



An Roinn Dlí agus Cirt
Department of Justice

Request for Tender for Research Services

An economic analysis of models or approaches to controlling and reducing litigation costs in Ireland.



Request for Tender for Research Services

Applications for tenders must be returned to research@justice.ie by **5pm Irish time on the 30th of April 2021.**

Section 1. Background information and invitation to tender

1.1 The Department of Justice

The Department of Justice (“the Department”) is a department of the Government of Ireland. The Department's mission is to work to make Ireland a safe, fair and inclusive place to live and work. It has a wide range of responsibilities including, state security, the protection of life and property, the prevention and detection of crime, providing services for the buying and selling of property, managing inward migration to the State, providing a Courts Service, updating our criminal and civil laws, developing the Insolvency Service and various other regulatory services.

1.2 Background to the Tender

Following a Government Decision in 2017, it was announced that a Review Group, to be chaired by the then President of the High Court, Mr. Justice Peter Kelly, would be established to review and reform the administration of civil justice in the State. The Group was requested to report to the Minister for Justice and make recommendations for changes with a view to improving access to civil justice in the State, promoting early resolution of disputes, reducing the cost of litigation, creating a more responsive and proportionate system and ensuring better outcomes for court users.

The Group held an open call requesting submissions from interested persons or parties in relation to its work. The Group received over 90 submissions which were considered by the Review Group and a number of specialised sub-committees. Submissions were received from Government Departments, members of the judiciary, legal professionals, academics, non-profit organisations, professional bodies and individual members of the public.

As part of the process, researchers also reviewed caseload data for the various jurisdictional instances and considered surveys and evaluations of performance of Ireland's civil justice system taken internationally (EU Justice Scoreboard, Doing Business Reports by World Bank, Global Competitiveness reports of the World Economic Forum etc.). Findings and conclusions of a range of reviews and reports on this topic from other jurisdictions were also examined.

As part of their report, the Review Group made a large number of recommendations in order to make the civil justice system more efficient and easier for people to access. The Group also made several recommendations to help reduce the costs and time involved in legal proceedings. A number of these related to litigation costs generally. However, the Group was unable to reach a consensus regarding recommendations on how to reduce litigation costs. A majority of the Group members recommended the drawing up of non-binding guidelines for costs levels, while a minority of Group members recommended a table of maximum costs levels be prescribed by a new Litigation Costs Committee, which could be derogated from in exceptional circumstances. In making their recommendation the group examined the experience in other jurisdictions in particular litigation costs regimes in Canada and Australia.

1.3 Research aims

The Department invites tenders for the design and conducting of a Cost Benefit Analysis (CBA) in the area of litigation costs to the State, with the focus on evaluating the economic impact of measures to control litigation costs to the State, in particular binding and non-binding controls on contentious costs. Also as part of the work, the researcher is asked to carry out a rapid review of any alternative models that meet the goal of reducing the litigation costs to the State and undertake a CBA of them. The CBA's will include sensitivity analysis and the potential for some scenario “what if” scenarios.

It is proposed that the project be broken into two parts;

Part 1 - Recommendation by the Review Group

- a. Conduct a CBA in the area of litigation costs to the State for the two models that were put forward



as part of the recommendations by the Review Group. This will include the establishment of a framework to outline the parameters used in the analysis.

Part 2 - Alternative Model

- a. Based on evidence identified in the course of the rapid review, design an alternative model that could potentially meet the goal of reducing the litigation costs to the State as in Part 1 above. Consideration should be given to how transferable this model is.
- b. Design and conduct a CBA of this model.

Part 1 - Recommendation by the Review Group

In regards in the area of controlling litigation costs to the State, the Review Group recommended the following two options;

1. The creation of a table of binding maximum costs chargeable (the minority view) and;
2. A table of non-binding guidelines regarding costs (the majority view).

In relation to the latter, the Group noted that the guidelines should be expressed by reference to schedule 1 of the Legal Services Regulatory Authority Act 2015, and the levels at which parties have either resolved or had adjudicated costs disputes. They should take into account prevailing economic conditions and refer to the need to ensure no more than a reasonable level of remuneration on a party and party basis, and that similar guidelines for practitioner and client costs also be formulated.

