

## Procurement of Criminal Legal Aid Services from 1 October 2022

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://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1026870/Information\\_for\\_Applicants\\_2022\\_Crime\\_Contract\\_V.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1026870/Information_for_Applicants_2022_Crime_Contract_V.1.pdf)

### Timetable

The timetable is confirmed to be as follows:

<b>Activity</b>	<b>Timescale</b>
Procurement process opens and available via the LAA’s eTendering portal	19 Oct 2021
Final date for submission of questions about this procurement process	23.59 on Sun 7 Nov 2021
‘Frequently Asked Questions’ to be published	w/c 15 Nov 2021
<b>Deadline for submission of Tenders</b>	<b>17.00 on Tues 30 Nov 2021</b>
Notification of mandatory & discretionary criteria fails	Early Jan 2022
Deadline for submission of appeals	Two weeks after notification
Outcome of Tenders notified	Late Feb 2022
Deadline for submitting compliant verification (‘verification date’)	<b>23.59 on 27 Mar 2022</b>
Deadline for the submission of CRM12s (with Duty Solicitor details) for 3-month rotas beginning 1 October 2022	<b>23:59 on 25 May 2022</b>
Deadline for the submission of CRM12s (with Duty Solicitor details) for 3-month rotas beginning 3 January 2023	<b>23.59 on 5 Sept 2022</b>
<b>Contract Start Date</b>	<b>1 Oct 2022</b>

### 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 contract is only due to last for **one year** but the LAA has retained the ability to terminate this earlier or extend for a further two years. This Contract is only intended to span the period of time between the end of the current 2017 contract and the point at which it is possible to tender for a contract based on the outcome of the independent Criminal Legal Aid Review (commonly referred to as CLAR or ICLAR) which is currently ongoing. The date of the subsequent contract and the tender process for that will depend on the outcome of the CLAR and ongoing consultation process. From

experience, the LAA commonly extends the contracts for as long as it can do but this isn't a given in this scenario.

### Who can bid?

The tender is open to any interested party and any party meeting the minimum requirements will be offered a 2022 Contract (i.e. it is non-competitive).

The LAA will only contract with single entities though and so if an Applicant is contemplating a merger or acquisition they need to ensure they bid as the ultimate contracting entity that they will be delivering the Contract Work from 1 October 2022. This may not necessarily be the same entity as they are currently.

If an Applicant submits a bid as one entity but changes legal status and/or corporate structure of the organisation following the submission of the tender this amounts to a 'material constitutional change' they must notify the LAA within 14 days of that change. The LAA will reasonably consider the request and may still award the contract (note this is 'may' not 'will' and may depend on the nature of the change and how this affects the bid) but this could delay the award or verification process and may ultimately delay the start of the Contract and eligibility to join the Duty Schemes. If the entity changes status this may also mean that it will need to be re-audited against a Quality Standard and so this may need to be factored into timings.

### Outline of criminal legal aid services

The IFA seeks to invite tenders for:

- Criminal Investigations and Criminal Proceedings (this includes the ability to deliver Appeals and Reviews work but there is no obligation to carry out such work); and/or
- Prison Law (as above, this includes Appeals and Reviews); or
- Appeals and Reviews only

Those wishing to deliver Prison Law work in addition to Criminal Investigations and Criminal Proceedings work must indicate this as part of the tender and meet the additional verification requirements for prison law.

### Duty Schemes

Those who wish to join duty schemes must indicate this as part of their tender for each office for which this is relevant. This will be the only opportunity to apply to join Duty Schemes for this Contract.

## Section 2: Procurement Process Requirements

To be eligible for the award of a contract, Applicants are required to submit a tender consisting of:

- the Selection Questionnaire (**SQ**); and
- the Invitation to Tender (**ITT**) which has to include confirmation and details of:

- all Offices from which they wish to deliver Contract Work and the Class(es) of Work (e.g. Criminal Investigations/Proceedings and/or Prison law or appeals and reviews only) they wish to deliver from each Office
- whether they wish to join any or all of relevant Duty Schemes from each office (if applicable)

### Crime Contract requirements

As an organisation, Applicants must:

