



Invitation to tender for the provision of Legal Services

March 2021

Contents

Introduction.....	3
Service being procured: legal services.....	3
Terms and Conditions	5
Tender Submissions	6
Assessment of tenders	7
Tender conditions	9
Timetable.....	10
Making a tender	9
Administration of tender.....	9
Annex 1: Section 19 of the Scottish Public Services Ombudsman Act 2002.....	11

Introduction

SPSO

The Scottish Public Services Ombudsman (SPSO) has a wide remit, covering a variety of functions and services.

Her powers and duties come mainly from the Scottish Public Services Ombudsman Act 2002 (as amended) which gives her four distinct statutory functions:

1. the final stage for complaints about most devolved public services in Scotland including councils, the health service, prisons, water and sewerage providers, Scottish Government, universities and colleges
2. specific powers and responsibilities to publish complaints handling procedures, and monitor support best practice in complaints handling
3. Independent Review Service for the Scottish Welfare Fund with the power to overturn and substitute decisions made by councils on Community Care and Crisis Grant applications;
4. Independent National Whistleblowing Officer for the NHS in Scotland with the power to set standards for whistleblowing and the final stage for complaints about how whistleblowing complaints have been handled

Details of the Ombudsman's team are available at www.spsso.org.uk/senior-management

The Ombudsman's most recent Annual Report is available at: <http://www.spsso.org.uk/annual-reports>

Her strategic plan for 2020-2024 and information about our values can be found here:

<https://www.spsso.org.uk/sites/spsso/files/Corporate/2020-24%20Strategic%20Plan%20FINAL.pdf>

Service being procured: legal services

Specification

1. The Ombudsman is inviting tenders for the provision of legal services for The Scottish Public Services Ombudsman (SPSO), Bridgeside House, 99 McDonald Road, Edinburgh, EH7 4NS. The successful contract from this invitation to tender will:
 - commence on **Tuesday 1 June 2021**
 - be provided by a single supplier
 - meet the Living Wage standard
2. The Ombudsman is inviting tenders for legal services for an initial period of twelve months, with the option to renew annually for a further 2 years.
3. The SPSO is subject to Data protection legislation, and Access to Information (ATI) legislation, with associated duties to protect personal data. Bidders must be aware of, and take account of,

the confidentiality requirements of section 19 of the SPSO Act. A copy of section 19 is attached at Annex 1.

Terms of Reference

4. The legal service will provide a general advice, advocacy and training service to the Ombudsman in all areas relevant to our remit and our role as an employer and lease-holder

Background and Scope

5. The SPSO seeks legal advice on a limited number of occasions each year but this can be very varied in extent and in recent years we have sought advice on:
 - 5.1. Individual casework, for example
 - 5.1.1. technical matters relating to our jurisdiction and the interpretation of the SPSO Act 2002,
 - 5.1.2. equalities and human rights issues,
 - 5.1.3. aspects of law relating to the service complained about, including environmental and property law matters, social work and adults with incapacity
 - 5.2. Developments and proposed changes to our legislation including negotiating with drafters and providing preliminary advice in advance of changes to support the implementation of new functions. (we have also sought regular review of our own legislation to ensure we have an up-to-date version)
 - 5.3. Data protection matters including advice on specific policies and in relation to potential data breaches
 - 5.4. Property matters, in relation to our lease and responsibilities as a provider of services to others in the building
 - 5.5. HR matters
6. SPSO is rarely involved in litigation but has on occasion needed advice in relation to court action.
7. Based on our experience successful bidders will need to demonstrate they can provide legal services relating to all the following areas:
 - Public law (with experience across the range of our remit)
 - Medical and Health law
 - Employment and HR (including specific expertise or experience related to whistleblowing and protected disclosures)
 - Property, Planning and Environmental
 - Equalities and Rights
 - Data Protection and Information Governance

8. While we will require bidders to demonstrate they can reasonably provide services across these areas, our role within the administrative justice system means we will require the successful bidder to be able to show that they have significant experience and expertise in public law in Scotland. Fifty percent of the scoring for this item will be reserved for the assessment of public law experience and expertise.

Responsibilities

9. To provide legal advice and support on request to SPSO timeously, this may include providing advice to very short timescales if there is an urgent matter.
10. To provide cost estimates for individual items of work and to inform SPSO before undertaking any work that would exceed those estimates.
11. To maintain the ability to provide legal advice and support in all the areas outlined above throughout the duration of the Contract.
12. To ensure SPSO always has a key contact within the organisation.
13. To keep SPSO informed of any relevant developments or risks arising from significant changes in legislation or case law.
14. To provide training to SPSO staff on legal issues (on request and to an agreed cost).
15. To notify the SPSO of any conflicts of interest that may arise during the duration of the contract.

