



Support for Improvement in Governance and Management

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Public Procurement

Procurement Tools

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Member states have the option of deciding whether or not to implement provisions permitting the use of three specific types of procurement tool: framework agreements, electronic auctions and dynamic purchasing systems.

Each of these procurement tools uses one or more of the main competitive procedures as a starting point for the procurement process to be followed.

What is a framework agreement?

The term 'framework' can be used to describe a number of commercial and procurement arrangements. However, the Directive provides a specific definition of a 'framework agreement':

“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 time limit, in particular with regard to price and, where appropriate, the quantity envisaged”.

In other words, a framework agreement is a general term for agreements with economic operators that set out the terms and conditions under which specific purchases may be made. The advantage of a framework agreement is that provided it is advertised at the outset in the Official Journal of the European Union (OJEU) and set up and operated in accordance with the provisions of the Directive, there is no need to advertise again in the OJEU or run a full tender process when contracts are awarded under the framework agreement.

Who can set up a framework agreement?

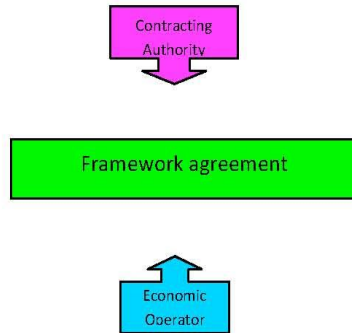
A framework can be set up by:

- an individual contracting authority;
- a contracting authority acting on behalf of a number of contracting authorities;
- a central purchasing body acting on behalf of itself or a number of contracting authorities.

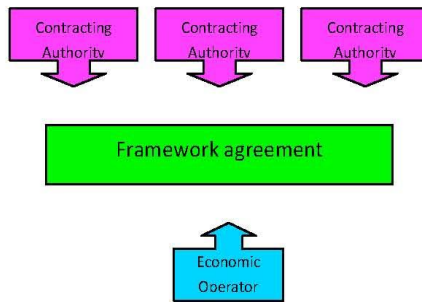
Where a framework is set to benefit a number of contracting authorities then, in order to satisfy the requirements of transparency, the OJEU contract notice must clearly indicate the contracting authorities that are party to the framework agreement. The contracting authorities that are party to the framework agreement remain fixed for the duration of the agreement, and therefore new authorities may not join the framework once it has been established.

Some examples of how framework agreements may be set up

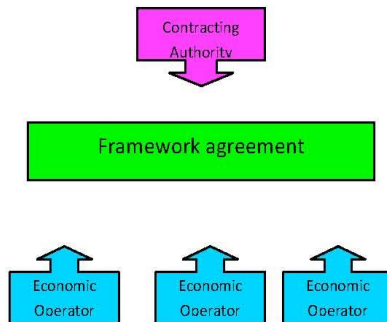
Single-supplier framework – between one contracting authority and one provider



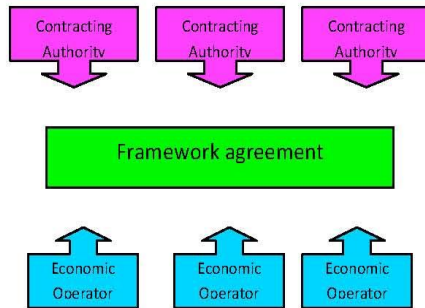
Single-provider framework – between a number of contracting authorities and one provider



Multi-provider framework – between one contracting authority and multiple providers

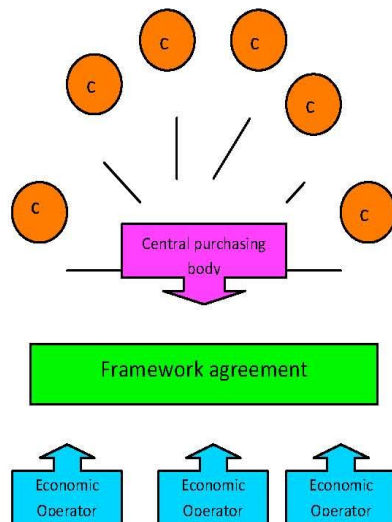


Multi-provider framework – between a number of contracting authorities and multiple providers



Multi-provider framework – between a central purchasing body acting on behalf of a number of contracting authorities and multiple providers

 = contracting authority



Is there a limit on the number of economic operators participating in a framework agreement?

