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# Guidebook for Setting-up and Operating Framework Agreements



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**WORLD BANK GROUP**  
Governance

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The World Bank 1818 H Street NW  
Washington DC 20433  
Telephone: 202-473-1000  
Internet: [www.worldbank.org](http://www.worldbank.org)

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GUIDEBOOK  
FOR  
SETTING-UP AND  
OPERATING FRAMEWORK  
AGREEMENTS

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This Guidebook was prepared under the overall guidance of Elmas Arisoy, Accredited Procurement Manager (South Asia) and Vinay Sharma, Global Director (Procurement), World Bank. Comments and inputs at various stages of preparation from the following World Bank persons are gratefully acknowledged: Felipe Goya (Practice Manager), Chris Browne (Lead Procurement Specialist), Shaun Moss (Lead Procurement Specialist), S.M. Quamrul Hasan (Lead Procurement Specialist); Jurgen Rene Blum (Senior Public Sector Specialist); Anjani Kumar (Senior Procurement Specialist); Demelash Demssie (Senior Procurement Specialist); Michael Graeme Osborne (Senior Procurement Specialist) and colleagues from India Procurement Team.

Following subject experts provided their inputs for Guidebook: Rob Kissick, CEO, 2Buy2, U.K.; Alberto Neyra, Senior Public Procurement and Financial Management Expert, TAPPS Ltd., University of Birmingham, U.K.; Nathan Swinney, Head of Category, 2Buy2, U.K.; Karl Rutter, Head of Account Management, Crown Commercial Service, U.K.; Rob Johnson, Head of Category Management & Services at Southern Universities Purchasing Consortium, U.K.; Dorthe Kristensen Balshøj, Associate professor, Department of Law, Aalborg University, Denmark; Oleksandr Shatkovskiy, UNDP Consultant, Ukraine; Christopher R. Yukins, Professor, Department of Law, George Washington University, USA; Peter Trepte, Barrister and Public Procurement Expert, London, U.K.; Rosa Benavente, Head of Strategic Management, ChileCompra; and Benjamin Herisset, Associate Legal Officer, UNCITRAL Secretariat.

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# ACRONYMS AND ABBREVIATIONS

## Acronyms and Abbreviations

<b>AI</b>	Artificial Intelligence
<b>ANAC</b>	Italian National Anticorruption Authority
<b>B2B</b>	Business to Business
<b>B2C</b>	Business to Consumers
<b>BAME</b>	Black, Asian and Minority Ethnic
<b>CCS</b>	Crown Commercial Service (of UK)
<b>CEBR</b>	Centre for Economics and Business Research (of UK)
<b>CEO</b>	Chief Executive Officer
<b>CFR</b>	Code of Federal Regulations (of USA)
<b>CLP</b>	Chilean Peso
<b>CPB</b>	Central Purchasing Body
<b>DPS</b>	Dynamic Purchasing System
<b>e-catalogue</b>	Electronic Catalogue
<b>EIA</b>	End Implementing Agencies
<b>e-RA</b>	Electronic Reverse Auction
<b>EU</b>	European Union
<b>FA</b>	Framework Agreement
<b>FAQ</b>	Frequently Asked Questions
<b>FAR</b>	Federal Acquisition Regulation (of USA)
<b>FCDO</b>	Foreign, Commonwealth and Development Office (of UK)
<b>FDRE</b>	Federal Democratic Republic of Ethiopia
<b>GAO</b>	Government Accountability Office (of USA)
<b>GeM</b>	Government e-Marketplace (India)
<b>GFR</b>	General Financial Rules (of India)
<b>GPA</b>	Agreement on Government Procurement
<b>GSA</b>	General Services Administration (of USA)
<b>ICT</b>	Information and Communications Technology
<b>IDIQ</b>	Indefinite-delivery/indefinite-quantity (Contract, of USA)
<b>IFB</b>	Invitation for Bids
<b>IFRC</b>	The International Federation of Red Cross and Red Crescent Societies
<b>INR</b>	Indian Rupee
<b>IPF</b>	Investment Project Financing (World Bank's Lending Instrument)

<b>IT</b>	Information Technology
<b>KPI</b>	Key Performance Indicator
<b>LAC</b>	Latin America and Caribbean
<b>MAS</b>	Multiple Award Schedule
<b>MEF</b>	Ministry of Economy and Finance (of Italy)
<b>MFN</b>	Most Favored Nation
<b>ML</b>	Machine Learning
<b>NDDDB</b>	National Dairy Development Board (of India)
<b>NHS</b>	National Health Service (of UK)
<b>NHS SBS</b>	NHS Shared Business Services (of UK)
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OEM</b>	Original Equipment Manufacturer
<b>OFPP</b>	Office of Federal Procurement Policy (of USA)
<b>OJEU</b>	Official Journal of the European Union
<b>OMB</b>	Office of Management and Budget (of USA)
<b>PCR</b>	Public Contract Regulations (of UK)
<b>PPE</b>	Personal protective equipment
<b>PPPAA</b>	Public Procurement and Property Administration Agency (of Ethiopia)
<b>PPPDS</b>	Public Procurement and Property Disposal Service (of Ethiopia)
<b>RP</b>	Price Registration System (of Brazil)
<b>SME</b>	Small & Medium Enterprises
<b>SPD</b>	Standard Procurement Document (of World Bank)
<b>SPV</b>	Special Purpose Vehicle
<b>SSQ</b>	Standard Selection Questionnaire
<b>TED</b>	Tenders Electronic Daily (of EU)
<b>TP</b>	Technical Parameter
<b>UK</b>	United Kingdom
<b>UKUPC</b>	UK Universities Purchasing Consortia
<b>UN</b>	United Nations
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UTM</b>	Unidad Tributaria Mensual
<b>WB</b>	World Bank
<b>WTO</b>	World Trade Organization

# 1 INTRODUCTION

# Chapter 1. Introduction

## 1.1 Background and Objectives of the Guidebook

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1.1.1 Procurement of commonly used items is a challenge for government agencies. There are many examples of abuse and failure to achieve value for money in such procurement, in some cases attributable to the relatively unstructured, non-competitive and non-transparent methods commonly used for the procurement of items of relatively low value. Where more structured, competitive and transparent procurement processes are used, the time and costs involved are likely to be disproportionate to the value of the items, and may be particularly troublesome in emergency response situations.

If the items are repeatedly purchased in one-off fashion, so that the total volume is significant, the following missed opportunities also arise:

- **Loss of economy of scale.** Multiple separate contracts issued for the same items may result in higher unit rates than those that could have been secured if the procurements were aggregated
- **Loss of efficiency.** Placing separate multiple contracts involves proportionately more transaction time and cost than aggregating volumes into one procurement, and is particularly challenging where procuring entities have limited capacity
- **Lower competition:** Low-volume contracts may not attract the more competitive suppliers, and Original Equipment Manufacturers (OEMs)
- **No long-term partnership with suppliers:** benefits associated with transparency about future procurement (such as better planning by suppliers, value engineering<sup>1</sup>, performance improvement etc.) are lost.

1.1.2. Framework Agreements (FA) have emerged as a potential solution for above issues, e.g.

- **FAs can be potentially more efficient** than individual small-scale procurements, because the aggregation of repeat purchases allows some stages of the procurement process, such as advertising, assessing qualifications and offers, to be conducted once for the group of purchases rather than for each one-off purchase, and the time and costs of these steps are amortized over an appropriate volume of purchases
- **FAs offer more transparency and competition** than many procurement methods used for low-value purchases, because their value

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<sup>1</sup> Though it may be argued that there is not much scope for value engineering in case of simple common use items

tends to exceed minimum thresholds for normal competitive bidding processes. Better transparency and competition tend to yield better quality and offer terms for procuring entities, and hence **better value for money**

- **FAs may offer better value for money** through economies of scale and ongoing competition during the operation of the FA
- **FAs can ensure security of supply**, because suppliers can be bound to supply items at a future time (commonly at the cost of a retainer), though such retainer clause is not used in most of FAs
- **FAs are more easily monitored and evaluated** than individual small-scale procurements because their scale and procurement methods used to conclude and operate them allow for meaningful data-gathering and analysis.

Many countries (particularly in Americas and Europe) have used FAs successfully, though FAs should not be considered as a silver bullet to address all the above challenges, and there remain risks and constraints in their use (see paragraph 1.4 below). In addition, the use of FAs by countries outside these regions is still very low – confined to a handful of countries elsewhere. Hence there is tremendous potential for scaling-up the use of FAs in developing countries in particular.

1.1.3. Although FAs have been the subject of academic commentary (some of which are listed in Annexure-7), there is a lack of practical guidance on using FAs. This is a particular challenge for the developing countries.

1.1.4. With above background, this Guidebook aims to fill the void by providing a step-by-step process for setting up FAs and managing them, aimed particularly at procurement policymakers as well as practitioners in developing countries. This Guidebook is not meant for FAs under IPF Projects financed by the World Bank, where FAs are governed by Procurement Regulations, Standard Procurement Documents and other Guidance issued by the World Bank.

## 1.2 What are FAs

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There are multiple definitions of FAs, reflecting a wide variety of contractual and procurement mechanisms. The essence is that the FA is concluded and operated under a procedure that has the following steps:

- An invitation to potential suppliers to present offers against a description of the procuring entity's needs;
- The selection of one or more suppliers to be parties to the FA;
- The procuring entity (or central purchasing body, if applicable) and the selected supplier(s) entering into the FA; and
- The procuring entity placing orders with selected supplier(s), as its needs arise, with or without second stage competition.

The first three steps are the “first stage” of the FA procedure. The last one is the “second stage” of the FA procedure. The steps at the first stage follow those in a traditional procurement procedure, save that the conclusion of first stage is not the conclusion of the procurement procedure, and the second stage, during which a series of final procurement contracts are awarded, will extend generally for a longer period (many times in years).

Commonly-used definitions of FAs include the following:

Under Article 33(1), of Directive 2014/24/EU (the European Procurement Directive), “A framework agreement means 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>2</sup>

The UNCITRAL Model Law<sup>3</sup>, which has worldwide application but is most commonly used in developing countries and countries in transition, has a similar definition: “a framework agreement procedure is.....“conducted in two stages: a first stage to select supplier (or suppliers) ... to be a party (or parties) to a framework agreement with a procuring entity, and a second stage to award a procurement contract under the framework agreement to a supplier ... party to the framework agreement.” The purpose of the FA itself is to establish “the terms upon which purchases will be made (or [to establish] the main terms and a

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<sup>2</sup> The OECD has a similar approach: see <https://www.oecd.org/gov/ethics/manual-framework-agreements.pdf>

<sup>3</sup> UNCITRAL Model Law on Public Procurement (2011), *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (UN document A/66/17), <https://uncitral.un.org/en/texts/procurement>. The definitions are in Article 2(e).

mechanism to be used to establish the remaining terms or refine the initially established terms).”

The United States’ Federal Acquisition Regulation<sup>4</sup> has a related definition, for its equivalent of FAs: “‘Delivery-order contract’ means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract. ‘Task-order contract’ means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.” Another related term used in USA is “Indefinite Delivery, Indefinite Quantity (IDIQ)” Contracts, which are often used for service contracts and architect-engineering services<sup>5</sup>.

As per World Bank’s Procurement Regulations,<sup>6</sup> an FA is “...an agreement with one or more firms that establishes the terms and conditions that will govern any contract awarded during the term of the Framework Agreement..”.

Many other countries have similar definitions, some of which are mentioned in country case studies included in this Guidebook at subsequent pages.

These definitions are flexible: they allow for a variety of FAs, ranging from an FA with a large number of suppliers for broadly-defined needs and most terms of the eventual procurement contract remaining to be settled at the second stage, through an FA with several suppliers with most terms fixed at the first stage, to the conclusion of an FA with one supplier, which sets all terms for the supply of the items save for the timing of deliveries. This Guidebook will mainly address three main types of FAs, reasons for selecting one or another type, and the most common tools and procedural variables within them. Additionally, some variants of these FAs are also described in a few country case studies in the Guidebook.

