



Legal Aid
Agency

Procurement Process for Civil Legal Aid Services from September 2018 Selection Questionnaire Frequently Asked Questions

Many questions will be answered by the information given in the Information for Applicants document (IFA), which is available on the Tenders pages of our website:

<https://www.gov.uk/government/publications/civil-2018-contracts-tender>

The deadline for questions about the IFA or the tender was **23.59 on 19 October** (note this is referred to as the “End date for supplier clarification messages”) on the e-Tendering system. We are therefore unable to answer questions received after that deadline.

Questions that we consider to be of interest have been collated and answered centrally in writing to ensure that all interested parties have equal access to information in the answers. These questions and answers will be published in this FAQ document.

This final FAQ document incorporates questions received up to 23.59 on 19 October 2017 and incorporates all questions that we consider to be of interest which are received by the above deadline (including those published in the interim document). New questions have been included in **blue**. We would draw Applicants attention to changes to the answer to question 2.1.

Technical Questions on how to use the e-Tendering system

There is a Helpdesk to provide technical support to Applicant Organisations using the e-Tendering System. However, the Helpdesk is **unable** to assist with problems with your own computer hardware or systems - for these types of issues; you should contact your usual IT support.

Questions should be emailed to the following email address: help@bravosolution.co.uk . Alternatively, the telephone number for the Helpdesk is 0800 069 8630 (lines are open from 9am to 6pm Monday to Friday).

The Helpdesk remains open until the tender closes. However, we recommend that you start to complete your tender early so that you identify any areas where you need technical help as soon as possible, as the Helpdesk is likely to be very busy in the days leading up to the tender deadline and cannot guarantee that queries received close to the tender deadline will be dealt with in time.

The deadline for receipt of Tenders is 5pm on 10 November 2017.

Section 1: Submitting a Tender

Q1.1. Where is the Pre-Qualification Questionnaire (PQQ)?

A. The PQQ has been replaced by the Selection Questionnaire (SQ).

As set out at paragraph 3.7 of the SQ Information For Applicants:

"No information relating to this procurement process is available via the 'PQQs open to all Suppliers' section of the e-Tendering system."

The SQ Information For Applicants states at paragraph 3.8, that Applicants must submit a response to both the Selection Questionnaire and at least one Face to Face Contract ITT.

The SQ can be found at ITT – 445 via the 'Project' or 'ITT Open to all Suppliers' link on the front page of the e-Tendering system.

Q.1.2. Who may complete the SQ and ITT Responses and who may make the declaration on behalf of the Applicant organisation?

Q1.2. Can any member of staff complete the form so long as the declaration is made by an appropriate person?

Q.1.2. I am the sole director of my firm and am also the COLP. Should I say COLP or Director for person submitting the application?

A. As set out at paragraph 4.11:

"A declaration in the form set out at Section D of the SQ (see Annex A below) must be provided by:

- (a) the Compliance Officer for Legal Practice (COLP) or the individual intending to be the COLP where Applicant is or intends to be authorised by the Solicitors Regulation Authority (SRA); or
- (b) the Head of Legal Practice (HOLP) or the individual intending to be the HOLP where Applicant is or intends to be authorised by the Bar Standards Board (BSB); or
- (c) the Compliance Manager (CM) or the individual intending to be the CM where Applicant is or intends to be authorised by CILEx Regulation (CILEx); or
- (d) where the Applicant is not (and will not be) authorised by the SRA, the BSB or CILEx, a member of Key Personnel who either (i) has decision and / or veto rights over decisions relating to the running of the Applicant; or (ii) has the right to exercise, or actually exercises, significant influence or control over the Applicant"

The responses to the Selection Questionnaire and/the ITT Response(s) can be completed by someone other than one of the individuals set out above, however, we would strongly recommend that the person making the declaration on behalf of the Applicant reads the proposed Response before submission via the e-Tendering system.

Q.1.3. Can the same person sign the tender at the end - i.e. both as the person completing the application and the person making the declaration?

A. Yes, so long as this individual hold one of the status' within the organisation as set out at paragraph 4.11.

Q.1.4 We are due to move offices prior to the commencement of the contract. Do we put our current office address as our registered/head office address or the new one?

