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Focus on: National Treasury Standard for Infrastructure Procurement and Delivery Management

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Framework agreements

The *Standard for Infrastructure Procurement and Delivery Management* includes provisions for framework agreements. Framework agreements have similarities with term service and transversal contracts, but are different in several important aspects. Internationally framework agreements have different meanings. It is therefore important to understand what precisely a framework agreement is and how it is to be implemented in terms of the National Treasury *Standard for Infrastructure Procurement and Delivery Management*.

INTRODUCTION

A framework agreement is defined in the *Standard for Infrastructure Procurement and Delivery Management* (SIPDM) as "an agreement between an organ of state and one or more contractors, the purpose of which is to establish the terms governing orders to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged". Framework agreements enable an employer to procure engineering and construction works, goods and services on an instructed basis (call-off) over a term without any commitment to the quantum of work instructed in the absence of a fully developed scope of work (see Figure 1). This may be achieved by issuing a package (engineering and construction contract), batch (supply contract) or task order (service contract) in terms of a framework contract during the term of the contract, i.e. an instruction to provide works, to supply items of goods in a batch, or work within a service within a stated period of time.

Price in the context of a framework agreement may be considered to be a sum of money for which something is purchased, the actual cost of acquiring something calculated according to some specific measure, or an estimate of what the transaction is worth. Accordingly, framework contracts contain prices for work to be executed over a term or cost parameters which enable prices to be determined once the scope of work has been determined. They may also contain a combination of prices and cost parameters.

Framework agreements reduce the employer's need to re-advertise and approach the market for goods, services or works falling within the scope of the agreement over the term of the agreement and the number of relationships to be managed. They also provide employers with programming flexibility to manage expenditure relating to the delivery and maintenance of infrastructure over time, and enable collaborative relationships to develop in order to deliver better value and project outcomes, particularly those relating to contractor development, community participation and skills development. They also provide an opportunity for contractors to improve their internal management systems, to develop their supply chains and improve their Broad-Based Black Economic Empowerment status during the term of the contract through continuity of work over a longer term than is the case in non-framework contracts.

Framework agreements enable lessons learned in one package or task order to be taken to the next, and enable a team to work together on an integrated approach over a period of time. The promotion of secondary (developmental) procurement objectives in this contracting arrangement is also very flexible and, unlike most other delivery models, allows the employer to change the deliverables associated with such a policy over time in response to emerging needs and changing circum-

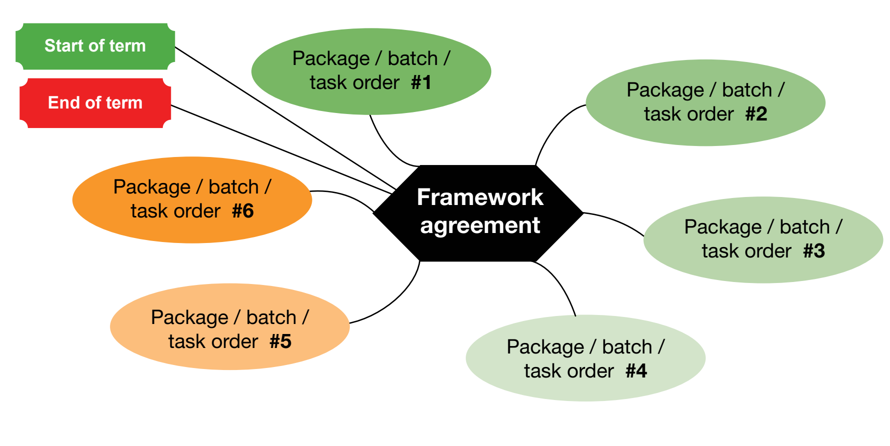

Figure 1: Call-offs over the term of a framework contract

stances. This enables meaningful development of local enterprises and labour to take place over the term of the contract.

It is also possible, with careful planning, for one organisation to make use of another organisation's framework agreement to satisfy their needs. This can be used to overcome public sector capacity constraints through the establishment of regional framework agreements.

