

Frequently Asked Questions related to the
Invitations to tender to deliver publicly funded
Housing Possession Court Duty Schemes

Many questions will be answered by the information given in the Information for Applicants document (IFA), which is available on the Tenders pages of our website:

http://www.legalservices.gov.uk/civil/tendering/social_welfare_family.asp

The deadline for submitting questions about the content of the IFA or the Invitations to Tender was 12 noon on 9 July 2010 (note this is referred to as the 'End date for clarification messages' on the eTendering system).

We will continue to respond to technical queries on how to use the eTendering System. Technical questions may 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).

Please note that we recommend that you start to complete your tender response early so that you identify any areas where you need technical help as soon possible, as the technical team is likely to be very busy in the days leading up to the tender deadline.

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 in this Frequently Asked Questions (FAQ) document.

A final FAQ document will be published on 13th July 2010.

This FAQ document is broken up into sections for ease of reference. These sections are as follows:

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1. Advisor requirements

1.1 In relation to the 12 hours supervised casework to be undertaken by advisors on the scheme, does the time spent working at court on the scheme count or does the 12 hours casework need to be in addition to this?

12 hours casework can be any specialist level housing case undertaken by the caseworker.

1.2 Can you clarify whether debt caseworkers who do housing work as part of their casework can act as agents under the new tender?

In Civil Bid Rounds for 2010: A Consultation Response we set out that we only want organisations that hold a Standard Civil Contract with Schedule Authorisation in Housing to run schemes. This is to ensure that court desks are run by providers with sufficient expertise in housing to identify and take forward all options available for avoid possession of the property.

However, any advisor can advise on the scheme if they can demonstrate that they are an appropriate advisor i.e. that they undertake 12 hours a week specialist housing advice.

1.3 Under this new tender, it is stated that the scheme must be staffed with experienced housing advisers with 12 hours per week casework time.

Is it allowable to staff the new scheme with one experienced housing adviser, and supplement this staff provision with volunteer representation and assistance?

It is an essential criterion that all advisors must be Appropriate Advisors i.e. specialist Housing caseworkers who, in the course of their work, conduct 12 hours of supervised Housing casework per week.

Volunteer advisors may advise as part of the scheme if they meet this requirement.

1.4 In Essential Criterion 7 you have used the term "Specialist Housing caseworkers" to define the term "Appropriate Advisers". What do you mean by specialist housing caseworkers?

By specialist housing caseworkers we mean caseworkers undertaking specialist level housing advice i.e. at a level that would be performed under a face to face LSC contract.

2. Using Agents

2.1 If a bidder intends to use agents to deliver the service, do those agents have to be named individuals and, if so, where in the tender form is the bidder expected to name those individuals?

No, you are only required to indicate whether Agents will be used in the delivery of the scheme.

2.2 Can you describe what would constitute using an 'Agent' as oppose to 'sub-contracting part of the contract' and can you highlight the key differences?

By agent we mean an individual caseworker not employed by you used in the provision of the scheme. By subcontracting we mean a major delegation of the obligations under the contract so that the subcontractor becomes primarily responsible for the service. Organisations cannot subcontract the service in part or whole to another organisation.

We wish to clarify what we mean by “subcontracting part of the service” in 5.27 of the IFA. By part of service we mean that part which is delivered whole (or in part) at a court in a procurement area. For example where a scheme covers two courts we would not permit one organisation to subcontract with another to cover one of the courts in its entirety.

Individual caseworkers may acts as agents and this can be on a regular (rota) basis or on an ad hoc basis.

2.3 In relation to the use of Agents, please confirm whether, in the context of this service, you intend the rules contained within Paragraphs 2.7 and 2.8 of the Contract Specification to apply? If you do not intend them to apply please indicate where, within the contract, they are specifically dis-applied? If you do intend them to apply please confirm that your intention is that all current rota based schemes must end as they are inconsistent, in the context of potential agency agreements, with paragraphs 2.7 and 2.8?

Clause 3.2 of the Standard Terms allows you to appoint agents to undertake Contract Work in accordance with the Specification. The relevant rules of the Civil Specification are 2.7 and 2.8. As the delegation, will, of necessity be of the entire Matter because the Schemes cover one off advice at Court the conditions in 2.8 must be satisfied. This means that:

- a) The Agent’s work is subject to your supervision
- b) The Agent works solely or mainly for you
- c) The Agent is integrated into your processes, including Data Protection and Equal Opportunities, and is shown in your management structure
- d) The agents work is covered by your insurance
- e) You retain responsibility for each Matter or case undertaken by the agent
- f) Matters and cases undertaken by the agent are not referred to a separate organisation.

However, for work under the HPCDS only we will dis-apply clause b).

Rule 10.5 of the Specification (which should be read in conjunction with Rule 1.10) means that the use of Agents to deliver a scheme must be authorised in your Schedule. Clause 2.8 b) will be dis-applied as part of this authorisation.

