



SCOTTISH GOVERNMENT GUIDANCE ON FRAMEWORK AGREEMENTS

Purpose

1. The purpose of this note is to alert stakeholders to new Scottish Government guidance on framework agreements.

Scope of the Guidance

2. The guidance provides advice on the operation of framework agreements under the Public Contracts (Scotland) Regulations 2006. Regulation 19 of the Regulations sets out the procedures which contracting authorities must follow when concluding a framework agreement and awarding contracts under the framework.
3. The guidance reflects good practice and takes account of the new standstill and remedies rules introduced by the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2009. It also takes account of developments in case law.

Dissemination

4. Please bring this SPPN to the attention of all relevant staff, including those in Agencies, Non-Departmental Public Bodies and other sponsored public bodies within your area of responsibility.

Contact

5. Enquiries about this SPPN should be addressed to Jessie Laurie, Scottish Procurement Directorate, telephone 0141 242 5672 or e-mail jessie.laurie@scotland.gsi.gov.uk.

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Scottish Government Guidance on Framework Agreements

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Introduction

1. The purpose of this guidance note is to provide advice on the operation of framework agreements under the Public Contracts (Scotland) Regulations 2006¹ (“the Regulations”). Regulation 19 of the Regulations 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.

2. The guidance note has been produced to assist contracting authorities which are planning to set-up and operate a framework agreement and contracting authorities which are planning to award a contract under an existing framework agreement.

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

4. Regulation 2(1) defines 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.”

¹The Public Contracts (Scotland) Regulations 2006 (SSI 2006 No. 1) : <http://www.opsi.gov.uk/legislation/scotland/ssi2006/20060001.htm> (as amended) which implement Directive 2004/18/EC of the European Parliament and the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts in Scots law. This guidance does not address framework agreements under the Utilities Contracts (Scotland) Regulations 2006.

5. 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”² 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 framework³.

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

7. 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.

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

9. Where purchasing requirements are divided into “lots”⁴ to, for example, encourage competition, secure supply or maintain a consistent provision of service across different geographic areas, framework agreements may be concluded either with one supplier or a number of suppliers per lot.

² 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.

³ Any contract outside the framework must be awarded in accordance with normal procurement procedures including, where appropriate, the Regulations.

⁴ 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 Office Supplies could be broken down into 3 lots; one for paper, one for ringbinders and one for printer consumables.

Agreements which bind a contracting authority

10. Any agreement which places a binding legal obligation on a contracting authority to purchase goods, services or works constitutes a public contract and should be treated in the same way as any other public contract. In these circumstances, the special rules on framework agreements set out in Regulation 19 do not apply (although the Treaty principles including transparency will always apply).

11. For example, an agreement which commits a contracting authority to purchase local bus and school transport services from the supplier at pre-agreed rates constitutes a public contract, even if the frequency and exact number of transport services required is not specified. Although it may have the characteristics of a framework agreement (for example, full details of the potential commitment are not provided at the time the contract is awarded), the agreement binds the contracting authority to purchase the services from the supplier when the requirement arises and is therefore a public contract. A specific purchase under a public contract is not a distinct contract in its own right - all contracting activity takes place under one contract.

12. 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).

13. 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

14. It will be important to consider whether a framework agreement is the right approach for the particular goods, services or works to be purchased. This will

be a value for money (“VFM”) judgement for a contracting authority or authorities concerned, taking account of the type of purchases involved and the ability to specify such purchases with sufficient precision upfront.

15. 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 should 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. For example, in some energy or fuel procurements, bidders are unable, because of price fluctuations, to offer either a price or a price formula based on market prices.

16. 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 for the supply of computers should establish the technical specification in terms of (minimum) preferences and functionality required, whereas tenders submitted in response to subsequent mini-competitions would relate to the latest models. Care should be taken to ensure that the Common Procurement Vocabulary (CPV) codes quoted on the Contract Notice accurately reflect the types of goods, services and works covered by the framework agreement.

17. When setting up a framework agreement a contracting authority should ensure that the terms and conditions for call-off contracts set out obligations in relation to issues such as, for example, health & safety and TUPE. The use of framework agreements does not remove the need to address these issues, where relevant, when awarding a contract at the call-off stage. For example, an assessment of the application of TUPE to the award of call-off contracts will have to be made on a case by case basis.

Advertising a framework agreement

18. It is necessary to advertise a framework agreement in the Official Journal of the European 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. This applies unless one of the exclusions set out in regulation 6 of the Regulations applies or the framework relates to Part B services, 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, including any potential extensions. Further information on completion of the OJEU contract notice is included in Annex A.

