

7/13/12

TO: ALL OFFERS

FROM: Daniel Madrid  
The Division of Vocational Rehabilitation  
4425 N. Market St., 3<sup>rd</sup> Floor  
Wilmington, DE 19809  
Daniel.madrid@state.de.us

SUBJECT: ADDENDUM TO INVITATION TO BID - CONTRACT NO. DDS122CONSULT - Disability  
Determination Consultation Services

**ADDENDUM #1**

The Disability Determination Services waives the condition on this request for proposal (RFP) that requires liability insurance to be provided by the offeror. This addendum is provided under the following authority:

DI 39518.050 Litigation and Related Issues - Challenges to Determinations or Procedures -- DDS Citations:

Section 205(g) , 205(h) and 1631(c)(3) of the Social Security Act

A. Background  
Federal Responsibility

The Federal government and not the Disability Determination Services (DDS) is responsible for defending court challenges to disability determinations and related procedures. The Commissioner is the proper party to such a challenge.

B. Policy Principle  
Responsibility for Court Defense

State DDSs will not be responsible for defending in court any determination made or any procedure for making determinations under the Federal or State regulations.

C. Operating Policy

1. Remedies

The exclusive administrative and judicial remedies for these challenges are provided in section 205(g) , 205(h) and 1631(c)(3) of the Social Security Act.

2. Time to respond

State defendants have only 21 to 60 days to answer complaints, while the Federal government has 60 days.

#### D. Operating Procedure

##### 1. State Named as Defendant

Contact the State's own legal counsel and SSA Regional Office immediately if a plaintiff attempts to name a State official or employee as a defendant.

##### 2. Extension

The State will generally have to file an answer or request for an extension of time because of the short State response time. (Federal Rules of Civil Procedure, Rule 12).

##### 3. Response/Removal

The State will obtain from the RO the name of the attorney from the SSA who (upon consultation with the local U.S. Attorney's office) can advise the State attorney in filing the appropriate response.

NOTE: The Federal attorney will attempt to have the State defendant removed as a party.

##### 4. Federal Representation

The State may request the Federal attorneys to represent the State component if the State remains a party.

NOTE: In such cases, a statement from the employee requesting such representation as well as a statement from the employee's supervisor that the State defendant was acting in his or her official capacity in making the determination will normally be required.

#### E. Related Policy

See Federal Rules of Civil Procedure, Rule 12 for information on filing an answer or a request for an extension of time.

All other terms and conditions remain the same.

If you have any questions, please contact me at 302-761-8281 or [Daniel.madrid@state.de.us](mailto:Daniel.madrid@state.de.us).