

GUIDANCE ON THE USE OF FRAMEWORK AGREEMENTS

This guidance document has been prepared to assist buyers within the University to use framework agreements in a legally compliant manner. It is aimed at all buyers who use framework agreements and also seeks to assist those members of staff working on projects financed by European Structural Funds.

1. WHAT IS A FRAMEWORK AGREEMENT?

A framework agreement is an agreement with one or more suppliers/providers which sets out terms and conditions under which individual contracts (call-offs) can be made throughout the term of the agreement.

A framework agreement itself is not a contract, but the call-offs made from it are.

Framework arrangements create a streamlined and flexible process for procuring goods, works or services.

2. WHY SHOULD I USE FRAMEWORK AGREEMENTS?

- They can reduce the administrative burden of procurement. Individual purchases can be made without repeating many of the stages of a full competitive tendering process required by the University's Financial Regulations and the Public Contract Regulations 2015.
- There is no need to formulate terms and conditions for call-off contracts because these are pre-agreed.
- There is no need to assess financial standing, technical capability, health and safety, environmental aspects as this work has already been undertaken. (Although it may be necessary to check certain supplier credentials as part of a due diligence process.)
- Aggregated demand through a number of HEIs or other public sector bodies working together should be more attractive to suppliers and will usually result in lower unit costs.

3. CAN I USE ANY FRAMEWORK AGREEMENT?

No. Before making a call-off under a framework agreement, you must ensure that:

- a) The particular goods, services or works required are available under the framework agreement (i.e. within the scope of the framework agreement as originally advertised in the OJEU); and
- b) The University falls within the range of contracting authorities that can lawfully use the framework agreement (i.e. the University is identified or named within the Contract Notice).

All frameworks available on the North Western Universities Purchasing Consortium website and the majority of frameworks established by the National Procurement Service for Wales and Crown Commercial Services are available for use by buyers within the University. If you are in any doubt, please contact the Corporate Procurement Unit for assistance.

4. HOW DO I USE A FRAMEWORK AGREEMENT?

Users of framework agreements award 'call-off' contracts against the framework of approved suppliers. The call-off will be a contract between the relevant supplier and the University. Staff should always consult the 'Buyer's Guide' provided by the Contracting Body before making any call-offs, as this document will explain the procurement process that should be followed. NB. WEFO procurement guidelines require buyers to check that call-offs do not exceed the estimated total value of the framework, as this is deemed to be non-compliant. Please consult the Corporate Procurement Team in the first instance.

There are three different ways that call-offs can be made:

4a. AWARDING CONTRACTS UNDER A SINGLE-SUPPLIER FRAMEWORK.

Where a framework agreement is concluded with just one supplier, call-off contracts must be awarded within the limits of the terms laid down in the framework agreement. In practice, there will always be a need to specify certain details at the point of calling-off.

4b. AWARDING CONTRACTS UNDER A MULTI-SUPPLIER FRAMEWORK.

Where a framework for the same goods, works or services is awarded to several suppliers, there are three possible options for awarding call-off contracts: direct award, mini-competition or a combination of both.

Option 1 – Apply the terms of the framework agreement (direct award).

Where your requirements match the terms and/or specification of the framework agreement (in the event of any query, you should clarify the situation with the organisation that established the framework), a particular call-off should be awarded without re-opening competition. The call-off should be awarded to the provider who is identified as the most economically advantageous tender based on the award criteria used at the time that the framework was established (i.e. the supplier ranked no. 1). Randomly selecting a supplier off a framework is not permitted.

Option 2 – Hold a mini-competition between capable suppliers.

If your requirements do not match the terms and/or the specification of the framework, you should conduct a mini-competition exercise. Whilst it is not permitted to substantially change the basic terms or specification of the framework, in running a mini-competition it is possible to supplement or refine the basic terms of the framework prior to making a call-off. Examples of such terms are:

- The particular goods/services/works required;
- Particular delivery timescales;
- Particular invoicing arrangements and payment profiles;
- Associated services such as installation, maintenance and training;
- Quantity;
- Functional specification.

Under no circumstances should brand names or brand-specific descriptions of goods be used e.g. BIC Biro Pen, Hewlett-Packard Printer, Dell computer. Descriptions should give reference to the characteristics and outputs of the product or service. Where no other description is possible, any reference should be qualified by adding the words 'or equivalent'.

