

# Make better use of framework agreements

## Summary

The 2014 Public Procurement Directives define a framework agreement (FA) as “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.”<sup>1</sup> FAs allow contracting authorities to set the parameters for purchases without having to define the precise amounts or the full specifications. Furthermore, there are many different variations of FAs, as they may combine single or multiple suppliers, serve one or more contracting authorities, and predefine all conditions or only some of them. Importantly, FAs may be awarded directly to a supplier (through a ranking mechanism if there are multiple suppliers) or through a mini-competition.

The main rationale for using FAs is to achieve cost savings in procurement by generating economies of scale, as well as in the process of procuring by reducing the administrative burden of issuing multiple tenders. FAs are the main tool used by central purchasing bodies, and these bodies generally achieve the most savings by using FAs.<sup>2</sup> The main advantages of FAs lie in increased administrative efficiency, namely, allowing flexibility in procurement but reducing time and administrative costs of running the procedure. Once an FA has been awarded, there are no requirements to run other full procedures or to advertise contracts in the Official Journal of the European Union (OJEU), thus decreasing the length and costs of procurement procedures. Other benefits of FAs derive from streamlined processes for standardised purchases, better management of uncertainty and lower risk of litigation.<sup>3</sup>

However, FAs are complex instruments, as they need to be designed appropriately in order to perform effectively. A poorly designed FA can have a number of negative effects, in particular if it serves multiple contracting authorities, because it may not address their specific needs. Other drawbacks of FAs relate to the decline in competition for a certain amount of time, difficulties experienced by SMEs in bidding to join large frameworks, as well as ‘lock-in’ effects for technology purchases. The risks of collusion and corruption also increase due to reduced competition. Finally, the management of FAs poses a number of specific challenges as well.

Thus, to make better use of FAs, the contracting authority must analyse a series of variables in order to develop the optimal FA. Contracting authorities face a trade-off between the benefits of setting up a long-term framework – which diminishes procurement costs and speeds up procedures – and the resulting effects of reduced competition for a certain period of time. The most appropriate type of FA depends on the heterogeneity of demand (i.e. different kinds of needs, spending capacities and contract-management skills of various contracting authorities), expected participation and the characteristics of the supply market. When designing an FA, it is important to keep in mind the impact it would have on the market structure, e.g. consider whether the public administration has a dominant position in the market (for example, healthcare). Finally, it must be noted that cultural elements play a role in the choice of an FA. For instance, in the UK, ‘mini-competitions’ are very common. In Denmark, in contrast, FAs are often single-supplier, based on the rationale that this way, one supplier would offer their good price.<sup>4</sup>

## Good Practice Examples

- ✓ Austria
- ✓ Denmark
- ✓ France
- ✓ Finland
- ✓ Germany
- ✓ Italy
- ✓ Slovakia



## Impact

### Enhance value for money



One of the key goals of FAs is to bundle demand and achieve better value for money through economies of scale.

### Reduce administrative burden



FAs reduce the number of procedures a contracting authority has to run, and therefore decrease the time and costs linked to carrying out procurement. The diminished administrative burden also applies to economic operators that are either awarded a contract directly or face a simplified ‘mini-competition’ against the winners of the FA.

### Increase transparency



If an FA is in place, economic operators do not have access to the same level of information regarding specific contracts within the FA as they would for contracts conducted under other procurement procedures, which, in turn, reduces transparency. For instance, the information on pricing within the FA is not disclosed publicly.

### Increase competition



Competition is reduced for a limited time whenever an FA is in place, as there is no need for additional competition once an FA is awarded.

## Input

### Cost – €

Low set-up and operation cost (personnel costs for implementing the FA)



### Time – 6 to 12 months



### Complexity – Medium

- Market consultations to understand supply
- Consultation with contracting authorities involved in the framework agreement for understanding demand aspects
- Analysis of past purchasing behaviour to identify specific needs



## Related Good Practices

- Use e-auctions for small, standardised purchases
- Prior market consultations

## Key success factors and potential pitfalls (1)

### Manage the trade-off between standardisation and specific needs

Purchases can often be standardised, as a good/service may be suitable for a large number of contracting authorities. Exploiting such a potential for standardisation increases economies of scale and thus value for money. In this regard, making use of EU or national catalogues of standards for goods or services could help make the FA more effective. However, in some cases, specific needs may have to be taken into account. To determine these needs, past purchases must be considered in order to identify outliers and exceptional purchases. Importantly, it is key to understand the rationale of specific needs and to assess whether they correspond to a legitimate need or stem from a habit or lack of knowledge about alternative options.

### Take time to prepare

The preparation phase of an FA requires substantial time and effort (demand analysis, market research, designing the FA), but this phase is essential for the performance of the FA, and thus should not be cut short. Consultations with market players and 'customers' of an FA are fundamental in this process to understand market dynamics and demand. Making use of support tools, e.g. planning tools, examples of good practices, etc., can help contracting authorities in designing optimal FAs.

### Make use of data for the supply-demand analysis of an FA

The demand must be analysed to get a better sense of the FA's value and to estimate its degree of heterogeneity. Supply markets must be analysed to assess the FA's impact on price, technology and innovation, market structure and risk of collusion. Several tools and indicators can be used for the supply and demand analysis, such as surveys of contracting authorities, analysis of purchasing behaviour, consultations with suppliers, and analysis of bids submitted by tenderers.

