



Legal Aid
Agency

LCCSA and CLSA Questions

In addition to the questions received through the eTendering system message boards by individual organisations, we have received copies of a standard template of questions sent on behalf of the LCCSA and CLSA.

Whilst a number of the questions posed do not pertain directly to the tender process for 2015 Duty Provider Crime Contracts, the LAA has provided responses in this document for general information purposes only. Where questions have been answered in the 'Invitation to Tender for 2015 Duty Provider Crime Contracts Frequently Asked Questions' the relevant cross references have been provided in this document.

The majority of the questions in this document have already been asked by individual organisations and the responses can be found in the main FAQ document. To avoid unnecessary duplication, the LAA has grouped the same or similar questions together and categorised questions by subject matter. Questions have been categorised into the following areas:

- Frequently Asked Questions
- Contract
- Questions on data
- Policy
- Claim for Judicial Review
- Hypothetical or rhetorical questions

For ease of reference, where provided, question reference numbers in the LCCSA and CLSA's template have also been included. A number of the questions asked also replicate questions asked by the Law Society, where this is the case, this is detailed in red.

Frequently Asked Questions

To avoid duplication with the FAQ document supporting the tender process, the questions asked are listed below with a reference to where these are answered in main FAQ document.

1.9. What is meant by the words "as far as possible" in paragraph 1.14 of the IFA?
The answer to this question can be found at 12.1 of the final Frequently Asked Questions document (FAQ) on our website:
<https://www.gov.uk/government/publications/legal-aid-crime-tender-2015>

2.6. Does a Delivery Partner's office have to be in the same procurement area? **This question was also asked by the Law Society**
The answer to this question can be found at 15.1 of the final Frequently Asked Questions document (FAQ) on our website:
<https://www.gov.uk/government/publications/legal-aid-crime-tender-2015>

2.8 How will the LAA determine which bid is disqualified if a Delivery Partner on multiple bids has breached the rules on the number of bids it can be a DP on?

The answer to this question can be found at 15.2 of the final Frequently Asked Questions document (FAQ) on our website:

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

2.9. & 2.10 In relation to paragraph 2.29 to 2.37 of the IFA, Applicant Organisations may be unaware of this situation. How can they be sure their Delivery Partner does not breach the rules? Will an AO be able to check with the LAA before submitting tender?

The answer to this question can be found at 15.3 of the final Frequently Asked Questions document (FAQ) on our website:

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

2.11. and 8.9 What does the LAA consider to amount to 'due diligence'? Will the LAA be drafting guidance?

The answer to this question can be found at 15.4 of the final Frequently Asked Questions document (FAQ) on our website:

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

2.12 Are Agents to be submitted as part of the tender? If so what level of detail is required? Are the limits on the number of AO's an Agent is permitted to work for in a Procurement Area?

The answer to this question can be found at 15.5 and 15.6 of the final Frequently Asked Questions document (FAQ) on our website:

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

2.13 Is it right that an AO bid will fail if a DP pulls out after the tender deadline? If so, how is it considered reasonable that the AO cannot substitute one DP for another in such circumstances?

The answer to this question can be found at 15.7 of the final Frequently Asked Questions document (FAQ) on our website:

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

3.1. What happens if the sustainability of a bid depends on the firm winning all of the contracts they bid for, yet they only win one or two, thus rendering their entire bid unsustainable? **This question was also asked by the Law Society**

The answer to this question can be found at 18.1 of the final Frequently Asked Questions document (FAQ) on our website:

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

3.2. AOs complete one Organisation ITT and then 1 or more PA ITTs but they must be capable of Concurrent Delivery on all PA bids. How would the Concurrent Delivery model deal with the scenario of an Applicant Organisation also acting as Delivery Partners?

The answer to this question can be found at 18.2 of the final Frequently Asked Questions document (FAQ) on our website:

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

3.6. Given the short timescale and the enormous detail required, many bids will be submitted close to the deadline. Has the eTendering portal been properly tested?

3.7. What assurances can the LAA give that it will not crash around 27 or 28 January?

The answer to these questions can be found at 18.4 of the final Frequently Asked Questions document (FAQ) on our website:

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

3.8. What limitations will there be on the use of 'employees' on zero hours contracts, if any?

This question was also asked by the Law Society

The answer to this question can be found at 17.1 of the final Frequently Asked Questions document (FAQ) on our website:

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

4.1. Accreditation (para 4.5): The contract start date is only 6 months after the close of bidding and a shorter time than that after notification that the bid has been successful. What confidence does the LAA have that there will be enough assessors to carry out this work in a relatively short space of time? What will the LAA do in the event that there are insufficient assessors to carry out even the desk top audits in time for the contract start date?

4.2. & 7.2 If it is established that there are insufficient assessors to carry out the work before the contract start date, will the LAA maintain its rigid position about no extensions or will there be an ability to apply for extensions in such circumstances?

4.3. If there is illness (for example if the COLP or COFA falls sick and cannot proceed with the audit on the day in question) will the LAA refuse to consider extensions or will the Applicant Organisation face discrimination due to illness on the part of one of its key staff members?

