



Oifig um Sholáthar Rialtais  
Office of Government Procurement



# Market Engagement Summary

**Feedback to Market Information Seminar**

**Office of Government Procurement**

**Tel:** 076 100 80 50

85 – 93 Lower Mount Street  
Dublin 2

[www.procurement.ie](http://www.procurement.ie)  
[sean.bresnan@ogp.gov.ie](mailto:sean.bresnan@ogp.gov.ie)

---

## Background

The Office of Government Procurement (OGP) held a Legal Services Market Information Seminar on 22<sup>nd</sup> April 2015 in the Law Society of Ireland, Blackhall Place.

The seminar was presented by Sean Bresnan, Portfolio Manager, Professional Services, OGP and was chaired by the Director General of the Law Society of Ireland, Mr Ken Murphy.

The purpose of this Seminar was to provide the Solicitors profession (our market) with an overview of;

- Procurement Reform
- The Operating Model within OGP and its significance for the future procurement of legal services from Solicitors
- Current OGP thinking as it related to future service delivery models

As part of this seminar and in keeping with our principle of giving service providers, regardless of their size an opportunity to help shape and influence the future of procurement and the provision of these services across the Public Sector, we sought the views of participants on their experiences in participating in public sector procurement competitions previously and specifically sought their views on the following areas;

- Design & Construct of intended Framework Agreements
- Participation & Representation in competition
- Award & Assessment criteria for entry to Framework Agreements
- Pricing Models
- Draw Down & Access mechanisms
- Competition Thresholds for entry to Framework Agreements
- Performance Measurement during the continuance of Framework Agreements

Where the feedback provided by participants was to be considered of substance and merit, we have incorporated this into our procurement strategies in an effort to ensure that the needs of our customers match the capacity and capability of the market place.

This document aims to summarise the feedback received from the market and how this feedback has impacted on our initial thinking.

This document is for information purposes only and does not represent the actual and final OGP policy or approach to the procurement of legal services. The final approach to each specific Framework Agreement will be contained in the RFT for each specific Framework Agreement that is tendered.

## Overview of Feedback

There was a broad range of feedback received to the presentation. Respondents were generally open to legal services being procured through a number of different framework agreements, each of which being specific to a sector, a service complexity or a geographical area. Key feedback from respondents was they wanted solutions that;

- Ensure the participation of a broad business base, from small Band 4 practices (1-5 solicitors) right through to large Band 1+ practices (>100 solicitors)

- Provide an opportunity for firms to compete by reference to their size
- Have a clear, efficient and low cost drawdown or competitive process;
- Create transparency by allowing Framework Clients (i.e. public sector bodies) to identify law firms that provide quality and value for money through a quality framework
- Do not place an over-reliance on institutional knowledge
- Have reasonable and proportionate competition thresholds applied for the purposes of competing for entry to Framework
- Are not driven exclusively by price
- Ensure those who engage service through the framework are informed, equipped and knowledgeable on how to instruct and manage law firms.

This engagement has proven to be an invaluable exercise and one which has given us a deeper understanding of the market. It is now our intention to proceed with a phased procurement approach to the market with a number of different Framework Agreements being let at different times. The following is the order in which we intend approaching the market between now and year end.

#	Title
<b>FA1</b>	Strategic Legal Services to All of Government (AoG)
<b>FA6</b>	Provision of Legal Services to HIQA
<b>FA5</b>	Operational & Transactional Legal Services to All of Government (AoG)
<b>FA3</b>	Educational Training Board Legal Services
<b>FA2</b>	Local Government Legal Services
<b>FA4</b>	Regulatory Legal Services
<b>FA7</b>	Tusla Legal Services (to be confirmed)
<b>FA8</b>	Prosecution Services (to be confirmed)

