Framework Agreements
OGC Guidance on Framework Agreements in the Procurement Regulations
OGC Guidance on Framework Agreements

Framework Agreements in the 2006 Public Contracts and Utilities Contracts Regulations

Contents
1. Introduction
2. What is a framework agreement?
3. Setting up a framework agreement
   - Early considerations
   - Requirements of the OJEU Contract Notice
   - Award of a framework agreement
4. Call-offs
5. Examples of framework agreements
   - Figure 1: Framework agreements
   - Figure 2: Call-off Stage
1. Introduction

1.1 The European Union (EU) Public Sector Procurement Directive 2004/18/EC includes a provision (Article 32) on framework agreements. The UK Public Procurement Regulations which implement this Directive and came into force on 31 January 2006, cover this provision in Regulation 19. The Utilities Procurement Directive and Regulations include this provision at Article 14 and Regulation 19 respectively. This note offers guidance to practitioners on the implications of the provision on framework agreements.

1.2 This guidance is not intended as a substitute for project specific legal advice, which should always be sought by a contracting authority where required.

2. What is a framework agreement?

2.1 The Regulations define a framework agreement as:

“an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies”.

In other words, a framework agreement is a general term for agreements with providers that set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. In most cases a framework agreement itself is not a contract, but the procurement to establish a framework agreement is subject to the EU procurement rules. In a few circumstances it may be the case that the framework agreement itself is a contract in its own right to which the EU procurement rules apply. This would be the case where the agreement places an obligation, in writing, to purchase goods, works or services for pecuniary interest (or consideration in UK legal terminology). For this type of agreement, there is no particular problem under the EU rules, as it can be treated in the same way as any other contract.

2.2 However, the term ‘framework agreement’ is normally used to cover agreements which are not, themselves, covered by the definition of a contract to which the EU rules apply (though they may create certain contractually binding obligations). Such agreements set out the terms and conditions for subsequent call-offs but place no obligations, in themselves, on the procurers to buy anything. With this approach, contracts are formed under the Regulations only when goods, works and services are called off under the agreement. The benefit of this is that, because authorities are not tied to the agreements, they are free to use the frameworks when they provide value for money, but to go elsewhere if they do not.

---

2.3 It is this form of agreement, where the framework itself cannot be readily classifiable as a contract for the purposes of the current Regulations, which has caused much difficulty in relation to the application of the EU procurement rules, and which is addressed explicitly in the 2004 Directives and covered in this note. It should be stressed that the contractual status of a framework agreement should not cause undue concern; the key is that a means of awarding contracts under framework agreements is provided for without the need to re-advertise and re-apply the selection and award criteria from the outset.

3. Setting up a framework agreement

Early considerations

3.1 It will be important to consider whether a framework agreement, as defined above, is the right approach for the particular goods, works or services to be purchased. This will be a value for money (vfm) judgement for the contracting authority or authorities concerned, taking account of the kinds of purchases involved and the ability to specify such purchases with sufficient precision upfront. In particular, in order to be consistent with vfm obligations the framework should be capable of establishing a pricing mechanism. However, this does not mean actual prices should always be fixed, but rather that there should be a mechanism that will be applied to pricing particular requirements for call offs during the period of the framework. Even though it would be possible to award the framework itself on the basis of quality criteria alone, with prices being offered at a mini competition, this is unlikely to be consistent with vfm and is generally only considered appropriate in a few limited circumstances where it is not possible to determine price or a pricing structure at the time the framework is established. It should also be possible to establish the scope and types of goods and/or services that will need to be called-off. There should not be any objection to upgrading the product, service or works required so long as it remains within the scope of the original specification.

3.2 In using framework agreements, contracting authorities will need to ensure that their obligations on issues such as sustainability, TUPE and the Code of Practice on Workforce Matters are being met. The use of framework agreements does not remove the need to the address these issues, where relevant, in awarding a contract at the call-off stage.

---

5 For example some energy or fuel procurements where because of price fluctuations bidders are not able to offer either price or even a discount formula based on market prices.
3.3 It is necessary to advertise a framework agreement in the OJEU, if its estimated maximum value over its lifetime exceeds the relevant EU threshold and the procurements in question are not covered by one of the exclusions set out in the Directives. When assessing the total value of the framework, a required field in the OJEU Contract Notice, it is important that the estimate should include 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 procuring the framework agreement.

