

NHS LA Provision of Mediation Services- Clarification Questions and Answer

NHS LA Clarification

Tender Clarification

Item	Question	NHS LA Response	Date
1.	<p>Please would you clarify whether the mediation providers will have to include the cost of rooms/venue hire, or is this charged to the parties equally in circumstances where the solicitors or representatives are not able to provide a venue, in view of the fact that expenses are limited to £150 plus VAT?</p> <p>Is it envisaged that it will be possible for mediations to take place by telephone or online in suitable cases?</p> <p>In relation to the statement that "The Authority has a requirement for a small number of contracts which will provide a service that will process and complete 100-120 cases by mediation annually at all ranges of value" please would you clarify how many cases are likely to fall within each range of values 1a) - c) and 2 a)-c)?</p>	<p>Expenses do not include room hire. Expenses will include the mediator's travel and accommodation costs (if any). Mediation venues will be provided free of charge by the NHSLA's panel lawyers. In the event that the parties' representatives are unable to provide a venue the cost of rooms/venue hire will be paid by the NHSLA, or equally by the parties.</p> <p>Consideration will be given to different modes of mediation in suitable cases.</p> <p>We cannot answer with certainty, but the overwhelming majority of Lot 1 and 2 mediations are likely to fall within 1b) - c). We are unable to respond in relation to 2a) - c) because these questions have no value bands</p>	

2

My organisation does not currently have Civil Mediation Council accreditation status however we are in the process of applying for it. Can we still submit a tender?

Members of my panel do not currently have individual Civil Mediation accreditation status however they are in the process of applying for it. Can we still put their names on the tender document which will be subject to CMC approval?

Your question is covered by Section 5, paragraph 8.1 of the response document Volume 4, which we set below

8.1

Please self-certify whether your organisation is a registered mediation provider and/or a registered mediator of the Civil Mediation Council, or if you are currently not, you commit to obtaining such status prior to the commencement of the contract.

Yes ☐No ☐

Suppliers who self-certify that they meet the requirement will be required to provide evidence of this if they are successful at contract award stage.

Your question is covered by Section 5, paragraph 8.1 of the response document Volume 4, which we set below

8.1

Please self-certify whether your organisation is a registered mediation provider and/or a registered mediator of the Civil Mediation Council, or if you are currently not, you commit to obtaining such status prior to the commencement of the contract.

Yes ☐No ☐

Suppliers who self-certify that they meet the requirement will be required to provide evidence of this if they are successful at contract award stage.

1. Please confirm the financial arrangements for venue provision. Is this to be a reimbursable expense (in which case the expenses cap of £150 is likely to be problematic); or do you require these costs to be included within quoted mediation fees; or is some other arrangement to apply?
2. In your definitions of leading, senior and junior mediators, are you referring to numbers of personal injury/clinical negligence mediations, or are other classes of work, such as commercial, community or family cases, to be included?
3. Is it mandatory for a bidder to offer mediators in all three experience categories and, if not, how will the financial evaluation work in relation to the band for which no offer is made? If we chose not to use any junior mediators, for example, do we still have to quote an hourly rate for evaluation purposes?
4. Are there are requirements with regards to the relationships between suppliers and individual mediators? The documentation suggests that sub-contracting is prohibited, which would seem to imply that all nominated mediators must be employees of the supplier. Is this correct? Alternatively, if non-employed mediators are permitted, are there any restrictions about individual mediators appearing on more than one tenderer's proposed panel? And if such restrictions do exist, can you please confirm that a supplier entering into discussions with prospective panel members would not constitute a breach of the non-collusion requirements

See response to question 1 at the clarification question and answer table.

Yes. The definitions of leading, senior and junior mediators are referring to numbers of personal injury/clinical negligence mediations only.

Yes. It is mandatory for a bidder to quote an hourly rate for mediators in all three experience categories. For the duration of the contract the supplier can propose new mediators at all experience categories. The hourly rate therefore must be agreed in the contract for each experience category even if the supplier's mediators currently only fall into one or two experience categories.

There are no specified requirements regarding the relationships between suppliers and individual mediators. However, the supplier is not permitted to subcontract work to mediators not approved by the NHSLA.

