



Llywodraeth Cymru
Welsh Government

Framework Agreements

Procurement Advice Note (PAN) for the Welsh Public Sector

July 2017

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1. Introduction

Points to Note - please ensure you read this section first

- *The information set out in this Procurement Advice Note is not legal advice and is not intended to be exhaustive – contracting authorities should seek their own independent advice as appropriate. Please also note that the law is subject to constant change and advice should be sought in individual cases. This document is correct as at July 2017.*

What is the aim of this Procurement Advice Note?

This Procurement Advice Note (PAN) has been updated in line with the Public Contracts Regulations 2015 (PCR 2015) following its original issue by Welsh Government (a division of the Welsh Government) in 2012. The rules on framework agreements in the PCR 2015 have not changed substantially – the key changes are clarification of the rules on identifying the users of framework agreements and more flexibility when setting up and calling off multi-supplier framework agreements (Regulation 33).

The aim of the PAN is to encourage a consistent approach to framework agreements for goods, works and services within Welsh Government and across the public sector in Wales – especially those which are collaborative in nature as they tend to be more complex - and to ensure they are set up and used effectively and correctly, in line with the Wales Procurement Policy Statement (WPPS - covered later in this section) whilst utilising Welsh Government procurement policy guidance and tools. This PAN is designed to meet the needs of all levels of procurement staff with varying knowledge of procurement. Users can either work their way through it step by step or if specific guidance is needed in a certain area, go straight to that section or to the Frequently Asked Questions (FAQ) at the back of the document.

2. Setting the Scene – Public Procurement in Wales

Public procurement in Wales is underpinned by the Wales Procurement Policy Statement (WPPS) which contains ten principles against which the Welsh Government expects public procurement to be undertaken. The WPPS can be accessed via the link below:-

<http://gov.wales/topics/improvingservices/better/vfm/publications/procurement-policy-statement/?lang=en>

In recent years, there has been a move towards greater collaboration in the public sector – both in Wales, the UK and across Europe - with a view to aggregating requirements to remove duplication and achieve better value for money. Through the WPPS, Welsh Government procurement policies seek to balance that with the need to open up opportunities for smaller firms and third sector suppliers and strengthen the economy in Wales.

Working together collaboratively is included in the WPPS at Principle 7 which states

“Collaboration – areas of common expenditure should be addressed collectively using standardised approaches and specifications managed by the National Procurement Service (NPS) to reduce duplication, to get the best response from the market, to embed the principles of this Policy Statement for the benefit of Wales; and to share resources and expertise.”

This principle goes on to outline what is required of the Welsh public sector as follows:-

- *Participate in the National Procurement Service for the benefit of Wales and their individual organisation*
- *Consider opportunities for further collaborative procurement initiatives*
- *Monitor and report on engagement with NPS and other collaborative initiatives*

...and also what Welsh Government will do:-

- *Deliver collaborative contracts and frameworks through National Procurement Service to the value of £2.2bn over the next 2 years*
- *Support collaboration and the wider shared services agenda*

It is likely that all the principles in the WPPS will apply at some point during the process of letting a framework agreement including consideration of the economic, social and environmental impacts (Principle 3), considering Community Benefits (Principle 4), ensuring open and accessible competition (Principle 5) and standard and simplified processes (Principle 6).

This PAN will help you through the process, ensuring that an effective framework is let, reflecting WPPS principles and benefitting buyers and suppliers through supporting the economy, jobs and growth in Wales.

National Procurement Service

The National Procurement Service (NPS) was established in 2013 and is responsible for setting up collaborative contracts for commonly bought goods and services in the Welsh public sector. The NPS adopts the principles of the WPPS into all its frameworks whilst identifying supply chain opportunities where possible.

More information on the NPS, the current frameworks and pipeline of work can be accessed via the following link:-

<http://nps.gov.wales/?skip=1&lang=en>

3. Types of Agreement

The main difference between contracts and framework agreements is the level of commitment required by both parties.

The agreements used most widely by the public sector tend to be contracts and framework agreements. In law, a contract and a framework agreement are two very different things, the main difference being the 'commitment' required by both parties ie the guarantee of quantities / volumes. These are looked at in more detail below.

Contracts

A contract (in this context) is an agreement between a “contracting authority” (a public body) and a supplier under which the supplier is required to supply goods, works or services in return for ‘consideration’ (normally a sum of money although it can be in other forms). This arrangement amounts to a mutual agreement between the contracting authority and the supplier where the former agrees to pay for the goods, services or works as specified in the contract which the supplier agrees to provide.

Framework Agreements

Regulation 33 of the PCR 2015 defines a framework agreement as:

“An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.”

A framework agreement, on the other hand, merely sets out the terms of an agreement under which a public body may purchase goods, services or works, usually without there being any commitment to using the agreement. There is no up-front consideration; instead a contract is formed each time the contracting authority “calls-off” from the framework and purchases goods, services or works.

The expiry date of the framework agreement is specified up front and the maximum length of a framework agreement under the PCR 2015 is 4 years, unless there are exceptional reasons for an extension. The mere existence of the framework agreement does not commit potential purchasers to any purchases however contracting authorities which have signed up as users of a framework agreement are expected to utilise it . Frameworks are often used for goods, works or services which are needed by a number of contracting authorities where the intention is that the greater volumes lead to better prices and terms. They are also used where contracting authorities identify a need to make repeated purchases over a period of time but cannot specify exactly the quantities which they will need or precisely when the need will arise.

Framework Agreements and the Public Contracts Directive

The European Union (EU) Public Contracts Directive 2014/24/EU ('the Directive') which governs public sector procurement law across the EU, includes a provision on framework agreements under Article 33. The PCR 2015 implements this Directive in England, Wales and Northern Ireland and came into force on 26 February 2015.

Approved Lists of Suppliers

The use of 'approved lists' is not recommended. These arrangements often have not been through any competitive process so it cannot be established if value for money has been achieved. In addition, once approved lists are established, they sometimes offer little or no opportunity for new suppliers to join for long periods of time and the process can be unfair and lack transparency.

4. Early Considerations

Before everything else, getting ready is the secret of success (Henry Ford)

Before deciding to set up a framework agreement, there are early considerations that contracting authorities should think about and which should assist with the decision on whether a framework agreement is the best course of action or not.

A carefully planned framework agreement that is used well can bring many benefits and save time/money through users being able to call-off requirements. Conversely, a poorly planned framework that is used incorrectly can create issues for buyers and suppliers and is at risk of challenge.

Does a framework agreement suit your procurement?

Framework agreements do not suit all procurements and sometimes an alternative arrangement is more suitable, such as an ordinary contract or a Dynamic Purchasing System (DPS) which allows the involvement of more suppliers. The contracting authority will need to make a value for money judgement on whether a framework agreement – and in some cases a collaborative framework agreement involving other contracting authorities – is indeed the most appropriate solution.

Frameworks generally work well when buying standard goods, services and works and where better prices or other value for money benefits can be achieved through aggregating volume. However, for certain areas such as professional services, social care or construction, the ability of the provider / contractor to tailor its specific services to what the end user / client really needs is key.

In social care, for example, markets are often geographically bound with local services being critical, new requirements may be needed at short notice and it may be important to expand capacity rather than restricting market entry during the period of a contract. Whilst frameworks can operate successfully in these areas, thought should be given to mitigating the risks and a DPS may well provide more flexibility and choice of service providers to meet

citizens' needs.

In addition, the effects that a large framework agreement can have on the market should also be borne in mind. Small firms, third sector suppliers and supported businesses (referred to in the PCR 2015 as “sheltered workshops”) play an important role in delivering public services in Wales and contribute to boosting the Welsh economy. Public contracts should be open and accessible to ensure such firms are able to bid - as well as to encourage joint and consortia bids - and sometimes frameworks are too large and can be out of reach. There are ways around this such as splitting the framework into lots and building in Community Benefits t, which will be covered later.

Changes to Services

It is worth noting the changes to services under the PCR 2015. The former distinction between Part A and Part B services has been abolished and new rules known as the ‘light touch regime’ have been introduced for social and other specific services which tend to be of lower interest to cross-border competition (see Regulations 74 to 77 and Schedule 3 to the PCR 2015).

The list of services covered under the light touch regime is defined using Common Procurement Vocabulary (CPV) codes. The “other specific” services referred to include health, social and related services, legal, hotel and restaurant, postal services, security services, benefits, certain manpower and agency staff services. The full list can be found at Schedule 3 to the PCR 2015 via the link below:-

<http://www.legislation.gov.uk/uksi/2015/102/schedule/3/made>

The light touch regime offers significant flexibilities for contracting authorities to organise service provision in the way that best meets their needs. This will be of great benefit in social services provision particularly and will help support strategic commissioning. The importance of cultural context and sensitivity in this area has been recognised by the Commission and the light touch regime provides more focus and flexibility on meeting end users needs, which will help strengthen the quality of service provision.

The PCR 2015 provide details of procedures which must be observed for these services, including placing contract adverts and award notices in OJEU (Regulation 75, PCR 2015), compliance with Treaty principles of transparency and equal treatment and ensuring time limits are reasonable (Regulation 76, PCR 2015).

More information on the light touch regime can be accessed at:-

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469057/LTR_guidance_v28_updated_October_2015_to_publish_1.pdf

Buyer / Supplier Considerations

There are certain considerations on the demand / buyer side and the supply side which should help facilitate the decision on whether a framework agreement is appropriate for the procurement in question – these are outlined below.