Using agents does not prevent you operating a rota; however the current arrangements for multi agency schemes will end on 13th October.

2.4 Is the Lead Provider responsible for the professional indemnity cover for any Agents which the Provider includes in the Scheme?

Yes.

2.5 Can we be used as agents in the following scenarios?

If our bid loses/fails, would the winning legal entity be entitled to use our firm as agent, assuming that the winner is authorised to use agents and assuming we win our SWL contract which in our case will be as part of a consortium, and where the winning bid is part of our consortium in SWL?

If we do NOT bid, can the same winning bid as described in 1 above use us as agents with the same assumptions made as in 1 above.

If we can be used as agents in circumstances mentioned in 1 and/or 2 above, will the LSC impose any restrictions on the number of cases or rotas allocated by the winning bid to us as agents or the amount of fees we are able to claim acting as agents?

The winning legal entity cannot use your firm as an agent but may use individual caseworkers from your firm as their agents. They will only be able to use individual caseworkers who are appropriate advisors to staff the scheme.

There is an allocation of acts of assistance that the scheme may not exceed without our written permission. The organisation will need to manage the scheme in line with the requirements in the Standard Civil Contract with regards using agents.

The LSC will not impose any further restrictions on the use of agents in terms of acts of assistance or fees. It will be up to the winning bidder to come to arrangements with their agents with regards the rota and fees payable.

2.6 Could you clarify whether it will be permitted to use agents to cover the housing possession scheme? What percentage of the total contract can be undertaken by agents?

Yes it is permitted to use agents to deliver the service. Organisations may use agents at a level they decide. However, as part of the tie break we may give preference to organisations who do not need to rely on agents to deliver the service.

3. Capacity Test

3.1 We propose to use existing staff; however they have been included in our housing bid. How will this affect the capacity test? Are you looking for a team outside of the team used in the housing bid to solely deal with HPCDS work?

Bids for HPCDS will not affect the capacity test for the SWL and Family tenders. Organisations will be expected to manage their resource (and use agents where necessary) to fulfil their obligations for both their office based work and their HPCDS.

Capacity to deliver the HPCDS will be only be considered at the tie break stage.

3.2 Depending on the size of the HPCDS Selection Criteria 7 requires a Housing Supervisor overseeing the scheme either on a part time or full time equivalent

basis. Can we put down our current supervisors who have been included as a full time FE in the housing bid tender? Or should their time be apportioned to account for them being put down as a full time FE in the housing bid tender?

You may consider staff as full time/ part time without reference to your bid(s) for SWL and Family tenders.

3.3 In the previous SWL tender, you provided a maximum caseload figure per FTE caseworker as a means for a provider to demonstrate that they have sufficient staff. Can you outline how the required caseworker staffing level is to be calculated in the case of the HPCDS tender?

As set out in 6.11 of the IFA Organisations (including where relevant, Agents they delegate the provision of the service to) must have the capacity to have at least one Appropriate Advisor present at each relevant session the court runs, both regular and ad hoc.

4. Selection Criteria

4.1 The Criteria fail to allow firms that have experience in Court Duty Schemes outside of the HPCDS. We have been involved with delivering advice through a voluntary scheme for years and think it should be permitted as relevant experience.

As set out in 6.45 of the IFA where you are required to provide information of experience of delivering services, this relates to work undertaken under other funding as well as under LSC funding.

Therefore experience gained on non LSC funded Court Duty Schemes can be used in response to the Criteria.

4.2 What constitutes a full time equivalent supervisor/caseworker/authorised litigator?

We consider full time to be 35 hours. An FTE would therefore be someone working at least 35 hours or 2 part time staff together working at least 35 hours.

4.3 Can the same FTE supervisor be responsible for supervising more than one scheme?

For large schemes we want one FTE supervisor to be responsible for one scheme, for medium and small schemes the supervisor may be responsible for more than one scheme but we will prefer organisations where the FTE supervisor can dedicate more time to an individual scheme.

4.4 Can the same FTE Authorised Litigator be available to more than one scheme?

For large schemes we want one FTE Authorised Litigator available to the office delivering the scheme per scheme tendered for. For medium and small schemes it is not an essential requirement to employ an Authorised Litigator. However we will prefer organisations who employ an Authorised Litigator who is based and regularly working from the office running the scheme for a greater proportion of time per week. This Authorised Litigator may be available to more than one small or medium scheme from the same office. They also may be available to schemes run from separate offices but

that FTE time would need to be split across those offices in responding to the selection criteria (e.g. 17.5 hours per week in one office and 17.5 hours in another).

4.5 Selection Criteria 4 of ITT asks about the office "managing a HPCDS" since June 09. What does "managing" mean?

Managing a scheme means being responsible for the functioning of the scheme for example - administration of the scheme, managing the rota, ensuring supervision. Management requirements are set out in 10.43 – 10.49 of the specification.

