

DFPS Draft RFP: Independent Administrator #RFP2006OP02CPS

Name of Individual Completing Response F. Scott McCown, Executive Director Tiffany Roper, Policy Analyst	Brief Explanation of Interest In Publicly Funded Child Welfare Service The Center for Public Policy Priorities (CPPP) is a nonpartisan, nonprofit research organization committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. CPPP is home to Texas KIDS COUNT, a state-by-state and county-by-county effort to track and promote the well-being of children. F. Scott McCown is a retired state district judge who heard over 2,000 child abuse and neglect cases concerning over 4,000 children. He now serves as director at the center. Tiffany Roper is an attorney who has represented CPS as an assistant attorney general, assistant county attorney, and assistant district attorney. Ms. Roper has also represented children as an attorney ad litem with the UT Children’s Rights Clinic. Ms. Roper now serves as a policy analyst for child welfare at the center.	Do You Currently Have Contracts With DFPS <input type="checkbox"/> Yes XX No If yes, complete the box below. Provide information for each contract you have with DFPS
Name of Entity Represented Center for Public Policy Priorities 900 Lydia Street Austin, Texas 78702 512-320-0222 512-320-0227 (Fax) www.cppp.org		1. Type of Service 2. Area/Region of Texas Served

Section	Line Number	Proposed Wording Change	Comment or Question
1.1 Mission Statement	139 (p. 10) See also line 622 (p. 27) General issue	Define “community-centered delivery.”	Throughout the RFP, DFPS uses the term “community-centered delivery.” Nowhere do you define or explain that term. Nowhere do you explain how it differs from what DFPS does now. The reader cannot infer anything about it from the context. If it means anything, you should explain it.
1.3.1 Child Protective Services Reform	190-192 (p. 11) General issue	Define DFPS’ role and responsibilities as the legal managing conservator.	Nowhere in the RFP does DFPS delineate what its roles and responsibilities are as the legal managing conservator. Saying that you maintain the rights and responsibilities of a managing conservator is meaningless. Under SB 6, DFPS is like a property owner who has maintained legal title to a business property but has rented the property to a tenant. Saying that the property owner maintains legal title is meaningless in terms of delineating what the property owner must do

Section	Line Number	Proposed Wording Change	Comment or Question
			and what the tenant must or can do. What does the owner control and what does the tenant control with regard to the use of the property? The RFP does not adequately define roles and responsibilities.
1.3.3 Overview of DFPS' Current Child Welfare System	212-214 (p. 12)	Delete the sentence "Inefficiencies in the current system are caused by the duplication of some case management functions, particularly the development and implementation of the child's service plan, by both DFPS staff and residential providers."	Actually, this is untrue. The tasks DFPS staff perform and the tasks residential providers' staff perform are not duplicative, as this RFP makes painfully clear. The claim of duplication during the development of SB 6 is the untruth on which SB 6 is based. DFPS would be making a mistake to embrace this untruth because DFPS is going to have to have the staff needed to continue the functions that were claimed to be "duplicative." The RFP itself calls for DFPS staff to oversee the IA who must have staff to oversee the contract providers. If the RFP were truly eliminating duplication, fewer overall staff instead of more overall staff would be required.
1.4 Project Overview	363 (p. 18) (See also Sections 1.4.1, Independent Evaluator, Line 368, p. 18, and 1.4.2, Multi-disciplinary Quality Assurance Team, Line 386, p. 19)		What is the authority of the QA Team? As written, it appears that the QA team is merely monitoring and evaluating to give feedback on overall performance to DFPS. If the QA Team has authority to reverse decisions in individual cases, the RFP should say so. If not, the RFP should say so.
1.5.1 Contract Term	421 (p. 20)	Amend contract period to two (2) years.	This model of providing services and case management is untested; a shorter contract term period is necessary in case this model does not work. In any event, the contract should clearly say

