



Costs Lawyer Services

Customer guidance (RM6137)



Crown
Commercial
Service

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End date	August 2023
Extension options	Option to extend for a further two years, on a 1+1 basis Both extensions utilised - extended to full term
OJEU contract notice	Link to OJEU
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Introduction

Purpose of this document

We have developed this guidance to assist you when accessing the Costs Lawyer Services framework.

This document is not a legal document and is to be used as guidance only.

Background

This framework has been established to provide a simple and compliant route to market for costs law services. It replaces the previous Law Costs Draftsman Services framework (RM1675).

It has been set up following extensive engagement with CCS as the authority and a wide range of external stakeholders, including central government departments. The framework offers 3 lots of quality assured services provided by a maximum of 11 suppliers.

Accessing the framework

This framework is available for use by central government, wider public sector and third sector organisations. Further details can be found in the OJEU contract notice.

Features and benefits

Competitive tenders were evaluated following an open procurement process under the light touch regime. We used a mix of quality and price, with quality weighted at 70% and price at 30%.

The quality evaluation (through questions and responses) was conducted by a team that included senior practitioners from Government Legal Department (GLD), NHS Resolution and other central government users. Price (value for money) was evaluated through careful consideration of supplier tenders according to a range of 'cost models' specific to each lot.

- better aligned to customers' requirements
- correct capacities in each service area to enable fast and responsive action
- jurisdictional coverage across England and Wales
- streamlining the process to reduce the cost of procurement
- highly competitive hourly and daily rates, including risk and reward, options for fixed fees and/or alternative fee arrangements via direct award and further competition
- simplified tender documents, templates and standard terms and conditions agreed by all suppliers

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Framework scope

Lot selection

You will need to select the most appropriate lot to best match your requirement.

Lot structure

Lot 1 General Costs Law

Covers budgeted and non-budgeted costs services for both the receiving and paying party, as required by the buyer at call-off. Services could include:

- considering and advising upon opponent's budgets
- preparing, filing, exchanging and negotiating budgets
- attend upon a costs management hearing/ case costs management conference, if required
- preparing schedules of costs and bills of costs/ eBills, preparing and replying to points of dispute
- applying for detailed or provisional assessment
- advising upon the outcome of a provisional assessment, and, if appropriate, attend the oral hearing
- validating costs claims upon summary provisional and detailed assessment (including a provision for qualified one way cost shifting)
- attending detailed assessment hearings, dealing with any other steps to begin or progress with costs proceedings.

Lot 2 Clinical Negligence

Covering all of lot 1 in relation to clinical negligence work.

Lot 3 Security Clearance

Covering all of lot 1, focusing on proceedings involving sensitive information, where security clearance is required.

Suppliers have personnel with security check (SC) available to fulfil the requirements of this lot. You can request a higher level of clearance at call-off, if needed.

These personnel are available to work on-site or can be seconded to your organisation, if required. They will comply with all your security requirements.

Mandatory service requirements

All lots include complex cases, those involving litigants in person, and matters within the:

- Senior Court Costs Office (covering bills for High Court and Court of Appeal matters, including assessments from other forums)
- The Supreme Court
- European Court of Justice
- The First Tier and Upper Tribunals (Tax, and Social Entitlement Chamber)
- Competition Appeal Tribunal
- Employment Tribunal
- Employment Appeals Tribunal
- Lands Chamber of the First Tier and Upper Tribunal
- County Court
- Magistrates Court and Crown Court

All lots include matters which may be dealt with in, and require attendance at:

- Alternative Dispute Resolution (ADR)
- Joint Settlement Meetings (JSM)

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Things to consider

Stakeholder engagement

When establishing requirements you should engage early with internal colleagues including procurement, finance and legal to draw on their knowledge and experience and gain their buy-in.

Business case

Before procuring external support a business case is usually required to demonstrate the need. It should be a well-structured document that supports the specific business need. A compelling business case should adequately capture the quantifiable and non-quantifiable characteristics of the proposed project.

Large, complex or high profile projects often require a comprehensive and highly structured business case. Information included in a formal business case could include an overview of your organisation, project background, options considered including do nothing (risks / costs / lost opportunities of doing nothing), expected business benefits, expected costs and anticipated risks. You should refer to your own departmental policies and guidance to ensure compliance with your departmental rules.

