



Best Practice Guidance in the use of Frameworks

Purpose

1. This construction policy note (CPN) publishes new guidance on the use of Frameworks in public sector construction.

Key message

2. Where frameworks are used contracting authorities should ensure that SMEs are not disadvantaged or prevented from participating in frameworks by the way in which they are set up.

Target audience

3. This note is intended for all those contracting authority staff involved in the planning and delivery of public works projects.

Outline of Guidance

4. The Review of Scottish Public Sector Procurement in Construction recommended that “Guidance on best practice in the use of framework agreements should always be followed, in particular in allowing opportunities for SMEs to Participate”. It noted that whilst frameworks are efficient in getting projects to market and offer improved value for money for the public sector, they can often have a disproportionate impact on SMEs. This can be for a number of reasons including that they can't get on them, the cost of preparing tenders is prohibitive or the anticipated benefits do not materialise.

5. The guidance, which is attached at Annex A, provides contracting authorities with advice on when to use frameworks, how best to set them up and how to help prevent adverse impact on SMEs.

Dissemination

6. Please bring this construction procurement note to the attention of all those staff involved in the procurement or delivery of construction activities.

Contact

7. If you have any questions about this CPN please contact:

Construction Procurement Policy Unit
The Scottish Government
5 Atlantic Quay
150 Broomielaw
GLASGOW
G2 8LU

Phone: 0131 244 8492

Email: constructionpolicy@gov.scot



Best Practice Guidance in the use of Frameworks

Contents

Paragraph	Subject	Page
1	Introduction	1
2	Definition of a framework agreement	1
3	Agreements which bind a contracting authority	2
4	Setting up a framework agreement - early considerations	2
5	Definition of an Effective Framework	3
6	Risks to Framework Effectiveness	4
7	Creating Opportunities for Small And Medium Sized Enterprises (SMEs)	5
8	Value of work	5
9	Location of work	5
10	Requirements of the European single Procurement Document (ESPD)	6
11	Community Benefits	6
12	Advertising a framework agreement	7
13	Award of a framework agreement	7
14	Framework agreements concluded by central purchasing bodies	8
15	Calling off from existing framework agreements	9
16	Call-off contracts	9
17	Awarding contracts under a single-supplier framework agreement	10
18	Awarding contracts under a multi-supplier framework agreement	10
19	Option one: apply the terms of the framework agreement (direct award)	10
20	Option two: hold a mini-competition between capable suppliers	11
21	Terms and conditions for call-off contracts	12
22	Monitoring use of a framework agreement	13

23	<u>Framework agreements that are exempt from the full requirements of the Regulations</u>	13
Annex A	<u>Annex A: Requirements of the OJEU contract notice which are specific to setting up a framework agreement</u>	14
Annex B	<u>Annex B: Diagram illustrating the options for awarding call-off contracts under a multi-supplier framework agreement</u>	17
Annex C	<u>Annex C: Features of an effective Framework from the report by the working Group on the Effectiveness of Frameworks Task Group</u>	18

Introduction

1.1 The purpose of this guidance note is to provide advice on establishment and operation of construction or construction related framework agreements. For above EU procurement thresholds, the Public Contracts (Scotland) Regulations 2015 (“the Regulations”) are mandatory. For contracts below this threshold, including contracts regulated by the Procurement Reform (Scotland) Act 2014, the following guidance is considered as best practice.

1.2 Regulation 34 sets out the procedures which contracting authorities must follow when concluding a framework agreement and awarding contracts under the framework. This guidance note uses the terms ‘framework agreement’ and ‘framework’ interchangeably.

1.3 This note is not intended to be a comprehensive guide. Practice in the use of framework agreements is continually evolving and developments in case law may require previous practices to be revisited. Public procurement officials are advised to consider taking legal advice in any case where doubt as to the legal position may exist.

Definition of a framework agreement

2.1 Regulation 2(1) defines a framework agreement as meaning, 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 terms with regard to price and, where appropriate, the quantity envisaged;

2.2 A framework agreement is, therefore, a general term for an agreement or arrangement between a supplier or suppliers, on one hand, and a contracting authority or contracting authorities, on the other, which sets out the terms and conditions under which “call-off contracts”¹ can be made throughout the term of the agreement. A framework agreement does not bind any contracting authority to purchase goods, services or works - a contracting authority can decide to use the framework agreement if it represents value for money. If a contracting authority considers that the framework agreement does not provide value for money, it can choose to award a contract outside the framework².

2.3 Framework agreements are generally used for purchases where there is a repeat need but exact quantities or timings are unknown. They allow contracting

1 The terminology used in the Regulations is “specific contract” or “specific contract based on a framework agreement”. As such contracts are normally referred to as “call-off contracts”, that term is used throughout this guidance.

2 Any contract outside the framework must be awarded in accordance with normal procurement procedures including, where appropriate, the Regulations.

authorities to make individual purchases without repeating many of the stages of a full competitive tendering process required by the Regulations. There is no need to formulate terms and conditions for call-off contracts because these are pre-agreed.

