

Framework Agreements



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A modern method of construction

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Introduction

Framework agreements offer a potential solution as contracting authorities attempt to minimise the impact of the Public Contract Regulations 2006 on their business.

What are framework agreements and how do they help?

A framework agreement is simply a contract between an employer and a supplier that governs individual project agreements awarded under it during the framework term. It may be used where a contracting authority, knowing it has a number of construction projects to implement over a certain period, decides to carry out a single tender process for the consultants and contractors that it will need for the projects. Alternatively, it may be used by a contracting authority who wishes to develop a stronger relationship with a single contractor or consultant or a small number of contractors and/or consultants across all or a number of its projects. Whilst the framework agreement is generally between the employer and the supplier, there is no reason why the supplier, here likely to be a consultant or contractor, should not be required to enter similar framework agreements with its suppliers and contractors, thus including the supply chain.

A panacea for all?

For the contracting authority, the framework agreement has the benefit of reducing tender costs. Obviously, if it can carry out one tender exercise for ten projects, rather than tendering each project separately, there will be a cost benefit.

There is the possibility of economies of scale. The framework agreement will generally require the contractor or consultant to tender a price mechanism for the contracts that may be called off under the framework agreement. Where the contractor or consultant is likely to obtain a steady stream of work over a period of years, he is likely to reflect this in his price.

The framework agreement will often require the contractor to perform more efficiently over time, as he becomes more familiar with working with the contracting authority or on a particular type of project. There may be key performance indicators, against which performance is judged. Alternatively, a percentage reduction of preliminaries costs over a number of projects may be required. Certainly, as in any relationship, communications should improve over time as each party becomes more familiar with how the other works and what is important to them. Whilst

this can be obtained through individual contracts over a period, the improvement should be more structured pursuant to the framework agreement.

For the consultant or contractor, it is undoubtedly important to have a planned income and work stream over the framework period. This allows planning for financial forecasts and staffing and provides a buffer against difficult times. Where framework agreements are put together on partnering principles, the relationship should be less adversarial with fewer disputes, allowing all parties to concentrate on the project and, hopefully, lead to fewer calls on the professional indemnity insurance.

Or another placebo?

Critics may claim that the security of a framework agreement results in contractors and consultants becoming complacent. They have a cosy relationship with the employer and therefore standards may slip. Most contracting authorities are alert to this and any complacency would quickly result in another company being awarded the next project. Alternatively, the contracting authority may be denied the benefit of a fresh, innovative approach. In either case, framework agreements rarely guarantee that work will not be awarded outside the framework.

Others may assert that the framework agreement will reduce competition. Unless you are one of the successful tenderers at the outset, your company may be precluded from working on a particular type of project or for a specific employer, for the framework period. Where the framework agreement covers a greater number of projects over a period, it is arguable that only the larger consultants and contractors are able to resource the projects, leaving smaller companies in the cold.

A common problem is the contracting authority requiring a large number of contractors on its framework, for a relatively small volume of work. Of course, this eliminates certain of the benefits to the employer in terms of improved efficiency. It is also increasingly difficult to persuade contractors to bid for such projects as they become disillusioned with being appointed to a framework having invested heavily in winning the place on the framework - but not winning any work.

Some contractors in particular have complained



that employers have unrealistic expectations of the savings that a framework agreement can bring. An intention to reduce time and costs over a number of projects is laudable. Imposing this on the contractor or consultant as an obligation is, perhaps, unfair.

The EU effect

Many contracting authorities have expressed frustration that compliance with the EU public procurement regulations has delayed the commencement and delivery of their projects.

The tender process under the EU procurement regulations is slow, particularly when you need to start on site quickly. The regulations are also complex and for many will involve input both from technical advisors and solicitors. In these circumstances, the framework agreement brings added advantages.

Where a contracting authority enters a framework agreement, it can appoint the contractors or consultants on the framework for individual projects, without further recourse to the EU procurement procedures. This should be either by means of a mini-competition between those on the framework capable of performing the contract, or, where the price and terms are sufficiently clear, by simply engaging one of the framework contractors or consultants without further competition.

Where several contracting authorities wish to create a joint framework, they can carry out a single tender exercise as long as each contracting authority is named in the relevant documentation. A contracting authority can also set up a framework which can be used by other contracting authorities on this basis.

The public procurement regulations:

- impose a maximum 4 year term on framework agreements, unless exceptional circumstances can be shown;
- require at least three suppliers to be selected, unless the framework agreement is to be with a single supplier or insufficient tenderers or suppliers satisfy the selection or award criteria; and

- govern how individual agreements are called off; either without reopening competition and by application of the terms in the framework agreement, or by a mini-competition.

The form of framework set up will differ depending on the contracting authority's requirements. It may wish to take a flexible approach and simply create a list of names who can be called upon to perform in relation to projects as they are identified and agree the form of contract to be used for the project at the point of the mini-competition. Alternatively, a full blown framework setting out the full terms which will apply to each project and how the price will be calculated can be put together. Or something in between may be more appropriate. This should be considered well before drafting the contract notice and tender documents.

While the use of a framework agreement in accordance with the public procurement regulations simplifies the process of appointing contractors and consultants, the EU procurement procedures still have to be followed to set up a framework agreement. This is a complex process where it is easy to get "tripped up" and so will still need input from technical advisors and solicitors to ensure it runs smoothly.

"The rule of P"

Proper planning and prior preparation prevents poor performance - just as you would not build the floors before the foundations are in place, the key to a successful framework agreement lies in its planning. To avoid the agreement falling down, you will need to allow sufficient time to consider and agree what you want to achieve and how to achieve it, to draw up the framework agreement and underlying contracts, the technical specifications and fee matrix and the invitation to tender. Only once this is agreed and documented should you issue your contract notice and start the clock.

Is a framework agreement appropriate for you?

If you are an occasional construction client, the cost, time and effort required to set up a framework agreement is possibly best spent elsewhere. However, for regular "players" the benefits are likely to outweigh the costs. You are not committing yourself to using the framework consultants and contractors for the framework period unless you particularly wish to. However, you are planning a longer term relationship with a third party on an agreed price formula.

Changes to the Procurement Regulations

In January 2014, the EU Parliament approved a new package of procurement directives (including a new directive dealing with concession contracts), which are anticipated to be published around March 2014. The UK will have 2 years to amend the UK legislation but is preparing ambitious plans for early transposition, possibly by the end of 2014. Keep an eye on our website for more details in due course.

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