Inform Practice Note #15

August 2008
(Version 3 - August 2010)

Framework Agreements

Synopsis:

Framework agreements are designed to allow the employer to invite tenders from contractors to carry out work on an as instructed basis over a set term. Broadly speaking, framework agreements are agreements between two parties that establish the terms for the supply of goods, construction works or services over a period of time within a broad scope of work without guaranteeing any quantum of goods, services or works. The rationale behind using such agreements is that it saves the parties from having to procure from the open market every time work is required which is covered by such agreements. This results in savings, to both parties, of time, cost and other resources each time a specific delivery request is made.

This practice note outlines the nature and features of framework agreements, describes the essential elements of and the selection procedures associated with and identifies the forms of contract that are best suited to such contracts.
1. Introduction

Framework agreements provide a convenient means for employers to obtain goods, services or works from contractors within a defined scope on an “as instructed” basis over a set term without necessarily committing to any quantum of work. Normally the employer appoints a number of contractors to provide goods, services or works in terms of a framework agreement following a competitive selection process e.g. qualified procedure or open procedure. Framework agreements accordingly enable an employer to obtain goods, services or works as and when required in an efficient and cost effective manner. Only near the end of the term is the market approached to provide the goods, services and works covered by such contracts for the next term.

The essential elements of a framework agreement are:

- A framework agreement is 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.
- A framework agreement needs to include the basis by which contractors are to be remunerated for instructed work.
- The scope of work of a framework agreement needs to identify the extent and location of the work covered by the contract as the employer may not instruct a contractor to provide work outside of the scope of work associated with the contract.
- Competition amongst framework contractors participating in framework agreements covering a particular scope of work needs to be reopened whenever there is no justifiable reason for issuing a batch/task/package order to a particular contractor, in which case all such contractors are invited to submit quotations to execute a batch/task/package order.
- Contractors may only proceed with work associated with a batch/task/work package when given an official batch/task/package order to do so.
- Employers are not permitted to issue a batch/task/package order after the end date of the term of the framework agreement.
- Any work commenced before the end of the term of a framework contract may continue until the end date provided in the batch/task/package order.

The instructing of work outside of the scope of work of a framework agreement is not permitted. This is seen to circumvent the

**ISO 10845-1, Construction procurement**

*Part 1: Processes, methods and procedures,* defines a framework contract as a “agreement between an employer and one or more contractors, 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.”

**ISO 10845-1, Construction procurement**

*Part 1: Processes, methods and procedures*

6.3.7 Framework agreements

Employers may conclude framework agreements with one or more contractors following a competitive selection process or competitive negotiations process (see 6.3.2), provided that the term of the framework agreement does not exceed the period stated in the employer’s procurement policy.

Framework contracts may be entered into, based on a framework agreement during its period of validity, either by applying the terms set forth in the framework agreement or, if all the terms have not been fixed in advance in the framework agreement, by reopening competition between the parties to the framework agreement in relation to those terms, in which case, contractors will be required to submit tenders. Competition between the parties that are capable of providing goods, and engineering and construction works or services, shall either occur between all the parties to the framework agreement, or to the parties selected from a rotating electronic database based on the relevant requirements of 4.5.

When awarding contracts based on a framework agreement, the parties may not, under any circumstances, make substantial amendments to the terms laid down in that framework agreement. Employers shall not use framework agreements improperly, or in such a way as to prevent, restrict or distort competition.
tendering system. Anything not explicitly provided for in the framework contract must be procured on a competitive basis in terms of an organisation’s normal procurement system.

The reopening of competition amongst contractors whenever the terms and conditions are amended ensures that the prices for work done not explicitly covered in the framework contract remains competitive.

Framework contracts should generally be between three and five years. (ISO 10845-1 and the European Union Directives restrict the term of a framework contract to 4 years, except where justified by the organisation’s executive. Municipal contracts having a duration of longer than three years need to satisfy sections 33 and 116 of the Municipal Finance Management Act, 2003 (Act 56 of 2003)).

The Supply Chain Management Regulations issued in terms of the Public Finance Management Act and the Municipal Finance Management Act permit one organ of state to make use of another organ of state’s contract that is put in place by means of a competitive procurement process. Framework contracts are well suited to such applications.