Q.1.4 We are currently in the process of moving our principal office to a new address. This will not be complete before we submit our tender. However, subject to any unforeseen circumstances it should be complete prior to the contract start date of 1 September 2018. Which address should we give?

A. Applicants should provide the details of the new registered or head office where this is known at the time they submit their SQ Response.

Q.1.5. We are considering moving our principal or head office but don't yet know what the address will be. We plan to give our current address and then provide the new address to the LAA should we move. Is that acceptable?

A. Yes, as set out at paragraph 4.5, information provided at Section A of the SQ is non-assessed but may be used in the verification of the Applicant's Tender. Applicants who are considering moving their registered or head office may provide their current address at the time they submit their SQ Response and update the LAA once they have moved at a later stage.

Q.1.6 We will be moving address between submission of the tender and Contract Start Date. We have completed the tender in the new address. We do not hold a LAA account number for the new address but will move existing number over to the new office building in January 2017 and will cease business from the old address on the move. Should we provide our existing LAA Account Number in response to question A.6?

A. Yes.

Q.1.7. The SQ asks for the authorisation number/reference where the applicant is authorised to provide Contract work by a Relevant Professional Body. We are authorised by the Solicitors Regulation Authority, but we are not clear what is meant by authorisation number. We have a SRA ID number for each office.

A. Please provide the authorisation number or reference for your registered or head office

Q.1.8. Please can you confirm whether the organisation name on the e-Tendering registration details and the response to question A.1 in the SQ has to be the same as the applicant details? Eg: if you plan to secure a contract as new entity from September 2018 do you register as the current organisation but apply using applicant details as the new entity.

A. No, it is not necessary for the name of the organisation registered in the e-Tendering system and the response an Applicant gives in response to question A.1. to be the same. However, as set out at paragraph 3.2:

“Applicants already registered on the e-Tendering system whose registration details remain up to date do not need to register again. Applicants are encouraged to ensure that they review the contact details held in the e-Tendering system to ensure these are up to date.”

Q.1.9. We are in the process of novating our contract and have an LAA Account Number allocated to our office, however, we are unclear whether this will be transferred to our new contract, once novated. Can you confirm whether we should indicate our current LAA Account Number in our tender?

A. Yes, as set out at paragraph 4.5, information provided at Section A of the SQ is non-assessed but may be used in the verification of the Applicant's Tender. Where an Applicant is assigned a new LAA Account Number for its registered or head office following a novation it may update the LAA at that point.

Section 2: Relevant Professional Bodies

Q2.1. The IFA fails to mention law firms that are regulated by the Office of The Immigration Services Commissioner (OISC) even though the OISC is mentioned on the Immigration Supervisor Declaration Form.

Are OISC regulated law firms allowed to Tender for 2018 Civil Contracts? Further, are they allowed to tender for contracts other than just Immigration and Asylum? if they can tender for civil 2018 contracts, then which option should they choose under ITT 445 question A.9.ii. The options are SRA, BSB & CILEX and there is no OISC option?

A. The Office of The Immigration Services Commissioner (OISC) regulates providers of immigration advice and immigration services under the Immigration and Asylum Act 1999 only.

The OISC is recognised by the LAA as a Relevant Professional Body for the Immigration and Asylum Category of Law only. OISC is not recognised as a Relevant Professional Body by the LAA in relation to any other Category.

Applicants bidding in any Category of Law must, where required in order to conduct Contract Work, be regulated by a regulator which has been approved by the Legal Services Board under the Legal Services Act 2007. For the purposes of the 2018 Contracts, Applicants required to be so must, by no later than 6 weeks before the Contract Start Date, be authorised by either the Solicitors Regulation Authority, Bar Standard Board or CILEX Regulation. This requirement does not apply to Applicants which are either an “exempt person”, or subject to the transitional protection for non-commercial bodies, as provided for in the Legal Services Act 2007.

When responding to the SQ, Applicants bidding to deliver Immigration and Asylum only, and who are or who intend to be regulated only by OISC and conduct only Contract Work within the scope of OISC’s statutory authority should answer question A.9.i. by selecting “N/A, Applicant is able to deliver reserved legal services without authorisation”. For Applicants in this position and as part of any Contract award, Applicants will be required to provide evidence of appropriate authorisation.

