

2015 DUTY PROVIDER CONTRACT

ADDITIONAL INFORMATION

INTRODUCTION

At the same time as opening the procurement process for criminal legal aid services from July 2015 (the first stage of which will award 2015 Own Client Crime Contracts), we are making this additional information available for organisations that may also be interested in applying for or working under (as either a Delivery Partner or Agent) the 2015 Duty Provider Crime Contract. Organisations should note that only those organisations awarded an Own Client Contract will be eligible to tender for a Duty Provider Contract or carry out work under a Duty Provider Contract.

This document is divided into two parts:

- Part 1 provides information which prospective bidders should consider and take into account now in the course of deciding whether to apply for a Duty Provider Contract.
- Part 2 provides an overview of current thinking on key principles of the 2015 Duty Provider Contract which successful bidders will be required to comply with.

This document does not contain all information required in relation to the procurement process for a Duty Provider Contract and may be amended or added to at any time. The information contained in this document is intended to act as a useful guide but for the avoidance of doubt all prospective bidders must rely on and comply with the information and requirements of the procurement documents referred to below:

- Procurement of Criminal Legal Aid Services in England & Wales from July 2015: Information for Applicants (published April 2014);
- Duty Provider Contract Invitation to Tender and Information for Applicants (intended to be published July 2014);
- Frequently Asked Question documents issued by the LAA as part of the procurement process.

The Duty Provider Contract will be the subject of consultation with consultative bodies and a final version is planned for publication in July 2014.

PART 1

Part 1 provides information that will assist you if you are interested in:

- applying for a Duty Provider Contract, or,
- working with an organisation (as part of a formalised arrangement as a Delivery Partner or on an ad-hoc agency basis) that is seeking to obtain a Duty Provider Contract.

WHAT DO I NEED TO KNOW?