DEMAND / BUY SIDE	SUPPLY SIDE
Strategy and Baseline	
Check the framework agreement you are considering is consistent with your contracting authority's procurement strategy	Would it be better to run a Dynamic Purchasing System (DPS) rather than a framework as it's more open and flexible?
If considering a collaborative framework, check your authority is legally able to award frameworks for use by other public bodies.	Can Business Wales help identify suitable suppliers and support collaboration on the supply side such as joint bidding?
Is there a degree of certainty about funding and also the programme of work (or goods and services) the framework is expected to deliver against?	It is time-consuming and costly for suppliers to both review tender documents to decide whether to bid AND in putting their bid together, if they decide to do so. Provide as much information and certainty as possible about the requirement.
Could the framework be reserved for supported business or firms with a social mission?	Consider the market – are there enough supported businesses and social firms out there to satisfy requirements?
Are there existing frameworks which are compatible with the WPPS principles that could be utilised eg National Procurement Service (NPS) or sectoral frameworks?	Are there suitable suppliers out there – check those registered on Sell2Wales and in the Directory of Welsh Businesses.
Scope	
Can data on users / spend / demand be easily identified? Can specifications / requirements be standardised / streamlined or are they just too diverse?	How much scope is there in the market for achieving economies of scale? Are you dealing with a local, national or international market?
What is the nature of the procurement - does it lend itself to being split into lots? Would a single or multi-supplier framework be best?	What does the market look like and how competitive is it? Might a framework exclude a range of suppliers?
TIMESCALES AND DURATION	
Is there sufficient time to carry out the appropriate scoping and feasibility study that a collaborative framework requires?	Is the market / technology changing rapidly? How volatile are prices - might a shorter contract deliver better value for money?
Is four years (the maximum length for	Is investment needed by suppliers for this

frameworks) long enough for suppliers to make a return on investment? If not then give consideration to a longer term contract	requirement? If so, what contract length would allow them to make a return on that investment?
MANAGEMENT AND RESOURCES	
Might the greater complexity / time involved in letting and managing a framework negate the benefits gained?	What is the capacity in the market for frequent procurement exercises? Are suppliers familiar with frameworks?
Are there sufficient resources to ensure a dedicated framework manager and effective contract management?	Will the supplier be able to offer a dedicated account / framework manager and the appropriate escalation procedures?

Some of these aspects are explored in more detail below.

Procurement Strategy

It is recommended that all contracting authorities in Wales have an overall procurement strategy in place, setting out how their procurement is organised in order to implement their policies and goals. It ought to reflect any relevant Welsh Government procurement policies, such as the Wales Procurement Policy Statement, which underpins public procurement in Wales.

The procurement strategy will need to be borne in mind when considering setting up a framework agreement to ensure that any procurement activity is conducted in accordance with the strategy and will reflect its policy objectives and commitments.

Dynamic Purchasing Systems

As an alternative to letting a framework agreement, consideration could be given to running a Dynamic Purchasing System (DPS). A DPS is a procedure available for contracts for commonly used goods, works and services generally available on the market. It is similar to a framework agreement in many respects but one important difference is that it does not lock out suppliers and new suppliers can join at any time, provided they meet the selection criteria. A DPS may suit social care contracts better than a framework as more flexibility would derive from a potentially wider range of providers to meet citizens' needs.

Contracting authorities, including central purchasing bodies, may set up a DPS. The DPS should be set up for identified types of requirement, which may be divided into categories of products, works or services.

A DPS has its own set of rules, set out in Regulation 34 of the PCR 2015. It must be run as a completely electronic process and should be set up using the restricted procedure.

More information on DPS can be accessed via the following link to Crown Commercial Services (CCS) Guidance:-

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417942/Guidance_on_Dynamic_Purchasing_System.pdf

Reserved contracts

During the planning stage, contracting authorities should consider if the framework agreement is suitable for being 'reserved' for supported businesses or firms with a social mission. Such third sector suppliers play an important role in providing public services in Wales and it is therefore a requirement under the Wales Procurement Policy Statement that this is considered.

The PCR 2015 include new opportunities for reserving contracts under Regulations 20 and 77, to help further social and community objectives.

- Regulation 20 allows contracting authorities to reserve the right to participate in procurement procedures to supported businesses and suppliers whose main aim is the social and professional integration of disabled and/or disadvantaged persons, provided that at least 30% of the employees of the workshop are disabled or disadvantaged. If this option is used then the contract notice will need to make reference to Article 20 of the Public Contracts Directive.
- In addition, Regulation 77 allows contracting authorities to reserve contracts for certain health, social and cultural services to organisations based on employee ownership or active employee participation in their governance. If this option is utilised, then the call for competition will need to make that clear.

An organisation must meet certain criteria to qualify for Regulation 77, including:-

- Its objective is the pursuit of a public service mission linked to the delivery of services covered by the CPV codes;
- profits are reinvested with a view to achieving the organisation's objective, and any distribution of profits is based on participatory considerations;
- Ownership of the organisation is based on employee ownership/participatory principles or requires the active participation of employees, service users or stakeholders; and
- The organisation has not had a contract for the services concerned reserved to it by this contracting authority in the previous three years.

More information on reserved contracts can be accessed from the Procurement Route Planner <http://prp.gov.wales/toolkit/?lang=en>

Who can set up collaborative framework agreements?

Contracting authorities can set up and advertise framework agreements on behalf of other contracting authorities. This is particularly common in the case of contracting authorities that act as Central Purchasing Bodies (see below).

Before leading on a collaborative framework which will be open to other public sector bodies,

the contracting authority should satisfy itself that it has the powers laid down by law to do so and should seek advice from its Legal Department.

Central Purchasing Bodies (CPBs)

Contracting authorities can purchase goods, works and services through Central Purchasing Bodies (CPBs), defined in Regulation 2 of the PCR 2015 as:-

“a contracting authority which provides centralised purchasing activities and which may also provide ancillary purchasing activities.”

CPBs may act as a ‘wholesaler’ supplying an authority on the basis of contracts it has itself awarded and / or provide contracting authorities with access to framework deals or Dynamic Purchasing Systems it has established.

Where a CPB has awarded a framework agreement in line with the PCR 2015, other contracting authorities may use the framework as required so long as they have been identified in the call for competition or invitation to confirm interest. The identities of all the contracting authorities entitled to call-off under the terms of the framework agreement must be included in the procurement documentation. The contracting authority using the framework agreement is responsible for awarding call-off agreements in a way which complies with the terms of that agreement.

It should be noted that all procurement procedures conducted by a CPB must be performed using electronic means of communication.

Utilising Existing Framework Agreements

Before establishing your own framework, early consideration should be given to any other framework agreements which are in the process of being set up and in which you could ask to be listed as a user. Alternatively, there may be other framework agreements in existence that your contracting authority may be able to legitimately utilise (if listed as a user). If the requirement is for commonly bought goods, services or works, it is possible the National Procurement Service (NPS) will already have a framework agreement in place which is open for use by those contracting authorities that are signed up. The NPS website provides details of its framework agreements and pipeline of contracts <http://nps.gov.wales/?skip=1&lang=en>

If the NPS does not have a framework agreement in place for the goods/services you wish to buy, you could contact them to see if it’s something they are planning for the future or would consider if there is sufficient demand. You could also:-

- Speak to colleagues in other authorities to see if they are planning similar procurements;
- Check with the consortium or procurement group representing your sector to find out what existing sectoral agreements are in place; and
- Check with Crown Commercial Services (CCS) to see if they have anything suitable you could utilise.

Where existing framework agreements are identified, the contracting authority should speak

to the lead authority / organisation for that framework agreement to ensure that they are able to lawfully use it to mitigate the risk of using a non-compliant framework agreement. Some of the key things to consider would include establishing that:-

- (i) It is definitely a framework agreement;
- (ii) It has been awarded by a contracting authority as defined in the PCR 2015;
- (iii) It identifies the framework agreement as set up on behalf of (itself and / or) other contracting authorities;
- (iv) It clearly identifies the potential users of the framework and covers the appropriate sectors, regions and scope of goods / services required; and
- (v) The total value of call-offs that have gone through the framework to date has not exceeded the estimated value of the framework agreement.

Comparing Existing Agreements

There may be a number of framework agreements already in existence that a contracting authority is legitimately able to utilise (if for example, it is listed as a user in more than one agreement). Whilst it is prudent to consider all available frameworks to identify the best one to meet requirements, you should not directly compare offers from more than one framework agreement (i.e. by conducting mini-competitions under two separate frameworks then comparing the best offer from each one select a supplier).

This is due to the fact that mini-competitions are carried out against the terms established in the original framework and any bid comparison between two different frameworks is unlikely to be on a like for like basis as different evaluation criteria will be used. This practice is highly unlikely to accord with the EU Treaty principles of transparency, non-discrimination and equal treatment and is therefore not recommended.

The Requirements and Scope of the Agreement

A truly collaborative agreement should take into account the end-user requirements of the contracting authorities to which it will be open. The likelihood is that these will differ greatly from one contracting authority to another and maybe even more so in the case of cross-sector agreements and it can be a time-consuming task to review these and make sense of them.

Ideally, products / services should be streamlined and standardised wherever possible to remove duplication, aggregate demand and improve pricing whilst meeting the needs of the end users. Setting up a project group is advisable to assist with this, consisting of stakeholders and end users.

It is important that the full scope of the agreement and exactly what is to be included is well thought out in the beginning. Once the framework is awarded, no substantial modifications may be made to its terms (Regulation 33(6) PCR 2015). It would be unlawful to extend the scope of the agreement to include fundamentally new products or services that were not originally advertised.

