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FOREWORD

Legal aid solicitors play a vital part in the criminal justice system. Defence solicitors working in the police station and at the magistrates' court enable us to be confident in the ability of this system to deliver justice.

The Legal Services Commission (LSC) has always had a clear focus on developing and improving the services received by legal aid clients. By working in partnership with our service providers, we have already made significant progress in improving the quality of the services we fund. However, I believe there is further room for improvement by focusing on the outcomes achieved for clients.

At the same time as ensuring quality, we must also provide a service that is affordable to the public purse now and sustainable into the future. The report on the legal market by economic consultants Frontier Economics has provided us with evidence on which we can begin to shape the future of contracting in criminal work.

We feel that the current remuneration scheme does not do enough to secure value for money for the taxpayer and is too inflexible to reflect the local market conditions facing solicitors. Moving away from paying for inputs, such as time and letters, to a system of paying fixed amounts for outputs provides a positive incentive for service providers to deliver results for their clients in the most time and cost efficient way.

In other sectors, competitive tendering is a well-established method of delivering quality public services. These proposals are part of a programme of reform focusing on these aims and developing new ways of working with those who provide legal services. In particular, our preferred suppliers pilot is exploring a new style of partnership that benefits service providers, the client and the taxpayer.

I believe that the proposals set out in this consultation paper will also benefit legal aid solicitors by providing:

- increased opportunities for the best performing service providers to grow
- opportunities to benefit financially from innovation and efficiency savings
- simplified contract and reporting mechanisms
- an end to the need for a justification of costs in the majority of cases
- certainty of bills, with less risk of costs being reduced.

I welcome your views on the proposals in this paper. I know that there is concern amongst some of our legal service providers about how a system of competitive tendering might work. We are also aware that we must have particular regard to issues relating to small and specialist firms. The LSC is committed to introducing a system of managed competition, and this consultation is a genuine opportunity for our partners and stakeholders to influence the choices we make and help us shape how we do it.

I very much value your input and your responses will help us build a stronger, higher quality legal aid system, with the client at its heart.

Clare Dodgson

Clare Dodgson
Chief Executive
Legal Services Commission

Executive Summary

This consultation paper sets out the Legal Services Commission's proposals to introduce a competitive bid process for the awarding of Criminal Defence Service (CDS) contracts in London, for criminal lower legal aid, from January 2006.

The Commission has an obligation to ensure quality of service to the client and to achieve value for money for the taxpayer.

By introducing managed competition based first on quality and then on price, the Commission believes that the value for money under its current system of purchasing CDS services can be improved further.

Managed competition will build on the current quality standards by introducing a risk-based quality assessment of each potential supplier using criteria such as quality of advice established from individual files and case outcomes. In addition, we believe that managed competition will help ensure that the overall criminal legal aid system remains sustainable and flexible enough to cope with future developments.

The Commission is not seeking to reduce the number of suppliers in London to a particular number or to limit the size of a firm (other than perhaps by setting a minimum volume of work to ensure quality). In addition, we believe that the proposals set out in this paper can benefit suppliers regardless of size or ethnicity, and we will actively seek the participation of small and black and minority ethnic (BME) suppliers in the process.

In developing these proposals the Commission has built on the work of Frontier Economics, which indicated that a system of purchasing based on paying for outputs - such as completed cases - rather than paying for inputs - such as time - could address some of the inefficiencies in the existing system. Introducing competition and allowing the market to determine the price for these outputs could further improve value for money.

Managed competition will allow firms to innovate and organise their businesses in the most cost effective way, and to benefit financially from these innovations without prejudice to quality. At the same time it will allow efficient firms to grow as they secure a larger share of the work.

We are proposing to run a two-stage bidding process: the first is based on quality and the second on price. London will be divided into a series of zones, each containing at least one magistrates' court and a number of police stations.

The process is summarised below:

- We will invite firms to express an interest in bidding for work within one or more bid zones.
- On receipt of the expression of interest, we will conduct a risk-based assessment of the likely quality of advice and service provided by the firm; this is stage one.
- Firms failing to achieve the quality standard will not be invited to bid. However, a firm will only be excluded if the poor quality assessment has been confirmed by two independent peer reviews.
- Firms that meet the quality standard will be invited to bid a price for work in the police station and at the magistrates' court; this is stage two.
- As well as bidding a price per case, firms will be requesting a proportion of police station and magistrates' court duty solicitor slots.
- Duty solicitor slots will be allocated first to firms bidding the lowest price.
- Not all firms invited to bid a price will necessarily receive a contract.

This consultation paper sets out a proposed framework for managed competition in London on which we are actively seeking your comments. The responses to this consultation paper and subsequent discussions with interested parties will shape the detail of the competition and the service to be delivered. Lessons learnt from piloting these processes in London will inform the introduction of managed competition into other areas as appropriate.

The Commission believes that the proposals set out in this paper will help to create sustainable and profitable legal aid firms that will be able to work with the Commission to deliver improved services to clients and improved value for money for the taxpayer.

1 Introduction

- 1.1 This paper sets out, for consultation, proposals to change the way that the Legal Services Commission (the Commission) purchases criminal defence services in the police station and at the magistrates' court. The Commission intends to hold a competitive bid process for the provision of these services in which quality and price will be the key factors in the award of contracts.
- 1.2 The amount spent by the Criminal Defence Service (CDS) under the General Criminal Contract (GCC) for criminal lower was £535m in 2003/4 (around £110m of which was spent in London). This £535m is around one quarter of the total legal aid budget of £2.1 billion.
- 1.3 The Commission is committed to testing the benefits of managed competition in the purchasing of legally aided services. By the successful introduction of managed competition, and through our commitment to working with our legal service providers¹, we can further ensure that the services we purchase deliver both quality to the client and represent value for money for the taxpayer.
- 1.4 The Commission is also developing two pilots that will test 'block contracting' and enhanced incentives for quality. The evaluation of these pilots, and other measures the Commission has introduced in recent years to reform the way services are purchased, will feed into the implementation of the purchasing strategy that the Fundamental Legal Aid Review (FLAR) is developing.
- 1.5 If the introduction of managed competition in London yields the improvements we hope for, we intend to extend the model (adjusted in the light of initial experience, and following further consultation) to other areas.
- 1.6 In 2003 the Department for Constitutional Affairs (DCA) and the Commission employed Frontier Economics to conduct a review of demand, supply and purchasing arrangements for legally aided services. The work was undertaken to investigate the underlying cost structures of the legal aid market.
- 1.7 Frontier was asked to address two fundamental questions: "*Given the likely levels of demand would the Commission be able to continue to purchase sufficient supply at current prices?*" and "*Whether the Commission's existing purchasing arrangements (including remuneration) secure value for money?*".

¹ In this paper, the terms 'legal service provider', 'supplier' and 'firm' are used interchangeably.

1.8 Frontier concluded² that:

- there may be some spare capacity in the legal services market
- the current national remuneration structure is unlikely to deliver best value for money, given the differences in the costs of delivery across parts of the country and between firms
- a system of paying for inputs (such as time, letters written and telephone calls) is unlikely to encourage efficiency as effectively as a system of paying for outputs (such as completed cases)
- an output-based remuneration structure where fees are determined by a process of managed competition, could lead to better value for money being achieved by the Commission.

1.9 Frontier recommended that value for money could be improved through the introduction of competition, where the competition is managed to ensure quality. An essential component in achieving value for money - a statutory obligation for the Commission - is the quality of the service provided by the supplier. However, users of legal services are not always best placed to assess the quality of service received. It is, therefore, the responsibility of the Commission to ensure that the services that it purchases on behalf of clients are of the highest quality within the limits of affordability. Frontier recommended that any competition should be on both quality and price in order to ensure value for money and to protect the client.

1.10 Achieving real value for money requires services to be of the right quality, provided at the right time and at the right price. The Commission believes that the current system of remuneration rates fixed centrally is not the most efficient way of securing value for money.

1.11 One advantage of allowing the market to establish a price per case, is that there will be incentives for innovation, and firms will have the opportunity to benefit financially from their efficiency gains.

1.12 Managed competition in London is being introduced within the context of a fixed Legal Aid budget, set as part of the Government's Spending Review. Against this background the growth of CDS work is reducing the money available to fund Civil Legal Aid.

1.13 The Commission has already taken steps to bring expenditure under control including:

- the introduction of individual case contracts in very high cost cases (VHCCs)

² "A market analysis of legal aided services provided by solicitors", December 2003 (see <http://www.dca.gov.uk/laid/frontier-solicitors-rpt.pdf>)

- changes to both the scope and remuneration structures for work in the police station and at the magistrates' court, and
 - through a continuation of our contract compliance audit programme and other criminal bill assessment.
- 1.14 In addition, we are looking at a number of other measures that would, whilst maintaining quality, introduce incentives to maximise efficiency and control rising costs. These measures include:
- the CDS Direct pilot which will investigate how service delivery and value for money can be improved for police station telephone advice
 - the Effective Trial Management Programme to reduce 'cracked' and ineffective trials through prioritising and incentivising early preparation
 - the extension of the graduated fee scheme (GFS) for Counsel in the Crown Court to cover those 'cracked' trials and guilty pleas that are outside the scope of the current structure
 - introduction of a litigator's graduated fee scheme for solicitors in the Crown Court during 2005/6
 - investigating whether we can move further towards fixed prices for police station advice outside London
 - the CDS Bill which will reintroduce means testing to ensure those able to pay for their defence do so.
- 1.15 The Fundamental Legal Aid Review (FLAR) is also examining the underlying CJS processes that drive legal aid costs.
- 1.16 The purpose of this paper is to hear your views on the proposals set out and receive feedback about how managed competition could work. We have set out a number of consultation questions and are also keen to hear your views on any wider issues that you believe this paper raises. However, do not feel that you have to answer all the questions: some may not be relevant to you or your organisation.
- 1.17 The responses to this consultation paper and subsequent discussions with interested parties will shape the detail of the processes and will inform the framework for the wider introduction of managed competition.
- 1.18 In order to help us collate and analyse the responses to the Consultation Paper – and for equal opportunities monitoring purposes - please would you complete the brief tear-off cover sheet in Annex F. The provision of equal opportunities information is voluntary. When responding, please state whether you are responding as an individual, as a supplier or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. Copies of this consultation paper and additional copies of the response cover sheet are available from the LSC's website www.legalservices.gov.uk.

- 1.19 In accordance with the Freedom of Information Act 2000, the Legal Services Commission may publish your name and contents of your response unless you provide sufficient reasons for asking us not to. Please ensure that your response is marked clearly if you wish your response or your name to be kept confidential. In any event, confidential responses may still be disclosed in a summarised or anonymous format, and will be included in any statistical summary of the comments received and views expressed.
- 1.20 The closing date for consultation is **29 April 2005**. Please send your responses, including the response cover sheet, to:

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2 Objectives

Quality

- 2.1 The Commission believes that the introduction of the Specialist Quality Mark (SQM) and CDS contracting has improved the quality of the services by providing a framework that sets standards for practice management, client care and service delivery. The Commission is committed to further improving quality.
- 2.2 Potential bidders will therefore be assessed on the quality of advice as established through analysis of individual files and case outcomes.
- 2.3 The quality assessment (stage 1 of the evaluation process) proposed in this paper will establish a new quality floor. The contracts awarded will clearly set out the quality of service that the supplier will be expected to provide during the contract and how that will be measured.

