

Questions and Answers

RFP: Caseload Standards Study

Date Posted: February 25, 2016

(1) Question: Do the following entities and programs constitute the complete list of providers of interest to the proposed study? (if not, please provide the complete list):

- a. Hiscock Legal Aid Society (Onondaga)
- b. Onondaga County Bar Association Assigned Counsel Program
- c. Ontario County Public Defender
- d. Office of the Ontario County Conflict Defender
- e. Ontario County Assigned Counsel Program
- f. Schuyler County Public Defender
- g. Schuyler County Conflict Defender
- h. Schuyler Assigned Counsel Program
- i. Legal Aid Society of Suffolk County, Inc.
- j. Assigned Counsel Defender Plan of Suffolk County
- k. Washington County Public Defender
- l. Washington Assigned Counsel Program

Answer: Yes, at present, this is the complete list of providers of indigent legal services within the five counties, and therefore represents the complete list of agencies and programs of interest in this study.

(2) Question: Page 5 of the RFP suggests that most indigent defendants in Onondaga County are served either by the Hiscock Legal Aid Society or by the Onondaga County Bar Association Assigned Counsel Program. If true, how are the remaining indigent defenders served in this location?

Answer: The Hiscock Legal Aid Society and Onondaga County Bar Association Assigned Counsel Program are the only two providers in Onondaga County and they provide all of the indigent legal services within that County.

(3) Question: Our assumption is that the New York State Defenders Association-developed Public Defense Case Management System (PDCMS) is the primary electronic case management system currently utilized by the Ontario Public Defender Office, the Schuyler County Public Defender Office, and the Legal Aid Society of Suffolk County. Please describe the primary electronic case management systems for each of the organizations and programs described in Question 2 (including any corrections to Question 2).

Answer: Onondaga County Assigned Counsel Program uses a bespoke billing system called 'AC Peeper'. Hiscock Legal Aid Society uses a system called Legal Server. All other programs do indeed utilize the New York State Defenders Association PDCMS.

(4) Question: Can the successful bidder assume that provisions will be made for either access to an extract of anonymized records contained in the primary electronic case management systems for each of the organizations and programs described in Question 2 (including any corrections to Question 2) or that such organizations and programs will perform analysis on their own CMS records as necessary for the successful completion of the contracted deliverables? (for example,

we will likely require information regarding the annual number of representations handled by each organization or program arising out of each of the proceedings described in lines a-l on pages 6 and 7 of the RFP)

Answer: ILS will work with the successful bidder to communicate any data needs to providers, establish whether said data exist and are obtainable, and, to the extent possible, facilitate the extraction and provision of those data. The bidders should not assume that provider organizations will analyze their own CMS records. The bidders may assume that the data mentioned in the parenthetical example will be obtainable.

- (5) **Question:** Does the RFP require assessing time expenditures of attorneys outside of the organizations and programs listed in Question 2 (including any corrections to Question 2)? For example, would the time study include the activities of attorneys from Tompkins County Assigned Counsel Office who provide services to indigent defendants in Schuyler County?

Answer: Any attorneys providing representation within the five counties are of interest to the study. In the case of assigned counsel attorneys providing representation in Schuyler County, the fact that they are representing a client in that county means they should be considered among the population of subjects included in the study.

- (6) **Question:** Would the successful bidder be able to obtain a list of names and contact information for every attorney who performed services to indigent defendants in the five counties during an agreed to time span (for example, calendar year 2015), regardless of whether that attorney was employed with a formal public defender office? If so, would that list indicate whether the attorney was associated with a formal public defender office or was assigned counsel?

Answer: ILS is not in possession of those data, but will work with the successful bidder to communicate any data needs to providers, establish whether said data exist and are obtainable, and to facilitate the extraction and provision of those data. The terms of the settlement provide that the caseload/workload of each attorney providing mandated representation in the five settlement counties be accurately tracked and reported on at least a quarterly basis, including private practice caseloads/workloads. This information should be available to the successful bidder during the course of the study.

