

**TERMS AND CONDITIONS FOR THE OPERATION OF FRAMEWORK
AGREEMENT FOR**

DoF – Collaboration – Provision of Agency Workers

THIS AGREEMENT is made on the date set out in the Award Letter (as hereinafter defined)

BETWEEN:

(1) The list of participating bodies identified in the contract notice in the Official Journal of the European Union (hereafter referred to as **the Client**); and

(2) The person, firm or company that enters into this contract with the Client as set out in the Award Letter ("**Contractor**").

BACKGROUND:

- A Central Procurement Directorate (CPD) placed a contract notice in the Official Journal of the European Union to establish a framework agreement for the Provision of Agency Workers for the Client.
- B The Contractor represented to the Client in its Tender that it is capable of delivering the Services in accordance with the Client's requirements as set out in the Invitation to Tender.
- C On the basis of the Tender, the Client selected a number of contractors to enter into a framework agreement to provide the Services to the Client from time to time on a call-off basis in accordance with this Framework Agreement.
- D This Framework Agreement sets out the award and ordering procedure for purchasing the Services which may be required by the Client, the main terms and conditions for any Call-Off Contract which the Client may conclude and the obligations of the Contractor during and after the Term of this Framework Agreement.
- E It is the Parties' intention that there will be no obligation for any Client to place any Orders under this Framework Agreement during the Term, unless otherwise indicated in the Specification Schedule.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Framework Agreement, including its recitals, the following expressions shall have the following meanings:

"Approval" means the prior written consent of the Client and **"Approve"** and **"Approved"** shall be construed accordingly;

“Award Letter” means the letter of award issued by CPD to the Contractor informing the Contractor that they have been appointed to this Framework Agreement;

"Call-Off Contract" means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between the Client and the Contractor comprising a letter of appointment and the Call-Off Terms;

"Call-Off Terms" means the Conditions of Contract (including supplementary Clauses);

"Charges" means the fees, disbursements, charges and expenses payable by the Client under or in connection with a Call-Off Contract from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure and the Ordering Procedures;

"Charging Structure" means the structure to be used in the establishment of the charging model which is applicable to each Call-Off Contract, which structure is set out in the completed pricing schedule with the Contractor's Tender;

“Client” means the definition provided in the Conditions of Contract;

"Commencement Date" means the date set out in the Award Letter;

"Framework Agreement" means the Clauses of this Framework Agreement together with the Framework Schedule

"Framework Price(s)" means the price(s) applicable to the provision of the Services set out in the Charging Structure;

"Framework" means the framework arrangements established by CPD for the provision of the Services to Clients by Contractors;

“Initial Term” has the meaning set out in Clause 2.1;

"Invitation to Tender" or "ITT" means the Invitation to Tender issued by CPD for this Framework;

"Law" means

- (a) any applicable law, statute or bye-law, regulation, order, proclamation or any delegated or subordinate legislation (including, but not limited to (as

- appropriate), any Act/Order of the Northern Ireland Parliament or Act/Order of the Northern Ireland Executive/Assembly or other expression within the meaning of Section 1 of the Interpretation Act (Northern Ireland) 1954);
- (b) any enforceable community right within the meaning of Section 2(1) European communities Act 1972;
 - (c) any applicable regulatory policy, guidance, direction, code of practice, industry code, requirements of any Regulatory Body, notice of any Regulatory Body or determination with which the Authority and/or the Contractor is bound to comply and which are mandatory; and
 - (d) any applicable judgement of a relevant court of law which is a binding precedent in Northern Ireland as appropriate, in each case in force in Northern Ireland;

"Letter of Appointment" means a letter of appointment used by Clients to order Services;

"Material Default" means a material breach by the Contractor of this Framework Agreement;

"Order" means an order for the provision of the Services placed by a Contracting Body with the Contractor in writing and in accordance with the Ordering Procedures;

"Ordered Services" means Services which are the subject of an Order by a Contracting Body;

"Ordering Procedures" means the ordering and award procedures specified in Schedule 1 of this Framework Agreement.

"Party" means the Client or the Contractor and **"Parties"** shall be interpreted accordingly;

"Services" means the services described in Specification Schedule (Services) which the Contractor shall make available to the Client in so far as is required to meet the specific requirements in the Order;

"Service Levels" means the service levels or key performance indicators that may be detailed in Call-Off Contracts;

"Services Requirements" means the requirements of the Client (as appropriate) for the Services from time to time;

"Tender" means the Contractor's response to the Invitation to Tender as

submitted to the Client;

"Term" means, subject to Clause 11 (Termination), the term of this Framework Agreement as determined in accordance with Clause 2 (Term of Framework Agreement);

"VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

"Working Day" means any day other than a Saturday, Sunday or public holiday in Northern Ireland; and

"Year" means a period of 12 months.

