

## **Civil tenders update – December 2010**

### **Family contracts**

Further to the Law Society's successful challenge of the family tender process, we have announced the extension of existing family contracts until 30 November 2011.

Providers who hold a Unified Contract in housing alongside family and have not been awarded a new Standard Civil Contract to deliver housing will also have the housing work in their Unified Contract extended.

Given that the extension to the current contract is limited to family (and in a few instances, housing), tolerance work is not permitted under the extension, including licensed work in other categories. Such work is limited to those providers that have successfully tendered for a 2010 Standard Civil Contract to undertake other civil publicly funded legal services started on or after 15 November 2010.

Schedules covering the initial extension to 14 December have already been issued. We will shortly be issuing subsequent schedule extensions. These will initially only cover the next month period through to 14 January 2011. This is because we want to discuss with representative bodies how matter starts are calculated for the remainder of the contract.

### **Other mainstream civil contracts**

We have now issued all contracts and schedules for signature. Whilst some schedules required amendment, we have now issued final, countersigned civil contracts to all but around 5% of providers where there remain outstanding issues. Where providers have been issued with conditional schedules (for example because they have not provided a complete Supervisor Self-Declaration Form) they have been given a final deadline to submit any requested information. Where the requested information is not received, contract offers are being withdrawn.

Where verification has resulted in contract offers being withdrawn or revisions to ranking on selection criteria we have, in some categories and procurement areas, already assigned additional matter starts to other successful applicants. In other categories and procurement areas, there was not sufficient time before the issuing of contract documentation to reallocate any additional matter starts.

Further to the issue of contract documentation, we will undertake a full outturn exercise of the work awarded to identify where there are any gaps in provision and, if so, the best approach to dealing with them. In some instances this will include reallocating matter starts to successful providers. In other instances, an expressions of interest or full tender exercise may be required.

### **Expressions of Interest for SWL**

We have already identified some priority areas where provision of Debt, Housing and Welfare Benefits has not been achieved. In response to this, in the areas of Walsall, Reading West, Berkshire & Wokingham and North Northumberland Expressions of

Interest to deliver Debt, Housing and Welfare Benefits services were published. The deadline for submitting these was 3 December 2010. We are considering all responses received and are in the process of contacting those that have expressed an interest on the next steps.

### **Expressions of Interest for Immigration**

We have begun to review the position following the award of contracts for Immigration Services. In the majority of areas contracts have been awarded in line with the procurement plans and we have a good level of access to services. However, there are five areas where we may seek to improve the level of provision either through our usual contract management approach or additional tender activity. Of these areas we consider that there are two that are a priority where we failed to let contracts and there is lack of alternative provision in the vicinity - we intend to commence tender activity immediately in the Access Points of the City of Plymouth and the Kent Coast. We consider that there is demand for services in these areas that is currently not being met and we will shortly be seeking Expression of Interest (EOI) from organisations who wish to deliver Immigration services through a 2010 Standard Civil Contract.

Once we have received EOIs we will decide on the next steps in the process and the provision of any interim arrangements. There are additional areas of East Essex, Suffolk and Portsmouth & the Isle of Wight where a significant volume of matter starts have not been let. We propose to seek to address this in January 2011.

### **Housing Possession Court Duty Scheme Tender**

We have now successfully awarded contracts for all the Procurement Areas in which we invited tenders. Due to the timing of the appeals process, some providers have been issued with transitional contracts for 2 ½ months. The appeal deadline has now passed and we aim to have considered all appeals by mid-December.

### **Immigration Removal Centres Tender**

It was necessary to undertake further clarification on the IRC tenders to ensure that contracts were awarded to those best placed to deliver this service. This has meant delays to the final outcome but we have awarded 2 month conditional contracts from 15 November, subject to the outcome of appeals, to providers that have completed the clarification process so that access to advice at all surgeries and fast-track rotas can be provided. We aim to consider all appeals by the end of December and issue final contracts schedules and rotas in early January. However, in the meantime we are confident we have secured access to services.

### **Litigation**

As previously communicated, the LSC decided not to appeal against the judgment following the Law Society's judicial review of the family tender process.

Whilst the LSC was disappointed by the outcome of the Law Society judicial review, we consider the overall picture for the LSC to be positive given that we have successfully defended challenges on a number of occasions.

Subsequent to the Law Society ruling, a number of judicial reviews and procurement challenges have been brought by individual providers in relation to the civil non family tender exercises.

Where these challenges have sought to attack the way the tenders were set up, the courts have to date been robust in rejecting the claims. Several judicial reviews have been dismissed at the permission stage both on grounds of delay and on the merits. So far detailed judgments have been handed down in two cases, one brought by Alan Rutherford Solicitors and one by Public Interest Lawyers.

The LSC's recent success in the Alan Rutherford case gives us a great deal of confidence in defending similar challenges. In this case the claimant had argued that the welfare benefits selection criterion about representing clients at the Upper Tribunal was disproportionate, and that the decision to not award a contract to them was both unreasonable and disproportionate. The judge refused permission to apply for judicial review on the basis that the claim was not brought promptly. The grounds on which the claim was brought were also rejected as "having no substance".

In the Public Interest Lawyers case, a wide range of challenges were made relating to the Mental Health and Public Law tenders. The majority of grounds of challenge were abandoned before the final hearing and others apart from one were rejected by the court.

In addition, a number of cases have been brought by firms while the verification process is still on-going. As a result they are obtaining new contracts without the need for a full hearing. Where this happens, the LSC will continue to vigorously oppose any claims for costs.

Although there are still some challenges arising out of the 2010 tender process which are yet to be determined, or for which judgment is awaited, most of these relate to individual tender or appeal decisions and are therefore unlikely to affect other contracts.