- (7) **Question:** Would space be made available without charge to the successful bidder to hold two separate Delphi sessions for the development of caseload standards? Our assumption is that there would be 30 people at each event.

Answer: Yes, if requested, ILS would work with the successful bidder to obtain adequate space at no charge for Delphi sessions.

- (8) **Question:** Would space be made available without charge to the successful bidder to hold five time study training sessions (one in each of the five counties)? Our assumption is that there would be 100 people at each event.

Answer: If requested, ILS would work with the successful bidder and counties to find space at no charge for this purpose, however there is no guarantee that such space could be secured.

(9) Question: Would the contractor be allowed perform to data collection activities and background investigation prior to formal approval of the work plan?

Answer: Yes, as part of the development of the final study plan (see section 3.1 of the RFP), and in consultation with ILS, data collection and background activities could be performed prior to final approval of such plan.

(10) Question: Does the deliverable date of one month after contract start for the submission of the Final Study Plan refer to the submission of a proposed plan for ILS' review and approval, or does the Final Study Plan need to have been approved by that date? If the latter, when would ILS expect to receive a proposed plan from the contractor?

Answer: The final study plan must be approved by ILS by one month after the contract start date. (see section 3.1 of the RFP) ILS expects to meet and work with the successful bidder's representatives in order to facilitate the timely completion of this task, and, by working closely with such bidder, to assure ILS' approval of the plan in a timely manner.

(11) Question: Does the November 15 deliverable date for the Final Report refer to a proposed draft from the contractor submitted for ILS' comments (with a period of time thereafter for peer review, revisions, and pre-publication editing), or is it expected that the document delivered on the 15th of will have been reviewed and commented upon by ILS, revised thereafter, subjected to peer review, and prepared for publication?

Answer: A final report is due on November 15, 2016. We expect the November 15th final report will have been the result of a process whereby ILS and the successful bidder work closely together, during which time ILS expects to comment on and review drafts of the report as appropriate.

(12) Question: Do the criminal and family courts in the five counties track whether cases in their courts involved indigent defense appointments?

Answer: Although the courts have the capacity to track these data, we understand that, in practice, the collection of these data can vary from court to court, and frequently the data are missing, inaccurate or misleading.

(13) Question: Can the successful bidder assume that provisions will be made for either access to an extract of anonymized records contained in the primary electronic case management systems for each of the criminal and family courts in the five counties or that such criminal and family courts will perform analysis on their own CMS records as necessary for the successful completion of the contracted deliverables? (for example, we will likely require information regarding average time from filing to resolution for each of the proceedings described in lines a-l on pages 6 and 7 of the RFP)

Answer: ILS is not in possession of those data, but will work with the successful bidder to communicate any data needs to the courts in each county, or the Office of Court Administration where appropriate, to establish whether said data exist and are obtainable, and to facilitate the extraction and provision of those data.

(14) Question: Are the case weights required as part of this study anticipated to be solely reflective of average attorney time expended on each case type of interest? Does ILS require additional sets of case weights that reflect expected investigator time or other non-attorney staff resources?

Answer: The settlement stipulates that attorney caseloads are to be the subject of standards, and not the caseloads of non-attorney staff. However, bidders should recognize that “to the extent necessary to comply with the caseload/workload standards, the number of additional attorneys (including supervisory attorneys), investigators, or other non-attorney staff, or the amount of other in-kind resources necessary for each provider of Mandated Representation in the Five Counties,” must be taken into consideration. (see section 2.2 of the RFP, which quotes paragraph IV(B)(1) of the settlement.

(15) Question: Will the case weights required as part of this study be applicable to all five counties in the aggregate, or should there be separate weights for each county?

Answer: The final decision on whether caseload standards will vary by county will be made in consultation with ILS, and may depend on the results of the study itself. Bidders should note that the settlement does call for consideration of factors such as geographic size and other characteristics of the counties themselves which may factor into caseload standards and could vary by county.