FAs are not a contract in most jurisdictions due to absence of commitment and associated consideration. A Framework Contract on the other hand needs to have a consideration of a monetary sum (sometimes a small token amount) paid upfront by the purchaser to the supplier. This payment is made in order to create a contract on the terms and conditions offered by the supplier to the purchaser. A framework contract thus commits purchaser to buying at least a certain volume of particular goods or services from the supplier over a specified period. This Guidebook focusses on FAs and not on Framework Contracts.

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<sup>4</sup> Federal Acquisition Regulation, Code of Federal Regulations (CFR) Title 48, Subpart 165 - 16.501-1, Definitions. FAR 2005-83/07-02-2015, available at <https://www.acquisition.gov/?q=browsefar>.

<sup>5</sup> <https://www.gsa.gov/buying-selling/new-to-gsa-acquisitions/how-to-sell-to-the-government/indefinite-delivery-indefinite-quantity-contracts>

<sup>6</sup> <http://pubdocs.worldbank.org/en/178331533065871195/Procurement-Regulations.pdf>

## 1.3 Additional Potential Advantages of FAs

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In addition to the general advantages of FA listed under para 1.1.2 above, FAs can offer:

- **Better value for money through a second round of competition:** the benefits of ongoing competition can be realized for the types of FAs that include second-stage competition
- **Aggregation of demand across procuring entities:** Aggregating demand across multiple entities further encourages suppliers to offer competitive pricing, where they have the possibility of bulksales. One agency (e.g. a centralized purchasing agency) may act on behalf of several in undertaking the primary procurement of the FA that may be run through, which saves all procuring entities from individually going to market for the same goods or services
- **Rapid procurement:** particularly important in emergency response situations, because the second stage of the procedure can be very quick, especially for FAs operated online or through digital platforms

Few other reported advantages of FAs are:

- Opportunity for focused efforts to develop procurement capacities, expertise and professionalism in centralized purchasing agency
- Time and bidding cost savings for procurers and suppliers (eliminates multiple repeat bidding exercises)
- Easier monitoring of transactions under FAs rather than spreading efforts on multiple individual small value transactions
- Better integrity of the procurement process due to better monitoring (this is related to last point and quite relevant for many developing countries)
- Better compliance with rules/regulations due to better monitoring (this is again very relevant for many developing countries) for example addressing modern slavery in manufacturing, minority or small business support, responsible procurement policies etc.
- FA allows procuring entities to focus on their *raison d'être* i.e. to focus on procurement of specialized goods or services, not common goods and services.

Please also see the case study on United States (Chapter-5) for many other advantages of FAs cited by users.

One of the major areas of interest for procurement practitioners and researchers alike is quantification of savings from the use of FAs due to the factors mentioned above. Purchasing authorities cannot always guarantee<sup>7</sup> that the cost of goods or services purchased through FAs will be lower than in any other procurement procedure, particularly if the agreement has been in place for a few years. It is for this reason that list prices alone cannot be used to evidence the benefits of FAs.

As per a 2009 study done in Finland<sup>8</sup>, the average duration of a decentralized tendering process was 167 hours, while for centralized purchasing (viz. FA) it took approximately 1030 hours. This duration was converted in to cost and the cost of a decentralized tendering comes out to be 5,845 Euro, in comparison to cost of 20,000 Euro for centralized tendering. It was further estimated that if centralized FA is not available, about 270 decentralized processes will be run in a year by government agencies for one product. Thus a saving of 1.5 Million Euro can be achieved by setting up centralized FA for only one product. The researcher further looked into savings due to economy of scale. For one service category (commercial flights), the saving was 19% while using FA. This saving increased to 37%, if FA has flexible terms. Based on Euro 33 million spent by Finnish government on flight tickets during 2007, the yearly savings would have been at least Euro 5.5 Million per year. Similarly for 5 mostly used office supply items, the savings were from 8% to 37% with average of about 25% while using FAs. Based on total expenditure of Euro 17.8 Million on this category, the savings to Finnish government would have been at least 5.9 Million Euros. It may be noted that these are 2007 figures and if extrapolated to current prices, the savings will be significantly higher.

Box-1 on next page illustrates the approach used by a few agencies of U.K. and Italy for calculating savings from FAs.

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<sup>7</sup> Some FAs include a “Most Favored Customer” clause (which is sometimes also called “Most Favored Nation (MFN)” clause as it is drafted based on MFN clause of WTO). Such clause essentially requires Supplier to agree not to offer better terms/prices to third parties than those it has agreed with the Procuring Entities under the FA. This clause is particularly relevant for very large volumes such as all-of-government FAs. This is also called “Fall clause” in some countries like India.

<sup>8</sup><https://aalto.doc.aalto.fi/bitstream/handle/123456789/11525/a344.pdf?sequence=1&isAllowed=y>

### Box-1: How the Savings from FAs are Calculated in U.K.?

2Buy2 is a national procurement service for schools, churches, charities and businesses established in 2009 in Wales. In 2020 it has been recognized as the 25th fastest growing business in Wales by Fast Growth 50. 2Buy2 is designated as National Procurement Officers for many UK public and third sector bodies. They have established a nationwide School's Buying Hub, Churches Buying Hub and Education Buying Group working over 500 education professionals in the last year to offer procurement advice, management, and access to FAs.

Procurement agents like 2Buy2 estimate savings for potential clients based on market experience or undertaking market research on specific categories of spend. They tend to focus on the percentage that individual sites can save in their marketing to eligible institutions. For example, under a recent FA for office consumables with an aggregation of 200 UK schools, 2Buy2 were able to not only advise that the entire FA resulted in gross savings of approximately £3.4 million, but that individual sites saved 41% on average.

Of course, FAs can also lead to time savings. For example, 2Buy2 let an FA for 18 schools for photocopying which, as well as leading to savings of £160,000, has meant that the time that the contracting authorities take to conclude contracts is greatly reduced. A fully compliant OJEU tender not using the emergency process takes a minimum of 45 days from advertisement to contract placement whereas a call-down contract process takes on average 4-5 days.

The best examples of this are where technology is leveraged by the CPB to make the process as smooth as possible for the contracting authorities. For example, the online catalogues which CCS have established for the most common spend areas, which operate in the same way as online shopping sites. Or the online buying hubs which 2Buy2 have established for schools and churches. CCS manage an FA named the 'G-Cloud', through which suppliers can provide these online systems behind which sit the frameworks.

Southern Universities Purchasing Consortium (SUPC) generally calculate savings achieved from using their FAs in following three ways:

**Cost reduction** – calculated by comparing standard market prices against the baseline prices offered in the FA and further reductions which occur through 2<sup>nd</sup> competition stage.

**Cost avoidance** – calculated by comparing annual price increases in the market through the life of the FA. These will differ dependent on spend categories and authorities may include a provision for annual price negotiations with suppliers.

**Efficiency cost savings** – It is estimated by the UK Universities Purchasing Consortia that the efficiency cost savings realized by bodies who utilize their agreements are approximately £6,000 in the first year and £3,000 per year for subsequent years. Most central purchasing bodies will levy a marketing premium to members. However, in the case of SUPC, this is returned once the agreement is used.

Interestingly, **Consip S.p.A. (Italy)** calculates the savings from FAs very differently i.e. by comparing prices resulting from an FA with purchasing price obtained by a public entity by running a competitive procedure on its own. This is to know for sure that (after taking into proper account quality differences) the price comparison delivers a measure of the effectiveness of an FA as a demand aggregation technique.

## 1.4 Potential Challenges of FAs

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Some of the potential challenges of FA are listed below:

- **Market closure and reduced competition**, when few suppliers are contracted for a long period, exacerbated where the procuring entity is a dominant purchaser in the relevant market
- **Complex planning process**, with greater complexity where there are higher numbers of procuring entities<sup>9</sup> that can purchase under the FA and the more dynamic is the market concerned
- **Higher proportional transaction times and costs than traditional procurement** if the FA is not used to amortize the higher transaction costs and time across sufficient volume of purchases. This may arise as a result of inadequate planning, or trying to use an FA in a rapidly-changing market
- **FAs may be unresponsive to change**, if new suppliers or solutions evolve during the term of the FA, or prices change unexpectedly
- **May not be a suitable method** for all types of procurement e.g. where there are complex, unusual or novel requirements so that the purchases cannot be standardized to a reasonable degree
- **Increased complexity** of FA management as compared with one-off procurement

One area of concern while using FAs with a relatively low number of suppliers, especially where markets are not highly competitive and where procurement norms and standards are developing, is increased possibility of collusion (between Suppliers; or between centralized purchasing agencies and Suppliers). Hence this aspect should be monitored carefully.

Another “hot” area is potential use of FAs to achieve social objectives of governments<sup>10</sup>. There are varying views on usefulness of FAs for enabling SME participation. Some feel that procuring entities may structure their purchase sizes (i.e. tenders could be broken down into lots where applicable, for example, lots could be geographical or separated by service type) to allow SMEs to participate, though this may reduce the benefits of larger contracts and economies of scale. On the other hand, many commentators criticize FAs for hampering SMEs participation. See Box-2 for experiences from some countries.

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<sup>9</sup> A potential issue is “spend leakage” where some procuring entities may not want to participate in the “All of Government” FA and instead prefer sourcing from their local SMEs. Stakeholder engagement on the buyer side is hence also important for success.

<sup>10</sup> The Procurement Strategy (ref: paragraph 3.2.2) should identify the “needs” including social and environmental objectives. It should also identify the likely impacts on suppliers such as SMEs if they are excluded from the FA.

## Box-2: Participation of SMEs in FAs

One major concern about use of FAs is that they may cause market distortion due to the restrictions on the number of suppliers allowed on the shortlist. When aggregating requirements of multiple national authorities, there is the risk that only 1 or 2 suppliers will be able to deliver the full scope of the requirements, or that SMEs will not have the resources to put together bids for tenders of that scale.

CCS (UK) provide specific detailed advice for SMEs. The advice reflects the UK Government's commitment to ensure that access to public procurement is not limited to larger organizations. It has tips on how to build up experience in the public sector, how to respond to tenders as well as information on the changes the UK. This has resulted in increased procurement spending with SMEs. The changes that have been made include holding public sector bodies to 30 days payment terms, removing the requirement for pre-qualification questionnaires for low value contracts and the use of the online platform called Contracts Finder, launched in 2011. Through Contracts Finder, suppliers of any size can register their interest in specific categories of goods and services to receive notifications of upcoming tenders as well as searching through all tenders with a value of over £10,000.

Despite these measures, losing access to small local supplier is still a potential concern for many public bodies who have a particular local focus and often leads purchasing authorities away from the framework route. For example, when the Church of England were considering aggregation of communion wine and wafers requirements across all UK churches, they chose not to let an FA. This was because the churches across the UK have 100's of small local suppliers and they worried that not many of these would have been able to respond to a tender for the aggregated quantities. That is where alternatives to FAs may be more beneficial, for example the use of a dynamic purchasing system (DPS).

Also see the example of India's GeM in subsequent chapter, which allows use of "SME Filter" while using FAs, to maximize the orders to SMEs. Similarly, ChileCompra (Chapter 10) has reported impressive increase in participation by SMEs in FA.

The 2009 Finland study<sup>11</sup> referred earlier also points out to three major reasons for limited participation of SMEs in centralized tenders (including FAs). These are limited legal expertise, administrative resources, and e-capabilities. This has an important implication for procurement policymakers. If the policymakers want adequate participation by SMEs, it is necessary to simplify the procurement processes and documentation required. Training to SMEs may also be provided to improve their capacity. It is also interesting to note that exclusion of SMEs from FA bidding processes may affect the pricing behavior of remaining suppliers competing for FA i.e. they may not offer full discount, thus compromising potential savings from FAs.

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<sup>11</sup><https://aalto.doc.aalto.fi/bitstream/handle/123456789/11525/a344.pdf?sequence=1&isAllowed=y>

## 1.5 When to use FAs

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The above commentary indicate that deciding whether to use FAs requires careful analysis of procuring entity needs and markets, and of the applicable procurement procedures and policy objectives such as using procurement expenditure to support SMEs. Traditional procurement methods, which allow only for a single procurement contract with a single supplier will not accommodate most types of FAs, so a threshold issue is whether the applicable legal framework has the necessary flexibility.