- Will it be necessary to obtain DBS checks for admin staff and/or Approved Mediators (who are not employees) in order for mediation services to be provided (clause 6.6 of the contract)?
- Part 2 Section 1 Question 2.1(a) - the link to the webpage does not appear to be working - would it be possible to provide a web address?
- Lot 1 Quality Question 3 - will it be necessary to provide an organisational chart where the provider is a partnership?
- Part 3 Section 1 4.1 - Where audited accounts are not produced (e.g. in the context of a private limited company) will you accept unaudited accounts?
- Schedule 3 - can you give any further clarification on when the NHSLA may deem it appropriate for the Mediation to be subject to hourly rates rather than a fixed fee?
- In relation to Lot 1 can you clarify how Mediations will be allocated between the 2 (or 3) successful bidders? Will there be a system for allocating the cases?
- Please can you clarify how the Approved Mediators will be selected for a Mediation? Will the Supplier be asked to suggest one Mediator or will all Suppliers provide a suggestion and then the parties will select the Mediator that they wish to use?

Yes. Paragraph 6.6 of the contract imposes a requirement on suppliers to obtain DBS checks (or other appropriate body), for all potential staff or persons performing any of the services during the term of the contract. This will be at the supplier's own cost and expense and shall take place before the supplier engages the potential staff or persons in the provision of the services.

We understand the link to which you refer is at Volume 4, Part 2, and question 2.1 (a). Please see attached link and web address <http://www.legislation.gov.uk/ukxi/2015/102/regulation/57/made>

Yes, if the partnership and support staff is comprised of more than 2 personnel.

If your private limited company's accounts are exempt from needing an audit (reviewed and confirmed by an independent accountant) please supply the unaudited accounts that are available with a statement of turnover, profit and loss and cash flow for the period(s) subsequent to the date of such accounts.

The use of hourly rates will be considered on a case by case basis.

The NHS LA cannot guarantee volumes of work. The supplier organisations awarded contracts will be requested to provide a list of suitable mediators for each mediation, and the parties will select the mediator.

The supplier will provide a list of suitable mediators for each mediation and the parties will select the mediator.

	<ul style="list-style-type: none">• Finally (and separate to the above), where the relevant person is unavailable (due to prior mediation commitments) on 25th November for the validation meeting might it be possible to reschedule that meeting (providing of course that we get that far in the process!)• Can you clarify the percentage of cases which will be personal injury or clinical negligence cases as opposed to resolution of disputes arising from claims for legal costs?	<p>The validation meeting is scheduled for 25 November 2016. A request to rearrange the meeting will be given due consideration as appropriate.</p> <p>We cannot answer with certainty, but the majority of mediations are likely to fall within Lot 1.</p>	
--	--	---	--

5.	<p>I. Is this tender for services limited to the traditional model of mediation: "a private, voluntary, nonbinding process in which a neutral third party - the mediator - assists the parties to a dispute to find a mutually satisfactory outcome"1?</p> <p>II. If it is not limited to the traditional model, can responses to this tender involve more modern modes such as On-line Dispute Resolution (ODR) and evaluative formats of neutral third party mediation?</p> <p>III. To ensure that our proposal benefits from the relevant lessons learnt from the delivery of mediation services by previous providers, could you please provide us with a copy of the relevant documents upon which the NHSLA based its reflections regarding its disappointment with the uptake of mediation in 20142?</p> <p>IV. In addition, and more specifically, for the same purpose as III above, could you please provide the evaluation criteria, results and 360degree feedback relating to:</p> <p>(a) mediation pilot scheme 3</p> <p>(b) project(s) established by the National Health Service Litigation Authority (NHSLA), Action for Victims of Medical Accidents (AVMA) and Centre for Effective Dispute Resolution (CEDR) that ran in 2002; and/or</p> <p>(c) any other similar schemes.</p>	<p>See response to item 1 at the clarification question and answer table. Consideration will be given to different modes of mediation in suitable cases.</p> <p>See response to item 1 at the clarification question and answer table. Consideration will be given to different modes of mediation in suitable cases.</p> <p>There are no disclosable documents relating to this request.</p> <p>See pages 36-37 of the NHSLA's Annual Report and Accounts 2015/16 (21 July 2016), for the results and outcome of the mediation pilot launched on 31 July 2014.</p> <p>See Volume 3, Appendix 2 for the 360 degree feedback questionnaire which will be used by the approved suppliers for this contract.</p> <p>There are no documents in existence and/or disclosable relating to this request.</p> <p>See above</p>	
----	---	---	--