

TENDER TO DELIVER PUBLICLY FUNDED
CRIMINAL DEFENCE SERVICES IN ENGLAND AND
WALES UNDER THE 2010 STANDARD CRIME
CONTRACT

**INFORMATION
FOR
APPLICANTS**

Contents

Section 1	Overview of this Information for Applicants (IFA)	3
Section 2	Services covered by this IFA	5
Section 3	About this IFA and the tender process timetable	6
Section 4	Documents related to this IFA	8
Section 5	About the Legal Services Commission and legal aid	9
Section 6	Quality Standards for the delivery of services from 00.01am on 14 July 2010	12
Section 7	About Criminal Defence Services from 00.01am on 14 July 2010	14
Section 8	About the volume and location of services we wish to procure	16
Section 9	Criminal Justice System areas and Duty Solicitor Schemes	17
Section 10	How to submit a tender using the eTendering system	20
Section 11	How the tenders will be assessed	28
Section 12	Terms and Conditions of Tender	30
Section 13	Definitions	36

Annexes (in separate documents)

Annex A: List of Duty Solicitor Schemes for the 2010 Standard Crime Contract

Annex B: Duty Solicitor police station scheme rota arrangements for the 2010 Standard Crime Contract

Section 1: Overview of this Information for Applicants (IFA)

What are we inviting tenders for?

- 1.1 The Legal Services Commission (LSC) is inviting interested parties to submit a tender to carry out publicly funded criminal defence services for eligible clients in England and Wales from 00.01am on 14 July 2010. Criminal defence services means the delivery of publicly funded legal advice and representation to eligible clients being investigated or charged with a criminal offence. See **Section 7** for more information about criminal defence services.

What does this IFA cover?

- 1.2 This IFA contains the information, instructions, rules, conditions of contract award and Terms and Conditions of Tender that will govern the tender process for the CDS Invitation to Tender (ITT) (see **Section 4** for documents related to this tender). Applicant Organisations must read and comply with all instructions and rules contained in the Tender Documents and the Terms and Conditions of Tender (see **Section 12**).

Who may submit tenders?

- 1.3 This is an open process and Applicant Organisations do not need to be current contract holders with the LSC to apply. Any Applicant Organisations interested in undertaking criminal defence services in England and Wales may apply.

How do Applicant Organisations submit tenders?

- 1.4 We will only accept tenders submitted through our eTendering system which can be accessed at www.legalservices.bravosolution.co.uk (see **Section 10**).
- 1.5 There is one CDS ITT covering all criminal defence services in England and Wales which will be published on our eTendering system for Applicant Organisations to submit tenders against.
- 1.6 A tender can cover multiple offices run by an Applicant Organisation, including new offices (subject to the office requirements set out at Part A of the 2010 Standard Crime Contract Specification).

What does a completed tender consist of?

- 1.7 A completed tender consists of a response to the Pre-Qualification Questionnaire (which, if applying for the SQM must include submission of the Applicant Organisation's Office Manual) **and** a response to the CDS ITT (this includes the Tender Information Form which is a Mandatory Form).

When can Applicant Organisations submit tenders from?

- 1.8 Applicant Organisations may submit their tender from **Monday 15 February 2010 at 4pm**.

When is the deadline for submitting tenders?

- 1.9 The deadline for submitting a tender is **Friday 12 March 2010 at 4pm**. Any tenders received after this deadline will not be considered (see **Section 3** for full details of the timetable).

How will tenders be assessed?

- 1.10 Tenders will be assessed by the LSC in accordance with the process set out in **Section 11**.

What happens if a tender is successful?

- 1.11 If a tender is successful, we will enter into a contract with the Applicant Organisation to operate the applicable services under the terms of the 2010 Standard Crime Contract (three year contract to commence on 00.01am on 14 July 2010 and extendable at our option by up to a further two years).

Section 2: Services covered by this IFA

- 2.1. This IFA governs the tender for the provision of criminal defence services to eligible clients from providers' offices across England and Wales for criminal defence services that start on or after 00.01am on 14 July 2010.
- 2.2. The 2010 Standard Crime Contract will be awarded to whole organisations rather than to single offices. This means that there will be one crime tender for the organisation. If Applicant Organisations have more than one office they will be asked when they respond to the CDS ITT to provide details of each office that they intend to offer criminal defence services from and the type of work that will be undertaken at each office.
- 2.3. All 2010 Standard Crime Contracts will include the ability to do Associated Community Legal Services work. The combinations of work that Applicant Organisations can apply for under the 2010 Standard Crime Contract are:
 1. Criminal investigations and criminal proceedings (this includes Appeals and Reviews)
 2. Criminal investigations and criminal proceedings with Prison Law (this includes Appeals and Reviews)
 3. Prison Law only
 4. Appeals and Reviews only
 5. Prison Law and Appeals and Reviews only.

Section 3: About this IFA and the tender process timetable

Structure

- 3.1. This IFA sets out information about the documentation required for this tender as well as information about the LSC, legal aid, quality standards, the CDS, how to respond to the PQQ and CDS ITT and the assessment and appeals process. The annexes contain information about Duty Schemes that will operate under the 2010 Standard Crime Contract.

Terms and Conditions of Tender and Definitions

- 3.2. **Section 13** explains the definitions of key phrases used throughout this IFA and the Tender Documents. **Section 12** contains the Terms and Conditions of Tender governing the tender process. Applicant Organisations should familiarise themselves with these terms and conditions.

Asking questions

- 3.3. During the tender process there will be two different channels through which to direct questions depending on the nature of the query. The two different question types are:
- Questions about the content of this IFA, the PQQ or the CDS ITT.
 - Technical questions about how to use the eTendering system.

Questions about this IFA, the PQQ or the CDS ITT

- 3.4. If Applicant Organisations have any questions about this IFA, the CDS ITT or the PQQ they may submit them up until **12pm on 4 March 2010** (note this is referred to as the 'End date for clarification messages' on the eTendering system).
- 3.5. All questions must be submitted using the online secure messaging tool within the eTendering System (see **Section 10** for more detail about eTendering).
- 3.6. Questions that we consider to be of wider interest will be collated and answered centrally in writing to ensure that all interested parties have equal access to information in the answers. These questions and answers will be published regularly on the crime tender pages of our website in a Questions & Answers (Q&A) document.
- 3.7. An initial Q&A document will be published when the tender opens. A final Q&A document will be published on **9 March 2010**.

Questions about how to use the eTendering system

- 3.8. We will offer a Helpdesk to provide technical support to Applicant Organisations using the eTendering System. However, the Helpdesk is **unable** to assist with problems with Applicant Organisations' own computer hardware or systems - for these types of issues Applicant Organisations should contact their usual IT support.
- 3.9. Questions should be emailed to the following email address: lscsupport@bravosolution.co.uk. Alternatively, the telephone number for the Helpdesk is 0203 3496610 (charged at a local rate from any national destination).

3.10. We recommend that Applicant Organisations start to complete their tender early so that they can identify any areas where they need help as soon possible, as the team is likely to be very busy in the days leading up to the tender deadline.

Timelines

3.11. A list of planned dates for key activities in this tender process is set out below.

Activity	Date
Invitation to tender opens via the LSC's eTendering portal	4pm on 15 February 2010
Final date to submit questions about this IFA and the tender	4 March 2010
Final Q&A to be published	9 March 2010
Deadline for submission of tenders	4pm on 12 March 2010
Notification of outcome of PQQ and CDS ITT assessment issued. Successful Applicant Organisations will also receive the Contract for Signature (including Annex) that will outline the work they will be authorised to undertake under the 2010 Standard Crime Contract from the Contract Start Date	From 26 March 2010
Deadline for submission of appeals following assessment of PQQ and CDS ITT	9 April 2010
Notification of decision on appeal issued	23 April 2010
Deadline for submission of Duty Solicitor Application forms (CDS 12s)	4pm on 30 April 2010
Deadline for submission of Supervisor Standard Self-Declaration Forms (these can be submitted as part of the response to the CDS ITT or by 4pm on 15 June 2010)	4pm on 15 June 2010
2010 Standard Crime Contract Schedules issued to successful Applicant Organisations	August 2010
Rotas will be issued	June 2010
Contract Start Date	00.01am on 14 July 2010

Section 4: Documents related to this IFA

Tender Documents – Applicant Organisations **MUST** read these before submitting their tender

Name	Description	Location
Information for Applicants (IFA) – (including the annexes)	Sets out the information, instructions, rules and Terms and Conditions of Tender relating to the CDS ITT	www.legalservices.gov.uk > CDS > Tenders > Crime Contracts for 2010
Pre-Qualification Questionnaire (PQQ)	Includes: (1) Series of questions (2) Applicant Organisation Information Form (Private Sector or NfP); <u>and</u> <i>If applying for the SQM as part of the PQQ you must submit your Office Manual. You may also submit a QM1 form.</i>	PQQ pages on the eTendering portal: www.legalservices.bravosolution.co.uk
Invitation to Tender (ITT)	Asks about the type of work Applicant Organisations wish to do and where they will deliver it from: (1) CDS ITT questions (2) Tender Information Form (Mandatory Form) (3) Supervisor Standard Self-Declaration Forms	ITT pages on the eTendering portal: www.legalservices.bravosolution.co.uk

Supporting documents - contract documents, additional supporting guidance and information

Name	Description	Location
2010 Standard Crime Contract	All Contract documentation including: Contract for Signature Standard Terms Office Schedule Specification (including Payment Annex)	www.legalservices.gov.uk > CDS > Crime Contracts > 2010 Standard Crime Contract
Tender Q&A document	Questions and answers of wider interest to Applicant Organisations	www.legalservices.gov.uk > CDS > Tenders > Crime Contracts for 2010
CJS information	Information about the volume and value of police station and magistrates' court work in 2008/09 by CJS area	www.legalservices.gov.uk > CDS > Tenders > Crime Contracts for 2010
eTendering guidance*	Guidance on how to use the eTendering system including: (1) eTendering online training or Powerpoint presentation (2) eTendering Quick Guides (3) eTendering Technical FAQ	“Technical Support and Guidance” section on the eTendering portal: www.legalservices.bravosolution.co.uk Please note, this link is only available on the front page of the portal so we advise that Applicant Organisations familiarise themselves with this documentation before registering or logging in.

