

Procurement of Criminal Legal Aid Services from 1 April 2017

This is a summary of the Legal Aid Agency's (LAA) information for Applicants (IFA) document but also includes some observations from the team at DG Legal. The full document can be downloaded from <https://www.gov.uk/government/publications/legal-aid-crime-tender-2017>

Timetable

Current providers will be aware that the indicative timetable is simply that. The LAA usually change the timetable to allow for errors and omissions. The Contract Start Date though is least likely to change.

The current timetable is:

Activity	Timescale
Procurement process opens and available via the LAA's eTendering portal	21 July 2016
Final date for submission of questions about this procurement process	12 noon on 8 August 2016
'Frequently Asked Questions' to be published	22 August 2016
Deadline for submission of Tenders	12 noon on 15 September 2016
Notification of mandatory criteria fails	Early October 2016
Notification of discretionary criteria fails	Mid October 2016
Deadline for submission of appeals	To be received no later than 2 weeks after notification of outcome
Outcome of Tenders notified	November 2016
Deadline for Passing verification for inclusion on 1 April 2017 (3 month) Rota	12 December 2016
Deadline for the submission of Duty Solicitor information and CRM12s	23:59 on 13 January 2017
Final deadline for submitting Tender verification for issuing of Crime Contracts for 1 April 2017	28 February 2017
Contract Start Date	1 April 2017

IFA Sections

Section 1: Introduction and Background

Section 1 of the IFA is an introductory chapter providing information about the LAA and setting out the background to the tender.

The contracts are due to last for 3 years with the ability to extend for a further 2 years. However, past experience (i.e. the 2010 crime contract) demonstrates that, in practice, the LAA can and do extend for an even longer period of time.

The IFA seeks to invite tenders for:

- Criminal Investigations and Criminal Proceedings (this includes Appeals and Reviews); and/or
- Prison Law (this includes Appeals and Reviews); or
- Appeals and Reviews only

Applicants who wish to join duty schemes must indicate this as part of their tender for each of their current or proposed offices. Similarly, any plans to deliver Prison Law work must be indicated.

The share of duty solicitor work will be based upon the number of duty solicitors that the Applicant shall have in place from the Contract Start Date. The Public Defender Service will also receive slots but will not have to submit a tender.

Section 2: Procurement Process Requirements

To be eligible for an awarded of a contract, Applicants are required to meet:

- the requirements applicable to the application as a whole in the Organisation ITT; and
- the Selection Criteria and Award Criteria for each of the individual Bid ITTs they propose to enter.

If an applicant submits a bid for say five offices and all five are successful, the LAA expects the Applicant to accept the offer of five offices or to decline the offer. This indicates a hardening of approach to that taken in previous civil tenders where applicants often accepted part of an offer.

As an organisations, Applicants must:

- have authorisation to practice from a relevant professional body (e.g. the SRA)
- hold SQM (audited by the SQM Delivery Partnership) or the Lexcel Practice Management Standard
- have an office in England or Wales
- employ a least one full time equivalent Crime supervisor (and, if delivering Prison Law work, also a full time equivalent Prison Law supervisor)
- maintain a ratio of 1 FTE supervisor to 4 designated caseworkers (crime) (for Prison law, the ratio is 1 to 6).

Important: Applicants should consider the supervisor self-declaration forms as soon as possible to enable any intended supervisors are able to meet the criteria, in particular, that they can demonstrate the requisite case experience. The forms are very different to the 2010 Contract versions and there were some difficulties experienced by some supervisors during the last tender process. Supervisors will need to include a number of case references relating to Police Station Advice and Assistance cases, Magistrates' Court Representation and Advocacy cases and/or Crown Court Representation and Advocacy cases undertaken in the last 12 months (including providing case names, types of case, dates worked on and UFNs). In particular, where experience has been obtained at other firms, Applicants should ensure that all of their supervisors record that information prior to joining the Applicant and are able to provide it at the verification stage of the tender.

Applicants may provide evidence as part of the tender process if they are able. All applicants must provide evidence of the above 4 weeks before the contract start date.

Applicants with limited liability (e.g. Ltd, LLP) must complete a personal indemnity forms. There are no exceptions apart from for registered charities.

If an Applicant is also applying to join duty schemes, there are additional contract requirements relating to the delivery of Duty Solicitor work for each office tendered for – see below.