Section	Line Number	Proposed Wording Change	Comment or Question
			that it is void if the legislature revokes DFPS' authority to outsource case management.
1.8.1 Delegation of Authority	486 (p. 22)	Add specific citation to Texas Register for policies that would govern IA.	Respondents may not understand that the state must adopt policy through a specific procedure set out in the Administrative Procedure Act and that the policies promulgated by DFPS will govern the way they must do business. The specific regulations should be cited.
1.8.2 Conflicts of Interest	489 (p. 22)	Add language to clarify that agencies doing case management cannot have mission statements that conflict with the impartial administration of the law. For example, an agency cannot have as a mission statement, providing quality long-term foster care, if it is doing case management for a child.	<p>Traditionally, DFPS has contracted with service providers to provide placements and other services. Although DFPS caseworkers rely on information given by service providers when determining the best outcome for children in foster care, service providers do not currently “decide” the permanency plan for children.</p> <p>In the RFP, service providers who have traditionally been child-centric would begin working with both children and parents. These service providers may have a conflict of interest between the mission of their agency and the impartial administration of the law. For example, their mission may be to promote foster care, which puts them in conflict with the interest of a child who needs kinship care or family reunification.</p>
2.1 Overview of Scope of Work	630 (p. 27)		How can the IA “clearly delineate the roles and responsibilities” of the IA and the service providers, when DFPS has not clearly delineated the roles and responsibilities of DFPS and the IA? DFPS says it will maintain policy responsibilities and legal conservatorship of children, but has not specified the extent of its authority to make decisions about individual cases or the extent of its role in prosecuting the court cases. The IA cannot define what it will do and what the service providers will do unless the IA knows what DFPS

Section	Line Number	Proposed Wording Change	Comment or Question
			will do.
2.2 Client Population	646-647 (p. 27)		You have a serious problem in this section. It is not uncommon for a child to be placed outside the “county of conservatorship” without the legal case being moved. For example, the court may place a child outside the county of conservatorship to be with a relative. Moving the legal case might be detrimental or even impossible. Indeed, in the legal case, there may be several children in several counties. If the IA is not responsible for the child in its county, how will DFPS provide services? DFPS will no longer have a caseworker in the county or contract providers in the county. You may want to add a requirement that the IA must provide limited service to children in the region whose legal case is outside the region with a separate fee paid for this limited service.
2.3 Administrative Services	687 (p. 29) See also 895-896 (35) See also 4683-4685 Definition of No Eject/No Reject		Claiming a no reject/no eject requirement is seriously misleading. The system right now has the exact same requirement that the system will have under this RFP. Right now, DFPS cannot reject or eject a child. Under this new system, the IA cannot reject or eject a child. Children will still bounce from placement to placement, however, unless the IA can do better than DFPS in holding placements to a better level of performance. This no reject/no eject policy should not be presented as something new or something that it is not.
	705 (p. 29)	Add the following: “12. The development and implementation of a plan that requires as few children to move from their present placements as possible with particular emphasis on preserving placements of children in PMC.”	The independent administrator should develop a plan to minimize moves from present placements in order to limit disruptions in placements and therapeutic and other services currently utilized by foster youth and their families. See next comment.

Section	Line Number	Proposed Wording Change	Comment or Question
2.3.2 Network of Service Providers	732-734 (p. 30)		This RFP should do more than merely make it a goal to ensure minimal disruptions. DFPS should add this as an outcome measure for which the IA can be awarded or punished financially. DFPS should add an extra fee to maintain a placement in a home that will not be part of the ongoing network of providers.
	General	Add: DFPS has the right to review any subcontracts and the financial records of any subcontractor.	The RFP is largely silent about subcontractors. Somewhere in the RFP, DFPS needs to retain the right to review and audit.
2.3.4 Training and Technical Assistance	804	Add language giving DFPS the authority to review and approve all training materials and to monitor all training sessions. Add language giving DFPS the authority to require providers to attend DFPS training if DFPS determines it to be desirable.	Training is critical. DFPS needs to monitor training and perhaps even provide certain training.
2.3.4 Training and Technical Assistance	809-810 (p. 32)	Add the following language to the list of topics "1. Legal, psychological, educational, emotional, financial, and other issues affecting foster care youth and their families, and 2. Confidentiality requirements."	Training must cover a broader range of issues. Confidentiality training is particularly important.
2.4 Case Management	1106 (p. 41) See also comments at line 2000 below. 2000 (p. 73) See also line 3029 No. 5 (p. 109)	Change the word "child" to "all the children."	Take a classic case. A child is a sexual perpetrator. It is in that child's best interest to be placed with his siblings, but it is not in the siblings' best interest to be placed with the child. As written, you have the case manager looking at it only from the perspective of one child. The perspective of all the children must be considered and balanced.
2.4.2.2.2 Case	1193 (p. 44)		DFPS should develop a service plan form for use