*In addition to the LSC's eTendering guidance, our provider of the eTendering system, Bravo, has its own Supplier Helpdesk which can be accessed through clicking on the '?' options on the eTendering system. This Supplier Helpdesk contains Bravo's own technical support which may assist you further in using the eTendering system.

Section 5: About the Legal Services Commission and legal aid

About the Legal Services Commission

- 5.1 The Legal Services Commission (LSC) is responsible for delivering legal aid (publicly funded advice and representation) through high quality service providers to people with legal problems in England and Wales.
- 5.2 The LSC was established under the Access to Justice Act 1999, replacing the Legal Aid Board in April 2000. It is a non-departmental public body sponsored by the Ministry of Justice. The Lord Chancellor and the Secretary of State for Justice is accountable to Parliament for the LSC's activities and performance, and also appoints a board of non-executive Commissioners to oversee its work.

About legal aid

- 5.3 Legal aid enables people to safeguard their rights and address their legal problems. Our work is therefore essential to the fair, effective and efficient operation of the civil and criminal justice systems. It is also critical in helping to provide access to justice and fair trials (with professional representation) to over two million people each year.
- 5.4 We commission the services people need from solicitors, advice agencies, barristers and commercial organisations (known as our 'providers'). The skills and commitment of legal aid service providers are essential to helping people resolve their problems.
- 5.5 We deliver legal services through the Criminal Defence Service (CDS) and the Community Legal Service (CLS). Both have eligibility criteria in relation to the means of the client and the nature of the problem, with certain limited exceptions.

The Criminal Defence Service

- 5.6 The CDS guarantees that people under police investigation or facing criminal charges can get legal advice and representation. By ensuring that people accused of crimes have access to legal advice and representation, the CDS also helps the police and courts operate fairly and efficiently. The CDS is run by the LSC in partnership with criminal defence providers.
- 5.7 Subject to a means and merits test in certain areas, criminal legal aid offers:
- Advice and assistance from a provider on criminal matters.
 - Legal advice from a provider at the police station during questioning.
 - The cost of a provider preparing a case and initial representation for certain proceedings at a magistrates' court or Crown Court.
 - Full legal representation for defence in criminal cases at all court levels.
 - Legal advice and representation at magistrates' court.
 - Legal advice and representation for Prison Law and Appeals and Review work.

Client choice

- 5.8 While providers contract with the LSC to conduct criminal advice and representation services, the LSC does not control the allocation of cases or work. Clients are free to choose, from those providers with a crime contract, a legal representative of their choice to advise or represent them.

Quality Assessment

- 5.9 It is a mandatory requirement for our 2010 contracts that all providers that deliver services under the civil or crime contract hold either the LSC's own quality standard (the Specialist Quality Mark (SQM)) or the Law Society's quality standard (Lexcel). See **Section 6** for more information about these and how to apply for the SQM.
- 5.10 The LSC also operates a quality assessment tool called peer review. Peer review involves independent experienced legal aid practitioners assessing a random sample of a provider's case files to determine the quality of advice and legal work provided to clients in a particular Category of Law. A standard ratings system is applied to the work as an indication of quality (1 being the highest rating and 5 being the lowest). More information about the Independent Peer Review process can be found at www.legalservices.gov.uk > CDS > Quality and Performance > Peer Review.

2010 Standard Crime Contract

- 5.11 New crime contracts for the delivery of criminal defence services will replace the current contract from 00.01am on 14 July 2010 and have a term of three years, subject to rights of early termination and our right to extend for up to two years. All services under the 2010 Standard Crime Contract (including staff, premises etc.) must commence on 00.01am on 14 July 2010 and an Applicant Organisation must be able to confirm it is ready to deliver these services by 4pm on 15 June 2010. The 2010 Standard Crime Contract is split into:
- Contract for Signature.
 - Standard Terms (govern the relationship between the LSC and the provider).
 - Specification (governs how work should be delivered and includes the Key Performance Indicators that providers must meet and the Payment Annex setting out the applicable rates).
 - Schedules (set out the Classes of Work which Applicant Organisations may undertake and any bespoke terms relevant to the delivery of services at a particular office location).
- 5.12 All the contract documentation (and guides) are available at www.legalservices.gov.uk > CDS > Criminal Contracts > 2010 Standard Crime Contract) and we would strongly recommend that Applicant Organisations familiarise themselves with the terms of the 2010 Standard Crime Contract prior to tendering.

Who we will contract with

- 5.13 Tenders are welcome from new organisations and from organisations which are opening new offices, subject to them meeting the requirements of their regulatory body, the tender process, and the terms of the 2010 Standard Crime Contract.
- 5.14 As part of this tender process we are introducing a Pre-Qualification Questionnaire (PQQ), which will ask a series of questions designed to determine whether Applicant Organisations can meet the minimum standards for a contractual relationship with the LSC.

Legal status of applicants, mergers, subcontracting and consortia bids

- 5.15 We will only contract with a single legal entity for the purposes of providing criminal defence services. Should Applicant Organisations wish to merge or 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, in accordance with the relevant professional body's regulatory rules, will be responsible for ensuring the performance of the provider's obligations under the contract and that a client's retainer will always be with the single entity.

- 5.16 If Applicant Organisations have merged or intend to merge with another organisation, they may apply as the merged entity if the merger is finalised before the deadline for submission of tenders. If the merger is not complete by the deadline, Applicant Organisations are advised to apply in their current form as single legal entities in their own right, then once the merger is finalised, apply to us to have the contract(s) novated, once the contracts have started. For rules on novations see Clause 22 of the Standard Terms.
- 5.17 We will not accept subcontracting arrangements (e.g. where another organisation is paid to deliver part of the service); instead, Applicant Organisations must be able to provide all the services they tender for, without the need to refer work to other individuals or organisations. Please note that the 2010 Standard Crime Contract does permit the use of agents, counsel or approved third parties in certain circumstances and the rules on this are unchanged from the Unified Contract (Crime) July 2008. We will not accept consortia bids for the provision of these criminal defence services.

The Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006

- 5.18 The LSC does not consider that TUPE will apply to the termination of current crime contracts and the re-awarding of the 2010 Standard Crime Contract following the tender process.
- 5.19 In summary, where the number of outgoing providers and successful providers is greater than two on both sides of the alleged transfer of activities, it seems likely that there will be significant difficulties in showing that the relevant activities are an identifiable transfer from a particular outgoing provider to a particular incoming provider.
- 5.20 However, we continue to state that Applicant Organisations should get their own legal advice on TUPE and not rely on our views.

Indemnities from Applicant Organisations with limited liabilities (excluding charities)

- 5.24 If you are an Applicant Organisation with limited liability (unless you are a registered charity) any 2010 Standard Crime Contract awarded will be conditional upon the Applicant Organisation supplying the LSC with a completed, relevant indemnity form specified by us. This must be sent to us on or before 4pm on 15 June 2010 and signed by the ultimate owners of the Applicant Organisation and/or such persons as the LSC might reasonably regard as being controllers and/or senior managers of the organisation and/or where the Applicant Organisation is a limited company, from any company which is a holding company.
- 5.25 If Applicant Organisations fail to provide the completed form (or notify us of any reasons for any delay) by 4pm on 15 June 2010 this will mean that the Applicant Organisation has failed to meet a condition of the 2010 Standard Crime Contract. This will entitle us to reject a tender and/or entitle us not to proceed with any decision made to award the Applicant Organisation a contract or entitle us to terminate the Contract pursuant to Clause 25 of the Standard Terms.

