

## **Consortium Arrangements for Social Welfare Law contracts in 2010**

### Introduction

1. As outlined in “Civil Bid Rounds for 2010 Contracts: A Consultation” we wish to commission debt, housing and welfare benefits as joined up services from 2010. We are aware that the market is not currently uniformly configured to deliver services in this way and we do not want to require providers to merge or to expand unrealistically in order to be able to bid. We therefore propose to accept a form of consortium for 2010 bids so that providers can come together to provide the combination of social welfare law services that clients require.

### Consortium Structure

2. We propose to offer providers the option of forming a consortium under which they sign separate, but linked, contracts with us. A consortium must as a minimum include debt, housing and welfare benefits
3. This provides a mechanism for consortium working but with contract arrangements that are similar to other providers and in which all consortium members will have a direct contract with the LSC. This is simplest in terms of management and payment systems for both providers and the LSC, as this is closest to what the LSC operates at the moment.
4. We do not propose to allow subcontracting in mainstream contracts but we will continue to allow use of agents to the extent permitted by the current contract (these rules will be clarified in the revised specification). Although we have not called this a consortium arrangement in this paper, providers will also have the option of joining together formally to form single legal entities to bid.
5. Consortia may also include in their bids other categories such as community care and/or employment, although there will still be the option of providers submitting single category bids in these two categories instead if they would rather (e.g. a debt and employment provider could bid as part of a consortium to deliver debt but also bid on their own to deliver employment).
6. Although we will not allow subcontracting in relation to service delivery, this does not prevent members of a consortium from having an agreement (for example, dealing with matters such as use of premises and facilities, back office functions, data security and internal dispute resolution) between themselves about how the consortium will operate, provided these are lawful and comply with our contract requirements

### Service Requirements

7. Each consortium member will be required to meet the essential criteria of the tender in relation to the categories of law being provided by that member. In Service A areas this will include employing an authorised litigator in housing and community care. In Service B areas it will not be essential to cover the full scope of work in housing and community care and employ an authorised litigator,

however bids that do provide that service may be preferred over those that do not.

8. In order to meet the essential criteria of the tender each consortium member would have to deliver the minimum number of New Matter Starts per category as stated in the tender and must also employ a Supervisor in the category they are delivering in accordance with the Standard Terms and Specification of the 2010 Unified Contract.
9. We will expect a client to be able to access the full range of services that are provided by the consortium at whatever location they access the service. For example, if a consortium consists of three providers in three different locations each delivering a single category of law, we would expect the client to be able to access at least initial advice in all three categories of law whichever location they went to. Whilst we would not necessarily expect the full range of services to be available in each location during all of the opening hours of each location, in principle we will expect that services are brought to the client unless in individual circumstances it is in the client's best interest to travel to another location to receive advice. It will not be sufficient for providers to continue to deliver a single category of law and then routinely require clients to travel to another location to get the additional services they require.
10. However, we recognise the need to ensure that the consortia arrangements are flexible enough to work in practice and take account of the individual circumstances of clients. By way of example the following exceptions would be considered an appropriate alternative to delivering all three categories from one location:
  - A very short journey on referral if consortium providers are closely located.
  - Provider A contacting Provider B by telephone on behalf of the client, to discuss the case, whether face to face advice is appropriate, and, if so, how face to face advice will be provided at Provider A's location, or otherwise if this best meets the client's needs. This could be done while the client is still there or subsequently.
  - If face to face advice is not required at that time, the client being placed in direct contact with Provider B, from Provider A's offices, by telephone, web cam or other means.
  - Provider A arranging for the client to see Provider B face to face
    - At a drop in session or by appointment at Provider A's office; or
    - By some other appropriate arrangement which is convenient for, and agreed by, the client.
  - In exceptional circumstances where it would be in the client's best interest to travel some distance to see an adviser e.g. in emergency homelessness cases where it was not practical for a lawyer to prepare proceedings from another Provider's office (they would need access to their books/precedents/specialist admin support etc).
11. To facilitate the above we will change the rules on making funding applications to facilitate referrals and joined up working between consortium members, eg allow Provider A to sign funding application on behalf of Provider B.

## Contract Requirements

12. We will introduce a number of consortium specific terms to address possible breaches of the Solicitors' Conduct Rules prompted by acting in consortia. We propose to introduce these for all providers working in consortia, to be fair and also because they are based in good client care. The terms we propose to introduce are in the current draft of clause 3.10 of the draft revised Standard Terms to ensure that:
- Working in consortia does not jeopardise providers' duties to keep client information confidential;
  - The arrangements between the consortium members do not breach Solicitors' independence and duty to act in the best interest of the client when making referrals; and
  - Despite any use of a consortium "brand" it is clear who is acting for the client and to whom complaints must be made.
13. If consortium members are contracted to supply other categories (where we are not looking for joined up services these will still be covered by the same contract, but the specific consortium rules will not apply to these categories), these separate categories will be unaffected by any disintegration of the consortium.
14. Whilst one element of successful consortia will be the operation of a highly effective system for clients to access services, we are expecting consortia to be much more than a referral process. We would expect contract holders to act in the best interests of the client in deciding where and how to deliver their services. Generally, we also would not expect a consortium member to deliver a service under tolerance that is available under a category specific contract from another member of the consortium.

## Tender Process

15. Providers considering delivering Housing, Debt or Welfare Benefits, but which don't want to provide all 3 categories themselves, may meet this requirement by either;
- bidding as part of consortium of bidders applying for separate but linked contracts in all 3 categories;
  - Joining up with other providers to form a single legal entity to provide all 3 categories (provided the single legal entity is already formed or is planned and will be in place in time for April 2010).
16. When awarding contracts we will make decisions according to the tender process to be set out in the Information to Tender. We will not prefer bids on the basis that they are single legal entities.

## Changes to the Consortium Structure

17. Termination of or withdrawal from the contract of one or more consortium members may leave us without the three categories and/or geographical locations for which we originally advertised in the tender. In these circumstances, we do not believe that procurement law permits the remaining consortia members

to simply find a replacement for the missing member. However, we will try to avoid terminating all the consortium contracts and re-tendering the whole service by instead considering:

- Novation of the missing member's contract, where this is permissible under our usual rules;
- Extension of the other consortium members' contracts to cover the missing category (provided they meet the Supervisor requirements etc.) and/or geographical location;
- Having an open tender of just the missing contract work, on the basis that the winning bidder would have to work with the remaining consortium members and vice versa.