

2015 Duty Provider Crime Contracts Update

Delivery Partners & Financial Assessment

Important Notices

Only those organisations awarded a 2015 Own Client Contract will be invited to tender for a Duty Provider Contract or carry out work under a Duty Provider Contract.

The information contained in this document is intended to act as a useful guide which can be amended or added to at any time. For the avoidance of doubt, all prospective bidders must rely on and comply with the information and requirements of the procurement documents referred to below that will be made available as part of the procurement process:

- Duty Provider Contract Invitation to Tender and Information for Applicants
- Frequently Asked Question documents issued by the LAA as part of the procurement process.

Key Bidding Rules

1. A **fixed number of equal sized contracts** will be available in each procurement area. The number and size of contracts in all areas will be published with the tender documents.
2. An organisation can make only **one** bid as an Applicant Organisation per procurement area.
3. There can only be **one** Applicant Organisation per bid. Any organisation can only appear on a bid **once** i.e. an organisation cannot be both an Applicant Organisation and a Delivery Partner on a single bid.
4. An organisation can only be included in up to **two** bids per procurement area i.e. as an Applicant Organisation once and a Delivery Partner once **or** as a Delivery Partner twice.
5. The maximum number of organisations **in a single bid** for contract work in a procurement area is **four** i.e. an Applicant Organisation & up to three Delivery Partners.
6. Within a bid, the **Applicant Organisation must deliver the largest individual share of the contract work** e.g. if a single Delivery Partner delivers 40% of the work in the procurement area the Applicant Organisation must deliver greater than 40%.
7. In addition, within a bid, the Applicant Organisation must deliver certain minimum percentages of the total value of the contract work. In a rural area, this is 30%, in an urban area, this is 45%.
8. A Delivery Partner is limited to delivering no more than **40%** of the total value of the contract work under a single bid.

Section A- Delivery Partners

Types of Organisations

The LAA will only contract with **single legal entities (Applicant Organisations)**. However, **Applicant Organisations** may work with **Delivery Partners** to deliver the Contract Work within a procurement area.

Applicant Organisation (AO) An organisation which tenders for contract work and if successful will hold the contract with the LAA and ultimately be responsible for all services delivered under the contract.

Delivery Partner (DP) An organisation working under a formal written agreement with an AO in order to deliver contract work in a procurement area. An AO can work with up to three DPs in a procurement area. In its capacity as a DP, an organisation will NOT be a party to the Duty Provider Contract in that procurement area.

All DPs must hold an Own Client Contract in their own right, and have a formal written agreement with the AO.

Joint venture and consortia The use of the term consortia is a general term to describe organisations coming together to deliver a service and will not be a defined term in the contract and/or tender. Organisations may come together in a number of ways to deliver the service but will either need to form a single legal entity or by means of a lead contractor (the Applicant Organisation) working with up to 3 Delivery Partners. Any single legal entity will need to meet the requirements of the tender process and an organisation which is not delivering contract work will not be able to do so. However, a joint venture that is appropriately regulated and intends to deliver Contract Work, may tender.

Using Delivery Partners – some points to consider

The tender criteria will not inherently favour OR disadvantage bids on grounds of including Delivery Partners. Including Delivery Partners may be of benefit to some organisations, but Applicant Organisation must consider the consequences of working with Delivery Partners.

- An Applicant Organisation may rely on individuals employed by their Delivery Partners to meet **some** of the criteria. However, **minimum requirements and criteria pertaining to the management of the service must be met by the Applicant Organisation only**. These will be specified in the main tender documents.
- Applicant Organisations may be able to **share overheads** with their Delivery Partners including sharing office space (subject to meeting the requirements set out in paragraphs 2.27 of the draft Contract) and support staff.
- The Applicant Organisation **remains contractually responsible for all work conducted under the Duty Provider Contract Work undertaken by Delivery Partners**. The Applicant Organisation remains contractually obliged to fulfil the Duty Provider Contract if a Delivery Partner is no longer able to deliver services. The Applicant Organisation is responsible for drawing up the agreement with its Delivery Partners, so may include arrangements for risk sharing and liability if the Delivery Partner is no longer able to deliver services.
- The Applicant Organisations' **Peer Review will include all work undertaken under the Duty Provider Contract, including work undertaken by Delivery Partners where applicable**.
- It will be the responsibility of the Applicant Organisation to ensure that it **undertakes appropriate due diligence checks** of its Delivery Partners. Applicant Organisations will need to continually manage their relationship with Delivery Partners, which may add an additional layer of complexity in the allocation of work depending on the terms of the arrangement.

