

How to undertake a mini competition under a framework agreement

Version 2 - updated further to the Remedies Directive implemented on 20 December 2009.

Several agreements have been let by APUC (and other consortia/Centres of Expertise) which are multiple supplier frameworks. This means an institution needs to undertake a further or mini competition to call off from the agreement. The process of undertaking a mini-competition may seem complex or daunting. The aim of this guidance is to explain and simplify the process.

What is a mini-competition?

A mini competition is a process you need to carry out to place a call-off contract under a framework agreement where the best value supplier has not been specified. It allows you to further refine your requirement whilst retaining the benefits offered under the collaborative agreement.

Benefits of doing a mini-competition under a framework agreement:

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|-------------------------------------|---|
| Speed | <ul style="list-style-type: none"> ✓ Faster and less onerous than a full tender process ✓ No need for a standstill period ⁽¹⁾ ✓ No need to assess successful suppliers' capacity and capability to provide your requirements using selection criteria such as financial standing, technical capability, staffing, health and safety, environmental aspects, accreditations etc. – work already done by APUC and the User Intelligence Group ✓ By providing an EU compliant platform, there is no need to advertise the requirement |
| Savings | <ul style="list-style-type: none"> ✓ Additional cost savings possible at the mini-competition stage, where pricing is not fixed (or is fixed at a maximum level) |
| Consortia Purchasing | <ul style="list-style-type: none"> ✓ Your mini-competition will still achieve the benefits of consortium purchasing |
| Multiple sourcing | <ul style="list-style-type: none"> ✓ Multiple opportunities for source of supply provide increased choice and competition for institutions |
| Refining your requirement | <ul style="list-style-type: none"> ✓ Your exact requirement can be further refined over and above the basic contract terms. |
| Best value | <ul style="list-style-type: none"> ✓ You can simply focus on achieving best value for money for your specific requirement |
| Terms and Conditions | <ul style="list-style-type: none"> ✓ The terms and conditions of the agreement will have already been established, so call-offs can just be made in reference to the agreement and its conditions |
| Compliance to EU Regulations | <ul style="list-style-type: none"> ✓ By following these guidelines, and any specifics detailed in the commodity Buyers' Guide, you will ensure you are adhering to EU Procurement legislation. |

EU Directives:

When awarding call-offs, the full procedural steps of the EU Directives do not need to be applied. However, the EU Treaty-based principles, including equal treatment, transparency and non-discrimination still apply.

Frameworks do not in themselves create any contractual obligations, whereas a call-off does. In placing a call-off contract with a supplier from a framework, your institution will be making a commitment to purchase the specified goods/services from that supplier.

Effect of the Remedies Directive

The Scottish Government implemented the EU Remedies Directive into The Public Contracts (Scotland) Regulations on 20 December 2009. The new Directive applies to Frameworks commenced on or after 20 December 2009, and any subsequent mini-competitions under that Framework. Key changes include the requirement that bidders must be notified of the outcome of the mini-competition, and that the call-off contract resulting from the mini-competition may, if subject to a legal challenge, result in a financial penalty, curtailment of the contract, or in an ineffectiveness order. For call-offs above the EU threshold, and for which the new Directive applies, you could choose to run a voluntary standstill period which would limit the remedies available if challenged to damages only - ineffectiveness would not apply.

For further details of the implications and changes of this please see the Government note at the following link:

<http://www.scotland.gov.uk/Topics/Government/Procurement/policy/SPPNSSPANS/policy-notes/resppn32010>

You must not run a mini-competition under a framework agreement in order to create your own framework agreement from which you could run mini-competitions for call-offs. However, you may decide to conduct a mini competition to select a single supplier to service all your requirements over a defined period.

Mini-Competition Process

1. Prepare your Invitation To Quote (ITQ)
2. Issue your ITQ
3. Evaluate responses and select supplier
4. Award

1. Preparing your ITQ

Although you cannot change the basic terms or specification set out in a framework agreement (the scope of the agreement cannot substantively change), mini-competitions do allow you to **refine the basic terms** of the framework prior to making a call-off.

For example, areas you can refine include:

- ❖ *Delivery timescales;*
- ❖ *Invoicing/payment arrangements;*
- ❖ *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. Hewlett-Packard printer or BiC Biro pen) ⁽²⁾. 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**'.

It is highly recommended that you use an 'output-based' specification wherever possible, in which you can set out how you wish the goods/services to perform, and what you need to achieve.

For example, if you were issuing an ITQ for a PC, you could state the required memory size, or monitor size of the required item. An ITQ for prospectuses might specify the size (e.g. A4), number of pages, whether the paper is recycled etc.

This enables suppliers to quote for provision of goods/services that meet your minimum requirements and does not unnecessarily eliminate a supplier that cannot supply the exact brand/manufacturer of goods specified. This can also reduce the risk of unnecessarily over-specifying your requirement.

