

London Competitive Tendering: Q&A

Background

1. Why is the current system being changed?

Managed competition is being introduced as part of a range of ongoing initiatives designed to improve quality for the client while achieving value for money for the taxpayer and ensuring a sustainable legal aid scheme.

We believe that improved quality and value for money can be best achieved through managed competition. This view is supported by independent research. The cost of criminal legal aid rose to £1.1 billion in 2003/4 and, as the legal aid budget is not unlimited, more people can be helped (including through civil funding) if the cost of helping them is lower.

The Proposals

2. What is the LSC proposing?

We are proposing to introduce a competitive tendering system where criminal legal firms bid for work, and are paid, on a per-case basis. The proposals cover cases in the police station and at the magistrates' court in London. This differs from the current system of hourly rates.

3. What will firms actually be bidding for?

Firms are likely to be asked to bid for a percentage of duty solicitor slots and a price at which they are prepared to complete a case. The consultation paper is deliberately open as to how a case should be defined.

4. How many duty solicitor slots will a supplier be able to bid for?

The consultation paper does not suggest a limit to the number of duty solicitor slots that suppliers can bid for. We will need enough suppliers to ensure we cover issues such as competition and conflict of interest. The percentage of slots that a supplier can bid for will need to be established as part of the consultation process.

5. How will quality be assured?

London Competitive Tendering will draw on a number of quality measures that are being developed in partnership with the legal profession and as part of our overall supplier management strategy. These measures focus on the quality of the advice provided and the outcomes achieved for the client. We expect most firms to show that they meet these quality measures.

Those suppliers that achieve outcomes for the client that are significantly out of profile, when compared to the supplier base as a whole, will be peer reviewed. Only those suppliers that fail two independent peer reviews will be excluded from the bid process on quality grounds.

6. Will the LSC allow a firm to participate in the bid round if it has a category three contract compliance audit rating?

While no decision has been taken on excluding category three firms, our current thinking is that category three suppliers that have exhausted the appeals process may not be allowed to bid.

Scope and Impact

7. What will happen to 'own client' work?

We propose that only firms that win a contract will continue to do own client work. There will be a transition period to ensure quality and continuity of service for the client and to allow those suppliers that do not win a contract time to rearrange their business affairs.

8. Will client choice be reduced?

We propose that client choice be limited to the contracted suppliers that have passed on quality and bid competitively on price.

9. What is the likely impact of these proposals on barristers?

The most direct impact on the bar is the proposal to remove the system of direct payments for assigned counsel in the magistrates' court.

10. Can any supplier in the country bid for work in London?

Yes: though they would be required to meet any standards introduced as part of London Competitive Tendering – including a requirement to have an office within a bid zone for which they won a contract.

11. Will the Public Defender Service be allowed to bid for a contract in London?

The PDS will not bid for a contract in London. We will however, consider, along with other options, using a directly employed service within any bid zone with insufficient bidders to meet demand.

12. Is this going to lead to fewer suppliers in London?

Although we believe that the introduction of managed competition will lead to fewer suppliers, we can't be certain that this will be the case as it will depend on the number of suppliers bidding, the volume of work they expect to do and the price at which they bid.

13. Will the proposals have an impact on the volume of cases

We do not believe that the proposals will have an impact on the volume of criminal legal aid cases.

14. What will happen to existing suppliers (and their clients) who fail to win a contract?

The importance of quality of service to the client remains at the centre of these reforms. Suppliers who fail to win a contract will have a transition period in which to rearrange their business affairs and ensure that no client is disadvantaged. We are consulting on the appropriate length of this period.

15. What support is available to help suppliers with the bid process?

We recognise that most firms providing criminal legal aid will have had no experience of a formal competitive tendering process. The key issue for firms will be to ensure that they understand their cost structures well enough to put together a realistic bid.

To help firms assemble their bids, we will be providing all firms with a bid pack of general data about bid zones, as well as specific details about their own work in criminal defence.

In addition, Business Link for London - the locally based, government funded organisation that supports small business - will arrange a series of free, half day,

seminars. For further information London based suppliers can contact Business Link on 0845 60 23 709.

16. How do you intend to monitor the impact of managed competition on small and Black and Minority Ethnic firms?

We do not believe that there is anything inherent in competitive tendering that will disadvantage small suppliers or BME firms. We have however, included a specific question on that subject in the consultation paper. We will also be raising the issue when we meet with the Law Society and the Black Solicitors Network as part of the consultation process.

17. Will competitive tendering be introduced in other parts of the country?

If the introduction of managed competition in London yields the anticipated benefits, we intend to extend the model (adjusted in the light of initial experience, and following further consultation) to other areas.

18. Is there an intention to adopt this model for civil work?

A number of models are being piloted within the whole legal aid market. It may be that this model of managed competition, a variation of this model, or another model entirely, is suitable for civil legal aid: it is too early to say.

Number of bidders

19. What if you have too many bidders?

If we have more bidders than we need to meet demand then the more expensive bidders will not win contracts. There will be a transition period to help client continuity and unsuccessful suppliers manage their business. There is a specific question in the consultation paper on the transition period.

20. What if you get insufficient bidders?

With nearly 500 existing suppliers in London, and the possibility that suppliers outside London may also wish to bid we are confident that enough suppliers will come forward to meet demand and ensure healthy competition across London.

21. What will the LSC do if competitive tendering increases cost?

We do not expect competitive tendering to increase costs as the evidence from previous procurement exercises across the public sector indicates that significant savings can be achieved while improving quality. We will monitor future costs to see what savings have actually been achieved.

The Consultation Process

22. How open is the consultation process?

We are committed to working closely with all our stakeholders to ensure that we develop a system that works well for our clients, our suppliers and ourselves.

The consultation paper is deliberately open and sets out a framework for the introduction of managed competition. It proposes a way forward, based on a number of options.

We recognise that introducing managed competition for criminal lower will be a significant challenge for both the Commission and our suppliers. The open nature of the consultation paper seeks to encourage responses from all relevant parties; these will be considered carefully and, in discussions with key representative bodies, a formal process will be agreed. The fact that we have included specific examples of how the process may work should therefore be seen as encouraging responses rather than pre-determining the outcome of the consultation process.

23. How will you use the responses to the consultation paper?

All official responses to the paper will be acknowledged, recorded and considered. We will then prepare a formal response within two months of the closing date that will summarise the views received and set out our next steps. All respondents will be sent a copy of our response, and a copy will be available on our website.

24. How do you intend to communicate with the representative bodies?

We meet with the Law Society on an ongoing basis and will be meeting with them and other key stakeholders throughout the consultation process. These meetings will provide an opportunity to discuss our proposals, respond to queries and ensure a continuing and constructive dialogue.

Other Questions

25. How does the Clementi review impact on this project?

We will need to take account of the findings of the Clementi review, particularly the recommendation that the direct legal services market be opened up to barristers.

26. How do you expect the outcome of the Fundamental Legal Aid Review to impact on this project?

The introduction of managed competition in London was one of three criminal purchasing arrangements proposed by FLAR. In building the structure for managed competition in London, we will need to be aware of the possible impact of FLAR when it reports later this year.

27. How do you intend to handle the period between the end of the existing General Criminal Contracts on 30 June 2005 and the new contracts being in place?

A letter was sent to all London Criminal Contract holders, on 21 December 2004, with an offer to extend their contract. If your firm is London based and you have not had a copy of that letter then please contact your account manager in the London Regional Office.