Section 3: Duty Schemes

The LAA operates two Duty Schemes:

- the Police Station Duty Scheme; and
- the Magistrates' Court Duty Scheme

Generally, the LAA will publish Rotas every six months and will allocate the slots according to the number of Duty Solicitors Engaged by Crime Contract holders. However, the first Rota will commence on 1 April 2017 and will run until 30 June 2017 and will consist of all those Duty Solicitors Engaged by Applicants who have successfully Tendered for Duty Schemes and who have Passed verification by **12 December 2016** and for whom the LAA receives CRM12s by **23.59 on 13 January 2017**.

If Applicants cannot Pass verification by the above date, there is an ability to join the later Duty Rota from 1 July 2017 – see below.

As part of this procurement process, the LAA is also inviting Applicants to apply to join the Duty Scheme(s) for which they are eligible by virtue of the postcode of their Office(s).

Important: Please note that there will be no further opportunity to apply for inclusion on additional Duty Schemes under the Crime Contract.

To join a duty scheme, applicants must have an office within the qualifying geographical boundaries as set out in the Postcode Tool available at: <http://www.gov.uk/government/publications/legal-aid-crime-tender-2017>

There is no need for Duty Solicitors to be working for Applicants at the time of tender but to be eligible for Duty Slots they must be Engaged from 1 April 2017. In addition, Applicants must be able to provide fully completed CRM12s for each individual by 23:59 on 13 January 2017 in order to be awarded Duty Slots on the first Rota.

Duty Slots will be allocated pro-rata to the number of Duty Solicitors Engaged by all organisations who have membership of a Scheme. Therefore, the frequency of slots on a Scheme will depend on the number of other organisations who apply and qualify to join that Scheme and the number of Duty Solicitors Engaged by those organisations.

Section 4: e-Tendering system

As with previous tenders in recent memory, all submissions must be made using the Bravo electronic system at www.legalaid.bravosolution.co.uk

Once Applicants have completed their responses to the Organisation ITT and each of the Individual Bid ITTs they wish to respond to, they must submit their Tender by clicking on the “Submit Response” button within each of the ITTs.

The Organisation ITT must be submitted first as it is not possible to submit a response to an Individual Bid ITT until a response to the Organisation ITT has been submitted.

Important: The eTendering system will not prevent an Applicant from submitting a response to the Organisation ITT without an Individual Bid (a response to an Individual Bid ITT). It will be your responsibility to ensure that all relevant ITTS are submitted.

Applicants may amend and re-submit their Tender at any time up to the Deadline. If amended and re-submitted, only the latest Tender submitted shall be assessed. It is the Applicant’s sole responsibility to ensure that its Tender is fully and accurately completed. The Applicant must ensure that information provided as part of its response is of sufficient quality and detail that an informed assessment may be carried out by the LAA.

Section 5: Completion of the Tender

Organisation ITT

The organisation ITT consists of the following sections:

- Organisation and contact details
- Grounds for mandatory exclusion
- Grounds for discretionary exclusion
 - Financial Assessment
 - Expansion Risk Assessment

- Crime Contract Requirements
- Declarations

Important: Where an Applicant is (i) intending to increase the number of Duty Solicitors it Engages by more than 50%; or ii, (being an Applicant who does not currently have any Duty Solicitors) is intending to Engage 10 or more Duty Solicitors, it will be subject to a risk assessment to confirm that it has the financial capacity to deliver the Contract Work tendered for.

All Applicants that are subject to either the Financial Assessment or the expansion risk assessment must submit the following Financial Information:

i. 2 years' audited or certified accounts dating from no earlier than the year ending 31 December 2013, where held; and/or

ii. Business Plan covering the 12 months period from the submission of the Tender; and

iii. Cash Flow Forecast Template which must:

be completed; and

contain a Cash Flow Forecast for 24 months from the submission of the Tender.

Where an Applicant is unable to provide 2 years' audited or certified accounts dating from no earlier than the year ending 31 December 2013, the LAA say it will be required to provide details of why such information is not available and where possible to provide equivalent information.

There is no template for the Business Plan but details of the information that must be provided are at Annex C. Where an Applicant is required to submit its Business Plan, this must be uploaded by clicking against the 'Click to attach' button at the relevant question of the Organisation ITT.