2 TERM OF FRAMEWORK AGREEMENT

- 2.1 This Framework Agreement shall take effect on the Commencement Date and shall expire four years from the Commencement Date (the period between the Commencement Date and this date being the "**Initial Term**") unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law.
- 2.2 The provision of Ordered Services under any Call-Off Contract entered into under this Framework Agreement shall commence on the Service Commencement Date set out in the Order on the basis of the Charges and shall expire on the date specified in the Call-Off Contract.

3 SCOPE OF FRAMEWORK AGREEMENT

- 3.1 The Client may, at its absolute discretion and from time to time during the Term, Order Services from the Contractor in accordance with the Ordering Procedures.
- 3.3 The Contractor acknowledges that there is no obligation whatsoever on the Client to invite or select the Contractor to provide any Services and/or to purchase any Services under this Framework Agreement.
- 3.4 No undertaking or any form of statement, promise, representation or obligation shall be made or deemed to have been made by the Client in respect of the total quantities or values of the Services to be ordered by them pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

4 CONTRACTOR'S APPOINTMENT

- 4.1 The Client hereby appoints the Contractor as a potential provider of, and the Contractor shall be eligible to be considered for the award of Orders for, the Services by the Client during the Term.
- 4.2 Where the Contractor is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the Contractor's obligations under this Framework Agreement.

5 NON-EXCLUSIVITY

The Contractor acknowledges that in entering into this Framework Agreement no form of exclusivity has been conferred on, or volume guarantee granted by the Client in relation to the provision of the Services by the Contractor and that the Client is at all times entitled to enter into other contracts and agreements with other Contractors for the provision of any or all services which are the same as or similar to the Services.

6 ORDERING PROCEDURES

6.1 The Ordering Procedures are outlined in Schedule 1 of this Framework Agreement.

6.2 Subject to Clause 6.3, the Client shall be permitted to place an Order for the Services in accordance with the Ordering Procedures, at any time during the Term.

6.3 If the Contractor receives an Order for Services which are not in accordance with the Ordering Procedures the Contractor must:

(a) promptly notify CPD in writing; and

(b) receive prior written approval from CPD to proceed before conducting any work, providing any Services or incurring costs.

For the avoidance of doubt, any individual commissions awarded by an Order under this Framework Agreement will be subject to the Call-Off Conditions of Contract and Supplementary Clauses as between the Client and the Contractor. The Client, nor CPD, shall have any liability whatsoever in respect of any Orders placed outside the Ordering procedures between the Contractor and any Contracting Body.

7 PROVISION OF MANAGEMENT INFORMATION

7.1 The Contractor shall, at no charge to the Client, submit upon the Client's request complete and accurate information from time to time (being no more than monthly) regarding this framework agreement. The information which may be requested but not limited to is provided in the specification.

8 PREVENTION OF CORRUPTION AND BRIBERY

- 8.1 The provisions of Clauses 52 (Prevention of Corruption) and 33 (Bribery Act 2010) of the Call-Off Contract shall apply to this Framework Agreement.

9 CONFIDENTIALITY

- 9.1 The provisions of Clause 34 (Confidentiality) of the Call-Off Contract shall apply to this Framework Agreement.

10 FREEDOM OF INFORMATION, DATA PROTECTION & DISPUTE RESOLUTION

- 10.1 The provisions of Clauses 32 (Data Protection), 36 (Freedom of Information) and 49 (Dispute Resolution) of the Call-Off Contract shall apply to this Framework Agreement.

11 TERMINATION

- 11.1 The Client may immediately terminate this Framework Agreement by notice in writing:
- 11.1.1 if anyone takes action against the Contractor which may lead to the Contractor being made bankrupt or insolvent or if the Contractor makes, or proposes to make, any arrangement with creditors; and/or
 - 11.1.2 if the Contractor has breached this Framework Agreement in any material way, and has not remedied the breach (if capable of remedy) to the satisfaction of the Client within 7 Working Days (or such other period as may be specified by the Client as being reasonable in all the circumstances) of a written notice specifying the breach;
- 11.2 Termination or expiry of this Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the terms of the Call-Off Contracts.
- 11.3 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

12 LIABILITY

- 12.1 The Contractor will indemnify the Client against any claims, losses, damages, costs or expenses whatsoever arising out of or in respect of or in connection with the Framework Agreement (but excluding any liability arising out of any Call-Off Contract which shall be subject to the liability provisions as set out in the Call-Off Contract) including in respect of any death or personal injury or loss of or damage to property or any other loss caused directly or indirectly by any negligent act or omission of the Contractor. This indemnity shall not apply to the extent that any injury, loss, damage, cost or expense is caused by the negligence or wilful misconduct of the Client.
- 12.2 The Contractor will indemnify the Client for any losses or liabilities the Client may incur (including legal expenses) as a result of any other person making a claim that the Services or any part of the Services breaches any intellectual property rights such as patents or copyrights which that person is entitled to.