The answer to these questions can be found at 18.3 of the final Frequently Asked Questions document (FAQ) on our website:

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

4.4. What does the LAA mean by the word 'identify' in para 4.14 (office requirements)?

The answer to this question can be found at 4.2 of the final Frequently Asked Questions document (FAQ) on our website:
<https://www.gov.uk/government/publications/legal-aid-crime-tender-2015>

4.9. If an AO bids in more than 2 areas with the same Management Team is it the LAA position that the entire bid is disqualified? Do AOs have to have 'alternative' Management Teams in place to avoid a Named Individual being named in more than two Procurement Area Bids?

The answer to this question can be found at 4.13 of the final Frequently Asked Questions document (FAQ) on our website:
<https://www.gov.uk/government/publications/legal-aid-crime-tender-2015>

4.10. What is the value, legally, of a Signed Engagement Agreement to employ a Named Individual? If the employment did not happen the consequences would be relatively minimal and once the contract had commenced the LAA would have no ability to react beyond terminating the entire contract and re-tendering at great expense?

7.3 Re: #7.16/7.20 What happens in the event that a Named Individual, Key Person or member of the Management Team has left the organisation and a second is then seriously ill or otherwise incapacitated and cannot be confirmed during the mobilisation period?

The answer to these questions can be found at 17.4 of the final Frequently Asked Questions document (FAQ) on our website:

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

4.11. How is the limit of one substitution compatible with promoting diversity and equal opportunity? How does this clause meet the statutory duty on the LAA to ensure that tenders comply with equality legislation?

The answer to this question can be found at 17.5 of the final Frequently Asked Questions document (FAQ) on our website:

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

4.13. Has the LAA considered that the tiebreak questions favour large firms which already exist as a legal entity?

The answer to this question can be found at 16.11 of the final Frequently Asked

Questions document (FAQ) on our website:

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

4.14. Who assesses the answers?

4.15. What steps are to be taken to ensure that the process of assessing the answers is transparent and fair?

4.16 Because this is likely to be a subjective assessment not an objective one what right of appeal against an adverse assessment will there be?

5.10. How is the work of any non-qualified staff member checked?

5.11. What arrangements are in place to deal with potential human error from the MOJ, their staff or the professionals and their staff? Are determinations reached with one person only reviewing each tender?

5.12. What checks or quality control processes are in place?

6.13 Re: #6.21 There is no appeal process. What happens if the assessment of the Procurement Area Bid you provide shows a clear unequivocal error in the marking process?

The answer to these questions can be found at 18.5 of the final Frequently Asked Questions document (FAQ) on our website:

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

4.17. Will the assessor be required to undergo a conflict of interest check to ensure he/she has had no prior dealings with the AO at any stage in the process. If so how will this be checked?

The answer to this question can be found at 18.6 of the final Frequently Asked Questions document (FAQ) on our website:

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

5.1. How does the Basic Financial Assessment ensure that it is appropriate for the AO to proceed to the next stage given that the expansion can be up to three times it's recent turnover?

5.6 The contract appears to be based on the assumption that firms can take on three times the present volume of work. How has this ratio been determined?

5.7. The average turnover of a firm will include private work which is billed at approximately 5 to 6 times legal aid rates. Has the LAA considered this in coming to these figures?

5.8. If the capacity test is designed to assess ability to perform an increase in work volume, why have you opted for a ratio based on value of work rather than volume of work?

G21 You require far greater detailed information for expansion bids than you do for non-expansion bids. Why?

5.C2.ii Why is the turnover of an applicant organisation relevant when considering the expansion capacity assessment?

The answer to these questions can be found at 8.1 of the final Frequently Asked Questions document (FAQ) on our website:

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

5.2. What is meant by "suitably qualified finance professionals"?

5.3. What level of qualification is "suitable"?

5.5, 5.20. & 5.24 Is the MOJ employing independent assessors of financial suitability and, if so, which firms are employed to undertake this assessment?

5.9. & 5.15. Paragraph 5.30 suggests that some assessments will not be conducted by a qualified professional. Is this correct?

5.4. and 5.22. Is a formula being applied to the Financial Assessment?

5.21. Will you provide information now to allow firms/companies to consider their potential bids against the criteria you will be using?

5.23. At paragraph 5.47 does reference to assessors mean the qualified personnel referred to previously

5.25 How are you going to undertake a realistic financial assessment?

Will Audited Accounts score more highly than Certified Accounts?

The answer to these questions can be found at 8.2 and 8.17 of the final Frequently Asked Questions document (FAQ) on our website:

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

5.13. Concerns have been raised as to the potential for different approaches to figures being used by bidding businesses/firms and the LAA. If the firm's Organisation ITT response confirms a turnover figure falling within the '3x' multiple, how would the LAA form a view that this information is incorrect and what would prompt the steps necessary to determine this?

5.14. How will the LAA know if the figures it has for each firm in given financial periods correspond entirely with the figures deployed by each firm in a given accounting period?

5.16. What is the position where sums are owed to the LAA under the SMP system? Does turnover include all sums received and is any allowance made for the possibility that some firms will owe the LAA some of this funding?

The answer to these questions can be found at 8.3 of the final Frequently Asked Questions document (FAQ) on our website:

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

5.17. Firms may obtain loans to fund expansion. Does the reference to "the first year of contract" mean that any loan repayments required after the first year will not be considered as part of this exercise?

5.18. How will the impact of such loans be considered? Are some types of repayment scheme more attractive to the LAA than others?

