



# **KURDISTAN REGIONAL GOVERNMENT**

**Ministry of Planning**

**Explanatory note on framework agreements**

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## **Explanatory note on framework agreements**

The Public Procurement Regulations No. (2) of 2016 reflect the trend in modern procurement systems of opting for use of framework agreements in appropriate types of procurement transactions. This note summarizes the nature, purposes and main procedural features of framework agreements.

### **First- General aspects**

#### **A. Definition and rationale of framework agreements**

As defined in the KRG Public Procurement Regulations No. (2) of 2016 art. (1.11), a framework agreement is an arrangement between one or more procuring entities and one or more suppliers/contractors/service providers, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

The framework agreement is not itself a procurement contract. Rather, it is a framework or structure for the future placement of orders and conclusion of individual procurement contracts in accordance with the procedures and terms specified in the framework agreement.

The advantage of framework agreements is that they allow individual end-user entities to be relieved, to one extent or another, of the burden of conducting full-blown procurement proceedings each time that they need to procure items that are the subject of recurrent procurement, or in the case of unexpected, urgent procurement. Time-consuming procurement processes are involved only for setting up the framework arrangement. The actual fulfillment of the needs of end-users using the framework agreement is a quick, simplified process. In that way, framework agreements offer efficiency and transaction cost savings for recurrent procurement.

Other potential benefits of framework agreements, depending upon how they are structured and the nature of the subject matter, may include access to bulk volume discounts and consolidation of demand, reduced inventory levels/just-in-time ordering, and ensuring security of supply. Additional factors that may be relevant to the suitability of a framework agreement include utilization of an item by multiple entities across the public administration, desirability of engaging multiple potential suppliers (e.g., to ensure sufficient supply capacity), and to deal with capacity shortfalls in particular on the part of smaller entities.

#### **B. Suitability of framework agreements**

The basic parameters for determining when use of framework agreements may be appropriate are established in art. (60) of Regulations No (2) of 2016. The use of framework agreements is particularly appropriate for the recurrent procurement of goods, services and small works, in a context in which it is not possible to predict the

quantity or timing of the future needs of the procuring entity or entities involved during a future period of time.

Examples of items that may be particularly suited for being procured through framework agreements include those listed below.

<b>Examples of common-use subject matter for framework agreements</b>	
Maintenance (e.g., building maintenance, equipment repair and maintenance, vehicle repair and maintenance)	Vehicles (including vehicle purchase, hire and leasing)
ICT	official travel (including hotel bookings)
office supplies	fuel and other commodities
catering (e.g., for hospitals and prisons)	cleaning services
Employees transport services	staff training

A characteristic of the above types of items is that they may be needed by multiple entities across the procurement system (“common-use” items). Framework agreements are thus particularly suited for the procurement of common-use items by multiple end-user entities.

Framework agreements can also be a key part of planning and preparing for emergencies. Having framework agreements in place for the supply of goods and services that are likely to be needed before any emergency actually arises (e.g., a natural or other type of disaster situation) will allow a quick response should an emergency arise without having to engage in time-consuming or competitive procurement processes when the emergency arises.

Framework agreements can also be relevant to the establishment of collaborative procurement mechanisms by municipalities

## **Second- Framework agreement structure**

### **A. Two-stage process**

The framework agreement mechanism consists of a two-level structure and a two-stage process:

1. The first level/stage involves the establishment of the framework agreement and the engagement of suppliers/contractors/service providers in the arrangement. The framework agreement is not a procurement contract;
2. Once the framework agreement has been set-up, individual orders may be placed under the framework agreement for the goods, works or services that are the subject of the framework agreement. Those orders are the actual procurement contracts that are concluded under the framework agreement.

A question that may arise is whether a framework agreement should or should not specify any minimum level of purchases required to be made under the framework agreement. Doing so may deprive a contracting authority of flexibility in implementation of the framework agreement and subject it fully to contract law. Other variants may include no mention of quantities, or mentioning non-binding, estimated levels, which may facilitate the formulation of offers by bidders. Yet another variant

would be to formulate a framework agreement in the form an exclusive purchase agreement. However, to maximize the contracting authority's flexibility, a contracting authority would avoid creating any legal expectation on the part of framework suppliers/contractors/service providers of being awarded any particular level of contract award.

Examples of issues that might be left to be defined in the contracts include: exact price, timing and quantities of individual deliveries, and the total volume delivered. The exact nature of the issues to be defined in the contracts awarded under the framework agreement depends on the subject matter and commercial circumstances involved.

## **B. Open or closed framework agreements**

The Public Procurement Regulations provide two possible approaches as to the extent to which participation in a framework agreement is open to participation by suppliers/contractors/service providers. In the "open framework agreement" variant, the framework agreement remains open for suppliers to apply to join throughout its duration.

By contrast, in a "closed framework agreement" the number of participating suppliers/contractors/service providers may not be expanded once the agreement is established. A closed framework agreement may be concluded with one or more suppliers/contractors/service providers.