In very general terms, FAs may be more suitable than traditional procurement in the following situations:

- **High-value overall expenditure divided into many lots required over time:** Where the goods or services are being repeatedly procured and cumulative volume and value of such goods or services purchased is significant, the additional costs and complexities of the FA procedure are more likely to be outweighed by its administrative and value-for-money benefits
- **Goods and services are less complex, easy to specify and largely homogeneous:** These help in standardization and reducing transactions costs
- **Planning for emergency situations:** FA may be useful to establish security of supply and to shorten lead times in advance of an emergency and where there are capacity constraints and/or fragility
- **Security of supply:** Where no single supplier is considered to have sufficient capacity to meet the procuring entity's needs, so there is a need to appoint more than one supplier, and/or to provide geographic cover through a range of suppliers in separate locations.

The benefits of FAs may be enhanced in the following circumstances:

- **Frequency of purchase:** The benefits of FAs are generally multiplied when the same items are purchased frequently
- **Higher degree of standardization:** FAs generally offer better economies of scale where procuring entities are similar in their "quality as purchasers"<sup>12</sup>, and their needs can be standardized, or where there are limited variations in demand. Demand heterogeneity arises not only in

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<sup>12</sup> In FAs with multiple procuring agencies as purchasers, experience indicates that where some procuring entities are more difficult customers than others, because they change terms or pay late, the average price for all offers under the FA will rise, even to the "better" procuring entities.

the items supplied but in delivery terms, notably times and frequency of orders, and where multiple procuring entities can use the FA

- **Competitive supply market:** the more competitive the market is, the more successful the FA should be (conversely, in economically concentrated markets, the greater the challenges to ensuring effective competition)
- **Where the FA duration** does not last longer than the market remains stable.

It is important to select right type of FA as a wrong FA model may result in problems like lesser flexibility for customization to meet needs of individual purchaser as a result of standardization<sup>13</sup>. Moreover, advance planning will be required to set-up or renew the FA, generally to be started at least 6 months in advance of the expiry date if continuity of supply is to be ensured.

Other major prerequisites for use of FAs are availability of trained personnel (both on purchaser and supplier side), necessary systems/software for collection of data and legislations/policies/rules to support use of FAs as a procurement approach.

Chapter 2 explains the three main models of FAs, which are used to accommodate key variables in the needs of the procuring entities (where different government buyers may have slightly different needs or, for example, be located in places for which delivery costs would vary), and in more dynamic markets.

Chapter-3 provides step-by-step guidance for setting up and operating FAs, which is supplemented by country case studies (Chapter-4 to 10) capturing variety of approaches and practices from both developing and developed countries. Annexure-5 illustrates some FA level case studies and discusses underlying factors for their success and failures. Those interested in further details may refer to additional resources listed in Annexure-7 in addition to reference materials mentioned in main texts and footnotes of various Chapters.

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<sup>13</sup> Usually the FA terms will state that the arrangement is non-exclusive, and there are no guaranteed volumes so if there are needs that cannot be met by the FA then the buyer can go to suppliers outside of FA

# 2

## TYPES OF FRAMEWORK AGREEMENTS

## Chapter 2. Types of Framework Agreements

### 2.1 Background

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Reflecting the benefits outlined in the previous Chapter, the use of FAs in public procurement has increased markedly in recent years. This Chapter will look at the evolution and types of FA. The sources for the discussion in this Chapter include the European Union Procurement Directive (Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (Text with EEA relevance)) and the UNCITRAL Model Law on Public Procurement (United Nations, 2011). The approach in these texts, which are used as templates for national public procurement systems, is largely consistent and can be used for laws in developed, developing and transition countries (the latter two comprising those for which the UNCITRAL model was in particular conceived). Both texts contain provisions on FAs, which are among the more detailed international examples available for use at the national level. The approach of the United States federal procurement system, which is long-standing and multi-faceted, reflects the overall procurement system in that country, and its experience is less easily adapted for current purposes. The references set out at Chapter 5 provide links to commentary on that system.

The text of the Directive 2014/24/EU is found at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>. The text of the UNCITRAL Model Law, and an accompanying *Guide to Enactment* that explains the policies expressed in the Model Law and how to use the options it contains, are found at <https://uncitral.un.org/en/texts/procurement>. For ease of reference, the EU Directive provisions and the Chapter of the UNCITRAL Model Law on framework agreements procedures are reproduced in the Annexures to this Guidebook.

## 2.2 Evolvement of FAs

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Early users of FAs in varying forms were found in France, the United Kingdom, the Nordic Countries and in the United States.<sup>14</sup> Reflecting their relative procedural ease of operation once established, FAs, are increasingly popular. A recent study in the United States concluded that they had “become the procurement instrument of choice in a wide variety of situations”; another estimated that federal procurement spending under FAs for 2011-2015 in that country was *one third* of the total procurement expenditure.<sup>15</sup>

According to the EU, “Between 2006 and 2009 the number of framework contracts has increased by almost a factor of four. In 2009 over 25 000 framework contracts amounted to about one seventh of the value of all the contracts published in the OJEU. In the same year 6.8% of all contracts were awarded by contracting authorities purchasing on behalf of other authorities. Over 40% of the value of contracts published by central or joint purchasing bodies was through FA contracts”.<sup>16</sup> Despite this and other indications of wide and increasing use of FAs in the European Union, more recent data on the extent of use of FAs in the European Union are not readily available, though some individual centralized purchasing systems in certain member states do provide some statistics.<sup>17</sup> The rise of e-procurement systems and procurement platforms appears, too, to be providing a further impetus to the use of the technique.<sup>18</sup>

While some countries used FAs without express legal authorization, many countries now provide for their use in the primary procurement law, and this is a recommended course of action: certain features of FAs procedures are not compatible with provisions found in many traditional procurement laws.

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<sup>14</sup> For a more detailed history, see *Albano, G. & Nicholas, C.* (2016). *The Law and Economics of Framework Agreements: Designing Flexible Solutions for Public Procurement*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781139939584>, Chapter 5.

<sup>15</sup> [https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2619&context=faculty\\_publications](https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2619&context=faculty_publications) - Nash and Cibinic Report.

<sup>16</sup> EU public procurement legislation: delivering results Summary of evaluation report, European Commission Internal Market and Services, Working Document, undated, available at: <https://ec.europa.eu/docsroom/documents/15552/attachments/1/translations/en/renderitions/pdf>

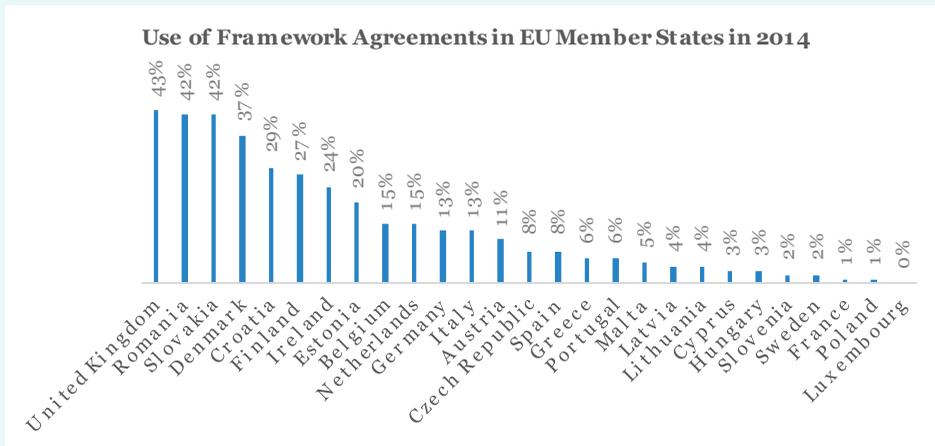
<sup>17</sup> *Albano & Nicholas*, *ibid.*

<sup>18</sup> See, for example, <https://prozorro.gov.ua/en>; <https://www.chilecompra.cl/>; <https://opentender.eu/pt/>; <https://www.gsa.gov/buying-selling/new-to-gsa-acquisitions/how-to-sell-to-the-government>; <https://www.pps.go.kr/eng/jsp/koneps/overview.eng>; <https://www.tuneps.tn/index.do>; and the country cases surveyed by the OECD at <https://www.oecd.org/governance/procurement/toolbox/principlestools/e-procurement/>.

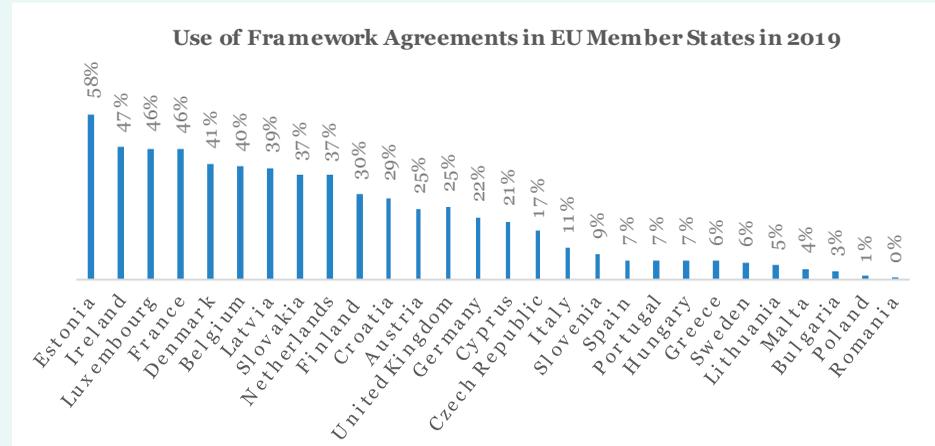
### Box-3: Use of FAs in European Union (EU)

All countries subject to the EU Procurement Directives have the same requirement to have transcribed them into national laws so the mandatory requirements for over-threshold procurement by public bodies will be similar across the EU. Procurement under the EU thresholds can differ at country level as these will be based on national case law and public sector objectives.

But parity of the regulations across the EU is not an indicator that the procurement is carried out in the same way. In fact, a 2016 study looking at the administrative capacity in the field of public procurement in the EU, conducted by Price Waterhouse Cooper on behalf of the European Commission<sup>19</sup>, found that whilst the use of FAs is high in the UK<sup>20</sup>, this is not the case for all other EU member states. The chart below shows that of the 27 member states included in the study, there are only 6 countries in which FAs accounted for over a quarter of the public procurement.



That is very roughly calculated to account for 7% of all over-threshold tenders in 2014. The 2019 data from the TED shows that 5 years later there are 13 EU member states using the FA method for at least a quarter of their public procurement. However, the overall percentage appears to have dropped from roughly 7% to just over 4.5%.



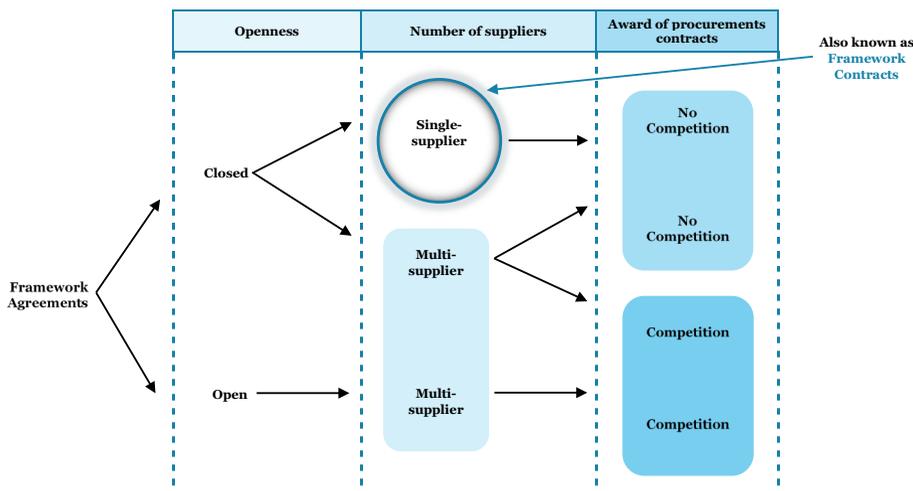
It is difficult to determine concrete reasons for increases or decreases in the use of FAs in individual countries, particularly with various levels of public procurement spend data available. However, FA continues to be a major procurement approach in many EU countries.