Minimum thresholds – do the checks on the firm having available cash to fund the business including any debts extend beyond year 1?

How do you avoid the problem of loans repayable after a year? **Questions on undertaking a realistic financial assessment and the impact of loans were also asked by the Law Society**

The answer to these questions can be found at 8.4 of the final Frequently Asked Questions document (FAQ) on our website:

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

5.19. Can you provide further information as to the type of financial monitoring you refer to in 5.43(c)?

The answer to this question can be found at 8.5 of the final Frequently Asked Questions document (FAQ) on our website:

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

6.1 At #6.6 your comments regarding the use of consultants suggest that you will not place complete trust in responses which appear to you to have been prepared with the assistance of consultants. You specifically mention the danger of 'generic' responses. Does this mean that not all answers given by AOs will be accepted as accurately describing the position of the applicant? How will you distinguish between assertions that gain full marks and those you see as falling short of deserving full marks?

6.2 How does an application clearly demonstrate it is specific to an AO? Is it sufficient to relate what may be a good but potentially generic response to some specific features of AO's tender?

The answer to these questions can be found at 16.31 of the final Frequently Asked Questions document (FAQ) on our website:

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

6.3 Re: #6.7 Why did you delay providing this information thereby preventing firms merging into new legal entities in time to submit bids?

6.4 & 7.4 Why are you only now informing firms that the management experience of colleagues in firms that might form such arrangements (eg as DPs) will be excluded? Why is this experience excluded? Can a member of an Agent or DP sign an employment contract

with the AO and what roles would they then be able to undertake?

The answer to these questions can be found at 16.13 of the final Frequently Asked Questions document (FAQ) on our website:

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

6.5 Re: #6.10. If a firm has procedures in place that have not historically been documented in a written plan, does this necessarily count against the firm when you consider whether “plan” are “well developed”? What evidence will you accept that a plan or system has been in place?

The answer to this question can be found at 16.18 of the final Frequently Asked Questions document (FAQ) on our website:

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

6.6 RE: #6.11. Please provide an indication of the extent of growth you believe AOs should be planning to cope with when you mention “routine fluctuation and sustained increases in the volume of contract work”? If you foresee growth that could take the volume of a contract beyond three times the previous average two year turnover of the AO, has such additional growth been factored in to the financial assessments being conducted at the outset of the application process? If not, why not?

The answer to this question can be found at 16.25 of the final Frequently Asked Questions document (FAQ) on our website:

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

6.7 In coping with fluctuations as foreseen in #6.11, do you allow for staff to work longer than the notional average FTE hourly week used elsewhere in the IFA or must AOs plans presume that no additional work can be obtained from existing full time staff?

The answer to this question can be found at 16.26 of the final Frequently Asked Questions document (FAQ) on our website:

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

6.8 Can firms refer to work conducted on non-contract work (eg VHCCs) as an example of how the firm has coped with other work ‘spikes’?

The answer to this question can be found at 16.27 of the final Frequently Asked Questions document (FAQ) on our website:

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

6.9 Re: #6.15 Why is there a word limit for these and other responses?. Can you extend the available character limits to these and other similarly character limited responses?

The answer to this question can be found at 16.29 of the final Frequently Asked Questions document (FAQ) on our website:

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

6.10 Re: #6.17/6.18. In what order will tie breakers be conducted vis-à-vis different procurement areas. If the tie-breaker is conducted in one area before another, how can AOs be sure that the result of the tie breaker will not have a knock on effects in multiple associated bid areas?

The answer to this question can be found at 16.10 of the final Frequently Asked Questions document (FAQ) on our website:

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

6.12 Re: #6.20 Why on earth would a complex tender process requiring hundreds of hours of preparation resort to a final system of random selection to split applicants? Why would you not require further tie breakers, (of whatever measurable type)?

The answer to this question can be found at 16.34 of the final Frequently Asked

Questions document (FAQ) on our website:

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

7.1 Will AOs know if they are close to have been selected, effectively placed on a shortlist? Given most applicants will fail, would it not be sensible to do so to allow applicants to consider their next steps?

The answer to this question can be found at 16.35 of the final Frequently Asked Questions document (FAQ) on our website:

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

8.3 Re: #8.12. How can the process be amended at “any time”? How can a bid be altered after the deadline? Do those submitting Tenders need to remain available to drop everything (work, home-life, holidays etc) for an indefinite period pending any potential notice from the LAA?

The answer to this question can be found at 18.7 of the final Frequently Asked Questions document (FAQ) on our website:

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

8.5 Re: #8.21 What is the minimum period you will retain the records of the Tender?

The answer to this question can be found at 18.8 of the final Frequently Asked Questions document (FAQ) on our

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

8.12 Re: #8.31 What does this mean? What additional contract requirements? In the absence of clarity, how can due diligence be conducted and thought be given to such suggestions and possibilities as to the AOs ability to comply?

The answer to this question can be found at 18.9 of the final Frequently Asked Questions document (FAQ) on our

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

8.13 Re: #8.34 There is no guarantee of a minimum amount of work. How can the LAA be sure that firms tenders (business plans, cash flow projections etc) will be viable? What figures should AOs use when considering the viability of their bids?