Where the framework agreement will be with several economic operators then the envisaged number or maximum number must be indicated in the OJEU contract notice. The minimum number of economic operators for a framework agreement involving several economic operators is three, provided that there are three suitably qualified economic operators. There is no statutory limitation on the maximum number of economic operators participating in a framework agreement although in practical terms it makes sense to limit the number of participants so that, for example, there are not too many participants in a mini competition.

The economic operators that are party to the framework remain fixed for the duration of the framework. New economic operators may not join the framework once it has been established.

Can frameworks be used for all procurements?

Frameworks may not be suitable for all types of purchasing, and contracting authorities need to be certain that a framework will provide an economic and efficient means of purchasing. The most appropriate use of frameworks is where a contracting authority has a repeated requirement for works, services or supplies, but the exact quantities are unknown.

Contracting authorities must be in a position to manage a framework agreement, as the needs of both the contracting authority or authorities and the provider(s) must be met, and the operation of the framework agreement must be closely monitored.

Care must also be taken to ensure that framework agreements are not set up in such a way as to distort competition and that they are not improperly used.

When does a framework agreement need to be advertised in the OJEU?

A framework agreement is advertised using a contract notice in the OJEU if the estimated value of all purchases to be made under the agreement exceeds the relevant EU threshold for that type of contract. The contract notice is advertised at the start of the process to establish the framework agreement.

When estimating the value of the framework the maximum estimated value of all of the contracts envisaged for the total term of the framework agreement must be included. The total value excludes value-added tax (VAT). Once the framework agreement has been established, there is no further requirement to advertise each time a contract is awarded under the framework agreement.

What procedure is used for procuring a framework agreement?

Any one of the four main competitive procedures may be used for procuring a framework agreement although it is most common to use the open or restricted procedures.

It is only when contracts are awarded under the framework agreement that different, framework agreement-specific provisions apply. It should be noted that a framework

agreement is not a list of selected economic operators that are qualified to provide the works, services or supplies covered by the agreement. To be appointed to the framework agreement, economic operators will have to have both qualified and submitted tenders, which are evaluated by the contracting authorities, and it is those tenders that will provide the basis for future awards under the framework agreement.

Is there a time limit on the life of a framework agreement?

Yes, the life of a framework agreement may not generally exceed four years. It may only exceed four years in exceptional cases duly justified, in particular by the subject matter of the framework agreement.

How are contracts awarded under the framework agreement?

Agreement with one economic operator: Where the framework agreement is with one economic operator then the contracts are awarded within the limits of the terms laid down in the framework agreement. The contracting authority may request the economic operator to supplement its tender if necessary but there must be no substantial amendments to the terms laid down in the framework agreement.

Agreement with more than one economic operator: Where the agreement is with more than one economic operator, the contracting authority has a choice. There are two ways of awarding a contract:

- by application of the terms laid down in the framework agreement without re-opening competition, awarding the contract directly to a particular economic operator; or
- by running an additional competition, inviting all suitably qualified economic operators on the framework to participate (a 'mini-competition').

Contracting authorities should make it clear when setting up the multi-provider framework how contracts will be awarded, and the framework agreement should include provisions covering the manner of awarding the contract. In both cases the parties may under no circumstances make substantial amendments to the terms laid down in the framework agreement and the award must not be made improperly or in such a way as to prevent, restrict or distort competition.

- **Award to an economic operator without further competition:** Where the contracting authority wishes to use the first option and to award a contract directly to one of the economic operators in the framework, then it must do so on the terms laid down in the framework agreement.
- **Award following a mini-competition:** The contracting authority may use the second option of a mini-competition, where not all terms are laid down in the framework agreement. This process allows the terms referred to in the specification to be introduced or existing terms to be more precisely formulated.