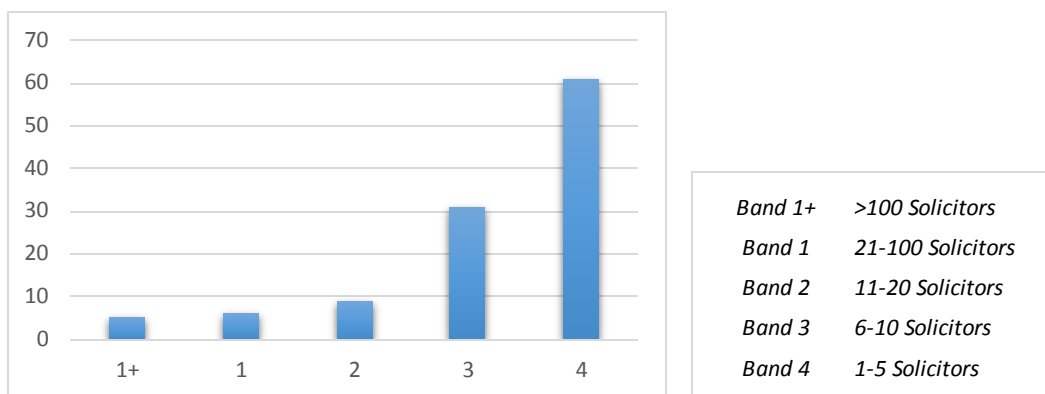
From time to time, as specific circumstances demand it, certain contracts outside the FA designations may be tendered by OGP.

It is not our intention to conduct any further market engagements. For notifications (e.g. updates, tender notices, tender documents etc) law firms interested in participating in any of these competitions should ensure they are registered on [www.etenders.gov.ie](http://www.etenders.gov.ie).

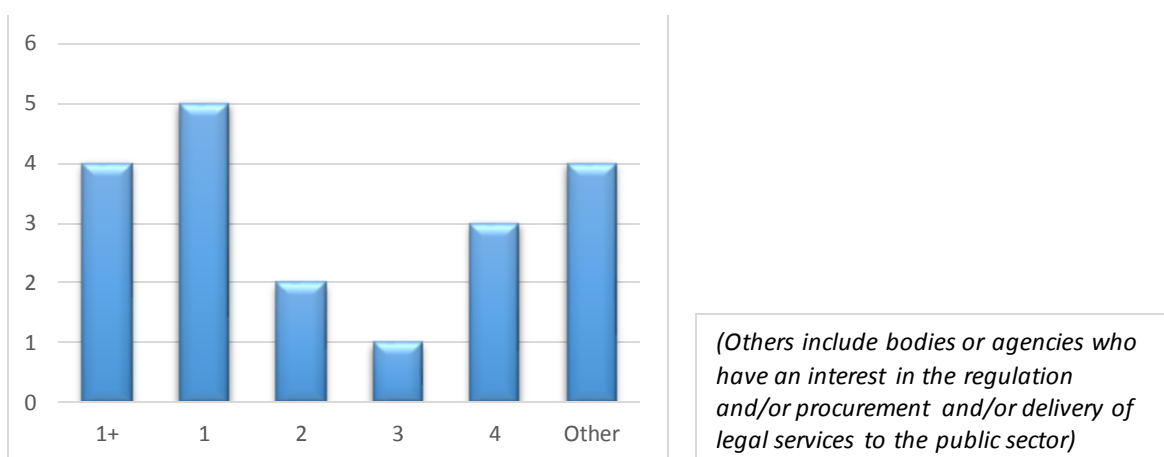
Appendix 1 to this documents provides a brief overview of the types of services that will be procured through each Framework. This information will hopefully assist participants in understanding which procurement competitions may be suitable for their firm.

## Participation & Responsiveness

A total of 135 people representing 112 law firms attended the Seminar. Incumbent firms numbered 50 while 62 firms in attendance were currently not providers of service to the public sector. The graph overleaf shows the breakdown of attendees by firm size.



A total of 19 responses were received from attendees which represent a 17% response rate. While the quantum of responses is considered low, the quality of responses is considered high. The graph below shows the breakdown of responses by firm size.



## Substantive Market Feedback

The tables at Appendix 2 list the substantive feedback received from the market along with an indication of how we will incorporate this feedback into our procurement strategies. We hope you find this useful and that it serves to illustrate our commitment to ensuring that market feedback is an integral part of our approach.