- ✿ have authorisation to practice from a relevant professional body (e.g. the SRA)
- ✿ hold the SQM (audited by the SQM Delivery Partnership) or the Law Society's Lexcel Practice Management Standard
- ✿ have an office in England or Wales that meets the requirements in the Crime contract Specification (paras 2.44 to 2.52) which will include, but not limited to:
  - having a constant right of access at any point during Business Hours
  - be open and accessible during normal Business Hours on each Business Day and be permanently staffed by a representative of your organisation (who need not be directly employed by you) for the purpose of arranging appointments and other meetings and where appropriate arranging advice in emergency cases
  - be able to arrange Client appointments during Business Hours (subject to personnel availability)
  - contain suitable facilities to interview Clients, witnesses and any other persons in a private interview room
  - contain sufficient infrastructure to enable you to deliver Contract Work
  - if in a shared building such as another legal services provider's premises or in a serviced office arrangement the Applicant must have a right of access to the Office at all times during Business Hours for the purpose of providing face-to-face legal services at that Office
- ✿ 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 fee earners or caseworkers (crime) (for Prison law, the ratio is 1 to 6).

Applicants will not be able to provide verification evidence as part of the tender submission but are to submit it after the LAA has assessed the bids and confirmed the outcome in Late February 2022. All Applicants must provide evidence by the Verification Date on **27 March 2022**.

Applicants with limited liability (e.g. Ltd companies, LLPs) must supply a personal guarantee and indemnity. This includes current contract holders who must supply a new indemnity. 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

As part of this procurement process, the LAA is inviting Applicants to apply to join the Duty Scheme(s) for which they are eligible by virtue of the postcode of their Office(s). To join a duty scheme, applicants must have an office within the qualifying geographical boundaries as set out in the Postcode Tool available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1026469/Duty\\_Solicitor\\_Postcode\\_Tool.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1026469/Duty_Solicitor_Postcode_Tool.pdf)

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 two Rotas will run for three months each. The first rota will commence on 1 October 2022 and will run until 2 January 2023 and will consist of all those Duty Solicitors Engaged by Applicants for whom the LAA receives CRM12s by **23:59 on 25 May 2022**.

If Applicants cannot submit CRM12s for Duty Solicitors by the above date, there is an ability to join the second Duty Rota from 3 January 2023 (which will run until 31 March 2023) provided the LAA receives CRM12s by **23:59 on 5 September 2022**.

The share of duty solicitor work 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. The Public Defender Service will also receive slots but will not have to submit a tender.

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

If an Applicant moves address or applies to join a Duty Scheme from a new office but then changes that office address after submitting the tender then the new address must fall within the same Duty Scheme boundary in order to remain eligible. An Applicant cannot amend the tender to apply to join another different Duty Scheme for this new Office.

Duty Solicitors do not have to be engaged at the time of tendering but to be eligible to join the duty rotas for a Duty Scheme they must be Engaged by the Applicant by 00.00 on 1 October 2022 (to join the October 2022 rota) and/or 00.00 on 3 January 2023 (to join the January 2023 rota). There is no obligation to join the earlier October 2022 rota but an Applicant must have at least one Duty Solicitor by 00.00 on 3 January 2023 to be eligible to join a particular duty Scheme and have slots on that rota or any subsequent rotas for that Scheme. Para 6.2 of the Contract Specification provides that for firms to be eligible and maintain duty Scheme membership they must, at all times during the Contract Period, have at least one Duty Solicitor registered on each Duty Scheme they are a member of and provide Duty Solicitor services on that Scheme.

For those wishing to join a duty Scheme, they will be required to submit the LAA's CRM12 forms. This applies to all Applicants irrespective of whether they are current Duty Scheme members or new. CRM12s will be required for:

- all Duty Solicitors who are currently working for Applicants on Duty Schemes under the current 2017 Contract and who will be Engaged by them from 00.00 on 1 October 2022 and/or 00.00 on 3 January 2023
- newly qualified duty solicitors
- any duty Solicitors who will move organisations and be engaged by an Applicant from 00.00 on 1 October 2022 and/or 00.00 on 3 January 2023

#### Section 4: e-Tendering system

As with previous tenders in recent memory, all submissions must be made using the Bravo electronic system at <https://legalaid.bravosolution.co.uk/web/login.shtml>

Once Applicants have completed their responses to the SQ and the ITT, they must submit them by clicking on the "Submit Response" button.

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.

Applicants already registered on the e-tendering system may use the same registration details but Applicants need to ensure that they use a registration that matches the name and trading status of the bidding organisation. Applicants should also check to see if the contact details remain correct and update them if necessary.