BIDDING RULES

Who can apply for a Duty Provider Contract?	<p>Only organisations that are awarded an Own Client Contract will be eligible to apply for a Duty Provider Contract.</p> <p>The organisation which holds the Own Client Contract must be the same legal entity as that which applies for a Duty Provider Contract. It will not be sufficient for a parent or related organisation to hold the Own Client Contract.</p> <p>You can either apply for the Duty Provider Contract in your own right (i.e. as a single bidding entity delivering all the services) or as a Lead Contractor working with nominated 'Delivery Partners'. Delivery Partners are organisations working as agents on behalf of the Lead Contractor under a formal agreement to deliver work under the Duty Provider Contract (see the 'Delivery Partnerships' section below for further details).</p> <p>However you tender, the LAA will only contract with a single legal entity which is regulated and authorised to provide criminal legal services. Therefore, if a bidder chooses to adopt a Delivery Partnership model then the contract entered into would be between the LAA and the Lead Contractor.</p> <p>As outlined in the consultation response, there is flexibility in the form the legal entity that the LAA contracts with can take, including alternative business structures and joint ventures.</p>
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When will the contract start?	<p>We intend to enter into contracts with organisations awarded a Duty Provider Contract in February 2015 (the contract start date).</p> <p>Organisations will then enter a mobilisation period until the date from which services will be delivered (the service commencement date of 1 July 2015). This is to allow time to put arrangements in place to have services up and running for the service commencement date.</p> <p>However, requirements in relation to holding appropriate authorisation and quality standards will need to have been met by the contract start date (see below).</p>
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When will my organisation need to be regulated and authorised by?	<p>The bidding organisation must be regulated and authorised by an appropriate legal sector regulator to provide criminal legal services by the contract start date (anticipated to be February 2015). At the time of writing, only the Solicitors Regulation Authority (SRA) have authority to approve activities in relation to the provision of criminal legal services by organisations. For the avoidance of doubt, the SRA have authority to approve alternative business structures as well as traditional solicitors' firms.</p> <p>If your organisation does not already meet this requirement, you must have submitted a fully completed application for authorisation by the time you submit a Duty Provider Tender (Tender deadline planned for September 2014).</p> <p>For an application to the SRA to be treated as fully completed it must contain sufficient information to allow a decision on authorisation to be made by the SRA. The SRA's determination of whether an application is fully completed shall be treated as definitive.</p> <p>For the avoidance of doubt no Duty Provider Contract will be entered into with an organisation which is not in receipt of the appropriate authorisation.</p>
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<p>Will I need to hold a quality standard to apply for a Duty Provider Contract?</p>	<p>The bidding organisation will be required to hold either the LAA's Specialist Quality Mark (SQM) (as audited by the SQM Delivery Partnership), or the Law Society's Lexcel practice management standard, by the contract start date (anticipated to be February 2015). Please note this timeframe is earlier than that for organisations awarded the Own Client Contract only.</p> <p>The LAA will not prefer one quality standard over the other. It is a bidding organisation's responsibility to ensure that if it does not currently hold a relevant quality standard it applies for and books its audit sufficiently far in advance to achieve the requirement by the contract start date (anticipated to be February 2015).</p> <p>Requirements that must be met by the contract start date according to the quality standard an organisation chooses to hold and its circumstances are as follows:</p> <table border="1" data-bbox="651 600 1787 1318"> <thead> <tr> <th><i>Applicant Type (by organisation)</i></th><th><i>Requirement</i></th></tr> </thead> <tbody> <tr> <td>New legal entity (i.e. not currently practising) that intends to obtain SQM</td><td>- Pass desktop audit by the contract start date and fully pass SQM audit within 6 months of service commencement date</td></tr> <tr> <td>Organisation that intends to obtain Lexcel</td><td>- Achieve Lexcel by the contract start date</td></tr> <tr> <td>Organisation that intends to obtain SQM (this includes existing contract holders with an SQM but not as audited by SQM Delivery Partnership)</td><td>- Fully pass the Post SQM audit by the contract start date</td></tr> <tr> <td>Organisation already holding Lexcel</td><td>- No further audit required</td></tr> <tr> <td>Organisation holding SQM as audited by SQM Delivery Partnership</td><td>- No further audit required</td></tr> </tbody> </table>	<i>Applicant Type (by organisation)</i>	<i>Requirement</i>	New legal entity (i.e. not currently practising) that intends to obtain SQM	- Pass desktop audit by the contract start date and fully pass SQM audit within 6 months of service commencement date	Organisation that intends to obtain Lexcel	- Achieve Lexcel by the contract start date	Organisation that intends to obtain SQM (this includes existing contract holders with an SQM but not as audited by SQM Delivery Partnership)	- Fully pass the Post SQM audit by the contract start date	Organisation already holding Lexcel	- No further audit required	Organisation holding SQM as audited by SQM Delivery Partnership	- No further audit required
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What is a Procurement Area?	<p>A Procurement Area is a geographical area within which the LAA will procure services. Holders of a Duty Provider Contract will be responsible for delivering Duty Provider work across the whole of a Procurement Area.</p> <p>As outlined in <i>Transforming Legal Aid – Next Steps: Government Response, Procurement of Criminal Legal Aid Services</i> published on 27 February 2014, the new Procurement Areas will be changing from current arrangements. This means that organisations may no longer be eligible for police station schemes they are currently on under the existing contract.</p> <p>There will be 85 Procurement Areas across England and Wales for Duty Provider Contracts. A list of amended Procurement Areas and the number of Duty Provider Contracts we intend to procure in each area is provided at Table C2 Annex C to the consultation response available at: https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps.</p>
Can I apply for a Duty Provider Contract in multiple Procurement Areas?	<p>You can apply for a Duty Provider Contract in one or more of the 85 Procurement Areas in England and Wales.</p> <p>However, most of the tender requirements will need to be met within the Procurement Area in which you are bidding and to avoid speculative bidding you must have capacity to deliver all of the services bid for concurrently.</p> <p>Organisations will be required to submit a separate bid for each Procurement Area they wish to bid in.</p>
Will there be restrictions on how many times I can bid for a Duty Provider Contract in a single Procurement Area?	<p>Yes, you may only apply to hold one Duty Provider Contract in any Procurement Area.</p> <p>If you apply for a Duty Provider Contract in your own right or as a Lead Contractor you may also be included in one other application in the same Procurement Area as a Delivery Partner.</p> <p>If you do not apply for a Duty Provider Contract in a Procurement Area (either as a single bidding entity or as Lead Contractor) you may be included in up to two applications in that Procurement Area as a Delivery Partner.</p> <p>The procurement process will include rules preventing a parent organisation from creating one or more bespoke legal entities in order to submit multiple bids within the same Procurement Area.</p>

