

# So you think you know frameworks?

Rebecca Rees and Jade Divers of Trowers & Hamlins LLP argue that frameworks are a valuable tool. But they are not a way to avoid hard thinking, they warn.

## KEY POINTS

- Frameworks are a helpful commercial tool for organisations bound by public procurement rules.
- They allow efficiency and can streamline the steps required to obtain goods, works or services.
- Frameworks need to be considered carefully before they are used by organisations.
- It is essential to consider if they will deliver the right goods, works or services and whether the terms of any contract awarded under it are appropriate in the circumstances.
- Frameworks under the old Public Contracts Regulations 2015 will live on for quite a while longer, but being under the previous regime does not mean they are better than a new process under the *Procurement Act 2023*.

Public procurement often gets bad press: the procedures are claimed to be too slow, contractors say they don't want the hassle of completing lengthy bid documents, and contracting authorities just want to pick the contractor they have always used. However, those well acquainted with public procurement rules will know that the criticism is unwarranted.

Public procurement is not as simple as finding a supplier on a trade website and appointing them, but it can be complied with efficiently and generally delivers better value for money. Procurement procedures focus on competitive prices and optimal quality proposals, not sales talk and flashy advertisements.

So how can efficiency be achieved in public procurement? The answer often reached for by practitioners is frameworks: a commercial tool in

both the previous Public Contracts Regulations 2015 (PCR) and new *Procurement Act 2023 (PA23)*. In this article we will explore what frameworks are, the key considerations with their use and why in the past year they may have become a comfort blanket for some contracting authorities.

## What are frameworks?

A framework is a public contract which provides for a closed set of contractors who can offer a specified set of goods, works or services. The contract is set up, not with the intention of performance being achieved directly under it, but with an intention to enable future contracts to be awarded for the relevant works/services/goods. Frameworks are procured in essentially the same way as any other public contract (generally a competitive tendering process) but the way they are used, and the contractual terms, are very different.

Focusing on frameworks established under the *PA23* regime, one of the essential elements of a valid framework is an indication of how future contracts can be awarded under it. It is possible for frameworks to be established with a single contractor (enabling multiple contracts to be called off in a similar way to allowing service orders under a large scale IT contract) or with multiple contractors, and this has a direct impact on how future contracts are awarded. However, once established, under a traditional closed framework there is no scope to amend the suppliers. Determination of membership is a one-time thing.

In a single contractor context future contracts will be awarded without any further competition. In contrast, with a multi contractor framework awards may be in one of two ways: award without further competition or award through a mini competition. Where a framework with multiple suppliers allows for award without further

competition, it must set out the core terms and conditions for the future contracts awarded and provide for an objective mechanism for the award.

In short, it must be clear on the face of the framework terms when a contract will be awarded without further competition between the framework contractors. Typical examples of the types of mechanism that might be acceptable include awarding to the contractor who was the most advantageous tenderer in the framework procurement process (i.e., the winning tenderer) or, according to the GCF Guidance on Frameworks, a taxi rank system whereby awards of contracts are rotated between the member contractors in line with the order set out in the framework.

The other option is for frameworks to permit mini competitions between framework contractors. These competitions tend to follow the following process:

- ◆ Seeking expressions of interest from contractors;
- ◆ inviting tenders for the contract; and
- ◆ running an assessment of those tenders to determine the most advantageous.

The process does not have to comply with the procedural and transparency obligations of a general competitive tendering procedure, but it does need to comply with the rules in sections 45 to 48 of *PA23*. The key ones are that tenders are only evaluated based on the award criteria used at the framework procurement stage (or a refinement of that) and that it must follow the procedure set out in the framework documents.

Given the above, it is fair to say that frameworks can often be quicker than full procurement procedures if there is a suitable direct award ground or a small set of suppliers for a mini competition. They can also be useful for organisations that struggle with resource as the core terms of any call off will be set.

### Transitional rules

We noted above that frameworks existed under the PCR and are well known to the market. Given that they did exist under the PCR, it is important to dwell on the transitional rules (introduced to bridge the move from PCR to *PA23*) briefly.

Although for new procurements we are now under *PA23*, when *PA23* was brought in, it was recognised that pre-existing public contracts and live procurements would not be *PA23* compliant.