Value for Money

- 2.4 The Commission's objectives for client-focused CDS lower services in London are to contribute towards achieving both value for money and delivering a sustainable legal aid scheme within the resources available.
- 2.5 One element of value for money is price. The Commission believes that lower prices will be achievable through:
 - the competitive element in pricing
 - encouraging firms to develop more efficient business practices and models and benefit directly from these efficiency gains
 - reducing non-productive expenditure; in London in 2003/4 £26m (29%) of the £91m spent on police station advice and assistance attendance cases, and representation order cases in the magistrates' court was spent on travel and waiting
 - reducing transaction costs for legal service providers in managing their ongoing relationships with the Commission.
- 2.6 The current system does not encourage firms to minimise their travel times. We therefore want to encourage firms to find geographically efficient structures for dealing with demand that include travel within the cost per case that they bid. We anticipate that, by introducing competition among suppliers, efficient suppliers who provide a quality service to their clients will be able to reap the benefits of their efficiency and innovation and, over time, secure a larger market share.

A Simpler LSC/Supplier Relationship

- 2.7 The Commission believes that the proposals for managed competition will alter the relationship between the Commission and its suppliers in a way that will be beneficial to the users of CDS services, to the Commission and to the suppliers.
- 2.8 The adoption of a payment-per-case model will enable the Commission to simplify the current contract and reporting mechanisms. Auditing will move from a cost compliance and management focus to a quality focus looking at the quality of advice and outcomes achieved for the client. This will end the detailed cost analysis of contract compliance audits and reduce transaction costs for the Commission and for suppliers.
- 2.9 All suppliers awarded new contracts will need to commit to work towards achieving the preferred supplier standard, which will be defined by the outcomes from the current national preferred supplier pilot.

Future Competition and Flexibility

- 2.10 The Commission's proposals for the competitive bid process aim to ensure that the development of CDS services in London is not constrained. It is important to keep a degree of flexibility to allow new firms to enter the market and existing firms to develop and grow. This will help to maintain quality and provide ongoing competition for future work.
- 2.11 The description of the proposed bidding process in section 4 sets out how the Commission could achieve its objectives.

3 Current System

- 3.1 All current CDS contract holders in London are solicitor firms operating within the Law Society's regulatory framework. This framework was considered as part of the Clementi Review whose report was published on 15 December 2004; we will need to take account of its findings.
- 3.2 The current system of CDS services in London is structured on the basis of choices made by legal service providers as to where they practice and the volume of work undertaken. Volume of work may be restricted by lack of access to police station and magistrates' court duty solicitor slots.
- 3.3 These choices are made within a contractual framework set by the Commission. This framework requires firms to achieve the SQM and to be awarded a contract by the Commission in order to undertake CDS work. Once awarded a contract, suppliers are subject to a monitoring system based on management audits and contract compliance auditing. Poor audit results can result in the supplier having to repay money to the Commission and/or in the loss of the contract.
- 3.4 Under the General Criminal Contract, all suppliers are paid the same basic remuneration rates.
- 3.5 The Commission recognises that many firms have become profitable under the existing scheme by controlling costs and adopting efficient business models. However, the current remuneration system, based primarily on inputs and time spent, does not allow firms to fully realise these gains and provides incentives to maximise hours worked. It also carries with it significant overheads and transactional costs for the Commission and suppliers.

Source of Work

- 3.6 Suppliers secure work either through the duty solicitor schemes (in the police station and at the magistrates' court) or through their own clients (clients who request specific suppliers). Membership of the schemes is based on individual solicitors being qualified (through an accreditation scheme) as duty solicitors. In London, a duty solicitor is entitled to join the police station scheme for the borough in which his or her office is based, plus any additional police station schemes in any geographically neighbouring boroughs. A magistrates' court duty solicitor may only join a maximum of two court schemes.
- 3.7 The volume and value of work in London is set out in Annex A.

Consequences of Current Structure

3.8 The current arrangements provide good coverage of services across London. However, there are aspects of the current system that are undesirable for the Commission, clients and suppliers.

Inefficiencies

3.9 There are a number of inefficiencies within the current arrangements.

- Fixed remuneration rates do not allow the Commission to benefit from the variability in price at which individual suppliers would be willing to supply services.
- Fixed remuneration rates do not necessarily encourage suppliers to innovate in either the way they develop and deliver services to clients or how they run their businesses.
- A remuneration system based primarily on payment for inputs, such as time spent, letters written and phone calls received, could provide incentives to perform more work on a case than necessary to achieve a desirable outcome.
- The current structure does not allow the Commission to allocate work to those suppliers offering the best value for money. It also does not allow such suppliers to offer to take on more work at competitive prices and to benefit from their efficiency and control of costs.
- Unrestricted choice of suppliers (independent of where they operate) can lead to high expenditure on travel and waiting time.
- There is insufficient incentive for firms to reduce travel and waiting time.

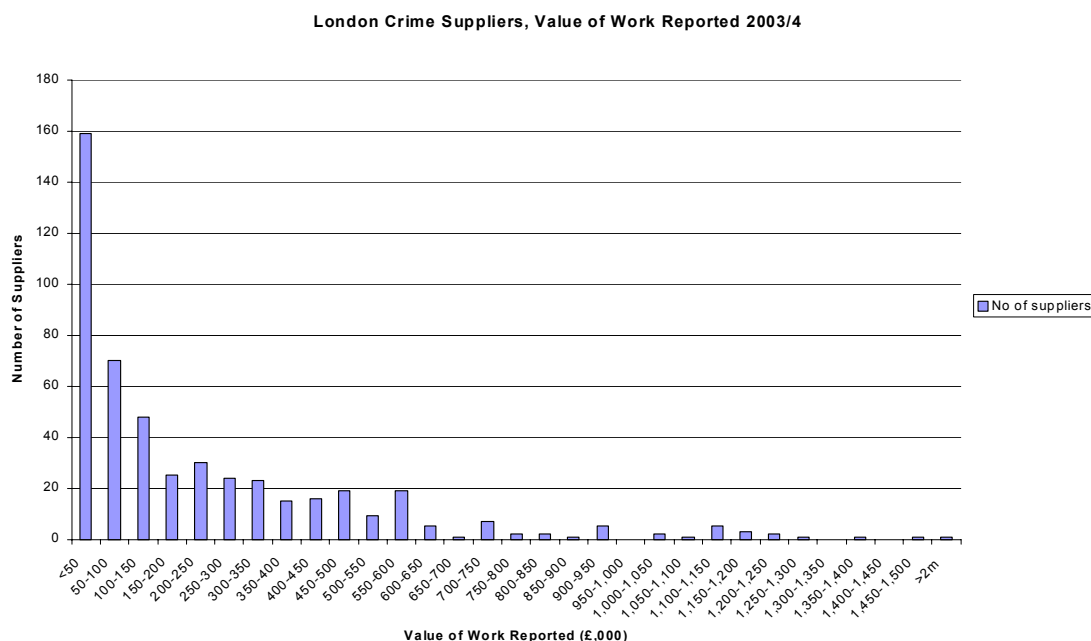
3.10 However, we recognise that there are inefficiencies within the present system that are outside suppliers' control. We continue to work with our partners in the Criminal Justice System to make significant improvements to its efficiency.

Meeting Government Objectives

- 3.11 By moving to a system that pays for outputs rather than inputs - with the price determined by the market - the Commission will be able to focus further on the quality of the work and on ensuring that the achieved outputs complement the Government's wider objectives for the criminal justice system.
- 3.12 Within a competitive bid process, focusing on the quality of output will improve the overall service provided to clients and ensure that legal aid work is carried out by suppliers best able to deliver value for money to the taxpayer.
- 3.13 The Commission believes that the reasons for, and the benefits of, managed competition apply across other regions and categories of law, but accepts that the form of the competition may need to vary.

Analysis of Supply

- 3.14 The chart below shows the distribution of CDS lower work in London between suppliers.



- 3.15 This chart shows that very small amounts of work are undertaken by a substantial number of suppliers. Nearly 160 out of just under 500 London-based suppliers (32%) earned less than £50,000 from CDS lower work in 2003/04.

3.16 The Commission has chosen to introduce managed competition in London for a number of reasons including:

- the large number of suppliers and their diversity
- research that suggests the current level of potential supply (measured by fee-earning capacity) in London most clearly exceeds the level of demand
- London represents the largest market for CDS in England and Wales and consumes around 22% of the CDS lower budget; the potential for achieving value for money in terms of quality and cost for the CDS is therefore considerable and would also contribute significantly to the overall aim of controlling the legal aid budget
- London would bring out many of the issues that will need to be addressed for a wider roll-out in the future.

3.17 The Commission recognises that many firms currently undertaking small amounts of work may be high quality suppliers, niche providers, or providing services targeted at, or best suited to, particular client groups. The Commission does not want to lose such firms, provided the services they offer meet the required quality standards and deliver value for money.

3.18 The Commission does not want to over-regulate and pre-determine the size and shape of the eventual supplier base that will result from the implementation of these proposals. It also believes that maintaining service standards is difficult for suppliers who only do a small volume of work. As a direct result of this managed competition, it is likely that there will be a reduction in the number of suppliers; they may merge, choose not to enter the competition or may be unsuccessful in bidding for a contract on price.

3.19 However, by opening the competition to suppliers outside London, the Commission is aware that this may actually result in new suppliers entering the market.

3.20 The Commission is also aware of the possible effect that this could have on some current contract holders and seeks views on the following:

- **Should we set a minimum volume of work? If so, how should this be determined? (Question 1)**
- **What would be the effects on current contract holders and, in particular, black and minority ethnic (BME) firms? (Question 2)**

4 The Bid Process

- 4.1 All the work delivered under the Commission's current General Criminal Contracts with suppliers in London will be the subject of the proposed bid process.
- 4.2 We are looking for a bid process that:
- ensures quality
 - promotes the optimum outcome for the client
 - provides effective competition
 - provides coverage across geographic regions
 - encourages entry of new firms into the market
 - sets a sustainable price for legal aid.
- 4.3 The Commission has considered a number of ways that it could run the bid process and has taken into account previous bid rounds for Community Legal Service work. Our preferred option for evaluating bids is a two-stage process: an initial quality filter followed by a bid round on price alone. An overview of this process is shown in Annex B.
- 4.4 We also considered and rejected a bid process based purely on price. We felt that this would be detrimental to the quality of service to clients, and would therefore work against the Commission's vision, part of which is to deliver quality services to clients through quality suppliers.
- 4.5 We also considered a single-stage best-value bidding process where bids are evaluated against a series of quality measures and price *at the same time*. This is a tried and tested method for awarding contracts in the public sector and is broadly similar to the process used to award civil contracts in April 2004. However, the Commission does not believe that the current quality assessment tools or the data that we hold on our CDS suppliers would allow us to distinguish adequately between suppliers in a robust and fair way.
- 4.6 The Commission will ensure that, at the end of this proposed competitive bidding process, all existing categories of criminal lower legal aid will be covered by one or more contracts. The existing categories are shown in Annex D.
- 4.7 Although the Commission believes that the setting of a minimum volume of work would provide benefits (such as helping to ensure that clients only deal with firms that have a large enough caseload to maintain quality standards), we will make no decision until the outcome of the consultation process.
- 4.8 We therefore set out below what we believe is the fairest way to operate the bid process to achieve a balance between quality and price.