Applicants who intend to be regulated by OISC as well as an approved regulator under the Legal Services Act 2007 and conduct Contract Work beyond the scope of OISC’s statutory authority must answer question A.9 by selecting the appropriate option in respect of whether they currently are or intend to be authorised by one of the Relevant Professional Bodies set out in question A.9.ii.

Q2.2. At question A.9.i, the Selection Questionnaire asks: “Does the Applicant currently hold the appropriate authorisation to provide Contract Work from one of the Relevant Professional Bodies?”

Mediation organisations are not required to be authorised by any of the Relevant Professional Bodies set out in the IFA, nor are they able to deliver reserved legal services without authorisation from a Relevant Professional Body under the Legal Service Act 2007.

How should mediation organisations answer this question?

A. As set out at paragraph 2.7 of the Face to Face Contract IFA those tendering for Family Mediation only are not required to have appropriate authorisation from a Relevant Professional Body where required under the Legal Services Act 2007.

When responding to the SQ, Applicants bidding to deliver Mediation only should answer “No” to question A.9.i. As part of any Contract award Applicants bidding to deliver Mediation Contract Work only will not be required to provide evidence that they have appropriate authorisation from a Relevant Professional Body.

Section 3: Legal entities and structuring bids

Q3.1. We became a company and were granted ABS status by the SRA in 2015. Are we required to confirm our predecessor body in response to question A.7.i?

A. Yes. Question A.7.i requires Applicants to provide details of any predecessor bodies where the Applicant has been subject to any change to its status in the three years preceding the date of its Selection Questionnaire Response submission.

Q3.2. I intend to start the contract as a sole trader and then move to being a company. Is it a problem if I bid as a sole trader and then register as a company when I start trading?

Alternatively, could I bid as a company now, but only register as a company when I am successful in my bid?

A. As set out at paragraph 1.18 of the Selection Questionnaire IFA:

“Applicants must bid as the contracting entity that they intend to be to deliver Contract Work.”

Furthermore, as set out at paragraphs 1.23 and 1.24:

“1.23 It is not necessary for the contracting entity to have been formed at the time an Applicant submits its Tender, however it must be clear from the Tender which organisation intends to hold the Contract(s) for which it bids.

1.24 The contracting entity must be fully constituted and be able to demonstrate it meets the minimum 2018 Contract requirements for each 2018 Contract it is bidding for by the following dates:

- CLA Contracts by 23.59 on 10 June 2018;
- HPCDS Contracts Applicants must be fully constituted before the end of the 10-day standstill period that follows notification of contract award and meet the minimum requirements no later than 23:59 on 19 August 2018;
- Face to Face Contracts by 23.59 on 20 July 2018.”

Q3.3. We are not registered with Companies House. How do we answer questions A.4.iv and A.4.v of the Selection Questionnaire?

A. Applicants which are not registered with Companies House because their current or intended trading status does not require them to be, or because they are not yet trading, should answer “N/A” to these questions.

Q3.4. If an Applicant is planning to change status from Limited Liability Partnership to Limited Company with the same key personnel to take effect during the procurement

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process, should they apply as their current legal entity or the one they intend to be when the Contract starts? Should they bid in the name of their current organisation or the one they intend to be when the Contract starts?

A. See the answer to Q3.2. As set out at paragraph 1.18 of the SQ IFA:

“Applicants must bid as the contracting entity that they intend to be to deliver Contract Work.”

Applicants should, therefore, bid as the legal entity and using the trading name that they intend to be to deliver Contract Work.

Q3.5. We are considering incorporating as of 1 April 2018 but have not made a firm decision yet. Is it possible/acceptable to tender as a partnership and as a limited entity for the same services, knowing that we will only proceed with one contract as one entity?

A. Yes. As set out at paragraph 1.21:

"The general rule is that organisations may submit Tenders through more than one legal entity, if they wish, in order to deliver Contract Work through those different legal entities. Each separate legal entity which submits a Tender will be known as an Applicant for the purposes of this procurement process. However, organisations that wish to bid to deliver services under a CLA Contract or HPCDS Contract, must also comply with the rules on Connected Entities. Those rules mean that they are not permitted to bid against Connected Entities, as set out paragraph 2.7 of the CLA Contract and HPCDS Contract IFAs.