**Section 6: Quality Standards for the delivery of services from 00.01am on
14 July 2010**

- 6.1 It will be a requirement of the 2010 Standard Crime Contract that providers hold a recognised quality standard – either Lexcel or the Specialist Quality Mark (SQM).
- 6.2 A new provider (i.e. one that does not currently hold the Unified Contract (Civil or Crime)) will be subject to a condition of contract award that they either:
- hold Lexcel; or
 - confirm in the PQQ that they wish to apply for the SQM and in accordance with the process set out below:
 1. must pass the desktop audit at least by 4pm on 15 June 2010; and
 2. must fully hold the SQM by 1 April 2011.
- 6.3. Those already holding the SQM in any Category of Law should note that the SQM has recently changed - it now applies to an organisation as a whole rather than being office or category specific. Applicant Organisations will not need to apply for the SQM if they currently hold the SQM and wish to expand to deliver from an additional office or in an additional Category of Law. Further information on these changes is available at www.legalservices.gov.uk >CDS > Quality and Performance > Quality Mark > Specialist Help.
- 6.4. Supervisor standards now form part of the 2010 Standard Crime Contract, and as such, supervision requirements will be covered by the CDS ITT – please see **Section 10** for further information.

Applying to hold the SQM

- 6.5. The process for applying for the SQM is made up of two parts:
1. SQM related questions in the PQQ;
 2. Submission of an Office Manual.
- 6.6. The application process for the SQM is dealt with separately to the tender process, as it is a condition of contract award and not part of the PQQ or CDS ITT response.
- 6.7. However, it is mandatory that Applicant Organisations submit their Office Manual with the PQQ if they are applying for the SQM or its application for the SQM will be rejected. The PQQ asks for a QM1 form as part of the SQM application. This form is non-mandatory. Therefore tenders without this form will not be rejected on this basis.
- 6.8. The SQM comprises of a set of standards designed to ensure that a service is well run and has its own quality control mechanisms. The content of the Office Manual must demonstrate that the Applicant Organisation has the procedures in place to comply with the SQM requirements. The purpose of the desktop audit is to assess the Office Manual to ensure it addresses these requirements.
- 6.9. Where, following initial desktop audit assessment of the Office Manual, the documentation is incomplete or further substantial work is required before the Applicant Organisation's procedures begin to comply with the SQM requirements, we will inform the Applicant Organisation of the omissions. The Applicant Organisation will be given 14 days to provide us with a revised Office Manual.

- 6.10. If the Applicant Organisation fails to provide a revised Office Manual or having done so, following a further desktop audit assessment, the documentation is still incomplete or further substantial work is required before the Applicant Organisation's procedures begin to comply with the SQM requirements, the desktop audit will fail.
- 6.11. Failure to pass the desktop audit will mean the Applicant Organisation has failed to meet a condition of contract award which will entitle the us to reject a tender, and/or entitle us not to proceed with any decision made to award the Applicant Organisation a Contract or entitle us to terminate the contract pursuant to Clause 25 of the Standard Terms.

Applicant Organisations applying for a contract in multiple categories of law

- 6.12. We only require one application for the SQM per Applicant Organisation regardless of the number of ITTs an Applicant Organisation has responded to. This includes applications for civil categories of law under the 2010 Standard Civil Contract tender process.
- 6.13. Consequently, we will process a single SQM application regardless of the number of ITTs an Applicant Organisation has submitted tenders against (or times a PQQ response is considered).
- 6.14. For example, if an Applicant Organisation has submitted a PQQ response (including SQM application) for a 2010 Standard Crime Contract and again for a Mental Health contract we will conduct one application process (i.e. a single desk top audit) and apply the outcome to both tender processes.
- 6.15. Applicant Organisations must therefore submit the required information to apply for the SQM with their first PQQ response and for any subsequent responses relating to ITTs for other Categories of Law, should indicate that they 'commit to achieving the SQM' but should not upload their office manual again.

Lexcel

- 6.17 As Lexcel is an externally run quality standard, any provider choosing to meet the quality requirements via this route would need to hold it at the time of tendering. Further information on Lexcel can be found at the Law Society's website: <http://www.lawsociety.org.uk/productsandservices/lexcel.page>.

Section 7: About Criminal Defence Services from 00.01am on 14 July 2010

Criminal Defence Services

- 7.1. This section describes the criminal defence services that we wish to procure and the requirements that apply. The rules governing how criminal defence services should be delivered are set out in the 2010 Standard Crime Contract.
- 7.2. The contractual obligations that Applicant Organisations will be required to meet are set out in the 2010 Standard Crime Contract which Applicant Organisations should read to understand the full extent of their obligations should they successfully apply for a contract.
- 7.3. Background information on our policy behind the criminal defence services that we are commissioning is set out in summary at www.legalservices.gov.uk > CDS > Crime Contracts > 2010 Standard Crime Contract.
- 7.4. CDS work is split into different classes of work, namely Criminal Investigations, Criminal Proceedings, Appeals and Reviews, Prison Law and Associated CLS Work. Applicant Organisations may apply to do all or some of these classes of work under the 2010 Standard Crime Contract:

- **Criminal Investigations** - covers work undertaken for a client in respect of an arrest or arrests taking place at the same time. An investigation takes place up to the point where a) the client is charged or summoned or b) the investigation concludes in another way, for example, the police take no further action.
- **Criminal Proceedings** - all advocacy assistance and representation given to a client (subject to the client being eligible) from the date of charge or summons. This includes work both at the magistrates' courts and the Crown Court.

Applicant Organisations must apply for Investigations and Proceedings work together and must apply to do Investigations and Proceedings work if they want to undertake Crown Court work.

- **Appeals and Reviews** - post-conviction/sentence work undertaken in relation to appeals and reviews of criminal convictions or sentences and applications to the Criminal Cases Review Commission (CCRC). All Schedules that authorise Investigations and Proceedings work will include Appeals and Reviews.
- **Prison Law** - advice and assistance to a prisoner in treatment cases, sentence cases and advice and assistance (including advocacy assistance) to a prisoner in disciplinary cases and Parole Board cases.
- **Associated CLS** - Legal Help and civil Legal Representation under a CLS Funding Certificate in actual or proposed proceedings: a) for judicial review (including proceedings under the Human Rights Act 1998) or proceedings for habeas corpus, provided those proceedings arise from a matter or case within the Crime Category or b) proceedings under the Proceeds of Crime Act 2002.

All Schedules will be issued with Associated CLS.

- Applicant Organisations may also apply to be included in a **Duty Solicitor Scheme**. Details and information about the Duty Solicitor Schemes are set out at **Section 9**.

7.5 Very High Cost Case (VHCC) work is subject to a separate tender process. A consultation on options for a new VHCC scheme for litigators to be implemented in July 2010 closed on 8 February 2010. One of the options concerns extending the Litigator's Graduated Fee Scheme and may have an impact on Crown Court work and fees governed by the 2010 Standard Crime Contract. More information is available at www.legalservices.gov.uk.

Payment

7.6 The general rules regarding remuneration for work are set out at Part A, Section 5 of the 2010 Standard Crime Contract Specification.

7.7 Payment rates for work carried out under the 2010 Standard Crime Contract are set out in the Payment Annex of the 2010 Standard Crime Contract Specification. The LSC will make a Standard Monthly Payment (SMP) to providers based on the average value of their claims, excluding work undertaken in the Crown Court. Remuneration for Crown Court work is set out in the Criminal Defence Service (Funding) Order 2007 (as amended) available at www.opsi.gov.uk.

Contract start date

7.8 Applicant Organisations must be able to commence delivering criminal defence services from 00.01am on 14 July 2010. Where Applicant Organisations have committed in their CDS ITT response to put necessary arrangements in place rather than having them in place at the time of submitting their tender (e.g. to set up an office or to recruit a supervisor against a vacant post), then we will seek verification of this by 4pm on 15 June 2010 to ensure that the services tendered for are capable of being delivered from 00.01am on 14 July 2010.

Section 8: About the volume and location of services we wish to procure

- 8.1 We are not procuring criminal defence services by CJS area or procurement areas, with the exception of the rules that exist around duty solicitor schemes.

Office location

- 8.2 The Applicant Organisation must have an office that meets:
- the definition of office in Part A, Section 1 of the 2010 Standard Crime Contract Specification
 - the office requirements set out in Part A, Section 2 of the 2010 Standard Crime Contract Specification.
- 8.3 Applicant Organisations must provide evidence of this by 4pm on 15 June 2010.
- 8.4 The information that we require about each of your offices is detailed within the CDS ITT (see **Section 10** for more information). All Applicant Organisations must confirm that they will deliver criminal defence services from an office that complies with these requirements.

Allocation of criminal defence services

- 8.5 The award of a 2010 Standard Crime Contract and any associated Duty Solicitor Scheme slots does not guarantee a minimum amount of contract work and the LSC does not control the allocation of cases or work.
- 8.6 If Applicant Organisations meet the requirements of the tender process they will be issued with a 2010 Standard Crime Contract and, if they have applied, and their office qualifies for a Duty Solicitor Scheme(s), they will be allocated work on the Duty Solicitor Scheme(s) for which their office qualifies. Information about how Duty Solicitor work will be allocated is set out at **Section 9**.
- 8.7 We have produced a Criminal Justice System (CJS) information document (available at www.legalservices.gov.uk > CDS > Tenders > Crime Contracts for 2010) that sets out information about the volume and value of police station and magistrates' court work by CJS area in 2008/09.

Allocation for the Public Defender Service

- 8.8 We will allocate slots to Public Defender Service (PDS) Duty Solicitors on the same basis as for any other Applicant Organisation although they will not be required to formally apply for a contract (as they are part of the LSC). More information about the PDS is available at www.legalservices.gov.uk.