We would be interested in views on:

How the following proposals match up against the criteria in section 4.2? (Question 3)

What would be the most effective way of achieving these results? (Question 4)

Number of Suppliers

- 4.9 When initially announcing its intention to run a competitive bid process in London, the Commission stated that one of its objectives was to reduce the number of CDS suppliers. This may have been interpreted as the Commission wishing to focus all work on a small number of large suppliers.
- 4.10 However, in designing the bid process, no limit has been placed on the number of suppliers; nevertheless, the process is likely to reduce their numbers.
- 4.11 The Commission has listened to the concerns of practitioners and agrees that quality and efficiency are not wholly the domain of larger firms. The Commission has formed the view that, in order to achieve the benefits that we believe managed competition will bring, it should be left to the market to decide the number of suppliers and their location.
- 4.12 This approach tries to ensure that, under the new proposed contracting regime, all firms will have the opportunity to develop profitability, to improve sustainability, and to grow.

New Suppliers

- 4.13 To be truly competitive, the Commission wants new suppliers to be allowed to enter the market. We intend that new suppliers will be subject to the same quality assurance processes as existing suppliers awarded a contract under the new arrangements. They will be eligible for entry onto the bid panel, i.e. they will be invited to submit a priced bid, and be awarded contracts on the same terms as existing suppliers that win contracts.
- 4.14 The LSC believes that, because of the current regulatory framework, bidders for the initial round of competition will almost exclusively be solicitor organisations. However, following the Clementi Review, should the framework change, nothing in these proposals rules out other organisations, including barristers, from bidding for contracts in the future.
- 4.15 New suppliers will be required to declare details of their previous firms or organisations. The Commission will reserve the right to exclude bids

from new suppliers that it believes have been created in order to circumvent the outcomes of previous audits or other regulatory activities, or where the Commission has serious doubts about the competence of any of the fee earners associated with the new supplier. There will be a right of appeal to the Commission's Contract Review Body on these decisions.

Bid Zones

4.16 For the purpose of the bidding process, London will be divided into bid zones. Each bid zone will cover a defined geographic area. Each bid zone will contain police stations and the magistrates' courts to which the police stations send the majority of their cases. Each bid zone must also be large enough to ensure that there can be genuine competition but not so large as to make construction of bids difficult and create barriers for smaller suppliers.

4.17 The Commission believes that there are a number of options for the creation of bid zones including:

- matching the bid zones to the current London boroughs, either individually or in groups
- matching the bid zones to the current duty solicitor schemes
- matching the bid zones to the CPS/GLMCA boundaries
- dividing London into a number of bid zones, e.g. central, north, south, east and west, or some other relevant geographical division.

4.18 The Commission may choose to vary the rules between bid zones in order to test the impact of these options. We may also wish to test factors such as varying the length of contract.

4.19 The purpose of the bid zones is to allow suppliers to bid for work in the most appropriate geographic areas. As part of the bid documentation, suppliers will be given data on the likely volumes of work/number of duty solicitor slots available in each bid zone. If successful in being awarded a contract, suppliers will be required to take work from anywhere in the bid zone; they should therefore have bid a price that takes this into account.

What shape and size of bid zones would allow firms to price their bids effectively and provide them with enough certainty for the future? (Question 5)

4.20 Suppliers will be able to bid for work in more than one bid zone. This will allow suppliers to consider expansion into new geographic areas.

4.21 We are considering removing the current requirement that a firm can only be on a duty scheme if it has an office in the area covered by that, or an adjacent, duty scheme. This means that firms located outside London will be able to enter the competition. This is an essential part of

allowing the market to determine the pattern of supply. Suppliers will, however, still be required to meet performance targets for attendance at police stations (travel and waiting times being included in the contract price), and be required to satisfy the Commission that they have appropriate arrangements to see clients within the bid zone. In the interests of our clients, it is inevitable that repeated failure to attend at police stations, or late arrival, will lead to contract sanctions.

Should an integral part of a quality service require suppliers to have office space to see clients outside police stations and the magistrates' courts in each bid zone?

If so, should the office be recognised by the Law Society as meeting the Society's practice rules (e.g. "... every office of the practice must have at least one solicitor *qualified to supervise*, for whom that office is his or her *normal place of work*."?) or should a different standard apply? (Question 6)

Basis of Bids

4.22 The Commission is planning to run a single overall bid process that will cover all bid zones in London.

4.23 Supplier bids will contain two elements:

- a fixed price per case, however a case is defined
- a defined number of whole police station and magistrates' court duty slots.

4.24 Existing suppliers who do not bid, or who fail to win a new contract, will be offered a transition period in which to manage the loss of their criminal legal aid work. Eventually, only suppliers with a new contract will be able to carry out publicly funded criminal lower work. Section 5 explains this in greater detail.

4.25 We are minded to base the bids on the duty slots in both the police station and at the magistrates' court. Because we cannot guarantee volumes of work to suppliers, these duty slots will simply provide the opportunity for criminal legal aid work. Suppliers will be bidding for access to a source of work. Clients will still be able to choose an own solicitor rather than the duty solicitor. However, at the end of the transition period, only those suppliers who are successful in bidding for a contract, including the award of duty slots, will be able to provide own client CDS work, subject to some small possible exceptions set out at paragraph 4.32.

We would welcome views as to whether basing bids on the duty slots would be the best way for allocating access to work as part of the managed competition process. (Question 7)

- 4.26 By focusing on the award of duty slots, suppliers will need to ensure that the quality of service they offer meets the standard required by the LSC and helps them to retain clients. It is our intention to continue to allow the distinction between duty solicitor and own solicitor work. We believe that, by allowing clients to choose, suppliers will have an additional incentive to provide quality services in order to retain clients.
- 4.27 Suppliers will not be limited to taking on a fixed number of cases but will be paid according to the actual number of cases they undertake at the price that has been agreed. Those suppliers offering the best value for money are likely, in time, to increase their market share.
- 4.28 Contracts will only be let for a comprehensive level of service. Bidders must bid for both police station and magistrates' court duty solicitor slots and honour their commitment to be on duty for the slots allocated. For reasons of client service and efficiency, suppliers would normally be expected to see a case through from the police station to the magistrates' court.
- 4.29 We will consider arrangements for suppliers to refer-on specialist Crown Court work that they do not have the capacity or expertise to do themselves. For the time being, Crown Court work will continue to be paid under the current remuneration structure.

Would it be reasonable to expect suppliers also to take on any Crown Court work that follows on from their police station and magistrates' court work? (Question 8)

- 4.30 To help suppliers prepare their bid, the Commission will provide information on volume and value (by claim code) of current work within each bid zone. The Commission will also provide, on request from an existing supplier, the supplier's own data in the same format.

Crown Court Specialist Suppliers / Complex Crime Unit Cases³

- 4.31 The Commission is aware that some firms - such as those working under contract with the Complex Crime Unit - specialise in Crown Court and other Higher Court work. These firms may currently undertake little, if any, CDS lower work. While it may be inappropriate to require these firms to bid for police station and magistrates' court duty solicitor slots, we would want to ensure that firms providing Crown Court work are subject to the same efficiency incentives and quality standards for criminal lower.

³ The Complex Crime Unit, previously known as the Very High Cost Cases Unit (VHCCU) directly manages, under contract, High Cost Cases in the Crown Court.

4.32 We are considering four options to achieving this, on which we would welcome views:

- Create a new, Higher Court, contract that would allow recognised specialist suppliers to do Crown Court work and own client work in the police station and at the magistrates' court at an agreed rate; these suppliers would not be required to bid for, or do, duty solicitor work. As now, holders of lower contracts would still be allowed to take on Crown Court work.
- Allow firms currently in possession of a General Criminal Contract, but not awarded a contract under the new provisions, to continue to provide Higher Court work, but be subject to the same quality assurance standards as CDS lower contract holders and allow them to continue to provide own solicitor work in CDS lower. Suppliers would be paid at a rate that reflects the prices within their 'home' bid zone or the bid zone where the work takes place.
- Create a new Higher Court contract and restrict Higher Court work to holders of that contract and allow them to provide own solicitor work in CDS lower. Suppliers would be paid at a rate that reflects the prices within their 'home' bid zone or the bid zone where the work takes place.
- Restrict work in the Higher Courts to those suppliers awarded a contract to undertake CDS lower work.

We would welcome your views on these options and any other suggestions for ensuring that Crown Court specialists can continue to work in the police station and at the magistrates' court, while being subject to the same efficiency incentives and quality standards as suppliers that have gone through the bid process. (Question 9)

Should Crown Court specialists be required to bid for duty solicitor schemes? (Question 10)

Other Specialist Suppliers

4.33 The Commission also recognises that there are a number of suppliers that offer services only to particular client groups and in very specialised areas of law. It may be inappropriate to ask these suppliers to bid for duty slots in order to be able to continue to provide essential services to their clients. We may, therefore, develop specific arrangements to preserve these services. In order to do so we would need to develop criteria to allow us to recognise such firms and to manage the quality of the service provided.

4.34 In our view, these suppliers are likely to provide services targeted at particular client groups. The reasons for this could be:

- language or cultural; clients may be less well served by other suppliers that have been awarded contracts
- the nature of the client's problem, complexity or rarity of the case
- because only a specialist would be able to provide the quality of service required.

4.35 The Commission wants to ensure that the Appeals and Review, Prison Law, and Associated Community Legal Service (CLS) classes of work are adequately covered, and would welcome views as to whether these classes of work should be subject to different arrangements. We believe that there are three options:

- Exclude some or all of these classes from the competition and allow all contract holders to continue to provide advice under the current contract and remuneration structures.
- Include some or all of these classes, and set the price separately, either by bid or by using a multiplier.
- Hold a separate bid round awarding contracts for these classes of work.

4.36 Once specialist suppliers have been identified, they could be allowed to continue to offer services on an own client basis and be paid at the appropriate bid zone rate. They would also have to pass the initial quality assessment and be subject to the same quality assurance process as other suppliers. We would amend the contract to specify the nature of the work that the supplier could undertake on a legally aided basis.

**We would welcome your views on whether special arrangements are needed and, if so, what those arrangements might be.
(Question 11)**

Pricing of Work

4.37 In submitting their bids, firms are stating the price at which they are prepared to carry out the work. This will be a commercial decision based on several factors including firms' cost structures, overheads and profit margins at which they are willing to operate.

4.38 However, there are several possible options for defining how the work should be packaged and hence, how suppliers should bid. Some of these are set out below for comment.

- A. Suppliers bid a composite case price for CDS lower work. This price would be paid per case, whether the case is in the police station or at the magistrates' court.

For example, if police station work would cost £250 per case and magistrate work costs £300 per case, then the composite price would be £275 per case.