13 TRANSFER AND SUB-CONTRACTING

- 13.1 This Framework Agreement is personal to the Contractor and the Contractor shall not Sub-Contract, assign, novate or otherwise dispose of or create any trust in relation to any or all rights and obligations under this Framework Agreement or any part thereof without Approval.

14 LAW AND JURISDICTION

- 14.1 This Framework Agreement and/or any non-contractual obligations or matters arising out of or in connection with it, shall be governed by and construed in accordance with the Laws of Northern Ireland and each Party agrees to submit to the exclusive jurisdiction of the courts of Northern Ireland.

BY ACCEPTING THE CONTRACT AWARD THROUGH THE ETENDERSNI PORTAL THE CONTRACTOR AGREES to comply with all the terms of this legally binding Framework Agreement (including Schedules).

FRAMEWORK AGREEMENT SCHEDULE 1

ORDERING PROCEDURES

FRAMEWORK AGREEMENT CALL – OFF PROCEDURES

1. Framework Information

- 1.1 This Framework Agreement shall be used to provide Agency Workers for Clients. The Client may modify the Framework Agreement or Contracts where the specific services fall under the scope of Agency Workers and the modification would not alter the overall nature of the Framework Agreement or Contracts. Any modification would be subject to a value for money consideration and the Public Contract Regulations 2015 (as amended).
- 1.2 Only those bodies listed in <https://www.finance-ni.gov.uk/publications/list-public-bodies-which-can-participate-cpd-collaborative-frameworks> (or their successor bodies) may place an order under this Framework Agreement.
- 1.3 The Framework Agreement is divided into 11 Lots. Following evaluation of the Framework Agreement the three highest scoring tenderers will be appointed to each Lot.
- 1.4 All participating bodies may decide to procure outside the Framework where the Framework Agreement does not represent VFM.
- 1.5 Subject to the requirements for parity of pay under the Agency Workers Regulations (Northern Ireland) 2011 (AWRs), prices for the Framework Agreement must be fixed for the first three years. Consideration of any price adjustment in the fourth year of the Framework Agreement will be strictly in line with the Consumer Price Index (CPI). Rates for the Framework agreement will become the rates for any subsequent call-off contracts/orders.

2. Nominated Representatives

- 2.1 Each participating organisation will provide nominated named representatives who will be the operational point of contact for the Contractor on a day to day basis.
- 2.2 Contact details of the nominated representatives will be provided to the Contractor prior to Commencement of the Services.
- 2.3 CPD will notify the Contractor of any changes to the nominated representatives as and when required.
- 2.4 Call- Off contracts / orders from the Framework Agreement may be ordered in two ways:
 - 1 – Place an order to the highest ranked tenderer; and
 - 2 – Secondary competition between the three highest ranked tenderers.

3. Placing Orders

- 3.1 Orders will be placed using an Order Form.
- 3.2 Contractors must only accept Order Forms for agency workers from the nominated representatives.
- 3.3 Departmental HR (DHR) or the equivalent body within each organisation is responsible for requesting agency workers or accepting agency trainees under this framework. Only the nominated representatives can make a request to a Contractor for an agency worker. If a Contractor accepts work from an unauthorised representative, the Contractor may not be paid under the terms of this framework agreement.
- 3.4 Where a requirement for agency workers has been identified, the Client will provide the 1st ranked Contractor for the relevant Lot with an Order Form. Should the 1st ranked Contractor fail to provide the agency worker within the agreed timescales, the Client will submit the order form to the 2nd ranked Contractor, and so on with the 3rd ranked Contractor. The submission of the Order Form will constitute a contract offer. When the Contractor fulfils the Order this will constitute acceptance of the contract.

- 3.5 The Contractor will have 24 hours to select the agency worker and provide the Client with their C.V. The contractor must make best endeavours to facilitate the Client's urgent requirements and provide the agency worker as soon as possible. The agency worker must be made available to commence work within 3 working days of the initial request. The Client acknowledges that the security clearance process may delay the engagement of an agency worker.
- 3.6 The Client acknowledges that in exceptional circumstances and due to the specialist nature of some of the job roles the Contractor may require a longer period of time to provide the agency worker. Under these circumstances the Contractor must agree with the Client, in writing, a time frame for sourcing the agency worker. This time frame should not exceed 10 working days. If the Client requires the agency worker urgently and an extension is not agreed, the Contractor must comply with the timescales in 3.5.
- 3.7 **Note:** An extension to the timescales stated in 3.5 will only be in exceptional circumstances and only in specific Lots. It is not expected that the exceptions in 3.6 will apply to the Administrative Assistant and Administrative Officer in Lot 1.

