NYS Department of State
Office for New Americans
Liberty Defense Project Grant

Request for Applications # 18-ONA-40

Questions & Answers

The responses to questions included herein are the official responses by the State to questions submitted by potential applicants and are hereby incorporated into RFA # 18-ONA-40 issued on December 20, 2018. In the event of any conflict between the RFA and these responses, the requirements or information contained in these responses will prevail.

Section V. Required Activities – Part A; 3. Case management and referrals is amended to read:

As part of the LDP Regional Rapid Response program, LDP attorneys must maintain capacity to immediately respond by phone or email to the referral source. Immediate response means confirming receipt of the request within one (1) hour during regular business hours or within the first hour of the next business day for requests made outside of regular business hours. DOS/ONA will allow some flexibility in extreme circumstances, however LDP attorneys are expected to make a good faith effort to respond within these time frames. Within twenty-four (24) hours of the initial referral, LDP attorneys must provide required legal services, including but not limited to legal screenings, intakes, and direct representation, based on assessment of need. Cases may be referred by DOS/ONA, its partners, and the NYS New Americans Hotline.

If an LDP attorney is not able to assist with a referral, they must contact DOS/ONA to ensure that the individual is referred to another partner, including if the LDP attorney receives an immigration law question from a constituent or provider outside of their assigned geographic region.

Section V. Required Activities – Part A; 5. Know Your Rights trainings is amended to read:

A minimum of three (3) Know Your Rights trainings or related workshops must be provided per quarter per LDP attorney, for a total of 12 annually. The locations for the Know Your Rights training or related workshop must be based on need and be geographically distributed within the service area. To achieve geographic distribution, grantees are encouraged to partner with local community groups to organize, host, and conduct outreach for these trainings and workshops. All Know Your Rights trainings and related workshops require prior approval from DOS/ONA. Know Your Rights trainings must be presented by an LDP Attorney or, with prior approval from DOS/ONA, a DOJ accredited representative. Non-attorneys are prohibited from providing legal advice at Know Your Rights trainings.

Section VI. Required Activities – Part B; 3. Case management and referrals is amended to read:

As part of the LDP Regional Rapid Response program, LDP attorneys must maintain capacity to immediately respond by phone or email to the referral source. Immediate response means confirming receipt of the request within one (1) hour during regular business hours or within the first hour of the next business day for requests made outside of regular business hours. DOS/ONA will allow some flexibility in extreme circumstances, however LDP attorneys are expected to make a good faith effort to respond within these time frames. Within twenty-four (24) hours of the initial

referral, LDP attorneys must provide required legal services, including but not limited to legal screenings, intakes, and direct representation, based on assessment of need. Cases may be referred by DOS/ONA, its partners, and the NYS New Americans Hotline.

If an LDP attorney is not able to assist with a referral, they must contact DOS/ONA to ensure that the individual is referred to another partner, including if the LDP attorney receives an immigration law question from a constituent or provider outside of their assigned geographic region.

Section VI. Required Activities – Part B; 5. Know Your Rights trainings is amended to read:

A minimum of three (3) Know Your Rights trainings or related workshops must be provided per quarter per LDP attorney, for a total of 12 annually. The locations for the Know Your Rights training or related workshop must be based on need and be geographically distributed within the service area. To achieve geographic distribution, grantees are encouraged to partner with local community groups to organize, host, and conduct outreach for these trainings and workshops. All Know Your Rights trainings and related workshops require prior approval from DOS/ONA. Know Your Rights trainings must be presented by an LDP Attorney or, with prior approval from DOS/ONA, a DOJ accredited representative. Non-attorneys are prohibited from providing legal advice at Know Your Rights trainings.

Section VII. Eligible Costs is hereby amended to add the following to the first paragraph following the bulleted list:

Please note that professional certification fees and professional development, such as bar admission, DOJ application fees, cost to attend CLEs and conferences, are not considered direct activities under this grant; however they can be included in the administrative cost rate.

Section VIII. Ineligible Expenses; 17. Is hereby amended to read:

17. Foreign travel. Out of state travel will only be considered on a case by case basis and will require prior approval.

In Attachment C: Sample Program Work Plan, Service Description the following cells are amended:

Row 3 reads: Under the Regional Rapid Response program, LDP attorneys must confirm receipt of referrals by phone or email to the referral source within one hour (1) during regular business hours or within the first hour of the next business day for requests made outside regular business hours. DOS/ONA will allow some flexibility in extreme circumstances, however LDP attorneys are expected to make a good faith effort to respond within these time frames. Cases may be referred by DOS/ONA, its partners, and the NYS New Americans Hotline.

Within twenty-four (24) hours of the initial referral, LDP attorneys must provide required legal services, including but not limited to legal screenings, intakes, and direct representation, based on assessment of need.