Both the closed and the open variants may be built with a competition in the second stage, at the time of the award of the actual contracts. The determination of whether to build in a competition in the second stage depends in particular on the degree to which the contracting authority can or should precisely define its requirements in the first stage (e.g., are the requirements of participating customers uniform and static, or more diverse and likely to change to one extent or another) and the degree to which the market may be subject to fluctuations during the period of the framework agreement. Typically, open framework agreements feature second-stage competition.

Open framework agreements should be posted online on a continual basis, and, when feasible, should be operationalized in an online, electronic manner.

The decision as to the structure of a framework agreement (i.e., closed or open, with or without competition in the second stage), depends in particular on the objectives of utilizing the framework agreement approach (degree of competition and supplier and new-entrant inclusion, aggregation of demand, promoting innovation).

## **C. Impact on Private Sector opportunities**

Apprehension is sometimes expressed that the use of framework agreements may limit opportunities for the private sector to the extent that framework agreements consolidate the needs of entities in a manner that may be beyond the capacity of the private sector to supply. However, depending upon how a framework agreement is designed, it may actually provide increased opportunities for the private sector. For

example, without a framework agreement being used, entities might place large, bulk orders beyond the capacity of the private sector, instead of placing small individual orders under framework agreements. Furthermore, framework agreements may be designed to safeguard private sector opportunities by way of limiting the diversity of requirements that are bundled into a framework agreement, limiting the quantities awarded to any particular supplier participating in the framework agreement, and through designation of certain framework agreements for participation only by the private sector (set-asides).

### **Third- Establishment of framework agreements**

#### **A. Use of competitive procurement method**

Pursuant to art. (42-First) of Regulations No (2) of 2016, the establishment of a framework agreement, and the award of contracts in the second stage, are subject to the principles and procedures of these Regulations. Accordingly, the establishment of a framework agreement should typically be carried out using a procurement procedure reflecting the essential elements of the open tendering method, or, another method if the circumstances fit the conditions for use of the other methods (e.g., limited tendering or request for proposals for consultancy services involving publication of a notice seeking expressions of interest).

#### **B. Organizer of framework agreement**

The main variants as to which entity establishes a framework agreement include: an individual contracting authority; a contracting authority that establishes a framework agreement on behalf of a group of entities; a centrally designated or created entity that establishes one or more framework agreements for use by entities across the public administration.

#### **C. Solicitation of participation**

Pursuant to art. (52-First) of Regulations No (2) of 2016, solicitation of participation of suppliers/ contractors/service providers in a framework agreement is subject to the advertisement requirements set forth in these Regulation. In the case of an open framework agreement, the existence of the framework agreement and the procedures to be followed by suppliers/ contractors/service providers wishing to apply for inclusion in the framework agreement should be published online on a continuous basis

#### **D. Duration of framework agreement**

Various provisions in Regulations No (2) of 2016 refer to the period of operation of framework agreements. In order to mitigate any potential anti-competitive effects of use of framework agreements, the maximum duration of a closed framework agreement should not exceed three years. The duration of an open framework agreement should not exceed four years. Within those general parameters, contracting authorities may determine that a shorter duration may be appropriate (e.g., when it is expected that market conditions are likely to be changeable). A longer

duration may be considered for open framework agreements since the risk of anti-competitive effects is mitigated by the accessibility of the framework agreement to new entrants.

A framework agreement that is not of a sufficient duration may diminish the efficiency that framework agreements can provide. At the same time, depending upon the nature of the subject matter of the framework agreement, framework agreements of an excessively long duration may stifle competition and in some cases not longer provide the latest technology.

When determining the duration of a framework agreement, and in any case, consideration needs to be given to the manner in which price will be dealt with in the framework agreement arrangement, including the possible benefits of including a second-stage price competition to ensure that the contracting authorities have access to up-to-date market pricing or, if the price is defined in the framework agreement, whether a price revision clause should be included. The latter mechanism may ensure that risk of cost increases is not unduly borne by suppliers/ contractors/service providers, who would account for such a risk by raising their bid prices.

#### **Fourth- Operation of framework agreements**

##### **A. Contents of framework agreement**

The exact content of a framework agreement is predicated on the nature and circumstances of the framework agreement. Below is an illustrative list of issues addressed in a framework agreement, though the exact content will vary from case to case.