The answer to this question can be found at 18.10 of the final Frequently Asked Questions document (FAQ) on our

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

8.14 Re: #8.36 Is this intended to include the submitted bids? Do you seek to assert ownership and proprietorial rights over the submissions of AOs?

The answer to this question can be found at 18.11 of the final Frequently Asked Questions document (FAQ) on our

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

8.15 Re: #8.41 Will these governmental transparency standards means the LAA will publish the total points awarded to each AO, their submissions, their responses to tie breakers etc?

The answer to this question can be found at 18.12 of the final Frequently Asked Questions document (FAQ) on our website:

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

8.16 Re: #8.42 How will such personal data re key personnel be used?

The answer to this question can be found at 18.13 of the final Frequently Asked Questions document (FAQ) on our website:

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

C1 What does ‘manage’ mean for these purposes (D.1.a.i.)?

The answer to this question can be found at 13.1 of the final Frequently Asked Questions document (FAQ) on our website:

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

C2 If management responsibilities are shared between partners/directors does this disadvantage a firm as against another entity because the one manager scores better than the two sharing responsibility?

The answer to this question can be found at 13.2 of the final Frequently Asked Questions document (FAQ) on our website:

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

C3 Do the Selection Criteria questions at D1 to D3 include all work, legal aid and private?

C4 Question D.2.a.i. : Is this intended as an average figure for the year or is this a contractual requirement for each week?

C5 Does work on VHCC cases in the Procurement Area count in any way towards this time?

The answer to these questions can be found at 13.3 of the final Frequently Asked Questions document (FAQ) on our

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

6. D1.a.i With reference to the volume of police station cases managed over the 12month period, does this include just those cases which resulted in a police station attendance or every case allocated via the DSCC even if it did not result in an attendance?

The answer to this question can be found at 7.3 of the final Frequently Asked Questions document (FAQ) on our website:

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

C6 Question D.4.a.i. - is this based on fees received or billed in the given period?

The answer to this question can be found at 13.4 of the final Frequently Asked Questions document (FAQ) on our website:

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

C7 Question D.4.a.i.- is this subject to disbursements, VAT etc?

The answer to this question can be found at 13.5 of the final Frequently Asked Questions document (FAQ) on our website:

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

C8 & C9 Question D.5.a.i. - How are VHCC cases and contracts treated for the purposes of responding to this question? **The answer to this question can be found at 13.6 of the final Frequently Asked Questions document (FAQ) on our**

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

Does the exclusion of case management hearings mean that a first hearing in the Magistrates Court is excluded where case management issues are considered?

17. E1.a Can an "entire case" be a case which results in an arrest and interview but is then not charged?

The answer to these questions can be found at 10.2 of the final Frequently Asked Questions document (FAQ) on our website:

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

C11 If a firm has conduct of an entire case must the whole case fall within the relevant period (1/3 years)? Is any part of the case still being live sufficient?

G10 & 15. E1.a Does the 12 month provision for conduct of an 'Entire Case' mean that the start and finish of the case must both have been in the past twelve months, or does it count if the case finished less than twelve months ago? **This question was also asked by the Law Society**

The answer to these questions can be found at 10.7 of the final Frequently Asked Questions document (FAQ) on our website:

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

8. D2.a.i & 10. D2.a.i Does the “volume” of cases managed include just cases that have been started and concluded over the 12 month period, or does it include any part of a case that has been ongoing in the last year?

9. D2.a.i With reference to the volume of Magistrates Court cases that have been managed over the last year, does this include any case that has been through the Magistrates Court on their way to the Crown Court or just cases that have been finalised in the Magistrates Court?

The answer to these questions can be found at 13.7 of the final Frequently Asked Questions document (FAQ) on our website:

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

C12 Does E.9.a really mean that the person who this question is directed at will have a) managed a serious fraud case and b) also be expected to spend 17.5 hours on contract work?

The answer to this question can be found at 10.1 of the final Frequently Asked Questions document (FAQ) on our website:

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

FTE When considering the time available for staff, how do you and should applicants factor in staff who may work from time to time on VHCC (or any other non-contract work) when and if such work becomes available?

The answer to this question can be found at 18.20 of the final Frequently Asked Questions document (FAQ) on our website:

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

G1 Does ‘percentage of turnover’ refer to all work including privately funded cases, all legal aid work, all crown court work, all magistrates court work or just magistrates court and police station legal aid work?

G3 Will the turnover of the entire firm - including any civil work or private client work – be taken into account?

The answer to these questions can be found at 8.7 of the final Frequently Asked Questions document (FAQ) on our website:

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

G2 Does turnover include vat and / or disbursements?

The answer to this question can be found at 8.16 of the final Frequently Asked Questions document (FAQ) on our

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

G4 What is meant by ‘current’ turnover?