2.4 A contracting authority may conclude a framework agreement for its own use (single-user framework) or for use by a number of contracting authorities (multi-user framework). For example, Centres of Procurement Expertise in Scotland typically establish framework agreements for use by a wide range of defined Scottish contracting authorities.

2.5 A contracting authority may also conclude a framework agreement with one supplier (single-supplier framework) or a number of suppliers (multi-supplier framework).

2.6 Where purchasing requirements are divided into “lots”³ to, for example, encourage competition, secure supply, maintain a consistent provision of service across different geographic areas or to prevent disadvantaging small or medium sized enterprises (SMEs), framework agreements may be concluded either with one supplier or a number of suppliers per lot.

Agreements which bind a contracting authority

3.1 Contracting authorities should be clear at the outset whether it is their intention to commit to purchasing the goods, services or works in question (a public contract) or to agree the terms and conditions that will apply if and when they decide to purchase the goods, services or works in question (a framework agreement).

3.2 A framework agreement does not bind a contracting authority to purchase goods, services or works. It sets out the terms and basis upon which contracts will be awarded in the future. In order to purchase goods, services or works under a framework agreement, a contracting authority must take an additional step to award a distinct call-off contract in accordance with the terms of the framework agreement. It is the call-off contract that constitutes a binding legal obligation on a contracting authority.

Setting up a framework agreement – early considerations

4.1 The Review of Scottish Public Sector Procurement in Construction (The Review) identified that contracting authorities were virtually unanimous in their view that framework agreements were a more efficient way of getting projects to market and that they facilitate the development of more integrated supply chains offering opportunities for clients to benefit from improved value for money arising from

³ Lots is the term used when a larger requirement is broken down/compartimentalised into smaller, grouped requirements. Grouping usually is on the basis of similar products/services. For example, a Framework Agreement for Construction Works could be broken down into 3 lots; one for values up to £2500,00, one for values between £250,001 and £500,000 and one for values over £500,000.

simplified call-off processes and potentially from economies of scale, but also encouraged firms in the supply chain to develop business relationships with each other creating an environment that promotes capacity and innovation.

4.2 The Review also made reference to the findings of the UK Government's Procurement and Lean Client Task Group which reviewed the effectiveness of frameworks. This Task Group concluded that benefits can accrue from the use of effective frameworks in procuring construction and that these benefits might include:

- Delivering sustainable efficiency savings
- Reduction in consultancy and construction costs
- Delivery of projects closer to target cost and time
- Reduction of disputes, claims and litigation
- High client satisfaction rates
- High proportion of value of work undertaken by Small and Medium – sized Enterprises (SMEs)
- High proportion of local labour and sub-contractors
- High take-up of government initiatives e.g. Fair Payment, Apprenticeships, Localism etc
- High proportion of construction, demolition and excavation waste diverted from landfill
- Good Health and Safety performance against national average
- Acting as a Key enabler to integration of supply team

4.3 Contracting authorities should reflect on these potential benefits early in their consideration of the use of frameworks and should make it clear how they will monitor and ensure that these benefits are taken advantage of throughout the period of the framework. Refer to Annex C Features of an Effective Framework.

Definition of an Effective Framework

5.1 The Procurement and Lean Client Task Group agreed that an **Effective Framework** is one that:-

- Has a demonstrable business need
- Has effective governance processes, active stakeholder engagement and client leadership

- Actively supports its clients throughout the project lifecycle, ensuring that clients and the supply chain receive a legacy of improvement
- Is driven by aggregated demand to create volume and generate efficiencies, and provides sufficient work opportunities to cover supplier investment
- Maintains „competitive tension“ in terms of value, quality and performance during its life;
- Is designed and managed to deliver the required outcomes and continuously improve upon them;
- Can demonstrate greater value for money for the taxpayer;
- Pays fairly for the work done and the risks taken;
- Contributes to the development of an effective and efficient construction market;
- Harnesses the power of public sector procurement to provide jobs and skills, local employment and enables SMEs to prosper;
- Ensures supply chains are engaged from the earliest stages of a project;
- Ensures transparency and collaborative values flow down the supply chain to produce supply chains that clients can have confidence in.

Risks to Framework Effectiveness

6.1 The following major risks to undermining framework effectiveness were identified:-

- Framework agreements that are not driven by demonstrable business need;
- Framework agreements that are not designed to effectively deliver the business needs of potential clients;
- Public sector clients engaging advisors/consultants who are not familiar with or committed to collaborative partnering processes and who promote lowest cost tendering. This potentially leads to tension between these consultants /advisors and framework contractors;
- Frameworks perceived as an opportunity to generate income, sovereignty and job protective behaviours;
- Frameworks perceived as a quick route to market (OJEU avoidance);

- Less expert clients believing that lowest cost tendering will deliver best value;
- Less expert clients not understanding that more complex schemes may benefit from retaining some risk by the client.

Creating Opportunities for Small And Medium Sized Enterprises (SMEs⁴)

7.1 Contracting authorities should ensure that all possible measures are taken to prevent smaller organisations from being disadvantaged when bidding for Frameworks. The Review identified that splitting frameworks into a number of lots on the basis of geography or value of works should always be a key consideration in developing procurement strategies.