### Make it (mostly) mandatory

There are trade-offs involved in requiring public authorities to purchase through centralised framework agreements. FAs sometimes result in a bad deal, so requiring public authorities to purchase through them unconditionally can multiply losses. A Central Purchasing Body's ability to negotiate a good deal depends partly on the purchasing power they represent, so the more authorities that are expected to purchase through it, the better. Also, allowing exceptions to mandatory central purchasing can lead to abuse. As such, MS should make the use of central purchasing as broadly mandatory as possible, while allowing limited exceptions paired with rigorous oversight where necessary.

### Assess the feasibility of FAs

Given the complexity of FAs and their drawbacks in certain situations, it is important to conduct a thorough assessment of their feasibility before launching an FA procedure. The feasibility analysis could be based on a comprehensive template and serve as a record for the go/no-go decision-making process.

### Consider the target goal to design the most suitable FA

If maximum participation is targeted, a multi-supplier FA is the most suitable option. Conversely, if the aim of the FA is to deliver maximum competition at the entry stage, a single-supplier FA should be chosen. If the aim is to achieve maximum quality, it is best to put in place an incomplete multi-supplier FA.

## Key success factors and potential pitfalls (2)

### Take into account expected participation, fixed costs and flexibility of supply

Important dimensions to be taken into account for the design of FAs include – among others – expected participation, heterogeneity of demand, characteristics of the product and supply market, as summarised in the table below.

	High	Low
Expected participation	Multiple suppliers	Single supplier
Fixed costs	Single supplier	Multiple suppliers
Specificity, obsolescence, flexibility of supply	Incomplete FA	Complete FA

Source: PwC elaborating Consip documentation (2014)

## Case Studies

### Italy – Consip’s ‘meet or beat’ rule

Consip, the Italian central purchasing body, implements a number of framework agreements, which serve Italian contracting authorities at central government level and regional/local level. The purchase of goods and services via Consip’s framework contracts is:

- Mandatory for central and local authorities according to a list of eight product categories such as energy supplies, gas, vehicle fuels, heating fuel, landline and mobile telephony, etc.;
- Mandatory for the central government in all the remaining product and service categories; and
- Voluntary for other contracting authorities (e.g. health sector, local authorities, schools and universities) in all the remaining product and service categories, provided that they respect the ‘meet or beat’ rule.

This rule says that if a contracting authority can demonstrate that it can achieve better value for money on an available procurement, it can opt out of a purchase under Consip’s framework contract. Specifically, the contracting authority must meet or beat the quality/price benchmark in Consip’s national framework contracts. The ‘meet or beat’ rule is an incentive for Consip to continuously improve its offer to customers, i.e. the contracting authorities. At the same time, it gives flexibility to contracting authorities that purchase outside of Consip’s framework contracts, if permitted by law. The ‘meet or beat’ rule was first introduced by law 488/1999 (Budget Law for the year 2000) as part of the programme for the rationalisation of public spending on goods and services. It applies to all framework contracts managed by Consip, as stated in the Ministerial Decree of 21 June 2016 by the Ministry of Economy and Finance, which defines the framework contracts whose price and quality parameters must be respected by all public administrations as benchmarks when running their purchases autonomously. As soon as Consip awards a framework contract, the Ministry of Economy and Finance publishes the prices and essential features of the goods and services on its website and on the e-procurement platform AcquistinRete,<sup>5</sup> in order to allow for a precise benchmarking analysis on price and quality. In order to prove how contracting authorities have ‘beaten’ a price, they publish on their websites and on the Anti-corruption Authority’s website the necessary information on their purchases, such as tender notice, awarding notice etc.

### Slovakia – Central purchasing for hospitals

In Slovakia, the Ministry of Health conducts central purchasing via specific framework contracts, which give contracting authorities (i.e. hospitals) the flexibility to choose equipment. These new types of framework contracts were introduced after it was recognised that Slovakia was paying higher prices for similar health equipment than the Czech Republic, as reported by the media.

As a result, in 2016, the Ministry of Health put in a place a system of framework contracts for five predefined categories of equipment. To define the product categories, a number of ‘pre-competitive’ consultations were held, which included the involvement of technical experts. The framework contracts are implemented in two phases. In the first phase, two suppliers are selected on the basis of an e-auction for each of the five categories. In the second phase, the selected suppliers compete to supply specific equipment to the hospitals that are party to the framework contract.

The framework contracts implemented by the Ministry of Health run for three years on a voluntary basis, meaning that each hospital is free to participate or not. Furthermore, they are designed to be modular so that each contracting authority can choose its equipment according to its needs. With the implementation of these framework contracts, Slovakian hospitals reported significant savings.

 Contact

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<sup>1</sup> Directive 2014/24/EU

<sup>2</sup> SIGMA, "Framework Agreements" (2016), see: <http://www.sigmaweb.org/publications/Public-Procurement-Policy-Brief-19-200117.pdf>

<sup>3</sup> OECD, "Framework Agreements: Consip's Implementation" (2014), see: <http://www.oecd.org/governance/procurement/toolbox/search/Italy-FA.pdf>

<sup>4</sup> Marta Andrecka, "Framework agreements in public procurement" (2015), see: <http://www.publicprocurementpodcast.eu/new-blog-avenue/2015/9/29/8-marta-andrecka-aarhus-university>

<sup>5</sup> [www.acquistinretepa.it](http://www.acquistinretepa.it)