In relation to the former, the minority group noted that the maximum table of costs concept it proposes should not preclude legal practitioners from agreeing costs lower than the levels specified. It notes that the table of costs could be developed with regard to principles and policies which would be applied to both legal practitioner and client costs, and party to party costs.

In both cases, it is envisaged that these will relate to contentious costs of litigation before the courts. The Review Group report provides information on costs arising from contentious business.

It should be noted that while the list of questions below is not an exhaustive list, these are some of the core questions to be answered in relation to both parts:

- What is the model's core characteristics?
- What are all the costs and benefits of the model in economic terms?
- What is known about its effectiveness in controlling litigation costs, for the State?
- What would be the economic impact of making such a model binding in the Irish context, except where both parties agree to opt out?
- Consider the implications for the Irish context of setting legal costs.

The CBA should include the following;

- Establish a framework to outline the parameters of the analysis for both options.
- Identify costs and benefits for both options.
- Calculate costs and benefits for both options.
- Compare the cost and benefits for both options.
- Analyse the results and make an informed, final recommendation on which option would be preferred.

It must be noted that the points above are to be used as a guide, and the CBA design will be to the researcher's discretion.

Part 2 Alternative model

This section will involve research into any potential alternative models that meets the goal of reducing litigation costs to the State.

As in part 1 above, that while the list of questions below is not an exhaustive list, these are some of the core questions to be answered in relation to both parts:

- What is the model's core characteristics?
- What are all the costs and benefits of the model in economic terms?
- What is known about its effectiveness in controlling litigation costs, for the State?
- What would be the economic impact of making such a model binding in the Irish context, except where



both parties agree to opt out?

- Consider the implications for the Irish context of setting legal costs.

As in Part 1, the CBA should include the following;

- Establish a framework to outline the parameters of the analysis for both options.
- Identify costs and benefits for both options.
- Calculate costs and benefits for both options.
- Compare the cost and benefits for both options.
- Analyse the results and make an informed, final recommendation on which option would be preferred.

1.4 Research outputs

There are several key challenges in carrying out this project. These will need to be clearly addressed by the researcher in their proposal. Some are as follows;

- Establishing a Framework the parameters of the analysis.
- Ensuring that all the costs and all the benefits are included, before being quantified, especially, intangible costs etc.

The outputs for this projects are:

- Development of CBA's that will examine all the costs and benefits associated for all the options outlined in both Part 1 & 2.
- Clear recommendations for which is the preferred model.
- Presentation to the Department and key stakeholders

The tenderer will also be required to meet at least three times with the Civil Policy and IGEES units in the Department, to include:

- A meeting within one month of the tender award to discuss the proposed approach and clarify expectations and outputs. This will include establishing a framework to outline the parameters of the analysis.
- An interim meeting after three months to discuss progress.
- A final meeting at which the findings of the report are presented.

The tenderer should describe how they will adapt the research to take account of any COVID-19 restrictions that may be in place during the research.

1.5 Timeframe

The Department is eager that the tenderer will be ready to start as soon as possible and asks that tenderers specify how soon they would be in a position to commence the work. **Duration of the tender will be 6 months after the awarding of the tender with the final report due on the 26th of November 2021.**

1.6 Timeframe

The budget for this research is a maximum of €25,000 (excluding VAT).



Section 2. Instructions to Tenderers

2.1 Format of tenders

Tenderers should complete and submit the application form. Tenders submitted in formats other than the application form will not be considered.

2.2 Compliant tenders

To better ensure compliance with the tendering process, tenderers should read this document in full including Section 5 'Terms and conditions'. If a tenderer fails to comply in any respect with the requirements of this paragraph, the Department reserves the right to reject the tender as non-compliant or, without prejudice to this right and subject to its obligations at law, to take any other action it considers appropriate including but not limited to:

- Seeking written clarification from the tenderer;
- Seeking further information from the tenderer; or
- Waiving a requirement, which in the Department's view, is non-material or procedural.

