

Submit Civil Bid Tenders by the 7th August 2008

As forewarned in the previous bulletin, the Legal Services Commission (LSC) has begun an [interim civil bid round](#). The LSC is inviting tenders for:

- integrated social welfare law services in 3 or more of 5 categories
- general family law services
- specialist family law services (domestic abuse and public law children).

The LSC is also inviting expressions of interest for family mediation services. It will shortly be inviting tenders for immigration advice at police stations and immigration removal centres (it intends to launch this tender on 22nd July).

The type of work on offer varies across the 134 procurement areas in England and Wales. For example, social welfare law tenders are not being invited in all procurement areas and in some procurement areas, services must be delivered in specific locations. Please refer to the LSC's [summary of invitations to tender](#) for details.

There is an open tendering process. All organisations meeting the LSC's bid criteria will be considered for funding, whether or not they currently hold a contract. Organisations may tender for work in a procurement area in which they are not currently located but, if successful, they will be required to deliver the service from an office in that area.

The deadline for submitting tenders is Thursday 7th August 2008.

For full details of the tendering process, please refer to the tender documentation for each LSC region (Tender Form and Information for Applicants). You should also look at the LSC's Q&A document, which will be regularly updated. The tender documentation and Q&A document are on the LSC's web page for the bid round.

Some key points about the tender process

In the remainder of this bulletin, CLS Support outlines some key points about the tender process for social welfare law services. This is not a comprehensive description and is no substitute for reading the tender documentation. We have some queries concerning the process and have submitted these to the LSC.

1. Do we need to tender if we want additional matter starts?

Not necessarily, but to safeguard your position it is probably advisable to submit a tender. We understand that Account Managers may at their discretion award a limited number of additional matter starts (for example up to 100) without requiring an organisation to go through the tendering process. Please contact your Account Manager for further details.

For the avoidance of doubt, you are not required to tender in order to maintain your existing contract and existing numbers of new matter starts.

2. The LSC currently contracts with single legal entities only and will not consider sub-contracting arrangement in this bid round.

This is explained in section 1.10 of the Information for Applicants, which states:

“We understand from previous bid rounds that organisations may wish to join together in groupings or consortia or expand to put in Tenders which create subcontracting arrangements. However, at the present time, we only wish to contract with a single legal entity for the purposes of providing these face-to-face services.

Therefore, should you wish to join up with others it will be necessary to form a new single legal entity to provide the advice services required. This will mean that the single entity will be responsible for ensuring the performance of the Provider’s obligations under the Contract and that Client’s retainer will always be with the single entity.

Where you wish to join together, we will not require you to do this before putting in your Tender. However, you would need to confirm to us in writing at the time you tender that this is the case, and confirm that should you be offered a Contract the single legal entity will be in place before the date on which the services commence. The award of a Contract will be conditional upon the single legal entity being in place.

We will not accept any subcontracting arrangements (e.g. where you will pay another organisation to deliver part of the service), instead your organisations must be able to provide all the services you are tendering for, without the need to refer any of these matters or levels of work to other organisations (although the Contract does permit the use of agent and Approved Representatives in certain circumstances).”

3. Providers must satisfy nine essential criteria to be considered for funding.

Three of these criteria are considered below. You should refer to the tender documentation for the other essential criteria, which cover:

- location of provider and clients
- Specialist Quality Mark
- start date of service
- previous failure to repay money to the LSC
- previous termination of a civil contract
- organisations with a confirmed peer review rating of 4 or 5.

(a) You must be able and willing to deliver a service face-to-face in three or more Social Welfare Law categories (essential criterion A, as it applies to integrated social welfare law services).

The LSC defines social welfare law as: welfare benefits, debt, housing, employment and community care. In some procurement areas, you may bid for any three or more of the five categories, but in other areas the tender is more closely specified (e.g. you may only bid for welfare benefits, debt and housing).

Your tender may include social welfare law categories in which you already hold a contract. For example, if you already hold a contract in welfare benefits and debt, you can meet the criterion by tendering to deliver more work in these categories and to deliver a new service in housing. Where this applies, section 1.16 of the Information for Applicants states:

“You will be permitted to achieve this Essential Criterion by tendering for a nominal number of Matter Starts in those Categories which you already are delivering services in.”