Focus your ITQ on just your actual requirement (i.e. the goods/service you require, delivery timescales etc.) and not selection criteria such as supplier experience, technical capability, location, accreditations etc. – as these have all already been evaluated by APUC and the UIG and attempting to re-evaluate these at mini-competition stage is not permitted.

The evaluation criteria, and weighting applied to each, **must** be notified to the suppliers at this first stage of inviting them to quote. (See point 3 for further details on evaluation criteria.)

2. Issue your ITQ

- i. Issue an ITQ in writing (by email, fax, or post) to the suppliers **capable** of performing the contract.
 - a. Only if it is clear a supplier **cannot** meet your requirement can you choose not to issue the ITQ to them.

For example, in the Office Equipment agreement only 5 of the 7 suppliers offer a no-commitment option, so if you wanted no-commitment you would only have to approach the 5 that could do the job.

- b. Sometimes the framework may be divided into categories or lots, each covering different supplies or services. In this case, you only need to consult suppliers in the lot(s) which cover the goods or services required.

For example, APUC's External Print framework has 2 'lots'; one covering prestigious work and one covering tactical work. If you had a prestigious job to issue an ITQ for, you would only need to issue it to the suppliers on that particular lot, not all the suppliers on the framework.

- ii. Set a reasonable timeframe for responses, that reflects the complexity of the requirement.
 - iii. Maintain confidentiality until after the closing date.

Please note:

You cannot amend the Terms and Conditions agreed under the Framework Agreement.
You cannot issue the ITQ to suppliers that have not been appointed to the Framework.

3. Evaluate responses and select your Supplier

The criteria on which an institution must base an award decision for a mini-competition - either lowest price or MEAT (most economically advantageous tender) - will be detailed in the commodity's Buyers Guide (which will be available on the CuPID website at www.cupid.ac.uk).

- i. Using **lowest price** as the award criteria, you should assess the suppliers:
 1. **first** on their ability to meet your needs such as meeting the specification of goods/services required, quantity, delivery etc.
 2. **and then** on price (i.e. if several suppliers could meet your needs, then the call-off should be awarded to the lowest price quoted. If only one could fulfill the requirement, then this supplier would be awarded the call-off).
- ii. Using **MEAT** as the award criteria, you need to assess the supplier responses for both price and qualitative elements. The criteria that must be used at this stage will be listed in the Buyers Guide.

MEAT Cont.

Note: You cannot use award criteria that was not detailed in the original framework award (and subsequently included in the Buyers Guide). The Buyers Guide will identify whether you must use all the criteria listed, or whether you can select the criteria most relevant to your mini-competition, (and, if so, whether there is a minimum number of criteria you must use). The Buyers Guide will also explain whether you are free to apply your own weightings to the criteria (divide up 100%), or whether these have already been fixed.

You should assess and score each supplier's response. The supplier with the best overall score (thereby offering the most economically advantageous tender) should be awarded the contract.

For example, if the call-off criteria for the Office Equipment framework were delivery period, service and price (with institutions free to apply the weightings) and price was the most critical factor to you, then you might apply your weightings as delivery 20%, service 10% and price 70%.

4. Award

Once the evaluation stage is completed, the call-off contract can be awarded. All bidders should be notified of the outcome of the mini-competition. Remember, you don't need to apply the standstill period to a mini-competition ⁽¹⁾, but you may still need to debrief participants afterwards if requested. Where a debriefing is requested, it should be completed within 15 days of the written request.

If you would like any further clarification on the process, please contact a member of the Collaborative Procurement team at APUC on 0131 442 8930

www.apuc-scot.ac.uk/team.htm or e-mail: cpadmins@apuc-scot.ac.uk

Definitions (general):

Buyers guide - A document produced by APUC (or other contracting authority) which provides an overview of the agreement that has been let and guidance on how institutions can access and use the agreement.

Call-off contract - The call-off contract is the legally binding contract between the institution and the framework supplier which defines the goods/services to be provided.

Framework agreement - A framework agreement can be described as 'a general term for agreements with providers which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement'.

Mini-competition - Further or mini-competition is the term used to describe one of the processes for selecting a supplier on a framework agreement to place a call-off contract with. The terms 'further' and 'mini' are used interchangeably, and within this document, we refer to 'mini-competition'.

Standstill period - A mandatory period applied to the end of a contracting process, prior to contract award.

Thresholds - Financial levels set by the EU which determine the procurement route that should be followed.

Definitions (Remedies Directive specific):

Ineffectiveness order - A remedy that could be applied if found to have awarded a call-off contract in breach of the terms of the Framework.

Voluntary Standstill - A voluntary process an institution may choose to follow for an above EU threshold call-off, and which reduces the remedies available should a legal challenge be brought.

(1) You may choose as a default position to apply a voluntary standstill period to a mini-competition of above EU threshold under a Framework Agreement to which the Remedies Directive applies to reduce the risk of ineffectiveness applying.

(2) You may be in breach of EU regulations if you choose to use a brand name or brand specific description of goods that restricts competition at ITQ stage. You are advised to use a functional (output) specification wherever possible.