

Legal Services Commission's Standard Contracts 2010: policy on novation of contracts in relation to Provider reorganisations

Background

During the course of their Standard Contract with the Legal Services Commission ("LSC"), Providers may wish to reorganise their businesses for various reasons. For example, a traditional partnership may wish to convert to an LLP or two separate organisations may wish to merge to pool resources and benefit from economies of scale.

The award of a Standard Contract was made on the basis that you have passed a Pre-Qualification Questionnaire, met the Essential Criteria and agreed to maintain the standards warranted in your response to the Selection Criteria.

The Standard Contract includes obligations on you to notify LSC and what happens subsequently if your organisation anticipates a material constitutional change occurring (Standard Terms, Clauses 21 and 22).

Clause 21 provides as follows:

"21 Things you must tell us about

Material constitutional changes

21.1 You must notify us as soon as reasonably practicable of becoming aware of any anticipated material constitutional change which will or might affect you. At a minimum, you must notify us on, or within fourteen days of, any material constitutional change that affects or might affect you. Without limitation, examples of material constitutional change are:

- (a) Where you are an unincorporated Not for Profit Organisation, any change (including any change of chairman or treasurer or any change of 75% or more of the membership since this Contract came into force) in the composition of your management committee;
- (b) If you are a sole principal (sole trader), any creation of a partnership;
- (c) Any change in the identity of more than one third in number of (i) the persons comprising your partnership, or (ii) the individual Members (LLP) of your limited liability partnership, or (iii) the individual directors of your company;
- (d) Any change in your legal status; or
- (e) Any sale, merger, acquisition, or transfer of, or by, you."

Clauses 22.1 and 22.2 make provision for automatic novation in some limited circumstances.

Clause 22.3 provides as follows:

“Constitutional changes in Clause 21.1 (b), (c), (d) or (e)

22.3 If any of the events specified in Clause 21.1 (b), (c), (d) or (e) has occurred, this Contract will not be novated under Clauses 22.1 or 22.2 and is incapable of being novated without our signed consent.”

Clause 22.4 details the terms on which novations under Clauses 22.1 or 22.2 will take place.

Policy

Whether or not to approve a novation of Contract is entirely at the discretion of the LSC having regard to the individual circumstances of the request.

Where a material constitutional change is to take place, in considering whether or not to agree to novate that Provider’s Standard Contract to the reorganised business, LSC must comply with procurement law principles. This means that LSC may only agree to a novation where its effect is to transfer the Contract Work in its entirety to the newly reorganised business on the basis that there are no operational changes to the way the Contract Work is provided. The arrangement must involve the same people delivering the same work in the same procurement area. The Standard Contracts do not anticipate the splitting of the Contract. This would involve the creation of additional Contracts outside formal bid rounds. If a Provider’s proposals for reorganising its business would require the splitting of its Standard Contract, LSC will not agree to a novation. This does not prevent consideration of the position where it is proposed that one of the new entities being created will take the Contract in its entirety.

Where LSC approves a novation of your Standard Contract, following your business reorganisation you must continue to comply with the Pre-Qualification requirements, and the Essential Criteria and the Selection Criteria on which you were awarded the Standard Contract .

Any novation of a Standard Contract or Contracts will be on the terms set out in Clause 22.4 of The Standard Terms 2010. LSC reserves the right to omit or add terms as considered necessary to any novation agreement.

Examples:

- a) Traditional partnership converts to LLP or Limited Liability Company.

LSC would normally agree to novate the Contract or Contracts provided all the Criteria on which the Contract or Contracts were awarded will still be met. LSC would require a Form of Indemnity and Guarantee as a condition of agreeing to novate the Contract or Contracts. Clause 4.4 of The Standard Terms 2010 provides as follows:

“If you are a limited company or an organisation with limited liability or if you are a partnership and any of your partners is an organisation with limited liability, then, unless you are a registered charity, we may at any time while this Contract is in force, require from you, and you must provide to us, guarantees and indemnities by such date and in such form as we may reasonably request from the ultimate owners of your organisation and/or such persons as we might reasonably regard as being controllers and/or senior managers of your organisation and/or where you are a limited company, from any company which is your holding company.”

b) Two or more Providers merge

LSC would ordinarily agree to novate the Contract or Contracts provided all the Criteria on which the Contract or Contracts were awarded will still be met. If, for example, the merged organisation was to be an LLP the Form of Indemnity and Guarantee would be required as a condition of agreeing to novate the Contract or Contracts.

c) A two Office Provider with a Schedule at each wishes to split so that each Office becomes a separate entity.

LSC could consider novating the Contract or Contracts to one of the new entities provided all the Criteria on which the Contract or Contracts were awarded will still be met. LSC would not split the Contract or Contracts to create a separate Contract or Contracts for each new entity.

d) The Family Department and the Social Welfare Law Department wish to form separate entities and take their elements of the Standard Contract with them

LSC would not split the Contract or Contracts to create a separate Contract or Contracts for each new entity.

e) The Crime department wishes to split from a Provider and form a new entity perhaps on the basis that the Provider no longer wishes to undertake Crime work

LSC would ordinarily agree to novate the Contract provided all the Criteria on which the Contract was awarded will still be met. There is no splitting of the Contract in this scenario.

f) A sole practitioner retires.

LSC could consider novating the Contract or Contracts to e.g. an employed solicitor who wished to continue with the business.

Procedure

Business reorganisations are not accommodated automatically under the Standard Contracts. If you wish to continue to receive payments under your Contract following a constitutional change you must come to us first, giving us at least one month's notice. You must put your request in writing to your Contract Manager. You will be required to provide a fully completed and signed declaration confirming that you will continue to comply with the Pre-Qualification requirements, and the Essential Criteria and the Selection Criteria on which you were awarded the Standard Contract.

LSC will aim to make a decision on your request within one month of receiving it.

Legal Services Commission

7 February 2012.