G5 Will the data for current turnover simply relate to work in the procurement area in which the firm is bidding? **These questions were also asked by the Law Society**

The answer to these questions can be found at 8.15 of the final Frequently Asked Questions document (FAQ) on our

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

G6 Why is it only the applicant organisation’s current turnover that is being considered when assessing capacity and not also that of any Delivery Partners? **This question was also asked by the Law Society**

The answer to this question can be found at 8.8 of the final Frequently Asked Questions document (FAQ) on our website:

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

G7 The casework criteria says that the named individual can be substituted if they drop out. Is that also the case with a named manager – subject of course to the replacement having at least equal experience? **This question was also asked by the Law Society**

The answer to this question can be found at 17.10 of the final Frequently Asked Questions document (FAQ) on our website:

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

G8 In the procurement area ITT, section B requires the firm to list all staff employed within the organisation who will be deployed on the contract. Should firms be listing delivery partners' staff in section B as well? **This question was also asked by the Law Society**

The answer to this question can be found at 15.14 of the final Frequently Asked Questions document (FAQ) on our website:

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

G9 'Entire Case': Does the phrase "supervision of" mean that where the person had conduct of it but instructed Counsel to do the advocacy, this meets the requirement for "representation of the client in at least one hearing"? Final hearing obviously includes a fully contested trial on a not guilty plea. What else does it cover? Guilty plea? Cracked trial? Presumably given the separate reference to a contested Crown Court matter, it does include guilty pleas and cracked trials?

Entire Case: this appears to include Guilty pleas, or cases dropped by the prosecution with no evidence served. Is this correct? **This question was also asked by the Law Society**

The answer to these questions can be found at 10.3 and 10.4 of the final Frequently Asked Questions document (FAQ) on our

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

G11 Section G: are we correct in assuming that the first version of the question is not supposed to apply in Split Procurement Areas? **This question was also asked by the Law Society**

The answer to this question can be found at 4.9 of the final Frequently Asked Questions document (FAQ) on our

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

G14 Re Procurement Area ITTs, Section A Procurement Area information, A1a: In London, does having an office in the Procurement Area garner more points than an office in an adjacent area?

The answer to this question can be found at 4.4 of the final Frequently Asked Questions document (FAQ) on our

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

1. B1.a.v A supervisor is said to be defined at para 2.1 to 2.13 of the 2015 Specification. A supervisor is then required to complete the "Supervisor Standard and Declaration Form". Sections 1, 2 and 3 of this form echo the requirements in Specification. However section 4 of the Form requires supervisors to demonstrate 350 hours of crime casework supervision each year in the three years prior to the date of declaration on the form. Meanwhile the Specification at para 2.3 only requires supervisors to have undertaken 350 hours of direct casework in the previous 12 months. Is there therefore an inconsistency in the two documents?

The answer to this question can be found at 9.15 of the final Frequently Asked Questions document (FAQ) on our

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

2. C1.i In accordance with the table at page 37 of the IFA which outlines what a material change does not include, is a change of a third automatically going to be seen to be a significant or material change?

The answer to this question can be found at 8.6 of the final Frequently Asked Questions document (FAQ) on our website:<https://www.gov.uk/government/publications/legal-aid-crime-tender-2015>

7. D1.a.iii Date employment commenced –when asked in the context of identifying a manager - is this the date the individual became part of the management team or the date that they became employed by the applicant organisation in any capacity?

The answer to this question can be found at 13.17 of the final Frequently Asked Questions document (FAQ) on our website:<https://www.gov.uk/government/publications/legal-aid-crime-tender-2015>

18. E6.a Why are you asking a question about Terrorism experience when it is likely to be such a rare type of case, particularly in rural Procurement Areas?

What use can be made of such limited work and what exactly is this test intended to demonstrate? Why does an AO not need to show experience of contested cases?

The answer to these questions can be found at 10.13 of the final Frequently Asked Questions document (FAQ) on our website:<https://www.gov.uk/government/publications/legal-aid-crime-tender-2015>

See also in this regard the definition of Current Liabilities. Is this catered for in the Interest Cover ratio? How?

The answer to this question can be found at 8.28 of the final Frequently Asked Questions document (FAQ) on our website:

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

Definition of Current Liabilities: This does not seem to take into account any sum owed to the LAA under the SMP system? Are such sums taken into account when considering otherwise similar or equal tenders and when considering whether an AO requires the additional analysis resulting from submission of an Expansion Bid?

The answer to this question can be found at 8.29 of the final Frequently Asked Questions document (FAQ) on our website:

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

3. C2.i Why does the completed “established business financial assessment form say “liquidity not tested”?

The answer to this question can be found at 8.23 of the final Frequently Asked Questions document (FAQ) on our website:

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

4. C2.i What is the relevance of the PBIT margin when you do not ask how many individuals share in this profit?

The answer to this question can be found at 8.24 of the final Frequently Asked Questions document (FAQ) on our

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

16. E1.a In the definition of “entire case”, representation at “committal hearings” is expressly excluded. What do you mean by committal hearings, do you use the term just to include the old 6(2) committals or are you also excluding committal from the Magistrates Court for sentence, which would appear odd as these often are the more involved and complex type of hearings for the advocate at court?

The answer to this question can be found at 10.14 of the final Frequently Asked Questions document (FAQ) on our website: <https://www.gov.uk/government/publications/legal-aid-crime-tender-2015>

Contract

The draft contract documents for the 2015 Duty Provider Crime Contract can be found on our website: <https://www.gov.uk/government/publications/draft-documents-for-the-duty-provider-crime-contract-2015>

1.10 What provisions are to be made if the Court or Police Station schemes change within the Contract period?

A1 How do you deal with the impact on figures of police station closures etc? **This question was also asked by the Law Society**

Please refer to clause 13 of the 2015 Duty Provider Crime Contract Standard Terms for information on Amendments to the Contract Documents.