3.4 Contracting authorities that act as Central Purchasing Bodies may set up and advertise framework agreements on behalf of other contracting authorities. Where the EU rules have been followed by such Central Purchasing Bodies, other contracting authorities may use the framework agreements as required so long as they have been covered in the OJEU notice (see paragraph 3.6 below).

3.5 Although the individual circumstances will need to be considered, it is worth considering whether to construct the framework so that it can have the maximum take-up across the public sector. This is particularly the case for items that are not already covered by a pan government agreement. Having too many frameworks for the same product or service will not encourage the market to bid or offer value for money if bidders are not convinced about the likely level of take up.

**Requirements of the OJEU Contract Notice**

3.6 The OJEU Contact Notice must:

- Make it clear that a framework agreement is being awarded;

- Include the identities of all the contracting authorities entitled to call-off under the terms of the framework agreement. The authorities can be individually named, or a recognisable class of contracting authority may be used – e.g. Central Government Departments, local authorities or health authorities in a particular region etc. It should be noted that European Commission guidance on frameworks indicates that classes of contracting authority should be defined in a manner that enables “immediate identification of the contracting authorities concerned. It is not considered to be sufficiently precise to refer to all contracting authorities in a particular region”.

- When class descriptions do not allow ‘immediate identification of the contracting authorities concerned’, a reference to where details of the authorities covered can be obtained should be included in the notice. For example, if there is an accessible list of contracting authorities in a relevant “class”, or an organisation with responsibility for maintaining details of the members of a “class”, that list or organisation should be quoted in the Contract Notice and, where possible, a link to this information included.

- State the length of the framework agreement. It will be a maximum of four years “except in exceptional circumstances, in particular, circumstances relating to the subject of the framework agreement”. It is understood that a longer duration could be justified in order to ensure effective competition under the framework agreement if four years would not be sufficient to provide a return on investment. It is worth

---

considering, in any event, whether a framework agreement is necessarily the best vehicle for a longer term project.

- Include the estimated total value of the goods, works or services for which call-offs are to be placed and, so far as is possible, the value and frequency of the call-offs to be awarded under the agreement (see paragraph 3.3 on assessing the framework’s total value). This is necessary in order for providers to be able to gauge the likely values involved and to provide a figure for the framework overall which, as with other contracts, should not normally be exceeded without a new competition taking place.

3.7 Regulation 7 of the Public Contracts Regulations 2006 (and Regulation 10 of the Utilities Contracts Regulations) enables contracting authorities to reserve the right to participate in a public contract to supported employment programs, factories and businesses. The ability to reserve contracts in this way applies to framework agreements as well as to contracts generally. The OJEU Contract Notice, at the start of the procurement for the framework agreement, will need to make it clear that it is reserved for sheltered workshops (the term used for supported employment programs, factories and businesses in the EU Directive itself) under Article 19 of the Public Procurement Directive (Article 28 of the Utilities Directive). Guidance on Article 19 is available at: OGC - Guidance on the 2006 Regulations.

Award of a framework agreement

3.8 Once the OJEU Contract Notice has been despatched, the authorities setting up the framework agreements should follow the rules for all phases of the procurement process covered by the Regulations. This will include the use of the open or restricted procedures or, where the conditions for their use are met, the negotiated or competitive dialogue procedures, and adherence to the rules on specifications, selection of candidates and award. The 2006 Regulations do not explicitly prohibit the possibility of concluding framework agreements under the competitive dialogue or negotiated procedures. However, the complexity of most procurements conducted under these procedures often results in the award of a contract rather than the conclusion of a framework agreement.

3.9 Framework agreements can be concluded with a single provider or with several providers, for the same goods, works or services. In the latter case, there must be at least three providers, as long as there are sufficient candidates satisfying the selection criteria and which have submitted compliant bids meeting the award criteria. The agreement will establish the terms that will apply under the framework, including delivery timescales and daily or hourly rates. Figure 1 (at the end of this document) sets out the questions that need to be asked in order to establish how a framework agreement should be treated.

3.10 Contracting authorities awarding framework agreements will need to apply the mandatory standstill (Alcatel) rules. The standstill period should apply to the award of the framework itself and not to contracts, or call-offs, awarded under the framework. For the detail on these rules, please see the separate advice on the Mandatory Standstill Period (Alcatel) on the OGC website.

