



Crown
Commercial
Service

THE PUBLIC CONTRACTS REGULATIONS 2015

&

THE UTILITIES CONTRACTS REGULATIONS 2016

GUIDANCE ON FRAMEWORK AGREEMENTS

Updated October 2016

Contents

Guidance on Framework Agreements

Overview

- What are frameworks?
- What has changed?
- Why is this helpful/necessary?

Key Points

- Identifying contract authorities in contract notices
- Call-offs and mini-competitions
- Award notices

FAQs

Overview

What are framework agreements?

The Public Contract Regulations 2015 (Regulations) define 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.”¹

In other words, a framework agreement is a general phrase for agreements with providers that set out terms and conditions under which agreements for specific purchases (known as call-off contracts) can be made throughout the term of the agreement. In most cases a framework agreement will not itself commit either party to purchase or supply, but the procurement to establish a framework agreement is subject to the EU procurement rules.

What has changed?

The key changes include the clarification of the rules on identifying the users of the framework agreement, increased flexibility in the rules on setting up and calling off multi-supplier framework agreements, and the requirement to publish award notices for call-offs on Contracts Finder.

Why is this helpful/necessary?

The new rules support the Government’s approach to making the process simpler and more transparent for business and contracting authorities.

Which rules do I need to refer to?

Regulation 33 on Framework Agreements

¹ Regulation 33(2)

Regulation 108 (1)(b) publishing award notices for call-offs from framework agreements on Contracts Finder²

The provisions in Regulation 51 of the Utilities Contracts Regulations 2016 are less detailed than in the 2015 Public Contracts Regulations. They do, however, set out that the term of the framework agreement should not exceed 8 years and that contracts based on the framework agreement shall be awarded on the basis of objective rules and criteria.

Key Points

Identifying contract authorities in contract notices

The call for competition or invitation to confirm interest has to clearly identify the contracting authorities that can use the framework. The key is that economic operators from any Member State can easily identify who the users of the framework may be. The identification has to be either by name or by other means that makes them clearly identifiable. Where possible a link to a list of relevant 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 - such as Inner London Boroughs as listed at

<http://www.londoncouncils.gov.uk/londonfacts/londonlocalgovernment/londonboroughs.htm> .

Call-offs and mini-competitions

Call-off contracts based on framework agreements may be longer than four years, and may extend beyond the expiry date of the framework (Recital 62 Public Procurement Directive).

² See Regulation 108 (1)(b) and Contract Finder Guidance at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406820/Guidance_on_the_new_transparency_requirements_for_publishing_on_contracts_finder.pdf

For single provider framework agreements, call-offs are placed according to the terms and conditions laid out in the framework agreement.

Multi-supplier framework agreements can now comprise just two suppliers (previously minimum of three)

For multi-provider frameworks, there are now **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 make a decision for award of 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 procurement documentation
- 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
 - 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.

Award Notices

Contracting authorities must publish award notices for call-offs from framework agreements on Contracts Finder³.

FAQs

When do I have to advertise a framework in OJEU?

All framework agreements subject to Regulation 33 must be advertised in OJEU. Advertising would not be required if the call-off contracts to be awarded under the framework are exempt from the requirement to publish in OJEU – for example because the estimated maximum value of all call-offs under the framework agreement over its lifetime is below the relevant EU threshold⁴ , or the procurements in question are covered by one of the exclusions set out in the Regulations. Where this is the case, Regulation 33 will not apply.

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 See Regulation 108 (1)(b) and Contract Finder Guidance at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406820/Guidance_on_the_new_transparency_requirements_for_publishing_on_contracts_finder.pdf

⁴ Regulation 5(8)

Crown Commercial Service, Customer Service Desk: 0345 410 2222 | www.gov.uk/ccs | follow us on [Twitter](#) | connect with us on [LinkedIn](#)

How can my organisation set up a framework that can be used by other contracting authorities in our region?

Contracting authorities may 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. 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 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. See Key Points above for more detail.

The contracting authority using the framework agreement is responsible for awarding call-off agreements in a way which complies with the terms of the framework agreement.

What do I need to include in my OJEU Notice?

The Regulations stipulate what is required in the Contract Notice or PIN as a call for competition, and your portal provider may also include guidance on what is required on the OJEU standard forms and notices. However the following will give you some idea of the information you need to consider and have at hand for completing the forms

- consider how the identities of all the contracting authorities entitled to call-off under the terms of the framework agreement will be easily available for potential bidders.
- consider the length of term of the framework agreement. It will be a maximum of four years “save in exceptional cases duly justified, in particular by the subject-matter of the framework agreement”⁵. You should therefore seek legal advice if you intend to conclude a framework agreement with a

⁵ Regulations 33(3)

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

- estimate the 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. This is necessary 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.
- include the other information required by Annex V to the Directive and the relevant form.

My Authority has a requirement that could be met by a sheltered workshop type organisation. Can we do that for a framework?

Yes. Regulation 20 enables contracting authorities to reserve the right to participate in a public contract to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons. The ability to reserve contracts in this way applies to framework agreements as well as to contracts generally. The OJEU call for competition, at the start of the procurement for the framework agreement, will need to make it clear that the framework is reserved for sheltered workshops (the term used for supported employment programs, factories and businesses in the EU Directive itself) under Article 20 of the Public Procurement Directive.

A framework I want to call-off from will expire in 6 months and I need to award the call-off for 2 years. Can I do that?

The length of call-offs under framework agreements are not specifically limited by the Regulations. 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 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 or services in question had been for such call-offs to last for just one month at a time.

Do I have to use a particular procedure to award a framework?

A framework agreement that is over the relevant threshold must be awarded in accordance with one of the procedures set out in the Regulations and the procurement documents. The OJEU call for competition must specify the procedure that will be used. The authority setting up the framework agreement should follow the rules for all phases of the procurement process covered by the Regulations.

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

The use of framework agreements does not remove the obligation on contracting authorities to address issues such as TUPE, where they are relevant to the contract at the call-off stage.

How many providers do I have to have on a framework?

Framework agreements can be concluded with a single provider or with several providers, for the same goods, works or services, it all depends on the market and your procurement strategy. Unlike the previous rules, which required multiple-supplier frameworks to include at least three providers, it is now permissible to have just two providers. The framework agreement will establish the objective criteria that will apply under the framework, for call-off by direct award, mini-competition or a combination thereof.

Can a multi-provider framework include a term that allows a direct award call-off to one provider i.e. no mini-competition?

Yes. Where the terms laid down in the framework agreement set out all the terms governing the provision of the specific requirement, and the terms or

procurement documents set out the objective conditions for determining which of the economic operators should perform the contract, the authority can award the call-off without reopening competition. The Regulations do not specify how this should be done, but the mechanism used should comply with general Treaty principles including transparency and non-discrimination.

Do the award criteria used for awarding the framework agreement have to be the same for mini-competitions?

No. The award criteria used for mini-competitions need not be the same as those applied in the award of the framework agreement itself. 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 procurement documentation the criteria to be used for awarding call-off contracts.

Do we have to observe a standstill period before we enter into the framework agreement or after a mini-competition?

The standstill period applies when you set up a framework agreement. However, there is no mandatory standstill period for a call-off contract under a framework

Can I make changes to my framework agreement post-award?

Please see separate guidance on amendments to contracts