If an LDP attorney is not able to assist with a particular referral, they must contact DOS/ONA, including if the LDP attorney receives an immigration law question from a constituent or service provider outside of their assigned geographic region.

Row 5 reads: A minimum of three (3) Know Your Rights trainings or related workshops must be provided per quarter per LDP attorney, for a total of 12 annually. The locations for the Know Your Rights training or related workshop must be based on need and be geographically distributed within the service area. To achieve geographic distribution, grantees are encouraged to

partner with local community groups to organize, host, and conduct outreach for these trainings and workshops. All Know Your Rights trainings and related workshops require prior approval from DOS/ONA. Know Your Rights trainings must be presented by an LDP Attorney or, with prior approval from DOS/ONA, a DOJ accredited representative. Non-attorneys are prohibited from providing legal advice at Know Your Rights trainings.

Q1

- **May we allocate funding under this contract across multiple attorneys using a Full Time Equivalent model of staffing? We find that it is much more cost effective to have multiple attorneys with different areas of expertise.**
- **Is it possible to employ more than two qualified immigration attorneys serving as LDP attorneys as long as the total time dedicated to activities on this grant throughout the entirety of the grant will be the equivalent of two FTE attorneys?**

A1 Yes, the LDP attorney position may be divided among multiple attorneys as long as the total time equals two FTE LDP attorney positions for Part A and one FTE LDP attorney for Part B.

Q2

- **What sort of models and requirements might be acceptable under the contract preference for a "universal representation" model? Would a legal services provider be at a disadvantage during the application process if they only serve children, for example? Or if the provider focuses on providing legal services to immigrants in removal proceedings as opposed to "affirmative" cases?**
- **Universal Representation: is there an operating definition of "universal representation?" We understand it to mean accepting clients within the designated region without regard to income or immigration status. Is this correct?**

A2 Under a universal legal representation model, applicants must provide legal services to any immigrant in need of immigration related legal representation, regardless of age, status or income, who meets geographic eligibility requirements. Per the RFA, the types of legal services the LDP attorney provides should include but not be limited to the following cases and services:

- Deferred Action for Childhood Arrivals (DACA)
- Asylum
- U visas
- T visas
- Temporary Protected Status (TPS)
- Special Immigrant Juvenile Status (SIJS)
- Unaccompanied/separated minors
- Violence Against Women Act (VAWA)
- Removal proceedings, for those currently detained or not, including those with a prior order of removal
- Work permits
- Bond hearings
- Board of Immigration Appeals (BIA)
- Federal litigation[1]
- Advanced parole
- Guardianship/custody issues for minors in the face of potential deportation of parents or guardians
- Family reunification

- Family-based immigration
- Complex naturalization

Q3

- **According to #7 of the required activities LDP attorneys may not provide legal services or Know Your Rights trainings in partnership with ONA Legal Counsels unless given prior approval from DOS/ONA. What are the factors that are being considered when determining if prior approval should be granted for this type of cooperation?**
- **Coordination with ONA Legal Counsel: The RFA requires prior approval of ONA when LDP staff is providing services or trainings at an Opportunity Center or in partnership with ONA Legal Counsel. Where an LDP attorney and an ONA Legal Counsel work together as part of the same organization, internal co-ordination of services to ensure non-duplication and the most efficient use of resources will be on-going. Cleary, reporting will be separated out to ensure appropriate reporting based on each grant's staffing and funding. How does ONA wish to be involved in such coordinated efforts? Will there be a formal prior approval process or is a more informal notification process envisioned?**
- **If an organization applies for and receives funding for both the ONA Legal Counsel and the LDP Legal Counsel for the same region, how does the Office for New American anticipate that these two attorneys will work together, divide up responsibilities and cases, etc.?**

A3 Prior written approval is required to ensure that there is no duplication of efforts between the ONA Legal Counsels and the LDP attorneys providing legal services in the same geographic area. The LDP attorney must inform DOS/ONA in advance of any activities including but not limited to legal services and trainings to be carried out with the ONA Legal Counsel and receive written approval to carry out these activities. If one organization receives funding for both an LDP attorney as well as an ONA Legal Counsel, they may collaborate with prior approval from DOS/ONA but each program will have a separate contract and adhere to separate reporting and program requirements.

Q4

- **The RFA requires that the LDP attorneys provide legal services as needed for individuals detained in Immigration and Customs Enforcement (ICE) detention facilities within the region of coverage. What is the scope of services required in instances where the attorney's case load is already at capacity?**
- **What LDP-funded services are required for the populations of the regional detention centers covered by the LDP grant?**
- **Will grantees be expected to provide a range of KYR/consultations/brief advice/full representation in removal proceedings?**

A4 Services provided by the LDP attorney in the detention center will be based on the needs of individual clients. At a minimum, LDP attorneys must conduct legal screenings for individuals in federal detention facilities. Further services provided by the LDP attorney will be based on the needs identified and can include direct representation or other legal services. If the LDP attorney is unable to represent any individuals they screen because their case load is already at capacity, they must inform DOS/ONA and they may refer the individual to any other free legal services in their area if available.