Value of work

8.1 Smaller organisations will be unable to bid for Works if too wide a value band is set. Frameworks should therefore be split into appropriate value bands for example:

Lot 1	£0 - £250,000
Lot 2	£250,001 - £500,000
Lot 3	£500,001 - £1,000,000
Lot 4	£1,000,001 - £2,000,000
Lot 5	Over £2,000,000

8.2 Contracting authorities should not rigidly stick to lot sizes but should consider the type of suppliers they are trying to attract to their framework on a case by case basis; small refurbishment projects are not likely to attract the same bidders as large value construction projects.

8.3 When operating a bundling process contracting authorities should avoid putting multiple smaller projects into a single large contract as this might attract interest from larger contractors and preclude smaller organisations from bidding.

Location of work

9.1 Consideration should be given in respect of the geographic location of the proposed grouped projects. This issue is particularly relevant in frameworks which cover a wide and diverse geographical area. Lots should again be created where appropriate ensuring national organisations are not discouraging local organisations from bidding.

4 Link to definition of SMEs provided by European Commission

http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en

9.2 Where a proposed grouping of projects includes those which are geographically disparate, the following issues should be considered:

- Is there a genuine likelihood that, in grouping the projects together, there is a quantifiable and material improvement in value for money?
- Is there potential for costs to increase due to the complexity of construction and operation over a wider geographical area?
- Would the client procurement teams for each project be able to work effectively in developing the grouped project together, e.g. at a practical level how/where would meetings be held?
- In the absence of a grouped approach, would the individual projects be Viable or Deliverable as defined by Scottish Value for Money Guidance?

Requirements of the European single Procurement Document (ESPD) ⁵

10.1 SMEs regularly complain that the financial qualification requirements being set by contracting authorities result in unnecessarily onerous criteria that they find hard to achieve at an appropriate cost. Contracting authorities should therefore carefully consider the following:

- Appropriate turnover figures
- Financial ratios
- Insurance provisions
- Average annual manpower
- Workforce size
- Managerial staff size

10.2 In multi-supplier frameworks, these criteria should be established while taking into account individual project values and not solely the aggregated framework value which would result in significantly higher levels to satisfy tendering criteria which in turn would disadvantage smaller organisations.

Community Benefits

11.1 Frameworks, like all other tendering processes, should develop a structured approach to developing a project plan to maximise the benefits that can be achieved from introducing community benefits to the framework process. The contracting

⁵ Link to Scottish ESPD Template

<https://www.procurementjourney.scot/route-2/route-2-develop-documents-european-single-procurement-document-esp-d-scotland>

authority should seek to establish their community benefit requirements as early as possible during the framework process and prior to any invitation to tender. Where this is not possible, the contracting authority can work collaboratively with the successful supplier to develop their community benefit project plan. With this approach, the contracting authority should ensure they maintain control of the project plan until completion of the programme of works. One of the key benefits that can be achieved through a structured community benefits plan is the provision of enhanced opportunities for SMEs both for contract and training opportunities down the supply chain. Contracting authorities should refer to the *Community Benefits Toolkit For Construction* published on the Scottish Futures Trust Website⁶.

11.2 It is important to consider whether a framework agreement is the right approach for the particular, services or works to be purchased. This will be a judgement call for a contracting authority or authorities concerned, considering value for money (“VFM”) together with the potential benefits listed at 13 above while also taking into account the type of projects involved and the ability to specify such call of contracts with appropriate levels of information as to allow pricing mechanisms to be established upfront.

11.3 In order to be consistent with VFM obligations the framework agreement should be capable of establishing a pricing mechanism. This does not mean actual prices must always be fixed, but rather that there should be a mechanism that will be applied to pricing particular requirements for call-off contracts during the period of the framework. Even though it may 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 only generally 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.

11.4 The scope and types of goods, services or works that will need to be called-off must be specified in the contract notice. There is no objection to upgrading the specific type of goods, service or works required so long as requirements remain within the fixed scope of the original specification. For example, a framework agreement could be established for the refurbishment of kitchens and bathrooms in flats by establishing the technical specification in terms of (minimum) preferences and functionality required, whereas tenders submitted in response to subsequent mini-competitions would relate to the specific component parts.

Advertising a framework agreement

12.1 Regulated Public Contracts and EU regulated contracts, including Frameworks, require to be advertised on Public Contracts Scotland (PCS). It is further necessary to advertise a framework agreement in the Official Journal of the European

6 Link to SFT webpages

http://www.scottishfuturestrust.org.uk/files/publications/Community_Benefits_Toolkit_-_For_Construction.pdf

Union (OJEU) if the estimated maximum value of call-off contracts anticipated to be awarded over the lifetime of the framework agreement exceeds the relevant EU threshold, PCS will automatically forward to OJEU for publication if appropriate. The above applies unless one of the exclusions set out in regulation 7-13 of the Regulations apply in which case it is not necessary to advertise the framework agreement in the OJEU. When assessing the maximum value, it is important to include all the potential call-offs, by all the contracting authorities that are permitted to use the framework, over the lifetime of the agreement.