2. Essential elements of a framework agreement

A framework agreement should, as a minimum, contain:

- The term (period) of the contract within which a batch/task/package order falling within the scope of work associated with the contract may be issued;
- The scope of the goods, services or works which may form the basis of a batch/task/package order;
- The basis by which contractors are to be remunerated for instructed work; and
- Where a framework contract is entered into with more than one contractor, the manner in which competition between framework contractors in relation to a specific batch/task/package order falling within the scope of work associated with their contracts, may be reopened.
3. Selection procedures where multiple framework contracts are entered into

Where the framework agreement provides prices, fees, staff rates, expenses etc. which fully cover the required goods, services or works, the employer may invite the contractor who in their opinion is most suited to provide the work associated with the batch/task/package order in the best interest of the employer to do so. Factors such as geographic location, prior work around the required scope of work and specialist expertise might influence the decision. Alternatively, such selection may be made on a next in line basis from a rotating data base.

Where the terms of the framework contract require modification, or where there is no advantage or justification for favouring one framework contractor over another, all contractors who have framework contracts covering the required scope of work are invited to submit quotations to provide work in terms of the batch/task/package order. Quotations need to be evaluated in accordance with the cidb Standard Conditions of Tender (see also inform Practice Note #24).

Typical activities associated with framework contracts

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Principal action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Prepare procurement documents.</td>
<td>Prepare task/package order using the fixed terms of the framework contract, or prepare quotation documents incorporating task order where terms of the framework contract are not fixed.</td>
</tr>
<tr>
<td>2</td>
<td>Obtain approval for procurement documents.</td>
<td>Designated person reviews the task/package order or quotation, identifies sections, if any, which require amendments or improvements, and grants the necessary approval.</td>
</tr>
<tr>
<td>3</td>
<td>Confirm that budgets are in place.</td>
<td>Designated person makes sure that finance is available for the procurement to take place.</td>
</tr>
<tr>
<td>4</td>
<td>Confirm Task/Package Order</td>
<td>Issue draft task/package order to a contractor or issue quotation documents to all contractors who have framework contracts.</td>
</tr>
<tr>
<td>5</td>
<td>Issue Task/Package Order</td>
<td>Finalise and issue task order.</td>
</tr>
</tbody>
</table>


Under these rules, when a contracting authority enters into a framework agreement ...... it may enter into contracts based on such a framework agreement during its term of validity either by applying the terms set forth in the framework agreement or, if all terms have not been fixed in advance in the framework agreement, by reopening competition between the parties to the framework agreement in relation to those terms. The reopening of competition should comply with certain rules the aim of which is to guarantee the required flexibility and to guarantee respect for the general principles, in particular the principle of equal treatment.
A Task Order in terms of the NEC3 Professional Service Contract is required to include:

- A detailed description of the work in the Task;
- A priced list of items of work in the Task;
- The starting and completion dates of the Task;
- The amount of daily damages if Option X7 applies to the contract, i.e. an amount not exceeding the estimated cost to the Employer of late completion of a Task; and
- The total of Prices for the Task.

### 4. Suitable forms of contract

Suitable contract data and a scope of work can be formulated for use with any of the forms of contract that are endorsed by the cidb in the Standard for Uniformity in Construction Procurement.

The NEC 3 family of standards is, however, well suited to framework agreements as:

- The NEC3 Professional Service Contract (Option G: Term Service Contract), the NEC Term Service Short Contract and the NEC 3 Term Service Contract (Option X:19 Task Order) contain standard provisions for tasks and task orders.
- The NEC3 Professional Service Contract (Option C: Target Contract), NEC3 Term Service Contract (Option C: Target Contract with a price list) and the NEC3 Engineering and Construction Contract (Option C: Target contract with activity schedules and Option D: Target contract with bills of quantities) make provision for the payment of contractors on a cost reimbursable basis with a share in the gain or pain should the total cost be less than or exceed the target, respectively. These options enable a framework contract to be entered into, based on tendered parameters relating to costs and allow the target cost to be either negotiated or tendered at a later stage.
- The NEC3 Supply Short Contract contains standard provisions for batch orders.

### 5. Batch/task/package orders

The batch/task/package orders need to communicate to contractors the specific terms and conditions under which a batch/task/package is to be performed.