1.12 Can the LAA confirm that applications for transfers of legal aid away from a DPW provider will not be subject to any more stringent regulations than exist at present and that the LAA will not become involved in such applications?

Please see paragraph 4.60 of the 2015 Duty Provider Crime Contract Specification for information on providing continuity of service under these contracts.

2.2 Can the LAA give further examples of what constitutes a material change under para 2.10? Does it include a change of office location, an increase or decrease in the number of offices, staff level changes, personnel changes at senior level, change of business structure to limited company from partnership, etc?

8.11 Re: #8.29 Is there a definitive list of “material change” applying in these circumstances? **It is for Applicant Organisations to identify where a material change has occurred to the tender information they have submitted. Further information on the types of circumstances that are likely to constitute a material change can be found in clause 21 of the 2015 Duty Provider Crime Contract Standard Terms.**

2.3. How will the stipulated percentages to be undertaken by the Lead Contractor and Delivery Partners over ‘a rolling period of 12...months’ be monitored or controlled? **This question was also asked by the Law Society**

The contract management procedures put in place to monitor this will take account of the fact that this cannot be an exact science and that some flexibility may be required in certain circumstances.

2.4. Has any consideration been given by the LAA to the potential regulatory and administrative problems which will arise where the Client retainer sits with the Applicant Organisation (AO) but the work is done by a Delivery Partner?

Arrangements for Delivery Partners were consulted on as part of the contract consultation. In constructing the Delivery Partner approach, discussions also took place with the SRA.

2.5 The representation order for duty work will be in the name of the lead supplier under the proposed model, even if the work is being conducted by the delivery partner. In accounting for tax the work of the delivery partner would be Work in Progress of the lead supplier as they would be responsible to submitting the claim. The lead supplier would therefore be taxed on that Work in Progress. The delivery partner would have to bill the lead supplier for the work they had done and so they would also have to account for it as Work in Progress and be taxed on it. This appears to mean that both lead supplier and delivery partner would

be taxed on the same work in progress. Clarification of this point would be welcomed. **This question was also asked by the Law Society**

Responsibility for the billing and taxing of work rests with individual organisations. Where organisations are uncertain about the approach that should be taken, they should raise this with their regulator or with HMRC.

3.3. If successful as the AO it may also be acting as a Delivery Partner on up to 40% of other contracts. If that firm then fails within the first year would the LAA be committed to then cancelling all successful bids linked to that firm?

3.4. What is the process for reallocating those contracts?

3.5. How would the LAA cope if it occurred more than 6 months after commencement when many failed bidders may have ceased to exist or are winding up?

See clauses 3.22 to 3.24 of the Duty Provider Contract Standard Terms for details on substituting Delivery Partners following contract award.

8.17 Re: #8.45 Are there specific requirements set out requiring firms to cater for clients with language needs? Where are these?

Please refer to clauses 5.2 (d) and 7.12 of the Duty Provider Contract Standard Terms for further information on this.

C13 Is it anticipated that future serious frauds will fall to be paid within this Contract rather than under for example the VHCC system?

The Duty Provider Contract Specification provides details of the services covered under this contract.

Questions on data

A2 Please explain in more detail how the “volume of Crown Court duty work in each procurement area is estimated using the same method “. Do you mean that you have followed cases through that started as a police or magistrates court duty case and determined over a given period, how many of these matters resulted in Crown Court case (ie a duty Crown Court case)?

As described at Annex A the volume of Crown Court duty work is based on the proportion of duty work that progresses to the Crown Court.

A3 Do you have any statistics available as to the Crown Court case mix resulting from duty work?

A4 Is this case mix similar to that for own client work?

A5 Is the mix of cases less profitable, less well paid, different case category etc?

A6 Have you taken into account the number of cases that start as duty cases but result in transfers of legal aid to an own client firm?

A7 Do you know what the rates are for such transfers (whether locally or nationally)?

For details of management information that has been made available please see the Data packs table for crime tender 2015 web page at

<https://www.gov.uk/government/publications/data-pack-tables-for-crime-tender-2015>

A9 Have the fee reductions been taken into account in respect of the 3x turnover maximum being applied re expansion bids?

As detailed at paragraph 5.11 of the IFA the Expansion Capacity Assessment for Established Business is triggered where the total Anticipated Contract Value bid for is more than three times its average Turnover over the last 2 years' accounts.

Anticipated Contract Values are detailed at Annex A of the IFA.

Policy

1.1 Can the LAA publish the document in which they claim to have undertaken “due consideration of the Public Services (Social Value) Act 2012. Proposals may improve economic, social and environmental wellbeing in a number of ways”?

In line with its statutory obligations the LAA has considered the Public Services (Social Value) Act 2012 as part of the pre-procurement stage of this tender process including how what is proposed to be procured might improve the economic, social and environmental well-being of the “relevant area”. The LAA currently has no plans to publish the more detailed document considering the requirements of the Act.

1.2. The LAA states (at 1.8) that the proposals will encourage local business and improve local access to services by requiring Applicant Organisations to have an Office in the Procurement Area they are bidding for (with the exception of London and the Split Procurement Areas). In particular in London and the split procurement areas, the impact of these proposals is likely to be that small local providers will be driven out of the market and unable to sustain the provision of criminal legal aid services to the residents in their local area on an Own Client contract while larger organisations without offices in the locality will be providing the services. This will require clients to travel greater distances to access any criminal advice under legal aid. How does this improve economic, social and environmental well being?