(16) Question: Would the contractor be expected to deliver separate standards for each factor described in Paragraph IV(B)(2) of the settlement (for example, separate standards that depend on “the qualifications and experiences of the attorneys” or “whether attorneys work on a part-time basis”) or should the contractor produce standards that apply to all attorneys, offices, etc., across the five counties with ILS to adjust later as needed for specific circumstances, locations, resources, or challenges?

Answer: While some considerations may be factored into standards in a uniform, mathematical fashion (such as part-time employment, where an attorney employed at 0.5 of full-time might only be expected to carry 0.5 of a full caseload) others, such as inexperience or lack of training, are less likely to be amenable to this type of treatment. As with Question 15 above, where the study’s findings shed light on how standards should be adjusted to deal with specific circumstances such as travel time, ILS will seek to use those findings to make such adjustments in as reliable a fashion as possible. Of course, ILS also recognizes that the large number of factors that might be considered in adjusting caseload limits for specific attorneys or places is likely too great to be incorporated into a statistical formula, and that decisions on how to adjust caseload limits will sometimes have to be made on an individual basis.

(17) Question: Similarly, is it expected that the contractor develop different standards for attorneys depending on whether or not they are associated with an institution (such as a Legal Aid Society or are occasionally appointed counsel)? The meaning of the passage “The standards will need to apply to both institutional and non-institutional provider types” is unclear.

Answer: The standards ILS produces must apply equally to attorneys in institutionalized (public defender, conflict defender or legal aid society) and non-institutionalized (assigned counsel) settings, in order to avoid having the quality of representation differ by provider system type. In practical terms, this will likely mean that attorney caseloads will need to be capped in proportion to the amount of time they can devote to providing mandated representation in each system type.

(18) Question: Table 1 does not show attorney and non-attorney staff for the assigned counsel programs. Is it possible to determine the number of unique attorneys who provided representations for the cases in the table?

Answer: We assume that the data collection contemplated under Question 6 above would also address this issue.

(19) Question: To what degree would the experiences of privately engaged criminal defense attorneys be included in the analysis? For example, does ILS desire that criminal defense attorneys who do not serve indigent clients be included in the time study, the sufficiency survey, or the Delphi sessions? If so, are there lists of names and contact information for criminal defense attorneys who do not serve indigent clients in each of the five counties?

Answer: ILS recognizes the potential value that including attorneys who provide representation on private retainer to paying clients can add to the conversation over standards for the amount of time and effort that should be dedicated to cases, particularly at the Delphi stage of the work. National standards recognize that representation afforded at public expense should be equal in standard to that afforded to paying clients, and so as a normative matter we would welcome inclusion of input from criminal defense attorneys with private practices, although such inclusion is not required. ILS does not maintain a contact list of privately retained criminal defense attorneys in the five settlement counties.

(20) Question: Does ILS utilize any sort of case management system to track information regarding individual indigent defendant appointments? If so, please describe.

Answer: ILS does not utilize such a system.

(21) Question: Are there annual counts for each of the organizations and programs described in Question 2 (including any corrections to Question 2) describing the number of representations in each of the proceedings described in lines a-l on pages 6 and 7 of the RFP?

Answer: If by representations the questioner means caseloads, the answer is no. As such we assume that the answer to Question 4 above largely covers this, but to reiterate, ILS will be most willing to assist the successful bidder in obtaining data from local providers of representation, to the extent that those data are available.

(22) Question: Do each of the proceedings described in lines a-l on pages 6 and 7 of the RFP capture 100 percent of all indigent defense representations that are the subject of this RFP?

Answer: It is the intent of the list referred to here to capture all cases in which the right to counsel attaches, and we believe that this list does cover all such cases. Given that judges have discretion to assign counsel even in cases where the right does not attach, it is possible that some assignments to represent persons would not be covered in this list. However, we expect that number of cases is very small. Above all, the list of case types referred to is intended to stipulate the most significant types and categories of case for which separate weights are likely to be essential for the development of a case weighting system.