All of the suitably qualified economic operators in the framework must be invited to participate in a competition on this basis so as to ensure equal treatment, non-discrimination and transparency. The Directive sets out the requirements for the conduct of the mini-competition.

Electronic auctions

The Directive contains a number of provisions that encourage electronic procurement including the use of electronic auctions. Electronic auctions are a method of inviting revised final tenders following the conduct of a full tender process. They involve an online electronic system that is used by economic operators to submit new prices and/or other revisions to elements of their tenders for a particular contract in real time and in direct competition with other economic operators.

Contracting authorities can only be used where the specification can be established with sufficient precision. They are not permitted to use electronic auctions for certain service contracts and certain works contracts having as their subject matter intellectual performances, such as the design of works.

There will be other types of purchases where an electronic auction is not a suitable method, such as contracts where more complex needs must be tailored for a particular project. The contracting authority needs to think carefully about the appropriate use of electronic auctions. For example, a contract for the supply of paper where the type and quality of paper can be easily specified and where there is a good level of competition in the market would be suitable for an electronic auction. A contract for complex medical equipment where a number of products are available, all with slightly different specifications, and where there are service delivery issues is unlikely to be suitable for an electronic auction.

At what stage in the tender process does an electronic auction take place?

The electronic auction is the final stage of the tender process and can be used where the contracting authority has conducted:

- an open procedure to select economic operators and receive tenders;
- a restricted procedure to select economic operators and receive tenders;
- a negotiated procedure with prior publication of a notice in the case where a previous open or restricted procedure has failed due to irregular or unacceptable tenders.

An electronic auction may also be used for a mini-competition under a framework agreement and under a dynamic purchasing system.

In all cases, in order to run an electronic auction, the contracting authority must authority must indicate in the original contract notice that it intends to use an electronic auction. The contracting authority receives initial tenders from all participating economic operators and makes a full evaluation of tenders before proceeding with an electronic auction. That evaluation must be conducted in accordance with the pre-set award criterion or criteria and weightings.

The electronic auction is used, following receipt and evaluation of the initial tenders, to request new prices, revised downwards. Where the contract is awarded to the most economically advantageous tender, the process may also be used to improve elements of the tender other than the price.

What factors can the contracting authority assess at the electronic auction?

Electronic auctions can be based on:

- either the submission of revised prices, but only where the contract is awarded on the basis of lowest price;
- or prices and/or new values of the features indicated in the specification, when the contract is awarded on the basis of the most economically advantageous tender.

Are there rules relating to the conduct of the electronic auction?

Yes, there are detailed rules relating to the conduct of the electronic auction and these are set out in the Directive. Important requirements to bear in mind are:

- All economic operators that submitted admissible bids must be invited to participate in the e-auction.
- All participating economic operators must be invited simultaneously, by electronic means, to submit new prices and/or values.
- The identity of the participating economic operators must not be disclosed before or during the conduct of the e-auction.
- The tender documents must include specified information relating to the features that will be subject to the electronic auction and on the conduct of the electronic auction process including the type of electronic equipment that will be used.
- The invitation to participate in the electronic auction must contain a specified list of information relating to the conduct of the process and be accompanied – when the contract is to be awarded on the basis of the most economically advantageous tender – by the outcome of the full evaluation of the relevant tenderer's tender, and therefore each tenderer receives information about its own tender, but not about others' tenders.
- The electronic auction can be conducted in successive phases, and the invitation to participate in the auction must include the timetable for each phase of the auction.
- Throughout each phase of the electronic auction, the contracting authority is required to instantaneously communicate to all tenderers information that is at least sufficient to enable them to ascertain their relative ranking at any moment.

How does the contracting authority close the e-auction and award the contract?