1.3. The LAA states (at 1.8) that the proposals will contribute to local skills development by preferring Applicant Organisations that offer training seats and invest in training and improving staff skills. Given that the proposals will mean and are intended to bring about mass contraction of the market, many firms will have to make considerable redundancies if a DPW contract is not obtained. Such redundancies are already obvious post the March 12104 cuts. How does the LAA expect tenders to encompass new training promises when there will be an over-supply of qualified solicitors in the market?

1.4. In addition has any thought been given to the fact that it is likely that the majority of firms obtaining a DPW will be large criminal only firms who would not be able to provide the requisite number of “seats” to offer any training contract?

1.5. The LAA states (at 1.8) that the proposals will raise standards in client care and confidentiality by requiring Applicant Organisations to have facilities in place to protect client confidentiality, and to have specific plans for helping clients with relevant protected characteristics and particular language requirements. Why does the LAA consider that this particular contract will bring about changes in this way when all existing contractors have the SQM in any event and such standards are already required?

1.7. The LAA states (at 1.8) that the proposals will enable a flexible market by allowing Applicant Organisations, Delivery Partners and Agents to group together to deliver services, according to their individual circumstances and expertise. Has any thought been given by the LAA to the problems posed by running a contract for criminal legal aid services in a Delivery Partnership or using an Agency agreement as suggested by these proposals?

1.11 How is it reasonable to impose a duty on a provider to continue to provide services to a client interviewed at a police station in Newcastle and then transferred to London where his case is to be tried and he is remanded in custody?

1.13 Why will the impact in falling volumes not be a factor considered in the review of the fees under this contract but will be taken into account in the review of Advocates’ fees?

2.1. How can the Secretary of State claim that these Contracts will enable consolidation of the market including via merger when contracts can only be let to legal entities that already have an Own Client Contract?

4.7. Where a London Borough borders a non-London Country (e.g Havering bordering Essex) what basis is there for not allowing a firm bidding in Havering to have an office in Essex for example? Has consideration been given to proximity of Police Stations to offices in such circumstances?

8.9 Re: #8.27 Necessary due diligence would be possible if you allowed AOs access to the data used to explain assumptions on which you do not now place faith. AOs ability to decide whether to have confidence in the proposals (and to be able properly to enter into conversations with bank managers on loan issues) is dependent on doing due diligence when you will not disclose important information. An example of this is that the LCCSA requested that KPMG explain its approach to minimal percentage profit. This request was made under the Freedom of Information Act and this was responded to with a suggestion that the question be directed at the MOJ. A similar letter to the MOJ was sent prior to the close off the last consultation but did not receive a reply or acknowledgement. How can due diligence be conducted in such a situation?

8.10 Re: #8.28 You again present information, require that AOs conduct due diligence and you then disclaim any responsibility for the accuracy of the information you provide. Does not any due diligence properly conducted rule against entering into any such uncertain contract? What do you believe firms should do to check the basis of the contract terms they are asked to tender for when you will not guarantee or warranty that your assumptions are correct?

All these questions relate to the policy as opposed to the tender process. The policy position has been consulted on. Please refer to the relevant consultation pages of the MoJ website for further details on this: <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps>

20. What checks will the LAA be making to ensure that they award contracts to the best placed applicants to deliver the contract, rather than the applicant organisation that can deliver the best narrative in the word limit?

The IFA supporting the Duty Provider Contract ITTs describes how these contracts will be awarded. The model on which the tender process is based formed part of consultation. Please refer to the relevant consultation pages of the MoJ website for further details: <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps>.

4.5. In paragraph 4.26 regarding volumes of different types of work, what confidence does the LAA have that these estimates are correct based on the current trends of falling crime? What modelling has been done about future crime trends and charging standards to ensure these assumptions are robust?

A8 A transfer rate of 5% would represent a considerable change to the statistical model and projected Crown Court work available. Has this been considered?

G12 What happens if firms in an area have changed dramatically since the historic data used to base assumptions? **This question was also asked by the Law Society**

The issue of whether a flat volumes assumption for future modelling is appropriate was addressed in the Government's response to the consultation 'Transforming Legal Aid: Crime Duty Contracts' which can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380251/laa-crime-duty-contracts-consultation-response.pdf

8.6 Re: #8.22 This paragraph explains why many AOs have not taken steps to prepare on the basis expected by the LAA, the MOJ and the Lord Chancellor. The bid process documentation itself allows for the possibility that for some reason the process may need to be abandoned. How can a contract be said to be fair when the contracting procurer, acting as a monopoly can dictate terms, change terms, end the process, and still not be subject to any of the requirements for transparency that are required of the suppliers with which it contracts? Does the LAA believe the contract terms as proposed constitute fair contract terms?

8.7 Re: #8.24 Is this disclaimer intended even to circumvent actions of gross negligence or fraud, on the part off the LAA, MOJ or companies used in connection with the consideration of the tender?

8.8 Re #8.26 How can a tender be offered on the basis that the underlying assumptions of the entire project are either accurate or complete? This seems to suggest that you already know of such problems or fear the concerns previously raised are valid?