Further, as explained in Q3, the Applicant must meet the minimum requirements by the dates set out at paragraph 1.24 of the SQ IFA.

Q3.6. In response to question A.9.iii (“If the Applicant has answered “Yes” to A.9.i please provide the authorisation number/reference”) do you require the SRA numbers for all the firm's offices or just the number of the Head Office?

A. Applicants are required to provide the SRA authorisation number for the Applicant’s registered or head office only.

Q3.7. The Applicant is not as an organisation registered with one of the Relevant Professional Bodies. However, we employ an Authorised Litigator who is entitled to practise as a solicitor.

Is it sufficient for the Applicant to employ an Authorised Litigator to meet the requirement in relation to being authorised by a Relevant Professional Body or does the Applicant i.e. organisation as a whole, need to hold appropriate authorisation from one of the Relevant Professional Bodies?

A. No, Applicants are required to be authorised by one of the Relevant Professional Bodies at an organisational level, unless where, in accordance with the Legal Services Act 2007, they are able to deliver reserved legal services without authorisation from a Relevant Professional Body.

Q3.8. A member of our Key Personnel is a non-lawyer. Am I therefore correct in selecting “Yes” in response to question A.4.iii on Alternative Business Structure?

A. Alternative Business Structures (ABS) must be licensed by one of the Relevant Professional Bodies. If you are licensed to trade as an ABS, or intend to be licensed to trade as an ABS, you must answer “Yes” to question A.4.iii.

Q.3.9 We changed our status from a partnership to a limited company in 2015. Would this be considered as "Alternative Business Structure"?

A. An Alternative Business Structure (ABS) is an organisation which has non-lawyers as members of its Key Personnel and, if it is licensed to do so, may provide certain legal services which are classed as “reserved legal activities” as defined in the Legal Services Act 2007. This is distinct from an organisation which is a limited company conducting reserved legal activities that does not contain non-lawyers as members of their Key Personnel. ABS’s must be licensed by one of the Relevant Professional Bodies. If you are licensed to trade as an ABS, you must answer “Yes” to question A.4.iii.

Q.3.10 How would an Exempt Body providing reserved legal activities under s12 of the Legal Services Act 2007 answer question A.9.i?

A. As set out in the note to question A.9.i at Annex A of the SQ IFA: “Where, in accordance with the Legal Services Act 2007, the Applicant is able to deliver reserved legal services without authorisation from a Relevant Professional Body, please answer “(iii) N/A, Applicant is able to deliver reserved legal services without authorisation””

Q.3.11 We are a company but with unlimited status i.e. we do not have limited liability status. Will you require us to provide a Personal Guarantee and Indemnity?

A. No. Applicants who are companies without limited liability will not be required to provide a Personal Guarantee and Indemnity.

Q.3.12. We are considering converting an LLP during the next 12 months, from what we have read we believe the best way forward would be to apply in both our Partnership name & that of the LLP. As these are Connected Entities we believe are able to bid for Face to Face contracts in the same Category of Law and/or Procurement Area without breaching any rules. Is this correct?

A. Yes. As set out at paragraph 1.36:

“Connected Entities may bid for Face to Face Contracts in the same Procurement Areas and/or Access Points and within the same Category of Law without breaching the rules on Connected Entities.”

Q.3.13. We are presently a Partnership but are considering converting to a Limited Company. If we do decide to go ahead and bid in the name of the Limited Company, how will this affect my current contract?

A. Applicants who are currently in the process of changing their trading status and currently hold a legal aid contract should review the Standard Terms of their Contract relating to the

circumstances in which the LAA will consider novating contracts. Applicants are encouraged to contact their Contract Managers to discuss their individual circumstances further.

Q.3.14. We are currently a partnership but we will be operating as a Limited Liability Partnership by the Contract Start Date. In accordance with paragraph 1.18, we are bidding as an LLP as that is the status we intend to be at the Contract Start Date. We therefore have a question in relation to A.7.i of the Selection Questionnaire. This question asks if the applicant has been subject to a change in entity in the last 3 years preceding the date of the submission. Given that the change in entity has not yet occurred and will take place outside of the specific period in the SQ, how should we answer this question?