Tenderers are required:

1. To submit all documentation which this Request for Tender (RFT) requires to be submitted with their tender;
2. To conform to and comply with all instructions and requirements set out in this RFT;
3. To submit the statement required under Appendix 1;
4. Not to alter or edit this RFT in any way.

2.3 Submission of tenders and closing date for application

Completed application forms must be sent by email to research@justice.ie with subject line "An economic analysis of models or approaches to controlling and reducing litigation costs in Ireland".

Completed application forms must be received no later than **5pm Irish time on the 30th of April 2021** (the 'tender deadline'). Application forms received after the tender deadline will NOT be considered.

Section 3. Queries and clarifications

All queries related to any aspect of this RFT must be directed to research@justice.ie. The Department reserves the right to issue or seek written clarifications. The Department reserves the right at any time before the tender deadline to update, cancel or amend the information contained in this document and/or to extend the tender deadline. Participating tenderers will be informed of any such clarification, amendment or extension by email.



Section 4. Evaluation of tenders and award of contract

4.1 Criteria for award of contract

The contract will be awarded out of a total of 100 marks on the basis of the most economically advantageous tender as identified in accordance with the following criteria:

- Have a proven and demonstrated track record of undertaking similar research and comparative studies, have knowledge in the area of Behavioural Economics and worked collaboratively with other government Departments/agencies (35)
- Feasibility of the approach suggested (20)
- Ability to deliver key outputs on time (10)
- Cost – broken down to show description of costs, justification for proposed costs and best use of resources (35).

Award of the contract to the highest ranked tenderer (as determined by the above paragraph) will be conditional upon the tenderer submitting the following evidence in respect of the tenderer (including any subcontractor as applicable) to the extent not already provided, within seven days of request by the Department (i) a Declaration in the form attached at Appendix I and (ii) all or any of the supporting documents specified in the section on 'Format of tender'.

The Department does not bind itself to accept the lowest priced of any tender. This RFT does not constitute an offer or commitment to enter into a contract. No contractual rights in relation to the Department will exist unless and until a formal written contract has been executed by or on behalf of the Department.

The tenderer will be required, if necessary, to outline and agree the approach which it proposes to take to the research with the members of the Department's Research Advisory Group / Research & Data Analytics unit.

4.2 Payment conditions

- i. All prices quoted must be all-inclusive of all expenses anticipated inclusive of VAT. The VAT rate(s) where applicable should be indicated separately.
- ii. Tenderers must confirm that all prices quoted in the tender will remain valid for three months following the tender deadline.
- iii. Payment for the delivery and implementation work will be on foot of appropriate invoices. Invoicing arrangements will be agreed with the successful contractor, following the award of contract.
- iv. The provisions of the Prompt Payment of Accounts Act 1997, as amended or revised, and the European Communities (Late Payment in Commercial Transactions) Regulations, 2002 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.

4.3 Taxation requirements

It will be a condition of any contract pursuant to this RFT that the successful tenderer shall, for the term of such contract, comply with all applicable EU and domestic tax laws. Tenders are referred to www.revenue.ie for further information. Prior to the award of any contract arising out of this RFT, the successful tenderer shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Department. By supplying these numbers, the successful tenderer acknowledges and agrees that the Department has the permission of the successful tenderer to verify its tax cleared position online.

4.4 Subcontractors

Tenderers should note that where a tenderer is relying on the capacity of other persons or entities (for example subcontractors) for the purposes of fulfilling any of the award criteria set out below, it must ensure that each such person or entity, when requested by the Department, will submit proof, to the satisfaction of the Department, that it will place the necessary expertise at the disposal of the tenderer.



If a tenderer does not, upon request by the Department, provide evidence which is considered by the Department as sufficient to demonstrate the fulfilment by any subcontractor on whose capacity the tenderer relies of the award criteria (or any one of them) in accordance with this RFT, it shall be excluded from further participation in this tender process unless it replaces the subcontractor with one which meets all relevant requirements of this RFT. Any such replacement cannot affect the price submitted.