Terms and Conditions

Contracted confidentiality

16. Bidders must be aware of, and take account of, the confidentiality requirements of section 19 of the SPSO Act. A copy of section 19 is attached at Annex 1.
17. All records, working papers, reports and other information held by the legal service in fulfilling this contract will remain the property of the SPSO. At the end of the contract, all applicable paperwork must reside with the SPSO.
18. The bidder must undertake not to publish or communicate the results or content of any of their work to anyone other than the SPSO. This undertaking continues beyond the life of the contract.
19. In addition, Data protection legislation, and ATI legislation apply to all the paper and electronic data, and information, you receive and create as part of your contract with the SPSO. You must comply with the contract, the SPSO Records Management and Security Guidance and any other specific reasonable instructions or directions from SPSO to ensure that the SPSO meets its duties under Data Protection legislation, ATI legislation (for example, FOISA, EIRs) and the Scottish Public Services Act 2002 confidentiality provisions.
20. Any breach of confidentiality of contract or restricted information will constitute a material breach and enable the Ombudsman to terminate the contract.

Length of contract

21. The contract will be for a one year term, commencing **Tuesday 1 June 2021** with the option to extend by up to three years, dependant on funding availability.

Tender confidentiality

22. The bidder will not issue any public statements or otherwise disclose any information concerning this Invitation to Tender (ITT), the process and its participation in the process without the prior written approval of the SPSO.

Legal Disclaimer

23. This ITT is an invitation to propose and does not in any manner create an offer or other obligation on the part of the SPSO to enter into any contract.
24. All expenses and costs incurred by the bidder in completing, submitting and delivering the bids, together with any costs incurred during the post tender stage, will be to the bidder's account. The SPSO are not bound to accept the lowest or any bid.

Use of Information

25. This ITT and any other information furnished hereunder shall be used solely for the purpose of responding to this ITT. Reproduction of any part of this ITT is authorised only to the extent necessary for the preparation of your response. All bidders shall ensure that all such copies are destroyed when no longer required in connection with this ITT.

Tender Submissions

26. Your tender submission **must** include:

- (i) Experience and ability to meet the scope (weighting 45%)

Details of relevant experience demonstrating your ability to meet our needs for advice across the scope. This should include summaries of relevant work carried out for two clients (with contact details), who would be willing to provide a reference.

- (ii) Sample report (weighting 15%)

A de-personalised sample report that should be based on a report you have produced for previous clients. The report should deal with a public law matter and scoring will reflect how well it demonstrates: excellent understanding of public law; an ability to identify key issues quickly and clearly; communicate technical matters appropriately for an informed but lay/non-legal audience; a practical, risk-focussed approach to dispute resolution and ability to provide concise, focused advice. The report should not be more than 2,000 words.

- (iii) Quality Assurance procedures (weighting 10%)

Details of what quality assurance procedures you have in place to ensure that you deliver a consistent, high quality service.

- (iv) Information security processes and procedures (weighting 10%)
Describe the systems and processes you have in place to ensure that information you process on behalf of the SPSO is kept secure, confidential and is protected from loss or unauthorised access and exploitation taking into account data protection and ATI legislation.
- (v) Resourcing arrangements (weighting 10%)
Describe the personnel / level of resources that will be applied to this contract. Our expectation is that we will be dealing with a dedicated resource throughout the duration of the contract.
- (vi) Costs (weighting 10%)
A day rate or half day rate should be provided (based on a seven hour working day) across the described resourcing arrangements. Expenses, including overheads, will not be applicable for this work. All pricing should be submitted in GBP, and include all charges, add-ons and indicate different levels of service. Rates should be fixed for the duration of the contract VAT (if applicable) should be listed separately.

It is anticipated that the work will be conducted at the legal services own premises. Expenses, including overheads, will not be applicable for this work.
- (vii) Living Wage (yes/no)
SPSO is an accredited Living Wage Employer, and is committed to encouraging suppliers to pay the Living Wage. Provide evidence or details of your Living Wage Employer status, or equivalent pay policy in respect of the Living wage, and whether those engaged in delivering this service will be paid the Living Wage.
- (viii) The identification of any conflict of interest in providing services to the SPSO (yes/no)
- (ix) Confirmation of Professional Indemnity Insurance and Public Liability Insurance cover your company has in place (yes/no)
- (x) Confirmation that you are registered with a relevant regulator and their details (yes/no)
- (xi) Requirement in terms of payment e.g. monthly invoice/payment periods (yes/no)
- (xii) Commitment to sustainability (SPSO issues an Environment, Sustainability and Biodiversity report, and submits a Climate Change Duties report annually) (yes/no)
- (xiii) The standard terms of the contract regarding termination (yes/no)

Assessment of tenders

- 27. The assessment of tenders will be undertaken by an evaluation panel which will include representatives from SPSO Leadership Team. The panel will consider all tenders against the requirements set out in this invitation and will make a decision on the basis of how closely tenders meet the requirements.

