

Guidance on applying for a waiver of Solicitors' Practice Rule 4

Those who are submitting a bid where the bidding organisation is a solicitor's office (as recognised by The Law Society) need not consider obtaining a waiver to any practice rules. For any other organisation, this issue must be considered. This note provides guidance for such organisations.

Bidders should be aware of the effect of Solicitors' Practice Rule 4, which prohibits solicitors employed by organisations which are not owned and controlled by lawyers from giving advice to the public.

The Solicitors Regulation Authority now has responsibility for professional regulation of solicitors, and bidders are referred to their website at www.sra.org.uk for full details of these provisions.

Bidders will note that there are exemptions from the application of Rule 4 under the "Employed Solicitors Code", including an exemption at Paragraph 8 for Commercial Legal Advice Services. We do not regard that the CDS Direct service qualifies for exemption under Paragraph 8, because of the requirement for CDS Direct advisers to liaise with the Police.

The LSC is requesting a change to the Solicitors' Practice Rules to provide that telephone advice services commissioned by the LSC will be exempted from Practice Rule 4. We do not anticipate it will be possible to get a Rule change before the start of the CDS Direct service in October 2007, and bidders affected should consider applying for a waiver of this provision in Practice Rule 4.

Bidders should note that applying for a waiver can be a lengthy process, and should consider contacting the Solicitors Regulation Authority as soon as possible.

Waivers are issued by the Solicitors Regulation Authority on a case-by-case basis, and it is not possible for the LSC to get a blanket waiver up front. However, the Law Society (who was at that time responsible for professional regulation) wrote to us on 20 December 2005 on this subject, and we quote the following which bidders may find helpful:

"A waiver is unlikely to be granted unless the applicant is able to demonstrate:

That the basis on which a waiver is sought falls within the Practice Waiver Policy with supporting evidence – for example, if the basis of the application is an exceptional public benefit, evidence that allowing solicitors employed by the applicant to provide the CDS Direct service, would, if the applicant were successful in the tender process, secure for the LSC and the public purse the best service at the lowest cost;

Evidence and details to demonstrate that if a waiver is granted the applicant organisation will have in place arrangements in relation to supervision, etc.

giving client protection equal to that which would be offered by [private practice or the PDS] if it offered the service itself; and

Evidence and details to demonstrate that if a waiver is granted the applicant organisations will have in place professional indemnity insurance equal to that required for a private practice offering the service.”