

## REQUEST FOR AUTHORIZATION FOR EMERGENCY PROCUREMENT

To: Kim Cordova, Executive Director of the Commission on Criminal and Juvenile Justice

From: Joanna Landau, Director of the Indigent Defense Services Office

Date: 5/15/20

RE: Emergency Procurement of Indigent Defense Services

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In the 2020 Legislative Session, the Utah Legislature passed Senate Bill 170, which created the Office of Indigent Defense Services (the Office) within the Utah Indigent Defense Commission (IDC). On May 12, 2020 the Office became responsible to provide and enter into contracts for indigent defense services (Services) for indigent individuals incarcerated in the Gunnison Prison who are charged with criminal offenses that were committed in the prison.

Recently an incident occurred at the Gunnison prison which resulted in the filing of riot charges against nine inmates. At the first appearance hearing, all inmates were found indigent and were appointed an indigent defense service provider (Provider). At that time, the Indigent Defense Funds Board (the Board) was responsible for providing Services for these inmates. The Board began the process of contracting with nine separate Providers to represent these inmates because of the legal conflicts that were inherent in the criminal case. As of May 12, 2020 the Board had only entered into contracts with seven Providers. Those Providers under contract before May 12, 2020 will continue to represent those seven inmates and the contractual duties will be assumed by the Office. The Office is now seeking additional Providers to represent the other two inmates.

The Office is currently engaged in the regular procurement process to create an Approved Vendor List (AVL) of qualified and experienced Providers to provide Services to inmates in the future. The Office is requesting authorization to contract with Providers and obtain Services, without going through the regular procurement process, for the riot case and any other cases that arise prior to the completion of the AVL. Emergency procurement is authorized under Utah Code § 63G-6a-803 when it is necessary to:

- (a) avoid a lapse in a critical government service;
- (b) mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property; or
- (c) protect the legal interests of a public entity.

In this situation, all of these criteria are present. The Office is statutorily mandated to provide Services to inmates and any delay in the provision of these Services will result in the denial of an inmate's constitutionally guaranteed liberties under the Sixth Amendment. If authorization is granted, the Office will ensure that the emergency procurement is made with as much competition as reasonably practicable and will keep written documentation of the basis of the emergency and the selection of each Provider. *See* Utah Code § 63G-6a-803(2) and Utah Administrative Code R33-8-401(5). Once the regular procurement process is complete and there is no longer a need for the emergency procurement, the Office will submit a copy of all of this documentation to the Division of Purchasing.

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I hereby authorize the Office to contract with Providers and obtain Services, without going through the regular procurement process, in any case where an inmate in the Gunnison prison is appointed a Provider prior to the creation of AVL. The Office is directed to engage in as much competition as reasonably practicable and keep written documentation of the basis of the emergency and the selection of each Provider

Dated this 18th, day of May, 2020.

*Kim Cordova*  
Kim Cordova (May 18, 2020)

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KIM CORDOVA  
CCJJ Executive Director