

basis for the eviction proceeding is that the particular illegal drug activity for which the person has been convicted or is being prosecuted did or does now threaten the health or safety of others living in the public housing project or working in the public housing agency. This qualification is intended to make clear that, in order for the prohibition to apply, the allegation which forms the basis for the eviction must be that, at the time the illegal drug activity was engaged in, it threatened the health or safety of others within the public housing community or that the activity currently threatens such health or safety. In other words, the threat must stem from the illegal drug activity which resulted in prosecution/conviction.

Finally, the prohibition extends only to the individual who has been convicted or is being prosecuted, and does not extend to other members of the individual's household who may be facing eviction because of the individual's illegal activity. For example, if a person is facing eviction based on the fact that another person in the household has been convicted of or is being prosecuted for the illegal sale, distribution, use or manufacture of a controlled substance, then the prohibition would not attach.

#### *Section 1633.4 Recordkeeping*

This section requires recipients to maintain documentation regarding representation declined under this part. Such recordkeeping will assist the Corporation in its compliance monitoring efforts and will provide empirical data for informational purposes.

#### List of Subjects in 45 CFR 1633

Legal services, Drugs, Public housing.

For reasons set forth in the preamble, LSC proposes to amend 45 CFR chapter XVI by adding part 1633 as follows:

### **PART 1633—RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS**

- Sec.  
1633.1 Purpose.  
1633.2 Definitions.  
1633.3 Prohibition.  
1633.4 Recordkeeping.

Authority: 42 U.S.C. 2996e(a), (b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e).

#### **§ 1633.1 Purpose.**

This part is designed to ensure that Corporation funds will not be used to provide representation in certain eviction proceedings to persons charged with or convicted of illegal drug activities.

#### **§ 1633.2 Definitions.**

(a) "Controlled substance" has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(b) "Public housing project" and "public housing agency" have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a); and

(c) A person is "being prosecuted" if a criminal proceeding has been instituted against such person by a governmental authority with jurisdiction to bring such prosecution.

#### **§ 1633.3 Prohibition.**

Corporation funds shall not be used to defend any person in a proceeding to evict that person from a public housing project if:

(a) the person has been recently convicted of or is being prosecuted for the illegal sale, distribution, use or manufacture of a controlled substance; and

(b) the eviction proceeding is brought by a public housing authority on the basis that such illegal drug activity for which the person has been convicted or for which the person is being prosecuted did or does now threaten the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

#### **§ 1633.4 Recordkeeping.**

Recipients shall maintain a record of all instances in which representation is declined under this part. Records required by this section shall be available to the Corporation, and should be maintained in a manner consistent with the attorney-client privilege and the rules of professional responsibility applicable in the local jurisdiction.

Dated: September 18, 1995.

Suzanne B. Glasow,

*Senior Counsel for Operations & Regulations.*

[FR Doc. 95-23490 Filed 9-20-95; 8:45 am]

BILLING CODE 7050-01-P

### **45 CFR Part 1634**

#### **Competitive Bidding for Grants and Contracts**

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed Rule.

**SUMMARY:** The Corporation anticipates that Congress will adopt legislation requiring the Corporation to utilize a system of competitive bidding for the award of grants and contracts. This proposed rule is intended to implement such a system of competitive bidding for the award of grants and contracts for the

delivery of legal services to eligible clients. The competitive bidding system would be structured so as to meet the primary purposes of the Legal Services Corporation Act as amended—to ensure the economical and effective delivery of high quality legal services to eligible clients and improve opportunities for low income persons. Competitive bidding is also intended to encourage recipients to improve their performance in delivering legal services.

**DATES:** Comments must be submitted on or before October 23, 1995.

**ADDRESSES:** Comments should be submitted to the Office of General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, at (202) 336-8810.

**SUPPLEMENTARY INFORMATION:** On June 25, 1995 the LSC Board of Directors ("Board") adopted a resolution requiring Corporation staff to prepare a regulation on competition in the delivery of legal services. On September 8 and 9, 1995, the Board's Operations and Regulations Committee and the provision for the Delivery of Legal Services Committee ("Committee") held public hearings on a draft proposed rule, 45 CFR part 1634. After adopting several changes to the draft proposed rule, the Committees voted to publish a proposed rule in the Federal Register for notice and comment.

