

# KNOWLEDGE CENTRE

## Framework Agreement

**FA:1**

### Relevant Facts or Questions Asked

- I. A Procuring Entity (PE) in keeping with its primary mandate to lead the orderly development of urban areas within Jamaica is desirous of establishing a number of Framework Agreements ("FA").
- II. The items and corresponding yearly estimated contract values are as follows:-
  - i. Beach footwear valued at \$18M;
  - ii. Stationery and office supplies valued at \$10M;
  - iii. Toiletries valued at \$8.5M.
- III. In order to do so the PE sought:
  - i. The approval of this Ministry to implement the above listed Framework Agreements;

Guidance regarding the tender process to implement these Framework Agreements (including approvals and methods of call-offs).

### Issues Arising

- I. the provisions in existing law for the creation of FAs;
- II. procedures for the establishing a FA; and
- III. procedures applicable to mini-competition and call-offs.

## Advice

1. The PE is advised that this Ministry is not authorized to approve or repudiate procurement decisions given that the responsibility for public procurement is vested in the head of entity pursuant to Section 20 of The Public Procurement Act, 2015 (as amended) (“the Act”). Therefore, the approval to implement a Framework Agreement (“FA”) is that of the PE’s head of entity.
2. FAs are established pursuant to Regulation 12 of The Public Procurement Regulations, 2018 (Regulations) when a procuring entity is certain of its need to procure goods, services or works, but is uncertain when it may need to do so, or the quantities required. FAs are therefore established to fix the terms governing contracts to be awarded by procuring entities during a given period, in particular with regard to rates or prices, technical specifications and, where appropriate, the quantities envisaged.
3. FAs may be established between the procuring entity and multiple suppliers, or between procuring entity and one supplier, or between multiple procuring entities and multiple suppliers, or multiple procuring entities and one supplier.
4. The FA may either be open or closed. An open FA allows for the admittance of qualified suppliers to the framework even after it has been established with other suppliers. A closed framework does not allow for any future admittance of suppliers.
5. It is therefore prudent for the PE to decide whether a closed or open FA is best suited to meet its procurement objective during the planning stage and prior to the call for tenders.

### Procurement Process for a FA

6. FAs are normally established by open competition- akin to open competitive bidding, and the associated rules:-



- a. A notification must be issued in accordance with section 30 of the Act;
- b. Suppliers/contractors that will be party to FA must be eligible to participate, in accordance with section 15 of the Act and Regulation 17(1) the Regulations;
- c. the appropriate tender document (Annex G11 – Procurement of Goods Framework Agreement) is utilized. Section 34 of Act refers;
- d. the evaluation and contract award criteria are clearly stated in accordance with section 45(1) of the Act;
- e. the tender document should specify the required quality (minimum technical specifications) of products, delivery schedule with relevant terms and timing;
- f. defined contract terms, conditions for call-offs, mini-competition and supply rules must be included in the solicitation documents;
- g. where a mini-competition is being utilized to award contracts under the FA, section 44(4) of the Act must be observed;
- h. observance of the necessary contract approval mechanisms as per section 43(1) of the Act; and
- i. express terms must be included within the bidding document treating the management and closing out of the FA.

#### **Contract Award Utilizing Call-Offs Under FAs**

7. A call-up made against an FA, be it closed or open, represents acceptance, by a purchaser, of the terms and conditions therein. As such, it is the “call-up” which forms the contract that would be submitted for approval by Head of Entity, Public Procurement Commission (PPC) or Cabinet, as the value warrants. Therefore, it is value of the “call-up” contract which will determine the respective Tier approval path for final approval.

#### **Contract Award Utilizing Mini-Competition Under FAs**

8. Contracts awarded under the FA may also be awarded either directly to FA members without a further competition or by using a mini-competition between FA members only. This process allows the terms referred to in the specification to be introduced or existing terms to be more precisely



formulated. This is still subject to the principle that the parties may under no circumstances make substantial amendments to the terms laid down in the FA. All parties to the FA are then invited to participate in a competition in order to ensure equal treatment, non-discrimination and transparency.

9. When conducting a mini-competition:

- i. the procuring entity must invite suppliers capable of performing the contract;
- ii. invitations must be done in writing;
- iii. the time limit fixed for return of tenders must be sufficiently long to allow tenders for the 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;
- iv. tenders are to be submitted in writing;
- v. the content of tenders shall remain confidential until the stipulated time limit for reply has expired; the contract shall be awarded to the tenderer who has submitted the best tender on the basis of the award criteria set out in the documents that are issued for the mini competition; and
- vi. the award must not be made improperly or in such a way as to prevent, restrict or distort competition.

10. There are no statutory time limits specified and the manner of inviting suppliers to participate and submit tenders is not set out in detail. However, suppliers should be given a reasonable time to complete their offers to be admitted to the FA, and must also be given a reasonable time to submit offers in the mini-competitions. Generally, the establishment and conduct of competitions and award processes must comply with the existing principles of procurement law.

11. Finally, for good form, where the anticipated contract sum (aggregate) is likely to exceed the Tier 1 limit, the PE should submit the FA for approval of the Tier 2 and Tier 3 authorities where required. Thereafter, no approvals for call-off



contracts are necessary, save and except that a report must be made to the relevant approving authorities in respect of all contracts that have been raised under the framework.

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