4.6 Selection Criteria 7 and the scoring system seem to be asking a different thing. The criteria says the supervisor must oversee and be available to work on the scheme, the scoring says only oversee. Which is correct?

The Applicant office must identify a Supervisor who will be responsible for overseeing the scheme.

4.7 In the context of Selection Criterion 5, please explain how this criterion applies to bidders intending to use agents where there are no recruitment issues? How is this criterion to be answered when the bidder does not know how many sessions there will be until it has seen the courts lists after 14th October 2010?

Selection Criterion 5 only relates to caseworkers to be employed. If the bidding organisation has no caseworkers to recruit they should answer accordingly.

Although a bidder will not know the number of sessions the court will list after October 14th, they could find out proxies for this. For example, they could ask the court how many sessions are listed now or use the size of the lists as a guide.

4.8 In responding to Selection Criteria 4 can we count the experience of a member of staff who has previously managed a HPCDS in their previous employment?

6.45 of the IFA sets out that experience must be held by the Applicant Organisation's Office that will be delivering the scheme. Experience of the Applicant Organisation's Office is that of members of staff employed and delivering services from that Office. Experience from previous employment may be used where this member of staff is now employed and delivering services from that Office.

5. Tie Break

5.1 In relation to the HPCDS Additional Information Form (tie break) there is reference to a limit of 250 words "per response".

Please confirm that this is 250 words for the response to each of the 4 key areas listed 1-4 and that therefore there are a total of 1000 words allowed for completion of the HPCDS Additional Information Form.

Yes, the limit is 250 words per response to each key area, 1000 words in total.

5.2 Tie break- delivery plan No.2 Key Area asks "what proportion of employed staff will deliver the service?" Does this mean proportion of staff employed in Social Welfare Law in the firm or proportion of staff in all departments in the firm dealing with other areas of law?

This means the proportion of employed staff as opposed to agents that will deliver the HPCDS.

For example if you will only use employed staff to deliver the scheme the proportion would be 100% employed.

5.3 Can you give any guidance on what you are looking for in the tie break?

We will only use the tie break to distinguish between bids where they are tied after the selection criteria have been applied. The purpose of the tie break is to allow us to evaluate the overall delivery plan for the scheme and make our decision as to who is our preferred bidder.

We have set out in Annex A of the IFA what we expect to be addressed in the answer to each key area but recognise that this is not an exhaustive list.

6. Miscellaneous

6.1 Can you indicate what proportion of all cases at court you expect to be seen as an act of assistance? In Newcastle you are allocating 690 acts of assistance. How many cases are listed in total per year that could qualify?

On average 22% of claims listed become acts of assistance but this varies from Scheme to Scheme. The HPCDS Procurement plan and section 7 of the IFA provides set out how we have allocated acts of assistance to each Scheme.

6.2 What do you mean by an 'ad hoc session? Will courts be expected to work with Schemes to give reasonable notice of any 'ad hoc' sessions?

By ad hoc session we mean a session (equivalent to a regular session) held by the court on a non-regular basis e.g. an extra session may be required due to the number of claims coming through.

We would expect courts and providers to work together to ensure coverage at all sessions.

6.3 The IFA says that a management fee will not normally be paid, suggesting that there are some circumstances where such a fee will be paid - indeed Paragraph 10.51 of the Specification says that "...a management fee may also be payable to you in the circumstances specified in your Schedule". There are no details of this management fee in the Payment Annex. Please confirm in what circumstances a management fee will be paid.

We do not envisage any circumstances where a management fee will be payable but have reserved the right to do so.

6.4 As set out in the HPCDS Procurement Plan providers delivering a scheme are expected to deliver at least 85% of their allocated acts of assistance in any schedule year. Some schemes have a significant number of cases listed outside both regular and ad hoc possession sessions – will this be taken into account when considering what action to take if the scheme has not met this requirement?

We would expect courts to list possession cases together in reasonable length sessions. Providers are only expected to cover such sessions and not to be at court to cover odd cases listed in the main civil list.

We would expect courts and providers to work together to ensure as many cases as possible are listed as part of possession sessions.

6.5 The Ministry of Justice has published consultation papers setting out proposals to close 54 county courts. As courts listed in the consultation document are also included in this bid round, please advise on the implications of this consultation on the HPCD Scheme tender process.

We cannot pre-judge the outcome of the consultation and therefore we will continue with the tender as it stands. Where courts will be closed we will then consider what the appropriate action to take is.

6.6 Can you clarify whether 6.31 relates to any further new Housing Matter Start within the next six months even where it would be acceptable under existing contract specifications to open another Housing New Matter Start as it relates to a separate housing matter e.g. disrepair where this is not a counter claim.

Yes, if it is a separate housing matter, not relating to the possession claim, where a separate matter is permitted under the matter start boundary rules in the specification.