Generally, the proposed rule is intended to set out the framework for a system of competitive bidding that would be structured so as to meet the primary purposes of the Legal Services Corporation Act, that is, to ensure the effective and efficient delivery of high quality legal services to eligible clients and to improve opportunities for low-income persons. Through the proposed competitive bidding system, qualified attorneys and entities would be provided an opportunity to compete for grants and contracts to deliver a full range of high quality legal services in service areas determined by the Corporation. Competitive bidding is also intended to encourage recipients to improve their performance in delivering legal services.

The competitive system envisioned in this regulation is intended to encourage realistic and responsible bids aimed toward the provision of quality legal services. Applicants should submit proposals that favor cost-effectiveness rather than cost and a system that provides a full range of legal assistance rather than fragmented services.

Finally, the rule provides authority for the Corporation to modify the timetables and other provisions of the system to conform to requirements imposed by law.

A section-by-section discussion of the proposed rule is provided below.

#### *Section 1634.1 Purpose*

This section sets out the purpose of the proposed rule, which is to encourage the efficient and effective delivery of high quality legal services to eligible clients through an integrated system of legal services providers by providing opportunities for qualified attorneys and entities to compete for grants and contracts and by encouraging recipients to improve their performance in delivering legal assistance. The section also indicates that the system of competition will preserve local control over resource allocation and program priorities, and minimize disruptions when there is a change in providers in the delivery of legal services to eligible clients within a service area.

#### *Section 1634.2 Definitions*

This section defines key terms used in the regulation. A "review panel" is defined to include, at a minimum, lawyers experienced in and knowledgeable about the delivery of legal assistance to low-income persons and eligible clients or representatives of low-income community groups. The definition prohibits any person from membership on a review panel that has a financial conflict of interest with or has, within the last five years, been employed by or has been a board member of the applicant being reviewed. The definition also contemplates that the Corporation would spell out in greater detail what constitutes a conflict of interest. Although Corporation staff should not be part of review panels, they may facilitate the work of the panels by providing planning and administrative services.

"Qualified applicants" is defined to include recipients and other lawyers or entities qualified to compete.

"Service area" is defined as an area over which there is to be competition and could include all or part of a current recipient's service area or be larger than an area served by a current recipient. The determination of particular services areas for any particular competitive process would be determined by the Corporation.

Finally, "subpopulation of eligible clients" is defined as population groups, such as Native Americans and migrant farm workers, who have been historically recognized as requiring a

separate system of delivery in order to provide legal assistance effectively.

#### *Section 1634.3 Competition for Grants and Contracts*

This section sets out the framework for competition for grants and contracts awarded under section 1006(a)(1)(A) of the LSC Act and is based on the provisions in HR 1806, the McCollum-Stenholm Bill of 1995, and the language in the House appropriations bill, HR 2076. Paragraph (a) provides that, as of a date certain, all grants and contracts for the direct provision of legal assistance will be awarded by competition. Paragraph (b) provides that the Corporation will determine the service areas or the subpopulations of clients to be served within service areas. Paragraph (c) states that the use of a competitive process for the awarding of the grant or contract for a particular service area, consistent with HR 1806 and HR 2076, will not constitute a termination or denial of refunding pursuant to parts 1606 and 1625 of the Corporation regulations. Paragraph (d) authorizes the Corporation to award more than one grant or contract for all or part of a service area but paragraph (e) states that no grant or contract may be awarded for terms more than five years. Paragraph (e) also clarifies that, if the amount of funding during the period of the grant or contract is reduced as a result of changes in Congressional appropriations, such reductions will not be considered to be the terminations or denials of refunding under Corporation regulations.

#### *Section 1634.4 Announcement of Competition*

Paragraph (a) of this section requires the Corporation to publicly announce a competition within a particular service area to current recipients, appropriate bar associations and other interested groups. The Corporation must also publish an announcement in periodicals of State and local bar associations and at least one daily newspaper of general circulation in the area to be served. The timing of the announcements may be dependent upon Congressional directions. Paragraph (b) sets out the general contents for the request for proposals (RFP), but leaves to the Corporation the details of what the RFP will include. The Corporation is required by paragraph (c) to send a copy of the RFP to any person or entity requesting one.

