Framework Arrangements

CIPS is expressing beliefs on framework arrangements as they are a fundamental part of managing the supply of goods and services, yet are often a source of confusion.

Introduction

Framework arrangements are becoming more popular as they represent a 'smarter' way of purchasing than placing 'one-off' orders for recurrent contracts for works or supplies; by, for example, optimising volume purchasing discounts and minimising repetitive purchasing tasks.

A key aim of a framework arrangement should be to establish a pricing structure; however this does not mean that actual prices should be fixed but rather that there should be a mechanism that will be applied to pricing particular requirements during the period of the framework. It should also be possible to establish the scope and types of goods/services that will need to be called-off.

CIPS Positions on Practice

The key positions in this paper are summarised below.

- CIPS emphasises the importance of buyers making a distinction between framework agreements and framework contracts.
- Buyers need to be aware of the various expressions associated with framework arrangements, including 'trading agreements' and 'standing offers'.
- CIPS believes that since, by definition, framework arrangements extend over a period of time, particular care has to be given to setting prices (consideration) when at the contract stage.
- CIPS would emphasise that lengths of call-offs are not governed solely by EC rules - they are also of significance for medium- and long-term consultancy contracts, for example.
- CIPS believes that the purchasing professional has a responsibility to select the type of framework best suited to his organisation's needs.
- CIPS considers that when putting framework arrangements in place purchasing professionals should communicate the implications to colleagues both within and external to the organisation.
- CIPS believes that buyers need to pay particular attention to the supplier base (geographical distribution, for example) when putting framework arrangements in place.

Definitions

There are broadly two types of framework arrangements - framework contracts and framework agreements.

Framework Contract

A framework contract has a consideration of a monetary sum paid up front by the buying organisation to the supplier. This payment is made in order to create a contract on the terms and conditions offered by the supplier to the buying organisation so it is important to first ensure that the terms and conditions are correctly drafted so that the supplier is tied in to what has been agreed. Consideration is of course an essential element of the contract; without consideration, either party may withdraw at any time. The consideration may be a purely nominal sum which will, however, in the event of a dispute, normally be interpreted by the courts as confirmation that the parties are happy to be bound in the legal sense (see section below headed 'Consideration').

Other expressions associated with framework contracts include 'term contracts' which are generally framework contracts, but may also be encountered in other buyer/supplier situations and are arrangements put in place for a fixed period of time. These are sometimes referred to as 'period contracts'. Where a contract of this kind is put in place without a specified end date it is sometimes called a 'running contract' or 'perpetual contract'.

Framework Agreement

A framework agreement is the same arrangement without the up-front consideration - instead, each time a buyer uses the agreement a separate contract is formed by the consideration paid for the order in question. Some organisations call framework agreements 'trading agreements' - others might call them 'standing offers'. 'Blanket orders' are a type of framework agreement (they can also be a commitment of any of the purchasing participants to make use of the arrangement but under the terms of which they are entitled to obtain the specified goods or services from the participating suppliers should they wish to do so). In blanket order situations an order number is given to a supplier which the supplier uses to invoice - and buyers simply call off their requirements against it. Many other terms are used for framework agreements, one example being 'umbrella agreements'. The term 'frames' is also used but is rather unfortunate in that it has negative connotations!

Therefore, difference between framework contracts and framework agreements may be summarised by saying that - the former is an arrangement between two parties which commits one to buying at least a certain volume of particular goods or services from the other over a specified period; the latter is an agreement between two parties for the supply of an unspecified amount of a product over a specified period. In this document, for points that apply equally to a framework contract or framework agreement, the generic term 'framework arrangement' is used to include both. A 'memorandum of understanding' is also an expression used in association with, or as a type of, framework arrangement.

Consideration

Consideration is almost always a sum of money; however, since consideration may be concisely defined in a contractual context as 'something of value', goods or services can also constitute consideration.
Opinions differ as to whether or not nominal amounts such as £1 represents consideration under a framework arrangement; in the civil service and MOD, for example, such a sum is deemed to be acceptable consideration.

An opposing view is that if the parties commit themselves then there is a contract - paying £1 will not make any difference.

In many cases buyers will not be able to accurately forecast their requirements; however this does not obviate the need for some form of contractual commitment. Generally the reality is that buyers are disinclined to commit themselves when, as is often the case, future needs are unclear; this is a particular issue when larger value items are involved. The attractiveness of the £1 consideration is that it should ensure the supplier keeps his offer open for acceptance without the buyer being committed to a specific level of expenditure.

On the other hand it may be difficult to imagine that a supplier would accept a commitment to satisfy any and every order in return for no client commitment to place any orders at all or at least would require much more than £1 for doing so.

An alternative approach is the 'total support concept' this functions rather like an extended consumer warranty, whereby, for a payment of £X per month a supplier will undertake to supply all the spares and repairs needed.

