

Reference is to be made to LN177 of 2005 in which Article 25 explains the framework agreement principles and rules to be followed.

The following is the relative EU Directive from whence the local regulation was transposed.

Framework Agreements under the Art. 32

According to Art. 32 (3-4) of the Directive 2004/18/EC:

“Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement. For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary... Contracts based on framework agreements concluded with several economic operators may be awarded either:

- by application of the terms laid down in the framework agreement without reopening competition, or**
- where not all the terms are laid down in the framework agreement, when the parties are again in competition on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement...”**

Four different options of FA are available to contracting authorities, viz:

Option 1: FA concluded with a single economic operator; contracts based on that agreement shall be awarded within the limits of the terms laid down in the FA.

Option 2: FA concluded with a single economic operator; for the award of those contracts, contracting authorities consult the operator party to the FA, requesting it to supplement its tender.

Option 3: Contracts based on FA concluded with several economic operators awarded by application of the terms laid down in the FA without reopening competition.

Option 4: Contracts based on FA concluded with several economic operators where not all the terms are laid down in the FA and the parties are again in competition.

Examples of framework agreements

- **supplies from a single supplier:** a framework agreement is required for desks by one authority and is awarded, following OJEC and selection, on the “most economically advantageous” basis to a single supplier. The authority calls-off its requirements for desks, during the period of the framework, on the basis of the terms agreed when the framework was set up;
- **supplies from several suppliers:** a framework agreement is required to cover a number of authorities’ paper needs over four years. Following the OJEC notice and the selection process, based on financial and economic standing and technical capacity, bids are evaluated on the “most economically advantageous” basis for entry into the framework. A number of suppliers are included in the framework to supply a variety of paper types – plain, lined, recycled, coloured etc – over the four-year period. The authority goes to the supplier within the framework whose offer is the “most economically advantageous”, based on the original award criteria, for each call-off required throughout the four years. As the terms do not need to be refined or supplemented in this case, the authority has no need to use the mini-competition option;
- **consultancy services:** a framework agreement is required for a range of consultancy services. An OJEC notice is issued and candidates for the framework are selected on the basis of financial and economic standing and technical capacity – including track record and ability. Bids are then evaluated on the “most economically advantageous” basis, including quality systems and fee rates. A number of companies are included in the framework, covering the range of consultancy services required. Hourly rates for different grades of staff form part of the agreed terms. When there is a need to call-off specific services, within the framework, the contracting authority holds a mini competition with all providers capable of meeting that need for the category of services required in order to establish which company provides the “most economically advantageous” (vfm) offer for the particular mix of grades/rates required;

- **minor works:** a framework is awarded to several contractors, following OJEC, selection and award on the “most economically advantageous” basis. The contractors provide a range of services within categories, such as building, plumbing and electrical services. Hourly rates, call out charges and levels of quality are set under the framework agreement. When a call-off is required, the authority goes to the contractor providing the “most economically advantageous” offer, on the basis of the original award criteria, for the particular need. There is no need for a mini-competition in this case, as the terms do not need to be refined. An alternative approach might be to award a framework to a single contractor for each area; and

- **major works 1:** a framework is needed for units to be constructed as part of a major works programme. Following an OJEC notice and a selection process, based on financial and economic standing and technical capacity, a framework is awarded to a small number of prime contractors for units to be constructed as necessary throughout the period of the agreement. The kinds of units in question might include prison cells, categories of hospital beds (eg acute, accident and emergency etc) garages etc, where there is a standard size, design or requirement. The awards are made on the basis of the particular mix of quality/unitary prices to meet the need. At the call-off stage, a mini-competition is held and bids are invited from all contractors capable of meeting the requirement for the specific units, with the call-off awarded to the contractor providing the “most economically advantageous” bid for the units required.

- **major works 2:** a framework is required for the construction of standard building units or office space in various locations over a four-year period. Following OJEC and the selection process, based on financial and economic standing and technical capacity, a framework is awarded to a number of prime contractors on “the most economically advantageous tender” basis. Each of the prime contractors has the skills and supply chains necessary to undertake the different aspects of the construction work during the period of the framework. A decision is made, at each call-off, as to whether a mini-competition is needed – based on whether the terms need to be refined. If a mini-competition is necessary, bids are invited from all prime contractors capable of meeting the particular need. Call-offs under the framework, which may be awarded any time up to the end of the agreement itself, can continue beyond the period of the agreement until the work is completed