28. If a tender does not substantially conform to the tender requirements, it will not be considered further.
29. Each item in the tender submission will be given a score as follows. :

Score	Description
5 - Excellent	Meets exactly the specified standard
4 - Good	Meets the standard well but not completely
3 - Fair	Mostly meets the standard but fails in parts
2 - Doubtful	Mostly fails the standard but meets in some
1 - Poor	Significantly fails to meet standard
0 - Reject	Completely fails to meet standard

30. The scores will then be multiplied to give them the weighted percentage score out of 100% as follows:

1	Experience of similar work including 2 references. This will be scored twice with one score for public law experience alone and an average then multiplied.	45%	x9
2	Sample report. This will be scored for each item listed at para 26, and then a median score for all items applied to the multiplier.	15%	x3
3	Quality assurance procedures	10%	x2
4	Information security processes and procedures	10%	x2
5	Resourcing arrangements	10%	x2
6	Breakdown of costs with VAT	10%	x2
7	Evidence of Living Wage accreditation, or equivalent	0%	Yes/No
8	Conflicts of Interest	0%	Yes/No
9	Professional indemnity / liability	0%	Yes/No
10	Confirmation of registration a relevant regulator (yes/no)	0%	Yes/No
11	Payment requirements	0%	Yes/No
12	Commitment to sustainability	0%	Yes/No
13	Terms of contract regarding termination	0%	Yes/No

31. Item 6. Full cost details must be provided as requested, otherwise the submission will score zero here. Scores will be awarded by ranking all submissions in order of cost. The supplier with the lowest total cost will receive 5, second will receive 4, third, 3 and so on. Add-ons will be used to differentiate between suppliers where the costs are equivalent.
32. Items 7-11. This information is required for the tender to be considered, but will not form part of the weighted score.

33. Representatives from the panel may undertake, if they deem it appropriate, communications with bidders to clarify / verify their tender. This may be in writing, by phone, by video link or a discussion at the SPSO's office. These meetings would not form part of the evaluation process and therefore would not be marked separately but they will be used to validate the scores allocated to your response.
34. In the event of clarification or verification being required, bidders would be contacted w/b **Monday 3 May 2021**.

Tender conditions

35. Suppliers are invited to submit a tender, including all expenses, for providing the services as described in this document. If the costs are not fixed for the duration of the contract, the review points and basis of the review should be clearly detailed.
36. Potential suppliers must meet their own costs of responding to this tender and any costs they incur in responding to this tender.
37. Prices quoted must be held firm for at least 45 days from the closing date for tenders
38. The supplier must be willing for the response to this invitation to tender to form part of the contractual relationship with the Scottish Public Services Ombudsman.

Submitting a tender

39. The closing time and date for tender responses is **17:00, Tuesday 27 April 2021**. Any response received after that time and date will not be considered further.
40. A full response to this tender must be clearly marked 'RESPONSE to Legal Services Tender' in order to ensure the contents are not opened before the deadline.
41. Any questions or requests for clarification may be emailed to Fiona Paterson, Corporate Services Manager in good time to meet the submission deadline, bearing in mind that the SPSO is currently delivering services remotely. Your email must be clearly titled 'ENQUIRY about Legal Services Tender'.
42. Your submission and enquiries can be emailed to fiona.paterson@spsso.gov.scot.

Administration of tender

Contracts and Procurement Policy

43. This invitation to tender (ITT), tendering process and the eventual contract are being managed in accordance with the SPSO's Procurement Policy. This is available as Section 9 of our Finance Handbook, available online as a PDF here: <https://www.spsso.org.uk/spsso-policies>
44. The policy is designed to ensure that all SPSO procurement activity focusses on the delivery of value for money, and is conducted to high professional standards and to the relevant legal requirements. In particular, our Procurement Standards include Value for Money, Responsible Purchasing, Ethical Standards, Openness and transparency.

45. SPSO is an accredited Living Wage Employer, and is committed to encouraging suppliers to pay the Living Wage.
46. Occasionally, contractors may provide information to the SPSO on the basis that it will remain confidential and will not be disclosed in the event that an information request is made for it. The SPSO will agree to accept information in confidence from contractors only in very limited circumstances. Even where we agree to accept information in confidence, the information may still be disclosed if the disclosure would no longer constitute an actionable breach of confidence, for example, if the information were no longer confidential.