Assessing the Potential Users and Value of a Framework Agreement

When letting a framework agreement, the necessary preparatory work needs to be carried out upfront to establish the demand, the likely value, the likely users and their requirements (especially so with complex collaborative frameworks)

Under the PCR 2015, for a contracting authority to participate in a framework agreement let by another contracting authority, they need to have been clearly identified in the call for competition ie contract notice or invitation to confirm interest (Regulation 33(5) PCR 2015). The Commission has made it clear that the contract notice is the primary transparency mechanism and as such, vague terms such as “any contracting authority” or “all public bodies in Wales” lack transparency and are not acceptable

The key objective is for suppliers from any Member State to easily be able to identify who the users of the framework may be. The identification ought to be either by name or by other means that makes them clearly identifiable. Where possible a link to a list of relevant contracting authorities should be provided. However, potential framework users may be identified by reference to a specific class of contracting authorities in a defined region that can be identified on the internet e.g. contracting authorities signed up to the National Procurement Service as listed at <http://nps.gov.wales/about-us/customer-member-organisations?lang=en>

If a contracting authority is leading on a collaborative framework agreement with a view to it being open for use to other contracting authorities, the necessary preparatory work needs to be carried out to reduce the risk of challenge. An in-depth scoping and feasibility study should be undertaken to assess demand, secure commitment from those contracting authorities wishing to use the agreement and establish what their potential spend is.

When assessing the total value of the framework, it is important that the estimate includes all the potential call-offs over the lifetime of the agreement that may be made by all contracting authorities that are permitted to use the framework, not just the intended call-offs by the contracting authority which is leading on the framework agreement. Estimated volumes and values of business based on responses to the scoping and feasibility study should then be included in the tender documentation, along with the list of committed participating contracting authorities.

All reasonable efforts should be made to provide as much information as possible upfront for suppliers - openness, transparency, equal treatment and proportionality are key. Spend through the framework agreement should be monitored during its duration and the value should not exceed that which is indicated in the contract notice or invitation to tender (ITT).

Please see the section on ‘Advertising the Framework’ for advice on what to include in the contract notice in relation to value and users.

Single or multiple Supplier Frameworks

The decision as to which type of agreement to establish rests with the contracting authority and will depend on what goods / services are being bought and the nature of the market.

The decision on whether to award a single or multi supplier framework needs to be considered early on in the process, before the ITT is issued and the way the contracting authority intends the framework agreement to operate should be made clear in the tender..

Some of the potential benefits and drawbacks of single versus multi-supplier frameworks are shown below.

Single Supplier Frameworks

A single supplier framework, as the name suggests, is an agreement with one supplier for the provision of certain goods, works and/or services. Call-off contracts will be awarded within the limits based on the terms and conditions laid down in the framework agreement.

Single supplier frameworks tend to suit straightforward, generic goods such as stationery, paper and computer consumables, where there is an element of standardisation and it is relatively simple to establish exact pricing and terms up front.

Advantages	Disadvantages
More scope to standardise specifications and requirements	Could be a perception by end-users of lack of choice
Less contract management – only one supplier to focus on per product area and more potential to build supplier relationships	Potential over-reliance on one supplier and inability to spread risk across suppliers, could distort the market
No need to run mini-competitions which can often be time-consuming and resource intensive	Lack of mini-competitions will mean no degree of on-going competition to test market prices

Multi-Supplier Frameworks

A multi-supplier framework is a framework agreement that is awarded to more than one supplier for the supply of certain goods, works or services. These can be useful for more complex service contracts such as social care, construction, consultancy and training, where it is more difficult to establish exact pricing and user requirements will vary.

Advantages	Disadvantages
More choice for end-users in terms of meeting their requirements	Potential ambiguity amongst end-users about which supplier to use and a risk some suppliers will receive no business
Ability to spread the risk and minimise service disruption – if one supplier fails, one of the other suppliers can be utilised	Contract management of several suppliers can be onerous and it's more difficult to monitor and measure quality of goods and/or services
Mini-competitions can be run between suppliers to ensure value for money	Mini-competitions can be a time consuming and resource-intensive process

5. Setting up an effective framework – things to consider

The more transparency and clarity there is at this stage, the less risk there is of potential legal challenge

Once it has been decided that a framework agreement will be established, and there is a degree of certainty on funding and the programme of work / goods / services that will be provided via the framework, the necessary time should be dedicated to following best practice in planning the procurement process to ensure an effective framework agreement.

There are often many elements to consider in the planning phase, especially when running a collaborative framework agreement that involves other contracting authorities in Wales. Effective planning and keen foresight during the early stages are key to getting it right and ensuring its future success.

The Remedies Directive, which came into force, via UK Regulations, in December 2009 allows easier recourse for suppliers to raise a challenge and the consequences of a flawed procurement exercise are more serious than was previously the case. In addition, the Supplier Feedback Service (SFS) operated by the Welsh Government, provides suppliers with a mechanism to feed back any issues or concerns they have in relation to public procurement exercises undertaken by contracting authorities in Wales. The link to SFS is provided below:- www.gov.wales/supplierfeedbackservice

So, there is greater need than ever for procurement exercises to be properly executed, fair, transparent and proportionate. The contracting authority needs to be clear as to how it wants the framework structured and how they intend it to operate and that needs to be clearly communicated to suppliers.

Some of the key areas for consideration when letting a framework agreement in the public sector in Wales are shown below and are outlined in more detail in the following sections:-

- Consulting the market;
- Duration of the framework;
- Pricing under the framework agreement;
- Lotting strategy;
- Sub-contracting;
- Prompt payment;
- Equality duties; and
- Welsh language obligations.

Consulting the Market

It is advisable to undertake early market engagement before embarking on a procurement exercise. We can learn a lot from suppliers – if given the opportunity, they can provide new and innovative ideas or alternative service delivery approaches which can help inform procurement approaches. This is reinforced in the WPPS under Principle 8 (Supplier Engagement and Innovation).

Whereas traditionally, buyers may have kept suppliers at arms length and been reluctant to talk to them for fear of being accused of favouritism, the PCR 2015 positively encourage preliminary market consultations. Under Regulation 40 PCR 2015, contracting authorities may conduct 'market consultations' with a view to preparing the procurement and informing suppliers of their procurement plans and requirements. Contracting authorities may, for example, 'seek or accept advice from independent experts or authorities or from market participants' (Regulation 40(2) PCR 2015). Such advice may be used in the planning and conduct of the procurement procedure as long as it does not distort competition and it is non-discriminatory and transparent (Regulation 40(3) PCR 2015).

The Duration of the Framework

The PCR 2015 stipulate that the duration of a framework agreement must not exceed four years 'save in exceptional cases' depending on the subject matter of the framework (Regulation 33(3) PCR 2015). Such circumstances are likely to include situations where suppliers invest significantly in the contract and therefore require a longer period to recoup their costs. You should therefore seek legal advice if you intend to conclude a framework agreement with a longer duration. It is also worth considering, in any event, whether a framework agreement is necessarily the best vehicle for a longer term project.

Frameworks agreements can be for any length of time within a four year period and contracting authorities are not obliged to apply the four year duration as the standard length of their agreements. Careful thought needs to be given to the duration, bearing in mind the types of goods, works or services being bought, the supply base / market and volatility of pricing.

It should be borne in mind that once a framework is awarded, suppliers that are not on the framework are locked out of the framework for its entire term. This can often be detrimental to small indigenous suppliers and new start-ups which may have missed out on the opportunity to bid for the work or were unsuccessful.

Establishing shorter-term framework agreements will result in the requirements being put out to competition more often, allowing suppliers the chance to bid again. This needs to be balanced against the fact that this would result in increased work for buyers and suppliers having to go through the tender process more frequently. Alternatively, consideration can be given to establishing a Dynamic Purchasing System (DPS) which is a more accessible system (further details are provided in section 3).

Pricing Under the Framework Agreement

Deciding how to deal with pricing under a framework agreement is an important aspect. Whole life costing is encouraged wherever possible to take into account the long-term impact and this is promoted in the WPPS (see Principle 3). The approach will very much depend on what goods, works or services are being bought and the nature of the particular market / industry involved.

For generic goods and services, it is usually possible to clearly specify requirements upfront and establish fixed prices for a certain period, whilst also agreeing volume discounts or catalogue discounts where possible.

For other more complex services, such as those subject to the light touch regime, (listed in Schedule 3 to the PCR 2015) it may be difficult to establish exact pricing upfront due to the diverse mix of services / expertise involved and varying nature of end-user requirements. In this situation, the framework terms and conditions would apply to each call-off made under the framework. It is recommended that a clear pricing structure / mechanism is in place that will be applied to pricing particular requirements during the period of the framework. A suggested approach is outlined below:-

- List the full range of services required under the framework and establish hourly or daily rates where applicable; and/or
- Establish a broad pricing-matrix showing the services required and range of prices depending on the levels / expertise of staff involved or set maximum prices;

For some health and social care projects, setting pricing may not be practical. In this instance, it is recommended that a thorough selection process is carried out based on a provider's technical capacity and financial standing, along with past experience and track record. Tender evaluations ought to be conducted based on the award criteria and quality elements of the tender and suppliers scored accordingly. The successful suppliers (chosen according to the criteria published upfront) would be offered a place on the framework as appropriate. Contracting authorities would then run mini-competitions under the framework terms, outlining their exact requirements to establish the provider offering the best value for money.

It should be remembered that whilst longer-term fixed pricing can provide stability and peace of mind, if pricing in that particular market or industry is volatile and decreases during that period, contracting authorities could find themselves paying above market value for the goods, services or works. A way around that, is to include a clause within the framework agreement stating that whilst fixed pricing is in place, it is expected that any price decreases in the industry will be automatically applied to the framework with immediate effect.