Section 5. Terms and conditions

5.1 Liability and warranty for tender information

While every effort has been made to provide comprehensive and accurate information in this request for tender, the Department does not accept any liability or provide any express or implied warranty in respect of any such information. Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this RFT and may wish to consult their legal advisers as appropriate.

5.2 Data protection

With effect from 25 May 2018, a new Europe wide data protection regime has come into place under the General Data Protection Regulation (GDPR). The GDPR significantly increases the obligations and responsibilities for organisations and businesses on how they collect, use and protect personal data. All data will be processed in accordance with GDPR and relevant data protection law. Applicants are required to comply with the requirements of data protection legislation and the General Data Protection Regulation (GDPR).

5.3 Tendering costs

All costs and expenses incurred by tenderers relating to their participation in this RFT shall be borne by the tenderers exclusively.

5.4 Confidentiality

All documentation, data, statistics and information furnished by the Department to tenderers during the course of this RFT:

- i. are furnished for the sole purpose of replying to this RFT only;
- ii. may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Department;
- iii. shall be treated as confidential by the tenderer and by any third parties (including subcontractors) engaged or consulted by the tenderer; and
- iv. must be returned immediately to the Department upon cancellation or completion of this RFT if so requested by the Department.

5.5 Publicity

No publicity regarding this RFT or any contract pursuant to this RFT is permitted unless and until the Department has given its prior consent to the relevant communication.

5.6 Ownership

Ownership of any reports or material produced relating to any contract awarded as a result of this RFT rests with the Department.

5.7 Copyright and publication

Copyright of any reports or material produced shall rest with and be assigned to the Department. The Department shall have the right to publish, or not as the case may be, and to disseminate the report in both its original and in a modified form, without further reference to the tenderer. The tenderer will not be entitled to further payment if this occurs. The tenderer and the individual researchers will be entitled to be credited with the work that they have done on this project in any publication.



5.8 Registrable interest

Any registrable interest involving any tenderer or subcontractor and members of the Department, members of the Government, members of the Oireachtas, or employees and officers of the Department and their relatives must be fully disclosed in the tender or, in the event of this information only coming to the notice of the tenderer or subcontractor after the submission of a tender, must be communicated to the Department immediately upon such information becoming known to the tenderer or subcontractor.

The terms 'registrable interest' and 'relative' shall be interpreted as per section 2 of the Ethics in Public Office Acts 1995 and 2001, copies of which are available at www.irishstatutebook.ie. The Department will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a tenderer from this RFT or terminating any contract entered into by a tenderer.

5.9 Anti-competitive conduct

Tenderers' attention is drawn to the Competition Act 2002 (as amended, the '2002 Act'). The 2002 Act makes it a criminal offence for tenderers to collude on prices or terms in a public procurement competition.

5.10 Freedom of information

Tenderers should be aware that, under the Freedom of Information Act 2014, information provided by them during this RFT may be liable to be disclosed.

Tenderers are asked to consider if any of the information supplied by them in their tender should not be disclosed because of its confidentiality or commercial sensitivity. If tenderers consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, tenderers must, when providing such information, clearly identify the specific sections of their tender containing such information and specify the reasons for its confidentiality and commercial sensitivity.

5.11 Conflicts of interest

Any conflict of interest or potential conflict of interest on the part of a tenderer, subcontractor or individual employee or agent of a tenderer or subcontractor must be fully disclosed to the Department as soon as the conflict or potential conflict is or becomes apparent. In the event of any actual or potential conflict of interest, the Department may invite tenderers to propose means by which the conflict of interest might be removed. The Department will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a tenderer from this tender process or terminating any contract entered into by a tenderer.

5.12 Withdrawal from the RFT process

Tenderers are required to notify the Department immediately by email to research@justice.ie if they decide to withdraw from the RFT process.

5.13 Insurance

The successful tenderer shall be required to hold for the term of the contract the appropriate level of insurance cover in order to carry out work associated with this project.