The contracting authority has a choice as to how to close the auction process. It can close the auction:

- at the date and time specified in advance in the invitation to participate in the auction.
- when it receives no more new prices or new values (that meet the requirements concerning minimum differences) for a pre-specified time limit. The time specified as the time required to elapse between the receipt of the last new price or new value and the close of the auction must be stated in the invitation to participate in the auction.
- when the number of phases in the auction, as specified in the invitation to participate in the auction, has been completed. Where phases are to be completed following an elapse of time between the receipt of the last new price and/or new value and the close of the auction, then the timetable must be stated in the invitation to participate in the auction.

The contract is awarded following the close of the electronic auction and on the basis of the results of that auction.

Dynamic Purchasing Systems

A dynamic purchasing system is a completely electronic system which can be used for repeat standardized purchases. A dynamic purchasing system operates rather like a live, online Internet-based catalogue, which economic operators can join at any time.

The contracting authority advertises the system using the open procedure. Interested economic operators then submit indicative tenders which set out the terms on which they will supply the requirements. All qualified economic operators who submit compliant indicative tenders are admitted to the system. New economic operators can apply to participate and submit indicative tenders throughout the life of the dynamic purchasing system. All economic operators can also update their indicative tenders at any time to improve them and all of this information is held electronically.

Contracting authorities wishing to purchase from the system must invite tenders from all economic operators registered on the system as well as advertising the opportunity in the Official Journal of the European Union. This provides economic operators who are not on the system with the opportunity to participate. The purchasing contracting authority then places an order with the successful economic operator.

Where the total estimated value of purchases under a dynamic purchasing system exceeds the relevant thresholds, then the Directive applies to the setting up and operation of that system.

What sorts of purchases are suitable?

The definition of a dynamic purchasing system makes it clear that it is intended only for 'commonly used purchases' and refers to those purchases being 'generally available on the market'. Dynamic purchasing systems are generally only suitable for commodity-type purchasing where there is an active market in standard items.

How is a dynamic purchasing system set up and how does it operate?

To set up a dynamic purchasing system, the contracting authority must have an electronic, Internet-based system. The contracting authority must follow the rules of the

open procedure in all of its phases, up to the award of the contracts to be concluded under the system. The contracting authority starts the process by publishing a standard form contract notice for the establishment of the system in the required format.

The contracting authority must include in the specification the following details:

- nature of the purchases envisaged;
- necessary information concerning the electronic purchasing system;
- electronic equipment used, technical connections and specifications.

The contracting authority must offer unrestricted, direct and full access to the specification and any additional documents and must indicate in the contract notice the Internet address where these documents can be found. This requirement for access to the specification and additional documents applies from the day of publication of the contract notice and for the duration of the dynamic purchasing system.

The contracting authority evaluates economic operators' submissions. The economic operators that are permitted to join the dynamic purchasing system are those that (1) have satisfied the selection criteria, and (2) have submitted an indicative tender that complies with the specification and any additional documents.

Operation of the system: A dynamic purchasing system may not last for more than four years, except in duly justified exceptional case. A contracting authority is not permitted to request the payment of any charges by economic operators wishing to join or that have joined the system. All documents must be made available free-of-charge and no charges may be made for administration or other costs.

Unlike framework agreements, where membership is fixed when the framework is set up, under a dynamic purchasing system new economic operators may apply to join the system at any time. New economic operators may access the specification and any additional documents at any time at the address indicated in the contract notice, and they are entitled to submit an indicative tender which must generally be evaluated within 15 days of submission. Existing economic operators are also entitled to improve their indicative tenders at any time.

Awarding a contract: Each contract that a contracting authority wishes to award in the framework of the dynamic purchasing system must be the subject of a separate invitation to tender which is advertised in the Official Journal of the European Union, using as simplified contract notice. The subsequent process and award must be conducted in accordance with the detailed provisions set out in the Directive.

Utilities

Qualification systems: Utilities may also set up and operate qualification systems.

A qualification system is a flexible system in which economic operators interested in contracting with the utility may apply to be registered as potential providers. The utility then registers some or all of those economic operators in the system. The registered economic operators form a pool from which the utility may draw those operators that are invited to bid or negotiate on contracts.

Further reading:

[SIGMA Public Procurement Training Manual](#)