- B. Suppliers bid a price for work under each of the current claim codes in the General Criminal Contract undertaken in the police station or at the magistrates' court. (see Annex D)

- C. Suppliers bid a composite price for all work undertaken in the police station (including free-standing advice), and a further composite price for all work undertaken at the magistrates' court. For example, if police station work would cost £250 per case and magistrate work costs £300 per case, then those are the prices bid.

- D. Suppliers bid one price for police station work, with the price for magistrates' court work being set as a multiple based on the current average differential in London. For example, if a supplier bid £250 per case for police station work and the multiple is 1.2, then the rate for the magistrates' court work would be £300 per case.

- 4.39 These options are not exhaustive and the Commission intends to keep an open mind about the optimum model; it may become clear during the consultation process that another way of pricing bids would be more appropriate.

What is the most appropriate option for pricing work, bearing in mind the need for any system to be easily understood and, at the same time, to cover adequately the range of complexity in the work involved? (Question 12)

- 4.40 Bidders will be expected to calculate the price at which they are prepared to carry out work within a bid zone. If suppliers are bidding for work in more than one bid zone they may bid different prices for each zone. It will be the responsibility of the suppliers to calculate their own cost base in order to allow them to establish sustainable and profitable bid prices.

- 4.41 The bid price will include all travel and waiting time.

- 4.42 It is our intention that we will eventually include all disbursements in the scheme. However, for this first bid round, they will not be included because the Commission believes that this would complicate the

process at this stage; disbursements will therefore continue to be paid as currently.

- 4.43 A key performance indicator under the contract will be the extent to which the supplier controls both the volume and value of the disbursements incurred, until such time as they are included in the bid process.

General Quality Issues

- 4.44 The Commission would like to use the opportunity presented by managed competition to improve quality requirements more generally. To this end, views on the following questions would be welcome.

Should the new contracts continue the requirement that a duty solicitor must provide initial advice in duty solicitor cases? The Commission is minded to allow bids on the basis that initial 'duty solicitor' advice for non-indictable matters could be provided by an accredited representative. (Question 13)

Given the nature of criminal work, should we require a certain percentage of a supplier's work to be performed by fee earners who work exclusively for that supplier? And, if so, what might that percentage be? (Question 14) (Please see the '*Police Station Representatives and Solicitors Attending the Police Station*' Consultation Paper available on www.legalservices.gov.uk.)

Should we require all fee earners to be re-accredited for the Criminal Litigation Accreditation Scheme (CLAS) within a specific period, say 12 months, of the Law Society launching the scheme for London? (Question 15)

Are there any other indicators of quality that we should be considering? (Question 16)

How could these quality indicators be monitored effectively and at reasonable cost? (Question 17)

Supervisors

Should supervising solicitors be required to have a minimum period of post-qualification experience? (Question 18)

Should supervising solicitors be expected to undertake a minimum number of hours of criminal defence work, for example, 350 hours per year? (Question 19)

Should supervising solicitors be allowed to work as supervisors for only one supplier? (Question 20)

Should there be a maximum number of fee earners that a supervising solicitor is allowed to supervise - and, if so, what might that number be? (Question 21)

The Bid and Evaluation Process

4.45 Suppliers will be sent an application pack containing details of the bid process and relevant data, and will be invited to express an interest in competing for a General Criminal Contract under the new provisions. Suppliers will be required to register their intention to bid four weeks from the date of the release of the invitation.

Stage 1: Quality Assessment

4.46 In the first stage of the competition, bidders will be evaluated against their ability to provide services of an appropriate quality. This will involve each potential supplier being subject to a risk-based quality assessment through an analysis of quality of advice from individual files and an analysis of case outcomes. If this risk-based quality assessment indicates that the supplier is not likely to provide competent advice, the supplier will be offered an independent peer review under the auspices of the Institute of Advanced Legal Studies (IALS). If the peer review indicates that the supplier is providing competent advice then they will be admitted to the bid panel.

4.47 However, should the peer review confirm that the supplier is not performing competently, the reasons will be outlined in the peer review report. Should the supplier not agree with the assessment in the report, they may submit representations to the reviewer. If the representations are accepted, i.e. the peer reviewer accepts that the supplier's work is competent, then the supplier will be entered onto the bid panel.

4.48 If the peer review does not change as a result of representations, the supplier will be offered a second independent peer review. The supplier will be required to meet the cost of this second review, likely to be in the region of £1000. The Commission will agree to abide by the outcome of this second peer review and will reimburse the supplier if the peer review finds that the supplier is competent; this would result in the supplier being entered onto the bid panel.

4.49 If the second peer review validates the outcomes of the first review then the supplier will be excluded from the bid panel. There will be no further internal review or appeal process.

4.50 We believe that this quality assessment process, based on an initial risk assessment and validated by two independent peer reviews, will exclude only those suppliers offering a poor quality service.

- 4.51 We will be developing, and will consult separately with stakeholders on, these processes.
- 4.52 The Commission is currently piloting a preferred supplier approach to the way we contract with suppliers. It is anticipated that the preferred supplier system will be rolled out nationally from autumn 2005. Given that preferred suppliers have already passed a peer review, they will be 'passportted', i.e. transferred automatically, onto the bid panel.

We would welcome views on this process and the protection it offers clients in terms of service quality. (Question 22)

Although peer review is based on files and records from a single office, the Commission wishes the results to be applicable to the firm whose office was reviewed. This should encourage firms to ensure that high professional standards are applied across all their offices. Is this reasonable? (Question 23)

Stage 2: Bidding on Price

- 4.53 Suppliers that have passed the quality stage will be required to submit their priced bids to the Commission's Head Office (or electronically to a specific email address) by the set date and time. An electronic or physical receipt will be issued.
- 4.54 Bids will be assessed and contracts awarded on the basis of price. No other factors will be considered at this stage as all suppliers will have passed the quality threshold.
- 4.55 The Commission believes that there are two options for establishing prices in each bid zone. The first would establish each supplier's individual price for the work they complete, and the second would establish a single price for all work in the bid zone, at the market clearing rate. These two options are described in greater detail below.
- 4.56 In the first option, suppliers would be awarded contracts at the price they bid. The lowest price bidders would receive the number of duty solicitor slots requested and this process would continue until a point is reached where all slots in the bid zone have been allocated. The remaining, higher-priced, suppliers will therefore not receive a contract.
- 4.57 For example: three suppliers A, B and C bid for contracts. Supplier A bids £100 per case based on receiving 50% of slots, B bids £150 for 30% of slots and C Bids £200 for 40% of slots. Contracts will be awarded in the following way. Supplier A will be awarded a contract for 50% of the slots at a price of £100, B will be awarded 30% of slots at a price of £150 and C will be awarded the remaining slots (i.e. 20% even though they requested 40%) at a price of £200.
- 4.58 In the second option, all suppliers would receive the same price. That price would be based on the bid of the highest priced supplier who

succeeded in being awarded a contract. This price is known as the market clearing rate at which all slots are filled. Again, the remaining, higher-priced, suppliers will not receive a contract. Apart from the simplicity, one of the other advantages of paying all suppliers the same rate within the bid zone is that this model provides the efficient suppliers with greater profits - and hence greater opportunity to grow and develop - than the less efficient suppliers.

- 4.59 For example: suppliers A, B and C bid for contracts. Supplier A bids £100 per case based on receiving 50% of slots, B bids £150 for 30% of slots and C Bids £200 for 40% of slots. The clearing rate is the highest price necessary to allocate 100% of slots, in this example £200. Therefore contracts are awarded in the following way: supplier A is awarded 50% of the slots at a price of £200 per case, B is awarded 30% of the slots at a price of £200 per case, and C is awarded the remaining 20% of the slots (half of the amount bid for) also at a price of £200.

**We would welcome your views on both these options and any other suggestions as to how the price should be established.
(Question 24)**

- 4.60 The Commission believes that there are two options for establishing contract length. The first option would be to offer all successful bidders the same length of contract; this could be for, say, three years. The second option would be to offer variable length contracts depending on bidders' price: the lower the bid, the longer the length of contract. (See also the later section on Length of Contract.)
- 4.61 Whichever options are chosen, there will be no right of appeal against the final contract offer, nor will suppliers be allowed to vary their bid in terms of volume, price or bid zone.
- 4.62 Suppliers may make bids based on planned expansion. The Commission needs to be confident that such bids are realistic and ensure that the service to clients is not jeopardised.
- 4.63 For the first bid process, we believe it is unlikely that suppliers will have had the time to re-organise radically. If a supplier is bidding to increase their duty slots (either in the police station or at the magistrates' court) by more than an agreed percentage, the Commission will request details on how the supplier intends to cover the likely additional work. The Commission reserves the right to refuse the expansion over the agreed percentage if it is not satisfied. We believe that this is necessary to ensure that the system continues to operate in the best interests of the wider CJS.

Should expansion-based bids be limited and, if so, should the expansion be limited to, say, 25%, 50% or 100% of current work volumes? (Question 25)

4.64 If at the end of the bid round there remains a quantity of work available, a further bid round will be held. Fresh invitations to tender will be issued to all suppliers that had originally expressed an interest and other potential bidders on request. The same process will be repeated except the Commission will take into account any current quality issues that have arisen with existing contract holders.

Length of Contract

4.65 Our current thinking is that the length of the supplier's contract will be determined by the competitiveness of its bid. The supplier's price will be compared with the prices of the other successful bidders. If the supplier is in the lower quartile⁴ of price the contract will be awarded for three years. If the price is in the upper quartile of price the contract will be awarded for one year. In all other cases a two-year contract will be awarded.

4.66 The Commission believes that, by offering contracts of different duration, we will ensure that competition continues to be a factor in setting prices and that efficient firms able to offer good value for money will have the opportunity to expand and grow at the expense of those suppliers providing lower value for money. We would welcome views on this approach and whether it will achieve its objectives.

4.67 By having three rolling programmes of contract awards (after one, two and three years), there will be defined points at which new entrants can enter the market. Existing contract holders will be able to bid for work and, if successful, their contracts will be extended accordingly.

4.68 The Commission anticipates that one of the effects of the introduction of managed competition will be the merging of firms both at the bid stage and during the lifetime of the contracts. If a merger or takeover occurs during the lifetime of a contract, the new supplier or enlarged supplier will be able to keep both volumes of work at the existing prices. However, the timetable for re-tendering the firms' original contracts will remain.

Contract Specification

4.69 The Commission proposes to involve supplier representatives in developing the contract specification. This is likely to include a series of joint seminars with suppliers and representative bodies.

⁴ A quartile is the total number of, in this case, contracts, divided by four.

5 Operation of the System Following the Bid Process

- 5.1 Immediately following the bid round, there will be three types of suppliers:
- those that have won contracts
 - those that chose not to bid and who will therefore need to 'wind down' their criminal lower work
 - those who participated in the bid round but did not win a contract.
- 5.2 Suppliers in the last two categories will therefore have to go through a transitional period to ensure that clients' needs are protected and that the impact on these firms is managed. This is addressed below.