Award of a framework agreement

13.1 Contracting authorities should use the procedures permitted by the Regulations to award the framework agreement. This will normally involve use of the open or restricted procedures and adherence to the rules on specifications, selection of candidates and contract award. The competitive procedure with negotiation, competitive dialogue procedure, innovative partnership and negotiated procedure without prior publication procedures are also permitted where the conditions for their use are met.

13.2 Contracting authorities should select suppliers to join the framework by applying appropriate award criteria to determine which suppliers' tenders are the most economically advantageous. The basis of establishing the most economically advantageous tender, the award criteria, together with the weightings, must be stated in the contract notice or in the tender documents. The tender documents should set out:

- the terms that will govern the operation of the agreement and
- the fixed terms for call-off contracts, which save in exceptional cases must not exceed 4 years.

13.3 A framework agreement may only be applied between those contracting authorities clearly identified in the call off and the successful economic operators.

13.4 A call off contract must not include substantial modifications to the terms laid down in the framework agreement.

Framework agreements concluded by central purchasing bodies

14.1 Contracting authorities that act as central purchasing bodies⁷ may conclude multi-user framework agreements on behalf of other contracting authorities. One of the functions of the procurement Centres of Expertise in Scotland is to establish framework agreements on behalf of organisations in their sector.

⁷ Regulation 2 of the Public Contract (Scotland) Regulations 2015 defines a central purchasing body as a contracting authority which provides centralised purchasing Activity whether or not including ancillary purchasing activities. Ancillary purchasing activity is defined in the same regulation as activity conducted on a permanent basis in two listed forms..

14.2 It is important that the central purchasing body transparently describes all of the contracting authorities that will use the framework agreement in the notice as it is not possible to include other contracting authorities at a later stage. Before including multiple participants, a Central Purchasing Body should ensure that they have:

- a specific remit from all listed contracting authorities
- prior consent from all listed contracting authorities, and
- a realistic expectation (e.g. based on previous experience) that the framework will be used by the listed contracting authorities

14.3 It is not good practice to list groups of participants in notices without ensuring the above, as doing so may cause confusion for potential bidders and is potentially misleading both in relation to the specific framework but also for any other contracts for those public authorities. The blanket listing of every class of public body, without any limitation or indication that they have been consulted may make it difficult for a prospective bidder to ascertain with any degree of confidence which of these bodies is likely to use the framework. This might have implications as regards compliance with legal obligations of transparency and value for money.

Calling off from existing framework agreements

15.1 When determining the suitability of an existing framework agreement, it is the responsibility of the contracting authority wishing to use the framework to satisfy itself if it is entitled to do so i.e. that it was listed in the contract notice or falls within a clearly defined class of contracting authorities which allows immediate identification of the contracting authorities concerned. In principle, a hyperlink to a publicly available webpage listing participating contracting authorities can be included in the contract notice, however caution should be exercised given that webpages are liable to change or be taken offline. Contracting authorities must ensure that their requirements are within the scope of the framework agreement, both in terms of the specification and the estimated value or volume of goods, works or services. They should also ensure that the operation of the framework, including the method of call-off and terms and conditions, are satisfactory.

15.2 A contracting authority may find that more than one framework agreement could meet its needs. For example, it may be looking to award a new contract for maintenance services and find there is a choice of three established framework agreements that it could use. In this situation, it should consider the suitability of each of the framework agreements as part of developing its procurement strategy. It should take care, when communicating with the marketplace, to ensure that it engages with suppliers in a fair and transparent way and ensures that the confidentiality provisions of each framework agreement are properly respected. Having chosen a framework agreement, a contracting authority cannot ask suppliers to bid against prices offered through one of the other frameworks. In other words, competitions cannot be held which involve more than one framework agreement.

15.3 Where a multi-supplier framework agreement exists, and a contracting authority (or a Centre of Expertise acting in the capacity of a central purchasing body) runs a competition either on its own behalf or on behalf of other contracting authorities, the resulting award must be a call-off contract or contracts and not result in the creation of a subordinate multi-supplier framework agreement.

Call-off contracts

16.1 When awarding call-off contracts under a framework agreement, a contracting authority does not have to repeat any of the stages of a full competitive tendering process required by the Regulations, provided that the framework agreement itself was set up in accordance with the Regulations. For example, no contract notice is required for call-off contracts awarded under a framework agreement and as suppliers on the framework are already 'pre-qualified' there is no need to undertake this element of a normal full competitive process. 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 agreement was awarded and should not be repeated at the call-off stage. To do so would constitute a breach of the Regulations.

Awarding contracts under a single-supplier framework

17.1 Where a framework agreement is concluded with just one supplier, call-off contracts must be awarded within the limits of the terms laid down in the framework agreement. In practice, there will always be a need to specify certain details at the point of calling-off. For example, a framework agreement for the provision of labour will establish the daily rate charged by the supplier but the number of days required to undertake the task and the exact nature of the task involved will not be known until the point of calling off.