Section 9: Criminal Justice System areas and Duty Solicitor Schemes

- 9.1 The LSC breaks up each of the 42 Criminal Justice System (CJS) areas in England and Wales into a number of Duty Solicitor Schemes, based on police station and magistrates' court location in the area. As part of the tender process for the 2010 Standard Crime Contract, we are also inviting tenders for membership of the Duty Solicitor Schemes operated by the LSC. Applicant Organisations may apply to join any Duty Solicitor Scheme for which they are eligible by virtue of the postcode of their office.
- 9.2 Where applying to join a Duty Solicitor Scheme, the Applicant Organisation must have an office within the qualifying geographic boundaries (as set out in the postcode tool available at www.legalservices.gov.uk > CDS > Tenders > Crime Contracts for 2010) by 00.01am on 14 July 2010, and provide evidence of this by 4pm on 15 June 2010.¹
- 9.3 The LSC operates two CDS Duty Solicitor Schemes:
- The Police Station Duty Solicitor Scheme
 - The magistrates' court Duty Solicitor Scheme (including the Virtual Court Duty Solicitor Scheme)
- 9.4 The schemes ensure that individuals who require assistance at the police station or the magistrates' courts and who do not have their own solicitor have access to a Duty Solicitor Scheme.
- 9.5 A list of Duty Solicitor Schemes under the 2010 Standard Crime Contract can be found at **Annex A** and **Annex B** shows Duty Solicitor police station scheme rota arrangements for the 2010 Standard Crime Contract.

How to apply for membership of a Duty Solicitor Scheme

- 9.6 Applicant Organisations will be asked in the CDS ITT whether or not they wish to undertake Duty Solicitor work and if so which Schemes they wish to apply for. We will award Duty Solicitor Scheme membership to Applicant Organisations if they have successfully applied for a 2010 Standard Crime Contract and if they have applied to join Schemes for which their office(s) are eligible. All qualifying Applicant Organisations will be given access to the Duty Solicitor Schemes which they qualify for.
- 9.7 As well as a PQQ and CDS ITT, Applicant Organisations will also need to complete and submit a Duty Solicitor Application Form, called a CDS 12, for each Duty Solicitor that will carry out work under your contract by 4pm on 30 April 2010. CDS 12 forms will be provided when we notify Applicant Organisations about the success of their tender.
- 9.8 There is no requirement for Duty Solicitors to be working for Applicant Organisations at the time of tender, but Applicant Organisations must indicate in the Tender Information Form the number of Duty Solicitors that will be employed by the organisation to work on Duty Solicitor Schemes on 14 July 2010 and we must receive a CDS 12 form for each of those Duty Solicitors by 4pm on 30 April 2010.

¹ Duty Solicitor Scheme boundaries, defined according to postcode sectors, were set out in our consultation response *Eligibility Rules for Membership of Duty Solicitor Schemes And Local Scheme Boundaries: A Consultation*, published in September 2009 and available at www.legalservices.gov.uk.

- 9.9 For the avoidance of doubt, this includes:
- all Duty Solicitors who are currently working for your organisation on Schemes under the current Unified Contract (Crime) July 2008, and who will continue to work for your organisation from 00.01am on 14 July 2010
 - newly qualified Duty Solicitors
 - any Duty Solicitors who will move organisations and be working for your organisation from 00.01am on 14 July 2010.
- 9.10 Following this tender process, there **will be no further opportunity** for organisations to apply for inclusion on additional Duty Solicitor Schemes until the expiry of the 2010 Standard Crime Contract (anticipated to be 13 July 2013 at the earliest).

How the schemes operate

- 9.11 Schemes may operate on the basis of rotas or panels or a combination of those.
- 9.12 **Rota schemes** – means a list of Duty Solicitors to provide advice and assistance or advocacy assistance at magistrates' courts and police station advice and assistance over a given period. The number of Duty Solicitors on any rota is not restricted, and all Duty Solicitors whom Applicant Organisations employ may work on the schemes which they have successfully applied to join.
- 9.13 By joining a scheme, providers will be allocated Duty Solicitor slots on both the police station scheme rota and magistrates' court scheme rota in that area.
- 9.14 A Duty Solicitor on a rota is also eligible to receive work by way of 'Back-Up' if the Duty Solicitor on a rota is unable to accept a request.
- 9.15 Generally we will publish rotas every six months and will reallocate the slots proportionately to all Duty Solicitors employed or engaged by Applicant Organisations at the beginning of the new rota. The first rota will commence on 14 July 2010 and will run until 13 January 2011 and will consist of all those Duty Solicitors for whom we receive CDS 12s for by 4pm on 30 April 2010. We may amend the last three months of these rotas to correct any errors or omissions.
- 9.16 **Panel schemes** – means an arrangement by which the Duty Solicitor Call Centre telephones Duty Solicitors on a Duty Solicitor Scheme in sequence to identify a Duty Solicitor available to provide advice and assistance at a police station. Where schemes operate a panel system, each Duty Solicitor from whom we receive a qualifying CDS12 will be included in the relevant panel list. The frequency of calls received by each Duty Solicitor will depend on both the number of other Duty Solicitors on the panel and the volume of clients requiring assistance from Duty Solicitors in that scheme.

Duty Solicitor work allocation

- 9.17 Applicants will be asked in the CDS ITT Tender Information Form to state the maximum number of slots each office can cover with their Duty Solicitors. Slots will then be awarded on the basis of Applicant Organisations' proportions of the total pool of eligible Duty Solicitors, working at all of the eligible offices of all successful applicants on that scheme, (who we have received a qualifying CDS12 by 4pm on 30 April 2010 for) up to their stated slot maximums.

9.18 If Applicant Organisations successfully apply for a 2010 Standard Crime Contract, and they have also applied for Duty Solicitor slots, we will confirm eligibility for the schemes for which Applicant Organisations have applied, based on the scheme catchment areas in which the office(s) is located, when we advise Applicant Organisations of the outcome of their tender. Duty Solicitor slots are allocated pro-rata and the frequency of slots will depend on the number of other organisations who apply and qualify to join the scheme and the number of Duty Solicitors working for those organisations.

Joining a scheme(s) which your organisation would not normally qualify for

9.21 If Applicant Organisations apply to join a Duty Solicitor Scheme during the 2010 Standard Crime Contract tender process, they may also indicate in the Tender Information Form any schemes for which they do not normally qualify (because their office location is outside the catchment area of that scheme) but which they would be willing to join. In order to fulfill our statutory obligations, we may then allow Applicant Organisations to join an additional scheme(s) if there are insufficient tenders from Applicant Organisations who do qualify for that scheme. If Applicant Organisations do not express an interest in a particular scheme, we will not let them join that scheme even where there are insufficient tenders from qualifying Applicant Organisations.

Section 10: How to submit a tender using the eTendering system

Introduction

10.1. This section covers how Applicant Organisations must submit a compliant tender and how to use the eTendering system to do so.

10.2. A completed tender will consist of a response to both a PQQ and a CDS ITT:

(1) PQQ

- Response to the questions
- Response to the Applicant Information Form (non-mandatory);

And, if applying for the SQM:

- The Applicant Organisation must as part of the PQQ response submit its Office Manual

and

(2) CDS ITT

- Response to the questions;
- Response to the Tender Information Form (Mandatory Form); and
- A completed Supervisor Standard Self-Declaration Form for each Supervisor (non-mandatory).

Mandatory forms and non-mandatory forms

10.4 The Tender Information Form is the only Mandatory Form, which must be completed and submitted with the CDS ITT in order for a tender to be complete. The SQM documents are dealt with in **Section 6**.

10.5 Completed Supervisor Standard Self-Declaration Forms are classed as 'non-mandatory' which means they are not required at the time of submitting a tender. However, it is a condition of any contract award that Applicant Organisations must provide this information for assessment by 4pm on 15 June 2010. Consequently, we would encourage Applicant Organisations to submit this information if possible at the time of tender and provision has been made for this within the CDS ITT.

10.6 Where any conditions of contract awards are not met, the Applicant Organisation may have its tenders rejected and/or any contract awarded will be terminated.

The eTendering system

10.7 eTendering is an electronic tender process used increasingly by Government and private organisations to procure contracts and commission services. It replaces paper-based forms and uses a secure internet site as a platform through which interested parties can submit tenders. It also offers a secure messaging service enabling Applicant Organisations and the LSC to communicate with each other throughout the tender process.

10.8 eTendering offers many advantages over paper-based systems including:

- access to all relevant documents in one place
- secure portal through which to submit tenders and send/receive communications

- instant submission with no risk associated with postal failure
- automatic acknowledgement of receipt
- full audit trail of all transactions.

Registration

10.9 To use the eTendering system Applicant Organisations will need to register onto the system. To do this Applicant Organisations should go to www.legalservices.bravosolution.co.uk Once Applicant Organisations have registered they will receive an automated email sent to their registered email address detailing their username and password to enable them to log into the system in future. For more information on how to use the eTendering system please see the 'Technical Support and Guidance' on the eTendering portal. If required, Applicant Organisations can access this information from the eTendering front page before registering.

10.10 Applicant Organisations may have already registered on the eTendering system as part of a response to another of the LSC's ITTs. If this is the case, then Applicant Organisations do not need to register again.