4. SECONDARY COMPETITION PROCEDURES

- 4.1 CPD will carry out a secondary competition when a Participating Body listed in <https://www.finance-ni.gov.uk/publications/list-public-bodies-which-can-participate-cpd-collaborative-frameworks> requests to add an additional job role(s) to the Framework Agreement.
- 4.2 CPD will provide a job specification for the job role(s) to all ranked Contractors for the lot which the job role(s) falls under.
- 4.3 Secondary competitions will be published and returned via e-TendersNI, and tenders will not be opened until the stipulated time limit for reply has expired.

4.4 The Contractors will complete the pricing schedule. Tenders will be evaluated as detailed below:

Quantitative Criteria 70%	
	Percentage Weight
Tendered Price	70%

4.7 A price score for each job role will be calculated using the following formula will be used to calculate the price score.

1. Lowest price tendered will be awarded the maximum score available of 70%.
2. To calculate the score for the remaining price, the following formula will be applied. The lowest tendered price divided by the tenderers price multiplied by 70.

4.8 CPD will add the price score to the score each Contractor received in their qualitative assessment from their original tender, to get a total score out of 100.

4.9 CPD will compile a rank list for each job role based on the total score out of 100.

4.10 CPD will inform Contractors of the result of the secondary competition prior to the job role(s) being added to the Framework.

4.11 The ordering process as detailed in section 3 will apply when selecting any of these additional job roles in the ranked order.

4.12 Contractors will not be compelled to respond to secondary competitions or submit prices for additional roles.

FRAMEWORK AGREEMENT SCHEDULE 2

FRAMEWORK MANAGEMENT AND MONITORING

1. Framework Management

- 1.1 The successful Contractor's performance on this Framework will be managed as per specification and regularly monitored see [Procurement Guidance Note 01/12 - Contract Management - Procedures and Principles](#).
- 1.2 Contractors not delivering on Contract requirements is a serious matter. It means the public purse is not getting what it is paying for. If a Contractor fails to reach satisfactory levels of contract performance they will be given a specified time to improve. If, after the specified time, they still fail to reach satisfactory levels of contract performance, the matter will be escalated to the Client's senior management for further action. If this occurs and their performance still does not improve to satisfactory levels within the specified period, it may be regarded as an act of grave professional misconduct and they may be issued with a Certificate of Unsatisfactory Performance and this Contract may be terminated.
- 1.3 The issue of a Certificate of Unsatisfactory Performance will result in the contractor being excluded from all procurement competitions being undertaken by Centres of Procurement Expertise on behalf of bodies covered by the Northern Ireland Procurement Policy for a period of twelve months from the date of issue of the certificate.

Performance Management

- 2.1 Performance monitoring is key to ensure that value for money is achieved. Poor performance will be managed at each business area through the contract monitoring.

- 2.2 The Client's business area / location representative will be responsible for day-to-day management and supervision of services.
- 2.3 The Client will work in partnership with the Contractor to monitor and improve service delivery.

2. Framework review meeting with the Contract Manager of CPD

- 3.1 CPD will facilitate and attend a six monthly category review meeting with the Contractor to review the performance of the Framework across the previous six months.
- 3.2 The objective of the meetings will be to monitor the performance standard detailed in the "Scale of Satisfaction" box on the CM01 – Supplier Assessment Form (Annex A), completed by each Client at contract review and to take any corrective action by:
- Providing a channel of communication between the Client and Contractor.
 - Monitoring the standards of service to ensure compliance with contract requirements.
 - Keeping records of periodic inspections using the process of formalised visual inspections and statistical control.
- 3.3 Poor performance by the Contractor will be dealt with by the procedures set out in the Conditions of Contract and follow the escalation procedures in section 5.

4. Management Information

- 4.1 The most current up to date management information shall be supplied by the Contractor to CPD at least 5 working days before any CPD Framework review meeting. The MI must be capable of being submitted in format as requested and agreed by CPD and be of no additional charge to the CPD or the Client.
- 4.2 The Contractor must provide the management information by completing the template at Annex B of Schedule 1 Specification.

- 4.3 Each Client may require individual operational meetings with the Contractor as and when requested.
- 4.4 Should CPD request further statistical and performance reports, additional or enhanced management information during the life of the Contract, the Contractor(s) shall provide the information within the stated deadline for each request, at no additional cost.

5 Escalation Procedures

- 5.1 In the event that complaints cannot be resolved between the Client's Representative and the Contractor, the Client's Representative will escalate this to a senior member of staff. At the Client's Representative request, the Contractor shall also escalate this within their organisation and agree to meet with the Client's Representative to discuss complaint resolution. If the issue remains unresolved the Client's Representative shall contact CPD who will review the complaint and advise how the matter is progressed.

Annex A

Supplier Assessment Form



Supplier Assessment
Form.DOCX