Terms and Conditions

Some organisations set up framework arrangements by sending stringent terms and conditions to suppliers as part of the invitation to tender documentation, and in order to be awarded the framework arrangement they have to agree to the terms and conditions proposed. On other occasions 'boiler plate' conditions of contract are sent to suppliers which are modified under the contract that comes into being later, for example, when a call-off order is made.

The terms and conditions agreed at today's date will apply even if delivery and hence payment is a year down the line; the original framework document needs to reflect/accommodate this. The framework is the main contract, with each individual order constituting a separate mini-contract.

The contract needs some form of disclaimer to the effect that any estimates of volume of demand are non-binding, and even that the buyer is not obliged to place any orders at all. Also that the buyer has the right to place orders for the same goods and services elsewhere during the lifetime of the agreement.

Framework arrangements can also be used simply to pre-agree one or two terms or conditions that the parties agree will provide the basis of a trading arrangement if suitable opportunities arise in the future. Here it is important that all the buyers who might be dealing with that supplier are made aware of the arrangement so as to avoid unnecessary debate. Thus a buyer might confirm acceptability of the supplier's buyers standard terms so they do not have to be renegotiated every time.

Call-Offs

When awarding call-offs (i.e. individual contracts) under framework arrangements, contracting authorities in the public and utilities sectors do not need to go through the procedural steps again as long as the rules for setting up the framework arrangement were correctly observed in the first place.

The length of call-offs under a framework arrangement is not limited by the EC Procurement Directives (see next heading). For example, call-offs for consultancy services might be for three, six or 12 months or even longer.

However, individual call-offs should not be affected just to circumvent EC rules. Thus it would be difficult to justify a 12-month call off right near the end of the term of the framework in cases where the normal pattern hitherto has been for one-month call-offs.

Options for call-off arrangements will vary according to individual circumstances and in particular the number of suppliers involved.

Framework Agreements and the EC Procurement Rules

In the EU, buyers in the public and utilities sectors must comply with the EC Procurement Directives. The Directives do not mention framework arrangements of any kind yet it is common practice in the UK for both public and utilities sector buyers to put such arrangements in place. Indeed, well over 80% of public sector orders are put through framework arrangements.

(Note: The new consolidated Public Procurement Directive (currently - June 2003 - in its final stages in Brussels) does for the first time explicitly address the issue of framework agreements. This gives important clarification to the way bodies subject to the EC rules must let and operate framework agreements and introduces certain new requirements including the restriction of the length of a framework agreement to four years except in exceptional circumstances. Comprehensive guidance is available from the OGC website (www.ogc.gov.uk).

The Public Sector

Within the public sector, there are two types of framework arrangements that are commonly used. The first is where an arrangement is put in place with one or more suppliers for the supply of a range of supplies or services in which the prices (or more accurately, a pricing formula) and terms and conditions are all agreed for the duration of the period of the arrangement. The second type is where prices are determined by a 'mini-competition' between the suppliers that have been awarded the framework contract; they can also be used to refine other value for money criteria. However, the award criteria must remain consistent with those employed at the time the arrangements were put in place. Both types of arrangement can be let with a single source supplier but the 'mini-competition' stage in the second type of arrangement involves the supplier firming up the prices for the requirement in question.

Alternatively, it can be argued that rather than two different types of framework arrangement there are instead two different ways of calling off from any given framework arrangement. Whether or not a mini-competition is held depends on the particular requirement and whether the terms are precise enough to identify the best supplier for that particular requirement.

The Utilities Sector

The separate Utilities Directive provides for framework agreements, defined as "an agreement with suppliers, the...
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The purpose of framework arrangements is to establish the terms governing contracts to be awarded during a given period, particularly in terms of price and quantity, for the purposes of the application of EC rules. As such the practice has been to advertise framework arrangements on the framework as a mechanism to support the organisation's needs according to circumstances. For example, if a supply requirement is from a supply chain with risks associated with it then it is probably best to firm up the arrangement by making it into a contract.

Variations in Framework Arrangements, and in Their Uses

The following examples illustrate some of the variations in framework arrangements, and the purposes they can serve.

Drawing up Framework Arrangements

Setting up framework agreements and framework contracts should not be seen as an onerous process. The UK has always taken the view that the only sensible approach to such arrangements is to treat them as if they are contracts in their own right for the purposes of the application of EC rules. As such the practice has been to advertise the framework itself in OJEU and follow those rules for the selection and award of the framework.