<sup>19</sup> <https://op.europa.eu/s/oAKT>

<sup>20</sup> UK is no more part of EU

## 2.3 Models of FAs

This Section addresses the three main models of FAs, which are presented below in the order of relative complexity to design and set up (also see the diagram below<sup>21</sup>).



### 2.3.1 Model 1 - a closed FA, with one or more suppliers, without second-stage competition

A “closed” agreement means the FA is concluded with a fixed number of suppliers at the first stage (one or multiple suppliers), and no additional supplier(s) can join the agreement afterwards until it is renewed at the end of the FA duration. The terms and conditions for the procurement and the suppliers’ offers are also fixed, so that (for example) unit prices are set<sup>22</sup> when the FA is concluded. Under a Model 1 FA, the procuring entity simply places a purchase or delivery order for the required quantity and stipulates the delivery requirements. A Model 1 FA can be used for either a specific good or service, or groups of related goods and services, including electronic catalogues (“e-catalogues”).<sup>23</sup>

A traditional procurement contract can provide for the supply of the relevant goods and services in lots, so a threshold question is what difference there is between such a procurement contract and a Model 1 FA. Under normal

<sup>21</sup> Albano, G. & Nicholas, C. (2016). *The Law and Economics of Framework Agreements: Designing Flexible Solutions for Public Procurement*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781139939584>

<sup>22</sup> Though in volatile market, it is possible to include periodic review of pricing, particularly in case of commodities where prices are subject to unpredictable changes e.g. timber, coffee, paper, fuel etc.

<sup>23</sup> E-catalogues operated as Model 1 FAs cannot be updated. Updates can be provided through second-stage competition or a variant form of FA.

procurement rules, the solicitation documents must set the total quantity of goods and services, and a time of delivery or delivery schedule. It is normally concluded with a single supplier<sup>24</sup> but it is possible to split the contract into product lots and use an “award limit” clause, that is, a solution to avoid the winner-take-all outcome. Thus, even in a standard procurement procedure the multi-award outcome is possible but it will not work if volume and timing are left open. A Model 1 FA, on the other hand, may have several supplier-parties, and allows the volume and timing of orders (and delivery locations where necessary) to be left open at the first stage – they are set when the orders are placed. The terms of solicitation, and FA, might (but need not) set a total quantity of the procurement, though it will generally include estimates<sup>25</sup>. This is a very crucial aspect of FAs. An estimate of total value/volumes provides a very meaningful signal to the supply market to enable them to offer volume based discounts and also reduces the risk of manipulation ex-post by the procuring entity (one of the awardee might be tempted to bribe the procuring entity to raise volume after the FA has been concluded).

Placing orders under the FA, normally via a purchase order, is sometimes called a “call-off”. The process is simple, and can be very swift, generating the procedural efficiencies described in Chapter 1. The call-off method must be defined in FA solicitation document at the first stage approach to market.

The most common business case for a Model 1 FA with a single supplier is that it leads to a relatively high-value contract and can generate economies of scale, since the suppliers at the first stage should compete aggressively to win the entire contract.

Where a Model 1 FA is concluded with more than one supplier, the first stage of the procedure selects suppliers offering the lowest price(s) or most advantageous offer(s) at the first stage, and they are admitted to the FA as parties. (There is considerable flexibility in selecting the number of suppliers to be admitted.) At the second stage, then, the procuring entity issues the purchase order to the supplier with the “best” offer for the goods or services required as per the terms of the FA.

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<sup>24</sup> In some systems including in the United Kingdom, procurement contracts are awarded as “term contracts”, meaning that they are awarded to a single supplier for a defined term, to cover “discrete items of work or services... initiated by orders placed under the contract in question” (see Procurement Lawyers Association, “The use of framework agreements in public procurement”, March 2012, available at [www.procurementlawyers.org/pdf/PLA%20paper%20on%20Frameworkworks%20PDF%20Mar%2012.pdf](http://www.procurementlawyers.org/pdf/PLA%20paper%20on%20Frameworkworks%20PDF%20Mar%2012.pdf)). This description of quantity has been considered sufficient for a traditional procurement contract. Each order determines the nature, quantity and terms of delivery goods or services to be provided.

<sup>25</sup> Demand estimation is usually based on aggregation of past procurement data (with certain factors to take care of growth in demand etc.) by the agencies which will potentially be using the FA.

A multi-supplier Model 1 FA allows for security of supply if, for example, the supplier with the “best” offer is unable to fulfil an order (in which orders can be placed to supplier with next “best” offer). It has flexibility in that where the FA covers a broad delivery area and suppliers are in different parts of that area, the procuring entity can place an order with the supplier whose delivery costs are lowest for the relevant delivery location. There are potentially several ways of doing this. Some other examples are placing purchase orders on rotational basis and equal split of demand among suppliers.

As there is no further competition among the suppliers that are parties to the FA when the deliveries are required, a Model 1 FA is suitable for purchases for which the procuring entity can set all these terms in advance, and needs flexibility only as regards quantities and delivery terms. Standardization may be difficult or inappropriate in some cases, especially in the context of centralized purchasing, and the planning and design of FAs will need to assess how much standardization is appropriate (see, further, FAQ available at Annexure-3).

Considerations for choosing between single and multi-supplier FAs are discussed in FAQ available at Annexure-3.

Since the supplier(s) cannot update their offers or e-catalogues (and especially prices) during the term of the FA, Model 1 agreements are suitable for markets that are stable, for example, specifications and price are likely to remain relatively consistent for the duration of the agreement. Another important determinant for using Model 1 FA is the predictability or stability of final users’ needs/requirements eliminating the need to reopen competition at the second stage of the FA.

Clearly, however, an important consideration will be the appropriate length of time to fix the contract terms and so the length of the FA so that its terms remain in line with the open market. This issue is considered in FAQ available at Annexure-3.

Examples of types of procurement for which Model 1 FAs have worked successfully are:

- Telephone services
- Petrol, electricity and gas supplies (prices for units can be fixed, or can be linked to listed indices, so they would be “fixed” in that sense)
- Office supplies (e.g. paper)
- Pharmaceutical supplies
- Cleaning and unit-priced services (e.g. regular maintenance, pavement repair)

As the most straightforward type of FA in practice, a Model 1 FA is recommended as a starting point for introducing FAs, using a pilot for a market sector in which goods and services are procured on the basis of lowest price (e.g. office and pharmaceutical supplies). The pilot can also usefully operate using e-catalogues.

### **2.3.2 Model 2 – a closed FA, with multiple suppliers and second-stage competition**

A Model 2 FA, as the reference to second-stage competition in its title implies, is one in which not all terms and prices for the final procurement are set at the first stage. It must therefore have multiple suppliers, though in other regards it has the same characteristics as a Model 1 FA insofar as it remains closed to additional suppliers and can be for single items or related goods and services. The difference lies in the second round of competition to allow the “best” offer to be identified when the procuring entity seeks delivery of the goods or services concerned.

Model 2 FAs are therefore designed to address an inflexibility in Model 1 FAs – that they do not allow for changing market conditions, or variations in the procuring entity’s requirements. To take the example of common pharmaceutical supplies, under a Model 1 agreement, the procuring entity will order from the best supplier for the relevant item, and the supplier will have set its price based on estimated overall volume and frequency of demand. Under a Model 2 agreement, the second-stage competition allows the suppliers to reduce their prices or otherwise improve their stage one offers now that the precise terms of delivery are set. In addition, the second-stage competition can bundle different items or allow competition on quality aspects (such as faster delivery time, quality of item), so that the supplier with the best combined offer for the bundle/quality requirement is selected, even though that supplier’s price for some items may not be the lowest. Model 2 FAs therefore allow for ongoing competition and aggregation of demand through bundling. They generally provide that second-stage offers must be better than first-stage offers, which provides a safeguard and can be useful in certain sectors, such as the IT sector, where prices generally reduce over time.

A few words of caution are required: in order to generate the administrative and procedural efficiencies that FAs are intended to offer in the context of two rounds of competition, the number of suppliers that are admitted to the FA and the extent of terms that are competed at the second stage are limited (otherwise the process overall would be as cumbersome as a traditional procurement, and perhaps more so). The second-stage competition is therefore often called a “mini-competition” or a “mini-tender phase”, reflecting that this competition is a refinement of first stage offers, rather than a competition ab initio. In addition, as the second-stage competition is conducted with limited numbers of suppliers, the

risks of reduced pressure to compete, bid-rigging and collusion<sup>26</sup> need to be addressed (please also see Q&A at Annexure-3). For this reason, the length of a Model 2 FA should also be limited, in order to allow both for periodic full competition and for the procuring entity to benefit from market developments.

Examples of types of procurement for which Model 2 FAs have worked successfully are:

- Internet connectivity
- Standard IT equipment
- Standard medical equipment (e.g., x-ray and ultrasound machines)
- Essential products/services/construction for emergency situations (e.g. food, water, medical supplies, shelter kits)
- Travel services
- Small works
- Repeated lump-sum consulting assignments

As Model 2 FAs involve additional procedures and assessments, it is recommended that they be introduced after Model 1 FAs and the use of pilot schemes.

### **2.3.3 Model 3 – an open FA, with multiple suppliers and second-stage competition**

A Model 3 FA is an “open” FA. The epithet “open” means new suppliers can join the FA throughout its duration. Model 3 FAs are called “dynamic purchasing systems” in the EU Procurement Directive. Under both the UNCITRAL Model Law and the EU Procurement Directives, the agreement must be operated online. In other respects, the agreement has the salient features of a Model 2 FA: there are two rounds of the procedure, and the terms of the eventual purchase order, including price, are set through competition at the second stage.

Model 3 FAs are therefore designed to address the main concern in Model 2 agreements – the restriction of competition to a limited sector of the relevant market during the duration of the FA, because new suppliers can join at any time and the market is consequently “refreshed”. Model 3 FAs are therefore suitable

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<sup>26</sup> Common forms of bid rigging include Cover bidding, Bid suppression, Bid rotation and Market allocation. To minimize the chances of collusion at second stage, effective competition is a must at the first stage. See OECD Guidelines for Fighting Bid Rigging in Public Procurement for more details, available at <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=284&InstrumentPID=299&Lang=en&Book=False>

for dynamic and competitive markets, such as IT supplies, where there is a ready market so that suppliers offer broadly the same quality and technical characteristics, where there are regular new entrants to the markets, prices may fall, and where the characteristics of the goods or services are continually evolving. In common with Model 2 agreements, there are two rounds in the process, but the procedure to award a Model 3 FA has some significant differences in practice.

In accordance with normal procurement procedures, qualification/technical requirements will be pass-fail in character and operate to set minimum standards. Whereas the first stage of a Model 2 FA involves both an assessment of those requirements and a competition to select a defined number of the “best” suppliers to be admitted to the FA, the Model 3 FA operates quite differently because it is “open” to new joiners at any time. In this context, seeking to compare offers and select the “best” suppliers is impractical. Any suppliers not selected because they are not among the “best” could make (minor) adjustments to their offers and resubmit their applications, effectively requiring the procuring entity to re-evaluate the entire supplier base each time such a re-application to join was received. Consequently, the first stage of a Model 3 FA procedure assesses supplier qualifications and that their offers are responsive, but (absent rare exceptions) does not involve a competitive comparison or evaluation of offers. They may include indicative prices, but not binding prices.

As a result, all qualified suppliers with responsive offers must be admitted to a Model 3 FA, and so in highly competitive markets, it may have tens of, or even more, parties. The logistical challenges that large numbers of participating suppliers can raise are among the reasons for requiring a Model 3 FA to be operated online. In addition, designing an appropriate and related bundle of goods and services for the FA, and setting sufficiently rigorous minimum qualification/technical requirements at the first stage can identify realistic suppliers and effectively exclude marginal suppliers that would be highly unlikely ever to win a contract. (For a discussion of SMEs and start-ups in this context, see Box-2 earlier.)