#### Section 5: Completion of the Tender

##### SQ

The SQ consists of the following sections:

- Section A: Organisation and contact details

If an Applicant is yet to form legal entities, they may provide 'N/A' responses to some questions and will be asked to provide these details upon verification.

- Section B: Grounds for mandatory exclusion

Where an Applicant answers 'yes' to any question, the LAA will reject the tender unless there are mitigating circumstances which the LAA deem satisfactory. The Applicant must complete a series of 'free text' boxes to provide 'exceptional circumstances'.

 Section C: Grounds for discretionary exclusion

Where an Applicant answers 'yes' to any question designated as a discretionary fail, the LAA may reject the tender but will consider exceptional circumstances submitted. Applicants must provide 'explicit and comprehensive' information in the 'free text' boxes to the supplementary questions provided.

 Section D: Declarations

For solicitor firms the declaration must be made by the COLP.

## ITT

The information Applicants need to submit will depend on the class(es) of work they wish to bid for and whether they intend to bid for Duty Schemes.

Under the Criminal Investigations and Criminal Proceedings class of work, Applicants may bid for Criminal Investigations and Criminal Proceedings Contract Work:

-  via Duty Schemes for Offices eligible to join Duty Schemes in London boroughs. This will also allow Applicants to undertake Own Client Contract Work from those Offices, and/or
-  via Duty Schemes for Offices eligible to join Duty Schemes outside of London boroughs. This will also allow Applicants to undertake Own Client Contract Work from those Offices, and/or
-  which is exclusively Own Client Contract Work for Offices where Applicants are not also applying to join Duty Schemes.

All applicants will be required to confirm:

-  the Class(es) of Work (e.g. Criminal Investigations & Criminal Proceedings and/or Prison law or appeals and reviews only) they wish to deliver
-  whether they are applying to join any Duty Schemes in London boroughs, any duty Schemes outside of London boroughs, and/or apply to deliver Own client Work from Offices (multiple options may be chosen)

Applicants will need to provide details of all Offices from which they wish to deliver any type of Contract Work. This will include the office address, postcode and LAA Account Number if held (if they don't have a LAA contract number this can be applied for subsequently). If bidding to deliver Criminal Investigations & Criminal Proceedings Own Client work, Prison Law and/or Appeals and Reviews only Contract Work from any Office the Office details will be provided in text boxes within the ITT. For Duty Schemes, Applicants will need to complete and attach one or two Duty Information Form(s) (DIFs).

Due to the complexity of the London area duty schemes, the London borough and non-London borough Office locations will be determined differently.

### Offices in London boroughs

A London DIF must be completed to apply to join Duty Schemes in London boroughs.

The Office is only eligible for the London police station and London Magistrates' court duty Schemes listed in the Duty Solicitor Postcode Tool under an individual London borough (determined by entering the postcode into the 'find your local council' tool on the gov.uk website: <https://www.gov.uk/find-local-council>).

An applicant cannot apply to join London Magistrates' Court Duty Schemes as part of the DIF. This will be applied for when an Applicant later submits the CRM12s.

### Offices not in London boroughs

A non-London DIF must be completed to apply to join Duty Schemes outside of London boroughs.

**An Applicant can provide one or both DIFs depending on the Offices it wishes to include in the bid.**

Some postcode sectors in London boroughs are also eligible for non-London Schemes. The IFA allows an Applicant a means to apply for Schemes inside or outside London boroughs.

## Section 6: Applicants' Questions

Any questions about this tender can be submitted via the Bravo portal until 23.59 on **7 November 2021**. The replies to these questions are due to be published the week commencing 15 November 2021. This does not provide a great deal of time before the tender submission deadline on 30 November 2021.

**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

SQ responses are assessed on a pass or fail basis.

