

COUNCIL

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PUBLIC**

FTP legal services tender process

For decision

Issue:

The GOC's Standing Financial Instructions mandate that tenders for provision of certain key services (including the provision of legal advice to the Legal & Fitness to Practise Directorate) are to be undertaken every five years.

The GOC's contract with its current provider of external legal advice to the Legal & Fitness to Practise Directorate is due to expire on 31 March 2010 (having been extended in April 2009 by the Registrar to run for an additional three months from 1 January to 31 March 2010).

The purpose of this paper is to update the Council on the progress made thus far in relation to the tender exercise, and the remaining activities that form part of the process.

Recommendation(s):

The Council is invited to receive details of the variations to the GOC Standing Financial Instructions which were agreed by the Chair in order to accommodate recommendations made by external specialist advisers as to the format of the tender process.

The Council is invited to agree to hold a teleconference meeting of Council on either 10 or 11 March 2010, in order to confirm the appointment of the successful legal firm(s) following the recommendations to be made by the selection panel responsible for evaluating the tenders after the tender presentations on 3 and 5 March 2010.

Annexes:

The following annex is attached to this paper:

Annex 1: Amended wording of the Standing Financial Instructions

Further information:

If you would like further information about this paper please contact:

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FTP legal services tender

For decision

Background/Introduction:

1. The GOC's Standing Financial Instructions mandate that tenders for provision of certain key services (including the provision of legal advice to the Legal & Fitness to Practise Directorate) are to be undertaken every five years.
2. The GOC's contract with its current provider of external legal advice to the Legal & Fitness to Practise Directorate is due to expire on 31 March 2010 (having been extended in April 2009 by the Registrar to run for an additional three months from 1 January to 31 March 2010).
3. The purpose of this paper is to update the Council on the progress made thus far in relation to the tender exercise, and the remaining activities that form part of the process.

Discussion:

4. In late 2009 the Director of Legal & Fitness to Practise prepared a draft set of documents in relation to the tender, and sought specialist legal advice as to the structure of the tendering process to be used, as well as the contents of the tender documents.
5. The advice received was to the effect that, while the tender procedure to be used need not adhere to the requirements of the Official Journal of the European Union (OJEU) process (due to the inclusion of the provision of legal services within Part B of the Public Contracts Regulations 2006), it should nonetheless follow the requirements of the EU process in certain respects, which would entail deviation from the process envisaged within the GOC's Standing Financial Instructions. Notably the tender process should:
 - Include a Pre Qualification stage, so that only a limited number of firms are invited to provide full tender documents;
 - Provide for evaluation of Pre Qualification Questionnaires (in order to shortlist those to be invited to provide full tenders) by the members of the same panel that will evaluate the tenders, rather than by anyone else;
 - Allow for more than three suppliers to be invited to provide full tenders and present those tenders to the selection panel;
 - Sub-divide the tender between the criminal and non-criminal matters upon which the GOC requires advice, in order to ensure that firms may tender to provide only one or other (or both) so that the GOC achieves best value for money overall; and
 - Allow for the appointment of more than one provider in relation to both types of services being provided (i.e. services in relation to criminal and non-criminal cases).

6. The advice also recommended that rather than entering into a contract for five years it would be preferable to enter into a four year contract with the option to extend for a further 12 months.

Amendment of the GOC's Standing Financial Instructions

7. The external solicitors' advice received confirmed that, in order for the tender process to be completed and the new supplier (or suppliers) to be appointed by 31 March 2010, it would be necessary to initiate the tender process before the end of January 2010.
8. In light of this timescale, the Chair of Council agreed that consideration of the amendments required to the Standing Financial Instructions could not be delayed until the Council meeting scheduled for 25 February 2010.
9. The Chair approved the amendments required to the Standing Financial Instructions, on behalf of Council, on 15 January 2010. The precise wording of the amended Standing Financial Instructions is attached at **Annex 1**.

