

UK-London: legal services

2010/S 48-071146

CONTRACT NOTICE

Services

SECTION I: CONTRACTING AUTHORITY

I.1) NAME, ADDRESSES AND CONTACT POINT(S):

Department of Energy and Climate Change, FAO Sharron Charlton, Zone A 3rd Floor, 3 Whitehall Place,
Contact: Sharron Charlton, Attn: Sharron Charlton, London SW1A 2AW , UNITED KINGDOM. Tel. +44
3000685703. E-mail: Sharron.Charlton@decc.gsi.gov.uk. Fax +44 3000685129.

Internet address(es):

General address of the contracting authority: www.decc.gov.uk.

Address of the buyer profile: www.decc.gov.uk/en/content/cms/what_we_do/consumers/coal_health/coal_health.aspx.

Further information can be obtained at: As in above-mentioned contact point(s).

Specifications and additional documents (including documents for competitive dialogue and a dynamic purchasing system) can be obtained at: As in above-mentioned contact point(s).

Tenders or requests to participate must be sent to: As in above-mentioned contact point(s).

I.2) TYPE OF THE CONTRACTING AUTHORITY AND MAIN ACTIVITY OR ACTIVITIES:

Ministry or any other national or federal authority, including their regional or local sub-divisions.

General public services.

The contracting authority is purchasing on behalf of other contracting authorities: no.

SECTION II: OBJECT OF THE CONTRACT

II.1) DESCRIPTION

II.1.1) Title attributed to the contract by the contracting authority:

UK-Legal support, advice and claims handling for liabilities resulting from the former British Coal Corporation and its subsidiaries.: UK.

II.1.2) Type of contract and location of works, place of delivery or of performance:

Services.

Service category: No 21.

Main place of performance: United Kingdom.

NUTS code: UK.

II.1.3) The notice involves:

A public contract.

II.1.4) Information on framework agreement:

II.1.5) Short description of the contract or purchase(s):

The Coal Liabilities Unit ("CLU") within the Department of Energy and Climate Change ("DECC" or the "Department") is responsible for managing the resulting liabilities from the former British Coal Corporation ("BCC") and its subsidiaries. CLU requires legal advice and support in order to manage current and future challenges. DECC faces new litigation from potential claimant groups seeking compensation for injury or loss.

This can result in the Department investigating and defending the potential litigation. Currently, the Department is facing two major strands of litigation focusing on Osteoarthritis of the Knee ("OAK") and a range of respiratory and cancer claims related to employment at a Phurnacite Plant in South Wales. Both are subject to a Group Litigation Order ("GLO") and are expected to come to trial over next couple of years. A preliminary issues trial for OAK has been timetabled for June and July 2010.

Strategic legal advice is also required in relation to coal health matters. Such advice could range from horizon scanning for future issues to advice on individual operational policies. In addition, DECC requires a broad range of legal advice to support more general non-coal health specific matters such as, but not limited to, procurement, contracts, data security, data retention, fraud and Regulatory Access Requests ("RARs").

A contract is, therefore, required to provide legal and claims handling support including:

- (i) legal advice and support for managing the Department's liabilities resulting from the former BCC and its subsidiaries, including (a) leading the Department's defence in relation to the conduct of major litigation; (b) providing strategic legal advice; (c) providing advice in relation to matters which may impact upon a wide range of policy areas; and (d) managing individual litigated claims;
- (ii) claims handling for non-litigated claims; and
- (iii) a broad range of legal advice as referred to above.

The service provider will be required to cover all legal advice and claims handling in England and Wales and in Scotland. This may require potential service providers to enter into consortium arrangements and/or sub contracts to ensure that both Scottish legal advice and legal advice in England and Wales can be provided. On current expectations and experience it is envisaged that Scottish legal advice will form only a small proportion of the contract's value overall.

To support the main activities, CLU has broader responsibilities to adhere to current and relevant legislation such as the Data Protection Act ("DPA") and the Freedom of Information Act ("FoIA"). Due to the nature of the work, the service provider will be required to manage on behalf of CLU a large amount of personal and sensitive information. This data is subject to a robust data handling policy and destruction schedules agreed with the Department and must be managed in line with these.

Potential service providers should note that the contract described above is envisaged to be Phase I of the Department's proposed procurement exercise relating to the provision of support for managing the Department's liabilities resulting from the former British Coal Corporation and its subsidiaries. DECC may at a later date consider whether, as Phase II of this proposed procurement exercise, it will advertise and award a separate contract for the provision of further specialist claims handling services. This will depend on the circumstances at the relevant time.

CPV Codes: Legal services; Legal advisory and representation services; and Insurance claims adjustment services.

II.1.6) **Common procurement vocabulary (CPV):**

79100000, 79110000, 66518300.

II.1.7) **Contract covered by the Government Procurement Agreement (GPA):**

Yes.

II.1.8) **Division into lots:**

No.

II.1.9) **Variants will be accepted:**

No.