3.11 Section 4 describes the mechanism for calling-off contracts under a particular framework. However, OGC is aware that on occasion, a contracting authority may find itself in a position where there might be more than one framework or other contractual

---

7 Please see OGC - Guidance on the 2006 Regulations
vehicle that could meet its needs. For example, a department might be looking to procure a new contract for IT services and find there is a choice of three established framework agreements that it could call-off from. It would be appropriate to consider the three different frameworks as part of developing a procurement strategy, but contracting authorities will need to ensure that any suppliers consulted at this stage are aware of the nature of this engagement as part of the pre-procurement process.

3.12 If a contracting authority proposes to consider the extent to which more than one framework is capable of delivering its requirements, it is imperative that this is communicated to the marketplace openly. This includes, but is not limited to, consideration of the following matters:

a. not engaging with suppliers in a covert or misleading way;
b. not proposing that suppliers bid against prices offered under another framework;
c. ensuring that if the possibility of using different frameworks to fulfil a requirement is used, that there are adequate processes in place to make sure that each assessment is carried out in isolation (e.g. that those individuals involved in carrying out the mini-competition are not the same individuals who conduct a comparison);
d. ensuring that the confidentiality provisions of each framework agreement are properly respected

4. Call-offs

4.1 When awarding call-offs (individual contracts) under framework agreements, authorities do not have to go through the full procedural steps in the EU Directives again, provided the rules were followed appropriately in the setting up of the framework agreements themselves. However, the relevant EU Treaty provisions and Treaty-based principles, including non-discrimination, still apply at this stage, and authorities need to be careful to ensure that nothing is done which is discriminatory, improper or which distorts competition. See Figure 2 (at the end of this document) for more information on the call-off stage. Contracting authorities have some flexibility with regard to the award of call-off contracts within the following guidelines:

- for multi-supplier frameworks where a call-off is required following a mini-competition, it may be permissible to vary the weightings of the award criteria provided that the intention to do this was publicised in advance and ranges are given for each criterion, to ensure transparency and avoid the unequal treatment of any suppliers;

- for multi-supplier frameworks where a direct award is envisaged, it may be permissible to vary the weightings at call-off to reflect the fact that requirements will vary from time to time in terms of cost/quality. However, procurers should allow some flexibility in their specifications to reflect the fact that their needs may change during the term of the framework;

- criteria used for mini-competitions may differ from the award criteria used to set up the framework if they are related to (i.e. derive from) the original award criteria.

4.2 The length of call-offs under framework agreements is not specifically limited by the Regulations, although the Commission guidance referred to in paragraph 3.6 does state that call-offs, as well as frameworks themselves, should not last for more than four years. The length of call-offs, as with other contracts, should be appropriate to the purchases in question and should reflect value for money considerations. It may be the case that individual call-offs extend beyond the four-year term of the framework itself.
However, this should not be done in order to circumvent the EU rules. For example, it would be difficult to justify a 12-month call-off, very near the end of the framework itself, where the normal pattern for the goods or services in question had been for such call-offs to last for just one month at a time.

4.3 Where a framework agreement is concluded with just one provider, call-offs under the agreement should be awarded on the basis of the terms laid down in the agreement, refined or supplemented by other terms in the framework agreement but not agreed at that time. It is the same principle as that applying to a normal contract, except that with a framework agreement, there will be an interval between the awarding of the framework itself and the calling-off of the goods, works or services under it. There can be no substantive change to the specification or the terms and conditions agreed at the time that the framework is awarded.

4.4 Where frameworks for the same goods, works or services are awarded to several providers, there are two possible options for awarding call-offs:

**Option one: apply the terms of the framework agreement**

4.5 Where the terms laid down in the framework agreements are sufficiently precise to cover the particular requirement, the authority can award the call-off without reopening competition. The Regulations do not specify how this should be done and the following section sets out some points that contracting authorities may find it useful to consider.