(23) Question: Are the organizations and programs described in Question 2 (including any corrections to Question 2) required by the terms of the settlement agreement to cooperate with the development of the proposed standards or does that mandate only apply to the State of New York and/or ILS?

Answer: The settlement agreement requires the five settlement counties to use best efforts to cooperate with the State and ILS to the extent necessary to facilitate the implementation of its terms. (See section VII of the settlement agreement) The settlement terms include the development of appropriate numerical caseload/workload standards for each provider of mandated representation. (See section IV of the settlement agreement)

(24) Question: Regarding the list of activities in Lines a-l on Page 7: Must the activities described in the time study conform to this list, or can it be amended with approval by ILS?

Answer: The case tasks are not subject to modification except with prior approval by ILS.

(25) Question: Can attorneys who presently provide services to indigent defendants be required to participate in a time study or complete a time sufficiency survey as a condition of future appointments? If not, to what degree of assistance can the successful contractor expect to receive from ILS and the organizations and entities described in Question 2 to encourage cooperation and participation in the study on the part of indigent defense attorneys in the five counties?

Answer: While the settlement agreement requires the five settlement counties to use best efforts to cooperate with ILS to facilitate the implementation of the terms of this agreement, individual provider attorneys cannot be compelled by ILS to participate in the time keeping or time sufficiency phases of the study. That being said, we expect full cooperation to be forthcoming from the counties and their providers. ILS will work to encourage and ensure the cooperation and participation of the settlement counties and providers in the study.

(26) Question: In addressing the workload measures for investigators and other non-attorney staff (pages 4-5), please clarify whether ILS expects the workload study to determine weights and standards for each of these positions. Does the state use a standard formula for funding investigator and other non-attorney staff, and if so, can you provide the formula?

Answer: The state does not use a standard formula for non-attorney staff funding. The study does not require determining weights and standards for investigator and other non-attorney positions, but should recognize that meeting appropriate attorney caseload standards will require additional resources for supporting, non-attorney staff, and should quantify the need for those staff.

(27) Question: Again, on page 5, the cited settlement language refers to “adequate staff investigators, other non-attorney staff, and in-kind resources.” Does the settlement language define adequate?

Answer: While “adequate” is not defined in the settlement, it should be understood to mean that attorneys have sufficient time, staff and resources to provide quality representation.

(28) Question: On pages 5-6, the RFP discusses some of the data available to ILS. What additional data be available to the Offeror from the Office of Court Administration both about criminal cases and family court cases?

Answer: Without knowing what additional data is being sought, we are unable to provide a response. To the extent possible, ILS will assist the successful bidder in accessing data from other agencies where such data is needed for the study.

(29) Question: Should the Offeror include cases that are not violations of the state penal code (municipal code or administrative code violations) in the analysis?

Answer: Yes, the analysis should include all cases wherein the right to counsel attaches.

(30) Question: On page 7, two types of appeals are mentioned as case types to consider. In light of the inclusion of family court cases, when caseloads are mixed, please confirm that appeals in family court are outside the scope of this RFP.

Answer: Non-criminal cases are to be included in the time keeping phase of the study where attorneys have mixed caseloads. This may include appeals in family court where an attorney is also carrying criminal cases at either the trial or appellate/post-conviction stages.

(31) Question: The RFP stipulates on page 8 that bidders must plan a study involving a time study, a time sufficiency study, and a Delphi panel. Can Offerors add to the methodology with additional phases or by including different parties in the iterative review process?

Answer: The RFP requires a three-stage study, and bidders should not include additional stages in their proposal. The RFP also requires that the Delphi group includes practicing attorneys from the five counties. Inclusion of different parties in the iterative review process is possible subject to ILS approval of those parties.

(32) Question: On page 9, Delphi group is discussed, and the members of that group are subject to approval by ILS. Are members of this group expected to be identified specifically in the proposal from the Offeror?