Consideration should be given as to the length of time for which prices will be fixed and the formula applied thereafter to any price variations. There needs to be some form of control – otherwise it could be argued that, in the interests of fairness, when prices change the requirement should be subject to fresh competition. A pricing formula should be put in place to ensure both that value for money is achieved and that there is transparency and clarity upfront around pricing. At the tender stage it is often beneficial to request a breakdown of suppliers pricing in the key areas of transport, overheads, materials, labour and profit.

If this information is requested upfront, suppliers can be asked to justify any future applications for price increases against these criteria by providing evidence to show in which areas the increases have occurred. This could then be checked against the relevant industry index, Retail Price Index (RPI) or other data from the Office of National Statistics to verify the suppliers' claims.

Lotting Strategy

Collaborative frameworks involve aggregation of demand and not necessarily of supply

There has been much debate about the effect collaboration and large framework agreements have on SMEs (Small Medium sized Enterprises) including small indigenous suppliers, third sector firms and supported businesses.

The SME definition as stated in article 2 of the Annex of Regulation 2003/361/EC is provided below:

“The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding 43 million euro.”

One of the drivers of the procurement reforms in Europe, the UK and Wales is to facilitate access to public contracts for SMEs (Small and Medium Enterprises). This is sometimes seen as being at odds with the move towards greater collaboration in the public sector in recent years, with a view to aggregating requirements to achieve better value for money.

To address this, during the planning stage of letting a framework agreement, contracting authorities will need to consider how best to structure the tender to ensure smaller suppliers, third sector firms, supported businesses and any potential consortia are given a fair chance of competing. This need to ensure open, accessible competition is a requirement of the WPPS and the Welsh public sector are encouraged to use appropriate lotting strategies.

The need to make procurement 'SME-friendly' is also highlighted in Recital 78 of the Public Contracts Directive (2014/24/EU) which states that public procurement should be adapted to the needs of SMEs and that contracting authorities should be encouraged to make use of the Code of Best Practice set out in the Commission Staff Working Document of 25 June 2008 entitled '*European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts*', providing guidance on how they may apply the public procurement framework in a way that facilitates SME participation:-

http://ec.europa.eu/internal_market/publicprocurement/docs/sme_code_of_best_practices_en.pdf

Frameworks can be split into lots, either geographically or by product / service type but this will depend on what is being bought and the nature of the market / geographical spread eg one supplier might be able to service sites in north Wales but not south Wales. This is where knowledge of the supply base is important and how best that can be matched to the users of the framework agreement and their requirements.

As part of your market analysis, you may find it useful to search the Directory of Welsh Businesses, produced by Business Wales - <https://businesswales.gov.wales/business-directory>

New and improved lotting provisions are provided in the PCR 2015 (Regulation 46). The Commission has introduced an 'adopt or justify' approach so where contracting authorities decide not to split a framework into lots, they must provide their reasons for not doing so in the tender or the procurement report (Regulation 46(2) PCR 2015).

Contracting authorities are free to decide the size and subject-matter of the lots and there is now more flexibility around this. If the framework is divided into lots the contracting authority:-

- Must indicate if tenders can be submitted for one, several or all lots; and
- Can limit the number of lots to be awarded to one tenderer;

Contracting authorities should indicate in the procurement documents the objective and non discriminatory criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number (Regulation 46(5) PCR 2015).

If the contracting authority decides that more than one lot can be awarded to the same tenderer, it may award the framework combining several or all lots as long as it has been specified in the contract notice or in the invitation to confirm interest that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined (Regulation 46(6) PCR 2015).

Sub-Contracting

The PCR 2015 encourages sub-contracting and there are new provisions to support this. Contracting authorities can ask the tenderer to indicate in its tender any share of the contract it intends to sub-contract to third parties and any proposed sub-contractors (Regulation 71). Questions can also be asked about suppliers' plans to review their supply chain to identify and maximise sub-contracting opportunities. The tender might also allow suppliers to sub-contract work to other suppliers to cover the areas not served by the main contractor.

Promoting opportunities through supply chains and framework agreements is also encouraged in the WPPS. Contracting authorities are encouraged to make this aim clear in their tenders so that suppliers and main contractors are aware of these objectives and can evidence their support where required. This can often be achieved through including social clauses in tenders. Further details regarding Welsh Government's Community Benefits guidance are provided later in this section.

There is a Buyer Supplier Contract Notice Facility on <http://www.sell2wales.gov.uk/>, which enables main contractors to widely advertise sub-contracting opportunities - contracting authorities are encouraged to promote the use of this facility to their suppliers where it will create the possibility of damaging established, local supply chains. In addition, the Welsh Government Community Benefits guidance helps contracting authorities build social clauses into tenders in order to benefit the wider community.

Prompt Payment

Prompt payment to suppliers is vitally important in the current economic climate, not only by public sector contracting authorities to suppliers but also by main contractors to their sub-contractors. The Welsh Government is committed to ensuring that sub-contractors involved in the delivery of public sector contracts in Wales are treated fairly and with respect. It is a requirement of the WPPS under Principle 5 that fair payment terms are promoted throughout the supply chain and contracting authorities should ensure this message is communicated clearly to all suppliers in the supply chain.

For framework agreements which include main contractors and sub-contractors, it is recommended that a specific contract condition is included on prompt payment and the number of days within which this must happen should be specified. This should then be monitored through Key Performance Indicators (KPIs) for the duration of the agreement and discussed regularly at contract review meetings to ensure it is complied with. This may be particularly helpful in relation to construction contracts which consistently experience problems with late payments.

In addition, it is recommended that consideration be given to setting up Project Bank Accounts (PBAs) within publicly funded construction/infrastructure projects, in accordance with Principle 6 of the WPPS. A Project Bank Account (PBA) is a ring-fenced bank account from which payments are made directly and simultaneously to a lead contractor and members of the supply chain. This approach should help ensure that small sub-contractors involved in delivery of public construction projects are paid on time. The PBA has trust status which means that the monies in the account can only be paid to the beneficiaries – the lead contractor and supply chain members and is secure in the event of insolvency. Welsh Government's PBA guidance can be accessed in the Procurement Route Planner via the following link <http://prp.gov.wales/toolkit/>

Equality Duties

The Equality Act 2010 includes specific duties for public sector procurement. Section 153 of the Act provides the Welsh Ministers with power to make Regulations, imposing duties on a public authority for the purpose of enabling the better performance of the Public Sector Equality Duty (PSED). Such Regulations may also, by virtue of section 155, impose specific duties on public bodies in relation to their public procurement functions. The appropriate Regulations in Wales are the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. Regulation 18 of those Regulations provides that contracting authorities should have regard to whether contract award criteria should include considerations relevant to performance of the PSED. Also a contracting authority must have due regard as to whether any conditions imposed by them should include considerations relevant to performance of the PSED.

As well as ensuring that Equality duties and any end-user service requirements are reflected in the tender, there are a number of other ways to address equalities through procurement and these are outlined below. More information on Welsh Government procurement policies and tools to help satisfy the PSED is provided in Section 6 and they can be accessed in the Procurement Route Planner Toolkit via <http://prp.gov.wales/toolkit/?lang=en>:

- Using the Sustainable Risk Assessment (SRA) (covered in next section) at the planning stage of procurement to identify and mitigate sustainability risks;
- Taking a risk-based and proportionate approach to the selection stage of procurement;
- Adoption of Community Benefits can also address equality issues, providing training and employment for disadvantaged people where appropriate;
- Widely advertising the requirement through <https://www.sell2wales.gov.uk/> to ensure smaller suppliers, third sector firms and supported businesses have the opportunity to participate; and
- Ensuring Welsh Language requirements are built into the tender where appropriate.

More information and guidance on equalities and procurement can be found via the following link <http://gov.wales/topics/people-and-communities/equality-diversity/?lang=en>

Welsh Language Obligations

In 2011, the Welsh Language Measure was passed by the National Assembly introducing new Welsh Language Standards. The Measure gave the Welsh Language official status in Wales, meaning that Welsh must be treated no less favourably than the English language.

Contracting authorities will need to consider their Welsh language obligations on a case by case basis for each framework / contract. The extent of Welsh language requirements are likely to vary depending on the goods and services being bought and should be proportionate e.g. they will be far more applicable to a complaints management system than they would to a stationery contract. There are guidance and tools available to help you assess the scope of Welsh language considerations and to build them into the procurement process where appropriate. It is recommended that contracting authorities complete the Sustainable Risk Assessment (SRA) at the planning stage of procurement and utilise the guidance 'Contracting out Public Service Contracts and the Welsh Language' which the Welsh Language Commissioner's office has updated to reflect the Welsh Language Measure:-

<http://www.comisiynyddygydraeg.cymru/English/Publications%20List/Contracting%20out%20public%20service%20contracts.pdf>

6. Welsh Government Procurement Policies / Tools

As mentioned in Section 1, the Wales Procurement Policy Statement (WPPS) drives effective public procurement in Wales, containing ten principles against which procurement should be undertaken. The Well-being of Future Generations (Wales) Act 2015, which came into force in 2015, also needs to be taken into consideration through your procurement activity. The Act contains seven goals and five ways of working - more information can be accessed via:-

<http://gov.wales/topics/people-and-communities/people/future-generations-act/?lang=en>
<http://gov.wales/docs/dsilg/publications/150428-guide-to-the-fg-act-en.pdf>

This section outlines some of the key Welsh Government procurement policies / tools which should be utilised when letting a framework agreement to promote best practice and help you meet the requirements of the WPPS.