FUNDAMENTAL PRINCIPLES

Framework agreements are only entered into with contractors (including suppliers and service providers) who have the resources and the capability to carry out work that is likely to be instructed. They may be entered into with contractors for a term not exceeding three years in the case of all organs of state other than public entities listed in Schedules 2 (major public entities), 3B (National Government Enterprise) and 3D (Provincial Government Enterprise) of the Public Finance Management Act who are permitted to enter into a term not exceeding four years. Suitable framework contracts are entered into with a single or a limited number of contractors, based on the projected demand and geographic location for goods, services or works.

Framework contracts need to contain terms which establish:

- the rights and obligations of the contracting parties, and the agreed procedures for the administration of the contract and the issuing of orders;
- the term of the agreement during which an order may be issued;
- the scope of work which may be included in an order to enable decisions to be made as to what is covered in the agreement and what needs to be procured outside of the agreement;
- the basis by which contractors will be remunerated for work performed in terms of an order, if and when such an order is issued; and
- where a framework contract is entered into with more than one contractor, the manner in which competition amongst framework contractors for a package order is to be conducted.

Framework agreements that are entered into may not commit an organ of state to any quantum of work beyond the first batch, task or package order. Furthermore, such agreements may not bind an organ of state to make use of such agreements to meet needs. The market needs to be approached for goods, services and works whenever better value in terms of time, cost and quality may be obtained.

Batch, task or package orders:

- may only cover goods, services and work falling within the scope of work associated with the agreement which may not be amended for the duration of the contract;
- may not be issued after the expiry of the term of the framework agreement (see Figure 2); and
- may be completed even if completion of the order is after the expiry of the term (see Figure 2).

Contractors may not proceed with work associated with a batch, task or work package until such time that an order has been issued in terms of the contract.

Call-offs from framework agreements (issuing of batch, task or package orders) with a number of framework contractors covering the same scope of work may be made with and without requiring competition. Where competition takes place amongst framework contractors, it needs to be conducted in a non-discriminatory manner such that competition is not distorted.

Competition amongst framework contractors for call-offs needs to take place where:

- there is no justifiable reason for issuing a batch, task or package order to a particular framework contractor;
- the terms in the framework agreement are insufficiently precise or complete to cover the particular requirement, e.g. delivery time scales or time estimates to complete the batch, task or package order (productivity); and
- a better quality of service can be obtained through a competitive process.

Justifiable reasons for issuing a batch, task or package order to a particular framework contractor include:

- the framework contractor provided the most economical transaction when the financial parameters included in the contract are applied and has the capacity to deliver;
- the required goods, services or construction works cannot technically or economically be separated from another contract or batch, task or package order previously performed by a specific contractor;
- the service or construction works being instructed are largely identical to work previously executed by that contractor;
- the value of the batch, task or package order is less than the threshold for the quotation procedure;