All competition among suppliers, in the sense of determining the “best” offer, therefore takes place at the second stage of a Model 3 FA, meaning that ensuring effective competition, transparency and integrity during that stage is a key consideration for Model 3 FAs.

A key question for the second stage from the efficiency perspective will be whether all suppliers to the FA are invited to participate in the competition, or only some suppliers are invited. The more complex the competition will be, and the more suppliers take part, the longer and more time-consuming the evaluation process will be. Limiting the use of complex and non-quantifiable quality requirements, so that the second-stage competition focuses on price and very

simple quantifiable quality criteria (such as delivery times or warranty periods), can help reduce the burden even if there are many participants. (Some relatively sophisticated IT tools can also assist, as discussed in Paragraph 3.5 in next Chapter). Procedures for FAs generally include criteria to identify whether all or some of the parties to the FA are invited to participate in the second stage, which balance the efficiency issue with ensuring non-discrimination, competition and transparency.

The above explanation highlights that Model 3 FAs work successfully for goods and services in competitive, dynamic markets, where the best supplier can be determined by competition focusing on price when the procuring entity's need arises. Examples of types of procurement where they are useful overlap with Model 2 examples, and, include:

- Specialized IT equipment
- Medical equipment
- Construction services

As Model 3 FAs require additional capacity to operate at the second stage than Model 2 FAs, it is recommended that they be introduced after Model 1 and after or as an alternative to Model 2 FAs, using pilot schemes, and where electronic connectivity and capacity is well-established.

**Table-1: Summary of the Three Most Common Models of FA**

Model	Openness	First Stage	Number of Suppliers	Second Stage
Model 1	Closed	Responsiveness + competition to identify best supplier(s)	Single supplier <i>OR</i> Multi-supplier	Award to best supplier, as determined at first stage
Model 2	Closed	Responsiveness + competition to identify best suppliers	Multi-supplier	Competition
Model 3 (also known as Dynamic Purchasing System)	Open	Responsiveness only	Multi-supplier	Competition

As the three Models of FA cater to different circumstances, the decision to engage in procurement using an FA can be a relatively complex one, requiring decisions on the appropriate procurement method for the award of the FA and the appropriate type of FA. For this reason, countries introducing FAs should take a phased approach to the use of FA procedures while experience in the technique is

gained. For example, they can start with a Model 1 FA, and use a pilot to test the procedure for the procurement of commonly used, off-the-shelf goods or straightforward, recurring services that are normally purchased on the basis of the lowest price. Thereafter, they can introduce, in a staged fashion, second-stage competition and goods or services requiring more complex assessments to identify the winner, using the most advantageous tender as an award methodology. While technological tools can alleviate the procedural burden, the more quality criteria that are involved – especially at the second stage – the longer that stage of the process will take, an important criterion for consideration as FAs are primarily designed to allow for rapid procurement of relatively Simple goods and services<sup>27</sup>.

**Table-2: Advantages and Disadvantages of Three Most Common Models of FA**

Type of FA	Main Advantages	Main Disadvantages
Model 1	Relatively simpler to set-up and operate Suitable for low capacity centralized purchasing agencies and manual procurement	Inflexible- do not allow for changing market conditions, or variations in the procuring entity's requirements Restriction of competition during the validity of the FA
Model 2	Useful for changing market conditions (e.g. price)	Higher risk of bid-rigging and collusion during second stage bidding Restriction of competition during the validity of the FA Relatively complex to operate in comparison to Model-1 FA
Model 3	Useful for changing market conditions (e.g. price)  Allows for new players to enter into FA during validity of FA	Complex to set-up and operate, normally requiring use of e-system. Requires relatively high capacity of centralized purchasing agencies.

<sup>27</sup> Apart from characteristics of supply market, purchasing body's internal policies are at least equally important in deciding design of FA. For instance, virtually all FA's awarded by Crown Commercial Service in the UK involve a second round of competition, whereas Consip in Italy makes very seldom use of this kind of FAs in spite of the two centralized agencies dealing with a fairly similar set of products/services. The main reason is that Italian public bodies tend to dislike the second round of competition as this involves an additional administrative cost. They basically trade-off the advantage of getting a more tailored contract against the disadvantage of designing a further round of (mini-) competition. Even when the contract is deemed to be "standardized" – say, fuel – different approaches are conceivable. For instance Consip in Italy would split the contract into geographical lots and award each lot to one supplier (single-award framework agreement), whereas Colombia Compra Eficiente (CCE) in Colombia uses a multi-award framework agreement involving a second round of competition. Why? Because CCE think that it is efficient to have final users pay different prices depending on the actual purchased quantities. Consip has so far adopted an approach guaranteeing that all final users get the same price no matter how heterogenous is individual consumption.

The second-stage competition can take the form of a traditional submission<sup>28</sup> (tender, bid, offer) or of an electronic reverse auction (e-RA). An e-RA is a tool to set the eventual winning offer, through rounds of online bidding during a scheduled time period. The bidding rounds involve successive reductions in overall price (or, less commonly, combined price and quality criteria), and the bids are automatically evaluated using IT systems. e-RAs take different forms in practice, but in general terms they are suitable for dynamic and competitive markets, and for straightforward goods and services that are normally procured on the basis of lowest-priced responsive bid, or where any quality criteria are limited in number and scope, easily quantifiable and operate as near-price criteria. Thus, e-RAs are designed for the same areas of the procurement market as FAs with second-stage competition. They offer swift and transparent mini competitions, with the automated evaluation offering a solution to concerns about the time and cost required to evaluate large numbers of bids in Model 3 (open) FAs. The Recitals to the EU Procurement Directive include policy and implementation commentary on the use of FAs,<sup>29</sup> UNCITRAL Model Law and *Guide to Enactment* include detailed provisions and guidance on their use,<sup>30</sup> and the including safeguards to avoid collusive behavior (which can be a concern in Model 2 FAs, as we have seen).

As FAs offer relatively swift second stages, procurement contracts can be awarded much more quickly than in many traditional procurement procedures. Once established, they can avoid or reduce the need for urgent procedures (which have traditionally generated higher prices and/or lower quality outcomes than non-urgent procedures). As set out above, FAs are available under the Model Law where the need for the goods and services concerned “may arise on an urgent basis”. In terms of Models of FAs, the broad categories of goods and services that an emergency or natural disaster may require can be predicted, and some specific items, but precise needs will reflect the situation as it arises. Where several requirements are bundled together under one FA, the effect will be to provide flexibility for the procuring entity to finalize or refine its statement of needs when the needs themselves arise, but some items may benefit from second-stage competition and others may not. Consequently, effective planning for FAs for emergency situations may involve a mixture of Models of FA. Relevant considerations are set out in FAQ available at Annexure-3.

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<sup>28</sup> However these should be simpler and quicker than traditional/Non-FA purchases, otherwise benefits of FA will be compromised, and hence to the extent possible, use of e-RA or RFQ (request for quotation) is recommended.

<sup>29</sup> See Recitals 59-66.

<sup>30</sup> See the text of Chapter VII of the Model Law and accompanying *Guide to Enactment* text.

### 2.3.4 E-catalogues

As noted in the discussion of Model 1 FAs, e-catalogues under those agreements cannot be updated. From a legal perspective, this is an implication of the requirement that the winning supplier is determined by selecting an offer submitted in response to a solicitation (whether at the first or second stage), and that suppliers are not permitted to revise their tenders or offers once the submission deadline has passed.

The reason for not permitting the spontaneous revisions of offers after the deadline for submission, as some forms of e-catalogues involve, is the possibility of abuse: the procuring entity could provide information to a favored supplier to ensure that the favored supplier gives the best offer at the relevant time. (The rules on contemporaneous tender deadlines and opening, and transparent competition before an offer is selected, mitigate this risk in “traditional” public procurement, but they would not cover spontaneous offer revisions.) Another risk is that some systems would not necessarily record successive e-catalogues comprehensively so as to keep a complete record of all suppliers’ offers at all times, and the procuring entity could simply award the contract to a favored supplier because the relative status of its offer would be difficult to ascertain after-the-fact.<sup>31</sup>

Clearly a static procedure is unsuitable for dynamic markets, and FAs with second-stage competition allow refinements to reflect market changes during the period of operation of the FA. E-catalogues are perfectly compatible with Model 2 and 3 FAs, in that the catalogue offers constitute the first stage tender in response to the solicitation documents, and are the starting-point for the mini-competition. The mini-competition can operate as an updated e-catalogue submission, or as an opportunity to better the e-catalogue offers (including through an e-reverse auction). The former approach allows for highly dynamic markets, in which first stage offers may be unrealistic even as a starting point. In addition, e-catalogues can allow for flexible bundling approaches that Model 2 and 3 FAs may not facilitate.

Reflecting the increase in B2B and B2C online commerce over the last decade, there is increasing desire for and the beginning of the use of e-catalogues without second-stage competition but that can be updated spontaneously in practice. In the United States, for example, an e-marketplace colloquially termed “Amazon.gov” is being trialed at the time of writing (see Box-4 below). It is hoped that further tools to allow them to operate in more markets will become available in the relatively near future.

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<sup>31</sup> There are similar risks in other types of FAs: in a single-supplier Model 1 framework, an additional risk of abuse through unmonitored revisions in the supplier’s favor during the framework period, and in request-for-quotations procedures for straightforward procurement outside an FA, which are relatively opaque: here, a procuring entity could easily provide information on the other quotations to the favored supplier. Record requirements and oversight provisions are designed to mitigate these risks.

#### **Box-4: GSA’s Commercial Marketplaces Initiative: Opening Amazon & Other Private Marketplaces To Direct Purchases By Government Users<sup>32</sup>**

The U.S. General Services Administration (GSA) opened a new chapter in public procurement by awarding three contracts—to Amazon Business, Overstock.com, and Fisher Scientific—that will allow federal users to buy directly from online electronic marketplaces, with sales anticipated to total \$6 billion annually. This proof-of-concept effort, dubbed the “commercial platforms” initiative by GSA, marks a radical departure from traditional procurement practices because it will allow individual Government users (not necessarily procurement officials) to make “micro-purchases” (generally up to \$10,000) using Government purchase cards. By removing the federal procurement system as an intermediary in the purchasing process, and in essence outsourcing the selection of available sources to private providers of electronic platforms, GSA’s initiative has both reshaped procurement and potentially redrawn a marketplace.

For more details, please see <https://publicprocurementinternational.com/2020/06/26/gsa-awards-contracts-to-open-amazon-and-other-commercial-platforms-to-billions-of-dollars-in-federal-micro-purchases/>.

## **2.4 Mandatory and Non-Mandatory FAs**

This feature is likely to deeply affect the competitive dynamics at the award stage, and consequently the outcome in terms of achieved value for money. The mandatory use of FAs requires that a pre-determined set of procuring entities will be obliged to purchase through the standing FA up to the estimated value of the FA itself. Mandatory FAs are instrumental to reduce the amount of uncertainty that potential competing firms bear at the first stage of the procedure.

If use of FA is not mandatory, there is a possibility that “attractive” buyers (e.g. those have large requirements, or those pay to suppliers in timely manner) will not use FA, and the supplier will be left with “unattractive” buyers. In such situation, firms will rationally protect themselves against possibly bad outcomes at the first stage of an FA by either not participating or not offering best terms, thus making new FA more undesirable for buyers. This Catch-22 phenomenon can be kept under control by having some form of commitment/obligation on the demand side.

Even in the cases where use of FA is mandatory, some exceptions are allowed. When regulations make room for such exception, procuring entities might be tempted, for instance, to manipulate their needs so as to escape the obligation. This phenomenon is sometimes known as “maverick buying”.