Sustainability Risk Assessment (SRA)

Good procurement is sustainable procurement and contracting authorities' day to day procurement activity ought to reflect this. This is especially important since the introduction of the Well-being of Future Generations Act 2015, which focuses on improving the social, economic, environmental and cultural well being of Wales. All contracting authorities in Wales are required to have regard to the duties set down in the Act, including when carrying out their procurement activities.

Welsh Government has developed a Sustainability Risk Assessment (SRA) for goods and services. It is a requirement of the Wales Procurement Policy Statement (Principle 3) that the SRA is used for all procurements over £25k, and it is recommended that contracting authorities complete this during the planning stage of procurement. The SRAs highlight the environmental, social and economic risks associated with the procurement and how best to mitigate them. There is a similar tool available for construction contracts - a Construction Quality Assurance (QA) template.

Contracting authorities need to request evidence to show that suppliers have the required expertise and / or skills to fulfil the requirement, or evidence that they are complying with relevant social and sustainability legislation, where appropriate. It should be noted that contracting authorities are not permitted to require tenderers to have certain corporate social or environmental responsibility policies in place generally (Recital 97 of the Public Sector Directive). Any requirements must be linked to the subject matter of the contract.

The SRA can be accessed via <http://prp.gov.wales/toolkit/?lang=en>

Community Benefits

The Wales Procurement Policy Statement requires that contracting authorities apply a Community Benefits approach to all public sector procurements and apply the Measurement Tool to all such contracts over £1m. The £1m threshold is stated as a minimum and so there may also be opportunities to apply Community Benefits – and complete/return the Measurement Tool - to contracts worth less than £1m so a common sense approach should be adopted and each contract considered on a case by case basis.

Community Benefits involve including social clauses in tenders ensuring that wider socio-economic issues are taken into account, including things such as training and recruitment of unemployed people, job retention, supply chain initiatives and community initiatives. Other

examples could include educational aspects where contractors / suppliers / service providers go into schools and talk to children about careers and opportunities in their particular industry, or school visits to manufacturing or production plants.

Community Benefits have traditionally been applied mainly to construction projects but its use is increasing in other areas such as food, school milk and other areas of service provision.

Community Benefits in Collaborative Framework Agreements

When incorporating Community Benefits into a framework agreement that will be open to other public sector bodies to use, it is recommended that you gain consensus around the Community Benefits objectives.

At the planning stage, discuss with those signed up to the framework agreement what types of Community Benefits they would like to see included and whether they should be core or non-core. In setting the Community Benefits requirements, think about the type of framework and where it will be possible to achieve benefits – will it be nationally or regionally? Also, establish how the benefits will be monitored and who will do the monitoring – will it be at a framework level or at each call off? The nature of the procurement will likely dictate many of these decisions.

Within the procurement documentation, communicate the contracting authorities' commitment to Community Benefits and how that commitment relates to the contracting authorities' powers, duties and policies. Explain the rationale for the Community Benefits being sought and expected outcomes and consider how those outcomes will be distributed amongst clients / users.

Welsh Government has developed Community Benefits Guidance documents for buyers and suppliers, along with a Community Benefits Measurement Tool. These documents can be accessed via <http://prp.gov.wales/toolkit/?lang=en>

Code of Practice

The Code of Practice for Ethical Employment in Public Contracts, published by the Welsh Government in March 2017, is an important driver for improving employment practices in Wales. It will help tackle modern day slavery, reinforcing our procurement stance of only wanting to deal with ethical and responsible businesses that treat their workers fairly and with respect. It is expected that the Code is applied to all appropriate framework agreements let by Welsh public sector contracting authorities.

Joint / Consortia Bids

Encouraging joint or consortia bidding is a key Welsh Government procurement policy and features in Principle 5 of the WPPS. It is important as it allows suppliers to pool their resources to increase their collective capacity or coverage in order to compete for contracts which may otherwise have been out of reach.

Contracting authorities should follow the Joint Bidding Guide to ensure they take steps to ensure (a) their tender is written in such a way so as to be open to joint ventures or consortia; (b) it is advertised early to allow the necessary time for suppliers to collaborate; and (c) the assessment model is used to identify suitable projects and appropriate selection criteria are set. The Joint Bidding Guide can be accessed via:-

<http://gov.wales/topics/improvingservices/better/vfm/publications/jointbidding/?lang=en>

eProcurement Tools

eProcurement enables buyers and suppliers to benefit from faster, more efficient and transparent processes and contracting authorities are expected to make best use of available eProcurement tools, as outlined in Principle 6 of the WPPS.

The use of electronic tendering and procurement systems in Wales has increased over the years. The Welsh Government centrally funds e-sourcing, e-trading and e-payment services which are available to use, free of charge (excluding any integration costs) by the Welsh public sector – more information can be accessed on the Procurement Route Planner (PRP) Toolkit via the following link:-

<http://prp.gov.wales/docs/prp/toolkit/26568eprocurementstoolenglishprintfinal280916.pdf>

E-auctions

Following an initial full evaluation of the tenders received, contracting authorities can run an e-auction, enabling them to rank bidders using automatic evaluation methods. Regulation 35 of the PCR 2015 sets out when electronic auctions may and may not be used. The intention to run an e-auction must have been stated in the contract notice or in the invitation to confirm interest. eAuction functionality is available on eTender Wales - more information can be accessed via:-

<http://prp.gov.wales/docs/prp/toolkit/26568eprocurementstoolenglishprintfinal280916.pdf>

E-Catalogues

For the first time, new rules in the PCR 2015 explicitly cover the use of electronic catalogues (Regulation 36). Contracting authorities may require tenders to consist of, or include, electronic catalogues, and may require the catalogues to comply with the technical specification and format set out by the contracting authority.

Where the presentation of tenders in the form of e-catalogues is accepted or required, this must be stated in the contract notice or invitation to confirm interest and the procurement documents must give details. The use of e-catalogues must meet the e-communication requirements in Regulation 22, PCR 2015.

E-catalogues may be used for further competitions in frameworks either by inviting re-submitted catalogues, adapted to the requirements of the contract in question or by collecting information from previously-submitted catalogues, provided suppliers are given the chance to refuse that collection. Use of this method of collection must be set out in the tender. .

eTradingWales provides a facility for all National Procurement Service (NPS) customers and specified Welsh Public Sector organisations to place electronic purchase orders from catalogues (National i.e. NPS and local i.e. buying organisation specific framework) and free text orders. More information on eTender Wales can be accessed via:-

<http://prp.gov.wales/docs/prp/toolkit/26568eprocurementstoolenglishprintfinal280916.pdf>

E-catalogues may also be used in Dynamic Purchasing Systems (DPS) - please see DPS guidance below:-

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417942/Guidance_on_Dynamic_Purchasing_System.pdf

Tick List Summary

As a guide, the following tick list outlines what needs to be included / considered when inviting tenders for a framework agreement and can be used as an aide memoire :-

Description	Included? (✓)
Clear description of the purpose / scope / duration of the agreement	
Clearly stated minimum selection criteria / requirements / standards	
List of committed users provided plus indication of total estimated value and volumes	
Outcome-based specification / KPIs / terms and conditions of contract	
Clear indication of the lots (where appropriate) & volumes per lot	
The selection and award criteria (together with any sub-criteria) plus full details of scoring / weighting / methodology	
Any pass marks / thresholds plus associated methodology	
Clarity on whether it will be a single or multi-supplier framework	
Clarity on how the framework agreement will be used throughout its duration (i.e. direct award, mini-competition or combination of both)	
Clear methodology for supplier selection at call-off stage	
Details required for e-auction (if appropriate)	
Inclusion of key Welsh Government procurement policies eg Wales Procurement Policy Statement (WPPS) requirements such as completion of SRA, Community Benefits included, SQuID approach used, Joint Bidding Guide utilised, etc.	
Consideration of key legislation eg Equalities, Wellbeing of Future Generations (Wales) Act, Welsh Language Measure, etc.	
Terms and conditions that apply to each call-off	
Prices / Pricing formula / Discount arrangements	
Contract management group established to monitor KPIs plus an effective method for dealing with persistently deficient suppliers under the framework agreement	

7. Advertising the Framework Agreement

The use of the open procedure should not necessarily increase the number of PQQs / bids received as long as the requirement & any minimum standards are clear.

If the estimated total value of the framework agreement is likely to exceed the relevant EU threshold – and it is not covered by one of the exclusions set out in Regulations 7 to 12 of the PCR 2015 - it must be advertised in the Official Journal of the European Union (OJEU) via www.sell2wales.gov.uk and the EU procurement process followed.

Not all procurements to establish framework agreements will be above the OJEU thresholds. Whilst the EU procurement rules will not apply to sub-OJEU frameworks, the basic Treaty principles will still apply. Accordingly, the principles of this framework agreement guidance note are considered equally applicable for procurements above and below the OJEU thresholds.

Contracting authorities have a choice of procedures to use when running an OJEU tender exercise. As under the old Regulations, the open and restricted procedures are still available but there has been some change to the other procedures available and an additional one added so now five are available for use:-

- Open (Regulation 27); Restricted (Regulation 28);
- Competitive with negotiation (Regulation 29);
- Competitive dialogue (Regulation 30); and
- Innovation partnership (Regulation 31).