II.2) **QUANTITY OR SCOPE OF THE CONTRACT**

II.2.1) **Total quantity or scope:**

The value of the contract is estimated to be between 20 000 000 and 80 000 000 (GBP). This value includes both legal and Phase 1 claims handling services. DECC has endeavoured to provide as accurate an estimate as possible of the contract value. However, the value is impossible to quantify exactly given that it is largely dependent on the outcome of any current or future litigation and whether any options to extend the contract beyond the initial 5 year period are exercised and for how long.

Estimated value excluding VAT:

Range: between 20 000 000 and 80 000 000 GBP.

II.2.2) Options:

Yes.

Description of these options: The contract will have an initial term of 5 years (60 months) but will include options to extend the contract for a period or periods up to a maximum of 60 months (depending on business needs and contractor performance).

II.3) DURATION OF THE CONTRACT OR TIME-LIMIT FOR COMPLETION:

Duration in months: 120 (from the award of the contract).

SECTION III: LEGAL, ECONOMIC, FINANCIAL AND TECHNICAL INFORMATION

III.1) CONDITIONS RELATING TO THE CONTRACT

III.1.1) Deposits and guarantees required:

If it is considered appropriate by DECC, an indemnity, guarantee, bond or other form of appropriate security may be required.

III.1.2) Main financing conditions and payment arrangements and/or reference to the relevant provisions regulating them:

Details contained within the tender documents.

III.1.3) Legal form to be taken by the group of economic operators to whom the contract is to be awarded:

DECC reserves the right to require groupings of suppliers to take a particular legal form or to require a single supplier to take primary liability or to require that each party undertakes joint and several liability irrespective of the form the grouping takes.

III.1.4) Other particular conditions to which the performance of the contract is subject:

Yes.

Compliance with EU and UK legislation and policy objectives including in relation to health and safety, environmental considerations and equal opportunities. Appropriate professional indemnity insurance.

III.2) CONDITIONS FOR PARTICIPATION

III.2.1) Personal situation of economic operators, including requirements relating to enrolment on professional or trade registers:

Information and formalities necessary for evaluating if requirements are met: (a) is bankrupt or is being wound up, where his affairs are being administered by the court, where he has entered into an arrangement with creditors, where he has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

(b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;

(c) has been convicted by a judgment which has the force of res judicata in accordance with the legal provisions of the country of any offence concerning his professional conduct;

(d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;

(e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

(f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

(g) is guilty of serious misrepresentation in supplying the information required under this Section or has not supplied such information;

(h) has been the subject of a conviction for participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA;

(i) has been the subject of a conviction for corruption, as defined in Article 3 of the Council Act of 26.5.1972 and Article 3(1) of Council Joint Action 98/742/JHA3 respectively;

(j) has been the subject of a conviction for fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities;

(k) has been the subject of a conviction for money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10.6.1991 on prevention of the use of the financial system for the purpose of money laundering.

In accordance with Articles 45 and 46 of Directive 2004/18/EC and Regulation 23 of the Public Contracts Regulations 2006, as set out in the pre-qualification questionnaire (the "pre-qualification questionnaire") available from the address in section I.1.

III.2.2) Economic and financial capacity:

Information and formalities necessary for evaluating if requirements are met: (a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;

(b) the presentation of balance-sheets or extracts from the balance-sheets, where publication of the balance-sheet is required under the law of the country in which the economic operator is established;

(c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last 3 financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

In accordance with Article 47 of Directive 2004/18/EC and Regulation 24 of the Public Contracts Regulations 2006, as set out in the pre-qualification questionnaire.

Minimum level(s) of standards possibly required: As set out in the Pre-Qualification Questionnaire.

III.2.3) Technical capacity:

Information and formalities necessary for evaluating if requirements are met:

(a) a list of the works carried out over the past 5 years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed. Where appropriate, the competent authority shall submit these certificates to the contracting authority direct;

(b) a list of the principal deliveries effected or the main services provided in the past 3 years, with the sums, dates and recipients, whether public or private, involved. Evidence of delivery and services provided shall be given:

— where the recipient was a contracting authority, in the form of certificates issued or countersigned by the competent authority,

— where the recipient was a private purchaser, by the purchaser's certification or, failing this, simply by a declaration by the economic operator.

(c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work;

- (d) a description of the technical facilities and measures used by the supplier or service provider for ensuring quality and the undertaking's study and research facilities;
 - (e) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, if necessary, on the means of study and research which are available to it and the quality control measures it will operate;
 - (f) the educational and professional qualifications of the service provider or contractor and/or those of the undertaking's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the work;
 - (g) for public works contracts and public services contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;
 - (h) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last 3 years;
 - (i) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;
 - (j) an indication of the proportion of the contract which the services provider intends possibly to subcontract;
 - (k) with regard to the products to be supplied:
 - (i) samples, descriptions and/or photographs, the authenticity of which must be certified if the contracting authority so requests;
 - (ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.
- In accordance with Article 48 of Directive 2004/18/EC and Regulation 25 of the Public Contracts Regulations 2006, as set out in the pre-qualification questionnaire.
- As set out in the pre-qualification questionnaire.
- Minimum level(s) of standards possibly required:
- As set out in the pre-qualification questionnaire.