Transitional Period

- 5.3 The Commission proposes that there should be a transitional period between the end of the existing system and the proposed new system.
- 5.4 This is to allow existing suppliers who decided not to bid or are not awarded a contract (transitional suppliers) to continue to provide own-client services for a limited period and to provide an opportunity for them to manage the change in their business. It will also allow time for the market to reorganise itself in response to the new pattern of supply.
- 5.5 There are several options when determining the length of the transition period and the Commission is seeking views on the most effective, or suggestions as to how else it might be determined. Two possible options are:
- The transition period is fixed for a maximum period, for example 6 months, at the end of which the supplier will not be able to claim and be paid for any work started after the cut-off date. The supplier will be limited to work undertaken for existing clients or existing cases, or
 - Suppliers are allowed to continue to provide services for existing clients for as long as the clients choose to instruct the supplier.
- 5.6 In both cases this will be achieved by an extension to the existing contract. Transitional suppliers will be subject to the same auditing regime as suppliers awarded contracts.
- 5.7 During the proposed transitional period the supplier will be allowed to act in an own-solicitor capacity. They would be paid at the average rate of either the bid zone where they are based or the bid zone in which the work is located, or at the market clearing rate, depending on which model is chosen.

What should be the arrangements for existing suppliers who decide not to participate in this managed competition? (Question 26)

Client Choice

- 5.8 During the transitional period clients will be able to continue to use their existing solicitor to provide own client work on existing matters, even if that firm is a transitional supplier. From the end of the transition period, client choice will be limited to suppliers that have been awarded a contract under the new arrangements.
- 5.9 Under the new arrangements clients will still be able to instruct a supplier to act as own solicitor even if that supplier is not located in the relevant bid zone, provided that the firm had been awarded a contract under the new arrangements. The supplier could be remunerated at their 'home' bid zone rate. If the supplier has contracts in more than one bid zone, the price could be the average price for that supplier and that type of work.
- 5.10 Unlike work in their home bid zone(s) suppliers will not have to accept instructions from clients outside their bid zone(s).
- 5.11 Transfer of instructions will need to be limited. Circumstances where transfers might be allowed could include instances where more than one case becomes consolidated at court or where a solicitor is prevented from continuing to act in accordance with their professional rules.

Acceptance of Work by Contracted Suppliers

- 5.12 Solicitors will be contractually bound to accept any eligible case from within the bid zone for which they have been awarded a contract. The only exception to this is where they are prevented from acting by virtue of their professional rules.
- 5.13 Where a supplier accepts a case at a police station within their bid zone, but any subsequent court hearing takes place out of the bid zone, the supplier will be paid either at their bid zone rate or, if they have a contract for work in more than one bid zone, the average rate. The supplier would be expected to continue with the case as part of the contract, although they would have the choice of instructing an agent.

Would it be appropriate to pay the suppliers' own tendered rate irrespective of where the court work takes place, or to pay the average rate applicable in the relevant bid zone? (Question 27)

Counsel

- 5.14 The current system, whereby assigned counsel are paid directly by the Commission, will be replaced by a system that allows solicitors to make these payments. This will bring payment into line with all other payments for barristers for work in magistrates' court.

What effect would this proposal have on barristers? (Question 28)

Disbursements

- 5.15 It is our intention to move to a system where disbursements will be managed by solicitors from a separately allocated budget determined by the case volumes awarded under the contract. However, we do not wish to introduce this at this time as we believe it would complicate the new bid process.
- 5.16 On 26 November 2004, the Commission issued a consultation paper on the quality and cost of experts: *The Use of Experts: Quality, Price and Procedures in publicly funded cases* (see www.legalservices.gov.uk). The result of this consultation will be taken into account when planning any changes to disbursements in criminal lower.

Payment and Auditing

- 5.17 Detailed billing and contract compliance auditing will cease. The Commission will continue to make monthly payments with the value of claims reconciled against them. Payments will be adjusted in accordance with the volumes of work actually undertaken.
- 5.18 Performance generally, and quality in particular, will be monitored and controlled through data analysis, file assessment and peer review where appropriate. We are currently working with the profession on further developing a quality measure that uses case outcomes as a trigger for concern and further investigation. We will continue to work with the profession on developing this and other quality assessment tools. We will continue to consult on the audit arrangements for the new contracts and would welcome at this stage any views on the best methods for assessing performance and quality.

6 Partial Impact Assessments (Regulatory and Equalities)

Regulatory Impact Assessment

1. Title of proposal

Improving value for money for publicly funded Criminal Defence Services in London.

Purpose and intended effect of measures proposed

2. The background

This consultation paper proposes the introduction of managed competition for purchasing criminal legal aid in London, to improve quality of advice and value for money and increase flexibility and competition in the marketplace. The proposals cover criminal lower legal aid work, largely delivered in police stations and magistrates' courts in the London area.

The Commission recognises that it has two important obligations: to ensure the delivery of quality services for the clients, and to ensure that the taxpayer receives value for money in the services purchased. Criminal legal aid is currently provided through solicitor firms holding contracts issued by the Commission, under which they receive centrally set fixed remuneration rates, paid on the basis of the time taken to meet client need. In 2003 the Commission and the Department for Constitutional Affairs commissioned a report from Frontier Economics to investigate issues of efficiency and value for money in the current arrangements for purchasing criminal legal aid.

The Frontier Economics' Report concluded that an output-based remuneration structure where fees are determined by a process of managed competition, could lead to better value for money being achieved by the Commission. In addition, the Commission believes that introducing managed competition will allow suppliers to indicate the price at which they are prepared to work and more accurately reflect market conditions.

The introduction of managed competition is also intended to help control the overall cost of purchasing criminal lower legal aid in London, which is a key objective of the proposals. The amount spent for criminal lower work in 2003/4 was £535m (of which around £110m was spent in London), which represents a quarter of the overall legal aid budget. If we do not control criminal legal aid spend, the scope of the criminal and civil legal aid work we currently fund is likely to be cut. These proposals are in addition to a number of other current and planned projects aimed at controlling criminal legal aid expenditure.

The Commission has chosen to introduce managed competition in London. The reasons include:

- the large number of suppliers and their diversity
- research that suggests the current level of potential supply (measured by fee-earning capacity) in London most clearly exceeds the level of demand
- London represents the largest market for CDS in England and Wales and consumes around 22% of the CDS lower budget; the potential for achieving value for money in quality and cost for the CDS is therefore considerable and would also contribute significantly to the overall aim of controlling the legal aid budget
- London would bring out many of the issues that will need to be addressed for a wider roll-out in the future.

The Commission is planning to use a two-stage bidding process. Bids will be first assessed on the basis of quality. Having passed this quality threshold, bids will be assessed and contracts awarded on the basis of price per case. No other factors will be considered at this stage.

We are proposing that bidders will not bid for a fixed percentage of work or a set number of cases, but for a percentage of the duty solicitor slots in the police station and at the magistrates' court duty solicitor schemes. These slots will give successful suppliers an opportunity to gain new work. Having been successful in bidding for duty slots, a supplier will then be obliged to undertake criminal lower work at the price established by the competitive process.

The proposals will only affect legal aid work in the Greater London area, though the Commission may seek to extend managed competition to other parts of England and Wales in due course.

3. Objectives

The Commission is committed to further improving the quality of advice provided by criminal suppliers, hence assessing quality of advice will be an integral part of the bid process.

Allowing remuneration rates to be established by the market will give suppliers incentives to innovate, become more efficient and to benefit financially from these improvements.

A key objective of these proposals is to move to a system that is affordable now and sustainable in the future. Increasing value for money and controlling costs are key objectives of the proposals.

The Commission's aim is to introduce managed competition in a form that will:

- build on our current quality standards
- allow remuneration rates to be set by the market and improve value for money
- give suppliers incentives to innovate, become more efficient and to benefit financially from these improvements
- give greater opportunity for efficient suppliers to grow and develop their businesses
- reduce the amount of money spent on non-productive work such as travelling and waiting
- simplify the relationship between the suppliers and the Commission, thereby reducing transaction costs for both
- offer small and new suppliers an equal opportunity to secure their position in the legal aid marketplace and to grow.

Implementation of the proposals should therefore contribute towards the Commission's objective of delivering a sustainable, good quality, legal aid scheme within the resources available.

The key steps in the bid process are set out below.

- We will invite firms to express an interest in bidding for work within one or more of the bid zones.
- On receipt of an expression of interest, we will conduct a risk-based assessment of the likely quality of advice and service provided by the firm; this is stage one.
- Firms failing to achieve the quality standard will not be invited to bid. However, a firm will only be excluded if the poor quality assessment has been confirmed by two independent peer reviews of case files.
- Firms that meet the quality standard will be invited to bid a price for work in the police station and at the magistrates' court; this is stage two.
- As well as bidding a price per case, firms will be requesting a proportion of duty solicitor slots in the police station and at the magistrates' court.
- Duty solicitor slots will be allocated first to firms bidding the lowest price.

4. Risk Assessment

We have identified a number of risks in the process of running a bid round for managed competition in the criminal legal aid market in London.

There is a risk that inviting suppliers to compete on price for access to duty solicitor slots will encourage suppliers to submit unrealistically low bids to win work which, in turn, may lead to a downward pressure on quality. In addition, suppliers who do submit realistically priced bids may reduce the time spent on cases because they will no longer be paid for each hour worked.

A key objective of introducing managed competition is to increase, not reduce, the quality of criminal lower work. The proposed bid process therefore focuses on quality as a key bid criteria, with appropriate monitoring once contracts are in place to ensure this is achieved.

As most current suppliers will have little or no experience of preparing bids for managed competition, we will be providing them with a detailed breakdown of their current volume and value of work, as well as more general data about the bid zones. This should reduce the need to divert the expertise of their solicitors away from servicing clients.

Another important aim of the introduction of managed competition is to improve value for money for the provision of criminal lower legal aid services. Clearly the new system must not be overly expensive and complex to administer or audit, or any savings generated by the competition will be outweighed by increased administration costs rather than being available for other parts of the legal aid system.

The Commission also wishes to ensure that its own resources are utilised in ways that benefit clients and suppliers. It is also important that suppliers spend as much time advising and assisting clients, and as little as possible in managing their relations with the Commission. We are therefore proposing a system of managed competition that will enable us to simplify the current contracts and reporting mechanisms, focus more on quality of advice given and move to 'lighter touch' auditing. We believe that this will be of benefit to suppliers and to clients.

We have designed the proposed system for introducing managed competition with these objectives firmly in mind. We set out below a number of alternatives to our proposed bid process for managed competition.

We are not recommending any of these alternatives because they entail what we consider to be a high risk of unintended or negative results, as discussed below, or fail to meet our objectives.

5. Options

Option 1: Use a bid process based on price alone

We have considered using a bid process based on price alone. Under this system, all existing and new suppliers would be entitled to bid for duty solicitor slots. Contracts would be allocated on the basis of price alone, with no other considerations except where there were clear concerns about the capacity of the supplier to meet the work volume for which it had bid.

Option 2: Use best value bid process

We have considered a single-stage best-value bidding process where bids are evaluated against a series of quality measures and prices *at the same time*. This was the approach adopted in the bid round for the civil contracts running from April 2004. This process would, in certain circumstances, allow a higher quality but higher price bid to beat a lower (but still satisfactory) quality and lower price bid, by taking into account factors such as recent auditing performance and qualifications and experience of fee earners.

