

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 authorised 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”). Accordingly, 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 (as amended) (“the Regulations”), where a procuring entity is certain of its need to procure goods, services or works, but is uncertain of the timing or 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 solicitation document is utilised. Section 34 of the Act refers;
- d. the evaluation and contract award criteria are clearly stated in accordance with section 35 and 38 of the Act;
- e. the solicitation 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 utilised 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 sections 25F and 43 of the Act; and
- i. express terms must be included within the solicitation document treating the management and closing out of the FA.

Contract Award Utilising Call-Offs Under FAs

7. A call-off represents acceptance of the terms of the FA. Section 25F of the Act, requires the PE to project the aggregate estimated value of anticipated call-off contracts and to obtain approval based on that aggregate value, in line with the procurement contract approval limits (Tier 1–3). The aggregate value of call-offs awarded must not exceed the approved FA value. Call-offs issued under the FA do not require separate approvals, but the PE must report them to the relevant reporting authorities.

Contract Award Utilising Mini-Competition Under FAs

8. Contracts may also be awarded through a mini-competition among FA members. 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:
 - a. the procuring entity must invite suppliers capable of performing the contract;
 - b. invitations must be done in writing;
 - c. 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;
 - d. tenders are to be submitted in writing;
 - e. 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
 - f. the award must not be made improperly or in such a way as to prevent, restrict or distort competition.

10. While the Act and Regulations do not prescribe statutory time limits for mini-competitions, the PE must ensure reasonable timeframes and compliance with the principles of transparency, fairness and competition.

Where the projected aggregate value of anticipated call-offs exceeds the Tier 1 limit, the FA must be submitted for Tier 2 or Tier 3 approval, as applicable. Once the FA is approved at the appropriate level, no further approvals are required for individual call-offs. However, the PE must ensure compliance with reporting obligations and must not exceed the aggregate value authorised.