Award of a framework agreement

19. 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 negotiated or competitive dialogue procedures are also permitted where the conditions for their use are met.

20. Contracting authorities should select suppliers to join the framework by applying the usual award criteria⁵ to determine which suppliers' tenders are the most economically advantageous or offer the lowest price. Where the framework is to be awarded on the basis of 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 both a) the terms that will govern the operation of the agreement and b) the fixed terms for call-off contracts.

21. As outlined in paragraph 8, a contracting authority may conclude a framework agreement with one supplier or a number of suppliers. In the latter case, there must be at least three suppliers, as long as there are sufficient

⁵ In accordance with Regulation 30.

candidates who satisfy the selection criteria and submit compliant bids which meet the award criteria.

22. A contracting authority which advertised a framework agreement on any day up to and including 19 December 2009 must notify any candidates and any tenderers which submitted an offer of the decision to conclude the framework agreement and observe a standstill period of at least 10 days. A contracting authority which advertised a framework agreement on or after 20 December 2009 must a) (a new requirement) notify excluded candidates following pre-qualification and b) notify all tenderers and any candidates concerned of the decision to conclude the framework agreement and observe a standstill period of at least 10 days (or at least 15 days if any of the recipients receive the standstill notice only by means other than fax or e-mail).⁶

Framework agreements concluded by central purchasing bodies

23. 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. The Centres of Expertise and their areas of responsibility are listed in Annex D. In addition, Buying Solutions⁸ establishes framework agreements on behalf of the public sector in the UK.

24. It is important that the central purchasing body transparently describes all of the contacting authorities that will use the framework agreement in the OJEU contract notice (see Annex A). It is not possible to include other contracting authorities at a later stage.

⁶ For further information on the standstill rules, please see SPPN 3/2010: <http://www.scotland.gov.uk/Resource/Doc/116601/0095741.pdf>.

⁷ A central purchasing body is defined in the Regulations as a contracting authority which (a) acquires goods or services intended for one or more contracting authorities; (b) awards public contracts intended for one or more contracting authorities; or (c) concludes framework agreements for work, works, goods or services intended for one or more contracting authorities.

⁸ Buying Solutions is a central purchasing body, previously known as OGC Buying Solutions.

Calling off from existing framework agreements

25. 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 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.

26. 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 IT 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 under one of the other frameworks. In other words, competitions cannot be held which involve more than one framework agreement.

27. 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. This would amount to the creation of a framework within a framework and would not be consistent with Regulation 19(12), which states that a contracting authority “shall not use a framework agreement improperly or in such a way as to prevent, restrict or distort competition”.

Call-off contracts

28. When awarding call-off contracts under a framework agreement, a contracting authority does not have to repeat many 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

29. 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 translation services will establish the daily rate charged by the supplier but the number of days required to translate a particular document and the languages involved will not be known until the point of calling-off.

Awarding contracts under a multi-supplier framework

30. 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 basis (see for example the Procurement Scotland office equipment framework referred to in Annex C)⁹.

⁹ 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.

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

31. Regulation 19(7)(a) allows a contracting authority to award a contract “by application of the terms laid down in the framework agreement without re-opening competition”. Where the terms laid down in a framework agreement are sufficiently 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 system¹⁰;
- 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 delivery of individual photocopiers, fax machines and printers, separately priced, and for delivery within set timescales. If a contracting authority wants to order some photocopiers, 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.

¹⁰ 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.

32. 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

33. 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.

34. The mini-competition must be held in accordance with any rules in the framework agreement and the mini-competition rules in regulations 19(7) - 19(9). 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; it should never be assumed that any particular supplier can be excluded from a mini-competition. For framework agreements advertised on or after 20 December 2009, any breach of regulations 19(7) - 19(9) could result in an ineffectiveness order being made in relation to the call-off contract.

35. 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.

36. 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.

37. Contracting authorities should apply the criteria for awarding call-off contracts¹¹ as set out in the framework agreement to determine which of the supplier's tenders is the most economically advantageous or offers the lowest price 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.

38. 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 21, 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.

39. Contracting authorities are required to notify the outcome of the mini-competition to all tenderers as soon as reasonably practicable after the

¹¹ These may differ from the criteria for concluding the framework agreement itself.

award decision has been made. There is no requirement to include reasons, although contracting authorities must respond within 15 days to a written request by a tenderer for debrief information¹². Providing summary reasons and holding a voluntary standstill period does however have the benefit of excluding the possibility of an ineffectiveness order being made in relation to an above threshold call-off contract awarded under a framework advertised on or after 20 December 2009 (as described later in this guidance note).