A. Applicants should provide details of change to its status in the three years preceding the date of its Selection Questionnaire Response submission.

Q.3.15 At question A.7.i you require Applicants to confirm changes in status. Does this cover a change in partners, members, directors or shareholders and if so what level of change would be classified as a change of status?

A. Question A.7 refers to changes in legal status. Applicants are required to confirm any change which has resulted in a change of legal status. Where the change in legal status has been brought about by a change of partners, members, directors or shareholders Applicants are required to provide details in response to this question.

Q.3.16 It is anticipated there will be a change to the Directors in April 2018. Do we complete the tender on the basis of the current directors? How would we then notify the change between submitting the tender and the Contract Start Date?

A. In response to question A.5 Applicants that are required to provide a Personal Guarantee and Indemnity (e.g. where it is an LLP or limited company), must confirm the names of the individuals required and authorised to sign, however they are not required to provide a signed form until they have been notified of the outcome of their Tender. Where the names of individuals who are required and authorised to sign change, they may inform the LAA at this time.

Q.3.17 We are considering becoming an ABS in the near future. Are we able to change our status during the procurement process?

A. No, as set out at paragraph 1.19 of the SQ IFA:

“Applicants for any 2018 Contract may not assign, novate or otherwise transfer their Tender or any part of their Tender to any other organisation. Please note, this means that following the final submission of their Tender, an Applicant will not be able to make any changes to their status until after 2018 Contracts are operational. For the avoidance of doubt, organisations seeking to change their status from a partnership to a Limited Company, for example, will only be considered once any 2018 Contract is in operation.”

However, Applicants who are considering changing their status should also read question 3.2 and 3.5 of this FAQ document.

Q.3.18. If a limited company and an LLP submit separate bids and between the submission of their bids and verification or the commencement of the contracts they remain the same legal entities but are brought under a Parent Company, does that:

(i) amount to a change of legal status, invalidating their bids; and/or

(ii) are their bids invalidated by the fact that subsequent to the submission of their bids their responses to SQ 1.6.1A will have changed?

Would the answer be different if only one of the organisations bid for a legal aid contract?

A. The addition of a Parent Company will not automatically invalidate the Tender of either Applicant in the circumstances set out above, save in the circumstances where the rules for Connected Entities are breached in relation to Tenders for CLA and/or HPCDS Contracts.

As set out at paragraph 4.5, information provided at Section A of the SQ is non-assessed but may be used in the verification of the Applicant's Tender. Applicants who are brought under the ownership of a Parent Company following the submission of their Tender should inform the LAA as soon as possible, in accordance with paragraph 7.36.

Q.3.19 We often purchase other law firms, some with legal aid contracts and are likely to wish to do this next year. How can we continue to do this?

Q.3.19 If we buy and merge with another law firm (non-legal aid) will this be allowed? If we buy and merge with another law firm (legal aid) will this be allowed?

A. As set out at paragraph 1.19 of the SQ IFA:

“Applicants for any 2018 Contract may not assign, novate or otherwise transfer their Tender or any part of their Tender to any other organisation. Please note, this means that following the final submission of their Tender, an Applicant will not be able to make any changes to their status until after 2018 Contracts are operational. For the avoidance of doubt, organisations seeking to change their status from a partnership to a Limited Company, for example, will only be considered once any 2018 Contract is in operation.”

However, Applicants who are considering changing their status should also read question 3.2, 3.5 and 3.18 of this FAQ document.

Q.3.20. We are considering a change of partners, members or Directors. Is this permitted? What if that change was significant and would lead to a novation of our current legal aid contract?

A. Applicants should refer to questions 3.13 and 3.16 of this FAQ document

Section 4: Responding to questions within the Selection Criteria

Q.4.1. In the Selection Questionnaire (SQ), at Section C.4, it asks if within the past 3 years the Applicant or any of its Key Personnel, have been guilty of professional misconduct or has been referred to a disciplinary body following allegations of professional misconduct, or has been disqualified as charity trustee? If so details have to be provided as part of the provider's response to the SQ.