#### *Section 1634.5 Identification of Qualified Applicants for Grants and Contracts*

This section lists types of applicants that would qualify to compete under HR 1806 and HR 2076. These include current recipients and other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, private attorneys, groups of private attorneys or law firms, state or local governments and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials. The rule proposes that in order to receive an award of a grant or contract, all of the above entities would be required to have, depending on the type of applicant, a governing or policy body that is consistent with the provisions of 45 CFR part 1607, the Corporation's regulations on governing bodies. Such a board or policy is not necessarily mandated by law for § 1634.5(a) (3), (4) and (5). Much will depend on the legislation finally enacted. However, the Corporation seeks comments on whether, as a matter of policy, some governing or policy body should be required for all types of grantees so that all grantees are accountable to and guided by the policy decisions of such bodies.

#### *Section 1635.6*

This section contemplates that all applicants, including current recipients, who intend to compete for a grant or contract for a particular service area, will file a notice of intent to compete along with any other additional information determined to be necessary and appropriate by the Corporation. Filing deadlines for the notices shall be specified in the RFP. The information requested will give the Corporation notice of the level of competition and some indication as to whether applicants may need assistance in order to complete a full application.

#### *Section 1634.7*

This section sets out the application process and the basic requirements that applicants will have to meet in order to compete for a grant or contract to deliver services in a particular service area. The Corporation is given broad discretion to determine what information is needed to complete a particular application.

Pursuant to paragraph (e), the Corporation may require each applicant to agree in writing that, if the applicant is not selected for the award of a grant or contract, the applicant would not

institute a court action regarding the denial of an award until the applicant has participated in a mediation with the Corporation on the matter. The inclusion of this provision in the rule should not suggest that applicants have any property or hearing rights. It is well established that, absent express statutory language to the contrary or a showing that the applicant's statutory or constitutional rights have been violated, pre-award applicants for discretionary grants have no protected property interests in receiving a grant and thus have no standing to appeal the funding decision by the grantor. See Cappalli, *Federal Grants and Cooperative Agreements*, § 3.28 and *Legal Services Corporation v. Ehrlich*, 457 F. Supp. 1058, 1062-64 (D. Md. 1978). Nevertheless, the Corporation could decide that it is productive to mediate a particular matter with the applicant so that the applicant might submit a better application the next time around or at least have a better understanding of the process.

#### *Section 1634.8*

This section sets out the selection process to be used by the Corporation when deciding what grants or contracts are to be made to service areas. It requires the Corporation to review all relevant information for each applicant, request any necessary additional information, conduct on-site visits if appropriate to fully evaluate an application and summarize in writing any information not contained in an applicant's application. Monitoring and Compliance reports for current or former grantees that are older than five years would not be reviewed by the Corporation because they would lack relevance to the grantee's current status and would create too great an administrative burden on the Corporation and review panel members.

This section also requires the Corporation to convene a review panel if there is more than one applicant for a particular service area although it could choose to convene a panel when there is only one applicant. Review panels would review the applications and any summaries prepared by the Corporation and would make recommendations to the Corporation regarding awards for particular service areas. This section then requires that the Corporation staff consider the review panel's recommendation and forward a staff recommendation to the Corporation President for a final decision. If the staff recommendation differs from that of the review panel, the staff's written recommendation must include the recommendations of the review panel as

well as an explanation of why the recommendations differ.

The Corporation staff could recommend that the President make an award up to five years or, if there is no applicant for a service area or no applicant meets the criteria to receive a grant, paragraph (c) makes it clear that the Corporation has discretion to determine how to provide for the provision of legal assistance to the service area. Among other choices, the Corporation could put a current grantee on month-to-month funding in order to conduct a new competition or enlarge the service area of a neighboring grantee.

Finally, this rule provides that the President is to make final decisions of what grants will be awarded and for how long (although not exceeding five years). The Corporation is then required to notify all applicants in writing of the President's decisions.

Paragraph (d) provides that the Corporation shall not give any preference to current or previous recipients of funds when awarding grants and contracts under the competitive bidding system.

#### *Section 1634.9*

This section sets out the selection criteria that the Corporation will use in selecting recipients for the service areas subject to competition. These criteria include those specified in HR 1806 and HR 2706 as well as additional criteria taken from the provisions of the LSC Act and regulations and from the Performance Measures which the Corporation has developed to measure the performance of recipients.

Subsection (a) requires each applicant to demonstrate an understanding of the basic legal needs of the eligible clients in the area served.

Subsection (b) requires each applicant to demonstrate that its delivery approach adheres to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor. Among other things, applicant's ability to meet this criterion could be demonstrated by information regarding the applicant's experience with the delivery of the type of legal assistance contemplated under the grants or contracts.