Q5

- **If ICE or the jail were to fail to cooperate, how would this impact the obligation?**
- **Will ONA assist in securing access to the jails and detention centers?**

A5 Applicants are expected to make a good faith-effort to access any individuals in need of legal assistance who are being held in the federal immigration detention facilities in their service area. If access is not possible, applicants are expected to engage DOS/ONA to pursue alternative avenues for access.

Q6

- **In addition to two qualified immigration attorneys is it possible to use the funding to hire a coordinator/paralegal under the supervision of an experienced attorney who will do outreach, screening and other client related activities on this grant?**
- **P 3 V. Required Activities – Part A provides that "each grantee will be required to have two qualified immigration attorneys serving as LDP attorneys dedicating 100% of their time to grant activities…" The current LDP model we use is to pair an experienced immigration attorney and a paralegal in each region to act as the LDP team. This provides the attorney with the support of a paralegal who can assist with document assembly, scheduling of trainings/Know Your Rights, travel arrangements, data collection and reporting and basic legal support to clients and allows the paralegal to augment the services of the attorney. As noted, significant travel will be expected; 12 Know Your Rights sessions will need to be scheduled and organized throughout the region, arrangements for facilities and/or partner locations will need to be organized, materials prepared, travel arrangements made – all of which are significant administrative tasks that are most efficiently and cost-effectively handled by a paralegal or administrative staff. Clearly every contract needs to pay for its own required activities and we will need to budget at least part of either an administrative staff or a paralegal to the LDP contract in order to support the attorney and provide the most efficient staffing pattern. Will the state allow a more flexible staffing pattern as long as each contract has at least one FTE attorney and one paralegal dedicated to the LDP?**
- **The new RFA envisions two attorneys dedicating 100% of their time to LDP services. Under existing contracts, LDP services have been provided with the assistance of a dedicated LDP paralegal moving towards BIA accreditation, but not fully accredited. Does the RFP permit the continuation of employment of a dedicated non-accredited LDP paralegal as part of the LDP staffing?**
- **Is a case manager allowable under the grant?**
- **This RFA calls for a variety of services to be provided that capture a full spectrum of a typical office workload, however, it appears that only attorneys and their direct supervisors can be accounted for in a budget. For example, services such as financial planning, assistance with guardianship arrangements, and accompanying individuals to ICE check-ins, are time-consuming and require direct representation (e.g. for an attorney to accompany someone to an ICE check-in a G-28 Notice of Appearance is required), while other services are also time consuming but more appropriate for a non-legal, administrative staff member (i.e. coordinating and planning trainings, other administrative responsibilities). Beyond the above, there are also other additional services that are more than administrative in nature, but do not necessarily rise to the level of requiring legal representation and could be more suitable for a paralegal (e.g. gathering documents, making referrals, providing translation and interpretation services, and other support services for families of individuals in removal proceedings or who have been deported). Because the RFA does not appear to reimburse for the expense of paralegals and administrative staff, successful applicants will be forced to either use attorneys for non-legal**

functions, or otherwise absorb the cost of administrative expenses through other means. Based on the foregoing, we respectfully request that DOS amend the RFP to allow bidders to be reimbursed for proportional salaries and related fringe benefits for paralegals and administrative support staff.

- **If there are sufficient funds remaining in the budget, may the grant fund a part-time or full-time administrative assistant that would dedicate their time to the LDP project?**
- **Can law assistants, who support the effort of the Legal Counsel by performing clerical tasks (including opening/closing/updating cases in the office computer system, aiding in drafting correspondence, pleadings, and other documents, answers/responds to incoming calls, etc.) be included as a direct cost?**
- **If there are sufficient funds remaining in the budget, may the grant fund a part-time grants manager that would directly dedicate their time to the LDP project (specifically, LDP data collection & financial reporting)**

A6 The grant requires two FTE LDP attorneys dedicating 100% of their time to grant activities. Any additional funds may be used to fund additional staff, as long as that position is directly providing services as required in the workplan of the contract. Any administrative staffing costs must be included under the administrative cost rate as detailed in Section VII of the Request for Applications.