Awarding contracts under a multi-supplier framework

18.1 Where a framework for the same goods, works or services is awarded to several suppliers, there are two possible options for awarding call-off contracts: direct award or mini-competition. These options are shown in diagrammatic form in Annex B. It is possible for a framework agreement to allow purchasers a choice of options on an objective basis⁸

Option one: apply the terms of the framework agreement (direct award)

19.1 Regulation 34(7)(a) allows a contracting authority to award a contract "following the terms and conditions of the framework agreement without re-opening competition". Where the terms laid down in a framework agreement are sufficiently

⁸ For example, where framework agreements are divided into two lots, the frameworks might specify that a contracting authority will hold a mini-competition to meet its requirements under "lot 1" but that requirements under "lot 2" will be met by direct award without further competition.

precise to determine which economic operator is to be awarded a particular call-off contract, there is no need to hold a mini-competition. To ensure transparency, contracting authorities should clearly state in the framework agreement:

- the objective circumstances in which it is permissible to make a direct award without further competition;
- how a contracting authority will select the supplier to which an award is made, for example by ranking the suppliers on the basis of the award criteria used when the framework agreement was concluded, or by operating a rotation system⁹;
- how a contracting authority will select a subsequent supplier if the first supplier selected is unable to provide the requirement. For example, a framework agreement might be concluded with five suppliers for the supply and fix of floor coverings, separately priced, and for delivery within set timescales. If a contracting authority wants to order some carpet, it will go to the provider which has submitted the most economically advantageous tender, using the original award criteria, for that item alone without re-opening the competition. If that provider for any reason cannot supply the items required at that time, the authority will go to the provider which has submitted the next most economically advantageous tender, and so on. The order of preference should be clear from the framework agreement.

19.2 The above information 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 suppliers

20.1 Where the terms laid down in the framework agreement are not precise or complete enough to determine which economic operator is to be awarded a particular call-off contract, a further or mini-competition should be held. 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:

- the particular goods/services/works required
- particular delivery timescales
- particular invoicing arrangements and payment profiles

⁹ A contracting authority should have sound commercial reasons for operating a framework agreement in a particular way. For example, a rotation system may be justified in circumstances where suppliers need security of supply and are unlikely to tender unless they are guaranteed business under the framework agreement. This could however be difficult to comply with in a multi-contracting authority framework agreement.

20.2 The mini-competition must be held in accordance with any rules in the framework agreement and the mini-competition rules in regulations 34(7) - 34(10). A contracting authority should consult in writing (invite to tender) all the suppliers under the framework that are objectively capable of meeting the particular need. This does not necessarily mean that every supplier in the framework must be included. A framework agreement may cover a number of different goods, services or works and there is no obligation to consult those suppliers that did not agree, when bidding for appointment to the framework, to provide the particular items that are the subject of the call-off. The framework agreement should make clear which suppliers are able to meet which requirements.

20.3 As previously stated a contracting authority may decide to divide the framework into lots, each covering different goods, services or works. This can make the framework attractive to smaller companies by opening up opportunities that might otherwise have been out of their reach. It can also reduce the number of suppliers which must be invited to tender for a mini-competition - a contracting authority need consult only the suppliers in the relevant category. If a framework is divided into lots, a contracting authority should specify, at the outset, how mini-competitions will operate.

20.4 Contracting authorities should state the subject matter of the call-off for which tenders are being requested, provide details of the award criteria and weightings to be used in the evaluation process and set a time limit for the receipt of tenders. The time allowed should take account of the complexity of the call-off contract and the time needed for the suppliers to submit their bids. Suppliers should be asked to submit their tenders in writing; these tenders should remain confidential until the time limit for their receipt has expired. When setting up a framework agreement one option is to prescribe an order form and ordering procedures so as to simplify the mini-competition process.

20.5 Contracting authorities should apply the criteria for awarding call-off contracts¹⁰ as set out in the framework agreement to determine which of the supplier's tenders is the most economically advantageous for the particular requirement. The criteria for awarding call-off contracts must be fixed for the life of the framework agreement, although the framework may give contracting authorities the flexibility to set weightings appropriate and relevant to individual call-off contracts.

20.6 If a contracting authority decides to make use of the option to hold an electronic auction for the mini-competition, it must abide by the rules covering electronic auctions as set out in Regulation 36, including the requirement to provide detailed information in advance of the electronic auction. Contracting authorities should state their intention to hold an electronic auction for mini-competitions in the body of the contract notice for the framework agreement and the ITT documents for both the primary competition and mini-competitions.

10 These may differ from the criteria for concluding the framework agreement itself.

20.8 Contracting authorities are required to notify the outcome of the mini-competition to all tenderers as soon as reasonably practicable after the award decision has been made.

