

Civil Contracts from 1 April 2004

1 Introduction

- 1.1 In our consultation paper on the process for awarding civil contracts ('Regional Prioritisation and Bidding Rules' issued in June 2002) we proposed to:
- (a) Extend General Civil Contracts for solicitors by one year from 1 April 2003.
 - (b) Set priorities for the award of new civil contracts by publishing Regional Legal Services Committee ('RLSC') reports and Regional Directors' contracting strategies.
 - (c) Introduce joint bid rules for the award of new civil contracts to solicitors and not-for-profit agencies.
 - (d) Issue new one-year rolling contracts for solicitors in April 2004.
- 1.2 We have now implemented proposals (a) to (c). Each region has published its RLSC report and contracting strategy setting out the top priorities for additional funding. The Bid Rules 2003 have also been published, and are available on our website at www.legalservices.gov.uk and in volume 2 of the LSC manual.
- 1.3 This paper announces the LSC decisions on the renewal of solicitors' contracts in April 2004.

Controlled Work Contracts (Legal Help, Help at Court and Controlled Legal Representation)

- 1.4 In paragraph 9 of the consultation paper, we said: 'We do not intend to hold a national bidding round in April 2003 or thereafter...We will however expect to take local initiatives to refocus contracts and allow in new suppliers in line with RLSC recommendations on an ongoing basis.'
- 1.5 In their response to the consultation, the Law Society, LAPG and others said that more needed to be done to allow new suppliers in to provide legally aided services. They were concerned that the opportunities presented if we only awarded Controlled Work contracts to fill existing gaps in provision would be too limited. Some respondents also pointed out that the process of prioritisation through RLSC reports and contracting strategies would be of restricted value if funds were not freed up to meet those priorities.
- 1.6 We believe that there is some force in those arguments, especially in light of the increasing pressures on the civil budget. The continued growth of average costs per case (between 15-20% per annum in the

main categories of law) makes it ever more difficult to release money to fund new contracts. The growing expenditure in crime and asylum also means that we are unlikely to be able to allocate significant extra funding to the controlled budget at this stage.

- 1.7 We have therefore decided to hold a bid round prior to letting contracts in April 2004 to allow new suppliers in, and to allow existing suppliers to bid for additional contracts and categories. The reality of a controlled budget is that we cannot do this whilst at the same time guaranteeing all existing contracts.
- 1.8 In practice it is likely that the overwhelming majority of suppliers that wish to do so will be able to renew their contracts in April 2004. This is because in many CLS Partnership (CLSP) areas the pattern of supply is reasonably settled. However regions will need to prioritise funding and may sometimes need to do so by not renewing existing contracts and we will need to allow for competition in CLSP areas where the number of organisations seeking a contract in April 2004 exceeds the allocated funding.

Licence contracts

- 1.9 In general, we will continue to award Licence contracts to any organisation with an authorised litigator that passes a preliminary Specialist Quality Mark (SQM) audit in the appropriate category of law. However, we have the discretion to refuse a Licence contract to a supplier that does not have a Controlled Work contract in the relevant category from 1 April 2004. We are likely to do so only where we consider that there is already sufficient supply, or where paragraph 2.9 below applies.
- 1.10 Existing 'Licence-only' contractors will therefore need to register on the bid panel, as set out in 2.5 below, if they wish to renew their current contract.

Form of the contracts

- 1.11 At paragraph 8 of the consultation paper we stated:

' The contracts issued in April 2004 will be on a rolling one-year basis and will have a simplified structure and language but essentially the same terms as the current General Civil Contracts.'
- 1.12 Many of the respondents to the consultation opposed the idea of one-year rolling contracts on the grounds that practitioners require longer-term security. Again, we see the force of this argument.
- 1.13 The contracts awarded in April 2004 will therefore be for three years.

- 1.14 However, the recent announcement by the Lord Chancellor's Department of the review of contracting means that we will need to reserve the right, via a break clause, to terminate those contracts on at least 6-months notice in restricted circumstances. Those circumstances will arise if the outcome of the review is to decide that there should be fundamental changes to the basis on which contracts are awarded and remunerated and that these changes must be implemented before the expiry of the three -year contracts in April 2007. We may also need to invoke the break clause in limited areas if we need to pilot any such changes.
- 1.15 We will consult on any changes to the existing contract documentation for April 2004. The Standard Terms will remain substantially the same. We do wish, in the long term, to simplify the Specification and remove some of the bureaucracy in the contract. However we need to balance the potential advantages of this with the fact that suppliers are used to operating the current contract. We recognise that any change may be seen as disruptive unless it very clearly removes existing obligations without imposing new ones, even if the new obligations are less onerous. We will discuss this issue further with the Law Society and LAPG before making our recommendations.