Section	Line Number	Proposed Wording Change	Comment or Question
Planning			by the IA and all service providers to maintain consistency and allow for adequate quality assurance monitoring.
2.4.2.2.4 DFPS Responsibilities	1330 (p. 48)	Define "oversight."	This RFP suffers at different points because DFPS is not clearly defining what its role will be with regard to decision making. Who at DFPS will review plans? How many staff will DFPS assign? What will be the caseload? What are the criteria by which DFPS will judge plans? Does DFPS have the authority to alter specific case plans?
2.4.2.3.2 Placement in Licensed Care	1436 (p. 51)		Which and how many DFPS staff will monitor compliance?
2.4.3 Family Reunification and 2.4.3.1 (IA Responsibilities)	1452 -1460 (p. 52) and 1485 – 1491 (p. 53)	Clarify DFPS role, IA role, and provider role.	<p>No section of the RFP points out more clearly the lack of role clarity than this section. A single person must have the authority to call the legal shots and interface with the DA or DFPS attorney prosecuting the case. Who is that person? How big a caseload will they have?</p> <p>Any person who testifies in court must have personal knowledge about what they are swearing under oath. At present, the DFPS caseworker is driving the case, testifying as an expert witness, and making recommendations. DFPS will not have the staff to do this under the RFP, and even if it had the staff, DFPS will not have the personal knowledge necessary.</p> <p>It is abundantly clear to us from many comments by providers that they do not understand that under this RFP they will be assuming the legal role now played by DFPS caseworkers. In other words, they will interact with the DA or DFPS attorney, they will have to be at court each time there is a hearing, they will have to participate in mediations, they will have to help the state's</p>

Section	Line Number	Proposed Wording Change	Comment or Question
			<p>lawyer prepare for trial, including providing records, and they will have to be the state's representative at trials. The RFP needs to make this clear.</p> <p>There is a tremendous difference in a model where DFPS is in charge of the litigation with the private providers assisting and a model where the private providers are in charge of the litigation with DFPS overseeing.</p>
2.4.3.2 DFPS' Responsibilities	1502 through 1511 (pp. 53-54)	Amend: 2. Appear and/or testify in court for any hearing as required. The service provider shall be responsible for testifying regarding the progress of the case and any recommendation to the court.	DFPS may review recommendations and ensure compliance with court orders, but its staff will not have the personal knowledge of the case necessary to testify in court. The service provider must guarantee that its staff is prepared to take the lead in court.
2.4.4.1 DFPS' Responsibilities	1618		<p>This section points up the problem with SB 6. Under the law, approving an adoptive placement is case management, yet DFPS is retaining the right to approve an adoptive placement. How does DFPS have that right under SB 6? What DFPS staff will review the placement? How big a caseload will they have? See Memorandum to Senate and House Conferees for Senate Bill 6, by CPPP, April 27, 2005, for a careful textual explanation of why this RFP conflicts with SB 6, at http://www.cppp.org/category.php?cid=4</p>
2.4.7 Court Services	1774 (p. 62)		<p>Although case management and client services are the backbone of every DFPS case, the court system plays an equally vital role. Failure to understand the role that courts and attorneys play in DFPS litigation will undermine, if not wreck, the privatization process.</p> <p>In every case that DFPS removes a child from an abusive or neglectful caretaker or requests that the court order a parent to attend services to alleviate</p>

Section	Line Number	Proposed Wording Change	Comment or Question
			<p>the risk of abuse or neglect, a court must approve the plan of DFPS. In fact, DFPS cannot make any long-term decisions about a child without court approval.</p> <p>DFPS must take extraordinary care during the planning, transitional, and working phases to guarantee that courts and attorneys representing parties to DFPS litigation continue their traditional functions. Most importantly, courts and attorneys must have adequate information to make decisions and effectively represent clients.</p> <p>Courts handling DFPS dockets hold DFPS responsible for the well-being of client children and for recommending the best long-term plans for them.</p> <p>Currently, a caseworker employed by DFPS is available at every court hearing to present information and recommendations regarding a family to the court. In order to testify to a court or to a jury, a caseworker must have personal knowledge of the client family. This caseworker has legal representation – either through a local prosecutor’s office or through a DFPS regional attorney’s office.</p> <p>Contracted service providers will now have most, if not all, contact with family members, so DFPS employees outside the investigative units will have no personal knowledge of the facts of the case. The same service providers will make recommendations for long-term plans for their child clients, including termination of parental rights. Although DFPS will be the temporary managing conservator of the child, it will be able to provide little in the way of persuasive or even legally sufficient testimony at trials. Few private entities</p>