When a mini-competition exercise is held, all suppliers appointed to the framework **that are capable of meeting the requirement** must be invited to submit a tender. (This might just relate to suppliers within a particular 'lot'). You must not limit the mini-competition exercise to selected providers. A time limit for submitting the tender must be set and advised to competing suppliers. This time limit must be reasonable, taking account of the complexity of the requirement.

The call-off must be awarded on the basis of the framework award criteria and new criteria cannot be added, although, where permitted, the weightings may be varied to take account of a particular requirement. However, in adjusting the weightings, care must be taken to ensure that any such changes do not have an adverse effect on competition.

Option 3 - Combination of direct award and mini-competition (available within frameworks awarded post 26 Feb 2015)

To use a combination approach, the procurement documents must state that this route may be used. The procurement documents will also specify which terms may be subject to the re-opening of competition.

Opening Tenders.

The University must not open any mini-competition tenders until the bid deadline has passed. The call-off must be awarded on the basis of the best tender according to the award criteria that were set when the framework was established. However, the weightings of the award criteria may be varied to reflect the importance of the particular criteria to the requirement to which the proposed call off relates provided, that this is notified to the suppliers as part of the tender request.

Systems.

Call-off competitions can be undertaken electronically through either Sell2Wales – Quick Quotes, or via eTenderWales.

5. CAN I USE MORE THAN ONE FRAMEWORK AGREEMENT AT CALL-OFF STAGE OR INCLUDE OTHER SUPPLIERS WHO ARE NOT ON THE FRAMEWORK?

There may be some commodity areas where numerous framework agreements exist. In this situation, staff should consider the suitability of each of the agreements as part of developing their procurement strategy. Having chosen a framework agreement, staff cannot ask suppliers to bid against prices offered under a different framework. In other words, competitions cannot be held that involve more than one framework agreement.

Similar to the above, it is not acceptable to issue mini-tenders to suppliers that have not been appointed to the framework as they will not have been through the same rigorous selection process as those suppliers on the framework, and therefore evaluation of bids would not be on a like for like basis.

6. CONFIRMING YOUR CALL-OFF ON A PURCHASE ORDER.

Once a call-off has been made, you will still be expected to raise a purchase order to confirm the goods, works or services that you are purchasing. In order to guarantee that suppliers offer the terms and conditions provided under the framework agreement, it is a **mandatory requirement** to make reference to the framework agreement and awarding body within the description field of the purchase order. Failure to do so can result in the supplier legitimately offering non-framework rates/terms and conditions.

The details that should be included on the order are:

Contracting Body – e.g. NWUPC

Framework Reference Number.

Bangor University Reference Number (if applicable – e.g. if related to a mini-competition exercise).

7. HOW LONG CAN CALL-OFF CONTRACTS BE?

The duration of individual call-offs do not need to coincide with the duration of the framework agreement, but might, as appropriate, be shorter or longer. The University may set the length of individual contracts based on a framework agreement taking account of factors such as time needed for their performance, where maintenance of equipment with an expected useful life or more than four years is included, or where extensive training of staff to perform the contract is needed.

8. DO I NEED TO APPLY THE STANDSTILL RULES TO CALL-OFF CONTRACTS

The University does not have to follow the standstill rules when awarding a call-off contract under a framework agreement, whether by direct award or mini-competition. However, it is good practice to follow the standstill rules on a

voluntary basis (giving summary reasons) when awarding an above-threshold contract by mini-competition in order to protect the University from an ineffectiveness order in the event of a legal challenge.

9. WHAT HAPPENS IF I DON'T USE A FRAMEWORK AGREEMENT IN A COMPLIANT MANNER?

If frameworks are not used in the manner intended or as described within the Buyer's Guide, it is possible that the University could be subject to an 'ineffectiveness order' being raised against the call-off contract.

Any contract resulting from the misuse of a framework agreement, for example calling-off a framework where the University has not been named as a party to that framework, or a material variation to the fixed terms of calling-off, would be viewed as a direct award that would be at risk of an ineffectiveness order.

Ineffectiveness means that the performance of the contract must cease from the date that the call-off contract was declared as ineffective. The Court would also order the University to pay a fine and may also order the payment of compensation to the claimant.

The university must not use a framework agreement improperly or in such a way as to prevent, restrict or distort competition. It must also comply with the general EU treaty principles of non-discrimination, proportionality, transparency and equal treatment. For example, when undertaking call-offs under a multiple provider framework agreement, it is important that the process is transparent to all relevant suppliers and that everyone is treated equally.

**CORPORATE PROCUREMENT UNIT
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