2 The Bid Round 2004

- 2.1 The attached document 'Bid Round 2004' sets out the rules under which we will operate the bid round.
- 2.2 The rules are based on our consultation proposals (now also incorporated into the Bid Rules 2003) amended as necessary to reflect our decision on the bid round.
- 2.3 There are three basic requirements that organisations must meet to be awarded a contract in April 2004.
- They must register on the bid panel using the form provided by **2pm on 1 October 2003**.
 - They must obtain at least the provisional Specialist Quality Mark (SQM) by **31 March 2004**.
 - If they are an existing solicitor contractor whose latest civil cost assessment results are category 3, then they will be excluded if this is their second such result since 1 November 2001 (the date the revised cost assessment guidance came into effect).

Registration on the bid panel

- 2.4 The Bid Rules 2003 provide a mechanism for organisations wanting new or additional contracts in any particular SQM category to register on a bid panel, divided into Panel A and Panel B. Panel A contains

organisations that already have an office or provide an outreach service in the CLSP area concerned, or in an immediately adjoining area from where services could easily be provided. Panel B contains all other organisations that have registered an interest in obtaining a contract in the CLSP area.

- 2.5 We will maintain this bid panel structure for the purpose of the bid round. Any organisation (including any supplier with an existing solicitor's contract) that wishes to have a have a General Civil Contract (Solicitors) from 1 April 2004 must register on the bid panel, using the attached bid form, by **2pm on 1 October 2003**.
- 2.6 Any supplier that does not return the form fully completed and signed by the deadline will not be considered (except where they demonstrate exceptional circumstances) for a contract award under the bid round. Late entries will be accepted on the panel for consideration for contracts during 2004-5 as and when funds become available.
- 2.7 The bid form is being sent to all current contractors, and to all other organisations that are registered on the bid panel under the Bid Rules 2003.

Provisional Specialist Quality Mark (SQM)

- 2.8 The organisation must hold at least a provisional SQM in the relevant category in order to be awarded a contract. Paragraphs 3.1 to 3.3 of the Bid Round 2004 paper explain how organisations that have not yet passed the SQM can take part in the process. Any contract awarded will be conditional on passing the full SQM audit.

Category 3 cost assessments

- 2.9 We will not award a contract to any contractor whose latest civil cost assessment result puts them into category 3 (overclaiming by 20% or more) if this is the second such result notified since 1 November 2001. Where the latest category 3 assessment is still subject to appeal, then a conditional contract may be awarded in April 2004, but this contract will be terminated if the result remains at category 3 after the appeal is determined.
- 2.10 Where a supplier was classified as category 3 on its last civil contract compliance audit for the first time since 1 November 2001, then that supplier may be invited to bid and be awarded a contract in April 2004. However the audit results will be taken into account in any decision between competing bids. Any contract awarded will be conditional on the next cost assessment result not falling into category 3.

3 Operation of the bid round

- 3.1 When the bid panel closes on 1 October 2003, regional offices will decide whether they will need to run a bid round in a particular CLSP area. They will only do so where there are more new bidders and existing suppliers than the number of contracts that they consider appropriate to award in the category concerned. In many areas, there will be no need to run a bid round.
- 3.2 In broad terms regional offices will determine the number and size of the contracts that they want to award (if any) by reference to the RLSC reports and to existing funds and performance.
- 3.3 The RLSC reports, which respond to the recommendations of the CLS Partnerships, were published in January 2003 and set out the contracting priorities for the region. We aim to produce an update to each report (taking into account comments and developments since publication) by 1 September 2003.
- 3.4 In those CLSP areas (probably the great majority) where the number of bidders does not exceed the number of contracts to be awarded in the particular category, regions will be able to write to the firms concerned fairly quickly after the bid deadline confirming that a contract will be awarded. This will give certainty to most existing practitioners well in advance of April 2004.
- 3.5 After the bid panel closes, the Regional Director will publish a contracting strategy. This will detail the Regional Director's intended action in response to the RLSC priorities. It will take into account the information from the bid panel as to who wants contracts and where. It will detail the Regional Director's decisions as to when and where a bid round is to be held.
- 3.6 In those CLSP areas where it is necessary to hold a bid round in a particular category or categories of law, then we have adopted the rules proposed in the consultation paper last year. A detailed invitation to bid will be sent out, with a specification of the service to be provided and any special conditions. The Regional Director may confine invitations to Panel A where he or she considers that this will be likely to provide sufficient bids.
- 3.7 The criteria for deciding between bids set out in the consultation paper (and now in the Bid Rules 2003) won general support from respondents. We have therefore adopted these for the bid round with some amendments as follows:
 - We have included specialist panel membership as a factor. We wish to support the efforts by the Law Society to further develop these panels.