Section	Line Number	Proposed Wording Change	Comment or Question
			have employees trained to prepare for trial, respond to discovery, and testify, making trial preparation doubly difficult.
2.4.7 Court Services	1777-1778 (p 62)	Add “attend Family Group Conferences and mediations.”	Family Group Conferences and mediation are a key part of the legal process and should be listed.
2.4.7.1.2 Adversary Hearing	1804 (p. 62)		This section should include a requirement that the independent administrator must ensure that the new case management service provider make sure that no information regarding the family is lost during the transfer of responsibilities from DFPS to an outside provider. Even within DFPS, pertinent information regarding foster youth and their families is sometimes lost when a case transfers from investigations to conservatorship or family based social services units. If this loss of information is a problem that occurs while DFPS oversees investigations and case management inter-agency, extraordinarily special care must be taken to ensure that it does not occur once a case leaves the agency.
2.4.7.1.2. (3)	1822 (p. 63)	Should be amended to include: “The CASA. Guardian ad litem, and/or Attorney ad litem shall have access to all records obtained by the service provider regarding the child, including but not limited to education, medical, psychological, and other records pertinent to the well-being of the child.”	Some provision must be made to allow CASA and attorneys and/or guardians ad litem access to records and documents relating to their child clients. These types of documents are currently made available to these persons. The independent administrator should develop a system for providing this type of document upon the request of any of these parties, especially since there will be numerous different service providers rather than a central agency to provide access to these records.
	1822-1823 (p. 63)	Add “access to the child and placement.”	CASA and any GAL and AAL must have access to the placement as well as the child to adequately investigate and prepare.

Section	Line Number	Proposed Wording Change	Comment or Question
General from here forward	1895 (p. 65)	Change from "Contractor" to "IA"	At this point, the RFP switches from the use of the term "IA" to "contractor." This reference is unclear. You should use IA and service provider throughout to ensure clarity.
2.4.7.2 DFPS Responsibilities	1894		This section clearly points out again that DFPS has not been duplicating the work of private providers. At this point, the RFP contains a long section of difficult and sophisticated stuff that DFPS is going to continue to do. What DFPS staff is going to do this? How many? How many cases will they carry? How will you pay for them?
2.4.7.1.2 (4)	1824 (p. 63)	Clarify the word " staff " – staff of the independent administrator or service provider?	Staff should mean staff of a service provider must meet qualifications required to provide expert testimony. It is unlikely that a court will allow the "expert" testimony of a DFPS or IA employee who lacks any personal knowledge of the facts of the case.
2.4.7.1.3 (4)	1840 (p. 64)		Funds need to be allocated to train service providers about testifying, making appropriate long-term recommendations for families, preparing for trial, answering discovery, and other legal topics. Additionally, service providers must appear in court as an agent of DFPS without the need for a subpoena. If a service provider fails to appear in court, the independent administrator must take appropriate action.
2.4.7.1.3 (8)	1868 (p. 64)	Should be amended – the list of fact witnesses should be provided to the DFPS attorney at least 10 days before a hearing and no less than 60 days before trial on the merits.	In metropolitan or other areas with a significant DFPS caseload, additional time is needed to serve subpoenas. Receiving a witness list 5 days prior to a hearing or 45 days before a trial will not allow sufficient time for case preparation. Additionally, in some jurisdictions, discovery control plans may require the delivery of witness lists to opposing

Section	Line Number	Proposed Wording Change	Comment or Question
			counsel more than 45 days prior to trial.
2.4.7.2 DFPS Responsibilities	1894 (p. 65)		Once again, the RFP exposes the untruth that DFPS staff and service provider staff had duplicative functions. Here DFPS proposes to retain a major task that will require DFPS caseworkers with small loads and personal knowledge of the legal case. DFPS will not have the staff necessary to accomplish these tasks. Moreover, DFPS staff will not have the personal knowledge necessary to prepare, sign, and distribute court reports. The court reports contain not only information but also recommendations. The court reports are the key document in case management and must be prepared by the service provider if the service provider is doing the case management.
3.1 Child and Family Outcome Measures	1929-1931 (p. 67)		If you redo the baseline each year, then it raises the performance requirement for the following year. This creates a disincentive to improve performance during a year beyond the agreed-upon targets.
3.1 Child and Family Outcome Measures	1937 (p. 67)		Proponents of privatizing case management argue that outcomes for foster youth and their families will improve if private companies manage their cases. The independent administrator should be required to perform at a higher level than DFPS on all performance measures.
3.1.4 Outcome 9	1996 (p. 73)	Change definition/indicator to read: "The definition of relatives and kin include related family members and unrelated persons who have a significant relationship and attachment to the child ("fictive kin").	Practices establishes that placement with family friends who do not have an independent relationship and bond with the child seldom work and are often unsafe. This definition is too expansive and gives providers an opportunity to dump children with whomever a parent names as a "well known to the family" regardless of their lack of relationship to the child.

