

Public Contracts Regulations 2015 – Regulation 33

Framework agreements

33.—(1) Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Part.

(2) In these regulations, “framework agreement” means an agreement between one or more contracting authorities and one or more economic operators, 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.

(3) The term of a framework agreement shall not exceed 4 years, save in exceptional cases duly justified, in particular by the subject-matter of the framework agreement.

(4) Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this regulation.

(5) Those procedures may be applied only between those contracting authorities clearly identified for that purpose in the call for competition or the invitation to confirm interest and those economic operators party to the framework agreement as concluded.

(6) Contracts based on a framework agreement may under no circumstances entail substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph (7).

Awarding contracts based on a framework agreement

(7) Where a framework agreement is concluded with a single economic operator—

(a) contracts based on that agreement shall be awarded within the limits laid down in the framework agreement; and

(b) for the award of those contracts, contracting authorities may consult the economic operator which is party to the framework agreement in writing, requesting it to supplement its tender as necessary.

(8) Where a framework agreement is concluded with more than one economic operator, that framework agreement shall be performed in one of the following ways:—

(a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out—

(i) all the terms governing the provision of the works, services and supplies concerned, and

(ii) the objective conditions for determining which of the economic operators that are party to the framework agreement shall perform them, which conditions shall be indicated in the procurement documents for the framework agreement;

(b) where the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned—

(i) partly without reopening competition in accordance with sub-paragraph (a), and

(ii) partly through reopening competition amongst the economic operators which are party to the framework agreement,

where this possibility has been stipulated by the contracting authorities in the procurement documents for the framework agreement;

(c) where not all the terms governing the provision of the works, services and supplies concerned are laid down in the framework agreement, through reopening competition amongst the economic operators which are party to the framework agreement.

(9) For the purposes of paragraph (8)(b)—

(a) the choice of whether specific works, supplies or services shall be acquired following a reopening of competition or directly on the terms set out in the framework agreement shall be made pursuant to objective criteria, which shall be set out in the procurement documents for the framework agreement;

(b) those procurement documents shall also specify which terms may be subject to reopening of competition.

(10) The possibilities provided for in paragraph (8)(b) shall also apply to any lot of a framework agreement for which all the terms governing the provision of the works, services and supplies concerned are set out in the framework agreement, regardless of whether all the terms governing the provision of the works, services and supplies concerned under other lots have been set out.

(11) The competitions referred to in paragraph (8)(b) and (c) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms and, where appropriate, other terms referred to in the procurement documents for the framework agreement, in accordance with the following procedure:—

(a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;

(b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;

(d) contracting authorities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the procurement documents for the framework agreement.