Terms and conditions for call-off contracts

40. Regulation 19(4) 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.

41. 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.

¹² This applies only where the framework agreement was advertised on or after 20 December 2009. For further information on the notification requirements, please see SPPN 3/2010: <http://www.scotland.gov.uk/Resource/Doc/116601/0095741.pdf>.

Length of call-off contracts

42. Although the European Commission has advised that call-off contracts, as well as frameworks themselves, should not last for more than four years¹³, 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. For example, a contract for the lease of photocopiers may last for six years; it would therefore be acceptable for a call-off contract under a framework agreement for the lease of photocopiers to also last for six years – simply reflecting the market characteristics or ‘industry norm’. 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 contract¹⁴.

Application of the standstill rules to call-off contracts

43. Contracting authorities do not have to follow the standstill rules when awarding a call-off contracts under a framework agreement, whether by direct award or mini-competition. However, they may choose to follow the standstill rules on a voluntary basis (giving summary reasons) when awarding an above-threshold contract by mini-competition in order to protect themselves from an ineffectiveness order in the event of a legal challenge¹⁵.

Application of the remedies rules to framework agreements and call-off contracts

44. Under the remedies rules introduced by the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2009, it is now possible for

¹³ http://ec.europa.eu/internal_market/publicprocurement/docs/explan-notes/classic-dir-framework_en.pdf

¹⁴ 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.

¹⁵ This applies only where the framework agreement was advertised on or after 20 December 2009. For further information on the standstill rules, please see SPPN 3/2010: <http://www.scotland.gov.uk/Resource/Doc/116601/0095741.pdf>.

concluded framework agreements or call-off contracts to be rendered “ineffective”¹⁶. In the case of a framework agreement, an ineffectiveness order will prevent new call-off contracts being awarded.

45. A framework agreement will be vulnerable to an ineffectiveness order if it is awarded:

- without OJEU advertising where such advertising is required;
- in breach of an applicable standstill period (where there are other breaches of the procurement regulations*); or
- in breach of the new “automatic suspension” rule that will apply when a court challenge is brought (again where there are other breaches of the procurement regulations*).

*Where there has been a simple breach of the standstill period or the “automatic suspension” rule, the court will impose a civil financial penalty (fine) on the contracting authority establishing the framework agreement or shorten the duration of the framework agreement.

46. An above-threshold call-off contract will be vulnerable to an ineffectiveness order if it has been awarded in breach of the existing rules on mini-competitions. As stated above, following a voluntary standstill will avoid this risk.

47. Any contract resulting from misuse of a framework agreement, for example calling-off by a contracting authority that is not a party to the framework, or a material variation to the fixed terms for calling-off, would be viewed as a direct award that would be at risk of an ineffectiveness order.

Monitoring use of a framework agreement

48. 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

¹⁶ This applies to framework agreements advertised on or after 20 December 2009, and all call-off contracts under such frameworks.

value. If the estimated total value is exceeded by a “material” amount, the framework agreement should be re-advertised¹⁷.

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

49. The full requirements of the Regulations - including the procedures set out in Regulation 19 for the conclusion of framework agreements and the award of contracts under those framework agreements - do not apply to framework agreements that are exempt from the full application of the Regulations, for example framework agreements for Part B services or below-threshold framework agreements.

50. 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.¹⁸ However, contracting authorities should take care not to be seen to invoke the full procedural rules and should, for example, avoid referring to regulation 19 in tender documentation.

**Scottish Government
May 2010**

¹⁷ See *Presstext Nachrichtenagentur v Republik Osterrich (Bund)* ECJ C-454/06

¹⁸ See SPPN (03) 2006.

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

The OJEU Contact Notice must:

- (II.1.3)¹⁹ Make it clear that a framework agreement is being concluded.
- (II.1.5) 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 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 frameworks²⁰ 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.

