

Additional information related to the Procurement of Criminal Legal Aid Services in England and Wales from July 2015 and business structures

We have received a number of queries around amendments to business structures either under consideration or in the process of being completed. Many such questions will be answered by reference to the information given in the original Information for Applicants document for the Own Client tender and the subsequent Frequently Asked Questions (FAQ) document, which is available on the Tenders page of our website at:

<https://www.gov.uk/government/publications/legal-aid-crime-tender-2015>

A further FAQ will be in operation now the Duty Provider Contract tender has opened (the deadline for questions for that is **12 noon on 15 December**).

Questions received thus far which we consider may be of wider interest have been collated and are contained in this FAQ document.

- 1. We advised you in our Own Client tender that we were awaiting SRA authorisation to change our status from a sole trader to a limited company, and tendered as a Limited Company, which has now been approved. There has been a change of directors however – are we still able to work under the Own Client Contract and submit a tender for the Duty Provider Contract?**

The rules around structuring bids are set out in the Own Client Contract IFA at sections 1.17 – 1.22. If there is no change to the business type (in this case a Limited Company) there is no impact on the offer of an Own Client contract or the ability to submit a tender for a Duty Provider Contract.

The organisation must, however, inform the LAA if the change of directors has an impact on the responses to the Own Client Contract ITT. Where this is the case the LAA will reassess the tender (including rejection criteria) and this may result in the contract offer being withdrawn if the change results in the organisation no longer being eligible for a contract.

- 2. When I submitted my application for the Own Client Contract I was intending to continue to operate as a Sole Trader but I have now decided to change this. Will this have any impact on my ability to take up the Own Client Contract or tender for a Duty Provider Contract?**

As confirmed in the FAQ document issued previously, if Applicant Organisations did not intend to merge or change their organisational structure other than to change their legal status there was no need to submit more than one Tender. As set out in Paragraphs 4.2 and 8.33 of the IFA, if the Applicant Organisation's Tender has been assessed as successful and it subsequently changes its status or any material element of its Tender after the Deadline and before the Service Commencement Date, the Applicant Organisation must inform the LAA. The LAA will conduct a re-assessment to ensure the Tender is not adversely affected.

A simple change of status e.g. from partnership to Limited Liability Partnership with no material change to the structure of the business, would be permitted and would not prevent an application for the Duty Provider Contract.

However, where there has been a change in the nature of the bidding entity that entity will not have tendered for an Own Client Contract and, therefore, will be unable to tender for a Duty Provider Contract. In this case the tender was submitted by a sole practitioner but the organisation is now a partnership or limited company, and, therefore, a different entity to that which bid for the contract.

Where a change from sole practitioner to partnership was envisaged the organisation could have submitted Own Client Contract tenders as:

- A sole practitioner (current organisation); and
- A partnership or limited company (proposed organisation).

3. I have been successful in my application for the Own Client Contract for my current business as a Sole Trader, but since that notification I have agreed to change to a partnership, with a former colleague taking part ownership of the business. Can I still tender for the Duty Provider Contract?

The rules around structuring bids are set out in the Own Client Contract IFA at sections 1.17 – 1.22. In this case there is a change to the business type and this will have an impact on the offer of an Own Client Contract or the ability to submit a tender for a Duty Provider Contract.

As there has been a change of the ownership structure of the business the original organisation will no longer exist as a separate legal entity, and on this basis it would not be possible to accept the offer to award an Own Client Contract. Unless the new partnership also successfully tendered for an Own Client Contract it will not be able to tender for the Duty Provider Contract.

4. We have been notified of the successful outcome of our tender for the Own Client Contract. We have since been approached by another firm with a view to a merger, which will see us becoming a part of the larger group. Can we do this under our existing award or would this require a re-assessment of our application?

This will depend initially on whether the larger organisation submitted its own application for the Duty Provider Contract. Please see Sections 3.6 and 3.7 of Annex C of the IFA for more information.

Essentially if the merger proceeds, the original organisation will no longer exist as a separate legal entity, and on this basis it would not be possible to accept the offer to award an Own Client Contract or tender for a Duty Provider Contract.

5. **We were successful in our tender for an Own Client Contract but have now gone through a merger with another local firm. Can we still apply for a Duty Provider Contract?**

If the organisation which was previously successful in the Own Client Contract Tender no longer exists it cannot accept the Own Client Contract offer or bid for the Duty Provider Contract.

If the other local firm did not tender for the Own Client Contract, or was unsuccessful in that tender, it also cannot tender for a Duty Provider Contract.

6. **We had been planning a merger with another firm and successfully tendered for the Own Client Contract on that basis. We have now decided to remain separate. We only tendered on the basis of the merged organisation and not in our current status. Can we now apply for either an Own Client or Duty Provider Contract?**

As set out in the Own Client Contract IFA Sections 1.17 – 1.22 organisations should consider submitting tenders in various forms where a merger was being considered. As there was no application made in the current form the organisation cannot now apply for an Own Client Contract and therefore would not be eligible to apply for a Duty Provider Contract.

7. **We were successful in our tender in our current format of a Limited Company. Ownership of the company is split between the 3 shareholders although not equally, and the majority shareholder has decided to leave the business, with the 2 remaining shareholder/directors agreeing to 'buy him out.' Will our ability to tender for the Duty Provider Contract be affected?**

As set out in Paragraphs 4.2 and 8.33 of the IFA, if the Applicant Organisation's Tender has been assessed as successful and it subsequently changes its status or any material element of its Tender after the Deadline and before the Service Commencement Date, the Applicant Organisation must inform the LAA. The LAA will conduct a re-assessment to ensure the Tender is not adversely affected. A change of ownership in the way suggested would be permitted and would not prevent an application for the Duty Provider Contract.

The bidding entity has not changed and, therefore, it is likely that this would not impact on the organisations ability to tender for a Duty Provider Contract.

8. **Our firm successfully submitted a number of tenders as we were unsure of how we would proceed. We have been awarded Own Client Contracts as 'Bloggs' and also as Smith Ltd. Since the award 'Bloggs' has merged with another local firm, 'Jones' although I am yet to formally advise the LAA. Can the entities 'Bloggs', 'Jones' and Smith Ltd all tender for the Duty Provider Contract in the same Procurement Area? Would this answer be different if they were tendering in different Procurement Areas?**

As set out in Paragraph 2.9 of the IFA, the Duty Provider Contract is contingent on the holding of an Own Client Contract. Following the merger of the entities 'Bloggs' and 'Jones' the entities awarded the Own Client Contracts no longer exist, and the new trading business may not therefore tender for any Duty Provider Contract.

The business of Smith Ltd however has been granted an Own Client Contract and if it is still in existence it may tender for a Duty Provider Contract. If the business of Smith Ltd remains in existence it must consider the Rules on Submitting Multiple Bids– see the Duty Provider Contract Information for Applicants Section 2.

If Smith Ltd and Jones both tender in the same Procurement Area and are “connected” under the Rules on Submitting Multiple Bids both tenders would be rejected.