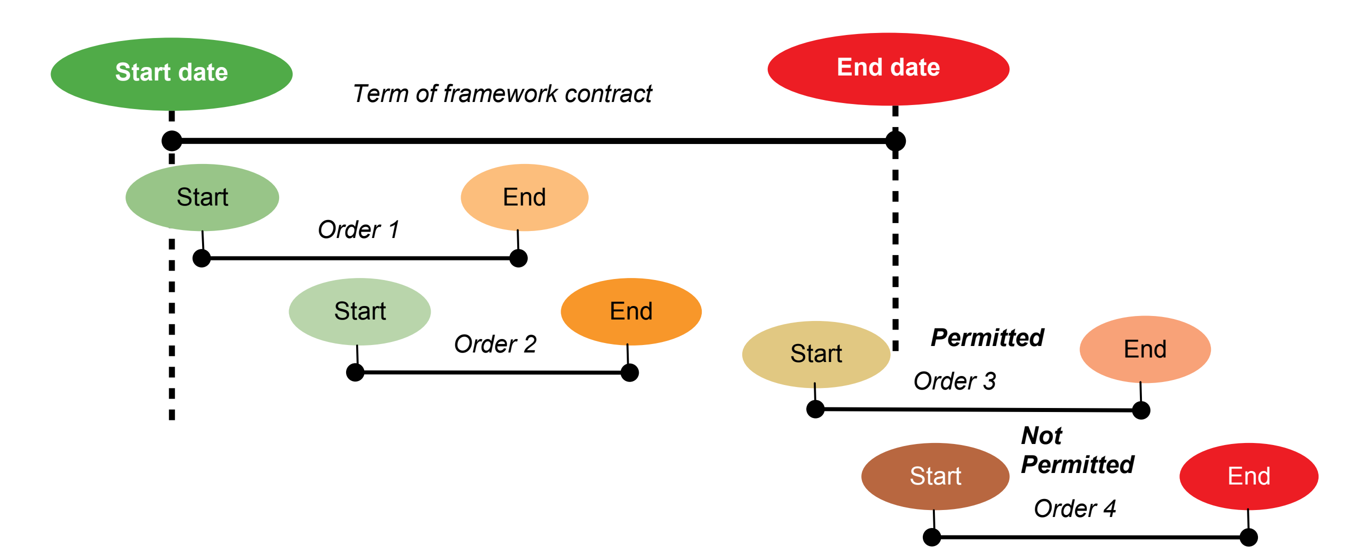

Figure 2: Timing of call-offs in a framework agreement

- the schedule for delivery necessitates that each of the framework contractors be issued with batch, task or package orders on a continuous basis; and
- capacity to execute the batch, task or package order.

The opening of competition amongst framework contractors is only necessary when no justifiable reasons for not doing so cannot be found.

PUTTING A FRAMEWORK CONTRACT IN PLACE

Framework agreements may be entered into with contractors for a term by:

- inviting tender offers to enter into a suitable contract for the term, using stringent eligibility and evaluation criteria to ensure that contracts are entered into with only those contractors who have the capability and capacity to provide the required services; and
- entering into a limited number of contracts based on the projected demand and geographic location for such services.

The process for putting in place a framework agreement is the same as that for any other contract, i.e. it follows the normal construction procurement procedures. The principal difference between a framework and a non-framework contract is that the contract at the time of the award has no price attached. An assumption is made that the 90:10 preference points scoring system applies. Tendered financial parameters, which may include the price for a first order and the financial parameters which are to be applied over the term, are reduced to a common base for comparative purposes.

When putting tender documents together, care needs to be taken to ensure that tenders can be compared on a comparative basis. The tendering of rates in the absence of quantities, for example, does not allow tenders to be competitively compared. Procurement tactics need to be carefully considered if value for money is to be obtained over the term of the contract.

A call for expression of interest is usually required to establish the CIDB contractor grading designation requirements, as no price is tendered for the framework contract. The CIDB contractor grading designation should be based on the anticipated annual value the work will execute through the framework contract in accordance with the provisions of the Construction Industry Development Regulations.

A key consideration in entering into a framework agreement is to decide on how contractors are to be paid for broadly-defined work which is usually not sufficiently scoped to enable it to be priced at the time when the agreement is entered into. This requires the use of price lists with a transparent methodology to determine the price of items that are not included in the price list at the time of tender or cost-based pricing strategies. It should be noted that the FIDIC, JBCC and SAICE forms of contract for works do not make provision for cost-based pricing strategies and do not provide a transparent means for determining the price of items that are not included in the price list at the time of tender. The NEC3 family of contracts addresses both these requirements and more.

The NEC3 family of contracts facilitates the implementation of sound project

Table 1: Procurement activities, key actions, responsibilities and gates associated with the issuing of orders

Activity*	
1 **FG1**	Confirm justifiable reasons for selecting a framework contractor where there is more than one framework agreement covering the same scope of work.
2	Prepare procurement documents.
3 **FG2**	Obtain approval for procurement documents.
4 **FG3**	Confirm that budgets are in place.
5	Quotations amongst framework contractors not invited: Issue draft order documentation, consult with contractor and prepare evaluation report. Quotations amongst framework contractors invited: Invite quotations from all framework contractors participating in the agreement, receive and evaluate submissions and prepare evaluation report.
6 **FG4**	Authorise the issuing of the order.
7	Log order onto management system.
8	Issue order to contractor.
9	Notify issuing of order to oversight person.
10	Administer orders in accordance with contract and confirm compliance with requirements.