Project management

Developing a robust project management process may help you secure your requirements on time and within budget.

Evaluators

You should nominate suitable evaluators to assess the quality questions in the award questionnaire and pricing schedule. This is key to the success of the procurement. You should give careful consideration to any specific skills that are required. You must ensure that there are no conflicts of interest and the evaluators have the relevant experience. Where a conflict of interest exists or evaluators do not have the relevant experience they will not be able to evaluate. During evaluation the evaluators need to ensure responses / comments are concise and accurately recorded for audit purposes. We would encourage evaluators to contribute to the drafting of the specification. It is also important to ensure evaluators are available within required time frame. It is advisable to have backup evaluators to avoid unnecessary delays.

Legal advice

You may wish to seek your own legal advice when selecting the most appropriate lot, deciding on the award procedure, drafting the tender documentation, call-off contract, pricing schedule and award questions. We are not permitted to provide any legal advice.

Supplier engagement

Early engagement with suppliers before you issue your tender documents may help you develop a more focused specification. A key principle of public sector procurement is that all suppliers are treated in a fair and equitable manner. Here are some hints and tips:

- make all suppliers in the lot you will be using are aware of the opportunity at the earliest convenience. Include proposed timescales, if known. This could be face to face (all supplier conference), webinars or teleconference
- it may be useful to issue an expression of interest to check suppliers' capacity or for any conflicts of interest, particularly if you are considering direct award
- if sharing sensitive information regarding your requirement you may wish to ask suppliers to sign a non-disclosure agreement (NDA)
- if you require market intelligence or have a specific question for which you require supplier input you may wish to issue a request for information (RFI). This should be sent to all the suppliers on your selected lot. Use of an eSourcing portal will provide an audit trail. You can use the CCS eSourcing tool or your own portal - you are free to choose your preference
- share your draft documents (including your specification) with all suppliers in the lot to receive feedback

Whilst the feedback may be used to help shape your requirement, you need to ensure that you retain control of your requirements and that they are not dictated by suppliers or provide an unfair advantage.

Specification (statement of requirements)

A specification is a statement of the requirements to be met by the supplier and forms a fundamental part of a successful process. A clearly written specification is an invaluable tool which will help you get the right result for your organisation.

If you are running a further competition, any quality questions within the tender documents should be linked directly to your specification to ensure the questions you ask, and the suppliers responses, are relevant to the requirement.

Think about what you want to achieve from the suppliers and how will you know that the requirement has been satisfied?

Purpose of a specification

- describe the characteristics of the services required and which the supplier is expected to provide
- create a contractual tool which forms an integral part of the call-off contract
- form part of a legally binding agreement which will be binding on both parties
- inform suppliers about the services required and enables them to propose a solution
- facilitate effective contract management
- act as a reference to be referred to in the case of any disputes between you and the supplier(s)
- key performance indicators (KPIs) should be established as appropriate to the requirement

Call-off contract (terms and conditions)

You will need to review all of the highlighted sections in the call-off contract and populate all necessary sections. Please pay particular attention to the following:

Limits of Liability – this can be addressed under the heading ‘Maximum Liability’ on the order form

Insurance – this can be covered under ‘Additional Insurances’ on the order form

Call-off Special Terms - this allows you to incorporate additional terms which may be specific to your organisation.

Base location

You need to specify your base location in the tender. This is the place where most of the work will be carried out. Travel and subsistence disbursements are not payable to the supplier unless expressly agreed in the contract order form.

Award procedure Further competition

Please see schedule 7 of the framework agreement for a detailed further competition process.

The first step in a successful call-off contract is to establish exactly what service you require from a supplier, and to communicate that requirement clearly in the form of a specification, or statement of requirement.

Your responsibilities

- develop a robust specification
- identify the most appropriate lot
- invite tenders by conducting a further competition
- invite all suppliers within the lot identified
- set a time limit for the receipt of tenders which takes into account factors such as the complexity of the subject matter and the time needed to submit tenders
- keep each tender confidential until the deadline for tender returns has expired
- evaluate the tenders against the award criteria detailed in the tender

Supplier responsibilities

- the supplier will confirm whether if they will respond to the tender. If they are not, they should give you a reason why not
- prices will be based on the charging structure as set out in framework schedule 3 (framework prices and charging structure) and as detailed in the tender
- the response from the supplier will remain valid for 90 working days, unless otherwise advised

Direct award

It is best practice to obtain your own in-house legal advice to ensure direct award is a compliant approach for your specific requirements.

