



The Governance Project

Briefing No. 6 – July 2009

2010 Tendering for Legal Services Commission Contracts – what do Trustees need to know?

From October 2010, the Legal Services Commission's (LSC) new contracting arrangements will replace the current Unified Contract for family and civil legal aid. This briefing is an outline of the LSC's plans.

The LSC wants to improve access for clients by joining up providers of legal advice and representation in Housing, Welfare Benefits and Debt. These 3 areas of Social Welfare Law (SWL) will be delivered in each Procurement Area¹ either by Consortium arrangements between providers or where a provider can deliver all 3 areas on their own. There will be separate arrangements for other areas of law, including Immigration & Asylum.

Advice agencies will definitely not be able to bid for Debt, Welfare Benefits, or Housing separately but as a 'bundle' either as part of a Consortium or as a standalone bid.

Advice agencies will need to have an Authorised Litigator if they are planning to provide legal advice in Housing and/or Community Care.

Advice agencies will need to be able to provide the full range of work from Legal Help to Licensed Work (Litigation) in Housing and/or Community Care.

Advice Agencies will need to demonstrate a Supervisor to caseworker ratio, one Supervisor to six caseworkers will be the maximum.

¹ Procurement Areas are areas for which the LSC want to have a contract in. There are 134 Procurement Areas across England and Wales. In London a Procurement Area is usually a London borough. The Procurement areas are bigger for Immigration & Asylum.

These arrangements are planned for all Procurement Areas with the exception of the 14 areas established or proposed for CLACs and CLANs².

There will be an open bid round for contracts either late 2009 or early 2010 for new contracts from October 2010. Existing providers will have to bid to have their contracts renewed. Bids will be open to NfP and private practice solicitors or in consortia of providers, or family and civil legal advice across all 126 English (134 including Wales) Procurement Areas. Organisations should be aware of potential competition from private or commercial companies who can also submit bids (eg A4E won the contract for the CLACs in Leicester and Hull). Unlike CLACs which affect both legal aid and local authority funding of NfP contract holders, LSC civil contracts cover legal aid only.

There will be no price competition for 2010 contracts, except in:

- Procurement Areas in which a CLAC or CLAN is being established
- Tenders for non-mainstream services such as telephone advice.

The current timetable is

The LSC published their response to the 2010 consultation on 30th June 2009. This response sets out the LSC's intentions for the bidding round.

Contract Standard Terms and Specifications for areas of law will be published shortly afterwards, along with Q&A on the LSC website that will be updated regularly.

The Tendering Process has been delayed and is now likely to start either late 2009 or early 2010.

We are unlikely to know what the selection criteria for the awarding of Tenders will be before the Tenders are published.

Tenders will be submitted electronically.

Currently it is not known when Contracts are to be awarded at the time of writing it is likely to be March 2010.

Contract awards will be followed by a 3 month period to allow for any appeals.

² CLACs (Community Legal Advice Clinics) CLANs (Community Legal Advice Networks) are the LSC's plans for one stop centres for legal advice and networks of advice.

Awarded contracts to start 1st October 2010.

Contracts for Immigration & Asylum (and other categories such as Family, Education and Mental Health) will be covered by separate arrangements, but are likely to follow the same timetable.

Possible options for Advice Agencies

The Advice Services Alliance has identified four possible options for NfP providers:

Withdrawal from LSC Contracting. Giving up your contract may be the most tempting course of action, especially if you are struggling under the current contract or have a small contract. For some advice agencies this is a difficult option as it will curtail access to public funds. It will mean that you will be unable to do Licensed work (certificated work will only be allowed by those providers that have a contract), or take a case to court as it is unlikely that other funders would be able to fund this type of work. Withdrawal may be more attractive if you have access to other funds to provide specialist legal advice. But if you are heavily reliant on legal aid funds, withdrawal will be tantamount to severely limiting your service or closing down completely.

Expansion: This entails expanding your service to cover areas of law that will increase your chances of getting a contract. Expansion may also include bidding for contracts in more than one procurement area; especially as geographical redistribution of legal aid funds will mean contraction in some areas and growth in others. But managing major expansion over a short period is far from easy. Look to neighboring advice agencies, is there work you could do together? Are there back office systems you could combine? For low volume areas of law such as Education, Community Care etc this may provide better access for clients.

Merger: Merged organisations could be in a stronger position to compete for larger contracts, as mergers may facilitate coverage of multiple categories of law, the rationalisation of service delivery and possible reductions in overhead costs. However, mergers between different types of NfP agency could raise issues of organisational and advice culture. Advice Agencies could look to other Advice Agencies or other similar organisations when considering this option. Partial merger of back office functions is also an option where support services are combined, for example a 'hub' providing finance, file management, HR etc could be shared between Advice Agencies in a region or neighboring areas.

Consortia: Joining with others to bid for the 'bundle' of Housing, Welfare Benefits and Debt, may best serve clients by drawing on the strengths of

different providers. And it may best ensure a significant NfP sector involvement in the future provision of legal aid. Consortia will also allow Advice Agencies and private practice firms to collaborate, which in some areas may offer the best mix of services.

The LSC consultation paper confirmed making a Consortium bid would not require a formal merger or to form a single legal entity.

Issues you must consider when planning to tender for an LSC contract in 2010.

There is no point tendering unless you can meet the conditions, specification and criteria set out in the Invitation to Tender.

- Do you offer the bundle of SWL categories in Debt, Welfare Benefits and Housing?
- Again if you do not provide all 3 categories, can you deliver these through a Consortium with other organisations? If you feel that you can, think carefully about whom you would want to form a Consortium with and begin negotiations now. (LCF & Advice UK will be providing further information in due course. Please contact LCF and Advice UK for information & support)
- Can you deliver the services from the locations specified in the relevant Procurement Plan? If not think how you might improve your chances by exploring opportunities for joining up with others (this can be other Advice Agencies) and sharing or renting premises in the relevant geographical area.
- Does your Memorandum & Articles allow you to deliver services in the locations specified in the relevant Procurement Plan? Please check this as it is extremely important. If your Memorandum & Articles does not have such a clause you will need to remedy this as soon as possible.

The following were in the 2010 consultation paper but have not been confirmed. However considering them will prepare you in case they become a criterion.

- There will be a flurry of activity in a relatively short period of time once the tender process has begun; will you have Management Committee members and staff available with delegated powers to make decisions? If not consider diarising Management Committee dates now, and make it clear what are the decisions your organisation are likely to need to make.
- Can you meet the Essential Criteria - especially in respect of employment of an Authorised Litigator, conduct under previous LSC

contracts (Peer Review results and Contract Compliance Audit ratings) and Supervisor / Caseworker ratios?

- Can you cope with the relevant proposed minimum matter start allocation? Don't bid for more than you can realistically manage. On the other hand does bidding for what you feel you can manage make the contract unviable?
- Can you comply with the technical, IT and reporting requirements of the proposed contract? If not can you start to raise some funds now to prepare?
- Can you meet the other contract requirements (e.g. opening times, performance obligations etc.)?
- How will your proposed tender look when evaluated against any Selection Criteria scoring, and is there anything you can do to improve that scoring?
- Do you know how to cost your service?
- Have you allocated sufficient resources for putting your tender together?

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The voice of independent advice

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Legal action for the community