More information about the changes to procedures can be accessed via:-

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/436230/guidance-on-changes-to-procedures.pdf

Contracting authorities are encouraged to use the **open procedure** as much as possible, rather than the other more restrictive procedures so as not to limit the opportunities for smaller firms and third sector suppliers. In addition, the open procedure helps reduce overall procurement timescales. Using the open procedure and providing as much information as possible upfront relating to requirements and minimum standards, ensures that prospective bidders understand the requirements before embarking on the process, allowing unsuitable suppliers to de-select themselves as early as possible.

It should be noted that all notices, including but not limited to PINs (Prior Indicative Notices), Contract Notices, Contract Award Notices and Contract Modification Notices must be sent to the Commission electronically (Regulation 51(1)(a) PCR 2015). Publishing a Contract notice on Sell2Wales fulfils this requirement as they are automatically sent to the Commission for publication. In addition, these notices shall not be published at national level on a buyer profile before they are published by the EU Publications Office (please see Regulation 52(3) of the PCR 2015 for more information).

Electronic availability of procurement documents

There are a number of new electronic procurement requirements in the PCR 2015, one of which is that contracting authorities must offer, by means of the internet, unrestricted and full direct access free of charge to the procurement documents from the date of the publication in the Official Journal of a notice sent in accordance with Regulation 51 or the date on which an invitation to confirm interest is sent (Regulation 53(1) PCR 2015).

The Welsh Government policy position on this is that this applies to ALL procurement documents, including but not limited to Pre-Qualification Questionnaire (PQQ) through to Invitation to Tender (ITT) and terms and conditions, unless one of the exceptions in Regulation 22(3) applies. This policy position is based upon the definition of “procurement document” under Regulation 2(1) which clearly states that “procurement document” covers everything in the procurement process, at whatever stage. The definition is provided below for information:–

“procurement document” means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents”.

8. The Tender Process

When issuing the tender documents, there are certain minimum timescales set out in the PCR 2015 which must be observed for tender return and / or expressing interest depending on which procedure is being used. These can be accessed via the following link:-

https://www.sell2wales.gov.wales/Guides/Guide_Download.aspx?id=5140

It should be noted that these are merely **minimum** timescales – depending on the nature of goods / services being bought and the complexity of the tender you may wish to allow bidders a longer length of time in which to respond. Bear in mind, smaller suppliers and third sector firms do not have the luxury of having large teams dealing with tenders so may well need more time to prepare their submissions.

Once the tenders (under the open procedure) or selection questionnaires (under the restricted procedure) have been returned and opened, the process of selection and award begins. It is worth noting that all selection and award criteria must be related and proportionate to the subject-matter of the contract.

Selection Stage

Any minimum requirements or standards should be stated clearly in the contract notice or invitation to confirm interest so that suppliers can easily de-select themselves.

Simplifying the Selection Stage

During the selection stage, a key requirement of the WPPS (Principle 5) is that public bodies should adopt a risk-based and proportionate approach. This ensures the process is as simple as possible for suppliers to reduce the time and cost of bidding. This involves thinking carefully about the selection questions you are asking and knowing how you are going to score them. The SQuID question set and Squizard on Sell2Wales have been updated to reflect the PCR 2015 and are consistent with the principles of self-declaration. It is likely the SQuID question set will be superseded by an electronic European Single Procurement Document (ESPD) on Sell2Wales during 2017 but until that time SQuID can continue to be used in Wales. More information on ESPD is provided in the next section.

European Single Procurement Document (ESPD)

The ESPD is a new requirement in EU Procurement Directive 2014/24/EU and has been transposed into UK law via Regulation 59 of the PCR 2015. It has been introduced to reduce the administrative burden on suppliers when bidding for public sector work.

The ESPD is a formal statement, a 'self-declaration' by bidders that they are not subject to exclusion criteria and that they meet the relevant selection requirements for shortlisting qualified bidders.

Although the ESPD came into effect at the end of January 2016, its use was not mandated with immediate effect. The Commission has acknowledged the technical work required to integrate the ESPD with its own systems and those across Europe and is content for SQuID to be utilised until an electronic ESPD is available on Sell2Wales.

Exclusion Grounds

There are various grounds for exclusion set out in Regulation 57 of the PCR 2015. Mandatory grounds are those related to criminal offences such as conspiracy, fraud, trafficking and terrorist offences. Amendments have recently been made to the PCR 2015 to also include modern slavery and related offences such as human trafficking, slavery and forced labour as grounds for exclusion.

If a bidder has been convicted of any of the offences listed in Regulation 57, they must be excluded from the process (unless they provide satisfactory evidence of 'self-cleaning' – see below). The period for mandatory exclusion is 5 years from the date of conviction.

Discretionary grounds for exclusion include bankruptcy, acts of grave misconduct and persistent deficiencies in the performance of a substantive requirement under a prior public contract and these are circumstances in which the contracting authority may determine on a case by case basis whether a bidder should be excluded. The period for discretionary exclusion is 3 years from the date of the relevant event.

It should be noted that where any of the exclusion grounds apply, **the bidder must be given the opportunity to provide evidence of 'self cleaning'** i.e. provide evidence showing that it has taken sufficient and appropriate action to remedy the situation to ensure the problem will not re-occur and that they can be regarded as reliable (Regulation 57(13) PCR 2015). Where the contracting authority considers any evidence provided to be insufficient, it must provide the bidder with a statement of the reasons for that decision.

Contracting authorities may decide not to award a framework to the bidder submitting the most economically advantageous tender where they have established that the tender does not comply with applicable obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive (Regulation 56(2) PCR 2015).

There is also provision within the PCR 2015 that permits contracting authorities to exclude bidders that submit abnormally low tenders, where bidders are unable to satisfactorily explain the low price proposed (Regulation 69 PCR 2015). When abnormally low tenders are received, buyers must ask bidders to explain the price or costs proposed in the tender. The contracting authority must assess the information provided by consulting the tenderer.

Selection Criteria

Any selection criteria set by contracting authorities must be related and proportionate to the subject-matter of the framework. Selection criteria may relate to:-

- Suitability to pursue a professional activity;
- Economic and financial standing; and
- Technical and professional ability.

The selection stage has been simplified in the PCR 2015 to make it easier and less costly for SMEs to bid for public contracts. Bidders can prove their suitability, financial status and abilities with self-declarations and only provide full documentary evidence at the end of the process prior to contract award (SQULD has been updated to reflect this approach, in line with ESPD). Generally speaking, it is only the winning bidder that has to provide evidence, however a contracting authority can request supporting evidence from any bidder at any stage of the tender process if needed to ensure the proper conduct of the procedure. This is not a requirement for call off contracts based on framework agreements however.

With regard to financial thresholds, it should be noted the minimum yearly turnover that bidders are required to have is capped at twice the estimated contract value, except in duly justified cases, such as by reference to special risks attached to the nature of the works, services or supplies. In that case, the contracting authority shall indicate their main reasons in the procurement documents.

The PCR 2015 provides additional explanation on how determining the economic and financial standing of bidders applies to lots, framework agreements and dynamic purchasing systems (Regulation 58(11 to 14) PCR 2015) as follows:-

- Where lots are used, Regulation 58 applies to each individual lot.
- If the successful tenderer is awarded several lots to be executed at the same time, the contracting authority can set the minimum yearly turnover that suppliers are required to have by reference to the groups of lots.
- Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement.
- Where a dynamic purchasing system (DPS) is used, the maximum yearly turnover requirement shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under the DPS.

Contracting authorities should note that the Commission considers the obligation of transparency that exists at award stage to also extend to the selection stage. It is recommended the following information be stated up front in the contract notice and/or ITT to make it easy for bidders to see what is being asked of them:-

- Full disclosure of PQQ scorings and weightings for criteria AND any sub-criteria (this would also extend to any lots);
- Any pass marks, thresholds or minimum standards; and
- Critical questions which would disqualify the bidder from the process (these should be attached on a front-sheet so are clearly visible)

Award Stage

The award or 'tender evaluation' stage is where tenders are evaluated against clearly defined evaluation criteria, to determine which is the most economically advantageous tenderer. The Public Contracts Regulations 2015 contain an amended definition of the concept of "Most Economically Advantageous Tenderer" (MEAT) from that with which buyers will have become familiar.

The old rules provided a choice between using MEAT or lowest price as award criteria. MEAT used to effectively mean the tender offering best value for money (or best price/quality ratio). While the new rules mandate MEAT, the definition of MEAT has changed significantly and the new definition is much more flexible. It permits, amongst other things, the awarding of contracts/frameworks on the basis of lowest price.

When evaluating tenders, contracting authorities must base the award of public contracts on the most economically advantageous tender assessed from the point of view of the contracting authority (Regulation 67(1) PCR 2015). That tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing (Regulation 68) and may include the best price-quality ratio (BQPR), which must be assessed on the basis of criteria such as price or cost plus other criteria such as qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in

question for example:-

- (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- (b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- (c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion (Regulation 67(3) PCR 2015).

Award criteria will be considered to be linked to the subject-matter of the contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in:-

- (a) the specific process of production, provision or trading of those works, supplies or services, or
- (b) a specific process for another stage of their life cycle, even where those factors do not form part of their material substance (Regulation 67(5) PCR 2015).

The weightings of the award criteria must be specified in the procurement documents, except where this is identified on the basis of price alone. Those weightings may be expressed by providing for a range with an appropriate maximum spread. Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance (Regulation 67(9) – (11) PCR 2015).

More information on award criteria can be accessed at:-

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417934/Guidance_on_Awarding_Contracts.pdf

Awarding the Framework Agreement

The framework agreement may be awarded to either a single supplier or multiple suppliers. Consideration as to whether to award a single or multi-supplier framework should have taken place earlier in the tender process (see Section 4).