Q7

- **According to the RFA, an attorney must be at LDP Know Your Rights community events and other such gatherings. Currently, we have our DOJ Accredited Representative conduct some of these events. Will this be acceptable? Allowing this expands the reach of the project.**
- **The RFA requires that an attorney be present at LDP Know Your Rights community events and other such gatherings. However, reputable agencies may currently employ non-attorney staff with deep knowledge and experience in providing such trainings and information to the community without the assistance of an attorney, with clearly defined systems for making an attorney referral where appropriate. This permits amplification and spreading of resources more widely throughout the community. Will such models be allowable under the RFA?**

A8 A DOJ accredited representative may conduct a Know Your Rights presentation with prior approval from DOS/ONA. Know Your Rights training curriculum and presentations must be reviewed and approved by the LDP attorney in advance. Non-attorneys are prohibited from providing legal advice at Know Your Rights trainings.

Q9 Will a joint application by 2 agencies be considered?

A9 Yes, however one organization must serve as lead applicant. Only one award will be made.

Q10 Is there a page limit, character limit, or other formatting requirements for the Narrative or Budget Narrative?

A10 There is no page limit, character limit, or other formatting requirement for the narrative section. Applicants must use the ONA budget template format, included in Appendix D of the RFA for the Budget Section.

Q11 May applicants submit letters of support with their application?

A11 Yes, however applicants will be scored solely on the evaluation criteria in Section XII (for Part A) or Section XIII (for Part B) of the Request for Applications.

Q12 If there are sufficient funds remaining in the budget, may the grant fund an additional part-time or full-time attorney that would dedicate their time to the LDP project?

A12 Yes.

Q13 In the required "universal model" for direct representation, will LDP attorneys be required to take on direct representation cases beyond their 15-20 client caseload? Or alternatively, once their case list has reached 20-30 active cases, will it be sufficient to provide advice & counsel + a referral until there is room in their case load?

A13 LDP attorneys will not be required to take on cases for direct representation beyond a case load of 30 active cases.

Q14 What is considered an "administrative cost"?

A14 Administrative expenses are the expenses that an organization incurs in support of a service delivery or agency-wide, as opposed to being a cost for providing a direct service.

Q15 What costs can be included in "fringe costs"?

A15 Fringe costs are agency specific costs for benefits supplementing an employee's salary. Fringe rate schedules are developed by employers and used consistently to receive reimbursement for these benefits. Please consult your tax preparer or attorney for additional information. If you do not have a fringe rate formula, you cannot charge for fringe benefits.

Q16 How does ONA define the difference in budget categories of "Supplies" and "Other Non-Personnel"?

A16 Non-personal is a major budget category. Supplies is a subcategory and should be included in the non-personal category.

Q17 What budget line should include unemployment compensation and workers' compensation?

A17 This should be included under fringe costs.

Q18 Can costs related to oversight by a senior attorney/supervising attorney/managing attorney be included as a direct cost?

A18 Salaries and associated fringe for these positions may be included if they are either directly supervising the LDP attorney or providing direct services under this grant as outlined in the workplan of the contract.

Q19

- **Can a legal counsel be comprised of 2 attorneys (each at .5 FTE)? For example, if we are going to subcontract with another organization, are we able to split one of the positions?**

- **We have had a number of successful partnerships that allow us to effectively serve clients in a given region. Given the funding level of each region, would it be allowable to meet the staffing requirement of two attorneys by having one attorney on staff and sub-contracting with a partner organization to provide the services of a second attorney?**
- **Could two organizations apply together under Part B of this RFA (with one subcontracting to the other) to have two attorneys and to split the geographic area covered between those two attorneys (e.g., with one attorney covering Kings, Queens, and Richmond counties and the other covering New York and Bronx Counties)?**

A19 Yes, as long as the primary applicant is providing at least 25% of direct program activities.

Q20 In Section V – Required Activities – Part A; 1. Recruit and hire or repurpose two immigration lawyers to serve as LDP attorneys; 2. Have three or more years of experience as an attorney, including at least two years of immigration law experience or work under the supervision of a senior attorney with three (3) or more years of immigration law experience. To clarify, does the attorney have to have at least three years of experience (with the stipulations noted) or can the attorney have less than three years as long as they are supervised by an attorney with three or more years of immigration law experience?

A20 The LDP attorney must either have three or more years of experience, two of which include immigration law experience OR if they do not have three years of experience (including two years of immigration law experience), they must work under the supervision of a senior attorney who has three or more years of immigration law experience.

Q21 Since the regions are broken down into smaller sections in the current funding, what would happen if the attorney had previous cases from a county that is not in the region that funding is received for?

A21 Only current LDP grantees may continue to represent current LDP cases that are outside of the geographic region of the new LDP contract under this RFA.

Q22 In the Introduction (p 1), the RFA is presented as a way "to create the capacity to provide a regional rapid response…" and "<u>expand</u> the availability of immigration attorneys…" (emphasis added). Does this mean the current LDP contracts will be continued at the current levels and these new contracts for LDP will be in addition to the services currently being provided by existing LDP contractors? Is this funding in addition to current LDP work or as a replacement for current LDP contracts/services?