III.2.4) **Reserved contracts:**
No.

III.3) **CONDITIONS SPECIFIC TO SERVICES CONTRACTS**

III.3.1) **Execution of the service is reserved to a particular profession:**
No.

III.3.2) **Legal entities should indicate the names and professional qualifications of the staff responsible for the execution of the service:**
Yes.

SECTION IV: PROCEDURE

IV.1) **TYPE OF PROCEDURE**

IV.1.1) **Type of procedure:**
Restricted.

IV.1.2) **Limitations on the number of operators who will be invited to tender or to participate:**
Envisaged number of operators 6.

IV.1.3) **Reduction of the number of operators during the negotiation or dialogue:**

IV.2) **AWARD CRITERIA**

IV.2.1) **Award criteria:**

The most economically advantageous tender in terms of the criteria stated in the specifications, in the invitation to tender or to negotiate or in the descriptive document.

IV.2.2) **An electronic auction will be used:**

No.

IV.3) **ADMINISTRATIVE INFORMATION**

IV.3.1) **File reference number attributed by the contracting authority:**

01.11.05.01/258P.

IV.3.2) **Previous publication(s) concerning the same contract:**

Prior information notice

Notice number in OJ: [2010/S 10-011992](#) of 13.1.2010.

IV.3.3) **Conditions for obtaining specifications and additional documents or descriptive document:**

Time limit for receipt of requests for documents or for accessing documents: 12.4.2010 - 12:00.

Payable documents: no.

IV.3.4) **Time-limit for receipt of tenders or requests to participate:**

12.4.2010 - 12:00.

IV.3.5) **Date of dispatch of invitations to tender or to participate to selected candidates:**

1.7.2010.

IV.3.6) **Language(s) in which tenders or requests to participate may be drawn up:**

English.

IV.3.7) **Minimum time frame during which the tenderer must maintain the tender:**

IV.3.8) **Conditions for opening tenders:**

Date: 10.9.2010 - 12:00.

Place: By officials of the Department of Energy and Climate Change.

SECTION VI: COMPLEMENTARY INFORMATION

VI.1) **THIS IS A RECURRENT PROCUREMENT:**

No.

VI.2) **CONTRACT RELATED TO A PROJECT AND/OR PROGRAMME FINANCED BY EU FUNDS:**

No.

VI.3) **ADDITIONAL INFORMATION:**

Section II.1.2(c) service providers should note that an additional service category will also apply to this requirement: Service Category 6 for the purposes of the services relating to CPV code 66518300-7 (insurance claims adjustment services), as referenced at Section II.1.6 above)./Sections II.2.2 and II.3: The contract will have an initial term of 5 years (60 months) with options (to be exercisable under the contract) to extend the contract for a period or periods up to a maximum of 60 months depending on business needs. DECC confirms therefore that in the event that all options are exercised the maximum contract duration will be 10 years (120 months)./Section III.3.1: Whilst the contract as a whole is not reserved to an particular profession, any economic operator (including sub-contractors and consortium members) providing legal advice must, as applicable, be registered with the Solicitors Regulation Authority and/or the Law Society of Scotland./Section III.3.2. The requirements to indicate the professional qualifications of staff responsible for the execution of the services shall be set out in the tender documents./ Expressions of interest: Expressions of interest must be by way of

completion and return of the prequalification questionnaire by the date and time specified in Section IV.3.4 above. A copy of the prequalification questionnaire is available from the address at Section I.1 above.

GO reference: GO 10030517/01.

VI.4) **PROCEDURES FOR APPEAL**

VI.4.1) **Body responsible for appeal procedures:**

VI.4.2) **Lodging of appeals:**

Precise information on deadline(s) for lodging appeals: The Department of Energy and Climate Change will incorporate a minimum 10 calendar day standstill period at the point information on the award of the contract is communicated to tenderers. This period allows unsuccessful tenderers to seek further debriefing from the contracting authority before the contract is entered into. Applicants have 2 working days from the notification of the award decision to request additional debriefing and that information has to be provided a minimum of 3 working days before the expiry of the standstill period. Such additional information should be requested from Sharron.Charlton at Sharron.Charlton@decc.gsi.gov.uk or by writing to Sharron.Charlton at the Department of Energy and Climate Change, 3rd floor, 3 Whitehall Place, London SW1A 2AW, UNITED KINGDOM. If an appeal regarding the award of a contract has not been successfully resolved the Public Contracts Regulations 2006 (SI 2006 No 5) provide for aggrieved parties who have been harmed or are at risk of harm by a breach of the rules to take action in the High Court (England, Wales and Northern Ireland). Any such action must be brought promptly (generally within 3 months). Where a contract has not been entered into the Court may order the setting aside of the award decision or order the authority to amend any document and may award damages. If the contract has been entered into the Court may only award damages. [The purpose of the standstill period referred to above is to allow parties to apply to the Courts to set aside the award decision before the contract is entered into].

VI.4.3) **Service from which information about the lodging of appeals may be obtained:**

VI.5) **DATE OF DISPATCH OF THIS NOTICE:**

5.3.2010.