Steps to submitting a tender

10.11 Below we provide an overview of the steps that an Applicant Organisation must follow in order to tender to deliver criminal defence services.

10.12 A tender will consist of responses to the:

- 1) PQQ; and
- 2) CDS ITT (which includes the CDS ITT questions and the Tender Information Form (Mandatory Form)).

10.13 These steps are set out in the eTendering system, we suggest Applicant Organisations look at the system in conjunction with reading this section:

- 1) Use the eTendering system to prepare and submit (publish) a single organisation response to the Pre- Qualification Questionnaire (PQQ)
- 2) Use the eTendering system to prepare and submit (publish) a response to the CDS ITT. A CDS ITT response will comprise of:

- **CDS ITT questions**

Applicant Organisations must pass the CDS ITT questions to qualify for a 2010 Standard Crime Contract. In this section Applicant Organisations will be able to download the relevant Supervisor Standard Self-Declaration Forms for their supervisor(s) and submit the forms either with the CDS ITT or by 4pm on 15 June 2010.

- **Tender Information Form**

Applicant Organisations must download a Tender Information Form (TIF) from the CDS ITT attachments link in the eTendering tool, complete and save it to your computer and then upload it with the tender. This is a Mandatory Form and asks for information about the criminal defence services Applicant Organisations wish to deliver under the 2010 Standard Crime Contract and the offices from which they intend to do this. It also

asks what, if any, duty work Applicant Organisations wish to be allocated - see **Section 9** for more information about the Duty Solicitor Schemes.

- 3) Once Applicant Organisations have completed a response to a PQQ and CDS ITT they must ensure that they submit ('publish') it.

Important note if your organisation has already expressed an interest or responded to the PQQ on the eTendering system in relation to another LSC ITT.

- 10.14 Applicant Organisations must as part of their response to the CDS ITT submit a response to the PQQ on the eTendering system.
- 10.15 Applicant Organisations may though have already 'expressed an interest' or in fact completed and submitted a response to the PQQ as part of responding to another LSC invitation to tender.
- 10.16 To avoid having to fill in a new PQQ each time Applicant Organisations submit a response to an LSC ITT, the eTendering system is designed so that it saves Applicant Organisations' latest response to the PQQ. However, this means that Applicant Organisations will need to review their response to ensure that they have answered all required questions and the information provided is accurate. If any changes are needed, Applicant Organisations will need to resubmit the PQQ.
- 10.17 As part of a response to the CDS ITT, Applicant Organisations will be required to confirm that a response to the PQQ has been submitted and that the information contained in the last response remains accurate and up to date at the time of submitting the CDS ITT.
- 10.18 In relation to this tender process, at 4pm on 12 March 2010, we will extract Applicant Organisations' response to the PQQ held on the eTendering system. We will assess on the basis of the latest information included in the response to the PQQ submitted to us before this closing time and date.

Pre-Qualification Questionnaire

- 10.19 The PQQ's purpose is to enable us to assess whether an Applicant Organisation meets our minimum standards of suitability for a publicly funded legal aid contract and to gather certain other information about Applicant Organisations.
- 10.20 The PQQ covers the following areas:
 - Are there any mandatory grounds for rejection of the Applicant Organisation under regulation 23(1) of the Public Contracts Regulations 2006 (Applicants or Key Personnel convicted of conspiracy, bribery, fraud, money laundering)?
 - Requirement to have one year's managerial experience and three years' experience of delivering specialist legal advice
 - Requirement to have a complaints process, and no history of complaints being upheld and sanctions applied by a regulatory/complaints body, or upheld professional negligence claims, in the last 3 years (in relation to publicly funded areas of law only)
 - Requirement to have appropriate professional indemnity, public liability and employers' liability insurance cover
 - Requirement to comply with workplace legislation (data protection, equalities and health and safety at work) by having appropriate policies and procedures

- Business conduct including interventions and adverse findings by regulatory bodies, bankruptcy/insolvency, terminations for fault of public sector contracts, criminal convictions and failures to repay money owing on public sector contracts
 - Confirmation that the Applicant Organisation has met its tax, VAT and NI liabilities
 - Confirmation that the Applicant Organisation will hold an appropriate quality standard (SQM or Lexcel)
- 10.21 A full version of the PQQ can be found on the eTendering system through the 'PQQs open to all suppliers' link.
- 10.22 Some answers to PQQ questions will be assessed on a pass/fail basis and do not offer an opportunity for Applicant Organisations to give further exceptional circumstances. In relation to these types of questions the requirement to have the required experience is absolute and is a mandatory ground for failing the PQQ.
- 10.23 Other questions on the PQQ provide an opportunity to set out exceptional circumstances where an Applicant Organisation considers that it cannot meet the requirements but that exceptional circumstances apply which mean that the Applicant Organisation should be considered by us as still meeting the PQQ requirement.
- 10.24 It is the Applicant Organisation's responsibility to ensure that it makes full use of this opportunity in order to provide comprehensive details of any exceptional circumstances. We are under no obligation to seek further information or clarify a response – and will not do so where in our opinion this would give an Applicant Organisation an unfair opportunity to improve their response.
- 10.25 The opportunity to give exceptional circumstances cannot be used to provide other supplementary information to an Applicant Organisation's PQQ or CDS ITT. Information incorrectly submitted, as exceptional circumstances that is intended only to enhance an Applicant Organisation's bid, will not be considered.
- 10.26 If an Applicant Organisation fails any PQQ question, the PQQ will be unsuccessful and none of the Applicant Organisation's tenders will be considered further.
- 10.27 The PQQ also asks for information about financial sustainability and equalities and diversity through an Applicant Information Form. This information is not assessed (and the form is non-mandatory at the time of submitting the tender), although we may use the financial sustainability information to inform future contract management. However, if Applicant Organisations do not submit this form at the time of application and are subsequently awarded a contract following assessment of the tender, we will require Applicant Organisations to provide this information as part of the terms of the contract.
- 10.28 Therefore we do encourage Applicant Organisations to complete and attach the relevant Applicant Information Form (Private Sector or not for profit as appropriate), however, where an Applicant Information Form is not uploaded and submitted as part of a tender, it will not result in a tender being rejected. Guidance about filling out the financial section of the Applicant Information Form is available at www.legalservices.gov.uk > CDS > Tenders > Crime Contracts for 2010.

CDS Invitation to Tender

- 10.29 Once logged into the eTendering system, Applicant Organisations can access the CDS ITT from the home page by clicking on the 'Invitations to Tender (ITTs)' link which will bring up a list of all ITTs currently open or by clicking on the 'Projects' link.

10.30 Applicant Organisations should click on the CDS ITT. This will bring up an overview of the CDS ITT. Applicant Organisations should then 'express an interest' in the CDS ITT and 'reply' to it (these links can be found on the left-hand side of the page).

What is in the CDS ITT?

- 10.31 The CDS ITT comprises of the following sections set out in a single page of the eTendering system:
- CDS ITT questions
 - Indemnities
 - Declarations (see paragraph 10.48)
- 10.32 The Tender Information Form (TIF) is a separate form that should be downloaded from the attachments link to the left of the page.
- 10.33 All of the questions in the CDS ITT questions are pass or fail and are weighted evenly whereas the TIF asks for information specific to your tender and is required for us to be able to allocate work.

CDS ITT questions

- 10.34 The CDS ITT questions section will seek confirmation that the Applicant Organisation meets the minimum service requirements to be considered for the award of a contract.
- 10.35 Whilst this stage should be completed only once by an Applicant Organisation, we are asking Applicant Organisations to respond in relation to **ALL** offices from which they intend to deliver criminal defence services.
- 10.36 All of the questions in this section require an answer of Yes or No. An assessment of the responses is set out below.

Peer review

- 10.37 Applicant Organisations must not have received a confirmed LSC crime peer review rating of 4 or 5 since December 2006. (i.e. at the conclusion of the process, following appeal and any follow-up audit).

Supervisor standards

- 10.38 Applicant Organisations must meet the LSC supervisor standards (set out in Part A of the 2010 Standard Crime Contract Specification) for each class of work that is applied for or confirm that they will do so by the contract start date and agree to provide evidence of this by 4pm on 15 June 2010.
- 10.39 Applicant Organisations must have, employ or agree to recruit a supervisor that meets LSC requirements and who is in post by 00.01am on 14 July 2010 and provide evidence of this by 4pm on 15 June 2010. A supervisor can be a partner, principal or employee of the organisation who actively supervises staff and meets all of the supervisory requirements set out in Part A, Section 2 of the 2010 Standard Crime Contract Specification.
- 10.40 Any Contract awarded to Applicant Organisations will be conditional upon them providing us with the details of a suitably qualified supervisor. Applicant Organisations can upload the relevant Supervisor Standard Self-Declaration Form as

part of this tender using the attachments link in the eTendering system or submit the forms via the eTender messaging service of this ITT after the closing date of 4pm on 12 March 2010 but before 4pm on 15 June 2010. If Applicant Organisations fail to provide this information by 4pm on 15 June 2010 they would have failed to meet a condition of the 2010 Standard Crime Contract. This will entitle us to reject a tender and/or entitle us not to proceed with any decision made to award the Applicant Organisation a contract or entitle us to terminate the Contract pursuant to Clause 25 of the Standard Terms.