## Appendix 1 – Framework Descriptions

#	Title	Description
<b>FA1</b>	All of Government (Strategic Legal Services)	<p>Designed for the provision of strategic, high level, broad based advice across eleven (11) separate Lots, each Lot representing a core legal practice area with a number of firms appointed to each Lot. It is anticipated that this Framework will be for those advices and services which</p> <ul style="list-style-type: none"> <li>(i) may be sensitive and/or significant in nature, and/or;</li> <li>(ii) of high value and/or complexity in nature, and/or</li> <li>(iii) are necessary to ensure that no precedent is created which will materially impact on a Framework Client in either a reputational or financial context</li> </ul> <p>Examples include PPP, PFI, large procurement projects, Corporate joint ventures, public service concessions or franchises, major infrastructure and strategic outsourcing projects, issues of important public law that impact on a national basis.</p> <p>It is likely that this FA will contain a lot specific to the delivery of Pro Bono and Corporate Social Responsibility Services.</p>
<b>FA6</b>	Provision of Legal Services to HIQA	A Framework Agreement for the provision of legal services to HIQA. This will be a multi-supplier Framework for the delivery of corporate type services nationally as well as the delivery of differing legal services on a localised geographical basis.
<b>FA5</b>	All of Government (Operational & Transactional Legal Services)	A Framework Agreement for the provision of operational services to any public sector body. It is likely that this will be lotted on a geographical basis and sub-lotted on a practice area basis. This will allow firms with particular expertise at local level to compete for inclusion in a Lot that they feel suits their area of legal expertise.
<b>FA3</b>	Educational Training Board Legal Services	A Framework Agreement for the provision of legal services to ETB's. This will be a geographical type arrangement that will allow ETB's to procure services both locally and nationally.
<b>FA2</b>	Local Government Legal Services	A Framework Agreement for the provision of legal services to Local Authorities. This will be a geographical type arrangement and sub-lotted on a practice area basis that will allow Local Authorities to procure services both locally and nationally.
<b>FA4</b>	Regulatory Legal Services	A Framework Agreement that will accommodate the needs of the regulatory sector. It will most likely be structured by sector where a regulatory body or agency can access law firms with particular expertise in that sector.
<b>FA7</b>	Tusla Legal Services (to be confirmed)	A Framework Agreement for the delivery of localised child care legal services
<b>FA8</b>	Prosecution Services (to be confirmed)	A Framework Agreement for the delivery of a broad range of localised prosecution legal services, e.g. fisheries or food prosecutions

## Appendix 2 – Substantive Market Feedback

<b>Design &amp; Construct</b> The responses provided will help guide us on the structures for the overall public sector wide approach to the procurement of legal services	
<b>Market Feedback</b>	<b>OGP Comment/Position</b>
Broad agreement with structures and constructs of Framework Agreements (FA's)	It is now our intention to proceed with a phased procurement approach to the market with a number of different Framework Agreements being let at different times.
Geographical Base too wide for Local Authority FA	Agreed - alternative and smaller geographical lots currently being considered by relevant Procurement Sourcing Team
Informed Purchaser, those procuring services under the FA need to understand how the FA operates, how to instruct and manage law firms	OGP will ensure that all those procuring services through Frameworks have a clear understanding of how to instruct and manage law firms. Each FA will be supported by framework toolkits and a guidance document suite
Consider Prosecution Services as a separate Framework Agreement	Under consideration by Category Council. Possible operating model now under development.
Consider the inclusion of Pro Bono & Corporate Social Responsibility Services	Will be included as a separate Lot within Strategic Legal Services FA

<b>Participation &amp; Representation</b> The responses provided will help inform us as to how best to structure our competitions to ensure we have participation from small Band 4 practices (1-5 solicitors) right through to large Band 1+ practices (>100 solicitors)	
Broad Agreement with the principle that there should be reasonable opportunity and expectation provided to Framework Members	OGP currently considering how best this principle can be made operative
Consideration should be given to accommodating new entrants	May not be possible, however duration of FA's will be such that they will not exceed more than 4 years and may be broken into 2+1+1 durations.
Majority in favour of competing by reference to size (60%)	This will not be possible. However, it is anticipated that the procurement of services through multiple FA's will lead to firms naturally aligning themselves to FA competitions that best suit their skill set

## Award Criteria & Assessment

The responses provided will help inform us as to how best to ensure we have Framework Agreements comprised of law firms who can provide high quality services to the public sector