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<sup>32</sup>[https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2783&context=faculty\\_publications](https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2783&context=faculty_publications)

Many examples of mandatory use of FAs exist especially in Europe. In Austria and Finland, the FAs awarded by the national centralized procurement bodies (BBG and Hansel, respectively) are mandatory for all central government bodies. In Italy, the Ministry of Economy and Finance obliges both central and local government bodies to purchase through Consip's FAs in 9 product/service categories. Many other countries included as case studies in this Guidebook mandate use of FA (e.g. Indian GeM and ChileCompra).

More questionable is whether it is sensible to oblige the suppliers to serve any procuring entity entitled to purchase through the FA. When procuring entities are heterogeneous (in terms of location as well as other characteristics) suppliers might be tempted to "cherry-pick" buyers in order to maximize profit. One can safely state that obligation on demand side should be coupled with a similar obligation on the supply side, whereas non-mandatory FAs would call for a similar feature on the supply side as well.

# 3

## ESTABLISHING AND OPERATING FRAMEWORK AGREEMENTS

## Chapter 3. Establishing and Operating Framework Agreements

### 3.1 Background

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This Chapter will discuss the use of FAs in government-funded procurement, and sets out the main issues for consideration for governments introducing their use in their public procurement systems. It should be noted that the Chapter is by no means exhaustive, and the references provided in Annexures (and country case studies) will provide additional guidance. Governments providing enabling rules for FAs for the first time will benefit from advice from those with experience in the technique – FAs have much potential but need careful planning both at the enabling and at the use levels. The discussion is presented in a narrative format.

The starting-point is that FAs are best used for repeat purchases, so that the time and costs involved in setting up an FA will be spread over a sufficient number of procurements so that the overall effect from the transactional cost perspective is positive<sup>33</sup>.

As noted in Chapter 1, detailed planning for FAs (which are by their nature relatively large and long-lasting arrangements) is needed, irrespective of the model of FA chosen.

The fact that purchases are repeated tends to indicate that the subject-matter comprises either commercial-off-the-shelf items, or items for which there is or will be a market of sufficient scale that deliveries can take place at short notice. The main discussion in this Chapter assumes that the goods and services are of this type. Using FAs for other reasons – principally emergency preparedness – will be discussed as a variant of the main discussion.

### 3.2 Preparation before Launching FA Procurement Process

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#### 3.2.1 *Analyzing Procurement Law or Regulations of the Country*

The first procedural requirement is to assess whether procurement of the goods or services concerned may be conducted through an FA (please also see Annexure-4 for legal and regulatory fitness check for FAs). WTO GPA member countries may also see Annexure-6 for discussions on impact of GPA on FA.

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<sup>33</sup> There is a heavy administrative cost in establishing FAs initially. The approach of using centralized purchasing bodies (CPBs) who levy a modest fee to the framework users can overcome this challenge. Other option is through establishing a centrally funded CPB.

Where FAs are being introduced for the first time, it is recommended that the procuring entity should be required to record an explanation justifying the use of an FA. A simple way of achieving this aim is to set “conditions for use” of the FA procedure in the legal rules. For example:

- “(a) the need for the subject-matter of the procurement is expected to arise on an indefinite or repeated basis during a given period of time, or
- (b) by virtue of the nature of the subject-matter of the procurement, the need for that subject-matter may arise on an urgent basis during a given period of time, or
- (c) a common item, bought regularly with high transaction costs not commensurate with the risk, so an FA reduces transaction cost to release time to focus on other core activities.”

It is also recommended that the procuring entity should also record an explanation of why the relevant Model of FA was chosen. The process of recording the justification helps focus minds on securing the benefits of the technique and assessing whether it is a better one in the circumstances than others that may be available and is therefore a capacity-building tool. Of course, the conditions relate to assessments of the future, and so involve subjectivity, meaning that governments should provide additional rules and guidance to assist the procurement officials involved.

Such guidance can recommend that:

- Most forms of FAs, and particularly open FAs, are best used for commonly-used, off-the-shelf goods or straightforward, recurring services that are normally purchased on the basis of the lowest price or price with limited and easily quantifiable quality criteria
- The potential benefits as well as the costs of the two-stage procedure be taken into account when deciding on the suitability of an FA
- For closed FAs, realistic estimates for the extent of need for the subject-matter should be included in the solicitation documents, so that potential suppliers are encouraged to submit their best prices at the first stage. Without those estimates, suppliers will price uncertainty into their offers, first stage prices may be unrepresentative (making budgeting more difficult than it needs to be) and the FA may include a price cushion that the second stage may not eliminate (so that the procedure does not yield the anticipated benefits)

Other tools that have proved helpful in practice include illustrative lists of suitable markets for each type of FA,<sup>34</sup> and descriptions of when FAs are not suitable.

Once capacity to use FAs has developed, a more flexible approach can be considered, for example under the EU Directive, which provides that “Contracting authorities may conclude framework agreements” (provided certain procedural rules are met), and justifications are not required.

It is recommended that the law should not allow for different Models of FA to be combined in one procedure unless there is sufficient capacity and oversight mechanisms in place to prevent any misuse. Although such a possibility (of combining FA models) could be helpful, for example, if the procuring entity’s needs may sometimes be urgent (in which case, first stage offers can simply be accepted and a purchase order issued) and sometimes not (in which case second-stage competition can be undertaken), it comes with challenges, particularly for the inexperienced user in appropriately applying the discretion thus conferred. FAs with this flexibility therefore need higher levels of experience and capacity to operate successfully and more oversight to monitor outcomes and to ensure that the flexibility is neither misused nor abused, and should be introduced only once there has been significant experience in using simpler forms of FA. However, particularly for emergency planning procurement, where experience has already been gained in the use of FAs, this combined approach could eventually offer a supplementary tool.

### **3.2.2 Finalizing Procurement Strategy<sup>35</sup>**

The purpose of this step is to decide whether FAs are suitable (even if allowed by the Law as mentioned above) for item(s) to be procured, and if yes, which model is to be used. It involves identifying procuring entities interested in purchasing the item and analyzing their past and current spend on that particular item. The result of this analysis (along with other variables) is used to project the likely demand of the item for next few years. For obtaining optimal benefits of economy of scale from FA, it is necessary to minimize the number of categories through discussions with procuring entities to arrive at common technical specifications (standardization). Current procurement approaches for the item are also identified and potential benefits sought from procurement process for the item are documented. This includes identifying Key performance indicators (KPIs) as well as how these are to be measured.

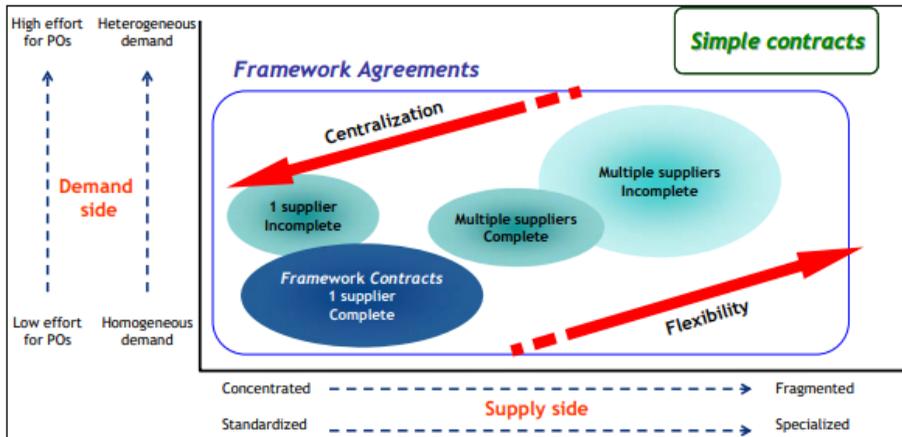
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<sup>34</sup> Experience in the United States indicates that trying to be more restrictive, by having up-to-date listed or defined products or services for which FAs are suitable, is an impractical approach.

<sup>35</sup> See step-by-step guidance at <https://www.procurement.govt.nz/assets/procurement-property/documents/guide-mastering-procurement.pdf>

Analysis of Operating Context includes aspects like economic, governance, technological, sustainability etc. Mapping the skills of personnel and capabilities (including e-procurement) of CPB and procuring entities is an important exercise to understand whether they will be able to handle setting up and operating of FAs. If any minor gap is noted, the same needs to be addressed before starting of FA procurement process.

**Figure 1. Factors influencing use of FA as Procurement Approach**<sup>36</sup>



Apart from CPB, procuring entities and Suppliers, there are many other stakeholders in a procurement process. For example, policymakers, auditors, media and taxpayers (final users of public services). It is necessary to identify the interests of each of them and prepare plan to address the concerns, if any.

Next comes the market analysis which includes mapping of potential suppliers, their current market shares in contracts issued by government in general and procuring entity in particular, Supply Positioning (how the buyer sees the Supply Market) and Supply Chain Analysis. Next stage is Market Approach and Options Appraisal, under which various procurement options are generated and analyzed based on short, medium and long-term goals of the procurement; and also risks of each of the options and mitigation measures. In case it is concluded that using FA is the best option; type of FA, its duration etc. are decided. Management of FA as well as purchase orders issued under FA are critical and these are also to be assessed.

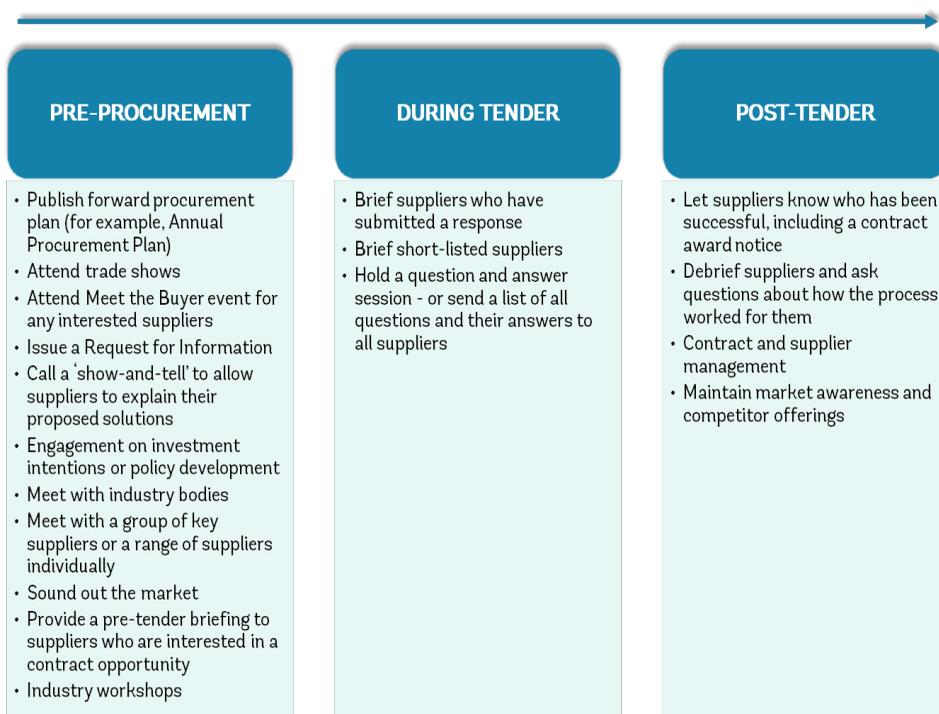
Final risk management plan includes risk factors, level of risk, owner of risk and mitigation measures with timeline.

<sup>36</sup> <http://ippa.org/images/PROCEEDINGS/IPPC4/o4EconomicsofProcurement/Paper4-1.pdf>

Final output of this stage is a Procurement Strategy, which guides FA procurement process<sup>37</sup>. Procurement Strategy also includes procurement plan to define projected timeline for various procurement actions.

### 3.2.3 Market Engagement

The purpose of the Market Engagement is to get the feedback of likely bidders and suppliers before launching the procurement process. This can be done either virtually or through physical meetings. It involves presenting the requirements (e.g. specifications), validate cost estimates and proposed timeline for bidding process, improve terms and conditions of FAs based on market feedback and alert the potential bidders about upcoming opportunity so that they are prepared and there is healthy competition. Following diagram<sup>38</sup> shows more details.