<p>What if something changes during the course of the procurement process that affects my bid?</p>	<p>Provision will be made in the tender documents to deal with a scenario whereby a change occurs to the tender information submitted by a bidding organisation. This may include issues relating to any current contract the bidding organisation holds or changes to personnel.</p> <p>In any such circumstances, the LAA will assess whether the bid is adversely impacted. Whilst the LAA will reserve the right to allow like for like substitutions in bids where it does not have a substantive impact on the assessment of that bid, organisations should be aware that where there is a substantive impact the bid may be rejected.</p> <p>The contract will also contain specific provisions to deal with similar scenarios arising during the term of the contract.</p>
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<p>Will I need to have a certain capacity of staff to bid for a Duty Provider Contract?</p>	<p>The tender requirements will include a basic capacity test, in line with findings from the Otterburn Report, that bidding organisations (or their Delivery Partners) employ at least one full time fee earner with relevant experience of crime work for every £83k of the indicative contract value.</p>
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DELIVERY PARTNERSHIPS

<p>What is a Delivery Partnership?</p>	<p>A Delivery Partnership is a group of separate organisations that have come together to deliver a Duty Provider Contract without forming a separate single legal entity.</p> <p>A Delivery Partnership must have a Lead Contractor which tenders for the contract, holds the contract and is ultimately responsible for all services delivered under the contract. The LAA's contractual relationship will only be with the organisation that is the Lead Contractor.</p> <p>A Lead Contractor must have a formal written agreement in place with each of its Delivery Partners by the time it submits a Duty Provider Tender (Tender deadline planned for September 2014). The proposed detailed requirements in relation to this agreement are referred to further below.</p>
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	<p>All Delivery Partners must hold an Own Client Contract and will work as 'formalised agents' of the Lead Contractor in accordance with the terms of the formal written agreement. The client retainer will always be with the Lead Contractor.</p>
<p>Are there any conditions/limitations on the use of Delivery Partners?</p>	<p>Each Delivery Partner may deliver up to 40% of the total value of work covered by a Duty Provider Contract.</p> <p>Lead Contractors may rely on individuals employed by their Delivery Partners to meet some (but not all) of the tender criteria. Minimum requirements to be awarded a contract and criteria pertaining to the management of the service must be met by the Lead Contractor. These will be specified in the main tender/contract documents.</p> <p>It will be the responsibility of the Lead Contractor to ensure that it undertakes appropriate due diligence checks of its Delivery Partners.</p>
<p>What do I need to include in the formal written agreement with my Delivery Partner?</p>	<p>It will be the responsibility of the Lead Contractor to determine and enter into an appropriate form of written agreement with each of its Delivery Partners. However, the LAA will specify what this agreement must contain as a minimum. This will include, but may not be limited to, the following:</p> <ul style="list-style-type: none"> • A requirement that Delivery Partners comply with all relevant requirements of the Duty Provider Contract Specification. • A requirement that Delivery Partners comply with key requirements of the Duty Provider Contract Standard Terms including, but not limited to, information security requirements. • A right for the LAA to review the conduct of all work carried out by the Delivery Partner in relation to the Duty Contract including a requirement on the Delivery Partner to co-operate with the LAA in relation to such a review. • A right for the Lead Contractor to access and review work undertaken by the Delivery Partner on its behalf.