A22 Current LDP contracts will end on the contract end date for those contracts.

Q23 What is the anticipated start date of these contracts? The RFA on pg 20 notes that "awards will have a start date of approximately Spring 2019." If this RFA will be a potential replacement of existing LDP contracts, will the start date be April 1, 2019 to ensure continuity of services?

A23 The start date of these contracts is not known at this time; it will be determined upon completion of the procurement process.

Q24 If these are "replacement funds" for the existing network of LDP services and if an existing provider is successful in its application, will the current and continuing LDP cases that are still pending continue to be recognized as LDP cases?

A24 If an existing provider is successful in its application, current LDP cases that are still pending will continue to be recognized as LDP cases under the new contract under this RFA.

Q25 The RFA notes the contract will be for a one-year period (renewable for one year). It is extremely difficult to manage these kinds of services on a one-year basis. LDP contractors will be required to provide intense legal assistance in immigrations matters that can stretch out over many years. Contractors will be signing retainer agreements with clients and becoming legally responsible for providing these services. Recognizing that any out year funding is dependent on the annual state budget, would the state consider entering into at least five-year contracts and allow for annual contract renewal based on available funding?

A25 No. The current two-year cycle of this grant allows ONA to be responsive to changing needs within the immigration landscape.

Q26

- **Required Activities, Required Capacity and Eligible Direct Grant Expense on p 3 notes that each grantee will be required to have qualified immigration attorneys serving as LDP attorneys …" and that such attorneys must meet the minimum qualifications outlined in the RFA, including being a member in good standing of the bar. In order to maintain good standing, attorneys must complete required Mandatory Continuing Legal Education credits. However, on p 8 the RFA provides that certain items and activities are not considered direct activities for budgeting purposes, including "time spent on mandatory CLE to maintain attorney registration." In effect, LDP is mandating that attorneys funded under this contract maintain their registration and in order to do so they must spend time/fees on CLE and attorney registration costs but that these mandated costs and activities will not be considered a direct expenses of the attorney's time and effort on this grant. Attorney malpractice coverage, attorney registration fees and the cost associated with securing CLEs needed to maintain the ability to practice law are all directly related to the ability to meet the grant requirements and therefore should be considered direct services expenses. Will the state consider including these items as allowable direct costs? In addition, memberships in professional immigration related organizations directly benefit the work of the staff that is supported with these funds. Will the state consider including the cost of professional memberships to such organizations as the American Immigration lawyers Association (AILA) as reimbursable expenses?**
- **May professional liability insurance be included as an administrative expense?**

A26 Malpractice insurance can be included as a fringe benefit or may be included in the administrative rate. Costs associated with CLEs and professional memberships can be included in the administrative cost rate.

Q27 On pg 10 in the list of non-allowable costs is advertising "other than the recruitment of clients." We may need to advertise for LDP staff as part of the recruitment and hiring

process. These expenses will be exclusively for recruiting LDP staff and therefore should be an allowable LDP expense since it would be inappropriate for another grant or funding stream to be charged for expenses not related to that grant's work. Would the state consider allowing such costs to be an allowable and reimbursable expense?

A27 This cost can be included under the administrative cost rate.

Q28

- **Rapid Response Requirement: How does ONA envision this new requirement of the Liberty Defense Project? Will the Rapid Response cases be counted within the general 20-30 cases required in the RFA?**
- **We commend DOS for its desire to provide rapid response to immigrants in need of legal services, however, requiring responses to a request for services within one (1) hour during regular business hours or within the first hour of the next business day, and the provision of required legal services within 24 hours of the request, is unrealistic and fails to account for ordinary workplace unavailability (e.g. vacation, personal and/or sick days). This is of particular concern in Part B of the RFA as only one attorney has been accounted for in the NYC area and, as a result, will be without coverage on a day off. This response time also fails to account for the exigencies of carrying a caseload that will inevitably involve court dates, deadlines and emergencies for existing clients for which attorneys are ethically obligated to prioritize over any new requests for services. Additionally, it is unclear how attorneys will simultaneously keep a caseload of 20-30 clients, while at the same time making availability for "rapid response". How does DOS advise that attorneys determine how many active cases to carry at any one time in order to retain capacity for "rapid response"? More specifically, how many case "slots" should the attorneys keep open to allow for "rapid response" to DOS referrals? Based on the foregoing, we respectfully request that DOS revise this requirement by making it contingent on capacity and ethical obligations to existing clients, and/or allowing a "good cause" exception to the requirement (that includes capacity issues and ethical obligations).**

A28 Rapid response referrals that lead to direct representation would be counted as part of the 20-30 caseload requirement for each LDP attorney. If the LDP attorney is unable to represent any individuals because their case load is already at capacity, they must inform DOS/ONA and they may refer the individual to any other free legal services in their area if available.