<sup>37</sup> Those interested in detailed FA procurement process including preparation of strategy, market engagement, tendering process etc., may refer to real life examples available at [https://www.nationalfirechiefs.org.uk/write/MediaUploads/Procurement/Fleet%20Framework%20Documents/DS183-15 Guidance Document for Contracting Authorities v2.5 Nov 18.docx](https://www.nationalfirechiefs.org.uk/write/MediaUploads/Procurement/Fleet%20Framework%20Documents/DS183-15%20Guidance%20Document%20for%20Contracting%20Authorities%20v2.5%20Nov%2018.docx) and <https://www.whatdotheyknow.com/request/474322/response/1382892/attach/html/5/DOC%20%20DS183%2015%20Framework%20Award%20Recommendation%20Report%20v1.0%20Revised%20Redaction.pdf.html>

<sup>38</sup> <https://www.procurement.govt.nz/assets/procurement-property/documents/guide-constructive-market-engagement.pdf>

If FA is new for the country, such engagement also allay fears (for example, concerns about distorting markets, particularly in smaller countries where the Government is a main buyer) of the supplier community about this procurement approach<sup>39</sup>. Market engagement should continue even after award of FA.

Country case studies (particularly, UK and Chile) included in this Guidebook provide more details on market engagement for FAs.

## 3.3 Procurement Process for Setting up FAs

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### 3.3.1 Applicable Definitions and Terms

The procurement process for setting up and operating FAs should be read in conjunction with relevant definitions. Defining the terms relevant for FAs and the applicable procedures, is important to ensure that both stages of the procedure will be governed by its safeguards to ensure transparency, competition and integrity.

Some sample definitions are given in Section 1.2. As the UNCITRAL Model Law is most commonly used in developing countries and countries in transition, it is further discussed below in details.

As we have seen in the Introduction, the UNCITRAL Model Law defines FA procedures and the types of FAs as: “Framework agreement procedure” means a procedure conducted in two stages: a first stage to select a supplier (or suppliers) or a contractor (or contractors) to be a party (or parties) to an FA with a procuring entity, and a second stage to award a procurement contract under the FA to a supplier or contractor party to the FA:

- (i) “Framework agreement” means an agreement between the procuring entity and the selected supplier (or suppliers) or contractor (or contractors) concluded upon completion of the first stage of the FA procedure;
- (ii) “Closed framework agreement” means an FA to which no supplier or contractor that is not initially a party to the FA may subsequently become a party;
- (iii) “Open framework agreement” means an FA to which a supplier (or suppliers) or a contractor (or contractors) in addition to the initial parties may subsequently become a party or parties;

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<sup>39</sup> A sample pre-market engagement document can be seen at [https://consultations.nidirect.gov.uk/dof-reform-quality-and-compliance/eo13fc19/supporting\\_documents/PREMARKET%20ENGAGEMENT%202019.docx](https://consultations.nidirect.gov.uk/dof-reform-quality-and-compliance/eo13fc19/supporting_documents/PREMARKET%20ENGAGEMENT%202019.docx). Also see early market engagement guidance at [https://www.bipsolutions.com/docstore/supplierguidances/guidance\\_11b\\_2006.pdf](https://www.bipsolutions.com/docstore/supplierguidances/guidance_11b_2006.pdf)

- (iv) “Framework agreement procedure with second-stage competition” means a procedure under an open FA or a closed FA with more than one supplier or contractor in which certain terms and conditions of the procurement that cannot be established with sufficient precision when the FA is concluded are to be established or refined through a second-stage competition;
- (v) “Framework agreement procedure without second-stage competition” means a procedure under a closed FA in which all terms and conditions of the procurement are established when the FA is concluded.”

A “procurement contract” is “a contract concluded between the procuring entity and a supplier (or suppliers) or a contractor (or contractors) at the end of the procurement proceedings”. The wording “at the end of the procurement proceedings” in the definition means that FAs themselves are not procurement contracts, but the awards under them – whatever the Model – constitute the relevant procurement contracts.”

An FA may be a binding contract in a national system but under the above approach, it is not a procurement contract. The procurement contract is concluded at the second stage of the procedure, when the procuring entity awards a procurement contract under the FA. The effect of this approach is that the rules and safeguards in the procurement law apply to both stages of FA procedures, and there is clarity as regards the rules of procedure that apply to FAs procedures.<sup>40</sup>

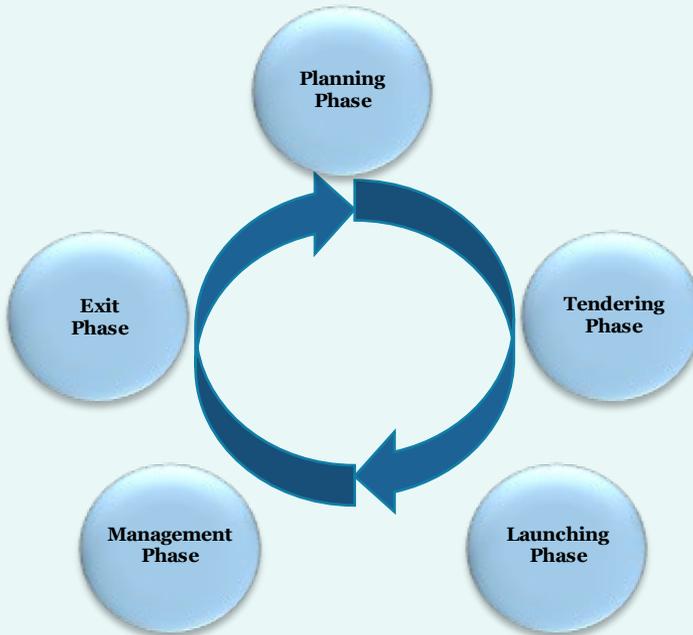
### **3.3.2 Steps involved in the first and second stages of an FA procedure**

The procedures for awarding the FA and issuing call-offs under it need to be clear and unambiguous. Box-5 describes various phases involved in life of an FA.

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<sup>40</sup> Other systems, including that in the European Union, have a lighter touch approach to the second-stage which may increase the risks to transparency, competition, and integrity particularly at that stage of the procedure.

**Box-5: Life Cycle of an FA<sup>41</sup>**



As explained under paragraph 3.2, the purpose of the **planning phase** of the procurement is to evaluate the suitability of the FA (vis-à-vis other procurement methods), assessment of the readiness of the purchasing agency to handle FA (viz. availability of skills and systems), market research to understand availability of suppliers and their interest in participation of FA as well as estimation of quantity of items required (including lot sizes). A comprehensive category review in this stage should conclude whether or not an FA is desirable. The timeline for procurement process will be prepared in this stage and also the model of FA to be used decided. Key performance indicators (KPIs) for evaluating the effectiveness of FAs may also be developed at this stage. Early supplier engagement is also very important as many will be worried when they hear the Government is introducing an FA, so their early engagement is key to reduce noise and promote participation.

The purpose of the **tendering phase** is to conclude the competitive tendering procedure in accordance with the country's law or rules on public procurement. The tendering procedure start when the invitation for bids (IFB) is published. Bid document should be clear enough with balanced risks and responsibilities between both the parties and sufficient time should be given to potential bidders to prepare the bids. Use of e-procurement system is desirable (though may not always be possible in developing countries) for improving efficiency and transparency. At the end of tendering phase, FAs are signed with successful bidders.

Purpose of the **launching phase** is to ensure that both suppliers and customers (agencies which are going to use FA) are aware that the FA exists and how it works. The existence of the FA need to be reminded constantly. Future pace of utilization of the FA depends much on the activities done during this phase. Market engagement continues in this phase.

Purpose of the **management phase** is to monitor the use of FA by user agencies and also how the market functions. The data regarding the purchase orders issued are compiled and analyzed to detect any abnormal pattern (e.g. collusion, quality issues, delays in supply, delays in payment etc.). Corrective actions are initiated as required. Market engagement continues in this phase.

Purpose of the **exit phase** is to evaluate how well the FA has served its purpose and the government's overall goals. KPIs (developed earlier) may be used for evaluation purpose. Also the phase includes learning from the FA for planning future FAs. The phase also involves closing down activities related to the ending FA.

<sup>41</sup> <https://www.oecd.org/gov/ethics/manual-framework-agreements.pdf>

The recommended main steps and procedures, in addition to the requirement to satisfy the conditions for use are as follows:

- *Award of a closed FA*: the procuring entity should use open tendering or its local equivalent to award the FA in both Model 1 and Model 2, unless one of the conditions for use of another procurement method is satisfied (which is most unlikely in the FAs context).<sup>42</sup> The solicitation documents must therefore contain information relevant for both stages of the procedure, including whether there will be a single- or a multi-supplier FA, and details of terms and conditions that will be determined at the second stage and how that stage will operate (competitive or non-competitive, and evaluation criteria for that second stage). The general rule that the solicitation documents must set out all necessary information for suppliers to decide whether to take part and what their offers must reflect can be relaxed only so far as needed to accommodate the particular case. This may include information on quantities but, in accordance with the notion that the better the information, the better the offers, where the total quantity and delivery details regarding the purchases envisaged under the FA are known at the first stage of the procurement, they must be disclosed; as must any minimum and maximum quantities or values for the procedure as a whole, and minimum commitment to supply that the suppliers must give. Estimates should replace precise quantities, timings, frequency of need, and so forth, where the precise details are unavailable. Finally, the award of the FA must be published in the same way as a traditional procurement contract.
- *Requirements for closed FAs*: the FA should record all the terms and conditions for the award of contracts under that agreement (as set out in the solicitation documents), including how those that are not established at the first stage will be settled. The FA should also expressly set out its duration, which must be less than a legally-required maximum (on this maximum and appropriate duration, see FAQ available at Annexure-3). Finally, the FA should contain all information necessary to allow for the FA to operate effectively such as access to platforms for online FAs.
- *Establishment of an open FA*: it is recommended that first stage of a Model 3 FA be concluded through a standalone procurement method, so that it is governed by dedicated provisions. Although the award of the open FA would closely follow open tendering proceedings, there need to be deviations from the rules on solicitation documents to reflect the lack

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<sup>42</sup> The possibility should be included for exceptional markets, which could include drugs, energy supplies and textbooks, for which the procedure could protect sources of supply in limited markets.