Subsection (c) requires that, where applicable, the applicant's governing board or policy body meets or will meet all applicable statutory, regulatory or other legal requirements.

Subsection (d) requires that the applicant demonstrate how it will comply with applicable provisions of the law and LSC regulations. Among

other things, the applicant's past experience of compliance with the Corporation or other funding sources or regulatory agencies would be evidence of the applicant's ability to comply with this criterion.

Subsection (e) is taken from HR 1806 and requires that the Corporation consider the reputations of the applicant's principals.

Subsection (f) requires applicants to demonstrate their capacity to provide high quality, effective and effective legal services through an integrated delivery system, such as a capacity of the applicant to develop non-Corporation funds and to engage in collaborative efforts with other organizations involved in serving or assisting eligible clients.

Subsection (g) requires that applicants who are not current recipients demonstrate how they will continue service to clients with pending matters.

Subsection (h) focuses on institutional conflicts of interest of the applicant with the client community. Institutional conflicts could prevent applicants from being able to deliver the full range of legal services necessary to address the basic legal needs of clients. Applicants must show that they would not be required by such conflicts to refuse to provide representation on particular cases that are of high priority to the client community because the applicant is not permitted by a funding source independent of LSC to provide such assistance.

#### *Section 1634.10*

This section provides for transition steps that the Corporation may take when a current recipient is replaced by another applicant. Under subsection (a)(1), funding can be provided to enable a current recipient to complete cases, or withdraw or transfer such cases to the new recipient or other appropriate legal services provider. Subsection (a)(2) authorizes the Corporation to ensure the appropriate disposition of real and personal property of the current recipient which was purchased in whole or in part with Corporation funds. Subsection (b) provides that the Corporation can use slope funding if necessary to ensure effective and efficient use of Corporation funds during the early months of its grant. Such funding was used effectively in past years when new grantees were funded and helped prevent the accumulation of excessive fund balances.

#### *Section 1634.11*

This section provides that the President may waive or amend certain

parts of the regulations, including the timetables established thereunder, in order to comply with requirements imposed by law on the awards of grants and contracts for a particular fiscal year. This is necessary, for example, because HR 2076 requires that LSC use a competitive bidding system for grants and contracts to be awarded for 1996. It will be impossible for LSC to comply with all of the provisions of this part and still issue grants by January of 1996. For example, if the House requirements remain in the appropriation legislation, it will be impossible to use review panels or require a notice of intention to compete. The Corporation seeks comments on whether any other sections of the rule should be waived.

#### List of Subjects in 45 CFR Part 1634

Contracts, Grants, Legal services.

For the reasons set out in the preamble, LSC proposes to amend 45 CFR Ch. XVI by adding part 1634.

### PART 1634—COMPETITIVE BIDDING FOR GRANTS AND CONTRACTS

Sec.

- 1634.1 Purpose.
- 1634.2 Definitions.
- 1634.3 Competition for grants and contracts.
- 1634.4 Announcement of competition.
- 1634.5 Identification of qualified applicants for grants and contracts.
- 1634.6 Notice of intent to compete.
- 1634.7 Application process.
- 1634.8 Selection process.
- 1634.9 Selection criteria.
- 1634.10 Transition provisions.
- 1634.11 Emergency procedures and waivers.

Authority: 42 U.S.C. 2996e(a)(1)(A).

#### § 1634.1 Purpose.

This part is designed to improve the delivery of legal assistance to eligible clients through the use of a competitive system to award grants and contracts for the delivery of legal services. The purpose of such a competitive system is to:

(a) Encourage the effective and efficient delivery of high quality legal services to eligible clients that is consistent with the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor through an integrated system of legal services providers;

(b) Provide opportunities for qualified attorneys and entities to compete for grants and contracts to deliver high quality legal services to eligible clients;

(c) Encourage ongoing improvement of performance by recipients in providing high quality legal services to eligible clients;

(d) Preserve local control over resource allocation and program priorities; and

(e) Minimize disruptions in the delivery of legal services to eligible clients within a service area during a transition to a new provider.

#### § 1634.2 Definitions.

(a) *Qualified applicants* are those persons, groups or entities described in § 1634.5(a) of this part who are eligible to submit notices of intent to compete and applications to participate in a competitive bidding process as described in this part.