Q29 Will the grant permit the purchase of technology (such as cell phones) and the monthly costs of maintaining them (data plans) in order to allow grantees to meet this requirement with a dedicated cell number to call to reach LDP staff?

A29 The purchasing of cell phones and data plans are permitted as long as they fall within the allowed direct costs outlined in the RFA (see page 8 of RFA).

Q30 Rapid response within one hour may be impossible if both attorneys (or attorney and paralegal is allowed) are in court or conducting Know Your Rights sessions or in transit in areas without adequate cell services. Will there be leeway for these kinds of circumstances?

A30 LDP attorneys are expected to confirm receipt of any rapid response referrals within one hour of when the referral was made during regular business hours or within the first hour of the next business day for requests made outside of regular business hours. DOS/ONA will allow some flexibility in extreme circumstances, however LDP attorneys are expected to make a good faith effort to respond within these time frames.

Q31 What procedure should be followed to refer cases once an LDP provider has reached its capacity to accept new cases?

A31 If the LDP attorney is unable to represent any individuals because their case load is already at capacity, they must inform DOS/ONA and they may refer the individual to any other free legal services in their area if available.

A32 The RFA requires the provision of "law-related support" for families of those in removal or facing deportation. May these services be provided by non-attorney staff funded by LDP grants where appropriate and overseen by the attorney?

A32 Yes.

Q33 Is ONA able to share information about the numbers of immigrants detained by ICE at each center?

A33 No.

Q34 Section II: Funding and Project Period of the RFA states that "If an agency wishes to apply for more than one region, a separate application must be submitted for each grant. If one agency is funded in more than one region, will there be two separate contracts? Will the State consider one contract to simplify reporting, vouchering and administrative processes?

A34 If one agency is funded in more than one region there will be two separate contracts, one for each region.

Q35 Will you be selecting one organization for Nassau and one for Suffolk, or just one for all Long Island?

Q35 There will be one award made for the Long Island region.

Q36

- **May the awardee use agency mission or other criteria to select cases for direct representation provided that they offer (merits blind) universal representation to clients who meet the selection criteria?**
- **May the awardee prioritize selection of certain types of immigration legal matters based on the needs of the clients they serve and/or the mission of their organization, provided that they offer (merits blind) universal representation who meet the selection criteria?**

A36 Applicants are expected to assist any immigrant in need of legal assistance and should adhere to a universal legal representation model by providing legal representation based on need and geographic eligibility requirements.

Q37

- **Please explain how LDP counsel can attribute law-related immigration services for family members of selected cases to the use of grant funds. Does it matter whether these services are directly related to case preparation of the selected case?**
- **Please explain how LDP counsel can attribute law-related immigration services for family members of individuals represented by other counsel, such as NYIFUP, to the use of grant funds. Does it matter whether these services are directly related to case preparation of a case represented by such other counsel?**

A37 Law-related support can be provided to any individuals in need of such services. The LDP attorney will track and report on the types of services provided, which should include, but is not limited to: "preparation of documents, interpretation and translation, referrals, financial planning, assistance with guardianship arrangements, and accompanying individuals to check-ins." Law-related support can be provided to any individual in need of such services, even if the LDP attorney is not providing direct representation to an individual, law-related support to their family members is allowable, as long as it adheres to the workplan in the contract.

Q38

- **If a subcontractor is a 501c3 not for profit organization employing an immigration attorney, must the subcontractor be DOJ recognized?**
- **If a subcontractor is a 501c3 not for profit organization employing an immigration attorney to complete naturalization applications, must the subcontractor be DOJ recognized?**

A38 No.

Q39

- **The RFA instructs that 1 signed original application must be submitted along with the copies. Where on the submitted application should applicants sign?**

A39 Anywhere on the application forms is acceptable but preferably at the bottom of Attachment 5, Budget Summary.

Q40 The *Subcontractor Eligibility Requirements* section indicates DOJ recognition is necessary only for a subcontractor aiding with the completion of naturalization applications (as opposed to other applications/relief). Could a subcontractor handle non-naturalization applications with a qualified immigration attorney even if the subcontractor's organization is not DOJ accredited?

A40 Yes.

Q41 What percentage of clients does ONA anticipate coming on a walk-in basis as opposed to through LDP Regional Rapid Response program referrals (or other referrals)?

A41 This will depend on the legal needs of individuals in the service area.

Q42 Is there a maximum percentage of the total clients served in a particular region who can come from any one county (specifically in New York City)?

A42 LDP attorneys should seek to represent all clients throughout their geographic area of coverage.

Q43 What is the provider organization's responsibility about serving clients whose cases extend beyond the grant period?

A43 All ONA LDP grantees are obligated to comply with all ethical obligations of attorneys in New York State as prescribed in the NY Rules of Professional Conduct in regard to terminating representation.