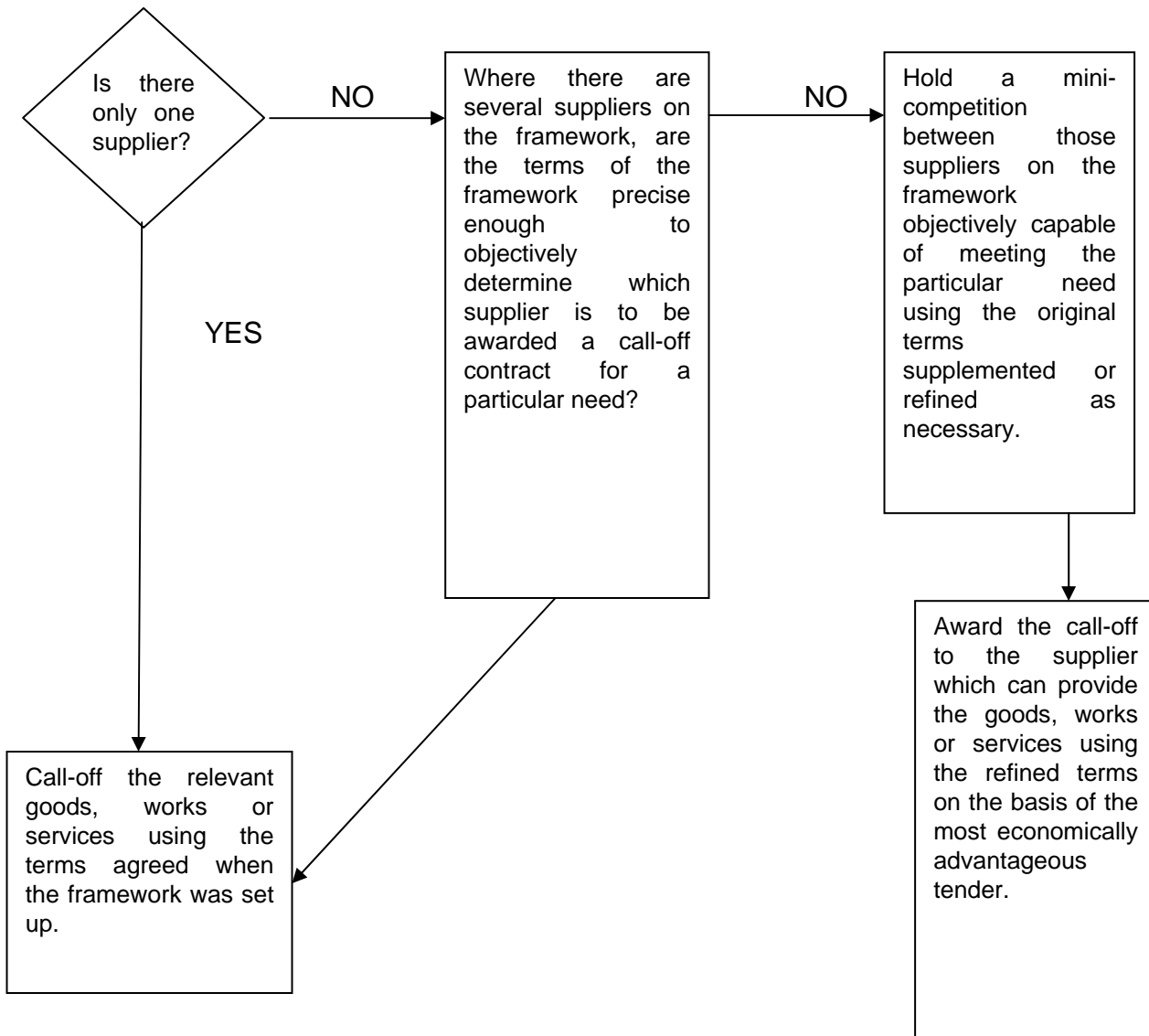
It is not possible to add a new contracting authority to a framework agreement after the framework agreement has been concluded. The parties to a framework agreement (both contracting authorities and economic operators) are fixed at the date of framework award for the life of the framework agreement. 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.

¹⁹ Section numbers in the Contract Notice.

¹⁴ http://ec.europa.eu/internal_market/publicprocurement/docs/explan-notes/classis-dir-framework_en.pdf.

- (II.1.4) State the length of the framework agreement. Regulation 19(10) states that a contracting authority “shall not conclude a framework agreement for a period which exceeds 4 years, including any extensions, except in exceptional circumstances, in particular, circumstances relating to 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.
- (II.2) 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.1.4) 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. It is possible to indicate that the value of the framework will fall within a specified range.
- (II.1.8) State whether the requirement will be split into lots and provide a brief description and details of the quantity or scope for each lot. 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 should be clear whether the lots are to be lots under a single framework or whether each lot will become a distinct framework in its own right.