Terms and conditions for call-off contracts

21.1 Regulation 34(5) states that when awarding call-off contracts based on a framework agreement, the parties may not include “terms that are substantially amended from the terms laid down in the framework agreement”. The call-off terms and conditions for a framework agreement must be formulated for the primary competition ITT and fixed at framework award, without material modification to the ITT terms - just as with an ordinary public contract. This means that no substantial changes can be made to terms and conditions when calling-off, and the terms of the framework agreement themselves may prohibit changing the call-off terms at all. In many cases it will not be necessary to change the terms of call-off contracts and the ordering procedures can account for a contracting authority’s particular requirements through an order form or similar mechanism.

21.2 Contracting authorities should ensure that the terms and conditions for the framework agreement and for any call-off contracts are appropriate. Whereas the terms and conditions for the framework agreement govern the operation of the agreement, the terms and conditions for any call-off contracts should be relevant to the subject matter of the contract and its delivery. It is preferable to clearly split the framework agreement terms and conditions from the call-off terms and conditions.

21.3 Although the European Commission has advised that call-off contracts, as well as frameworks themselves, should not last for more than four years, there is no express legislative restriction on the length of call-off contracts under a framework agreement. The length of call-off contracts, as with other contracts, should be appropriate and proportionate to the subject matter of the purchase in question and should reflect value for money considerations. In circumstances where the call-off contract will run beyond the expiry of the framework, the contracting authority should ensure that proper supplier management arrangements are put in place for the duration of the call-off contract¹¹.

Monitoring use of a framework agreement

22.1 It is important that a contracting authority monitors the use of a framework agreement, once set up, to ensure that call-offs do not exceed the estimated total value. If the estimated total value is exceeded by a “material” amount, the framework agreement should be re-advertised.

¹¹ Where a framework agreement is established by a central purchasing body or lead authority, its responsibility for managing suppliers will cease on expiry of the agreement. Any contracting authority awarding a call-off contract which runs beyond the expiry of the framework agreement becomes responsible for supplier management in respect of the call-off contract once the framework agreement has expired.

Framework agreements that are exempt from the full requirements of the Regulations

23.1 While the full requirements of the Regulations, including the procedures set out in Regulation 34, do not apply to framework agreements that are below the thresholds stipulated in s 3(2) of the Procurement Reform (Scotland) Act 2014, we recommend that any contracting authority seeking to establish a framework agreement that is exempt from the full application of the Regulations should follow the principles set out in this guidance note. In particular, such framework agreements should be advertised, where necessary to comply with the principles deriving from the Treaty on the Functioning of the European Union, and a fair procurement procedure should be followed. However, contracting authorities should take care not to be seen to invoke the full procedural rules and should, for example, avoid referring to regulation 34 in tender documentation.

Requirements of the OJEU contract notice which are specific to setting up a framework agreement.

The OJEU Contact Notice must include the following:

IV.1.3)¹² Information about a framework

Make it clear that a framework agreement is being concluded and that it is:

- an agreement with a single operator; or
- an agreement with several operators.

State the maximum number of participants to the framework agreement

I.1) Name and addresses

Include the Official name, address, contact person and national registration number, if applicable, of **all the contracting authorities** entitled to call-off under the terms of the framework agreement. The authorities can be individually named, or an objective and comprehensible class of contracting authority may be used – e.g. “Councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994” rather than “Councils”. 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”. For example, it is not sufficiently precise to refer to “all Scottish contracting authorities”.

In principle, a hyperlink to a publicly available webpage listing participating contracting authorities can be included in the contract notice, however caution should be exercised given that webpages are liable to change or be taken offline.

It is not possible to add a new contracting authority to a framework agreement after the framework agreement has been concluded. The parties to a framework agreement (both contracting authorities and economic operators) are fixed at the date of framework award for the life of the framework agreement. Caution must therefore be exercised when the contracting authorities falling within a class descriptor or a central purchasing body’s membership will change over time.

II.1.6) Information about lots

State whether the requirement will be split into lots and if tenders may be submitted for:

¹² These references are the section numbers in the Contract Notice.

- all lots
- a maximum number of lots or
- one lot only

State also:

- the maximum number of lots that may be awarded to one tenderer
- if the contracting authority reserves the right to award contracts combining lots or groups of lots.

It is worth bearing in mind that splitting a framework into lots can help the market, and in particular SMEs, 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.

II.2.4) **Description of the procurement**

Particular care is necessary in drawing up the specification and terms of the framework agreement as they cannot be substantially or materially amended afterwards. The scope of the requirement should promote competition and help avoid or limit the problems associated with the presence of dominant suppliers. If the scope is too wide there is a danger that the framework agreement will effectively kill off any competition in the market.