4.6 The reference in the Regulations to the terms laid down in the framework agreement is not just a reference to the call-off terms and conditions, but also to the information contained in the framework which explains matters such as:

- The circumstances in which the contracting authority envisages making a direct award without further competition;

- How the contracting authority would select the supplier to which an award is made, for example by adopting an initial ranking of the suppliers on the basis of the award criteria used at the time that the framework was established;

- How the contracting authority would select a subsequent supplier if the first supplier selected was unable to provide the requirement. For example, frameworks might be concluded with five providers for the delivery of individual photocopiers, fax machines and printers, separately priced, and for delivery within set timescales. If the authority simply wants to call-off some photocopiers, it would go to the provider offering the most economically advantageous offer, using the original award criteria, for that item alone without reopening the competition. If that provider for any reason could not supply the items required at that time, the authority would go to the provider offering the next most economically advantageous offer, and so on.

4.7 The process matters mentioned in the preceding paragraphs might also be reflected in the provisions of any operational guidance/strategy that accompanies the management of the framework agreement.

**Option two: hold a mini-competition between capable providers**

4.8 Where the terms laid down in the framework agreement are not precise or complete enough for the particular call-off, a further or mini competition should be held with all
those suppliers within the frameworks capable of meeting the particular need. This does not mean that basic terms can be renegotiated, or that the specification used in setting up the framework can be substantively changed. Substantive modifications to the terms set out in the framework agreement itself are not permitted. It is more a matter of supplementing or refining the basic terms to reflect particular circumstances for the individual call-off. Examples of such terms are:

- particular delivery timescales;
- particular invoicing arrangements and payment profiles;
- additional security needs;
- incidental charges;
- particular associated services, eg installation, maintenance and training;
- particular mixes of rates and quality;
- where the terms include a price mechanism;
- individual special terms (e.g. specific to the particular products/services that will be provided to meet a particular requirement under the framework).

4.9 Where a mini-competition is held for a particular call-off, the contracting authority should consult in writing (invite to tender) the providers within the framework that are capable of meeting the particular need. This does not necessarily mean that every provider in the framework must be included. A framework may cover a number of different supplies or services, and there is no obligation to consult those providers that had not agreed, when bidding for appointment to the framework, to provide the particular supplies or services that are the subject of the call-off. Indeed, the framework may be divided into categories, each covering different supplies or services. In that case, the authority only need consult providers in the categories that cover the goods or services required.

4.10 It is worth bearing in mind that splitting a framework into lots can help the market by allowing them to focus on the specific requirements that they would be interested in with a smaller competition base rather than, for example, putting them up against a potentially large number of bidders in a global mini competition. It can also make the framework attractive to smaller companies by opening up opportunities that otherwise might have been out of their reach. If the framework has not been set up in lots as a means of separating out the services that a supplier can provide, then it would be necessary to invite all capable suppliers to tender for a mini-competition. If a framework has lots but the requirement for a particular call-off spans more than one of the supplier lots then the suppliers in all relevant lots should be invited to tender.

4.11 It should be noted that there is no scope, at this stage, to run a selection procedure, based on technical ability, financial standing etc. This will have been carried out before the framework itself had been awarded and should not be repeated at the further competition stage. The decision about which suppliers should be consulted must be based on the kinds of supplies or services required and on which providers can supply them, based on their offers at the time the framework agreement itself was awarded.

4.12 Contracting authorities should state the subject matter for the call-off for which tenders are being requested, and also a time limit that is sufficient to enable the selected
providers to submit their bids for the particular call-off. This time limit should take account of the complexity of the call-off and the time needed for the different tenderers to submit their bids. In addition, where the authority has decided to make use of the option to hold an electronic auction for the mini competition, it must abide by the rules covering e-auctions as set out in the Regulations. Tenders should be submitted in writing, and they should remain confidential until the time limit for their receipt has expired. The contracting authority should award the call-off to the provider which has submitted the most economically advantageous tender on the basis of the award criteria set out in the framework itself focusing on the particular requirement. New award criteria may be added as long as they relate to the award criteria set out in the framework agreement and weighting may be varied to reflect the particular requirement. In the latter case contracting authorities should make it clear when there is a range of weightings that apply to particular award criteria.