*Shaded cells indicate the presence of a framework gate

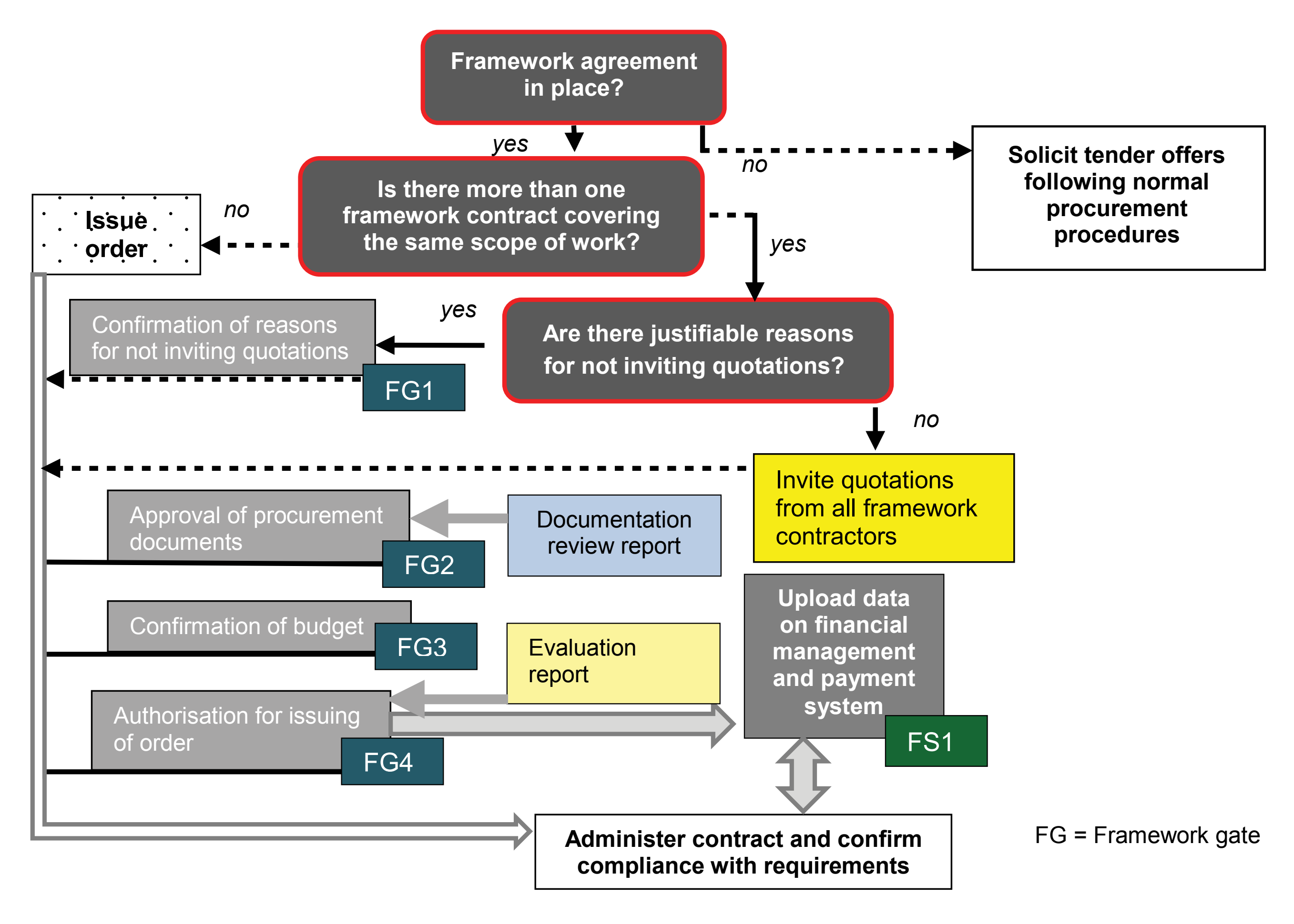

Figure 3: Control framework for the issuing of orders in terms of a framework contract

management principles and practices, as well as defining legal relationships. It is drafted on a relational contracting basis based on the belief that collaboration and teamwork across the whole supply chain optimises the likely project outcomes and is therefore based on *discussion at the time* rather than *argument later*. It contains clear procedures with defined time limits for actions to be taken and provides for effective control of change, speedy agreement of time, quality and cost impacts of change, and improved forecasting of end costs and end dates. It also includes requirements for the parties to issue to each other early warnings of risks relating to time, cost and quality. It assesses compensation events (events for which the employer is at risk) which entitle the contractor to more money on the basis of cost as defined in terms of the contract, uplifted by any percentages for overheads and profit or fees provided for in the contract for work already done or a forecast for the work not yet done. The NEC3 family of contracts is accordingly well suited to form the basis of framework agreements.