1. Identification of the parties;
2. Indication of the documents that make up the framework agreement and their hierarchical order;
3. General description of deliverables under the framework agreement;
4. Entry into force and duration of the framework agreement;
5. Statement that supplier/contractor/service provider selected to provide goods or services to the customers (i.e., users of the framework agreement) on a “call-off” basis;
6. Contact information of the parties;
7. Statement that customers are under no obligation to place any orders under the framework agreement, and that there is no undertaking to the supplier/contractor/service provider by the authority establishing the framework agreement as to any level of quantity of orders, or any exclusivity (or it may be provided otherwise);
8. Authority (establishing the framework agreement) is not responsible or accountable for conduct of customers;
9. If supplier/contractor/service provider is unable to fulfill an order from a customer of the framework agreement, he must inform the customer when acknowledging the order; otherwise supplier (contractor) must fulfil the order;

10. Rule on commencement date of contracts concluded under the framework agreement;
11. Supplier's/contractor's/service provider's obligation to maintain the means and capacity needed to perform the contracts;
12. If the framework agreement is associated with a catalogue:
  - (a) Supplier's/contractor's/service provider's obligation to keep the catalogue associated with the framework agreement up to date; any changes, except specifications of entries and relevant charges, subject to the applicable change procedures;
  - (b) Authority establishing the framework agreement licensed on a royalty-free basis to use, copy, publish catalogue entries;
13. If contracts are to be awarded on the basis of a second stage competition, an indication thereof and, if so, the aspects that will be the subject of the competition, and the applicable procedures and bid (including time period for submission of bids and bid evaluation criteria);
14. Whether, in a second-stage competition scenario, suppliers/contractors/service providers are obligated to submit bids; if applicable, notice of the cancellation of a supplier's/contractor's/service provider's participation in the framework agreement if the supplier (contractor) fails to submit a bid in a specified number of second-stage competitions;
15. Any data capture, reporting and information confidentiality obligations of the supplier (contractor);
16. Depending upon the nature of the item(s) to be provided, the technical specifications, functional/performance requirements, intended use; reference to standards and regulations to be met by the supplier/contractor/service provider in supplying the goods, services, and any security obligations;
17. Schedule of charges applicable to each product or service, and the procedure for adjustment of rates, if applicable, including the independent, third-arty sources for price indexation;
18. Invoicing and payment;
19. Award and opening procedure for orders by customers, main terms and conditions for any contract awarded under the framework agreement (including the status of any standard or special contractual conditions of the supplier/contractor/service provider; e.g., it may be provided that the standard or special conditions of the provider do not apply unless those are expressly accepted in the contract, which might be an option to one extent or another provided in a model contract appended to the framework agreement);
20. Reference to any general terms and conditions applicable to the framework agreement.



## **B. Contents of contracts awarded under framework agreement**

The exact content of a contract awarded under a framework agreement is predicated on the nature and circumstances of the framework agreement. Below is an illustrative list of issues addressed in a contract awarded under a framework agreement, though the exact content will vary from case to case.

1. Identification of the items and quantities being ordered, including any technical specifications, functional requirements, service level agreement (where applicable), at the level of the contract
2. Indication of any contractual terms and condition being incorporated into the contract by reference;
3. Indication of the documents that make up the contract (e.g., the framework agreement, the purchase order);
4. Identification of contact persons of the parties;
5. Delivery/completion details (address and date), or duration/period of expiry, as in the case of a service contract;
6. Manner of acceptance (or approval, in the case of maintenance) of the deliverable by the customer;
7. Additional details on invoicing and payment (e.g., price per product, or hourly rate for services);
8. Amount of performance security, if applicable;
9. If a license (e.g., a software license) is acquired, its scope and nature, and the terms of payment.

## **C. Award of contracts**

In a closed framework agreement with multiple suppliers/contractors/service providers and no competition in the second stage award of contracts, the bids submitted in the first stage are essentially final and contract award decisions are made in accordance with the framework agreement provisions as defined pursuant to Regulation No (2) of 2016 art. (61-Ninth-c).

In a closed framework agreement with multiple suppliers/contractors/service providers and competition in the second stage, contracts are awarded in accordance criteria defined pursuant to the framework agreement and disclosed in the second stage call for competition.

In an open framework agreement with competition in the second stage, suppliers/contractors/service providers submit indicative submissions in order to be admitted into to framework agreement. In order for a supplier/contractor/service provider to be admitted to the framework agreement the indicative submission must be deemed responsive. Contracts are awarded in accordance criteria defined pursuant to the framework agreement and disclosed in the second stage call for competition

When no competition is involved in the second stage award of contracts, the award is made in accordance with criteria specified in the framework agreement pursuant to article (61-Ninth-c) of Regulations No (2) of 2016.

#### **Fifth- Management aspects of framework agreements**

A central entity may be created or designated by the Ministry of Planning for the establishment of framework agreements for the procurement of common-use items.

Certain framework contracts may be designated for mandatory rather than optional use by KRG entities, though rules governing any mandatory use of framework agreements may indicate possible exemptions and the conditions to be met for claiming any such exemptions (when, upon review of the framework agreement, it is shown that the framework agreement no longer offers the latest technology, or most favourable contractual or terms).

The General Directorate of Contracts monitors the establishment and use of framework agreements. In accordance with instructions that may be issued by the General Directorate, contracting authorities shall report regularly to the General Directorate on their use of framework agreements.