Option 3: Continue charging by hourly rates/item rates, rather than for cases

Introducing managed competition does not necessarily entail also moving to a system of paying for cases rather than for hours worked or item of work (such as letters, telephone calls) undertaken. One option was to invite suppliers to submit bids for the hourly rates and rates for items of work which are used in the current system, but are currently fixed centrally rather than being open to competition.

6. Benefits

Option 1: Use a bid process based on price alone

Maximising value for money is one objective of the proposal to introduce managed competition. This will help us deliver a legal aid scheme that is sustainable in the long term. Running a bid process on the basis of price alone would enable us to discover and utilise the lowest rates at which suppliers were prepared to supply criminal legal aid work, therefore arguably maximising savings to the legal aid budget. It would also encourage suppliers to compete and develop efficient ways of working, as price would be the only determinant in winning a contract.

Option 2: Use best value bid process

This is a tried and tested method for awarding contracts in the public sector and is broadly similar to the process used to award civil contracts in April 2004. It would allow the Commission to recognise in the bid process a wide range of positive and negative attributes and take more account of past performance of suppliers. This might help ensure that high quality suppliers

who might not be the most competitive on bid price, would win contracts under the new system. Equally, it might ensure that suppliers who had past performance problems that fell short of justifying termination, or who were of low quality, did not win contracts, even though they submitted a low bid offer.

Option 3: Continue charging by hourly rates/item rates, rather than for cases

Continuing the current system of charging by hourly/item rates, but asking for suppliers to competitively tender for the rates, would have a number of advantages.

It is a tried and tested system. Suppliers and the Commission are used to working on an hourly rates basis. Running the system once the bid round has been completed and contracts awarded is likely to present fewer change issues than moving to a system of paying on the basis of completed cases.

Suppliers might find it easier to calculate a realistic and accurate bid price for hourly rates than for entire cases. The issue of the difficulty of suppliers having to assess an average rate for the lower crime cases they are likely to handle - taking into account variations in time required to handle different sorts of cases - would not arise.

7. Costs / Risks

Option 1: Use a bid process based on price alone

We consider that running a bid process based on price only, with no consideration taken of quality at the bid analysis stage, runs a serious risk of failing to give adequate weight to the importance of quality of service to clients. There is a clear risk of suppliers who are not of acceptable quality winning significant percentages of duty solicitor work. We have therefore rejected this option because we consider that it would not support the Commission's vision of delivering quality services to clients through quality suppliers.

In our proposed process, potential bidders will be assessed on the quality of advice as established through a range of risk-based methods such as analysis of individual files and case outcomes and, where appropriate, peer review. In addition, the contracts awarded will set out the quality of service that the supplier will be expected to provide during the contract and how that will be measured.

Option 2: Use best value bid process

A best value bid process is likely to be complex for both suppliers and the Commission. It is arguably best suited to situations where bidders are relatively experienced in preparing bids for managed competition, and are accustomed to collating and presenting the sort of management information that is requested to support these sorts of bids. We are therefore concerned that to embark on a best value bid process might present a major challenge to our suppliers, and entail them diverting substantial resources from client care.

The Commission does not believe that the current quality assessment tools or the data that we hold on our CDS suppliers would allow us to distinguish between suppliers, to this degree, in a robust and fair way. Nor is the historical record of suppliers (such as audit records) necessarily relevant when considering bids for fixed case prices. Under this new system, auditing of quality of work, rather than of bills, will be the focus.

In addition, best value bids are inherently more complicated, increasing the cost and complication of the bid process for the Commission.

We are not convinced that the advantages of the best value process, i.e. taking a wider range of factors into account, would outweigh the possible extra cost to suppliers and the Commission in preparing and assessing the bids, or the risk of not accurately reflecting the ability of suppliers. The proposed bid process places appropriate emphasis on quality, which we consider to be the key factor that we should take into account in selecting suppliers, in addition to bid price.

Focusing the first part of the bid process on quality of advice to clients (as we propose) also sends a strong message to all parties that we regard quality as key.

Option 3: Continue charging by hourly rates/item rates, rather than for cases

Continuing with a system under which suppliers charge by hourly rates/item rates has a number of significant drawbacks; this has led us to reject it in preference for a fixed price-per-case system.

If the objective of controlling the cost of criminal lower legal aid is to be achieved, it is important to reduce the non-productive expenditure in the current system on travel and waiting. Moving to a system of paying on the basis of completed cases will encourage suppliers to develop geographically efficient systems for dealing with demand and minimising travel time. At the moment, the current system does not encourage them to make these efficiencies, or allow them to benefit from them. Continuing with this model would miss the opportunity to encourage firms to develop more efficient business practices and models and benefit directly from these efficiency gains. This option therefore runs a significant risk of failing to support the reduction of costs of criminal lower legal aid in London, which is one of the key objectives of the proposal.

Although continuing with the present system of 'hourly rates' would be simpler in some ways - because this is what suppliers and the Commission are used to - we would be missing the opportunity to move to a price-per-case payment system with a number of significant administrative benefits. Under the proposed price-per-case system, administrative costs are likely to be reduced on both sides as less emphasis will be placed on detailed cost reporting and auditing.

One of the advantages of moving to a lighter touch auditing system is that it will allow us to concentrate auditing resources on the quality of advice given. Suppliers will also have the advantage of knowing the exact sum that they will receive for each completed case, with no risk of costs being reduced on assessment by the Commission.

The reduction in auditing and administration costs flowing from the move to the proposed system of payment will assist in achieving the objective of improving value for money for the Commission and efficiency for suppliers.

8. Consultation with Small Business: the Small Firms' Impact Test

Our suppliers, many of whom are small businesses, have their interests represented through the Law Society, the Legal Aid Practitioners Group, the Criminal Law Solicitors Association, the London Criminal Courts Solicitors Association, the Black Solicitors' Network and other black and minority ethnic (BME) representative bodies. The Commission will consult directly with all these bodies on these proposals.

The Commission does not intend to favour any particular size of supplier in the bid process. Bids will be determined on quality, capacity to undertake the duty solicitor slots bid for, and price. The Commission believes that the introduction of managed competition will present an opportunity for small firms to be able to secure their position and provide the potential for growth. There should therefore be no disproportionate impact of the proposed bid round on small businesses. However, the Commission will re-evaluate its current assumption that this is the case following responses to its consultation.

We are not seeking to reduce the number of suppliers of criminal lower work as a specific objective, although we believe that a reduction is a likely outcome; neither is it an objective to move to contracting with larger, rather than smaller, firms. We consider that it should be left to the market to decide the appropriate number of suppliers and their size and location, though we are considering setting a minimum caseload for firms in order to ensure quality of advice. However, we will make no decision on this until the outcome of the consultation process.

We have incorporated transitional provisions in the proposals with the aim of keeping a degree of flexibility in the period after the award of contracts. During this period firms that have not submitted a bid, or are unsuccessful, can carry on with limited work for a certain period. This will help small firms

who do not wish to bid, or are unsuccessful in the bid round, manage an orderly exit from criminal lower work.

Competition Assessment

The proposal will impact on approximately 500 suppliers who currently provide CDS services under the Commission's General Criminal Contract in Greater London. It will also impact on any suppliers outside London who wish to participate in the bid process to provide services in the Greater London area.

Having applied the Cabinet Office's competition filter test to the relevant market (suppliers of CDS services in Greater London) we conclude that the introduction of managed competition will not have any significant negative effect on competition. In fact, the Commission considers that introducing managed competition will have a positive effect on competition in the market generally by giving suppliers incentives to innovate, become more efficient, and to benefit financially from these innovation and efficiency gains.

The proposals allow and encourage entry by new suppliers. We propose that new suppliers will be subject to the same quality assurance processes as existing suppliers and will be awarded contracts under the new arrangements on the same terms as existing suppliers.

9. Equity and Fairness: Equality Impact Assessment

The Commission is committed to promoting equality of opportunity for the users and suppliers of legally aided services. The Commission's Equality Scheme requires us to consult on our preliminary assessment of the impact of policy initiatives on the promotion of equality in relation to race and, where relevant, also gender and disability. The impact assessment set out below focuses on the possible impact on the promotion of race equality, as we do not consider there to be significant issues in relation to gender and disability.

Ethnicity of CDS Clients

There is considerable evidence from data collected by partners in the criminal justice sector to suggest that members of black and minority ethnic (BME) communities are disproportionately represented at most levels within the Criminal Justice System⁵.

⁵ See Home Office Statistics on Race and the Criminal Justice System annual reports under the Criminal Justice Act 1991 s 95, available from the Home Office Research Development Statistics website at <http://www.homeoffice.gov.uk/rds/section951.html>.

Ethnicity of CDS suppliers

The Commission's research department, the Legal Services Research Centre (LSRC), gathered and analysed data relating to suppliers with a crime contract for its fourth annual report on the equal opportunities of the LSC supplier base. This data was published in *The Fourth Equal Opportunities Report (2004)*, in autumn 2004.

The following information has been compiled for this impact assessment by the LSRC. It is based on 825 responses to the LSRC's 2003/04 supplier survey, a response rate of 30%. Based on this information, it would appear that a disproportionate percentage of suppliers with criminal contracts in the London region are BME suppliers. This percentage is slightly higher for small firms, defined as those with five or fewer fee earners.

Ethnicity of ownership of firms with LSC contracts in 2004

	%
All (% BME owned or controlled firms holding an LSC contract of any type nationally)	11.1
Criminal (% BME owned or controlled firms holding a criminal contract nationally)	11.4
London (all) (% BME owned or controlled firms holding an LSC contract of any type in London)	41.1
London (criminal) (% BME owned or controlled firms holding a criminal contract in London)	45.9
Outside London (all) (% BME owned or controlled firms holding an LSC contract of any type in the regions)	3.7
Outside London (criminal) (% BME owned or controlled firms holding a criminal contract in the regions)	3.1
Small London (all) (% small firms that are BME owned or controlled holding an LSC contract of any type in London)	42.2
Small London (criminal) (% of small firms that are BME owned or controlled holding a criminal contract in London)	48.0

Note: The percentages of BME owned or controlled suppliers is perhaps higher than might be expected, and it may be that BME suppliers are more likely than non-BME suppliers to respond to a questionnaire on ethnicity. In any event, we are committed to ensuring that no suppliers are disadvantaged on the grounds of ethnicity.

Impact Assessment

Based on the above information about the ethnicity of the CDS supplier base, it would appear that a greater proportion of BME suppliers fall into the group of suppliers affected by the proposals, i.e. criminal contract holders in London compared to all criminal contract holders nationally.

The proposals contained within this consultation paper do not directly discriminate against small firms and, indeed, may provide growth opportunities for small firms providing value for money. If this is the case then BME firms, all else being equal, will have the opportunity to grow and develop their businesses. As stated above, the Commission intends to consult on the barriers to entry and growth and, in formulating our final proposals for implementation, will ensure, without compromising the quality of service offered to clients, that where possible these barriers will be removed to guard against any unlawful indirect discrimination. This is a prerequisite to allow BME firms to benefit from the opportunities for growth that the introduction of competition will bring. The Commission is committed to the principle that it is essential for the CJS system that the diversity of our suppliers is preserved and promoted.