- 10.41 Supervisor Standard Self-Declaration Forms are not Mandatory Forms, however it will be a condition of contract that we receive these by at least 4pm on 15 June 2010. Therefore, where possible Applicant Organisations are encouraged to submit these forms with their tender.
- 10.42 Where the criteria refer to 'have' or 'employ' it means that the Applicant Organisation must hold an employment contract or partnership agreement with that staff member. Those employed by the Applicant Organisation should be accessible to clients as and when required.
- 10.43 Where applying for criminal investigations and criminal proceedings, the organisation must have or employ at least one full-time equivalent Crime Supervisor. Where applying for Appeals and Reviews only, the organisation must have or employ a supervisor who meets the supervisory requirements for an Appeals and Reviews supervisor. Where applying for Prison Law, the organisation must have or employ at least one full time equivalent Prison Law supervisor for the organisation for every six full-time (or equivalent) designated fee earners or caseworkers.

Office requirements

- 10.44 Applicant Organisations must meet the office requirements set out in the 2010 Standard Crime Contract Specification and provide evidence of this by 4pm on 15 June 2010. See **Section 8** for more information about the volume and location of services that we wish to procure.

Indemnity requirements

- 10.45 If you are an Applicant Organisation with limited liability (unless you are a registered charity) any 2010 Standard Crime Contract awarded will be conditional upon the Applicant Organisation supplying the LSC with a relevant indemnity form specified by us (available in the attachments section of the CDS ITT). This must be sent to us on or before 4pm on 15 June 2010 and signed by the ultimate owners of the Applicant Organisation and/or such persons as the LSC might reasonably regard as being controllers and/or senior managers of the organisation and/or where the Applicant Organisation is a limited company, from any company which is a holding company.
- 10.46 If Applicant Organisations fail to provide the completed form (or notify us of any reasons for any delay) by 4pm on 15 June 2010 their 2010 Standard Crime Contract will not be valid and Applicant Organisations will not be able to perform Contract work or claim payment for such from 00.01am on 14 July 2010.

Declarations and Contract for Signature

- 10.47 Applicant organisations are required to submit both the CDS ITT and a PQQ to comprise a complete tender.
- 10.48 Applicant Organisations must confirm that they have read, understood and agree to the terms of the Contract for Signature, which will be available in the attachments section of the CDS ITT. This confirmation constitutes Applicant Organisations'

signature and their intention to submit a binding irrevocable offer(s) to us on the terms and conditions of tender and that Applicant Organisations agree to enter into a contract with us to deliver publicly funded criminal defence services on the terms and conditions of the 2010 Standard Crime Contract.

Tender Information Form (TIF)

- 10.49 As part of their response to the CDS ITT, Applicant Organisations must download the TIF, then respond to it and upload it back onto the eTendering system. The attachments link on the left hand of the screen allows Applicant Organisations to download the TIF.
- 10.50 Applicant Organisations should click 'Yes' if a message comes up when opening the form to enable macros. If Applicant Organisations' computer settings prevent the use of macros please see the guidance on enabling macros available at www.legalservices.gov.uk > CDS > Tenders > Crime Contracts for 2010.
- 10.51 We require Applicant Organisations to submit information in the TIF about each office from which they intend to deliver criminal defence services.
- 10.52 When the form opens, Applicant Organisations will see the instruction screen. Applicant Organisations can then click 'show form' to see where the Applicant Organisation's details should be added. Applicant Organisations should then click 'Add office' to add information about its office and then click 'Add another office' to provide information about any additional offices.

Question 1: Office details

- The address and postcode of the proposed office
 - Any existing LSC account number for the office
 - The classes of work Applicant Organisations intend to conduct from that office
- 10.53 Applicant Organisations will be required to specify as a minimum the postcode sector in which they intend to have an office when the contract starts on 00.01am on 14 July 2010. Contract offers will be conditional on the office locations being confirmed to us by 4pm on 15 June 2010.
- 10.54 Applicant Organisations can select from five options for the purposes of defining the classes of work that they are applying to conduct at the office.
- 10.55 Selecting the classes of work Applicant Organisations wish to conduct will specify what information should be completed for that office.

Question 2: Application for Duty Solicitor Schemes for which your offices are eligible

- 10.56 Applicant Organisations must indicate how many qualified duty solicitors they will have at each office (or how many they intend to have by 00.01 on 14 July 2010). The number provided is of Duty Solicitors that Applicant Organisations will submit CDS 12s for by 4pm on 30 April 2010. See **Section 9** for more information about the Duty Solicitor Scheme.
- 10.57 Applicant Organisations will be asked to provide the number of duty solicitors they intend to locate at each office. This should include those Applicant Organisations wish to recruit.

- 10.58 Applicant Organisations will be presented with a choice of all of the schemes for which the postcode entered at Question 1 is eligible. They must then select the ones that they wish to apply for.
- 10.59 An individual office may be eligible for more than one scheme and Applicant Organisations can reflect this on the TIF.
- 10.60 If an Applicant Organisation is eligible for another scheme because of another office they should complete a new record for that office by selecting 'Add office' on the form.
- 10.61 Applicant Organisations will also be asked the maximum number of police station slots they are able to undertake per month and the maximum number of court duty slots they are able to undertake per month.
- 10.62 Membership of Duty Solicitor schemes is determined by the postcode of Applicant Organisations' office(s). Applicant Organisations can check which schemes their office is eligible for by using the postcode eligibility tool at www.legalservices.gov.uk. A list of all schemes under the 2010 Standard Crime Contract is set out at **Annex A**. If Applicant Organisations open an office in a different postcode sector to the one indicated in this section of the TIF, their application for duty schemes may be affected.

Question 3: Joining a scheme(s) which you would not normally qualify for

- 10.63 We may allow Applicant Organisations to join an additional scheme(s) outside of the catchment area for their usual scheme(s). Please see **Section 9** for more information. Applications for additional schemes will be required to provide the same information asked for at **Question 2** of the TIF as set out above.

What happens once a response to a CDS ITT is 'published'?

- 10.64 Responses submitted to the CDS ITT will be treated as sealed bids. This means that the LSC will not open any responses until after the deadline for the tender exercise.
- 10.65 Applicant Organisations can therefore amend and resubmit their responses to the CDS ITT up until the closing date for tenders to be submitted (4pm on 12 March 2010).
- 10.66 Responses will be automatically acknowledged when they are submitted for the first time. There will be no acknowledgement of resubmitted responses where Applicant Organisations amend and republish their response to a CDS ITT. We will assess the latest submitted response.
- 10.67 By submitting a tender, Applicant Organisations make one or more irrevocable binding offers on the terms and conditions of the tender to enter into a contract with us to perform criminal defence services from 00.01am on 14 July 2010 on the terms and conditions in the 2010 Standard Crime Contract. Each of such offers is capable of acceptance by us either on its own or together with some or all of such other offers in any combination. We may accept any of an Applicant Organisation's irrevocable binding offers at our absolute discretion and notify Applicant Organisations of our acceptance of such offers in writing (including via electronic means such as email). If an Applicant Organisation's offers are conditional on it undertaking certain actions (for example, opening offices or recruiting supervisors) then meeting those conditions will be part of the contract formed.

Section 11: How the tenders will be assessed

Opening procedure

11.1 Responses submitted by Applicant Organisations will not be opened until after the deadline has passed. An authorised LSC representative will open responses and all responses will be opened at the same time (parallel opening) to ensure fairness.

PQQ assessment

11.2 The PQQ consists of a series of yes/no questions that are designed to test compliance with our requirements.

11.3 We expect all Applicant Organisations to confirm compliance with all of our PQQ requirements. If an Applicant Organisation fails any question in the PQQ then they will not be considered further and their tender will be unsuccessful.

11.4 At 4pm on 12 March 2010, we will extract Applicant Organisations' responses to the PQQ held on the eTendering system. We will assess on the basis of the latest information included in the response to the PQQ submitted to us before this closing time and date.

CDS ITT questions

11.5 The CDS ITT questions reflect the minimum service requirements that we want all crime providers to meet.

11.6 All of the questions asked this section will be equally weighted and assessed on the basis of pass or fail and any Applicant Organisation unable to confirm that they meet all our requirements will have their response to the CDS ITT rejected.

11.7 The only exception to this is the requirement to submit CDS 12s by 4pm on 30 April 2010 where the tender will not be rejected if an Applicant Organisation answers 'No' but the Applicant Organisation will not be allocated any work on Duty Schemes.

Notification of contact award

11.8 We will notify Applicant Organisations electronically via the eTendering system whether a tender has been successful, and (if applicable) which offices we have accepted and which Duty Schemes Applicant Organisations are eligible to work on and classes of work they are eligible for. A binding contract between us will be formed at the point of notification to perform the relevant criminal defence services from 00.01am on 14 July 2010 on the terms and conditions in the 2010 Standard Crime Contract.

Appeals

11.9 A completed tender consists of a response to the Pre-Qualification Questionnaire (which, if applying for the SQM must include submission of an Applicant Organisation's Office Manual) **and** a response to the CDS ITT (this includes the TIF which is a Mandatory Form).

