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Workshop on

Framework agreements in the light of provisions and practice of the European Union

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Framework agreement - definition

1. An agreement
2. One or more contracting authorities
3. One or more economic operators
4. Establishing the terms governing contracts to be awarded during a given period (price, quantity)



FA - Concept

- Agreement on ... contracting:
 - Specified works, supplies or services
 - Terms and methods of contracting

= **basis upon which future purchases will be made**
- FA does not imply binding contractual obligations to buy and sell
- Each call-off amounts to a separate contract

EU legal provisions

- **Maximum duration**

- 4 years, but longer also allowed in exceptional cases duly justified
- 8 years in utilities sectors, but longer also allowed in exceptional cases duly justified

- **Estimated value**

maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement

EU legal provisions

Stage 1 – conclusion of a framework agreement

- Procedures provided for in the Directive (open, restricted, competitive procedure with negotiations etc.)

Stage 2 – placing an order

- Call-offs with a single provider
- Call-offs with a multiple providers:
 - (1) All conditions set
 - (2) Mini-tendering
 - (3) Mixed

EU legal provisions

Framework agreements are also mentioned in the context of:

- E – technology:
 - Electronic catalogues
 - Electronic auction
- Centralised purchasing:
 - Central procurement body
 - Collaborative procurement



Parties of the framework agreement

- Individual contracting authority
- Group of contracting authorities
- Centralised public procurement body
- Single provider
- 2, 3 or more providers



Types of framework agreements (1)

Single supplier FA

Advantages	Disadvantages
More scope for standardise specifications and requirements	Lack of choice
Less contract management	Potential over-reliance on 1 supplier / Inability to spread risk
Ability to easily monitor and measure the quality of goods/services provided	In case of quality problem – no other suppliers to use – possible influence on quality and continuity of supply/service



Types of framework agreements (2)

Multi supplier FA

Advantages	Disadvantages
Choice for contracting authorities in terms of meeting their requirements	Contract management more demanding, time consuming
Ability to spread the risk	Potential for exploiting economies of scale may be limited
Reduced risk of distorting markets and making them less competitive for future	More difficult to monitor and measure the quality of goods and services



Framework agreement or public procurement contract?

- Standard goods/services/works
- Economies of scale
- Repeated need over a certain period of time
- Contracting authority knows that it will have a need but:
 - When?
 - How much?
 - Where?

Key steps. Conceptual phase (1)

1. Framework agreement or procurement contract:
 - What is the problem FA is envisaged to solve?
 - How FA may affect the market?
 - How FA may change the tendering and ordering practices of future users?

Key-steps. Conceptual phase (2)

2. Defining the call-off mechanism:

- No additional need for defining the order
- Need to complement an order by additional details before ordering

3. Single provider FA or multi-provider FA:

- Mini competition or ranking?

Key steps. Conceptual phase (3)

4. Calculating the quantity and the value of FA
5. Duration of a FA
6. Dividing into lots
7. Procurement process for setting up FA
8. Operating FA

What to include in a framework agreement

1. Obligation of parties
2. Duration of FA
3. Minimum technical and functional requirements
4. Description on the operation of FA:
 - a) Methods of contract award
 - b) Terms and criteria for contract award
 - c) Minimum requirements for orders (pricing, quality, time etc)
 - d) Duration of contracts
 - e) Conditions and payment terms
 - f) Penalties
 - g) Report and monitoring

Setting FA – Procurement process

- Choice of procedure
- Rules applicable to the procurement procedure chosen
- In case of multi-supplier FA: ranking
- Signing the FA
- Notice on concluded FA

Operating FA – single provider

- Contracts awarded directly to 1 economic operator
- Binding FA conditions and initial bid
- Terms established in FA:
 - Price / mechanisms how to determine the price
 - Delivery time
 - Delivery location
 - Quantity
 - Other particular conditions adjusted to the procurement in question

Operating FA – multi provider

Award without reopening competition:

- All conditions set out in FA and the tender
- Objective conditions for determining which provider (party of FA) will perform the contract:
 - Fixed ranking
 - Indicative ranking
 - Other methods of ranking?

Operating FA – multi providers

Reopening competition:

1) Not all terms are specified in FA

- Supplementing or formulating the basic terms more precisely allowed
- The change of substantive terms forbidden

2) The important terms specified in FA remain without modification or supplementation

- The tenderers are permitted to improve their tenders

Operating FWA – multi providers

Partially reopening competition and partially without reopening competition:

- For the part without reopening competition – all requirements must be fulfilled
- Choice between the 2 methods – objective criteria shall be set out in the tender documentation and FA



Operating FA - tools

- Instruction for contracting authorities or officers responsible
- Spreadsheet / on-line service for evaluation
- E-auction while reopening competition
- E-catalogues



FAQ

- How to sign the framework agreement with 12 suppliers?
- Do the provisions on remedies apply?
- Do the provisions on contract changes apply?
- Can I buy outside the established FA? On what conditions?
- What about the tender bond and the performance guarantee?
- Is it possible to establish FA with all the economic operators without ranking?

Thank you!

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