After writing out to inform the successful supplier(s) and unsuccessful supplier(s), the contracting authority leading on the framework will need to comply with the mandatory standstill periods set out in Regulation 87 PCR 2015.

It should be noted that once the standstill period has passed and the framework agreement concluded, a **contract award notice** must be sent for publication in OJEU within 30 days of the award (Regulation 50 PCR 2015) and this can be done via <http://www.sell2wales.gov.uk/>.

9. Benefits of Supplier Debriefing

Supplier debriefing is the process by which the buyer provides feedback to unsuccessful suppliers regarding their bid so they know why they were unsuccessful and how they can improve their bid for the future. It is important that this is carried out as it is an integral part of an effective procurement process and something which suppliers are entitled to. This is reinforced in Principle 8 of the WPPS which requires that de-briefing 'provides adequate tender feedback'. Some of the benefits to buyers and suppliers are outlined below.

Benefits to the buyer:

- Demonstrates to the market that procurement processes in the Welsh public sector are carried out in a fair, open and transparent way, in accordance with the legislative and regulatory framework;
- Valuable feedback gleaned from bidders on how the procurement process could be improved in future;
- Increased likelihood that a well-debriefed supplier will tender for future contracts, increasing competition to ensure maximum value for the Welsh pound; and
- Reduces risk of challenge from suppliers.

Benefits to the supplier:

- Increased confidence that procurement in the Welsh public sector is being undertaken fairly and in compliance with the legal and regulatory framework, and in accordance with the published evaluation criteria and scoring system;
- Recognition of the time, effort and resources they have invested in the process, which may encourage them to bid in future;
- Keener understanding of why they were unsuccessful, the strengths and weaknesses of their bid and the areas for improvement; and
- Less likely to challenge the process.

More information on supplier debriefing can be found on the PRP via the following link:
<http://prp.wales.gov.uk/planners/general/contractaward/supplierdebrief/>

10. Calling off from the Framework

The contracting authority calling off a contract under a framework agreement must be able to justify why they have called off from a particular supplier.

Once a framework agreement is awarded, provided the rules in the PCR 2015 were followed in setting up the agreement, the contracting authority – or authorities in the case of collaborative framework agreements - are able to 'call-off' the goods, services or works from the framework either by direct award or mini-competition.

When calling off from a framework, contracts must be awarded in line with the PCR 2015. Contracts based on a framework agreement may under no circumstances entail substantial modifications to the terms laid down in that framework agreement, in particular where a framework agreement is concluded with a single supplier.

Whilst call-offs must be awarded before the end of the term of the framework agreement the length of call-offs under framework agreements are not specifically limited by legislation and they may extend beyond the expiry date of the framework and may be longer than four years (Recital 62, EU Public Procurement Directive 2014).

The length of call-offs, as with other contracts, should be appropriate to the purchases in question and should reflect value for money considerations. When deciding on the length of an individual contract based on a framework agreement, contracting authorities can take into account factors such as the time needed for their performance, where maintenance of equipment with an expected useful life of more than four years is included or where extensive training of staff to perform the contract is needed.

However, this should not be done in order to circumvent the EU rules. For example, it might be difficult to justify a 12-month call-off, very near the end of the framework itself, where the normal pattern for the goods, services or works in question had been for such call-offs to last for just one month at a time.

Standstill Period for Call-Offs

The obligation for a standstill period only relates to the award of the framework agreement itself and is not mandatory for call-off contracts under the framework. However, it is good practice to also apply a standstill to call-offs made under the framework agreement, as it will protect the authority from a claim for ineffectiveness being brought under Regulation 99(6) of the PCR 2015.

If a court declares the call off contract “ineffective”, performance of the contract must cease from that date. The contracting authority would be required to pay a fine, and the court may also order it to pay compensation to the claimant.

By applying a standstill period to call-off contracts, the authority calling off is protected from such claims. Provided no challenge emerges during the standstill period, suppliers are prevented from being able to claim for the remedy of ineffectiveness on the grounds that the mini-competition rules were not properly followed.

Single Supplier Frameworks

For single supplier framework agreements, call-offs will be made by direct award to that one supplier and must be in line with the terms of the framework. There may be a need to specify certain details at the point of calling off and if necessary the contracting authority is permitted to request in writing that the supplier supplements its tender.

Multi-Supplier Frameworks

One of the changes in the PCR 2015 is that multi-supplier framework agreements can now comprise just two suppliers (previously there was a minimum of three). For multi-supplier frameworks, the Regulations provide **three** potential ways to select the provider and place specific contracts: direct award; mini-competition; or a combination of both.

i. Direct award without re-opening competition

If the framework agreement sets out all the terms governing the provision of the works, services and/or supplies concerned and all the objective conditions that are required to decide which supplier will perform the specific contract, then awarding the contract without re-opening competition amongst the parties to the framework agreement is

possible. In this instance, the choice of provider must be based on the objective criteria laid out in the tender.

ii. Mixture of direct award and mini-competition (New)

This route is available where the procurement documents for the framework agreement state that it may be used, and the framework agreement sets out all the terms governing the provision of the works, supplies and services concerned. The procurement documents for the framework agreement must set out objective criteria which will be used to determine whether a specific contract will be placed following a reopening of competition or directly on the terms set out in the framework agreement so it is clear and transparent for all users and suppliers. The procurement documents should also specify which terms may be subject to the re-opening of competition. For example a direct award could be for those suppliers allocated to provide goods to a specific region and the accompanying objective criteria for selecting to re-open competition could be:-

- a. the contract exceeds a set financial threshold;
- b. the quantity of products required is over a certain level; and
- c. the contract has particularly complex requirements.

iii. Mini-competitions

When the framework agreement does not include all the terms governing the provision of the works, services and supplies concerned, the contracting authority must organise a 'mini-competition' between the providers which are party to the framework agreement. The award criteria used for mini-competitions need not be the same as those applied in the award of the framework agreement itself. Regulation 33(11) of the PCR 2015 permits a contracting authority to supplement the original terms with more precisely formulated terms where necessary and other terms referred to in the procurement documents, where appropriate. The contracting authority should award the call-off to the provider which has submitted the best tender on the basis of the award criteria set out in the framework agreement focusing on the particular requirement. Contracting authorities must make it clear in the tender the criteria / methodology to be used for awarding call-off contracts.

11. The Importance of Contract Management

Good supplier relations can enhance performance under a framework agreement and lead to continuous improvement

The award of the agreement marks the end of the tender stage but heralds the start of the operational stage. Contract management is the process which ensures that both parties to a contract fully meet their respective obligations as efficiently and effectively as possible. It is vital that the contract and supplier(s) are monitored to ensure that the requirements / level of service agreed in the contract are being delivered and measured, and value for money continues to be achieved throughout the life of the framework. This is particularly important where Community Benefits has been included in the framework.

Some suggested elements of contract management include:-

- Establishing a contract management group to undertake regular contract review meetings with suppliers. This would include stakeholder / end-user

representatives and other contracting authorities in the case of a collaborative framework agreement;

- Establishing robust procedures for addressing poor supplier performance, ensuring any persistently deficient performance is properly documented, detailed and dated (see below);
- Setting Key Performance Indicators (KPIs) – these can be at a number of levels, from simple price and delivery targets to encouraging innovation in the way that the contract is delivered;
- Ensuring the supplier(s) on the framework provide regular Management Information (MI) for all contracting authorities using the framework agreement;
- Ensuring you record the savings and benefits arising from the framework; and
- Developing good supplier relationships - this can lead to mutual trust and understanding, openness, good communication and a joint approach and responsibility for contract delivery.

Dealing with Poor Performance

Good contract management should include measuring and monitoring supplier performance and effectively dealing with any issues of poor supplier performance. This is especially important under the new PCR 2015 because there is a new discretionary exclusion that allows contracting authorities to exclude suppliers that have shown:-

‘significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions’ (57(8)(g)).

It is therefore recommended that there are robust mechanisms in place for addressing poor supplier performance issues and these are clear to buyers and suppliers. Contracting authorities using the framework should address any poor performance issues through their own contract and supplier review meetings whilst, in the case of a collaborative framework agreement, also highlighting the issue to the contract manager of the authority that led on the framework. If the issues cannot be overcome, there should be provision enabling removal of the poorly performing supplier from the framework in advance of any re-competition.

12. Modifying the Framework during its Term

There are certain circumstances where a contract can be amended after award without the need to re-advertise in OJEU and the PCR 2015 provides clarity on this under Regulation 72. Permissible grounds for amendment include:-

- the existence of suitable “clear, precise and unequivocal” review clauses in the contract;
- a need for additional supplies or services where a change of supplier would cause significant inconvenience, or a need for additional deliveries due to unforeseen circumstances (subject to 50% maximum increase in initial contract value);

- where a new supplier replaces the existing supplier because of insolvency or genuine restructuring; and
- where the amendment, irrespective of its value, is not substantial.

A 'substantial' change is defined at Regulation 72(8) PCR 2015. It is a change which, irrespective of value, meets one or more of these conditions:

- Renders the contract materially different to the original contract/framework;
- Would have allowed other potential suppliers to participate or be selected, or another tender to be accepted;
- Changes the economic balance in favour of the contractor;
- Extends the scope of the contract/framework "considerably";
- Provides for a new contractor replacing the original contractor, other than where the change arises from a review or option clause in the original contract or from corporate changes such as merger, takeover or insolvency.

If the change you wish to make does not meet these tests then a new procurement procedure, conducted in accordance with the procurement rules, is required.

