

## Office of the Chief and Council

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### **PENOBSCOT NATION REQUEST FOR PROPOSALS PENOBSCOT NATION DEPARTMENT OF SOCIAL SERVICES SUB-CONTRACTOR ATTORNEY**

#### **I. GENERAL INFORMATION.**

- A. **Purpose.** This request for proposals is to contract for a Tribal Child Welfare Attorney for services to be provided to the Penobscot Nation Department of Social Services (PNDSS). The contract is for the duration of one year and may be extended at the pleasure of the Penobscot Nation. The Penobscot Nation is a federally recognized Tribe. The Tribal Child Welfare Attorney's services include readily responding to the needs of the PNDSS, including but not limited to consulting on various child welfare situations, as well as reviewing Preliminary Protection Petitions, Jeopardy Petitions, Safety Plans, Rehabilitation and Reunification plans. The Tribal Child Welfare Attorney covers the Penobscot Nation Tribal Court and any other Court in Maine in which a Penobscot Child is the subject of a child protective proceeding or a Juvenile Adjudication involving removing the Juvenile from their parents' custody (C5 hearings). The Tribal Child Welfare Attorney works on an as-needed basis with the PNDSS child welfare team to provide solutions that promote the welfare and safety of Penobscot Children and their families.
- B. **Description of Penobscot Nation.** The Penobscot Nation has existed since time immemorial in the State of Maine, particularly in the central and coastal areas. The Nation was federally recognized in 1979, it has approximately 2,400 enrolled members, and the seat of its government is located on Indian Island on the Penobscot Nation Reservation. In 1980, the Nation entered into a settlement with U.S. government and the State of Maine to compensate for sales and transfers of land conducted in violation of the federal Non-Intercourse Act of 1780. The resultant Maine Indian Settlement Act, 25 U.S.C. §1721 et seq. ("Act") ratified the illegal transfers, established the terms of the relationship of the Nation to the United States, and authorized the enactment of the State of Maine's Act to Implement the Maine Indian Claims Settlement Act, 30 M.R.S.A. § 6201 et seq. (hereinafter "MIA"). The MIA governs the Nation's regulatory and adjudicatory jurisdiction and relationship to the State of Maine. The Nation's reservation consists of 4,841 acres plus more than 200 islands in the main branch of the Penobscot River. In addition, the Nation owns and is responsible for policing and managing trust lands totaling 86,378 acres in nine different locations.
- C. **Description of the Penobscot Nation Judicial System.** The Penobscot Nation Judicial System (PNJS) was established by a vote of the Nation's legislative body, the General Meeting, on September 27, 1979. The PNJS is comprised of two levels: the trial-level Tribal Court and the appellate level Court of Appeals. The Tribal Court is a court of general

jurisdiction providing an initial single judge or jury for resolving cases and controversies arising under the Penobscot Nation's jurisdiction. The Tribal Court is presided over by a Chief Judge and an Associate Judge(s). The Chief Judge is primarily responsible for providing judicial services. The Associate Judge presides over cases where the Chief Judge has a conflict or is unavailable. Certain subject matter types of cases may be specifically assigned to the Associate Judge for hearing.

Jurisdiction is established pursuant to Penobscot Nation tribal law and further defined by the Act and the MIA. A problem-solving, restorative approach that is consistent with Penobscot Nation values and culture is applied by the Tribal Court. Divisions of the Tribal Court include, but are not limited to, the Adult and Juvenile Healing to Wellness Court programs. The Tribal Court hears criminal and juvenile delinquency cases and a wide range of civil matters, that include, but are not limited to: child welfare, guardianship, probate of estates, domestic relations, protection from abuse or harassment, small claims, and violations of tribal law. At present, the Tribal Court conducts hearings an average of six days per month (approximately 30 hours per month). An estimated additional 6 hours per month is spent writing and issuing orders.

Penobscot Nation tribal laws are posted on the Native American Rights Fund's National Indian Law Library's Tribal Law Gateway website at:  
<https://www.narf.org/nill/tribes/penobscot.html>.

Published opinions of the Court of Appeals are available on the Casemaker® legal research service (subscription required, free with a Maine State Bar Association membership) located at:  
<http://casemakerlegal.com/casebrowsenew.aspx?cat=TRIB&categoryAlias=Tribal%20Court&state=TRIB&courttype=NAPN>.