- Notice period of the Delivery Partner to withdraw from the agreement.
- The details of each party to the agreement, including the registered name (and any trading name/style, where applicable), which identifies the Lead Contractor and the Delivery Partner and the head office addresses of each party.
- The period that the agreement covers; this must be for at least one year from the Duty Provider Contract start date.
- The work that will be undertaken by the Delivery Partner under the agreement. The agreement must set out how the work will be allocated to the Delivery Partner. Depending on the arrangement agreed, this may specify the Duty Rota Scheme(s) or individual police stations, Magistrate's Courts and Crown Courts the Delivery Partner is responsible for delivering services at within the Procurement Area.
- The performance standards that the Delivery Partner is required to meet in its execution of Duty Provider work on the Lead Contractor's behalf (such as time standards for client contact) and any penalty or sanctions that will be applied by the Lead Contractor where these are not met.
- The process for time recording, case reporting and invoicing to the Lead Contractor.
- The payment arrangements between the Lead Contractor and Delivery Partner.
- The arrangements for secure file storage and right of access for the Lead Contractor to client files undertaken under the Delivery Partnership agreement.
- In accordance with obligations of conduct, arrangements for the protection of confidential information.
- The process for dispute resolution under the Delivery Partnership agreement.
- The termination rights for each party to the Delivery Partnership agreement. This must include a clause which confirms that where a Delivery Partner's or Lead Contractor's Own Client Crime Contract is terminated that the agreement between Lead Contractor and Delivery Partner is automatically terminated.

How many Delivery Partners can I use?	<p>The number of Delivery Partners you can use will differ according to whether a Procurement Area has been defined as rural or urban. Table C2 of Annex C to the consultation response sets out what each Procurement Area has been defined as. Current expectations are:</p> <p>In rural areas you may work with up to 3 Delivery Partners</p> <p>In urban areas you may work with up to 2 Deliver Partners</p>
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Must I deliver a minimum amount of work as a Lead Contractor?	<p>Yes the Lead Contractor must deliver a minimum amount of work, although this will differ according to whether a Procurement Area has been defined as rural or urban (see above).</p> <p>In rural areas the Lead Contractor must deliver at least 25% of the total value of Duty Provider work Contract in each rolling 12 month period.</p> <p>In urban areas the Lead Contractor must deliver at least 50% of the total value of Duty Provider work Contract in each rolling 12 month period.</p>
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AGENTS

How are Agents different to Delivery Partners?	<p>Agents are different from Delivery Partners because no formal agreement need be in place and they are used on an ad-hoc basis as required to cover police interviews, hearings etc.</p> <p>Agents may be used in addition to Delivery Partners (subject to the rules regarding the minimum value of work Lead Contractors must deliver).</p> <p>Like Delivery Partners, Agents must hold an Own Client Contract.</p> <p>Agents can be used to deliver a maximum of 25% of the total value of work delivered under the Duty Provider Contract.</p>
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	You cannot use the experience of Agents to meet tender requirements e.g. experience of working on certain types of cases etc.
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Can I use non-employees to meet the tender requirements?	<p>Where bidding organisations are reliant on a particular individual to meet the selection criteria, that individual will need to be employed by the bidding organisation (or where permitted, its Delivery Partner) and deployed on the contract bid for for at least 17.5 hours per week.</p> <p>Where an organisation has been awarded a contract on the basis of meeting particular criteria (e.g. employing an individual with certain experience) this will form part of contract documentation and need to be maintained throughout the life of the contract. The LAA may however permit like for like substitution of individuals.</p>
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PART 2

DUTY PROVIDER CONTRACT 2015: OVERVIEW OF CURRENT THINKING ON KEY PRINCIPLES

- 1 To hold a Duty Provider Crime Contract 2015 (“Duty Provider Contract”) you must hold an Own Client Crime Contract 2015 (“Own Client Contract”).**
- 2 All organisations acting as a Delivery Partner under a Duty Provider Contract must hold an Own Client Contract.**
- 3 All organisations who may be instructed as an Agent must hold an Own Client Contract.**
- 4 Duty Provider Contracts are dependent upon holding an Own Client Contract. If you cease to hold an Own Client Contract you will be unable to hold a Duty Provider Contract.**
- 5 Similarly, if you cease to hold an Own Client Contract you will be unable to deliver any work under the Duty Provider Contract (either as a Delivery Partner or Agent).**
- 6 All reference to ‘you’ below relates to the Duty Provider Contract holder.**

