

Questions and Answers
RFP: Counsel at First Appearance
January 16, 2013

1. **Question:** Are grant awards available to eligible counties proposing to provide counsel at first appearance by attorneys assigned through an assigned counsel plan?

Answer: Yes. Eligible counties seeking to provide mandated representation at first appearance by attorneys assigned through an assigned counsel plan may receive funding under this grant. Indeed, the RFP directs counties to “submit a proposal that is developed through consultation with representatives of each of the County Law Article 18-B criminal defense providers in the county, *including the person with administrative responsibility for overseeing the assigned counsel program.*” [Emphasis added] (see page 3 of the RFP). However, the attorneys must be assigned by an assigned counsel plan that the State Administrator (Chief Administrative Judge) has approved in accordance with County Law Section 722 (3).

2. **Question:** Two questions that should not compromise the competitiveness (they may already be answered but I do not see it):
1. How large is the total funding allocated to this solicitation?
 2. Is there is a maximum number of awards.

Answer: (1) Total funding available for this grant is \$12 million (\$4 million per year for each of three years.) (see page 4 of the RFP). (2) The maximum number of awards cannot exceed the number of counties in New York State that are eligible to apply for funds under this grant. (see page 5 of the RFP).

3. **Question:** Can the budget and/or work plan be revised or modified after the grant award?

Answer: Grant recipients are, in general, allowed a certain degree of latitude in making post-award budget revisions and programmatic (work plan) modifications to ensure efficient performance of the project. Revisions or modifications to the budget and work plan that support project operations occur for a variety of reasons. For example, additional funds may become available from line items in the budget, such as personnel, due to resignations or retirements, which may also affect project implementation. The grantee may reallocate funds within and between budget categories in the approved budget of the project to meet unanticipated requirements or to accomplish certain programmatic modifications. The work plan can also be modified based on process evaluation. Revisions or modifications to the budget or work plan must be requested in writing and approved by the Office of Indigent Legal Services, and may also require approval by the State Comptroller.

4. **Question:** Can the grant funds, or a portion thereof, be used to supplement salaries or pay overtime to current attorneys that work for institutional providers who would be willing to work additional hours to represent clients in person at arraignments in accordance with a plan that is adopted by the institutional provider, the County and the local courts?

Answer: Yes. Eligible counties seeking to provide representation at first appearance by supplementing salaries or payment of overtime to attorneys of current 18-B institutional providers

may receive funding under this grant. Page 3 of the RFP provides that “proposals are sought for the provision of direct, continuous representation to eligible persons through *enhancement of existing services* or creation of new and innovative approaches which address counsel at first appearance . . .” [emphasis added]. However, the county must clearly demonstrate in its proposal that funding awarded for an enhancement of existing services will “supplement and not supplant local funds.” (see page 10 of the RFP).

5. **Question:** The RFP states on page 4 that “proposals that make investigative services promptly available for pretrial detention issues are encouraged”. This suggests that proposals that would provide for, or enhance, the provision of investigative services at any time prior to trial, not just at the time of first appearance, would be entertained and encouraged. On the other hand, this RFP is specifically targeted to counsel at first appearance. Is the referenced sentence intended to be applied only in conjunction with counsel at first appearance, or is it intended permit a much broader and continuing use of investigators well past the first appearance?

Answer: Since the purpose of the RFP is to “make demonstrable and measurable improvements in the delivery of indigent defense services to eligible persons at a defendant’s first appearance before a judge,” funding proposals that include investigative services should reflect this purpose. (See page 1 of the RFP under *Intent of this Request for Proposals*.) Indeed, the RFP provides that, “Specifically, proposals are sought . . . which *address counsel at first appearance* by means such as: . . . *Improve investigation*: Proposals that make investigation services promptly available for pretrial detention issues are encouraged.” [Emphasis added] (see page 4 of RFP).

6. **Question:** In II(A)(5), which is on page 7, the question is “how would you assure effective representation for clients whose cases are resolved prior to trial?”. This seems to ask a very broad question that goes far beyond the scope of this RFP, and on its face would include all of the ways in which we work towards effective representation in all cases that are resolved before trial, which would cover the vast majority of cases, and could include months of representation, involving motion practice, effective negotiation, discovery, investigation, ongoing development of client relationship, etc. While at least some of that starts at the arraignment, it goes far beyond that appearance. What is the intent of that requirement, and could you possibly rephrase it so as to focus it better on the specific objectives of this RFP?