- We have added the range and mix of CLS funded services offered by the bidder as a factor. This is to encourage those organisations that provide a holistic service to their clients.

The full list of the criteria is at 2.8 of the 'Bid Round 2004' paper.

Joint bids

- 3.8 The option of allowing joint bids won general support on consultation and has been retained.

Contract Review Body

- 3.9 We have adopted the provisions for appealing contracting decisions set out in the consultation paper, subject to some necessary changes to enable us to manage the bid round process:

There will be a right of review to the Contract Review Body for:

- Any organisation that did not meet the deadline for registering on the bid panel, but claims that there are exceptional circumstances which means that their application should be accepted.
 - An existing supplier that, having registered as appropriate on the bid panel, has not had their contract renewed, or not renewed in all their current categories.
 - Any organisation that having been invited to bid, has not been offered a contract, or not offered a contract in all categories for which they were invited.
- 3.12 There will be a right of internal review to the Supplier Development Group for any organisation that has been awarded a contract in all categories for which they were invited to bid but is dissatisfied as to the terms of their contract award.

4 The Not-for-Profit (NfP) sector

- 4.1 Any NfP organisation that seeks a first contract with the LSC or an additional contract beyond their existing level of LSC funding will have to register on the bid panel by 1 October 2003.
- 4.2 However NfP suppliers will **not** need to register on the panel in order to maintain their existing contracts. The current General Civil Contracts (Not-for-Profit) do not expire until 31 March 2006.
- 4.3 Subject to contractual provisions as to performance and sanctions, we will guarantee that existing NfP suppliers with a three-year contract will be issued a schedule in April 2004 for at least 80% of the level

authorised by their 2003-4 schedule (or any amended version of that schedule).

- 4.4 The Regional Director will have discretion to reallocate the remaining 20% of funding in those cases where he or she considers it necessary to meet contracting priorities.

5 Bid Rules January 2003.

- 5.1 The Bid Rules 2003 will continue to apply to the award of contracts outside of the bid round.

6 Equal Opportunities Impact Assessment

- 6.1 Our preliminary assessment of the impact of the proposed bidding rules on the promotion of equal opportunities across our supplier base (published in the consultation paper on the process for awarding civil contracts) was that the proposals would have a neutral impact. Some respondents to the consultation expressed concerns that the proposals could have a negative effect because of the failure to open up the bidding process widely to new suppliers, some of whom could be from black and minority ethnic groups. Our decision to hold a bid round should address these concerns, and our final assessment is that the revised approach will have a neutral impact.

- 6.2 As part of the prioritisation process, each RLSC also assessed the access implications of gaps in provision on the unmet needs of different client groups. It is anticipated that the majority of recommendations contained in their reports, if acted upon, will have a neutral impact on the promotion of equality of opportunity in accessing legal advice services. Where recommendations focused on the provision of services to client groups identified in the LSC's Equality Scheme it is anticipated that if these are acted upon there will be a positive impact.

- 6.3 Following on from the consultation conducted last year, we confirm that the policies announced in this paper are intended to have a positive impact on competition in the legal aid services market.

7 Timetable

- 7.1 The timetable for the process is as follows:
- Regions review RLSC reports and contracting strategies: **April-July 03**
 - Update on RLSC reports published: **August 03**
 - Bid panel deadline **2pm 1 October 03**

- Contracting strategies finalised and contracts awarded where no bid process; further details requested from firms where bid process by end of **October 03**
- Contracting strategy published by **end November 03**
- Decisions made on any competitive bids by end of **December 2003.**
- Contract reviews: **Jan 04**
- Schedules issued: **Feb 04**

Civil Contracting Policy Unit

April 2003