(b) *Review panel* means a group of individuals who are not Corporation staff but who are engaged by the Corporation to review applications and make recommendations regarding awards or contracts for the delivery of legal assistance to eligible clients. Review panels must include, at a minimum, lawyers experienced in and knowledgeable about the delivery of legal assistance to low-income persons, and eligible clients or representatives of low-income community groups. No person may serve on a review panel for any applicant with whom the person has a financial interest or ethical conflict; nor may the person have been a board member of or employed by such applicant in the past five years.

(c) *Service area* is the area defined by the Corporation to be served by grants or contracts to be awarded on the basis of a competitive bidding process. A service area is defined geographically and may consist of all or part of the area served by a current recipient, or it may include an area larger than the area served by a current recipient.

(d) *Subpopulation of eligible clients* includes Native Americans and migrant farm workers and may include other groups of eligible clients that, because they have special legal problems or face special difficulties of access to legal services, might better be served by a separate system to deliver legal assistance in order to serve that client group effectively.

#### § 1634.3 Competition for grants and contracts.

(a) After the effective date of this part, all grants and contracts for legal assistance awarded by the Corporation under section 1006(a)(1)(A) of the LSC Act shall be subject to the competitive bidding process described in this part. No grant or contract for the delivery of legal assistance shall be awarded by the Corporation for any period after \_\_\_\_\_<sup>1</sup>

<sup>1</sup>The date will depend upon the appropriation or reauthorization provisions that are enacted into law.

unless the recipient of that grant has been selected on the basis of the competitive bidding process described in this part.

(b) The Corporation shall determine the service area to be covered by grants or contracts and shall determine whether the population to be served will consist of all eligible clients within the service area or a specific subpopulation of eligible clients within one or more service areas.

(c) The use of the competitive bidding process to award grant(s) or contract(s) shall not constitute a termination or denial of refunding of financial assistance to a current recipient pursuant to parts 1606 and 1625 of this chapter.

(d) The Corporation may award more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area, provided that, to the maximum extent possible, such grants and contracts are awarded so as to ensure that all eligible clients within the service area will have access to a full range of legal services in accordance with the LSC Act.

(e) In no event may the Corporation award a grant or contract for a term longer than five years, and the amount of funding provided annually under each such grant or contract is subject to changes in Congressional appropriations or restrictions on the use of those funds by the Corporation. A reduction in a recipient's annual funding required as a result of a change in the law or a reduction in funding appropriated for the Corporation shall not be considered a termination or denial of refunding under parts 1606 or 1625 of this chapter.

#### § 1634.4 Announcement of competition.

(a) The Corporation shall give public notice that it intends to award a grant or contract for a service area on the basis of a competitive bidding process and shall take appropriate steps to announce the availability of such a grant or contract in the periodicals of State and local bar associations and shall publish a notice of the Request For Proposals (RFP) in at least one daily newspaper of general circulation in the area to be served under the grant or contract. In addition, the Corporation shall notify current recipients, other bar associations, and other interested groups within the service area of the availability of the grant or contract and shall conduct such other outreach as the Corporation determines to be appropriate to ensure that interested parties are given an opportunity to participate in the competitive bidding process.

(b) The Corporation shall issue an RFP which shall include information regarding: Who may apply; application procedures; the selection process; selection criteria; the service areas that will be the subject of the competitive bidding process; the amount of funding available for the service area, if known; applicable timetables and deadlines; and the LSC Act, regulations, guidelines and instructions and any other applicable federal law. The RFP may also include any other information that the Corporation determines to be appropriate.

(c) The Corporation shall make available a copy of the RFP to any person, group or entity that requests a copy in accordance with procedures established by the Corporation.

**§ 1634.5 Identification of qualified applicants for grants and contracts.**

(a) The following persons, groups and entities are eligible to submit a notice of intent to compete and an application to participate in the competitive bidding process:

- (1) Current recipients;
- (2) Other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients;
- (3) Private attorneys, groups of attorneys or law firms (except that no private law firm that expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public may be awarded a grant or contract under the LSC Act);
- (4) State or local governments;
- (5) Substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

(b) All persons, groups and entities listed in paragraph (a) of this section must have a governing or policy body consistent with the requirements of part 1607 of this Chapter or other applicable law.

(c) Applications may be submitted jointly by more than one qualifying individual, group or entity.