Scope of Duty Provider work	<p>The Duty Provider Contract will cover all criminal legal advice, litigation (except Very High Cost Cases (VHCCs)) and magistrates court advocacy services delivered to clients who choose the Duty Provider at the first point of request (either at the police station or magistrates court).</p> <p>Provision of services is mandatory in the Procurement Area(s) in which you hold a contract. You must ensure that you deliver Duty Provider work to all eligible clients who choose the Duty Provider whilst you are on the Duty Provider rota.</p> <p>Subject to applicable rules of professional conduct you must retain a Duty Provider case until it concludes unless the client chooses to change representation.</p> <p>You will be allocated an equal share of Duty Provider rota slots within the Procurement Area(s) in which you hold Duty Provider Contract(s). Allocation will take into account busier periods to ensure fair distribution. As far as possible Duty Provider rota slots will be organised so the same provider is not covering different slots</p>
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	<p>within the Procurement Area at the same time.</p> <p>You are responsible for all work undertaken under the Duty Provider Contract including where work is undertaken by Agents or Delivery Partners.</p> <p>Procurement Areas will be fixed and you will be required to undertake an equal share of Duty Provider work in the Procurement Area. Holding a Duty Provider Crime Contract will not guarantee a particular volume of work and it is possible that the volume and value of work available will vary during the term of the contract. Variations may occur for a number of reasons including (but not limited to) offending patterns, changes to interview locations, courts etc.</p> <p>The contract will require you to be able to accommodate fluctuations in demand for services at short notice.</p>
Structure of the Duty Provider Contract	<p>The structure of the Duty Provider Contract will be very similar to the Own Client Contract and will be made up of:</p> <ul style="list-style-type: none"> • Contract for Signature • Schedule(s) • Standard Terms • Specification <p>Payment rates and methods of payment will be as per the Own Client Contract.</p>
Working with others under the Duty Provider Contract	<p>You are contractually responsible for all work conducted under your Duty Provider Contract regardless of whether you conduct the work yourself or use an Agent or Delivery Partner.</p> <p>Where you use Agents or Delivery Partners they will be acting on your behalf under an agency arrangement and the client retainer will at all times be with your organisation. See Part 1 above in relation to the minimum amount of work which must be undertaken by a Lead Contractor and maximum volumes for Delivery</p>

	<p>Partners and Agents.</p> <p>The Duty Provider Contract will require formal written agreements to be in place between the Lead Contractor and any Delivery Partners it uses in order to ensure that the Lead Contractor is always able to comply with its obligations to the LAA regardless of the fact that one or more Delivery Partners are used in order to provide the services.</p> <p>If a Delivery Partner or Agent ceases to hold an Own Client Contract you will be unable to continue to use them under the Duty Provider Contract.</p>
Peer Review	<p>All providers will be subject to a Peer Review during the life of the contract. Any Peer Review of your crime work will be against all crime work you undertake and, therefore, the sample of files reviewed may include Own Client work and Duty Provider work.</p> <p>Your Peer Review may include work undertaken by Agents or Delivery Partners as applicable. Under the Duty Provider Contract you are responsible for all work under the contract and conducted in your name. Whether work was undertaken by your directly employed staff or third parties it will be treated as your work for all contract purposes including Peer Review.</p>
Contract Term and Termination Rights	<p>The Duty Provider Contract will have a four year term subject to our right to extend the contract for up to a further 12 months.</p> <p>We may terminate the Duty Provider Contract on a no fault basis on six months' notice subject to compensation in certain circumstances.</p> <p>Duty Provider Contract holders will not have the right to terminate the contract on a no fault basis although common law rights relating to termination for breach of contract will continue to exist.</p>