If the Applicant has had an allegation of professional misconduct referred to a disciplinary body, which they have fully investigated and determined that there was no professional misconduct and the case is closed, should they respond “Yes” to this question?

Q.4.1. The firm has recently been subject to an SRA investigation regarding conduct of commercial property work in the period 2010-9/2014. No charges have been brought but indications are that a former director of the firm will be charged with misconduct. No charges have been brought or allegations made against any current directors of the firm. Does this situation trigger a 'yes' to Q C4 of the SQ?

Please can you set out the criteria that you will apply in assessing Applicants' exceptional circumstances.

A. Where an investigation into an allegation of professional misconduct has concluded with no finding of professional misconduct, Applicants must answer “yes” to question C.4 and provide details of their exceptional circumstances at C.4(a) to (e).

Where an investigation into an allegation of professional misconduct is ongoing and no finding has yet been confirmed, Applicants must answer “yes” to question C.4 and provide details of their exceptional circumstances at C.4(a) to (e).

The purpose of the questions at section C of the SQ is to determine whether, in all respects, the Applicant is suitable to enter into a contract with the LAA to deliver the required services.

If an Applicant answers a question in section C of the SQ in a way which constitutes a discretionary fail, the LAA will consider whether, in light of the exceptional circumstances provided, the Applicant meets the requirements of the SQ, as referred to in paragraph 4.7 of the SQ IFA.

The exceptional circumstances provided by Applicants will be assessed on a case by case basis.

Q.4.2. “Question C.4.e asks for details of measures the applicant has taken to ensure there is no repeat of circumstances leading to the finding or allegations of ‘grave professional misconduct or disqualification’, however, the word ‘grave’ does not appear in the wording for ground C.4.

Does the LAA require details of all finding or allegations of professional misconduct or only those which involve a ‘grave’ or professional misconduct?

A. Applicants are required to provide details of any finding of professional misconduct or has been referred to a disciplinary body following allegations of professional misconduct, or has been disqualified as charity trustee, as set out in question C.4. of the Selection Questionnaire.

Q.4.3. One of our staff who works in the Category of Law we are tendering for came to us from a firm that was intervened by the SRA. Do we need to disclose this on the "discretionary questions" part of the Selection Questionnaire? They are not a member of Key Personnel but employed as a legal assistant?

Q.4.3. Does the SQ have to be submitted with information both from equity partners and salaried partners from an LLP or just equity partners? Likewise, for a Ltd company, does the information need to be submitted for the directors alone or also any shareholders?

Q.4.3. Would an Assistant Solicitor who has no management role in the applicant organisation but simply provides legal advice to clients be "Key Personnel" as defined in Annex B of the Selection Questionnaire IFA? Would the LAA's answer be different if the Assistant Solicitor were not involved directly or indirectly in the delivery of "Contract Work"?

A. The questions set out in Section and C of the SQ should be responded to in relation to the Applicant and its Key Personnel. It is for Applicant's to determine which individuals within its organisation fall within the definition of Key Personnel as set out at Annex B of the SQ IFA:

"Any individual who has, or is held out as having either expressly or impliedly, or exercises, (or will have, be held out as having or exercise by the Contract Start Date) powers of representation, decision, veto, influence or control in relation to an Applicant including partners, directors, trustees and other senior managers and employees of the Applicant.

Where a trust or company would satisfy the above in relation to an Applicant, any individual who has the right to exercise significant influence or control over the activities of that trust or company."

Q.4.4. Do the questions in section C only refer to the last three years?

Q.4.4. Specifically - does the insolvency question only seeks information about the last 3 years?

A. Unless otherwise specified in the question, the period to which each question relates in Section B and C is the three years preceding the submission of the Applicant's SQ Response.

Q.4.5. We are currently going through the appeals process having received a Notice To Terminate on our legal aid contract. Are we able to submit a Tender?

Q.4.5. We are currently appealing a Peer Review score we have received. Are we able to submit a Tender?

A. Applicants who we are in receipt of a notice to terminate, who have a confirmed termination of an LAA contract or who have received either two confirmed Peer Review 4 ratings or a confirmed Peer Review 5 rating are able submit a Tender, however, they must provide details of their exceptional circumstances in response to the relevant questions set out in the SQ.