**§ 1634.6 Notice of intent to complete.**

(a) In order to participate in the competitive bidding process, an applicant must submit a notice of intent to compete on or before the date designated by the Corporation in the RFP. The Corporation may extend the date if necessary to take account of special circumstances or to permit the Corporation to solicit additional notices of intent to compete.

(b) Either at the time or prior to the filing of the notice of intent to complete, each applicant must provide the

Corporation with the following information as well as any additional information that the Corporation determines is appropriate:

- (1) Names and resumes of principals and key staff;
- (2) Names and resumes of current and proposed governing board or policy body members and their appointing organizations;
- (3) Initial description of area proposed to be served by the applicant and the services to be provided.

**§ 1634.7 Application process.**

(a) The Corporation shall set a date for receipt of applications and shall announce the date in the RFP. The date shall afford applicants adequate opportunity, after filing the notice of intent to compete, to complete the application process. The Corporation may extend the application date if necessary to take account of special circumstances.

(b) The application shall be submitted in a form to be determined by the Corporation.

(c) A completed application shall include all of the information requested by the RFP. It may also include any additional information needed to fully address the selection criteria, and any other information requested by the Corporation. In complete applications will not be considered for competition by the Corporation.

(d) The Corporation shall establish a procedure to provide notification to applicants of receipt of the application.

(e) The Corporation may require that, as a condition of being an applicant, an applicant must agree in writing that, prior to instituting any court action regarding a dispute with the Corporation or its employees arising from the application or the Corporation's action regarding the application, the applicant will participate in mediation with a representative of the Corporation. Mediation procedures shall be designed by the Corporation to provide for the convenience of the parties and to encourage the expeditious resolution of the applicant's concerns. The use of such mediation procedures should not be interpreted to suggest that applicants have any property or hearing rights pursuant to the competitive process.

**§ 1634.8 Selection process.**

(a) After receipt of all applications for a particular service area, Corporation staff shall:

- (1) Review each application and any additional information that the Corporation has regarding each applicant, including for any applicant

that is or includes a current or former recipient, past monitoring and compliance reports, performance evaluations and other pertinent records for the past five years;

(2) Request from an applicant and review any additional information that the Corporation determines is appropriate to evaluate the application fully;

(3) Conduct one or more on-site visits to an applicant if the Corporation determines that such visits are appropriate to evaluate the application fully;

(4) Summarize in writing information regarding the applicant that is not contained in the application if appropriate for the preview process; and

(5) Unless there is only one applicant for a particular service area and the Corporation therefore determines that use of a review panel is not appropriate, convene a review panel to:

(i) Review the applications and the summaries prepared by the Corporation staff. (The Corporation staff shall also identify other information reviewed by the Corporation and which the review panel may request in order to evaluate the applications fully); and

(ii) Make a written recommendation to the Corporation regarding the award of grants or contracts from the Corporation for a particular service area.

(6) After considering the recommendation made by the review panel, if a review panel was convened, make a staff recommendation to the Corporation President. If the staff recommendation differs from that of the review panel, the staff recommendation shall include the recommendation of the review panel and an explanation of the basis for the staff recommendation.

(b) After reviewing the written recommendations, the President shall select the applicants to be awarded grants or contracts from the Corporation and the Corporation shall notify each applicant in writing of the President's decision regarding each applicant's application. The President of the Corporation shall not make an award of a grant or contract for a term longer than five years.

(c) In the event that there are no applicants for a service area or the Corporation determines that no competitor meets the criteria and therefore determines not to award a grant for a particular service area, the Corporation has discretion to determine how to provide the provision of legal assistance to the service area under competition, including but not limited to, enlarging the service area of a neighboring program or putting a current recipient on month-to-month

funding in order to permit the Corporation to conduct a new competition.

(d) In selecting recipients of awards for grants or contracts under this part, the Corporation shall not grant any preference to current or previous recipients of funds from the Corporation.

#### § 1634.9 Selection criteria.

The Corporation shall consider the following criteria in selecting recipients.