The Penobscot Nation Rules of Court and other general court information is located on the Nation's website at: <https://www.penobscotnation.org/departments/tribal-court>.

**D. Who May Respond.** The successful Proposer will meet the following criteria:

1. A graduate of an American Bar Association accredited law school;
2. Is currently licensed to practice law and in good standing in any state jurisdiction;
3. Has never been convicted of a felony or of a crime involving dishonesty, moral turpitude, or child or elder abuse;
4. Has never been suspended from the practice of law on disciplinary charges or disbarred in any jurisdiction; and
5. Can demonstrate familiarity with Penobscot Nation statutory and decisional law, general principles of federal Indian law, the Act and the MIA.

## **II. SCOPE OF SERVICES.**

The Penobscot Nation Department of Social Services (PNDSS) Sub-Contractor Attorney shall be readily available to fulfill the duties of the PNDSS Attorney according to the laws, ordinances, traditions and customs of the Nation as well as applicable state and federal laws. Specific tasks to be performed include but are not limited to:

A. Represent the Nation in fulfilling the Penobscot Nation Child Welfare Code as a resource for families and protecting the prosperity of the Penobscot Nation, its children. Utilize the Indian Child Welfare Act in state cases to do the same.

B. Understand that the PNDSS attorney is an equal part of the child welfare team, not greater than or more authoritarian than any other member of the children welfare team.

C. Respond timely to telephone calls from employees of the PNDSS because those typically indicate immediate action for children in immediate risk of serious. Upon notice that the state has filed a petition in state court, immediately file a Motion to Intervene as a full party on behalf of the PNDSS.

D. Assist the PNDSS child welfare team in decision-making around administrative safety plans, unusual legal situations, as well as filing Immediate risk or Jeopardy petitions with the Tribal Court.

E. Provide research, evaluation and preparation of legal cases including preparing exhibit and witness lists in a timely and fiscally responsible manner.

F. As part of the PNDSS child welfare team, the PNDSS attorney requires approval by the PNDSS Director or Assistant Director in advance of any filings with the court, requesting subpoenas to be issued, hiring experts, or suggesting settlement terms to parents' attorneys, interveners or the Guardian ad Litem, for examples.

G. Attend all Court and Mediation Appearances. Only need attend family team meetings and any other events, when requested to do so by the Director or Assistant Director.

H. Endeavor to spot issues ahead of a crises through a monthly written Administrative Review of all open legal cases and share with the PNDSS Director and Assistant Director to insure you are all on the same page in terms of the stage of the child welfare proceeding.

I. Discuss attorney actions, motions or party communication with the child welfare team in advance of expending billable time.

J. When instructed to do so by the PNDSS Director or Assistant Director, file notice of

appeal, write an appellant or appellee brief and perform oral argument.

K. Clear communication is required and remember that the PNDSS team have many duties and the PNDSS attorney may need follow up to ensure adherence to important deadlines, filing of Rehabilitation and Reunification Plans or other time requirements found in the PNCWC or specified in court orders.

L. Maintain, enhance and share knowledge of relevant, tribal, state and federal laws, including case law, Tribal Court procedures and attend training sessions as necessary for such purposes.

M. Adhere to and follow the Penobscot Nation Judicial Rules of Procedure as they may be amended from time to time.

N. The PNDSS attorney shall conduct themselves with respect for others, be trauma informed and understand the cultural history of the genocide of Native Americans and why the welfare of the Tribe's children is critically important to the continued existence of a unique people.

O. The PNDSS attorney shall maintain their bar license in good standing with the Maine Board of Bar Overseers.

The PNDSS attorney will provide monthly billing statements including an itemized state of time for each individual case and any other PNDSS requests through a General Consultation bill, broken down into time increments of tenths of an hour and multiplied by the attorney's previous agreed upon hourly rate.

As an independent Sub-Contractor, the PNDSS attorney will be responsible for providing their own office space and administrative support (not billable to the PNDSS). Transportation is the full responsibility of the PNDSS attorney including but not limited to ample car insurance. Malpractice insurance is the responsibility of the PNDSS attorney. As a Sub-Contractor, the attorney will receive a 1099 at the end of the year. All deductions, withholdings or assessments, for federal, state and local taxes is the responsibility of the Sub-Contractor attorney.