5. Examples of framework agreements

Frameworks for supplies, services and works are allowed under the new provision. Examples of each type are as follows:

- **supplies from a single provider:** a framework agreement is required for desks by one authority and is awarded, following OJEU and selection, on the “most economically advantageous” basis to a single supplier. The authority calls-off its requirements for desks, during the period of the framework, on the basis of the terms agreed when the framework was set up;

- **supplies from several providers:** a framework agreement is required to cover a number of authorities’ paper needs over four years. Following the OJEU notice and the selection process, based on financial and economic standing and technical capacity, bids are evaluated on the “most economically advantageous” basis for entry into the framework. A number of suppliers are included in the framework to supply a variety of paper types – plain, lined, recycled, coloured etc – over the four-year period. The authority goes to the supplier within the framework whose offer is the “most economically advantageous”, based on the original award criteria, for each call-off required throughout the four years. As the terms do not need to be refined or supplemented in this case, the authority has no need to use the mini-competition option;

- **consultancy services:** a framework agreement is required for a range of consultancy services. An OJEU notice is issued and candidates for the framework are selected on the basis of financial and economic standing and technical capacity – including track record and ability. Bids are then evaluated at the ITT stage on the “most economically advantageous” basis, including quality systems and fee rates. A number of companies are included in the framework, covering the range of consultancy services required. Hourly rates for different grades of staff form part of the agreed terms. When there is a need to call-off specific services, within the framework, the contracting authority holds a mini competition with all providers capable of meeting that need for the category of services required in order to establish which company provides the “most economically advantageous” (vfm) offer for the particular mix of grades/rates required;

- **minor works:** a framework is awarded to several contractors on a UK-wide basis, following OJEU, selection and award on the “most economically advantageous” basis. The contractors provide a range of services within categories, such as building, plumbing and electrical services. Hourly rates, call out charges and levels
of quality are set under the framework agreement as well as information about how the authority will select contractors as requirements arise. When a call-off is required, the authority goes to the contractor providing the “most economically advantageous” offer, on the basis of the original award criteria, for the particular need. There is no need for a mini-competition in this case, as the terms do not need to be refined. An alternative approach might be to award a framework to a single contractor for each region; and

- **major works 1**: a framework is needed for units to be constructed as part of a major works programme. Following an OJEU notice and a selection process, based on financial and economic standing and technical capacity, a framework is awarded to a small number of prime contractors for units to be constructed as necessary throughout the period of the agreement. The kinds of units in question might include prison cells, categories of hospital beds (eg acute, accident and emergency etc), garages etc, where there is a standard size, design or requirement. The awards are made on the basis of the particular mix of quality/unitary prices to meet the need. At the call-off stage, a mini-competition is held and bids are invited from all contractors capable of meeting the requirement for the specific units, with the call-off awarded to the contractor providing the “most economically advantageous” bid for the units required.

- **major works 2**: a framework is required for the construction of standard building units or office space in various locations over a four-year period. Following OJEU and the selection process, based on financial and economic standing and technical capacity, a framework is awarded to a number of prime contractors on “the most economically advantageous tender” basis. Each of the prime contractors has the skills and supply chains necessary to undertake the different aspects of the construction work during the period of the framework. A decision is made, at each call-off, as to whether a mini-competition is needed – based on whether the terms need to be refined. If a mini-competition is necessary, bids are invited from all prime contractors capable of meeting the particular need. Call-offs under the framework, which may be awarded any time up to the end of the agreement itself, can continue beyond the period of the agreement until the work is completed.
Framework agreements are agreements with one or more suppliers which set out terms and conditions for subsequent procurements.

Does the agreement include a commitment by the procurer to buy something?

- **NO**
  - This is a framework agreement, for which contracts subject to the EU rules are formed only when call-offs are made under the framework.
  - Is the framework agreement, over its lifetime, estimated to fall below the relevant EU threshold? Or is otherwise not covered by the full rules?
    - **NO**
      - Apply the EU rules to advertising and awarding the framework itself as if it were a contract to purchase something. Apply the specific provisions of Regulation 19 to the call-offs under the framework.
    - **YES**
      - Only the EU Treaty provisions and Treaty-based principles including non-discrimination apply, together with the value for money policy.
  - **YES**
    - This is a framework contract and should be treated as any other contract under the EU rules (see para 2 of text).
Call-off stage

Is there only one framework supplier?

- NO
  - Where there are several suppliers in the framework, are the terms agreed in setting up the framework precise enough for the best supplier to be identified for the particular need?
  - NO
    - Hold a mini competition between those suppliers in the framework capable of meeting the particular need using the original terms supplemented or refined as necessary.
    - Award the call-off to the supplier who can provide the goods, works, or services using the refined terms on the most economically advantageous basis.
  - YES
    - Call-off the relevant supplies, works or services using the terms agreed when the framework was set up.

- YES