(b) You must be able and willing to deliver services across the full range and breadth of work from Legal Help to Licensed Work in all categories for which you are tendering (essential criterion C).

To undertake Licensed Work (i.e. litigation funded under legal aid certificates), you must normally employ a solicitor or a barrister authorised to conduct litigation under the provisions of the [Employed Barristers \(Conduct of Litigation\) Rules](#) (but see (c) (i) below).

If you employ solicitors, at least one must be “qualified to supervise” within the meaning of [Rule 5, Solicitors’ Code of Conduct](#). This means someone who has been entitled to practise as a lawyer for at least 36 months within the last 10 years and has completed the relevant training specified from time to time by the Solicitors Regulation Authority. For the avoidance of doubt, if you employ just one solicitor, then that person must be “qualified to supervise”.

If you employ a barrister or barristers, you should consider the Bar Council’s [guidance](#) on the rights of employed barristers to conduct litigation. Note that employed barristers conducting litigation are prohibited from handling clients’ money and that undertakings made by such barristers are not enforceable by the courts in the same way as undertakings made by solicitors. We are seeking clarification from the LSC on the application of The Community Legal Service (Costs) Regulations 2000 to employed barristers.

(c) If you are tendering for housing or community care, you must have a solicitor or an employed barrister who is authorised to conduct litigation under the provisions of the Employed Barristers (Conduct of Litigation) Rules in place by the date the service commences (essential criterion I).

This criterion raises two issues.

(i) solicitor or employed barrister in place

The LSC’s Q&A document states that having a solicitor or employed barrister “in place” means either employing a solicitor or barrister, or having:

“a formal arrangement in place giving you appropriate access (without the need for referral) to an adviser who is qualified as a solicitor, or an employed barrister.”

It is not very clear how such “formal arrangements” would operate, but they will presumably need to comply with the Unified Civil Contract (including the terms governing the use of agents) and with the relevant professional codes of conduct.

(ii) delivering a service in welfare benefits, debt and employment only

If you are tendering for welfare benefits, debt and employment only, do you need to employ or otherwise have in place a solicitor or employed barrister authorised to conduct litigation? The answer is not entirely clear.

Essential criterion C states that you must be able and willing to undertake Licensed Work (i.e. conduct litigation) in all categories of law for which you are tendering. This will require you to employ or otherwise have in place a solicitor or employed barrister. However, essential criterion I does not apply to organisations that are not tendering for housing or community care, and this could be interpreted as meaning

that such organisations do not need to employ or otherwise have in place a solicitor or employed barrister.

We have asked the LSC to clarify the apparent conflict between these two criteria.

Selection Criteria

Bids satisfying all essential criteria will be assessed against selection criteria.

Only bids satisfying all nine essential criteria will proceed to the next stage of the tendering process: assessment against selection (desirable) criteria.

The selection criteria vary between procurement areas, but commonly entail preference being given to providers who:

- deliver both family and social welfare law services (this means that in some areas, NfP providers may also need to bid for family work)
- deliver services in specified categories of social welfare law
- deliver services in more than one specified location within the procurement area
- offer clients appointments five days a week (mornings and afternoons)
- best demonstrate how clients' needs will be met in terms of factors such as: opening hours; appointments and waiting times; referrals; links with other organisations in the community; outreach services; local language needs.

This is not an exhaustive list, and not all of the above selection criteria apply in every procurement area. Please refer to the tender documentation for details of the criteria applying in the procurement areas in which you are intending to bid.

5. Tie Breakers

The LSC may apply tie breakers to decide between tenders.

Overall preference will be given to tenders that meet the greatest number of selection criteria applying in a given area. If tenders are "tied" at this stage, the LSC may apply one or two "tie breakers", choosing the provider that delivers the service:

- in the greatest number of categories (first tie breaker) or, if this does not break the tie
- from the greatest number of specified locations (second tie breaker).

Alternatively, the LSC may distribute the available new matter starts on an equal basis to tied bidders, either instead of using tie breakers or after applying the first tie breaker.