With that in mind transitional rules were introduced providing for the continuation of the PCR regime in the following non-exhaustive circumstances:

- ◆ Where a procurement was already commenced (tender notice launched) prior to 24 February 2025; and
- ◆ If a public contract (including a framework) had already been entered.

As a result of the above, any framework procured under a PCR procedure remains subject to the PCR and so too does its call-off contracts. The result is that contracting authorities will be using PCR frameworks for a number of years, and contracts governed by the PCR will exist (and their modifications be subject to the PCR regime) for even longer.

### Due diligence when using frameworks

Now we know what frameworks are and their potential utility, it is worth reflecting on what a contracting authority should consider before using a framework (framework due diligence). This can be broken into:

- ◆ Does the framework cover your requirement?
- ◆ Is the contracting authority authorised to use the framework?
- ◆ What regime applies?
- ◆ Is there spend left on the framework?
- ◆ Are the terms for call-off contracts suitable?
- ◆ What award mechanisms can be used?
- ◆ Are there fees?

Focusing on these in turn, a framework will only deliver value for money if it allows you to procure the right thing. There is no point using a framework to procure IT equipment if you need laptops and it only allows for the provision of monitors. Whilst it seems like common sense, at times the line can be a little blurred, certainly if the framework specification is vague in its description. There has also been a general sway towards frameworks in the last year due to the ability to remain under the PCR for a while longer.

Whilst the comfort of a regime organisations know can be alluring, what should take priority is choosing a procurement route that delivers the right thing. That is not to say checking the regime the framework falls under is not important. Organisations need to know the regime applicable

so that the correct transparency notices are issued and any modifications (to the framework or ensuing call-off contract) are made compliantly. *PA23* introduces greater transparency with framework call-off awards (for example a contract award notice setting out the contractor to be awarded to prior to entering the contract) and it introduces more onerous contract management obligations (for example, the need to publish a contract performance notice where certain breaches occur under the call-off contract).

Thirdly, checking you can use the framework might seem an obvious point, but with some frameworks drafted for select organisations, and others more broadly to cover all or parts of the public sector, it is not always obvious. We would recommend consulting with the framework provider if in any doubt.

Assuming the framework does offer the right type of services, you also need to check there is enough spend left under the framework to cover your call-off contract. Frameworks are public contracts which must be procured with an estimated contract value. They will also have estimated spends per lot. Since frameworks are public contracts, it would only be lawful to award under one if there is spend left or the framework provider lawfully modifies the framework to increase spend.

Diligence questions 5 to 7 are secondary questions assuming positive outcomes to the foregoing. Question 5 is concerned with checking that the terms on which your call-off contract would be based are indeed appropriate. If your organisation has an opposing position on certain boilerplate clauses or the terms and conditions are drafted poorly, it is unlikely to be appropriate to use that framework. Whilst there might be some flexibility to amend terms, the minute you begin to vary the core terms you are straying into framework modification territory (with modifications not being simple under the PCR or *PA23*). Question 6 is concerned with how awards are made and whether it sits comfortably with your organisation.

For instance, if a framework uses the taxi-rank allocation for awards without further competition (as discussed above), you eventually if awarding multiple contracts would need to award to every supplier (including the most expensive or poorest quality). This can often be a hurdle for authorities, certainly if there is a history of issues with some contractors.

Question 7 is primarily an administrative point: you may need to provide information to the framework procurer so they can raise invoices for fees. The approach taken across frameworks varies (though *PA23* makes clear fees must be a fixed percentage of the estimated value of any contract awarded to the supplier in accordance with the framework). It is mentioned so organisations go into the practicalities of using a framework with eyes wide open.

### Conclusion

So are frameworks a valuable tool – yes! When deployed in the right circumstances they can be an efficient means of procuring goods, services or works, enabling contracting authorities to meet their requirements and procurement rules. However, they are not a way to avoid hard thinking. Contracting authorities are expected when making procurement decisions to have one mind always to procurement objectives like delivering value for money and maximising public benefit. Unless the aforementioned diligence is done and returns the right conclusions, frameworks should not be used for your award.

As to whether contracting authorities may be drawing on frameworks too much in light of the move to *PA23*, there will certainly be some organisations guilty of this. They know the old regime and therefore opting for a call-off from a PCR framework provides them with more comfort than going out to market and testing their *PA23* awareness. However, we are also seeing more and more authorities embracing the *PA23* procedures and as 2026 continues we hope this continues. **CL**



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