It should only be used if you can determine that:

- the supplier provides the most economically advantageous solution for your requirements (which may be difficult to establish without seeking solutions from other suppliers)

OR

- your requirements can only be met by one supplier; and
- all of the terms of the proposed contract are laid down in the framework and the call-off terms do not require amendment or any supplementary terms and conditions

In this instance, you can place an order in accordance with the direct ordering procedure.

Quality questions

Suppliers have been assessed at framework level in terms of compliance. This factored the likes of insurance accreditation and financial status, which means you can focus your questions on the specifics of your requirement.

Pricing mechanism / models

The framework contains maximum hourly and daily rates based on an eight hour working day. It also contains a capped risk and reward percentage.

Alternative fee arrangements are possible (including but not limited to fixed / capped fees / collective conditional fee arrangements) however, any contracts awarded via direct award must have arrangements based on the maximum rates set at framework level.

Discounted rates cannot be requested under a direct award. Suppliers can only reduce these maximum rates under a further competition.

Rates can be accessed via the eSourcing suite – you will find a link on the framework page of the website.

You will need to develop a pricing model to reflect your requirements and you can select a model from a number of options such as:

- time and materials
- fixed fee
- capped fee
- risk and reward

Quality and price weighting

You need to evaluate supplier responses using the most economically advantageous tender (MEAT) criteria.

You can define the sub-criteria including weightings as part of the further competition process. You may wish to speak with your commercial / procurement team for advice.

eSourcing tool

We provide free access to our eSourcing portal which enables you to conduct a further competition and provides a fully auditable procurement process. If you prefer to use your own internal eSourcing portal, you can.

Call-off contract period

You will need to determine the length of your call-off contract and the period of any extensions you may wish to apply. Our recommendation is that a call-off should be no longer than four years. All contracts must include a contract end date which must not run 2 years beyond the framework expiry date.

Clarification period

When planning the tender you should ensure that you allow sufficient time for suppliers to ask questions and for you to respond to them. You should also set a deadline for questions and answers.

Once you have issued your final response to the clarification questions, allow sufficient time for suppliers to consider your responses before they submit their bid. Remember to respond to all bidders with the same information and anonymise the clarification log.



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Tender

Here is a list of documents you may wish to consider when formulating your tender:

- invitation to tender
- terms of participation
- specification (statement of requirements)
- call-off contract
- response guidance (award questionnaire)
- pricing schedule
- non-disclosure agreement (if applicable)

Timescales

A minimum of 10 working days should be allowed for a simple requirement - longer more complex requirements.

Failure to give suppliers sufficient time to bid may result in poor tender quality and reduced the chance of maximum savings.

You are encouraged to plan your requirement appropriately to receive maximum benefit and value from any competitive exercise.

If you are using lot 3 and require higher levels of security clearance please bear this in mind when setting timelines for suppliers to submit their responses.

Evaluation

Once tenders have been received a compliance check should be undertaken before evaluation begins to ensure that:

- the bid is from the same supplier that is awarded to the framework
- suppliers have confirmed acceptance of the framework and call-off contract terms and conditions. If a supplier proposes changes to the terms and conditions please notify us of this non-compliance
- mandatory questions are answered
- all documentation is completed and attached as requested
- supplier/s are notified if they have failed the compliance check and advised that their bid will not be further considered
- a compliance check of the pricing matrix is undertaken to confirm that there are no missing prices and it has been completed in line with the guidance
- the framework maximum pricing has not been exceeded. Should a supplier propose a rate higher than the framework maximum price please notify us immediately

Price evaluation and abnormally low tenders

You should evaluate price as defined in the tender.

Where a tender appears to be abnormally low in relation to the requirement you should seek an explanation of the price / costs from the supplier, and assess the information provided. If the evidence provided does not provide a satisfactory explanation then you may be able to reject the tender.

Legal advice should be sought prior to rejection.

Post tender clarification / negotiation

Under the EU regulations you are not permitted to undertake post tender negotiation.