Q44 With regard to the workshops and classes, how do you count attendees? Is it the number of clients in each individual workshop/class? Or are you counting the number of clients who attend all the workshops/classes?

A44 Attendees are counted as the number of total participants in any given workshop or class.

Q45 I would like to find out if this grant is exclusively for new organizations? or if organizations that already received the funds last year are eligible to reapply this year again?

A45 This grant is open to any eligible organization who meets the eligibility criteria as outline in the RFA on page 2:

"Not-for-profit organizations located within New York State are eligible for funding under this RFA. Not-for-profit organization shall mean any not-for-profit corporation exempt from taxation under section 501(c)(3) of the internal revenue code.

Additionally, applicants must have been operating continuously with 501(c)(3) status for the last three years and have not been debarred from contracting with the State or Federal Government in the past five years.

All applicants must be pre-qualified within the Grants Gateway by the application due date listed on the cover of this RFA."

Q46 When would the grants be awarded after decisions are made?

Q46 We expect to award these grants sometime in February 2019.

Q47 In March 2018, we heard that the state legislature had allocated $10million for the Liberty Defense Project. Is the $2.8 million in this RFA part of that $10 million?

Q47 Funding for this grant opportunity is appropriated in the NYS Department of State Budget for fiscal year 2018-19. $10 million has been allocated to the LDP, of which, $5 million is allocated in the DOS budget.

Q48 Can cases assigned to pro bono attorneys under this program count toward grant requirements?

A48 LDP attorneys must maintain a caseload of 20-30 cases at any one time. These are the only cases that will be counted towards the case load grant requirement. Pro Bono attorneys may assist with law-related support activities, which would be counted under the law related support category in the workplan.

Q49 How is the LDP Legal Counsel funding different from the ONA Legal Counsel funding in terms of the scope of services to be provided to the community?

A49 These are separate grants, however, both support the provision of legal services to the immigrant population across New York State.

The LDP RFA seeks qualified organizations to support one or two immigration attorneys who will provide legal services and direct representation particularly to those at risk for deportation, as well as support to their families, and maintain the capacity to respond to federal immigration enforcement activities in their region of coverage as part of the Liberty Defense Project Regional Rapid Response program.

The ONA Legal Counsel RFA seeks qualified organizations to support one or two immigration attorneys who will provide legal technical assistance to ONA Opportunity Centers and other immigrant service providers in assigned regions of the State, legal clinics at community-based organizations throughout their assigned regions, direct representation for clients in need of such assistance, and conduct legal seminars and workshops.

Q50 If no one applies for or is awarded the "North Country" region, would the Office for New Americans be willing to either divide that region in two and combine the Western North Country Region with Central New York, or allocate that money to another neighboring region?

A50 DOS will work to ensure all regions receive proper coverage.

Q51 Given that the LDP Representative contracts are scheduled to expire in the coming months, will ONA kindly clarify whether this RFA is intended to be an *expansion* of the existing LDP representation program, or whether this RFA and resulting contracts are intended to be a *replacement* of the same?

A51 The LDP RFA is a new procurement established to fund grants to eligible providers to fund dedicated LDP attorneys to provide services as detailed in the RFA.

Q52 If this RFA is an *expansion* of the existing LDP Rep program, should a bidder address in its proposal how it envisions integrating this opportunity with the LDP Rep program?

A52 The LDP RFA is a new procurement established to fund grants to eligible providers to fund dedicated LDP attorneys to provide services as detailed in the RFA. Applicants should describe capacity to provide legal services, see sections IX and X of the RFA.

Q53 Will any evaluation points or preference be afforded to bidders who offer staffing and/or budgetary efficiencies between the LDP Representative contracts and this RFA?

A53 Applications will be reviewed and evaluated against the evaluation criteria included in the RFA, as outlined in section XII and XIII.

Q54 If this RFA is a *replacement* of the existing LDP program, will cases accepted for representation under that program but that are still active and in need of continued representation be eligible for coverage under this new initiative? If yes, will there be a limit on the number of cases? If no, will DOS provide separate funding to continue representation on these cases?

A54 The LDP RFA is a new procurement established to fund grants to eligible providers to fund dedicated LDP attorneys to provide services as detailed in the RFA. Current LDP cases can be counted towards the caseload required in any newly awarded LDP contract.

Q55 It has been this bidder's experience that sourcing and hiring multi-lingual, experienced immigration attorneys can be challenging, especially in more remote/rural areas of New York State. As a result, it is often the case that contractors are not staffed at full capacity on the first day of the contract period, making it difficult to meet certain deliverables and other measurable performance indicators ("Deliverables") throughout the contract term where such Deliverables were initially established on the assumption of a full staff. In addition, in this RFA, ONA indicates in Section II that funding for subsequent contract years is contingent upon, in part, the contractor's ability to meet program requirements in the first contract year. As a result, contractors who miss Deliverables as a result of delays in onboarding staff may be unduly penalized by a reduction in, or loss of, contract funding. Based on the above, will ONA kindly confirm that (i) any Deliverables set forth in the RFA will take effect as of the date that the successful contractor reaches full staff capacity; and (ii) until the date the contractor reaches full staff capacity, all such Deliverables will be prorated?