(a) Whether the applicant has a full understanding of the basic legal needs of the eligible clients in the area to be served;

(b) The quality, feasibility and cost-effectiveness of the applicant's legal services delivery approach in relation to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor, as evidenced by, among other things, the applicant's experience with the delivery of the type of legal assistance contemplated under the proposal;

(c) Whether the applicant's governing or policy body meets or will meet all applicable requirements of the LSC Act, regulations, guidelines, instructions and any other requirements of law;

(d) Applicant's capacity to comply with all other applicable provisions of the LSC Act, rules, regulations, guidelines and instructions, as well as with ethical requirements and any other requirements imposed by law. Evidence of the applicant's capacity to comply with this criterion may include, among other things, the applicants compliance experience with the Corporation or other funding sources or regulatory agencies, including but not limited to federal or state agencies, bar associations or foundations, courts, IOLTA programs, and private foundations;

(e) The reputations of the applicant's principals and key staff;

(f) The applicant's knowledge of the various components of the legal services delivery system in the State and its willingness to coordinate with them as appropriate to assure the availability of a full range of legal assistance, including its capacity to:

(1) develop and increase non-Corporation resources,

(2) cooperate with State and local bar associations, private attorneys and pro bono programs to increase the involvement of private attorneys in the delivery of legal assistance and the availability of pro bono legal services to eligible clients, and

(3) have knowledge of and cooperate with other services providers,

community groups, public interest organizations and human services providers in a manner that is consistent with the local ethical requirements;

(g) Applicant's capacity to ensure continuity in client services and representation of eligible clients with pending matters.

(h) Applicant does not have known or potential conflicts of interest, institutional or otherwise, with client community and demonstrates a capacity to protect against such conflicts that may arise during the term of the grant or contract.

#### § 1634.10 Transition provisions.

(a) When the competitive bidding process results in the award of a grant or contract to an applicant other than the current recipient to serve the area currently served by that recipient, the Corporation may, if the law permits;

(1) Provide continued funding to the current recipient, for a period and at a level to be determined by the Corporation after consultation with the recipient, to ensure the prompt and orderly completion of or withdrawal from pending cases or matters or the transferral of such cases or matters to the new recipient or to other appropriate legal services providers in a manner consistent with the rules of ethics or professional responsibility for the jurisdiction in which those services are being provided;

(2) Ensure, after consultation with the recipient, the appropriate disposition of real and personal property purchased by the current recipient in whole or in part with Corporation funds.

(b) Awards of grants or contracts for legal assistance to any applicant that is not a current recipient may, in the Corporation's discretion, provide for incremental increases in funding up to the annualized level of the grant or contract award in order to ensure that the applicant has the capacity to use Corporation funds in an effective and efficient manner.

#### § 1634.11 Emergency Procedures and Waivers

The President of the Corporation may waive the requirements of §§ 1634.6 and 1634.8(a)(3) and (5), when necessary to comply with requirements imposed by law on the awards of grants and contracts for a particular fiscal year.

Dated: September 18, 1995.

Suzanne B. Glasow,

*Senior Counsel for Operations and Regulations.*

[FR Doc. 95-23491 Filed 9-20-95; 8:45 am]

BILLING CODE 7050-01-M

## 45 CFR Part 1635

### Timekeeping Requirement

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule requires all recipients of Legal Services Corporation ("LSC" or "Corporation") funds to account for the time spent on all cases, matters and other activities by their attorneys and paralegals, whether funded by the Corporation or by other sources.

**DATES:** Comments must be submitted on or before October 23, 1995.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, at (202) 336-8810.

**SUPPLEMENTARY INFORMATION:** On June 25, 1995, in order to improve the accountability of recipients for their Corporation funds, and in response to concerns expressed during congressional hearings, the LSC Board of Directors ("Board") adopted a resolution requiring Corporation staff to prepare a regulation specifying a time and recordkeeping system for implementation by LSC recipients. On September 8, 1995, the Board's Operations and Regulations Committee ("Committee") held public hearings on proposed 45 CFR part 1635. After adopting several changes to the proposed rule, the Committee voted to publish the proposed rule in the Federal Register for notice and comment.

This proposed rule requires recipients to account for the time spent on all cases, matters and other activities by their attorneys and paralegals. These requirements apply whether the case, matter or activity is funded by the Corporation or by other sources. Such timekeeping is not now required under 45 C.F.R. part 1630.

Perhaps a quarter of current Corporation recipients already maintain time records that meet most or all of the conditions of the proposed rule. They are already able to avail themselves of the potential benefits of timekeeping to recipients, such as improved supervisory information, better cost estimation in bidding for other funds, enhanced control of priority implementation by their local boards of directors and more informative reports to grantors and the public.

The Corporation is mindful of the costs which this regulation will impose