OPTIONS FOR AWARDING CALL-OFF CONTRACTS UNDER A MULTI-SUPPLIER FRAMEWORK AGREEMENT



EXAMPLES OF FRAMEWORK AGREEMENTS

Framework agreements can be used for the procurement of goods, works or services. For example:

Single-supplier framework for the supply of electricity

The open procedure was used by Procurement Scotland to establish two national framework agreements for the supply of electricity, both lasting three years with an option of a twelve month extension. Following an OJEU contract notice, suppliers' bids were evaluated on the basis of the most economically advantageous tender, taking into account supplier management fees and the technical aspects of how their contract products operate. The framework provides for the forward purchase of electricity in volatile commodity markets and therefore includes mechanisms by which to agree prices from such markets.

In addition, outside the framework essential processes and procedures have been put in place by Procurement Scotland to ensure that its pricing decision is appropriately governed and subject to sufficient oversight. A risk management strategy has been drawn up and is overseen by an independent risk management committee.

Multi-supplier framework for the supply of catering services

The catering services framework established by the Central Government Centre of Procurement Expertise (CGCoPE) is divided into three lots: fully managed catering service; hospitality; and events.

Suppliers were assessed through a pre-qualification questionnaire and shortlisted on the basis of their technical capacity, knowledge, experience and financial standing. The shortlisted suppliers were invited to tender and their bids were evaluated on the basis of the most economically advantageous tender. There are a total of 6 suppliers on the framework across the three lots.

As not all the terms of the proposed requirements are laid down in the framework agreement, contracting authorities wishing to call-off the framework must hold a mini-competition by issuing an invitation to tender to all suppliers under a lot which are capable of providing the service.

Multi-supplier framework for the supply of office equipment

The restricted procedure was used by Procurement Scotland to establish a 3 year national contract for the supply of office equipment with the option to extend for a further year.

The scope of the agreement covers office equipment products and services such as multi functional devices, photocopiers, printers, document scanners, fax machines, wide format equipment, very high volume equipment, management software, solutions and managed print services.

Seven suppliers were selected and appointed to the framework agreement after a robust procurement process in line with EU procurement regulations. The suppliers meet all the required minimum requirements including environmental and technical standards, and also represent best sustainable value for money.

There are two routes to procure office equipment under the framework agreement:

Direct award: organisations can call off directly from the framework, without re-opening the competition, if they can form a judgement from defined packages of goods and services in the Principal Catalogues. This is typically for lower value/lower volume purchases.

or

Mini-competition: this will be the most commonly used route to market through the framework agreement. It should be used when organisations are looking to purchase larger volumes and may also seek a managed service, a solution based offering, or require a single supplier over a number of years. These types of purchases typically require interaction and clarity from the suppliers.

FURTHER INFORMATION ON THE PROCUREMENT CENTRES OF EXPERTISE IN SCOTLAND AND BUYING SOLUTIONS

Centre of Expertise	Sector and National responsibility
Advanced Procurement for Universities and Colleges (APUC)	<p>Sector-specific contracts for Scotland's universities and colleges.</p> <p>Information on framework agreements awarded by APUC, or in collaboration with university purchasing consortia, is available at http://www.apuc-scot.ac.uk/contractinfo.htm.</p>
Buying Solutions	<p>The national procurement partner for UK public services.</p> <p>Information on framework agreements awarded by Buying Solutions is available at http://www.buyingsolutions.gov.uk.</p>
Central Government Centre of Procurement Expertise	<p>Sector-specific contracts for Central Government departments, its agencies and Non-Departmental Public Bodies (Category B).</p> <p>Information on current collaborative procurements is available at http://www.cgcopecotland.gov.uk/cgcope/52.29.44.html.</p>
Fire & Rescue Scotland	<p>Sector-specific contracts for all Scottish Fire and Rescue Services</p> <p>Information on current activities is available at http://www.efirescotland.org.uk/.</p>
National Procurement, NHS National Services Scotland	<p>Sector-specific contracts for all NHS Scotland organisations.</p> <p>Further information is available at http://www.nhsscotlandprocurement.scot.nhs.uk/.</p>

Police Centre of Expertise	<p>Sector-specific contracts for police forces in Scotland.</p> <p>Information on collaborative contracts is available from Ian Kelly, Head of Corporate Procurement at Strathclyde Police (Ian.Kelly@strathclyde.pnn.police.uk).</p>
Procurement Scotland	<p>Developing and implementing procurement strategies for national Category A commodities on behalf of all Scottish public sector bodies .</p> <p>Information on current activities are available at http://www.scotland.gov.uk/Topics/Government/Procurement/npcoe/buyer-information.</p>
Scotland Excel	<p>Sector-specific contracts for local authorities.</p> <p>Information on Scotland Excel's current contracts is available at http://www.scotland-excel.org.uk/suppliers/buyerprofile.asp.</p>