Answer: Since the purpose of the RFP is to “make demonstrable and measurable improvements in the delivery of indigent defense services to eligible persons at a defendant’s first appearance before a judge,” proposals should promote effective representation at this stage of the proceedings. (see page 1 of RFP). On page 4, under the heading “Procedures for effective advocacy,” proposals are sought to address *counsel at first appearance* that relate to, for example, allowing adequate time for counsel to obtain and use information from the client, charging documents, criminal history, and other available sources on the client’s behalf with regard to entry of a not-guilty plea, bail/pretrial detention, and any other matter arising at arraignment.” [Emphasis added]. Eligible counties may also utilize funding under this grant for promoting effective representation at proceedings subsequent to first appearance that involve matters arising at the defendant’s first appearance.

7. **Question:** Is there any way that the defense counsel can have access to Live Scan or some other state database regarding the client's criminal history or lack thereof? Often, at arraignment the prosecutors say that there no rap sheets so they will not confer jurisdiction on felony cases for bail pursuant to CPL Section 530.20 (2) (b) (i) (ii).

Answer: Yes. Eligible counties may utilize funding under this grant to access available state criminal history databases for providing mandated representation at arraignment. Page 4 of the RFP provides that proposals are sought that ensure counsel has the opportunity to effectively advocate on behalf of clients at first appearance, including “allowing adequate time for counsel to obtain and use information” such as “criminal history.” However, proposals that rely on statutory or other regulatory changes to access criminal history records will not be funded. (see page 3 of the RFP).

8. **Question:** The Justice Courts in Westchester conduct arraignments at all hours as the local police do not have the facilities to house individuals charged with crimes. Under this RFP would it be acceptable to have attorneys available until 12:00 midnight and then again at 6:00am?

Answer: Yes. Eligible counties seeking to provide mandated representation at a defendant’s first court appearance, when such proceedings are conducted outside the normal business hours of courts, may receive funding under this grant. Indeed, “[p]rojects that produce a replicable model or practice that is usable, adaptable, or scalable by other localities or counties are encouraged” (see page 2 of the RFP).

9. **Question:** Does the RFP contemplate reimbursement for travel, time and expenses?

Answer: Yes. Funding can be utilized for travel, time and expenses that relate to the provision of mandated representation at a defendant’s first appearance.

10. **Question:** Will the RFP provide for technology and expenses such as cell phones and carrying costs, possibly Lap top computers with internet connectivity?

Answer: Yes. Funding can be utilized for technology and expenses that relate to the provision of mandated representation at a defendant’s first appearance.

11. **Question:** Would there be funding to set up the process and network with the other necessary parties, i.e., the courts (42 justice courts), the various village, town and city police departments, County Police departments, MTA police, and prosecutors?

Answer: Proposals that “demonstrate collaboration among agencies and entities involved in any facet of the arraignment practice (such as courts, the law enforcement agency/agencies responsible for ensuring the presence of the person being arraigned, pretrial detention services, and investigative services) are encouraged.” (See page 4 of the RFP.) However, the provision of funding under this grant in furtherance of any such collaboration is limited to Article 18-B providers of services. (see page 3 of the RFP).

12. **Question #12:** Would there be limitations on subcontracting by a Legal Aid Society with 18-B attorneys to be present at arraignments for misdemeanors in some courts as our office is generally only assigned on felonies?

Answer: Eligible counties seeking to provide mandated representation at first appearance by attorneys subcontracting with a private legal aid bureau or society designated by the county to provide such services under County Law Section 722 (2) may receive funding under this grant. Question #19 on page 8 of the RFP requests that counties, as part of their proposal, “[d]escribe whether you intend to subcontract with another service provider in order to complete the terms described in the RFP.”

13. **Question #13:** In accordance with the RFP, no county may submit more than one proposal; however, is it acceptable for a County to have multiple options within the proposal?

Answer: No. Counties may submit only one proposal; a proposal with multiple options is considered more than one proposal and not “consistent with the format requested” by ILS. (see page 8 of the RFP). This is because, with multiple options in a proposal, the second level of the review process for this competitive grant could not be properly conducted. (see pages 8 and 9 of the RFP). Note, however, that there is some flexibility with budgets and/or work plans after a grant has been awarded. (see Question #2 above).

14. **Question #14:** On page 3 of the RFP, it states, “Proposals that include contracts with private law firms or individual lawyers will not be funded.” Does this include a contract with an entity, such as the County’s Bar Association, or Assigned Counsel Program?

Answer: Eligible counties seeking to provide mandated representation at first appearance by attorneys assigned through an *assigned counsel program* may receive funding under this grant, provided the assignments are made pursuant to an assigned counsel plan approved by the State Administrator. (see Question #1 above). In order to receive funding under this proposal, counties seeking to provide mandated representation at first representation must do so in conformance with County Law 722, which sets forth acceptable plans for representation.