Answer: No, any identification of potential Delphi group members would be preliminary at the proposal stage due to the need for ILS approval. Bidders are not constrained from identifying likely members in their proposal.

(33) Question: Given our experience conducting workload studies in 6 jurisdictions, and given that this study will include contract, public defender, and assigned counsel systems in 12 different sites, the 6.5-month timeline (May 1, 2016 – November 15, 2016) seems extremely short. Can the time for the study be extended? (See RFP p. 3, §§ 1.1, 1.2.)

Answer: Due to the constraints of the settlement agreement, the timeline cannot be extended.

(34) Question: Are any of the 12 offices currently engaged in timekeeping? (See RFP, p. 9, §3.1-1(a).)

Answer: None of the 12 offices are presently engaged in tracking the time of attorneys.

(35) Question: Do you plan to implement permanent timekeeping in each of the 12 offices? Where necessary, will the State of New York separately fund each of the 12 jurisdictions to support purchase, installation, and maintenance of timekeeping software and hardware? (See RFP, p. 9, §3.1-1(a).)

Answer: ILS does not plan to implement permanent timekeeping in any office. To the extent that software and hardware purchases are necessary to conduct the study, these may be purchased using funds from the RFP and these costs must be included in the cost proposal (see Appendix E: Cost Proposal).

(36) Question: Are the case types and case tasks set forth on pages 6 and 7 of the request for proposals subject to modification, given that they should be based in substantial part upon an analysis of the data produced by 6 months of timekeeping with compliance rates of at least 90%? (See RFP, p. 6, 7, §2.2.)

Answer: The case types and tasks are not subject to modification except with prior approval by ILS. Section 3.1 of the RFP specifies that bidders estimate the time and levels of attorney participation required to gather sufficient time-keeping data, and that the study participants be reasonably representative samples of the target population. It does not require 90% compliance specifically, nor does it require any specific duration for timekeeping data collection.

(37) Question: To what extent does the organization awarded the contract for the workload study have discretion in deciding upon the methods to be employed in conducting the study? For example, In the six prior public defender workload studies we have conducted, we have not shown the actual data from permanent timekeeping to the expert Delphi panel, and we would not plan to do so with this project. Is this an issue about which we will have discretion to exercise our best judgment in the matter? (See RFP, p. 9, § 3.1-1(c).)

Answer: The bidder will not have discretion over such matters. The decision regarding what information the Delphi panel will be given for their deliberations will be made by ILS in discussion with the bidder.

(38) Question: How in the past has the ILS determined its numerical caseload/workload standards?

Answer: In the past, ILS has employed a modified form of the caseload limits recommended by the National Advisory Commission on Criminal Justice Standards and Goals in 1973. Those standards, which are fully explained in pages 3 -7 of our November 2013 report *An Estimate of the Cost of Compliance with Maximum National caseload Limits in Upstate New York* available on the ILS website, state that attorneys may not take more than a total of 367 weighted cases annually. On September 25, 2014, that standard was adopted by the Indigent Legal Services Board, contingent on the availability of state funding to reduce caseloads.

(39) Question: How often in the past has the ILS conducted caseload studies, and can such studies be made available to bidders?

Answer: ILS has not previously conducted any caseload studies of the type described in this RFP.

(40) Question: What consulting or research partners has the ILS worked with in the past on matters related to caseload/workload standards or analysis?

Answer: ILS has not previously worked with any consulting or research partners on caseload/workload standards or analysis.

(41) Question: How in the future does the ILS plan to roll out the standards defined in this study to remaining NY counties?

Answer: The settlement provides that the caseload standards, as determined by ILS, apply only to the five settlement counties.

(42) Question: What technology enablement is the ILS considering to perhaps automate caseload or case-weighting process across counties?

Answer: ILS at present does not have plans to automate caseload or case-weighting processes in the five counties or elsewhere.