An over reliance should not be placed on institutional knowledge	OGP will ensure that previous experience of service delivery is not confined to delivering services to the public sector.
Past Experience should be a key assessment criteria	Agreed - OGP giving consideration to how best to test experience
People and team are an important consideration	Agreed. However, OGP may only test the experience of the firms for the purposes of entry to the FA. The suitability of the resources proposed for any subsequent engagements will be tested by way of mini-competition. This approach has two (2) key benefits <ul style="list-style-type: none"> <li>i. it reduces the administrative burden on Tenderers to compile voluminous numbers of Curriculum Vitae for each FA competition; and,</li> <li>ii. It ensures Framework Clients have the opportunity to test the suitability of resources as part of any mini-competition</li> </ul>
Need to be more specific in how we assess –the experience to date is that many Contracting Authorities have been too vague	Noted - OGP will endeavour to improve the information provided for the purposes of award. This is likely to include the inclusion of a Tenderers Briefing stage within the tender period.
Move experience window/period from 3 to 5 years	Agreed – Tenderers will be asked to submit details of previous experience for defined number of comparable projects within the last 5 years. These details will not necessarily have to have been delivered to public sector clients.
Added Value should be a consideration in award	Agreed - there are a number of added value additional services that the Tenderers may offer the Framework Clients when they purchase Services. Tenderers will be required to list and provide a brief description of each of the added value additional services that will be made available to the Framework Clients under Framework Agreements for which no specific charge will be made. This may or may not be a weighted criteria
The information called for in tenders is complex and voluminous which places a cost and resource burden on firms	Noted - Tenderers will not be required to submit voluminous amounts of information as it relates to regulatory compliance or quality assurance standards. Tenderers will self-certify that they meet the minimum standards and OGP will carry out a minimum number of random audits to ensure that this is the case
A level playing field is needed to ensure that all tenderers have an equal opportunity at the stage where they are competing for inclusion on Framework Agreements.	A standard tender response document (with page and word limitations) will be used by all Tenderers, which is designed to be intuitive for the user and easy to evaluate for the Contracting Authority.

## Pricing Models

The responses provided will help guide the cost structure for entry to the Frameworks and the type of billing arrangements and commercials proposals that will be necessary for drawdown

Broad agreement that entry to FA's should be by way of hourly rates	Noted. Entry to FA's will include hourly rate pricing as well as volume discount scheduling.
For more complex services, experience of alternative billing models should be examined	Agreed - FA for strategic legal services may test a Tenderers experience of operating by way of alternative billing and cost methods ("cost innovation")
Incentivise exceptional performance	Noted - not applicable for the purposes of entry to the FA. However, where appropriate, incentivised billing will not be precluded as a billing model in any subsequent mini-competition
OGP set the rate for services and all firms compete on a qualitative basis	Has been considered. At this stage we do not have sufficient information to determine a fair and reasonable rate. We may give this further consideration at a later date.

## Draw Down & Access

The responses provided will help inform us as to how best to ensure we have fair, clear, efficient and effective draw down mechanisms

Cascade does not work	Agreed - cascade is not considered an appropriate call of mechanism
Support for principle of ad hoc direct draw down	OGP currently considering a number of mechanisms to ensure easy access to service is provided to Framework Clients and reasonable opportunity is afforded to Framework Members
Ad Hoc draw down arrangement should be policy driven not rule set driven	Not agreed - a clear rule set needs to be included to ensure FA operates in a fair and transparent manner
Strong agreement with the "direct draw drawdown below a threshold" principle but that this needs to be consistent with FA type	OGP currently considering what thresholds below which there is no recourse to mini-competition may apply to each FA.

## Competition Thresholds

The responses provided will help inform us as to how best to ensure we have as competitive pool of service provider seeking to be included in any Frameworks

No turnover (TO) test to apply save for high profile Framework Agreements	Agreed, TO will not be a qualifying test
TO for strategic type FA's suggested at €5m	Not agreed - TO will not be a qualifying test
PI should be the minimum regulatory requirement	Agreed, PI levels for the purposes of competing for entry to FA's will be set at €1.5m (save for FA1 which may be in the order of €5m)



## Performance

The responses provided will help inform us as to how best we measure the overall value for money of service being delivered

The general view emerging was that the measurement of performance should be simple and clear.

Measuring the performance and quality of Framework Members services is an integral part of any OGP Professional Services Framework Agreement. It is likely that OGP will develop a simple questionnaire for Framework Clients that will measure performance by reference to the following,

- Efficiency,
- Effectiveness,
- Expertise,
- Commercial,
- Communication and
- Satisfaction

There should be a mechanism for reviewing the operation of the Framework Agreements

Agreed – OGP intends putting a mechanism in place that will allow Framework Members, on a periodic basis, to provide OGP with their views on how the arrangements are operating.