Individual Bids ITTs

There will be 12 individual duty schemes based upon proximity to LAA administrative offices. These are:

- ITT 433 – Individual Bid ITT for Birmingham
- ITT 434 – Individual Bid ITT for Brighton
- ITT 435 – Individual Bid ITT for Bristol
- ITT 436 – Individual Bid ITT for Cambridge
- ITT 437 – Individual Bid ITT for Leeds
- ITT 438 – Individual Bid ITT for Liverpool
- ITT 432 – Individual Bid ITT for London
- ITT 439 – Individual Bid ITT for Manchester
- ITT 440 – Individual Bid ITT for Newcastle
- ITT 441 – Individual Bid ITT for Nottingham
- ITT 442 – Individual Bid ITT for Reading
- ITT 443 – Individual Bid ITT for Wales

A Duty Information Form must be completed for each of their individual bid responses.

Applicants wishing to be allocated Duty Slots must also provide additional verification relating to the delivery of Duty Solicitor work for each Office tendered for.

Applicants must, for each Office tendered for, verify these initial contract requirements:

- have authorisation to practice from a relevant professional body (e.g. the SRA)
- have an office which meets the Office requirements in the Contract
- employ a Crime supervisor (and a Prison Law Supervisor, if applicable)

Applicants that pass the above verification will be invited to submit CRM12s for these offices.

Applicants must also, for each Office tendered for, verify the remaining contract requirements prior to joining the rotas. In particular, that they:

- hold SQM (audited by the SQM Delivery Partnership) or the Lexcel Practice Management Standard
- Applicants with limited liability (e.g. Ltd, LLP) must complete a personal indemnity forms
- meet the 1:4 Supervisor to Caseworker ratio for Crime

- if applicable, meet the 1:6 Supervisor to Caseworker ratio for Prison Law

Section 6: Applicants' Questions

Any questions about this tender can be submitted via the Bravo portal until 12 Noon on 8 August 2016. The replies to these questions are due to be published on 22 August.

Important: In the past, the LAA has been criticised for not answering questions but instead referring questioners back to the ITT document. It is therefore crucial to frame questions very clearly and if applicable make clear that the relevant section of the ITT has been checked.

Section 7: Tender Assessment

Tenders are assessed on a pass or fail basis.

Where an applicant is required to submit a business plan and a cashflow forecast, a LAA 'finance professional' shall review the information provided and make a determination as to whether there are sufficient financial resources available to fund the expansion. The LAA say that the assessment will be undertaken on a risk basis, where an Applicant will be rated Green or Red, depending on the level of risk presented to the LAA of provider failure, based on the organisation's proposed level of expansion.

Where all thresholds are not rated as Green the Applicant will be prioritised for Contract Management activity to ensure compliance with Crime Contract requirements.

The LAA go on to say that the judgement of the finance professional in all such cases shall be binding. This is of course just a clause to deter any challenges to the judgment of the LAA finance professional.

Section 8: Verification of Crime Contract Tenders

The LAA say that Applicants who are able to submit verification information are strongly advised to provide this as part of their Tender as this will enable the verification of their Tender and their inclusion on Rotas to commence as soon as possible.

Important: Our experience has been that time consuming disputes between firms and the LAA have happened as a consequence of verification not being submitted as part of the tender. The LAA tend not to necessarily read earlier correspondence on the Bravo portal before sending messages that verification has not been received. We advise, where possible, that all verification is submitted as part of the tender.

As part of the Tender outcome notification letter the LAA will confirm what, if any, verification information is outstanding.

Only Applicants that have successfully Passed verification by providing information that is compliant with the requirements of the procurement process by 23.59 on **12 December 2016** (with (and CRM12s provided by **13 January 2017**) will be included on the Rotas from 1 April 2017 (which runs from 1 April to 30 June 2017).

If that cannot be achieved then provided verification is submitted by 28 February 2017 (and provided CRM12s by 17 March 2017), Applicants will be eligible to join the 1 July 2017 rota (which runs from 1 July until 31 December 2017).

The Supervisor to Caseworker ratios will be verified after the Contract Start Date with each Applicant receiving a visit from their LAA Contract Manager within 6 months of the Start Date.

Section 9: Crime Contract Procurement Process

This section sets out the LAA's terms and conditions for the tender.

The Applicant's sole right of appeal is limited to circumstances where it reasonably, on the information contained in its Tender, considers that the LAA has made an error in its assessment of the Applicant's response to grounds for discretionary exclusion (Organisation ITT Section C).

The LAA state that there is no right of appeal other than that set out in the paragraph above. In practice though and because this is a public procurement process, there are always various channels to challenge a decision including informal and formal appeals.