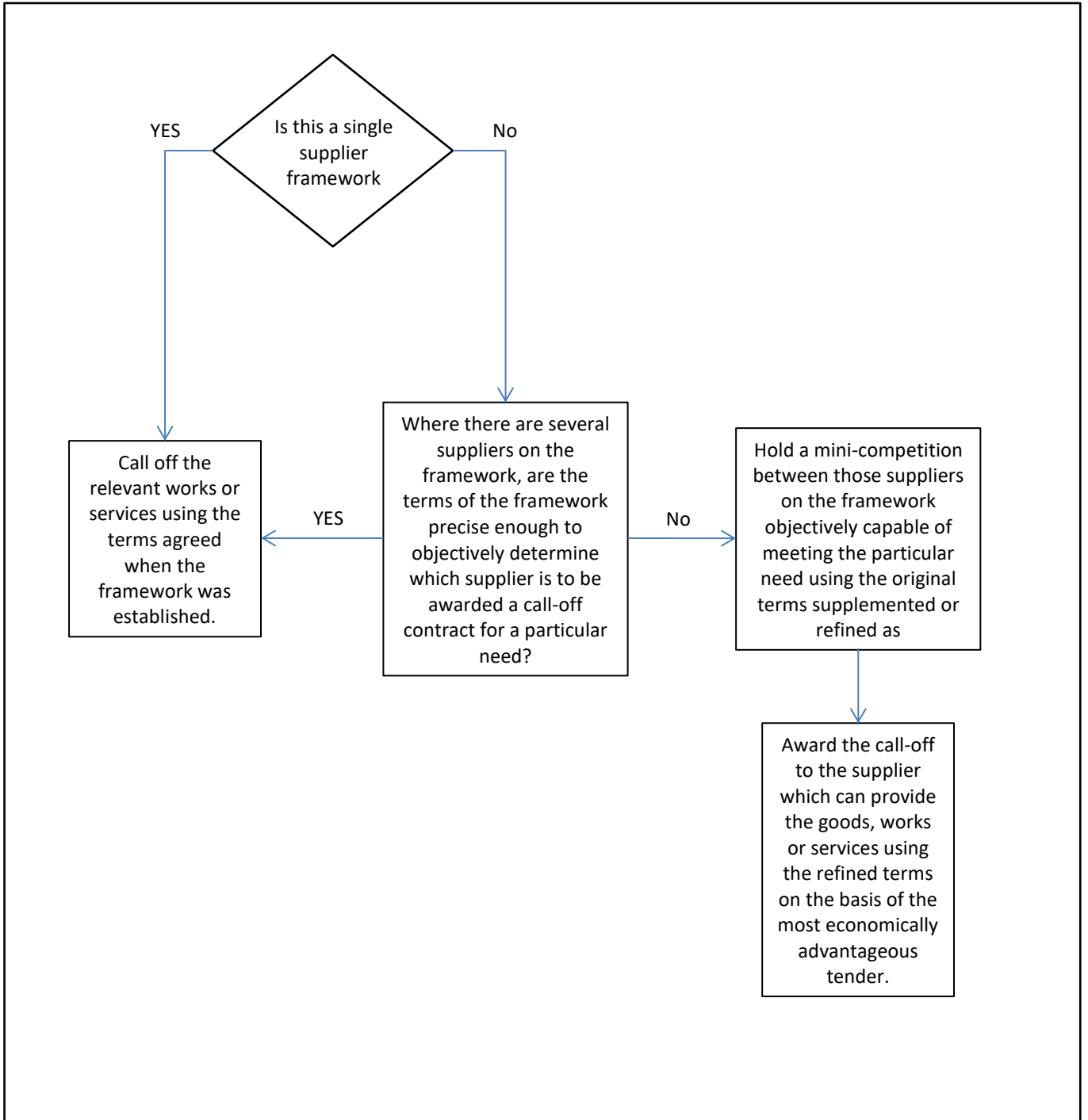
II.2.6) **Estimated value**

Include the estimated total value or volume of the goods, works or services for which call-off contracts are to be placed. This is necessary in order for suppliers to be able to gauge the likely values involved and to provide a figure for the overall framework which, as with other contracts, should not normally be exceeded without a new competition taking place.

II.2.7) **Duration of the framework agreement**

State the duration of the framework agreement. Regulation 34(2) states that the term of a framework agreement must not exceed 4 years, save in exceptional cases duly justified, in particular by the subject of the framework agreement". A contracting authority would need to have sound commercial reasons for proposing a framework of longer duration and would need to state its reasons in the contract notice. It is worth considering, in any event, whether a framework agreement is necessarily the best vehicle for a longer term project.

Options For Awarding Call Off Contracts Under a Multi Supplier Framework Agreement



Features of an Effective Framework

The key features of effective framework agreements that are detailed in the Table below are not necessarily exclusive to framework arrangements; the attributes can also be prerequisites in other effective construction procurement mechanisms or routes to market.