11.10 Where a tender (or any part it) is unsuccessful or rejected, the Applicant Organisation will be given written reasons as to why it was unsuccessful or rejected.

- 11.11 There will be no right of appeal against a decision to reject a tender if it is incomplete or if a tender (or any part of it) is received after 4pm on 12 March 2010 (or after any deadline set by a request for clarification or further information) or is not received by the LSC at all.
- 11.12 There will be a right of appeal if a tender is unsuccessful in the following circumstances:
- (a) where the Applicant Organisation does not pass the PQQ;
 - (b) where the Applicant Organisation does not pass the CDS ITT;
 - (c) where the Applicant Organisation does not comply with paragraph 12.2 **and** a notice that the tender is unsuccessful stipulates a right of appeal.
- 11.13 Appeals will only be accepted if made through the eTendering system and must be received prior to the applicable deadline(s) set out in **Section 3** of this IFA. An appeal submitted after the applicable deadline, in any other form or by any other method will not be considered.
- 11.14 The Legal Director (or the Legal Director's appointed representative) will review all appeals, and will determine the procedure and will decide whether to invite or require any further information from the Applicant Organisation, before making a determination on the appeal.
- 11.15 There will be no further right of appeal.

Section 12: Terms and conditions of tender

- 12.1. The Applicant Organisation's participation in the tendering exercise for publicly funded Criminal Defence Services covered by the 2010 Standard Crime Contract are governed by these Terms and Conditions of Tender. The Applicant Organisation must also comply with the User Agreement governing use of the LSC eTendering System and all rules, conditions of Contract award and instructions set out in any Tender Document.
- 12.2. Submission of a tender which fails to comply with any Terms and Conditions of Tender, User Agreement or other rules, conditions of Contract award and instructions shall, without affecting the Applicant Organisation's liability for non compliance, entitle the LSC to reject a tender, assess the tender as unsuccessful and/or entitle the LSC not to proceed with any decision made to award the Applicant Organisation a Contract or entitle the LSC to terminate the Contract pursuant to Clause 25 of the Standard Terms.
- 12.3. A tender must be submitted by 4pm on 12 March 2010 ("the deadline"). For the purposes of this deadline, it is understood that the time on the eTendering System shall be the definitive time.
- 12.4. By submitting a tender, the Applicant Organisation makes one or more irrevocable binding offers on the terms and conditions of the tender to enter into a contract with us to perform criminal defence services from 00.01am 14 July 2010 on the terms and conditions in the 2010 Standard Crime Contract. Each of such offers is capable of acceptance by us either on its own or together with some or all of such other offers in any combination. We may accept any of an Applicant Organisation's irrevocable binding offers at our absolute discretion and will notify Applicant Organisations of our acceptance of such offers in writing (including via electronic means such as email).
- 12.5. By submitting a tender, the Applicant Organisation is agreeing to comply with any conditions of 2010 Standard Crime Contract award (including any requests for evidence) stated in the Tender Documents and the Terms and Conditions in the 2010 Standard Crime Contract if it is awarded one.
- 12.6. The Applicant Organisation acknowledges that the award of a 2010 Standard Crime Contract does not guarantee any minimum amount of work. Work under the 2010 Standard Crime Contract, including that which may arise from slots on Duty Solicitor Schemes, is dependent on a successful Applicant Organisation attracting clients, and are subject to amendment under the terms of the 2010 Standard Crime Contract.
- 12.7. All tenders and appeals must be submitted on the eTendering System at www.legalservices.bravosolution.co.uk. A tender or appeal submitted in any other form, or by any other method, will not be considered.
- 12.8. For a tender to be complete, it must consist of a response to the Pre-Qualification Questionnaire (which, if applying for the SQM must include submission of the Applicant Organisation's Office Manual) **and** a response to the CDS ITT (this includes the TIF which is a Mandatory Form).
- 12.9. The Applicant Organisation must not amend or alter any document comprising part of the tender after the deadline.

- 12.10. After the deadline any information or documents submitted in response to a request for clarification or further information (in accordance with paragraph 12.26) will also form part of the Applicant Organisation's tender.
- 12.11. In the event of any conflict between the information, answers or documents submitted as part of a tender, the conflict will be resolved by accepting the information, answer or document least favourable to the Applicant Organisation.
- 12.12. It is the responsibility of the Applicant Organisation to make sure that a tender is fully and accurately completed (including any Mandatory Form). The LSC is under no obligation to contact the Applicant Organisation to clarify its tender or to obtain missing information or the Mandatory Form.
- 12.13. It is the responsibility of the Applicant Organisation to make sure that it submits a tender in good time to take account of any problems or delays in uploading the tender and documents requested by the LSC, accessing the LSC eTendering System owing to heavy usage, internet access or with the Applicant Organisation's own IT systems.
- 12.14. The Applicant Organisation is solely responsible for the costs and expenses incurred in connection with the preparation and submission of tender and all other stages of the tender process. Under no circumstances will the LSC, or any of its employees, be liable for any costs.
- 12.15. The Applicant Organisation must reply to all the questions in order to respond to the PQQ and the CDS ITT, even if it has previously provided this information or if it thinks the LSC is already aware of it (e.g. if the Applicant Organisation holds an existing contract with the LSC).
- 12.16. The Applicant Organisation must not submit a tender which contains any information which the Applicant Organisation knows to be, or has reason to be, false or misleading in accordance with Clause 18 of the 2010 Standard Crime Contract Standard Terms. If information given by the Applicant Organisation is subsequently found to be false or misleading, this may lead to the Applicant Organisation's tender being unsuccessful and/or entitle the LSC not to proceed with any decision made to award the Applicant Organisation a 2010 Standard Crime Contract or entitle the LSC to terminate the 2010 Standard Crime Contract pursuant to Clause 25 of the Standard Terms.
- 12.17. If, because an Application Organisation has registered more than once on the LSC eTendering system or, for any other reason, more than one response to the PQQ or a CDS ITT is received by the LSC the latest response submitted by an Applicant Organisation prior to the deadline shall be the response that is considered by the LSC in the assessment and award process.
- 12.18. The Applicant Organisation may amend and re-submit their response to the PQQ and/or CDS ITT at any time up to the deadline. If so amended and re-submitted by the Applicant Organisation the latest response submitted by an Applicant Organisation prior to the deadline shall be the response that is considered by the LSC in the evaluation and award process.
- 12.19. The person who submits a tender must be a member of the Applicant Organisation's Key Personnel with appropriate authority to submit a tender for the Applicant Organisation.

- 12.20. A tender will be rejected if it (or any part of it) is submitted after the deadline nor will the LSC consider (i) requests to submit the tender (or any part of it) after the deadline or (ii) requests for an extension of the time or date fixed for the submission of the tender (or any part of it).
- 12.21. A tender will be unsuccessful where, following assessment, the Applicant Organisation:
1) fails to pass the PQQ;
2) fails to pass the CDS ITT.
- 12.22. The LSC reserves the right to amend at any time any of the Tender Documents and the 2010 Standard Crime Contract or to issue clarifications (including in response to questions and answers from Applicant Organisations) or to correct errors or omissions provided that in all cases any such amendment is not sufficiently material to amount to a new tender or contract for the purposes of the Public Contracts Regulations 2006. Subject to paragraph 12.25, any notices of amendment etc will be published on the LSC website tender pages (CDS > Tenders > Crime Contracts for 2010) and sent by email to all Applicant Organisations that have expressed an interest in the CDS ITT and/or PQQ.
- 12.23. A submitted tender, which does not comply with any additional or alternative Terms and Conditions of Tender, rules, conditions of 2010 Standard Crime Contract award and instructions (or other qualifications) introduced in accordance with paragraph 12.22 above, may be rejected or unsuccessful.
- 12.24. Any communications about the Tender Documents will be given by notice published on the LSC website tender pages (CDS > Tenders > Crime Contracts for 2010) and sent by email to all Applicant Organisations that have expressed an interest in the CDS ITT or PQQ.
- 12.25. After the deadline, notices (pursuant to paragraph 12.22) relating to the 2010 Standard Crime Contract will be published on the LSC tender pages of website (CDS > Tenders > Crime Contracts for 2010) only.
- 12.26. Should the LSC, at any time during the tender process, request the Applicant Organisation to give additional information/clarification the Applicant Organisation should be prepared to provide additional information and/or clarify any aspect of a tender by the deadline set out in the request. The LSC reserve the right to validate any part of the Applicant Organisation's tender and information subsequently given to it.
- 12.27. Any questions and answers posted on the LSC website during the tender process (or before) will not form part of any 2010 Standard Crime Contract subsequently awarded (unless the LSC notifies Applicant Organisations as part of the answers posted that it will amend the 2010 Standard Crime Contract accordingly).
- 12.28. The LSC reserves the right to cancel the invitations to tender or PQQ covered by this IFA in their entirety or in part, and not to proceed to award Contracts or to suspend any stage of the process at any time at its absolute discretion.
- 12.29. The Applicant Organisation agrees to keep any tender valid and capable of acceptance by the LSC up to 00.01am 14 July 2010 (Contract Start Date).
- 12.30. The right of appeal for unsuccessful Applicant Organisations is limited to that set out in paragraphs 11.9 to 11.15.