Timetable

47. The timetable for this tender process is as follows:

Invitation to tender issued	09:00, Wed 31 March 2021
Deadline for submission of tenders	17:00, Tue 27 April 2021
Evaluate tenders	Wed 28 April – Fri 07 May 2021
Interview with short-listed contractors	Tue 11 – Thu 20 May 2021
Appoint supplier (subject to any clarification or verification required by the Ombudsman)	Friday 21 May 2021
Contract Commencement	Tuesday 1 June 2021

48. If clarification of the tender submission is required, bidders will be contacted during week commencing Monday 3 May 2021.

Annex 1: Section 19 of the Scottish Public Services Ombudsman Act 2002

19 Confidentiality of information

(1) Information obtained by the Ombudsman or any of the Ombudsman's advisers in connection with any matter in respect of which a complaint or a request has been made must not be disclosed except for any of the purposes specified in subsection (2) or as permitted by subsection (3).

(2) Those purposes are—

(a) the purposes of—

(i) any consideration of the complaint or request (including any statement under section 11),

(ii) any investigation of the matter (including any report of such an investigation),

(b) the purposes of any proceedings for—

(i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,

(ii) an offence of perjury alleged to have been committed in the course of any investigation of the matter,

(c) the purposes of an inquiry with a view to the taking of any of the proceedings mentioned in paragraph (b),

(d) the purposes of any proceedings under section 14.

(e) where subsection (2A) applies, the purposes of a welfare fund review.

(2A) This subsection applies if—

(a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and

(b) the welfare fund review relates to the decision made by the authority on that application.

(2B) Information obtained by the Ombudsman or any of the Ombudsman's advisers in connection with a welfare fund review must not be disclosed except for any of the purposes specified in subsection (2C) or as permitted by subsection (3).

(2C) Those purposes are—

(a) the purposes of the review,

(b) the purposes of any proceedings for—

- (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,
 - (ii) an offence of perjury alleged to have been committed in the course of the review,
- (c) the purposes of an inquiry with a view to the taking of any of the proceedings mentioned in paragraph (b),
- (d) where subsection (2D) applies, the purposes of any consideration of a complaint or request in respect of a matter, or the investigation of the matter.
- (2D) This subsection applies if—
- (a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and
 - (b) the welfare fund review relates to the decision made by the authority on that application.
- (3) Where information referred to in subsection (1) or (2B) is to the effect that any person is likely to constitute a threat to the health or safety of individuals (in particular or in general), the Ombudsman may disclose the information to any person to whom the Ombudsman thinks it should be disclosed in the interests of the health or safety of the particular individuals or, as the case may be, individuals in general.
- (4) In relation to information disclosed under subsection (3), the Ombudsman must—
- (a) where the Ombudsman knows the identity of the person to whom the information relates, inform that person of the disclosure of the information and of the identity of the person to whom it has been disclosed, and
 - (b) inform the person from whom the information was obtained of the disclosure.
- (4A) The duty under subsection (4)(a) to inform a person about the identity of a person to whom information has been disclosed does not apply where informing the former person is likely to constitute a threat to the health or safety of the latter person.]
- (5) It is not competent to call upon the Ombudsman or the Ombudsman's advisers to give evidence in any proceedings (other than proceedings referred to in subsection (2)) of matters coming to the knowledge of the Ombudsman or advisers in connection with any matter in respect of which a complaint or request has been made.
- (5A) It is not competent to call upon the Ombudsman or the Ombudsman's advisers to give evidence in any proceedings (other than proceedings referred to in subsection (2C)) of matters coming to the knowledge of the Ombudsman or advisers in connection with a welfare fund review.]

- (6) A member of the Scottish Executive may give notice in writing to the Ombudsman with respect to—
- (a) any document or information specified in the notice, or
 - (b) any class of document or information so specified, that, in the opinion of the member of the Scottish Executive, the disclosure of the document or information, or of documents or information of that class, would be contrary to the public interest.
- (7) Where such a notice is given nothing in this Act is to be construed as authorising or requiring the Ombudsman or any of the Ombudsman's advisers to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.
- (8) Information obtained from—
- (a) the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (c.36); or
 - (b) the Scottish Information Commissioner by virtue of section 63 of the Freedom of Information (Scotland) Act 2002 (asp 13),]is to be treated for the purposes of subsection (1) as obtained in connection with any matter in respect of which a complaint or request has been made.
- (9) In relation to such information, subsection (2)(a) has effect as if—
- (a) the reference in sub-paragraph (i) to the complaint or request were a reference to any complaint or request, and
 - (b) the reference in sub-paragraph (ii) to the matter were a reference to any matter.
- (10) In this section and section 20 references to the Ombudsman's advisers are to persons from whom the Ombudsman obtains advice under paragraph 10 of schedule 1.