Further guidance on amending contracts during their term is available via https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/466370/Guidance_on_Amendments_to_Contracts_-_Oct_2015.pdf

Legal advice should be sought before making any amendments / modifications if there is doubt as to their legality.

13. Top 10 Do's and Don'ts of Framework Agreements

DO	DON'T
Do consider carefully whether a framework agreement is the best option to meet your needs – would a DPS be better?	Don't rush into tendering a framework agreement without the necessary feasibility study and clarity on users and value
Do clearly specify the requirements and scope of the agreement upfront for suppliers	Don't enter into an agreement with unclear requirements / scope and poor specification
Do ensure the tender reflects the requirements of the Wales Procurement Policy Statement and Wellbeing of Future Generations Act 2015	Don't forget value for money includes wider environmental, social and economic considerations and always ensure tenders are 'SME-friendly'
Do use a risk-based and proportionate approach to supplier selection	Don't place unnecessary burdens on smaller suppliers by asking irrelevant questions and requesting disproportionate amounts of information
Do undertake your own due diligence before using someone else's framework to check you can legitimately use it	Don't just assume you are able to utilise any other framework agreement that is in existence
Do make sure if an e-auction is used, that suppliers have been notified upfront and the correct procedures are followed	Don't assume you can just decide to run an e-auction at the evaluation stage of the tender
Do disclose the weightings and scores to be used for evaluation when running a mini-competition	Don't include criteria that has already been assessed or add unrelated criteria
Do ensure you follow the appropriate process for calling off from the agreement	Don't create "framework within a framework" type arrangements to narrow a larger field of suppliers for call-offs.
Do follow clear methodology / criteria for deciding which supplier to call off from	Don't think you can call-off from whichever supplier you choose without justification
Do remember you are bound by the original scope and framework terms and conditions	Don't add or change the terms and conditions of the framework
Do offer supplier de-briefings post tender, ensure effective contract management and properly document any supplier deficiencies	Don't leave bidders in the dark as to where they lost out...or 'let and forget' and hope the agreement will run itself

14. Frequently Asked Questions (FAQ)

Q. How do I identify participants / spend for a collaborative framework agreement?

A. It is recommended you undertake an in-depth feasibility study to identify those contracting authorities committed to using the agreement. Include a list of these in the contract advert and ITT (or provide a link to the list). Vague references to “any contracting authority” or “all public bodies in Wales” lack transparency and would not satisfy the requirements of the PCR 2015 (Regulation 33(5)). Spend through the framework agreement should be monitored throughout its duration and the value should not exceed that which is indicated in the advert. *(See page 12 for further details).*

Q. How is a Central Purchasing Body (CPB) defined?

A. Regulation 2 of the PCR 2015 defines a CPB as “A contracting authority which provides centralised purchasing activities and which may also provide ancillary purchasing activities.” CPBs may act as a ‘wholesaler’ supplying an authority on the basis of contracts it has itself awarded and / or provide contracting authorities with access to framework deals or Dynamic Purchasing Systems it has established. *(See page 10 for further details).*

Q. How can I ensure small firms and third sector suppliers are not precluded from a large framework tender?

A. There are various ways to do this. Know your market and where possible break the contract into lots. Engage with suppliers and local providers beforehand to develop an appropriate lotting strategy to maximise opportunity. Take a proportionate and risk-based approach, making sure the tender is ‘consortia-friendly’ in line with Joint Bidding Guidance, enabling small suppliers to come together to bid if they wish. Use the open procedure, advertise on Sell2Wales widely, do not set financial thresholds that are too high, include Community Benefits clauses and/or sub-contracting options. Encourage main contractors to advertise sub-contracting opportunities on the Buyer Supplier Contract Notice Facility on <http://www.sell2wales.gov.uk/>

Q. How can I maximise the positive effects on the economy through my framework?

A. You can apply Community Benefits policy where appropriate. This involves including social clauses in your framework agreement, ensuring that the employment and training of disadvantaged people and/or apprenticeships are delivered through your requirement. Other types of Community Benefits could be educational in nature eg the supplier visiting schools to talk to children about their line of work or the industry they are involved with, or offering school visits to their manufacturing plant / distribution centre, etc. *(See page 22 for further details).*

Q. Is it possible to limit the number of lots suppliers can bid for?

A. Yes. Contracting authorities can stipulate that tenders may be submitted for one, for several or for all of the lots. Furthermore, they can limit the number of lots that may be awarded to one tenderer. *(See page 18 for further details).*

Q. How does self-cleaning’ affect the supplier selection stage?

A. Where the grounds for mandatory or discretionary exclusion apply to a bidder, they must be given the opportunity to provide evidence of ‘self cleaning’ i.e. provide evidence showing that it has taken sufficient and appropriate action to remedy the situation to ensure the problem will not re-occur and that they can be regarded as reliable. Where such evidence is considered satisfactory by the buyer, it would not be proportionate to exclude them. *(See page 27 for further details).*

Q. Does having a framework mean we don't have to consider sustainability and other issues such as TUPE?

A. No. The use of framework agreements does not remove the obligation on contracting authorities to address sustainability issues, comply with Wellbeing of Future Generations goals or meet any other worker-related requirements where relevant. (See pages 21 – 23 for further details).

Q. I am concerned that workers in the supply chain are at risk of being exploited – what steps can I take?

A. Completing the SRA during the planning stage will help identify what worker exploitation risks are present with the procurement and enable you to put mitigating steps in place. In addition, you can sign up to the Code of Practice for Ethical Employment in Public Contracts, published by the Welsh Government. You can also encourage your suppliers and those down the supply chain to sign up to the Code. This will help tackle modern day slavery and unfair working practices. (See page 22 for further details).

Q. I'm organising social care arrangements and wonder if a framework is the best option?

A. As an alternative to letting a framework agreement, consideration could be given to running a Dynamic Purchasing System (DPS). A DPS is a procedure available for contracts for commonly used goods, works and services generally available on the market. One important factor of a DPS is that it does not lock out suppliers and new suppliers can join at any time, provided they meet the selection criteria. A DPS may suit social care requirements better than a framework as there would be more flexibility and a wider range of providers to meet citizens' needs.

Q. Do we have to observe a standstill period before we enter into the framework agreement or for call-offs?

A. The PCR 2015 only require a standstill period for the award of the framework agreement itself and it is not mandatory for call-offs contracts under the framework. However, it is good practice to apply a standstill to call-offs under the framework agreement - it will protect the authority calling off against ineffectiveness. (See page 31 for further details).

Q. How many suppliers can we have on a framework agreement?

A. Frameworks can be concluded with single or several suppliers. Whereas the previous rules required at least three suppliers on a multiple-supplier framework, it is now permissible to have just two providers. The framework agreement should establish the objective criteria that will apply under the framework, for call-off by direct award, mini-competition or a combination of both. (See page 32 for further details).

Q. Why is contract management so important?

A. Effective contract management is key to ensure suppliers on the framework fully meet their obligations under the contract, any agreed Community Benefits are delivered and performance is monitored through Key Performance Indicators (KPIs). (See page 33 for further details).

Q. Can I modify my framework agreement during its term?

There are certain circumstances where a contract can be amended after award without the need to re-advertise in OJEU and the PCR 2015. Permissible grounds for amendment

include where the amendment is not substantial, clear review clauses in the contract, requirement for additional supplies (50% maximum increase rule), supplier replacement due to insolvency or similar. *(See page 34 for further details).*

15. Guidance and Tools

Below are some of the policy guidance documents and supporting tools that are available to you for use in your procurement activity (in alphabetical order):-

- Blacklisting in the Construction Industry <http://prp.gov.wales/toolkit/?lang=cy>
- Buyer-Supplier Contract Notice Facility <http://www.sell2wales.gov.uk/>
- Buying Safe Food Guidance / Food Charter <http://prp.wales.gov.uk/planners/food/>
- Community Benefits Guidance and Measurement Tool <http://prp.gov.wales/toolkit/?lang=cy>
- Employment Practices in Publicly Funded Projects <http://prp.gov.wales/toolkit/?lang=cy>
- Project Bank Account Guidance <http://prp.gov.wales/toolkit/?lang=cy>
- Public Contracts Regulations 2015 http://www.legislation.gov.uk/ukxi/2015/102/pdfs/ukxi_20150102_en.pdf
- Supplier Qualification Information Database (SQuID) <http://prp.gov.wales/toolkit/?lang=cy>
- Sustainable Risk Assessments (SRA) <http://prp.gov.wales/toolkit/?lang=cy>
- Third Sector & Supported Businesses <http://prp.gov.wales/toolkit/?lang=cy>
- Wales Procurement Policy Statement <http://prp.gov.wales/?skip=1&lang=en>

16. Acknowledgements

Welsh Government acknowledges that it has drawn upon the following publications and organisations to supplement its own research to produce this guidance note:-

- Chartered Institute of Purchasing and Supply (CIPS)
- Crown Commercial Services 'Framework Agreement' Guidance, Cabinet Office, 2015
- Crown Commercial Services 'Amendments to Contracts During their Term' guidance
- Crown Commercial Services 'Changes to Procedures' guidance
- EU Public Procurement Directive 2014/24/EU
- Commission's 'User Guide to the SME Definition', Ref. Ares(2016)956541 - 24/02/2016
- Public Contracts Regulations 2015

- 'Small Supplier Big Opportunity: Flagging your Contracts to SMEs', OGC / BIS, 2010
- 'Smaller Supplier Better Value', Cabinet Office, 2005
- The new SME Definition, User Guide and Model Declaration, Enterprise & Industry Publication (2005)