- 12.31. After assessment is complete, the LSC will retain copies of tenders for such time as it considers reasonable to satisfy the LSC's audit obligations and for any associated contract management purposes.
- 12.32. All intellectual property rights in the Tender Documents and any associated documents are and shall remain the LSC's property.
- 12.33. While the LSC has taken all reasonable steps to ensure, as at the date of the issue of the Tender Documents, that the facts which are contained in the Tender Documents and associated documents are true and accurate in all material respects, it does not make any representation or warranty as to the accuracy or completeness or otherwise of these documents, or the reasonableness of any assumptions on which these documents may be based.
- 12.34. All information supplied by the LSC to the Applicant Organisation or potential applicants, including that within the Tender Documents, is subject to that Applicant Organisation's own due diligence. The LSC accepts no liability to the Applicant Organisation or potential applicants whatsoever resulting from the use of the Tender Documents, or any omissions from or deficiencies in them.
- 12.35. Without prejudice to any warranties given, the rules, instructions, conditions of the 2010 Standard Crime Contract award and Terms and Conditions of Tender contained in this Tender Documents, do not form a separate collateral contract between the Applicant Organisation and the LSC. The relevant parts of the Applicant Organisation's tender may form part of any 2010 Standard Crime Contract subsequently awarded.
- 12.36. If an Applicant Organisation changes its status or any material element of its tender including management or Key Personnel, between submitting its tender and being awarded a 2010 Standard Crime Contract, the LSC must be informed of this as soon as possible in writing. The LSC reserve the right (depending on the nature and effect of the change in status) to revoke any 2010 Standard Crime Contract award made and may request the new Applicant Organisation (post-change) to submit a fresh tender.
- 12.37. The Applicant Organisation must not, and must ensure that its employees, partners, directors, Key Personnel and agents must not:
- (a) canvass any officers, employees, agents or advisers of the LSC in connection with this tender process; or
 - (b) offer or agree to pay or give any sum of money, inducement or valuable consideration (directly or indirectly) to any person for doing or having done or causing or having caused to be done in relation to this tender, any act or omission.
- 12.38. The Applicant Organisation must not enter into any agreement or arrangement with any other person or organisation about whether it should or should not tender, or to fix or adjust the amount of any tender, or collude with any such other person or organisation in any way, in this tender process.
- 12.39. Nothing in these Terms and Conditions prevents the Applicant Organisation from approaching or recruiting employees or agents to undertake work covered by this tender process on behalf of the Applicant Organisation.

12.40. If you are an Applicant Organisation with limited liability (unless you are a registered charity) any 2010 Standard Crime Contract awarded will be conditional upon the Applicant Organisation supplying the LSC with a completed, relevant indemnity form. This must be sent to the LSC on or before 4pm on 15 June 2010 and signed by the ultimate owners of the Applicant Organisation and/or such persons as the LSC might reasonably regard as being controllers and/or senior managers of the organisation and/or where the Applicant Organisation is a limited company, from any company which is a holding company. If an Applicant Organisation fails to provide the completed form (or notify the LSC of any reasons for any delay) by 4pm on 15 June 2010 the Applicant Organisation will have failed to meet a condition of the 2010 Standard Crime Contract. This will entitle us to reject a tender and/or entitle us not to proceed with any decision made to award the Applicant Organisation a contract or entitle us to terminate the Contract pursuant to Clause 25 of the Standard Terms.

Confidentiality and Freedom of Information Act 2000

12.41. The LSC may share any information contained in an Applicant Organisation's tender with Bravo Solutions Limited for the purposes of administering the tender process.

12.42. The Applicant Organisation should note that under the Freedom of Information Act 2000 (the "FOIA") the LSC may be required to disclose details of its tender in response to a request from third parties, either during or after the tender process. The LSC can only withhold information where it is covered by a valid exemption as set out in the FOIA.

12.43. If an Applicant Organisation is concerned about possible disclosure it should contact the LSC and clearly identify the specific parts of the tender that it consider commercially sensitive or confidential (within the meaning of the FOIA), the harm that disclosure may cause and an estimated timescale for that sensitivity. The Applicant Organisation should familiarise itself with the Information Commissioner's current position on the disclosure and non disclosure of commercially sensitive information and therefore should not notify us of blanket labelling of all its tender as confidential.

12.44. The Applicant Organisation should also be aware that the receipt by the LSC of information marked 'confidential' does not mean that the LSC accepts any duty of confidence in relation to that marking. Neither does the LSC guarantee that information identified by the Applicant Organisation as confidential will not be disclosed where the public interest favours disclosure pursuant to our obligations under FOIA.

12.45. It is important to note that the sensitivity of information is likely to change over time and therefore it is likely that general Contract details will be disclosed once the tender process is complete.

12.46. The LSC, will collect, hold and use personal data obtained from and about the Applicant Organisation and its Key Personnel during the course of the tender process ("Personal Data").

12.47. The Applicant Organisation must agree to such Personal Data being collected, held and used in accordance with and for the purposes of administering the tender process as contemplated by the Tender Documents and for contract management of any Contract subsequently awarded.

12.48. The Applicant Organisation warrants, on a continuing basis, that it has:

- a) all requisite authority and has obtained and will maintain all necessary consents required under the Data Protection Regulations (which means the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all relevant regulations together with any codes of conduct and guidance issued by the Information Commissioner);and
- b) otherwise fully complied with all of its obligations under the Data Protection Regulations, in order to disclose to the LSC the Personal Data, and allow LSC to carry out the tender process. The Applicant Organisation shall immediately notify the LSC if any of the consents is revoked or changed in any way which impacts on the LSC's rights or obligations in relation to such Personal Data.

Section 13: Definitions

Many of the phrases used in this IFA are explained in the document. Further definitions are set out in the 2010 Standard Crime Contract and are not repeated here.

Set out below are some summary definitions Applicant Organisations may find helpful.

“Applicant Organisation” and “Applicant” means a single legal entity tendering to deliver Criminal Defence Services.

“Bravo Solutions” is the software provider of the eTendering system.

“Confirmed Peer Review” means at the conclusion of the peer review process, following appeal and any follow-up audit.

“Equalities Legislation” refers to the:

Equal Pay Act 1970;
Sex Discrimination Act 1975;
Race Relations Act 1976;
Disability Discrimination Act 1995;
Employment Rights Act 1996;
Human Rights Act 1998;
Sex Discrimination (Gender Recognition) Regulation 1999;
Part Time Workers (Prevention Of Less Favourable Treatment) Regulations 2000;
Fixed Term Employees (Prevention Of Less Favourable Treatment) Regulations 2000;
Employment Act 2002;
Employment Equality (Sexual Orientation) Regulations 2003;
Employment Equality (Religion Or Belief) Regulations 2003;
Gender Recognition Act 2004;
Civil Partnership Act 2004;
Equality Act 2006;
Work And Families Act 2006;
Employment Equality (Age) Regulations 2006; or

any other equivalent legislation in a foreign state where the Applicant Organisation employs staff or engages in business activities;

“eTendering System” means the online system that will be used to run the tender process and through which Applicant Organisations must submit tenders.

“Full Time Equivalent” is a standard unit of measure for fee earning time based on a 35-hour week as one full-time post. The maximum FTE for any working individual will be one, and work done (fee earning time spent) by part time employees or agents should be calculated as a fraction of this unit.

“Information Commissioners Office (ICO)” is an independent authority sponsored by the Ministry of Justice, to oversee the Data Protection Act, the Freedom of Information Act and the Environmental Information Regulations.

“Information for Applicants” or “IFA” means this document and supporting annexes and appendices that contains information, instructions, rules, terms and Conditions of Tender that will govern the tender processes.

“Invitation to Tender” or “CDS ITT” means the specific Criminal Defence Services that Applicant Organisations can tender against. This can be accessed via the eTendering system.

“Key Personnel” means any person who has powers of representation, decision or control of an organisation including partners, directors and trustees.

“Mandatory Form(s)” means forms (or other documents or information) that must be submitted as part of a tender. Submission of Mandatory Form after the deadline will mean a tender is rejected.

“Terms and Conditions of Tender” are the terms and conditions set out at **Section 11** of this IFA.

“Publish” means to submit the final version of the Applicant Organisation’s completed PQQ and CDS ITT to the LSC.

“Partnership Voluntary Arrangement or PVA ” is a formal agreement with the partnership’s creditors to repay their debts either in full or more likely partially over a fixed period of time.

“Regulatory Bodies” means the Law Society, the Solicitors’ Regulation Authority, Bar Council, Bar Standards Board or the equivalent organisation in a foreign jurisdiction.

“Specialist Legal Advice” means giving legal advice where the Applicant Organisation is taking action on behalf of the clients in order to move the case forward. This includes negotiation and representing the client to third parties on the telephone, by letter or face to face. This also includes providing representation, litigation and advocacy services. It does not include triage or initial general advice.

“Tender Documents” means this IFA (and supporting annexes), the PQQ and the CDS ITT. **The term “Tender Documents” used in this IFA has a different meaning to and overrides the same term used in the 2010 Standard Crime Contract Standard Terms.**