Scenarios

The LAA will only contract with a single legal entity. However, there are many different ways in which firms can work together to deliver services. The scenarios below set out some potential examples of how firms might work together to meet the challenge of delivering the services in a new market place, but is not intended to be an exhaustive list.

<p>Scenario A: Delivery Partner(s) in a large procurement area</p> <p>The Applicant Organisation (AO) wishes to deliver services across some of the procurement area. However, some towns in the procurement area are distant from their offices.</p> <p>Other, smaller, organisations based in these towns would still like to continue to undertake duty work, but do not intend to bid for a Duty Provider Contract themselves.</p> <p>The AO therefore bids to carry out 50% of the contract work and enters into arrangements with the other organisations to cover the remaining contract work in the area as Delivery Partners.</p> <p>The Applicant Organisation is able to hold a contract without having to cover the whole procurement area.</p> <p>The Applicant Organisation is contractually responsible for the delivery of all contract work in the area and will need to manage the relationship with the three Delivery Partners to ensure rotas are covered and the work they deliver is of sufficient quality.</p>	<p>Scenario B: Applicant Organisation without specific expertise</p> <p>Some criteria will award more points to Applicant Organisation employing an individual experienced in a particular area of criminal law. These individuals can be employed by the Applicant Organisation or a Delivery Partner and are deployed on this contract in the procurement area.</p> <p>The Applicant Organisation therefore enters into a formal agreement with a Delivery Partner - another, local organisation which does have this level of experience and who is able to provide expertise across the contract in relation to this area of criminal law.</p> <p>The Applicant Organisation is therefore awarded more points against this criterion, so is more likely to be awarded a contract.</p> <p>The Applicant Organisation will need to undertake checks to certify that their Delivery Partner continues to employ this individual, as this will become a contract condition.</p>	<p>Scenario C: Very large Applicant Organisation</p> <p>The first Applicant Organisation currently delivers a large volume of work across the procurement area, approximately 140% of the value of one of the new contracts. It does not wish to reduce the amount of work it carries out in the area.</p> <p>It therefore bids as an Applicant Organisation with no Delivery Partners (therefore bidding for 100% of the contract work). The same organisation also acts as a Delivery Partner for a second firm, delivering a further 40% of the contract work in the area under that second firm's contract.</p> <p>In total the first Applicant Organisation will be delivering 140% of the contract work of a provider in an area thus not reducing its work.</p>
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Section B – Financial Assessment

Financial Assessment

As part of the tender process, Applicant Organisations (not Delivery Partners) will be subject to an assessment by qualified financial professionals of their finances.

For established business this will be based on key ratios from their accounts and for new business will focus on a range of information including cash flow forecasts.

Those receiving a red rating on the financial assessment will be subject to further checks to assess if there are any additional financial risk indicators based on their response in their Own Client Tender (e.g. unmet tax liabilities). Where such indicators are present, the Applicant Organisation will receive a 'red plus' rating and their bid will be excluded from the procurement process, as it presents too great a financial risk.

Expansion Capacity Assessment

Applicant Organisations that are bidding to deliver contracts that are valued at more than twice their current turnover or that are a new entities will be subject to an expansion capacity assessment, which will assess more detailed financial information. This is to ensure that they are in a position to support the level of expansion proposed.

For the purposes of this assessment, where Applicant Organisations are making bids across multiple Procurement Areas they will be able to assign their bids as a “main bid” or “expansion bid”. The intention is that if Applicant Organisations are assessed as having capacity to deliver their main bid but not their expansion bid(s), their main bids will be protected rather than all bids being rejected. However, if all bids fail the expansion capacity test, all an Applicant Organisation’s bids will be excluded from the procurement process.