Timetable for the tender process

10. The necessary publication of details about the tender was published in the Law Society Gazette and on the GOC's website on 21 January 2010.
11. The timetable for the tender process is set out below:

21 January 2010	Publication of advertisement in the Law Society Gazette; tendering documents made available on the GOC's website
29 January 2010	Deadline for submission of completed Pre Qualification Questionnaire to the GOC (to a dedicated email address)
1 – 11 February 2010	Evaluation of Pre Qualification Questionnaires by selection panel
12 February 2010	Limited number of respondents invited to tender
26 February 2010	Deadline for receipt of responses to the Invitation to Tender
3 & 5 March 2010	Presentations by potential providers to selection panel
8/9 March 2010	Evaluation by selection panel; recommendations as to appointments to be made to Council
10/11 March 2010	Consideration by Council of the recommendations made by the selection panel
12 March 2010	Contracts awarded (followed by 14 day standstill period)
By 31 March 2010	Contracts signed
1 April 2010	Framework agreement with supplier(s) becomes effective

The selection panel

12. The Chair of Council agreed that the selection panel would be constituted by:
- Dian Taylor, Registrar
 - Rosalyn Hayles, Director of Legal & Fitness to Practise
 - Stuart Heatherington, GOC Investigation Committee Member
 - Fiona Peel, GOC Council Member
 - Kisha Punchihewa, Assistant Director of Legal & Fitness to Practise
 - Alan Tinger, GOC Financial Consultant

Documents relating to the tender process

13. The following documents are available to download from the GOC website (http://www.optical.org/en/about_us/working_for_us/goc-tenders-.cfm):
- Copy of the advertisement placed in the Law Society Gazette;
 - The Pre Qualification Questionnaire;
 - The Invitation to Tender; and
 - The Framework Agreement that will be entered into with the successful supplier(s).
14. The tender documents permit firms to tender to provide services to the GOC only in relation to criminal investigations/prosecutions, or fitness to practise and High Court work, or both.
15. The tender documents make it clear that the GOC expects potential suppliers to commit to charging fixed fees in relation to the bulk of the work to be carried out.

Recommendation(s):

Council is invited to note the above outline of the process which has been adopted for the tender process.

Council is also asked to note the required variations to the GOC Standing Financial Instructions which were required in order to accommodate recommendations made by external specialist advisers as to the format of the tender process.

Mechanism for the confirmation of appointment of the successful legal firm(s)

16. Responsibility for confirming the appointment of the successful legal firm(s) lies with the Council. In order for the suppliers to be in place for 1 April 2010, the Council is asked to agree the method by which it will confirm the appointments of the successful firm or firms.
17. In accordance with the timetable outlined above at paragraph 10, the Council will need to consider and approve the selection panel's recommendations around 10 or 11 March 2010. Any slippage from the timetable will mean that

the GOC would potentially be unable to comply with the legal requirements in time to permit the new supplier (or suppliers) to be in place for 1 April 2010.

Recommendation(s):

Council is recommended to hold a teleconference meeting of Council on either 10 or 11 March 2010, in order to confirm the appointment of the successful legal firm(s), following the recommendations to be made by the selection panel following the tender presentations on 3 and 5 March 2010.

Resource implications:

18. Not applicable.

Equality and diversity implications:

Has an Equality and Diversity Impact Assessment been carried out?

19. Not applicable.

Human Rights Act implications:

Has a Human Act Rights Impact Assessment been carried out?

20. Not applicable.

Stakeholder engagement:

Has the Consultation Checklist been completed?

21. Not applicable.

Amended wording of the Standing Financial Instructions

“The tender procedure for the tender for provision of legal services to the Legal & Fitness to Practise Directorate shall be as follows:

- (a) The tender procedure may require potential suppliers to express an interest by completing a Pre Qualification Questionnaire in a format to be specified by the GOC;
- (b) The tender procedure may permit potential suppliers to express an interest in providing services to the Directorate in relation to one or more of a number of different types of case/services required;
- (c) The documents to be completed by those wishing to tender shall be as approved by the Director of Legal & Fitness to Practise, following receipt of any external advice that the Director considers is required as to the format of those documents and the structure of the tender process;
- (d) The selection panel to be appointed to evaluate any tender documentation (and any Pre Qualification Questionnaires required) shall be as agreed by the Registrar and the Chair of Council following recommendations made by the Director of Legal & Fitness to Practise, and shall include the Registrar and the Director of Legal & Fitness to Practise;
- (e) Shortlisting of those to be invited to tender shall be undertaken by the selection panel. If a Pre Qualification Questionnaire stage is included within the tender procedure, that shortlisting shall be based upon the evaluation of those Pre Qualification Questionnaires that were submitted to the GOC in accordance with the GOC’s requirements and within the specified timeframe;
- (f) At least 5 potential suppliers shall be invited to submit full tender documentation and present their tenders to the selection panel;
- (g) The selection panel shall assess the tenders and recommend to the Council the appointment of the supplier or suppliers who appear to the selection panel to represent the best overall value for money;
- (h) The Council shall consider the recommendation under paragraph (g) and appoint one or more suppliers.

The Registrar shall be authorised to sign all contracts on behalf of the Council and shall be the Authorised Officer for the purposes of each contract.”