

## Civil concerns

**F**ull steam ahead' seemed to be the message from the Legal Services Commission (LSC) as it published its plans for the civil legal aid bid round in June 2009, for contracts which will start in April 2010: *Civil bid rounds for 2010 contracts. A consultation response*. Next month will see firms, not-for-profit (NFP) agencies and other organisations invited to bid for contracts in 134 geographical or, to use the LSC jargon, 'procurement areas' for family and social welfare law, with separate areas covering immigration and mental health services (see page 4 of this issue). The plans, though, miss out the details of how bidders will be selected if their number exceeds the contracts available, and there are deep concerns among practitioners about how the system will work in practice.

In a welcome move for most providers, the LSC does not intend to force them to merge by insisting that they provide services in all areas of social welfare law. Instead, they will be allowed to provide a minimum of three areas of work: housing, welfare benefits and debt, in consortia with linked contracts. If a provider from a consortium drops out, there will be opportunities to bid for its work without the other consortium members having to also rebid for their contracts. The LSC will require providers in each consortium to have greater integrated work rather than just referral arrangements by giving at least initial advice on all the areas of law the consortium is contracted for in each location.

Asking firms and NFP agencies to work together more closely in providing seamless services in family, housing, debt and welfare benefits problems makes sense as it will benefit clients who tend to experience combinations of these problems. However, by the same logic, immigration law should be included, but it is not; this is for reasons of political expediency rather than a commitment to providing services that deal with clients' 'clusters' of problems. Stand-alone contracts in housing will not be allowed and this will hit some specialist firms and NFP agencies. They can link, though, with another organisation undertaking welfare benefits and debt work. Housing firms also have the option of providing family work as well so that they can contract with the LSC. LAG is concerned about the drop in specialist housing firms; there are currently only around 350 firms, which is down from over 800 firms eight years ago.

While it was suggested at one stage that housing and community care contract holders would have to employ a litigator, this will not now apply; however, the LSC does say that it is likely to prefer those agencies that do so over those which do not. LAG argues that to advise on these areas of law effectively, access to a caseworker experienced in litigation is essential; nevertheless, we recognise that the reality on the ground is that, in many areas, there is sparse availability of such specialists.

What is causing most uncertainty is the lack of clarity over the criteria which will be used to select between suppliers in areas where there are more bids than bundles of matter starts available. Related to this is the fear that some suppliers will bid aggressively for contracts, see what they get, and then decide if they want them. In the meantime, suppliers that have lost out might be forced to shed staff, which could leave the LSC unable to contract for all the matter starts it wants in a procurement area. To avoid this, the LSC has hinted that it will look at whether an organisation has the full-time equivalent staff available at the time of the bid to meet the contracts it is bidding for, and at an organisation's track record in LSC or comparable services. In addition, access points and local criteria might also be applied. Such criteria are sensible as long as they do not fall foul of procurement law.

LAG understands that some time over the summer the Ministry of Justice will have to make a decision about whether or not to go ahead with pilots for best value tendering (BVT) for civil legal aid. If it does decide to pilot BVT, the LSC is likely to announce the pilot areas next month. In LAG's view, if it is the policy to apply BVT to civil legal aid eventually, it is good practice to run pilots and evaluate them before taking any final decision, as we successfully argued should happen with criminal BVT. However, LAG suspects that there is reluctance among some in the government and LSC to do this as they are unconvinced (as we are) that there are any significant savings to be made in civil legal aid by introducing BVT.

LAG argues that a pragmatic approach is needed. The LSC should concentrate in the new bid round on getting the balance right between ensuring that there is continuity in the provision of good-quality services, that there is adequate coverage across the country and that new entrants have a fair chance of entering the system. These should be the priorities rather than introducing more change to firms and NFP organisations that are already struggling to cope with pressure from the current changes and with increased demand for advice from clients hit by the recession.

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