It is usual practice to include provisions in a procurement process to this effect and this accords with procurement legislation. The LAA is bound to act in accordance with paragraph 4 (3) of the Public Contract Regulations 2006 which includes acting in a transparent way.

Claim for Judicial Review

To provide some context for this section it is necessary to set out part of the 'Note on Time Scale' provided by the LCCSA and CLSA in their document even though it posed no specific questions. This stated:

"The timescale involved in the tender process itself (to conclude on 29th January 2015) is also far too short. The tender process is extremely complicated and this matter is now the subject of a claim for Judicial Review by the two Associations."

Subsequent questions asked relating to the above statement were as follows:

1. Given that Judicial Review proceedings are underway with actions brought both by the Law Society and the Associations, will the tender process be stayed pending the outcome of the judicial review proceedings?

The High Court has issued a temporary injunction which suspends the 2015 Duty Provider Crime Contract tender process.

2. In what circumstances would the tender process be extended past the unreasonably short deadline of 29th January 2015 which fails to take into account the effect of the Christmas period, the amount of work required to produce a tender which has any realistic chance of being successful and the fact that judicial review proceedings are in train? 3. In the same way as 1 and 2, will the deadline for submission of questions be extended beyond the unreasonably short deadline of 15th December 2014?

1.8. Given the time scale involved, how does the LAA expect firms to agree the basis of any Delivery Partnership or Agency agreement and to have undertaken proper due diligence by the end of January?

8.4 Does this include on the Deadline day? Why are you not providing a reasonable cut off time?

This forms part of the Judicial Review proceedings and will therefore be dealt with as part of those proceedings.

Hypothetical/Rhetorical Questions

1.6. Firms have a basic duty to protect client confidentiality otherwise they would fall foul of the SRA. This statement is absolutely absurd and must have been written by someone with no idea as to the basic principles of a solicitors' practice. Does anyone at the LAA understand the basic principles of professional conduct which must be maintained by all solicitors?

The question posed appears to be rhetorical. Given this the LAA does not propose to respond.

2.7. A number of potential conflicts of interest could arise from the Delivery Partnership (DP) model, particularly in multi-handed cases. For example:

A Delivery Partnership of four firms - W,X,Y,Z – where W is the Lead Contractor - and W, X and Y are acting for three different defendants in a multi-handed drugs case. Z acted for the wife of X's client in her divorce:

- i. Can firms X and Y continue to act for their clients, given the DP model and their relationship with W?
- ii. Can any of W, X and Y continue to act in the case, given Z having previously acted for the wife of X's client? **These questions were also asked by the Law Society**

4.8. In the event that there are no bids, or an insufficient number of bids, in a Procurement area what process with the LAA follow to ensure adequate provision of services at the quality level specified?

4.12. & 6.11 What will the LAA do if the financial assessment causes all or most of the shortlisted applications to fail?

B1 What is the cut-off date for you to make amendments/corrections to the IFA?

B2 What happens if you discover further errors after the Deadline Date?

G13 What will happen if a large firm goes out of business and closes down, after being awarded a contract? **This question was also asked by the Law Society**

The LAA is not in a position to comment on hypothetical scenarios as the actual approach taken will depend on any specific circumstances that arise.

4.6. In relation to paragraph 4.29, CLAS accreditation is under review and the accreditation that is currently held is only valid until 31 December 2015, two months after the contracts take effect. What does the LAA propose to do about this requirement with regards to re-accreditation, replacement of the CLAS scheme etc if it is overhauled at the end of 2015?

The LAA is not in a position to comment on hypothetical scenarios. The responsibility for CLAS accreditation rests with the Law Society but we would expect them to keep us informed well in advance of any changes so any impacts could be considered.

G15 Re Management Team – for the purposes of the application does it make a difference if there are 1, 2, 3 or more members of the management team?

G16 Will an “all in one” software based case management system necessarily score more highly than other systems deployed by firm for checking court dates and other deadlines, for inactivity on files, client details etc. Will a mixture of systems necessarily score less than just one?

G17 Re H3 – what can be deemed relevant in change programme?

G18 Re Strategy for motivating and retaining staff, does information re previous staff retention count as evidence of the success of motivating and retaining staff?

G19 If a firm in its Business Plan decides that it has not conducted all necessary due diligence as due to the insufficient time available to do so and the lack of certain information, will such a candid approach count for or against the firm concerned?

G20 If the biggest risk an AO faces is its reliance and dependence on the LAA as a sole provider of the majority of its work, does a decision to proceed in the absence of clear alternative and available sources of income count against the AO?

It is for an Applicant Organisation to decide how best to respond to the Tender based on the details provided in the IFA, the LAA is not able to advise on these matters.

8.1 Re:#8.2/8.3 Please confirm that this means what it appears to suggest, namely that any infringement or breach of the rules deemed to have occurred, no matter how minor, will result in a bid failure. Would the misspelling of a name in the contract lead to such a sanction? Is there a de minimis exception that will operate internally when considering bids

8.2 Re:#8.10 Please provide a full list of all references to circumstances capable of allowing the LAA to permit amendment or alteration. Can this occur after the Deadline and of so, when, why and how will such changes be managed?

The LAA is not in a position to comment on hypothetical scenarios and would need to consider the individual and specific circumstances that actually arise as to whether discretion needed to be applied.