ISSUING OF TASK, BATCH AND PACKAGE ORDERS

The activities, key actions, responsibilities and gates associated with the issuing of batch, task or package orders are indicated in Table 1. The control framework for the issuing of orders against a framework agreement is indicated in Figure 3.

The review of procurement documentation associated with the issuing of an order needs to confirm that:

- any standard templates required by the organ of state have been correctly applied and the necessary approval has been obtained for additional clauses or variations to the standard clauses in the conditions of contract not provided in the organ of state's approved templates or in the contract;
- the scope of work adequately establishes what is required, and the constraints to the manner in which the contract work is to be provided;
- the provisions for competition amongst framework contractors, if relevant, and the selected options are likely to yield best value outcomes; and
- the risk allocations are appropriate.

An evaluation report covering the application of the negotiated procedure for the issuing of an order needs to confirm that the negotiated amounts are market-related and represent value for money. Where the total of the prices associated with a target cost contract is negotiated, the total of prices need to be certified as being fair and reasonable by a professional quantity surveyor registered in terms of the Quantity Surveying Profession Act or a professional engineer registered in terms of the Engineering Profession Act.

The person responsible for authorising an order, prior to authorising the issuing of an order, needs to:

- confirm that the required goods or services, or any combination thereof, are within the scope of work associated with the relevant framework contract; and
- consider the recommendations of the evaluation report where competition amongst framework contracts takes place or a significant proportion of the total of the prices is negotiated, based on the financial parameter contained in the framework contract, and either confirm the reasonableness of such recommendations and sign the acceptance of the order, or refer the evaluation report and recommendation back to those who prepared it.

DIFFERENCES BETWEEN TERM CONTRACTS AND FRAMEWORK AGREEMENTS

A term contract is a contract that enables the employer to order work over a fixed term at agreed rates. Such contracts have, at the time that they are entered into, a contract value. Those who administer such contracts are authorised to instruct the required work over the term against such contracts.

Some forms of contract, such as the NEC3 family of contracts, contain a procedure to issue orders during the term of the contract to enable the amount to be paid to a contractor for carrying out a specified task to be determined. This feature within a contract provides the employer with a facility to control work and the costs relating thereto on a task by task basis. There is no need for the person administering the contract to obtain permission to issue an order provided that the price for executing the order falls within the sanctioned contract amount at the start of the contract. There is also no need for a formal review of the order prior to being issued to the contractor, as the work that is required is sufficiently scoped and described at the time that it is priced and the terms sufficiently precise and complete to cover the instructed work.

A framework contract is different to a term contract in that it has no value at the time of its formation and more than one contract covering the same scope of work may be entered into. Framework contracts frequently have no fixed rates. Consequently the terms of the contract may have to be applied in order to arrive at a price. Those administering such contracts require authorisation to issue an order for three basic reasons:

- authority to incur the required expenditure;
- confirmation that the goods, services or works fall within the scope of the framework contract approved at the time that the framework contract was entered into; and
- where more than one framework agreement covers the same scope of work, the acceptability of the reasons for selecting a particular framework contractor.

MAKING USE OF ANOTHER ORGAN OF STATE'S FRAMEWORK AGREEMENT

The SIPDM permits one organ of state to make use of another organ of state's framework agreement, provided that it was put in place following a competitive tender process, the agreement is suitable for the intended use, the required goods, services and works fall within the scope of such contract, the framework contractor agrees to accept an order from that organ of state who undertakes to pay the contractor in accordance with the terms and conditions of the agreement, and the term of the framework agreement does not expire before the issuing of the required orders.

NOTE

Further insights and information can be obtained from:

Watermeyer, R B 2012. A framework for developing construction procurement strategy. *Proceedings* of the Institution of Civil Engineers, Management, Procurement and Law, 165 (4): 223–237.

Watermeyer, R B 2013. Unpacking framework agreements for the delivery and maintenance of infrastructure. *Civil Engineering*, 21(1): 21–26.