In respect of all tenders, the LAA will check the submission of the ITT response and will conduct an assessment of:

-  all addresses and postcodes provided as part of the individual Bid, and
-  the declarations and warranties provided as part of the ITT response

## Section 8: Verification of Crime Contract Tenders

Applicants must, for each Office tendered for, verify the Contract requirements by providing by the Verification date of 23.59 on **27 March 2022**:

- ❁ confirmation of SRA, BSB or CILEX number
- ❁ confirmation of holding SQM or Lexcel through submission of:
  - SQM or Lexcel certificate valid as at 1 October 2022, or
  - Where the current certificate expires between 28 March and 30 September 2022, a copy of current SQM or Lexcel certificate and written conformation from the LAA's or Law Society's auditing body of the date on which their next audit will be carried out, or
  - Where the Applicant has passed the desktop SQM only, a copy of letter of confirmation
- ❁ For Limited Companies and LLPs, complete personal guarantees and an indemnity form
- ❁ Office address(es) including postcode for each Office from which the Applicant is applying to conduct criminal legal aid work and which meets the Office requirements in the crime Contract
- ❁ A fully compliant Crime Supervisor Standard and Declaration form (**Route A or B**) to demonstrate the Applicant Employs a FTE Supervisor for Criminal Investigations and Criminal Proceedings (see below)
- ❁ If bidding, a fully compliant Prison Law Supervisor Standard and Declaration form (**Route A or B**) (see below).

### Supervisors

The LAA expects many supervisors will be able to demonstrate the full supervisor Standards and they may submit the **Route A** Supervisor Standard and Declaration form ('SUPP (CRI-A)', 'SUPP (PL-A)' or 'SUPP (AR-A)' as applicable to the Class(es) of Work) which demonstrates the required case hours/case involvement from the 12-month period immediately preceding the date the form is submitted.

Some supervisors may not be able to demonstrate full compliance (maybe due to issues arising from the Covid-19 pandemic or being new to the role). They will still be able to bid providing they can demonstrate 50% compliance by the Verification Date but then use the period from 1 April to 30 September 2022 to be able to gain the relevant casework evidence and demonstrate 100% compliance by the Contract Start Date. An Applicant in this position, may rely on **route B** to verify the tender and may submit the Supervisor Standard and Declaration Form ('SUPP (CRI-B)', 'SUPP (PL-B)' or 'SUPP (AR-B)' as applicable to the Class(es) of Work) which demonstrates at least 50% of the total casework/case involvement required by the Supervisor Standards since 1 October 2021. The Applicant will warrant that the proposed Supervisor will meet the requirements of the Supervisor Standard in full from the period 1 October 2021 to the Contract Start Date (that is, they will have the ability to obtain the required case experience and complete the Route A forms in full at that time if requested).

### Supervisor Ratios

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 three months of the Start Date.

### New Offices

Where Applicants are opening new Offices (or those without a current contract), they will not yet have a LAA Account number for that Office and cannot be issued with Contract documentation without it. They will be required to complete and return an **AC1 Form** and supporting documents for each new Office (including PI insurance) to the LAA. This isn't specified but in previous tenders, the AC1 form would be submitted to the LAA's Provider Records Team direct rather than via the Bravo portal.

### Contract Documentation

This will be issued and executed electronically in the LAA's CWA system.

## Section 9: Submission of CRM12 forms

Applicants wishing to be allocated Duty Slots must also provide CRM12s relating to the delivery of Duty Solicitor work for each Office tendered for.

Only Applicants that have successfully provided compliant verification by the Verification Date will be invited to submit CRM12s to join the October 2022 rotas. The LAA must then receive CRM12s by **23:59 on 25 May 2022**. If Applicants cannot submit CRM12s for Duty Solicitors by that date, there is an ability to join the second Duty Rota from 3 January 2023 provided the LAA receives CRM12s by **23:59 on 5 September 2022**.

Where an Applicant has provided verification by the Verification Date but it isn't compliant and the LAA requires further evidence to verify compliance, they may be eligible to join the January 2023 rota. The LAA must then receive their CRM12s by **23:59 on 5 September 2022**.

### Duty Solicitor Requirements

This document is not designed to provide a summary of the changes to the Contract Terms and Specification but it is worth noting that the current Contract requirement for Duty Solicitors to undertake 14 hours Criminal Defence Work per week from the Office for which those Duty Slots have been obtained will change from 1 October 2022. In the 2022 Crime contract, the requirement has changed with Duty Solicitors being required to undertake a minimum of 50 hours' Criminal Defence Work per calendar month and this will be measured on a rolling three monthly basis.

## Section 10: General rules of the 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 the SQ response, considers that the LAA has made an error in its assessment of the

Applicant's SQ response. There is no right of appeal in respect of the LAA's assessment of the ITT responses.

The LAA state that there is no right of appeal other than that set out 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 and judicial review.