1	FRAMEWORK PLANNING (9 months)
1.1	Business Need
1.1.1	Identify the core business needs of the client and determine how they will be reflected in framework planning, procurement and operation.
1.1.2	Properly planned and developed business cases ensuring framework strategy is supported and that business need, income, cost, benefits and the risks are properly outlined.
1.1.3	Engage with all stakeholders and co-design the framework strategy, consider strategic objectives of localism, sustainability, efficiency.
1.1.4	Collaborate with partner organisations in the locality, regionally and nationally, ensuring an overall fit with existing landscape.
1.2	Market Capacity
1.2.1	Understand capacity, know your market and define an achievable throughput to ensure that the supply chain achieves predictable turnover. Through the achievable throughput the framework generates adequate „income“ to pay for management arrangements.
1.2.2	Through consultation avoid conflict with duplication of established procurement arrangements.
1.3	Appropriate Governance
1.3.1	Establish framework ownership arrangements, agree governance and commercial terms; and ensure the framework is effectively governed.
1.3.2	Consider appropriate risk sharing arrangement to help inform the form of contract for the underlying contracts, competency of contractors, risk transfer and pain / gain share arrangements.
1.3.3	Identify a suite of complimentary arrangements e.g. consultancy, minor and major works, repairs and maintenance.
1.4	Design Outcomes
1.4.1	Agree Building Information Modelling (BIM) strategy.
1.4.2	Agree sustainability strategy: Waste to landfill (WRAP), carbon reduction, whole life cost (BIM), Key Performance Indicators (KPI) performance measurement and management.
1.4.3	Agree economic regeneration strategy:

	Recycling the local £, encouraging social enterprise, monitoring engagement.
1.5	Supply Chain Engagement
1.5.1	<p>Agree SME and supply chain engagement strategy –</p> <ul style="list-style-type: none"> - Ensure engagement in national, regional and local frameworks - Emphasise the involvement and integration of tier 2/3 suppliers within the framework and design team - Ensure transparent approach and client engagement with supply chain - Local sourcing, fair payment provision down the supply chain , measure and monitor engagement <p>Agree employment and skills strategy: Proactive intervention for jobs, apprenticeships/ local employment outcomes linked to framework processes, monitor engagement</p>
2.0	FRAMEWORK PROCUREMENT (12 months)
2.1	Business Case
2.1.1	Agree framework management arrangements to ensure they operate as “a business” on a self-sustaining basis with a desire to deliver excellent outcomes.
2.2	Stakeholders
2.2.1	Lead or collaborate with other likeminded client organisations.
2.2.2	Properly planned and resourced procurement with engagement of key stakeholders.
2.2.3	Ensure competent procurement professionals are engaged to understand OJEU regulations and procurement procedure to ensure quality tenders and few queries and/or challenges from the supply chain.
2.3	Supply Chain Engagement
2.3.1	<p>Simplify procurement processes to encourage greater SME involvement</p> <p>Ensure obligations in the framework agreement which bring certainty to delivery of SME engagement strategy (fair payment, collaborative values flow down the supply chain, pipeline visibility, performance management)</p> <p>Provide mechanisms for greater client influence over negotiations with its supply chain</p>
2.4	Design Outcomes
2.4.1	Structure lots and value bands to ensure adequate workload and appropriate risk sharing arrangement to match the right supplier for the type of work being tendered.
	Continuous Improvement

2.4.2	Set measurable targets for continuous improvement (localism, efficiency, sustainability) with stakeholders.
3.0	FRAMEWORK OPERATION (48+ months)
3.1	Management of Framework
3.1.1	Invest in development and management of framework - dedicated framework management team proactively managing and capturing benefits, supporting clients.
3.2	Appropriate Governance
3.2.1	Establish relationship and regular forums between framework management, contractors, supply chain, consultants and clients.
3.3	Business Case Review
3.3.1	Demonstrate value for money and competitive tension are achieved through cost benchmarking and targeting.
3.3.2	Demonstrate early engagement of contractors and supply chain in the design process where their contribution reduces cost and increases whole life value.
3.4	Creating Programmes / Clusters
3.4.1	Sustainable workload in well organised programmes of work in line with predicted throughput.
3.4.2	Common delivery and standardisation of work through programmes.
3.4.3	Create clusters and programmes of work of sufficient scale and duration to incentivise the supply chain and maximise local economic and social impact, demonstrate continuity of workload for supply chains.
3.5	Supply Chain Engagement
3.5.1	Implement mechanisms that bring certainty to intended level of SME engagement and client visibility of supply chain Enable clients to have some influence over negotiations and management of supply chain decisions Early engagement of supply chain to influence specification and buildability decisions Provide pipeline visibility Ensure clear processes are established to ensure collaborative values and Tier 1 terms and conditions are cascaded down the supply chain Demonstrate fair payment practices are adopted through supply chain to encourage cash flow down to Tier 3
3.6	Framework Outcomes
3.6.1	Ensure that the Framework achieves its target spend.
3.6.2	Implement BIM and whole life cost assessment in the design process enabling carbon impact and longevity decisions to be made about building components.

3.6.3	Demonstrate a reduction in carbon footprint and waste to landfill through products utilised and impact of the supply chain.
	Continuous Improvement
3.6.4	Encourage innovation and standardisation through supplier groups and champions, strategic forums, capturing lessons learnt, championing new areas of development.
3.6.5	Demonstrate continuous improvement in time, cost, social, economic and environmental targets and relationship between parties on the framework.
3.6.6	Demonstrate decrease in worklessness by providing training and employment opportunities for apprentices and local people through the framework.
3.6.7	Actively supports clients through management arrangements ensuring that clients are left with a legacy of improvement.
3.6.8	Put in place a structured/managed continuous improvement process to carry across key lessons learnt to any further frameworks being established.