A55 Contract deliverables are reviewed on a quarterly basis by ONA. ONA program monitoring of deliverables takes into account the need to staff up a new program during the first quarter.

Q56 As previously stated, it has been this bidder's experience that sourcing and hiring multi-lingual, experienced immigration attorneys can be challenging, especially in more remote/rural areas of New York State. One of the ways to address this challenge, while still providing responsible and valuable legal services, is to instead hire recent law graduates who are not yet barred, but who are working towards bar admission as of the date of hire. This not only ensures that more law graduates are trained to provide immigration services thereby increasing the overall number of immigrants who will receive legal services, but it also reduces the attorney "poaching" that is happening across this and other states where immigration lawyers are moving from one agency to another without increasing overall service capacity. In all instances where recent law graduates are hired, this bidder has ensured that they are supervised by barred and experienced immigration attorneys. In order to ensure the most effective delivery of services under this RFA with minimal delay, will DOS kindly amend the RFA to allow contractors to hire recent law graduates who are working towards bar admission provided that, such individuals are to be directly supervised by a staff attorney who (1) is a member in good standing in the bar of the highest court of any state in the country or U.S. territory, and (2) has three or more years of experience as an attorney, two of which is in the practice area of immigration law?

A56 No, the requirements for the LDP attorney position are outlined as follows in the RFA:

(1) Be a member in good standing of the bar of the highest court of any state in the country or U.S. territory; and

(2) Have three or more years of experience as an attorney, including at least two years of immigration law experience or work under the supervision of a senior attorney with three (3) or more years of immigration law experience.

Q57 Section V(2) of the RFA states that LDP attorneys will provide legal services…to a caseload of 20 to 30 cases at a time, using a "universal representation" model. Assuming that "universal representation" is analogous to "first come, first served", an attorney could easily reach capacity in 4-6 weeks if he/she accepts every case for representation. This is especially true in light of the need for immigration legal services at this time, and the mix of affirmative and removal cases allowed under the initiative. A "first come, first served" approach could result in an overwhelming number of complex matters, or conversely, mostly affirmative cases such as DACA, TPS and EAD renewals (i.e. an unbalanced mix). For purposes of adhering to the 20-30 caseload requirement, will DOS kindly clarify whether this requirement is measured at any given point in time (i.e. as one case is closed, the attorney will be required to replace such case with a new one)? If each case closed is to be replaced with a new case, will final performance be measured by the total number of cases handled during the contract year (for example, will an attorney with an active case of 20 for the year be unfavorably compared with an attorney with 40 active cases)? We fear that would serve as a disincentive to take complex cases that are more time consuming and would limit an attorney to a smaller caseload. Based on the foregoing interpretation, we respectfully request that DOS amend the RFA to clarify that attorneys under this grant will be permitted to use professional judgment and discretion to select a mix of affirmative and removal cases (by way of example, 1/3 complex affirmative cases and 2/3 removal or post-order cases) – based on potential relief (meritorious cases), in-house expertise, and low income (inability to pay for private representation). If the above interpretation of "universal representation" in inaccurate, will DOS kindly clarify how it is using that term in the context of a fixed caseload?

A57 LDP attorneys are expected to provide legal services to any immigrant in need. The requirement for each LDP attorney is an active caseload of 20-30 cases at any one time. If a case closes, this allows the LDP attorney to take on a new case. Final performance will be measured by adherence to the program deliverable requirement of 20-30 active cases at any one time. LDP attorneys are expected to assist any immigrant in need of legal assistance and should adhere to a universal legal representation model by providing legal representation based on need and geographic eligibility requirements.

Q58 If an attorney under this grant is "repurposed" who has an existing caseload, will DOS kindly clarify whether that attorney will be permitted to count any of his/her existing cases towards the case load requirements of this RFA?

A58 Current LDP cases can be counted towards the case requirement of this RFA under the new contract.

Q59 From time to time, clients represented by an attorney under this grant may be detained in neighboring states, however, out of state travel is classified as an "ineligible expense" under this RFA. Will DOS kindly revise the RFA to include reimbursement for out of state travel specifically in those instances where an existing client who is a resident of NY State is detained in another jurisdiction and the assigned DOS attorney representing such client must travel to such state in order to continue to provide legal services?

A59 Out of state travel will be considered for reimbursement on a case by case basis. Prior approval for any out of state travel will be required.