Advantages of Framework Arrangements

Framework arrangements can provide many benefits to the buying organisation including:

- flexibility to determine the specific requirement at the call-off order stage
- saving time at a critical stage in a project, as the buyer can firm up the requirement at the appropriate time and simply call-off rather than having to go through a competitive exercise that could cause unnecessary delays to a project
- leverage/economies of scale through aggregation - framework agreements and framework contracts can often cover hundreds of items with the prices and terms and conditions agreed
- avoids duplication - one buyer goes out to the marketplace on behalf of all the other buyers in the organisation
- avoids re-work as framework agreements/contracts can be used to remove the need for requisitions and approval processes (as the risk has already been managed) - however some organisations prefer to use the full acquisition procedure, even for call-off orders
- a suitable method of conducting business in an organisation that has devolved budgets - by putting arrangements in place and then empowering end-users to order from them...
Framework Arrangements

- an appropriate method for use by consortia that set up arrangements on behalf of a number of organisations as it provides leverage through economies of scale whilst maintaining the independence of the buying organisations
- enabling eProcurement by putting the suppliers' offerings under the framework arrangement on the eProcurement system for buyers to use
- supporting purchasing cards as buyers can call off from the framework arrangements using pCards for ordering and payment
- can be used as a method of variety control/standardisation as appropriate by offering buyers only the choice of products within a category of spend which are provided for under the framework arrangements in place - alternatively the converse can be enabled through frameworks offering buyers a wider choice than they would have the time to arrange if sourcing independently.

Introducing Framework Arrangements

Practical Considerations

It is important that the purchasing and supply management professionals who put a framework agreement/contract in place for use by other buyers (either colleagues, or those in other organisations) ensure they communicate the fact that this has been put in place and provide these individuals with easy access to the arrangements. This might be done via an intranet or part of an eProcurement solution with suppliers' offerings under the framework arrangements being readily accessible and usable. Suppliers are also helpful in promoting the framework arrangement to buyers and end-users by, for example, putting on lunchtime presentations explaining the new arrangement and taking questions.

Another consideration is ensuring that buyers and end-users understand the circumstances in which they should use the framework arrangements. This must be articulated as part of the policies, procedures and standing orders of an organisation that empower specified individuals to carry out certain activities within an overall policy framework. An example might be for an end-user to commit a £100k order to a supplier that happens to be a preferred supplier under a framework arrangement for a given set of requirements whereas it would have been preferable to put the order out to competition.

A further related point is that end-users and buyers using the framework arrangements must be aware of the importance of confidentiality - and not for example, communicate prices to other suppliers in the marketplace. It is also good practice to involve a representation from the user community when setting up the framework arrangement so that their needs are included in the decision-making process and hence they are more likely to use and support the arrangement.

It is important to note also that a framework arrangement should be tailored for the type of requirement being contemplated e.g. that relating to short-notice plant hire will take the view that suggesting a sum of £1 might cause reference should be made to the CIPS Knowledge Summary document on Contract Management.)

For this purpose, when initiating or re-letting such arrangements, there must be clear definition of the management information and analysis which will be required, e.g. regarding frequency/value/types of goods and services called off, and delivery performance; and which party will capture it. Often, the supplier is in the best position to do this. As well as receiving such reports in hard copy, the customer will benefit from receiving them in digital form e.g. Excel files, enabling them, if necessary, to analyse the data in additional ways. Purchasing and supply management professionals must also ensure that they manage a market so that the competition does not disappear as a result of all the business being placed with just one or two suppliers. This is particularly important when setting up framework arrangements on behalf of a large organisation, or on behalf of a consortium.

When considering how many suppliers to award a framework arrangement to for a given requirement, the issue of geographical spread needs to be considered. For instance, one supplier might be best placed to service sites in the North East of England and not be as capable of servicing sites in Devon or Cornwall. One method is to enable a supplier to subcontract work to another local supplier to cover the area that is difficult for the main contractor to service.

In some public sector organisations, multiple framework arrangements are put in place at national, regional and local levels. Care needs to be taken to communicate to end-users and buyers which arrangement offers best value for money to the organisation especially if one supplier is servicing two arrangements - at a national and local level, for example.

All frameworks when tendered should clearly show that it is indeed a framework arrangement; the duration of such arrangement; the estimated maximum number of suppliers; estimated total value; and the award criteria, whether simply price, or MEAT (Most Economically Advantageous Tender).

Conclusion

This CIPS Position has drawn attention to the expression 'framework arrangement' as a convenient generic term embracing 'framework agreement' and 'framework contract' although given the visual similarity of the words 'arrangements' and 'agreements' the choice of word is perhaps not ideal.

This Position has clearly shown that while framework agreements are an essential feature of the landscape for those working in the public sector and with the EC Public Procurement Directives, and are moreover frequently mentioned in the literature, they have not until now featured in the Public Procurement Directives themselves (a situation which, however, is likely to change when the new consolidated Public Procurement Directive is published).

In its review of framework contracts this Position has drawn attention to the vital role of consideration in contracts. Referring to the discussion of nominal consideration, CIPS takes the view that suggesting a sum of £1 might cause resentment in some suppliers. Setting firm prices at the contract stage also has its dangers; a much better approach, suggested towards the bottom of the first page, is to make use of a mechanism that can be applied to pricing particular requirements during the period of the framework.