)

003. ADMINISTRATIVE APPEALS.

The PDC’s determination to create rules governing contracts and core requirements for contracts between counties and private attorneys for the provision of indigent services is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” (5-1-19)

004. INCORPORATION BY REFERENCE.

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions,” is incorporated into this Chapter. (5-1-19)

005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESSES – TELEPHONE – INTERNET WEBSITE.

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit operation. The PDC’s telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC’s official website is: <https://pdc.idaho.gov>. (5-1-19)

006. PUBLIC RECORDS ACT COMPLIANCE.

The PDC operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (5-1-19)

007. – 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems — Rule Definitions” for definitions of the terms and abbreviations used in this Rule. (5-1-19)

011. – 019. (RESERVED)

020. CORE TERMS.

If a Contracting Authority elects to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense by contracting with a defending attorney, as provided

under Section 19-859(4), Idaho Code, each contract between the parties shall be in writing and include Subsections 01, 02, 03, and 04. Each contract should also include Subsections 05 through 10. (5-1-19)

- 01. Underlying Bases.** The contract shall include a term explaining: (5-1-19)
 - a.** The Contracting Authority’s statutorily mandated responsibility to provide public defender services; and (5-1-19)
 - b.** The Contracting Authority’s desire to have legal services performed for individuals entitled to representation at public expense, provided by the Contractor. (5-1-19)
- 02. Parties.** The contract shall identify the Contracting Authority and the Contractor. (5-1-19)
- 03. Term of the Contract.** The contract shall specify the term of the contract, including a provision for renewal and for termination by either party. The contract should have a clear start date and end date. (5-1-19)
- 04. Compensation.** The contract shall have a term setting the monetary rate at which the Contractor will be compensated for legal services rendered. (5-1-19)
- 05. Independent Contractor.** The contract shall have a term explaining that the Contractor is an independent contractor for all services rendered pursuant to the contract. (5-1-19)
- 06. Scope of the Contract.** The contract shall establish the case types to be handled pursuant to the contract. (5-1-19)
- 07. Conflicts of Interest.** The contract shall include a provision ensuring the contractor does not provide representation to defendants when doing so would involve a conflict of interest. (5-1-19)
- 08. Training Requirements.** The contract shall require each defending attorney providing services pursuant to the contract to participate in regular training programs on criminal defense law, including a minimum of seven (7) hours of continuing legal education annually in areas relating to their public defense practice, as required by the most recent edition of “Standards for Defending Attorneys.” (5-1-19)
- 09. Experience Requirements.** Each Defending Attorney providing services pursuant to the contract shall:
 - a.** Meet the qualification and training requirements set forth in the most recent edition of “Standards for Defending Attorneys” incorporated by reference in IDAPA 61.01.08; and (5-1-19)
 - b.** Satisfy the minimum requirements for practicing law in Idaho as determined by the Idaho Supreme Court. (5-1-19)
- 10. Performance Requirements.** The contract shall require the contractor to do the following: (5-1-19)
 - a.** Make reasonable efforts to provide the services and comply with the requirements of the Contract; (5-1-19)
 - b.** Utilize adequate support staff to render the necessary competent assistance of counsel required under the contract; (5-1-19)
 - c.** Contact all clients within a specified amount of time from notification of case assignment. The amount of time should take into account the requirements of providing constitutional representation and the ability of the contractor to meet such requirement considering factors like travel time and the ability to engage in such communication; and (5-1-19)
 - d.** Abide by PDC standards as set forth in the most recent edition of “Standards for Defending

Attorneys.” (5-1-19)

021. ESTABLISHMENT AND MAINTENANCE OF RECORDS.

01. Costs of Services Records. The contract shall require the Contractor to maintain records, including personnel, property, financial, and programmatic records, which reflect costs of services performed under the contract. (5-1-19)

02. Costs of Subcontract and Personal Service Contract Records. The contract shall require the Contractor to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. (5-1-19)

03. Duration of Record Keeping. The contract shall require the Contractor to maintain records for a specified period of time after termination of the contract, unless permission to destroy records before that time period is granted by the Contracting Authority. (5-1-19)

04. Copies. A copy of every signed contract between a Contracting Authority and an Indigent Defense Provider shall be sent to the PDC by the Contracting Authority within thirty (30) days of ratification. (5-1-19)

022. REPORTS AND INSPECTIONS.

Each contract shall require the Contractor to submit to the Contracting Authority the following: (5-1-19)

01. Written Notification. Immediate written notification in the case that a complaint is lodged with the Idaho State Bar, which has resulted in reprimand, suspension, or disbarment of the Indigent Defense Provider, or any attorney who is a member of the Indigent Defense Provider’s staff or working for the Indigent Defense Provider. (5-1-19)

02. Materials. If requested, materials necessary to verify compliance with all terms of the contract. (5-1-19)

023. – 999. (RESERVED)

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