### **III. PROPOSAL CONTENTS.**

The Proposer, in her or his proposal, shall, as a minimum, include the following:

- A. **Cover Page.** Proposal shall have a cover page, including the Request for Proposal Title, due date, name, address, telephone number, fax number and email address of the submitting attorney.

**B. Qualifications and Experience.** Proposal should include the following:

1. A cover letter and resume.
2. A statement of qualifications and prior experience.
3. A detailed and precise discussion of her or his ability to meet the requirements of this RFP.
4. Currently admitted our willingness to be admitted to the Tribal bar.
5. A statement demonstrating that she or he has experience working in, or familiarity with, the following categories:
  - a. Penobscot Nation statutory and decisional law.
  - b. General principles of federal Indian law.
  - c. Indian Child Welfare Act ( ICWA)
  - d. The Maine Indian Claims Settlement Act.
  - e. The Act to Implement the Maine Indian Claims Settlement Act.

**C. Writing Samples.** Two legal writing samples written solely by the Proposer must be submitted.

**D. Conflict of Interest.** The Proposer must disclose any potential conflict of interest that might arise if she or he were to accept an award of a contract with the Penobscot Nation, including prior, pending, or anticipated litigation in the Penobscot Nation Judicial System.

**E. Price.** A description of the hourly billable rate for time spent in performance of the contract and a total amount for a one-year period. The proposal should also separately detail what reimbursable direct expenses, such as travel or postage, will be charged.

**F. References.** A list of three professional references from clients or other individuals for whom legal work has been done is required. References shall include a contact name, complete address, telephone number, and email address, if any.

#### **IV. SUBMISSION OF PROPOSALS**

- A. Closing Submission Date.** Proposals must be submitted no later than **midnight (12:00 p.m. Eastern Standard Time)** on August 5, 2022. It is the responsibility of the Proposer to insure that the proposal is received by the Nation, by the date and time specified above. Late proposals will not be considered.

- B. Conditions of Proposal.** All costs incurred in the preparation of a proposal responding to this RFP will be the responsibility of the Proposer and will not be reimbursed by the Penobscot Nation.
- C. Instructions for Submission of Proposal.** An original and two (2) copies of the proposal should be mailed and addressed as follows:

**Sonya LaCoute-Dana  
Grants and Contracts Director  
Penobscot Nation  
12 Wabanaki Way  
Indian Island, ME 04468-1254**

Or the proposal may be submitted by email to [sonya.lacoute-dana@penobscotnation.org](mailto:sonya.lacoute-dana@penobscotnation.org).

**V. INDIAN-OWNED ECONOMIC ENTERPRISE PREFERENCE.**

Preference will be given to American Indian or Alaska Native Proposers. The Nation shall give preference to an individual American Indian or Alaska Native Proposer so long as the bid by this does not exceed the lowest bid submitted by more than five percent (5%). Any Proposer claiming Indian preference shall give evidence to the Nation to support her or his claim as part of the proposal. The Nation does not have to accept the lowest bid or Indian-owned business' bid when differences exist in Proposer's qualifications, record of past performance, and compliance with public policy.

**VI. RIGHT TO REJECT.**

The Penobscot Nation reserves the right to reject any and all proposals received in response to this RFP. A contract for the accepted proposal will be drafted based upon the factors described in this RFP and in accordance with the Nation's Procurement Policy. Selection is also dependent on the negotiation of a mutually acceptable contract between the Proposer and the Nation.

**VII. NOTIFICATION OF AWARD.**

It is expected that a decision selecting the successful Proposer will be made within four (4) weeks of the closing date for the receipt of proposals. The Penobscot Nation may select one Proposer for the Tribal Prosecutor contract. Final acceptance of proposals is subject to the approval of the Penobscot Nation Tribal Council. Upon conclusion of final negotiations with the successful Proposer(s), all Proposers submitting proposals in response to this Request for Proposal will be informed, in writing, of the name of the successful Proposer(s). The contract shall be for a one-year period unless extended by mutual agreement of the parties and contingent on the availability of funding.

## **VIII. INQUIRIES.**

Inquiries concerning this Request for Proposals may be made to:

**Sonya LaCoute-Dana, MSW  
Grants and Contracts Director  
Penobscot Nation  
12 Wabanaki Way  
Indian Island, ME 04468-1254**

Telephone: (207) 817-7332

Email: [sonya.lacoute-dana@penobscotnation.org](mailto:sonya.lacoute-dana@penobscotnation.org)