Post tender clarifications may be necessary during evaluation if there are aspects of the bids which are unclear or contain minor errors.

Where post tender clarification is undertaken this needs to be transparent and auditable. You will need to liaise with your commercial team / legal advisors for further advice.

Quality evaluation

The quality evaluation process must be managed and conducted as detailed in the tender.

If you are undertaking individual scoring by evaluators it is advised that you hold a consensus meeting. This will ensure you have a consensus on scoring following a robust discussion of the bids. This should cover any anomalies and resolution of opposing views.

This will also ensure that the appropriate response guidance and evaluation rationale has been used. Detailed records should be maintained.

Evaluation report

Once the evaluation has been completed and the successful supplier identified, you should create an evaluation report and obtain appropriate approval and sign-off before the award of the contract.

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Contract award

Intention to award

If you include a standstill period (10 calendar days) when you develop your tender you need to issue intention to award letters to all suppliers.

For further advice please speak to your commercial team / legal advisors.

Award letters

After the standstill period expires (if used) or at the time of award, you need to issue letters to all suppliers informing them of the outcome.

You should provide feedback to all suppliers regarding their bids, which as a minimum should include the scores and commentary against the full evaluation criteria supporting the procurement.

Call-off contract

You should populate the call-off schedule 4 (call-off tender) with information taken from the successful supplier(s) tender (further competition) or response to the statement of requirements (direct award). It should include as a minimum:

- lot name
- call-off start date
- call-off end date
- potential extension period
- pricing
- benefits

All parties to the call-off contract should sign the letter of appointment call-off terms and conditions document.

Contracts Finder

When a public contract (in excess of £10,000 for central government departments and £25,000 for wider public sector organisations) is awarded you will need to publish on Contracts Finder, within a reasonable time, the following information as a minimum:

- name of the supplier
- date on which the contract was entered into
- value of the contract
- whether the contractor is a small or medium-sized enterprise (SME) or voluntary, community and social enterprise (VCSE)
- redacted contract documents

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Contract management and exit

It is important that you have a robust contract management process, in line with your requirements, in place. This should be used to ensure that the supplier works to the original brief.

Central government departments should follow the principles of strategic supplier relationship management as issued by the Government Commercial Organisation. Public sector organisations should follow their own contract management process.

Throughout the contract, you need to ensure you are invoiced correctly and that the agreed prices have not been exceeded.

You should also ensure that you have the right resource mix of personnel i.e. you do not have too high or low experience level for the work.

It is important to hold regular contract management meetings to ensure both parties understand their responsibilities and that they are fulfilled in accordance with the contract.

Progress against required delivery should be monitored and any issues should be identified to the appropriate person in a prompt manner.

Once the contract is live, you should schedule the contract management meetings and set a standard meeting agenda. In the meetings, you should discuss the following, as appropriate:

- progress against the contract requirements, including the implementation plan
- adherence to the specification, the service level agreement (the standards of service you have agreed with your supplier) and any key performance indicators (KPIs) to measure the performance acknowledging where the supplier has performed to the required standard
- identifying areas of concern as early as possible and what the supplier will do
- reviewing joint risks and issues logs
- review management information
- benchmarking and continuous improvement
- new service / product developments

You should minute the meetings and include any agreed actions and timescales. The minutes should be circulated promptly after the meeting.

Contract variation

You may need to vary the contract. To do this you will need to follow the variation process, as detailed in the call-off contract. You may wish to speak with your commercial or procurement team for further advice.

Sharing best practice

Please share details of best practice with us so that we can share it with other organisations across the public sector.

Knowledge transfer

Knowledge transfer should be built into any contract to ensure that future reliance on external suppliers is minimised and the building of internal capability is maximised.

Exiting the contract

You should start preparing for the end of the contract in advance of the expiry date. You may need to consider how you will:

- ensure the transfer of any data from the supplier to your organisation
- end any joint arrangements with suppliers
- collect passes from suppliers (if applicable)
- return suppliers equipment (if applicable)
- remove or dispose of any unwanted items

You may wish to consider holding a lessons learned meeting to explore what went well and what didn't, so that learning can be incorporated into future contracts.

If you need to end the contract early, you should follow the exit process detailed in the call-off contract.



Contact us

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If you have any further questions please get in touch:

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