Section	Line Number	Proposed Wording Change	Comment or Question
3.1.4 Outcome 10	2000 (p. 73) See also comment at line 1106 above. See also Line 3029 No. 5.	Change Indicator to read: "Percent of sibling groups where at least two siblings in the group are placed together in the same substitute care facility or home, excluding from the percent calculation any child for whom a treatment provider determines that it is not in the best interest of the other children for joint placement."	Placing siblings together is not always in the best interest of all the siblings. See comment at line 1106 above. This indicator should be rewritten to exclude from the calculation a child who should not be placed with his or her siblings. Otherwise, this indicator creates a disincentive to keep children safe by rewarding providers for placing children together even when it is dangerous.
3.1.5 Well-Being	2006 (p. 74)	Add education indicator: "Successful completion of grade level at which child enters care."	While DFPS rightly wants to negotiate performance measures, not to list an education performance measure in the RFP is unconscionable. Providers who say that educational progress is "beyond our control" do not understand the concept of performance-based contracting and should have their bids summarily rejected.
4.7.3 IA Responsibilities	2465	Add: "One methodology must include a way for families to report problems and provide feedback."	The RFP contains no requirement anywhere of a way for families to report problems. Such a requirement is essential for success.
4.12.1 Overview	2728 (p. 98)	Add: "The plan must ensure that all information that is now available to the public under the Texas Public Information Act remains available to the public."	Whatever is public information if DFPS were doing the work must remain public information even though a private contractor is now doing the work. DFPS should make this a contractual requirement.
4.12.2 Scope of Records Retention Plan	2733 (p. 98)		The plan must insure that appropriate parties to DFPS litigation have access to records pertaining to parents and children.
5.3 Parameters of Financial Approach	2916 (p. 105)		This schedule is too fast. The RFP requires that the transition occur evenly over time and punishes proposals where a greater percentage of cases transition toward the end. In fact, it would be better to work out problems on a small number of cases at the front end before moving rapidly. Children will be affected by this transition through

Section	Line Number	Proposed Wording Change	Comment or Question
			probably change in placement and service providers. The schedule for transitioning cases should occur more slowly to ensure a smooth transition.
5.3.2 Child Maintenance Fee per Child-Service Day)	2960 – 2964 (pp. 106 – 107) General		A flat rate child maintenance fee fails to account for the variation in clients' needs. In instances where the cost of meeting a child or family's needs exceeds the flat rate fee, there exists a disincentive to provide these more costly services.
5.3.3 Case Management Fee per Child-Service Day	2971 (p. 107) General		The Texas Family Code requires that, unless the court hearing a DFPS case determines special circumstances exist, either a child must be reunified with a parent or a final order entered within twelve months of the date that DFPS was appointed as temporary managing conservator of the child. In almost all cases, the responsibilities of the DFPS caseworker increase toward the end of that year period – usually around the 9 th month of the case. At this point, the legal case requires much attention by the caseworker, who may be required to prepare witness lists, answer discovery, meet with the attorney representing DFPS to discuss the final order, attend mediation, prepare for trial, and/or testify in a trial on the merits. Additionally, much social work is also necessary in this period.
		Add a litigation fee.	The declining rate creates a disincentive to do hard legal work and try termination cases. One might be able to incorporate both a declining fee and a litigation fee. DFPS should consider a litigation fee to avoid creating a disincentive to try cases.
	2989	Change to: "The Case Management Fee will be paid until DFPS has been dismissed from the case."	Courts often change conservatorship to a parent or relative but maintain the case to monitor the change. In this situation, DFPS remains a party

Section	Line Number	Proposed Wording Change	Comment or Question
			and casework continues. Under the RFP, that casework would be uncompensated.
5.3.4 Incentives	3008		DFPS needs to make sure that federal funds can be used to fund these incentives or that state funds are available. Many times federal funds cannot be used for incentives.
5.4.3 DFPS Responsibilities	3124	Add, "When legally appropriate..."	Not all funds from wills, trusts, and annuities can be taken to offset the cost of care. You should add a qualifier such as "when legally appropriate."
5.5.4 General Access to Accounting Records	General See also comment at line 2728 above.	Add language that requires the IA to make public any financial and accounting records that DFPS would have to make public were it doing the work of the IA under the Public Information Act.	DFPS should preserve the public's right to financial information about programs for which the public is paying.
6.7 State Use of Respondent Ideas	3630-31	Reword: "DFPS reserves the right to use any and all ideas presented in any proposal unless the Respondent asserts a valid claim of ownership of an idea as Respondent's intellectual property."	As written in the draft RFP, all the Respondent must do is "present a legal case" regardless of whether the claim is valid. This needs to be rewritten so that only valid claims are protected.
8.1 Evaluation of Proposals	4439 (p. 153)		The Procurement Negotiation Committee should include DFPS representatives with field experience.

Please feel free to enter additional rows to accommodate all comments. This table will expand as necessary.