From the perspective of the users of CDS services, the Commission does not consider that these proposals will have a negative impact on BME clients. We believe that access to justice will not be affected because sufficient supply will be retained. However, if we identify any particular groups through ongoing monitoring activity who are adversely affected, we will take steps to ensure the provision of quality services.

The Commission recognises that the introduction of competitive tendering presents a challenge to many firms, particularly small firms, a category in which BME firms are disproportionately represented. We intend to develop a number of initiatives, prior to the implementation of these proposals, to provide particular support for small and BME suppliers, as follows:

- Work with Business Link for London to provide support to all firms, but specifically targeted at small and medium enterprises (SMEs), on preparing for competitive tendering.
- Work closely with the Law Society, the Black Solicitors' Network and other specialist practitioner groups and representative bodies to identify other means of support.
- Hold a seminar specifically on the issues faced by BME firms and identify a stakeholder group to test emerging proposals.

Do you agree with the preliminary equalities impact assessment on clients? (Question 29)

What additional support measures (if any) for suppliers should the Commission consider establishing? (Question 30)

Monitoring

The Commission is committed to monitoring the effect of the proposals in this consultation paper when they are implemented in order to enable us to evaluate its impact.

Further data to be collected pre implementation

We plan to improve our data on the ethnicity of our CDS suppliers in London prior to the implementation of our proposals and to monitor the ethnicity of suppliers during the application process. This will be done by requesting that suppliers complete an equal opportunities form when applying for a competitive contract. The information that they provide will be processed separately to their application and used only for monitoring purposes. Given concerns about the effect of the proposals on suppliers of different size, we will also monitor the size of firms.

The Commission is also aware that some suppliers operate in a niche or specialist market, catering for a particular client base, e.g. particular racial groups or particular contract areas. We recognise the importance of retaining such practices and are consulting on the best method for ensuring that this supply continues. The Commission also recognises that many such suppliers are small firms. We will monitor how the proposals affect these small and specialist suppliers.

Ongoing commitment to monitoring

In addition, the Commission continues to monitor the ethnicity of the supplier base through the annual surveys carried out by the LSRC. This research should in due course be able to provide us with comparative information about the impact of the proposals. This will be used in conjunction with the data collection exercise described above.

The Commission is aware that a body of opinion exists that believes that many of our current contracting arrangements and quality assurance systems create barriers to entry into legally aided work for BME firms. During this consultation it is our intention to positively engage with BME firms and their representative groups including the Black Solicitors' Network and others, the Law Society and the Legal Aid Practitioners Group to identify these barriers and to ensure that our proposals promote the development of BME firms.

Do you agree with the conclusions drawn by the Commission about the ethnicity of CDS clients and CDS supplier base? We are also interested in comparing our information with any data sources that you may have. (Question 31)

We are interested in your views on what elements of the Commission's current contracting arrangements create barriers for BME firms and why. When responding please indicate whether you would be prepared to discuss your response in more detail with the Commission. (Question 32)

Can you identify other barriers to the growth of BME firms that are not within the control of the Commission? (Question 33)

10. Monitoring and Review

The proposed introduction of managed competition (as amended following the Commission's consultation process) will be reviewed in the context of the Commission's processes, procedures and contracts generally on an ongoing basis.

11. Consultation

The Commission has carried out an informal internal consultation. The views of the Law Society (being the suppliers' representative body under the General Criminal Contract) and of the Legal Aid Practitioners Group, the Criminal Law Solicitors Association, the London Criminal Courts Solicitors Association and others are being sought in relation to the Commission's proposals.

12. Summary and Recommendation

The Commission's proposal to introduce managed competition for the supply of criminal lower work in Greater London will help to improve the quality of the service and reduce the cost, thereby delivering value for money to the taxpayer and protecting the budget for civil legal aid. This is in compliance with the Commission's statutory duty under the Access to Justice Act 1999 to deliver the best possible value for money from the legal aid budget as a whole. The proposed scheme will highlight the quality of the service which is delivered, and managed competition will encourage efficient, innovative suppliers to grow their legal aid practices while at the same time benefiting from a simpler relationship with the Commission.

For these reasons, we recommend that the proposed amendments be accepted and implemented.

7 Summary of Questions for Consultation

In parts of the consultation paper we have asked for views on particular topics. For convenience and consistency, in this section, we have turned these requests for views into formal questions.

Section 3: Current System

Question 1

Should we set a minimum volume of work? If so, how should this be determined?

Question 2

What would be the effects (of a competitive bid round resulting in either more or fewer suppliers) on current contract holders and, in particular, black and minority ethnic (BME) firms?

Section 4: The Bid Process

Question 3

How (do) the following proposals (on a bid process as a whole) match up against the criteria in section 4.2?

Question 4

What would be the most effective way of achieving these (criteria in section 4.2) results?

Question 5

What shape and size of bid zones would allow firms to price their bids effectively and provide them with enough certainty for the future?

Question 6

Should an integral part of a quality service require suppliers to have office space to see clients outside police stations and the magistrates' courts in each bid zone? If so, should the office be recognised by the Law Society as meeting the Society's practice rules (e.g. "... every office of the practice must have at least one solicitor *qualified to supervise*, for whom that office is his or her *normal place of work*."?) or should a different standard apply?

Question 7

Would basing bids on the duty slots be the best way for allocating access to work as part of the managed competition process?

Question 8

Would it be reasonable to expect suppliers also to take on any Crown Court work that follows on from their police station and magistrates' court work?

Question 9

What are your views on these options (Crown Court specialist suppliers / Complex Crime Unit cases) and any other suggestions for ensuring that Crown Court specialists can continue to work in the police station and at the magistrates' court, while being subject to the same efficiency incentives and quality standards as suppliers that have gone through the bid process?

Question 10

Should Crown Court specialists be required to bid for duty solicitor schemes?

Question 11

Are special arrangements (for specialist firms) needed and, if so, what those arrangements might be?

Question 12

What is the most appropriate option for pricing work, bearing in mind the need for any system to be easily understood and, at the same time, to cover adequately the range of complexity in the work involved?

Question 13

Should the new contracts continue the requirement that a duty solicitor must provide initial advice in duty solicitor cases? The Commission is minded to allow bids on the basis that initial 'duty solicitor' advice for non-indictable matters could be provided by an accredited representative.

Question 14

Given the nature of criminal work, should we require a certain percentage of a supplier's work to be done by fee earners who work exclusively for that supplier? And, if so, what might that percentage be?

Question 15

Should we require all fee earners to be re-accredited for the Criminal Litigation Accreditation Scheme (CLAS) within a specific period, say 12 months, of the Law Society launching the scheme for London?

Question 16

Are there any other indicators of quality that we should be considering?

Question 17

How could these quality indicators be monitored effectively and at reasonable cost?

Question 18

Should supervising solicitors be required to have a minimum period of post-qualification experience?

Question 19

Should supervising solicitors be expected to undertake a minimum number of hours of criminal defence work, for example, 350 hours per year?

Question 20

Should supervising solicitors be allowed to work as supervisors for only one supplier?

Question 21

Should there be a maximum number of fee earners that a supervising solicitor is allowed to supervise - and, if so, what might that number be?

Question 22

Do our proposed quality assessment processes offer the protection to clients in terms of service quality?

Question 23

Although peer review is based on files and records from a single office, the Commission wishes the results to be applicable to the firm whose office was reviewed. This should encourage firms to ensure that high professional standards are applied across all their offices. Is this reasonable?

Question 24

What is the most appropriate option (paying the actual amount bid or using the market clearing rate) and are there any other suggestions as to how the price should be established?

Question 25

Should expansion-based bids be limited and, if so, should the expansion be limited to, say, 25%, 50% or 100% of current work volumes?

Question 26

What should be the arrangements for existing suppliers who decide not to participate in this managed competition?

Question 27

Would it be appropriate to pay the suppliers' own tendered rate (for magistrates' work outside the suppliers' bid zones) irrespective of where the court work takes place, or to pay the average rate applicable in the relevant bid zone?

Question 28

What effect would this proposal have on barristers?

Section 6: Regulatory and Equalities Impact Assessment

Question 29

Do you agree with the preliminary equalities impact assessment on clients?

Question 30

What additional support measures (if any) for suppliers should the Commission consider establishing?

Question 31

Do you agree with the conclusions drawn by the Commission about the ethnicity of CDS clients and CDS supplier base? We are also interested in comparing our information with any data sources that you may have.

Question 32

What are your views on what elements of the Commission's current contracting arrangements create barriers for BME firms and why. When responding please indicate whether you would be prepared to discuss your response in more detail with the Commission?

Question 33

Can you identify other barriers to the growth of BME firms that are not within the control of the Commission?

The Volume and Value of Work in London

Police Station and Magistrates' Court Data

The data below is a summary of work reported in London police stations and magistrates' courts, by suppliers based in the Commission's London Region, during 2003/4. The data is based on information reported by suppliers up to 10 August 2004. There are 33 Boroughs in London and their boundaries generally correspond with those of the police station and magistrates' court duty solicitor schemes.

Suppliers

- Number of suppliers (based in the London Region and active on 3 September 2004): 488
- Total value of work reported (including work outside the police station and magistrates' courts): £110.4m
- Number of suppliers on duty solicitor schemes: 387
- Number of duty solicitors (police station and magistrates' court): 1,183

Police Stations

- Number of police station schemes: 32
- Total number of police stations: 222
- Number of police station duty solicitor slots in a 4-month period (across all schemes): 10,796

Volume and Value of Police Station Advice and Assistance Attendance Cases (2003/4)

	No of Cases	Total Cost	Average Cost Per Case
Duty Solicitor	51,595	£21.8m	£422
Own Solicitor	44,550	£15.5m	£349
Total	96,145	£37.3m	£388

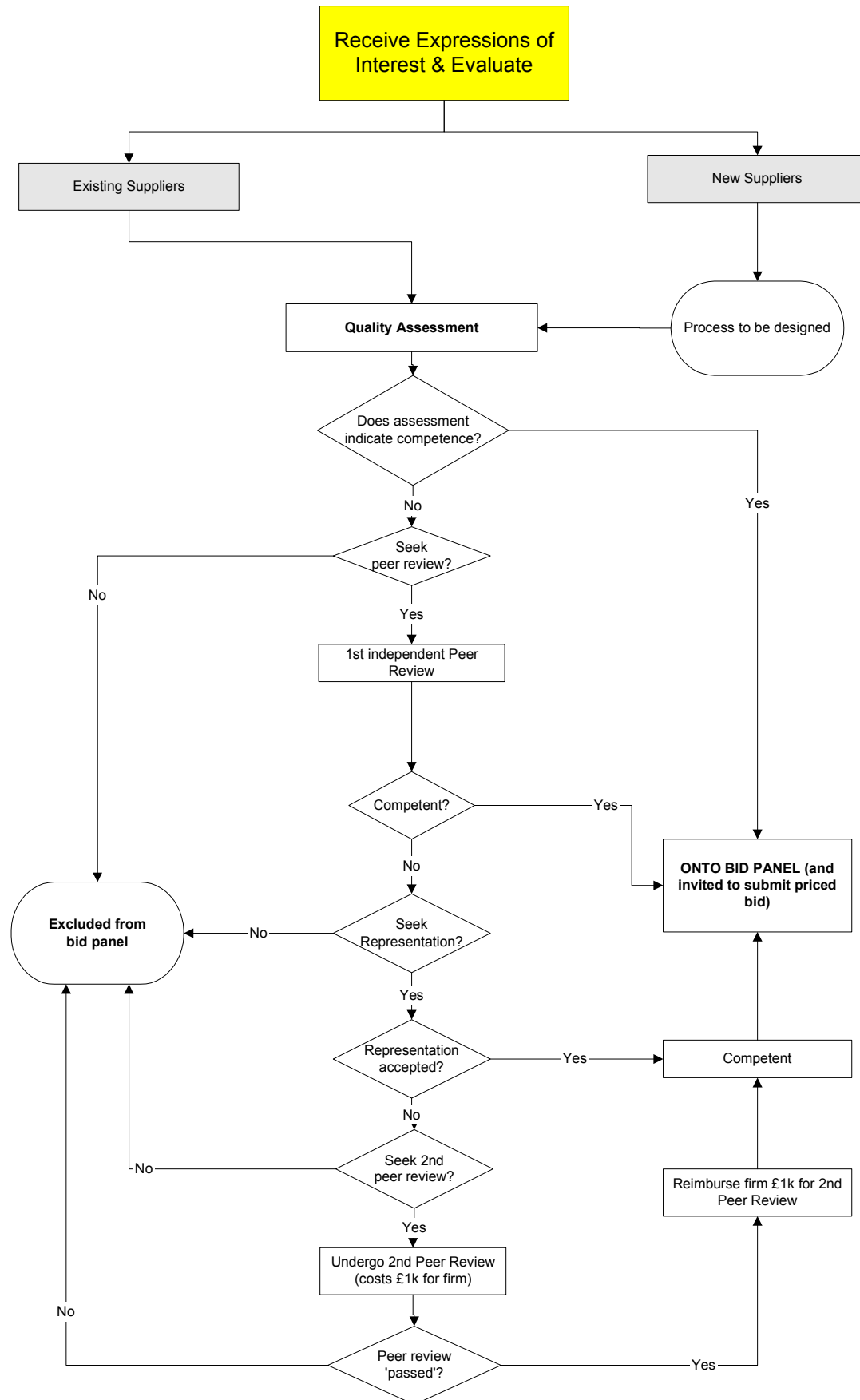
Magistrates' Courts

Number of magistrates' courts:	50
Number of court duty solicitor schemes:	42
Number of court duty solicitor slots in a 4-month period (across all schemes):	5,451

Volume and Value of Magistrates' Court Cases (2003/4)

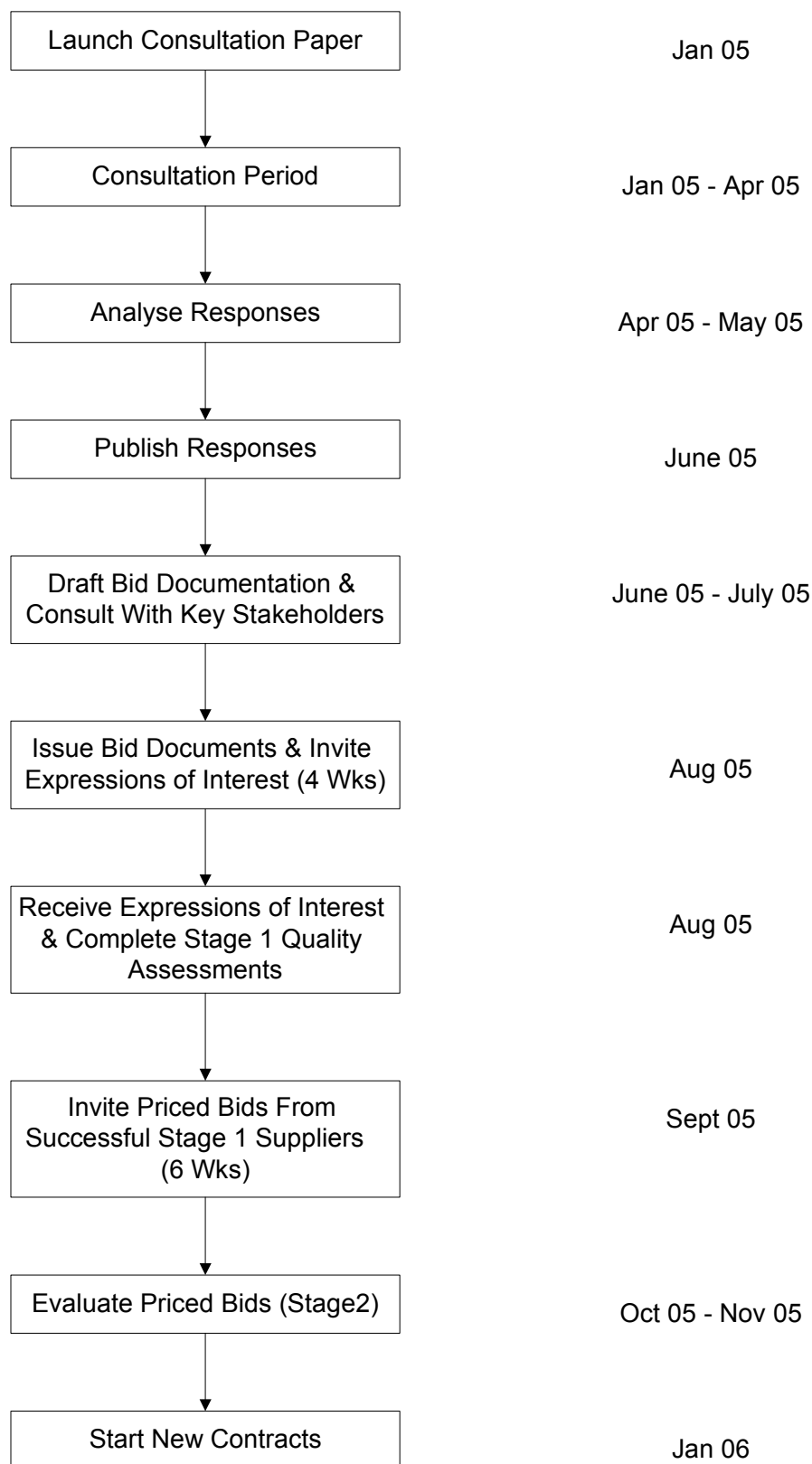
	No of Cases/ Sessions	Total Cost	Average Cost Per Case/ Session
Court Duty Solicitor (sessions)	14,319	£3.7m	£262
Representation Order (cases)	80,546	£53.8m	£668
Total cost	-	£57.6m	-

Flow Chart for Bid Process



Bid Process – Outline Timetable

Annex C



Note: This approximate timescale may be affected if a General Election were to be called during this period

CURRENT CLASSES AND CLAIM CODES IN GENERAL CRIMINAL CONTRACTS

London Work By Claim Code: April 2003 - March 2004				
CLASS	Claim Code	Claim Code Description	UNITS / LEVEL OF SERVICE	
			ADVICE & ASSISTANCE	ADVOCACY ASSISTANCE REPRESENTATION
1	1A	Free standing advice and assistance	NA	NA
	1B	Police station telephone advice only	NA	NA
	1C	Police station attendance	NA	NA
	1D	Police station attendance - Armed Forces Personnel only	NA	NA
	1E	Warrant of further detention (including Terrorism Act 2000)	NA	NOT APPLICABLE
	1F	Warrant of further detention - Armed Forces Personnel only	NA	NOT APPLICABLE
	1G	Duty Solicitor Standby	NA	NOT APPLICABLE
	1H	Breach of bail conditions	NA	NOT APPLICABLE
	1I	Arrest on warrant following failure to appear at the magistrates court	NA	NOT APPLICABLE
	1J	Post-charge identification parade / recharge following discontinuance or dismissal of the case	NA	NOT APPLICABLE
	1K	Administration of a reprimand, warning or caution	NA	NOT APPLICABLE
2	2A	Police station attendance on an immigration issue	NA	NA
	2B	Free standing advice and assistance	NA	NA
	2C/2P	Early hearing	NA	NA
	2D	Magistrates' court advocacy assistance	NA	NA
	2E	Court Duty Solicitor session	NA	NA
	2F	Representation order - LSF	NOT APPLICABLE	NA
	2G	Representation order - HSF	NOT APPLICABLE	NA
	2H	Representation order - NSF	NOT APPLICABLE	NA
	2I	Crown Court advocacy assistance	NOT APPLICABLE	NA
	2J	High Court representation	NOT APPLICABLE	NA
	3	3A	Second claim for a deferred sentence	NOT APPLICABLE
3B		Advice and assistance in relation to an appeal (except CCRC)	NOT APPLICABLE	NA
3C		Advice and assistance in relation to a CCRC application	NOT APPLICABLE	NA
4	4A	Representation on an appeal by way of case stated	NA	NOT APPLICABLE
	4B	Free standing advice and assistance	NA	NOT APPLICABLE
	4C	Advocacy assistance at prison discipline hearings	NA	NOT APPLICABLE
	4D	Advocacy assistance at parole board hearings	NA	NOT APPLICABLE
5	5A	Legal Help	NA	NA
	5B	Pre-contract work - Lower standard fee	NA	NA
	5C	Pre-contract work - Higher standard fee	NA	NA
6	6D	Pre-contract work - Non standard fee	NA	NA
	6E	Pre-contract work - CLAIM 10 advice and assistance	NA	NA
	6F	Pre-contract work - Court Duty Solicitor / Duty Solicitor of choice	NA	NA
	6G	Pre-contract work - Police station advice and assistance	NA	NA
	6H	Pre-contract work - ABWOR	NA	NA
	6I	Pre-contract work - Civil applications arising from criminal proceedings	NA	NA

THERE SHOULD NOW BE NO WORK IN THIS AREA

Government Code of Practice Criteria

The LSC abides by the Government Code of Practice on Consultation, which came into effect on 1st April 2004.

The six consultation criteria in the Code are:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full text of the government code is available from the Cabinet Office website at:

<http://www.cabinetoffice.gov.uk/regulation/docs/consultation/pdf/code.pdf>

CONSULTATION PAPER RESPONSE - COVER SHEET **ANNEX F**
 (further copies available from LSC's website at www.legalservices.gov.uk)

In order to help us collate and analyse the responses to the Consultation Paper – and for equal opportunities monitoring purposes - please would you complete the brief cover sheet below. The provision of equal opportunities information is voluntary but may be made public in an anonymised form. Thank you.

Your name: Position:

Organisation name:

Are the views that you are expressing your own or those of your organisation? If the latter, please describe how these views were collected.

.....

If your organisation is not a legal aid supplier, please tell us who your organisation represents:

.....

Address:

.....

..... Post code:

Telephone: Email:

For legal aid suppliers

	Total number	Asian / Asian British	Black / Black British	Chinese	Mixed	Other	Prefer Not To Say	Unknown	White
Partners (crime)									
Other fee earners (crime)									
Partners (civil)									
Other fee earners (civil)									

Is your firm currently on one or more police station or magistrates' court duty solicitor schemes? If yes, please state how many.....