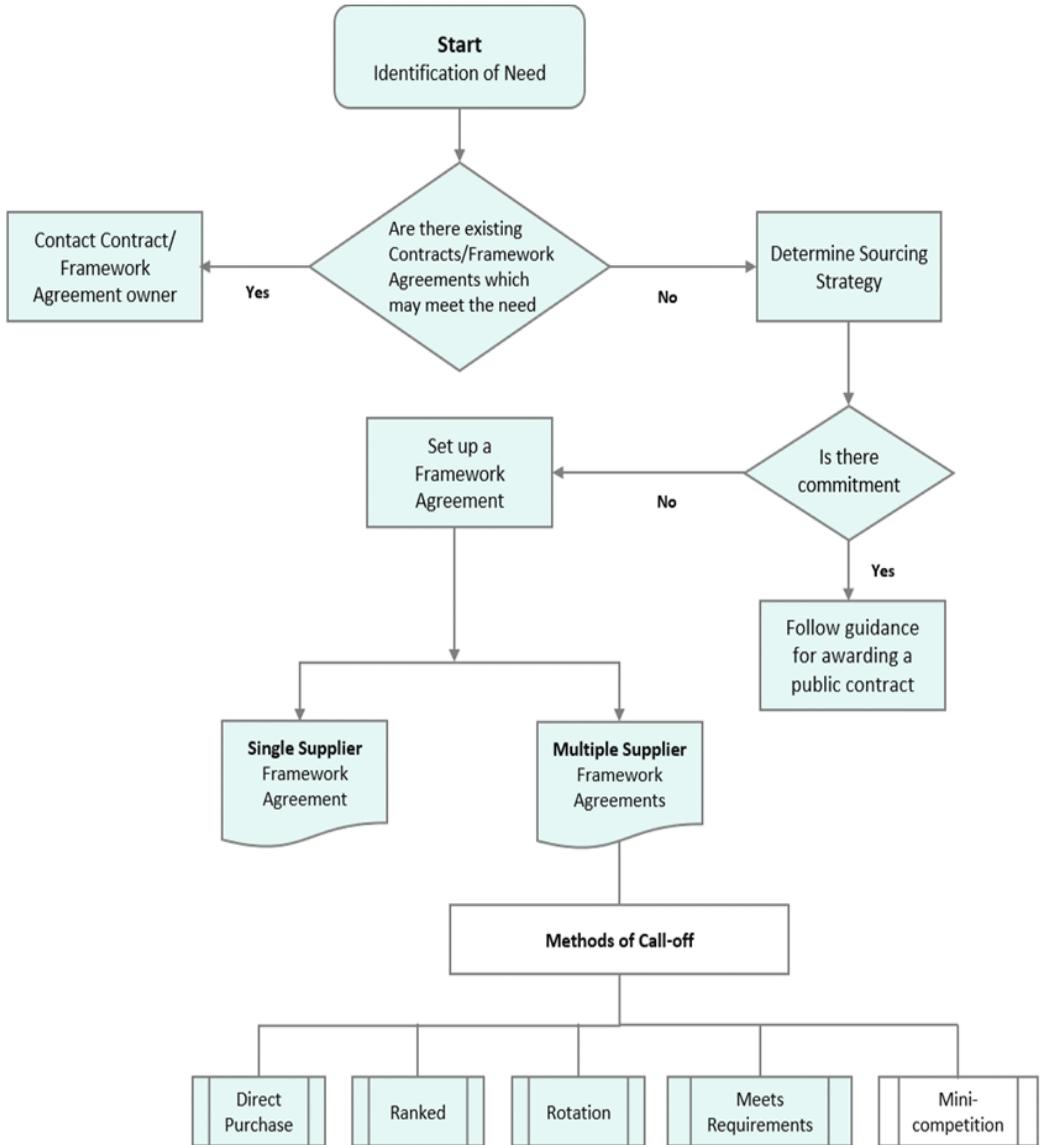
of precision on some elements, as for closed FAs. Measures specific to Model 3 FAs include that the FA must be set up and operated online; there is no competitive evaluation of offers at the first stage, so that all qualified suppliers with responsive offers are eligible to join the FA; the solicitation documents must expressly state that the FA will be open to new joiners throughout its duration. In order to make this provision effective, the rules require offers from new joiners to be assessed within a maximum period set out in the law.

- *Requirements for open FAs:* these requirements should mirror those for closed FAs, save as regards maximum duration. As the Model 3 FA remains open to new joiners, there need be no legally-imposed maximum duration. However, reflecting the overall transparent approach for FAs, the solicitation documents and FA must set out the duration for the agreement itself. However, the duration should not be excessively long, to allow for new technologies and solutions, and to avoid obsolescence – and case-by-case considerations will reflect the relevant market. To ensure that the existence of the Model 3 FA comes to the attention of potential new joiners, the provisions should require it to be publicized at least once a year. Akin to the position for closed FAs and to ensure unrestricted access, the FA itself must set out the website or platform at which it operates. As regards notice of the award of the FA, and in the context of new joiners, posting a list of suppliers that are parties to the FA on that is continuously updated can satisfy the requirement for publication of the notice.
- *Second stage of an FA procedure:* to avoid complications and overlapping procedures, a single set of provisions for the second stage of the procedure is recommended, with the overarching rule that the award of the procurement contract is made in accordance with the terms of the FA (whether a contract in the form of a purchase order under a Model 1 agreement or the award of a contract after second-stage competition under Models 2 and 3). Provisions should also address the second-stage competition in the latter Models, including substantive criteria and procedures for the “mini-competition”. Notable elements include:
  - A key safeguard that a procurement contract can be awarded only to a supplier that is a party to the FA (underscoring the importance of a rapid assessment of new joiners’ offers in Model 3 FAs, noted above, and the benefits of regular mini-competitions to take advantage of the competitive and dynamic market for which the tool is designed).
  - Mini-competitions are announced via a notice to all suppliers that are parties to the FA. The announcement of a mini competition in Model 3 FAs is made contemporaneously on its website. Together

with (non-binding) indications of forthcoming competitions, these announcements should encourage new joiners to seek swift admission.

- Invitations to take part in the mini-competition are also issued to all suppliers that are parties to the FA that are considered capable of meeting the needs of the procuring entity at the relevant time. This provision is designed to allow, for example, mini-competitions under FAs with a wide geographical scope to be conducted among suppliers located in the relevant area. (See FAQ available at Annexure-3 for a discussion of how and when to use this flexibility.)
- The invitations and announcements must set out all relevant information for the mini-competition, drawing on the solicitation documents and FA concerned, the deadline, and additional details as necessary
- A key safeguard is that no previously undisclosed criteria or procedures can be applied during the evaluation of the mini-competition
- The award of the procurement contract after the mini-competition follows the general rules for procurement contracts (which provide for a lighter-touch system for low-value contracts below defined thresholds).
- *Changes during the operation of an FA*: a key safeguard that should feature in the law is that there can be no change in the description of the subject-matter of the procurement, because allowing such a change would mean that the original solicitation would no longer be accurate (and so requiring a new procurement procedure). FAs must have the flexibility to allow refinements of terms and conditions and evaluation criteria during second-stage competition, and such refinements are permitted to the extent that the FA itself allows the changes. This flexibility is available subject to the overriding rule that the refinements do not change the description of the subject-matter of the procurement. (For some practical examples, see FAQ available at Annexure-3).

### 3.3.3 Flowchart of Decision-making for FAs<sup>43</sup>



<sup>43</sup> <https://www.procurementjourney.scot/framework-agreements>

### 3.3.4 Common approaches for Second Stage Call-off<sup>44</sup>

**Direct Purchase** - for goods and services which are the same or very similar and requirements can be easily defined for the user.

- |  |   |  |
|--|---|--|
| Users must be able to easily determine which supplier is to be awarded the call-off contract | - | Minimal work for users   |
|  | - | Should secure best overall value for money for both single and multi-supplier frameworks |

**Ranked** - for goods and services which are the same or very similar and requirements can be easily defined for the user.

- |  |   |   |
|--|---|---|
| Required for continuity of supply, if the supplier ranked No 1 cannot supply, users can then call-off from the next ranked supplier until requirements have been met | - | May secure best pricing                           |
|  | - | Lower ranked suppliers may never get any business |

**Rotation** - for good and services which may be similar in nature however availability of supply may vary due to lack of capacity or required skills

- |  |   |  |
|--|---|--|
| Required to ensure continuity of supply where one supplier is unable to satisfy all potential demand | - | Higher admin requirement for framework owner     |
|  | - | All suppliers likely to be awarded some business |

**Meets Requirements** - where some of the products may be different or differ in use and application, and not every supplier on the FA bid for all potential requirements

- |   |   |   |
|---|---|---|
| - Users would be able to select the supplier(s) who could meet their requirement  | - | may secure best stakeholder buy-in  |
| - if there is more than one supplier another method of call-off would have to be used to determine which supplier should be awarded the call-off contract | - | may be viewed by suppliers that the users have degree of choice and deliver poorer initial pricing. |

**Mini-competition** - where the terms laid down in the FA are not precise or complete enough to determine which supplier is to be awarded the call-off contract

- |  |  |
|--|--|
| Process for carrying out a mini-competition must be included in the invitation to tender (ITT) and subsequent guidance for users<br>No scope for renegotiating original specification or applying selection criteria | If the option for mini-competition exists suppliers are unlikely to bid their best prices in their tender to get on FA |
|--|--|

<sup>44</sup> <https://www.procurementjourney.scot/method-call>. Also see an example of detailed guidance for calling-off at <http://www.scotland-excel.org.uk/nmsruntime/saveasdialog.aspx?lID=14290&sID=25524>

### 3.3.5 Centralized purchasing

FA procedures are a main tool for procurement by groups of procuring entities. The benefits of centralized purchasing are that the additional aggregation of demand across procuring entities can leverage the benefits of FAs described above, notably in terms of economies of scale, enhanced capacity through specialization in the use of FAs, and process efficiencies. Thus, the main benefits are administrative efficiency, the promotion of better-quality tender and other documents, higher uniformity and standardization across government, and better understanding by suppliers of procuring entities' needs and consequently improved quality of offers.

Prior to setting up centralized purchasing arrangements, regulatory fitness check is needed: is the definition of a procuring entity in the procurement law sufficiently flexible to accommodate more than one procuring entity, a grouping or a third-party agency procuring on behalf of others? Other threshold issues include distribution of roles in administration, legal responsibility and legal representation (will the procuring entity or agency be authorized to undertake the procurements concerned in its own name (as a principal), or as an agent for the end-user procuring entity?). Solutions will need to reflect local legal and administrative traditions, setting out such issues as who is the contracting party, who bears responsibility for procedures and risk allocation. Additional procurement regulations or issue rules or guidance to ensure that centralized purchasing can operate in a transparent and an effective fashion may be needed.

Where centralized purchasing agencies conduct the procurement on behalf of procuring entities, their coordinating role can further enhance the benefits of centralized purchasing. They may operate through a lead procuring entity, or as third-party agencies to set up and administer centralized FAs, operating independently of governments. The latter approach involves outsourcing decision-making beyond government, such as to third-party IT and service providers, and the business model for the agency concerned may raise additional governance issues, including organizational conflicts of interest. For example, where the agency is remunerated on a fee-per-use basis, it will have an incentive to maximize its returns by promoting use of the FA, even if the agreement is not the best solution for the procurement concerned.

As the demand aggregation exceeds that for one procuring entity, the planning process assumes an even greater importance than for individual procuring entity FAs. Demand aggregation is also more complex and time-consuming where different procuring entities have different needs. A 'one size fits all' approach to promote standardization may disincentivize use of the FA by procuring entities who consider their needs are not met: this can also lead to suppliers factoring in a risk of lower than anticipated demand into their prices or other terms.

Centralized purchasing agencies normally plan with second-hand knowledge, and an interactive approach can improve the results. Where centralized purchasing agreements are set up with the views of the ultimate purchasers discussed and accommodated (through interaction and compromise as necessary), a better decision on standardization and variation can be provided for. Related planning issues include that the planning process should assess whether use of the FA should be optional or mandatory, and the extent of commitments to the suppliers in terms of orders.

In addition, differing ‘quality’ of individual procuring entities as purchasers under a multi-user FA may mean – at best – suppliers will set their prices to reflect only the “average” quality of purchasers, and at worst may lead suppliers to set the price to reflect the worst purchasers. In such cases, the centralized purchasing agency may operate better as the principal, with the procuring entities as end-users. In other cases, the agency operates as the agent for the procuring entities as principals.

One important issue to be decided is how the cost involved in setting-up and managing FA will be recovered by the lead procuring entity. There are multiple options like charging user fee from procuring entities, or charging fee from Suppliers or government subsidizing the cost involved.

Experience gained in pilot use of FAs can assist in assessing whether to expand the tool to centralized purchasing, and in the other planning and governance issues above. The benefits of a specialized body and staff in a centralized purchasing agency are considerable.

### **3.3.6 Management of FAs**

Management of an FA falls under the responsibility of the awarding entity (AE), be it a centralized procurement agency (CPA) or a “lead” public body. Throughout the duration of the FA, the AE should mainly carry out the following activities:

**Support to the PEs:** Effective and continuous communication with PEs is key to assure the success of an FA, and all the relevant information should be easily available, especially when PEs are final users of the FA. The following pieces of information are deemed essential:

- FA rules and conditions, especially as regarding rules and procedures for the award of call-off contracts;
- Catalogues of the FAs, including the list of items or goods offered by the FA Suppliers and all the relevant information, such as unit prices, technical features and related services;
- Standardized forms of all the documents needed by the PEs for managing call-off contracts;
- Contact reference (email addresses, phone numbers, websites links) for any communication and exchange of information with the AE.

**Data collection and data management:** Collection, maintenance and analysis of standardized and reliable data on all the purchases carried out under an FA is essential in order to allow

- Effective management of the FAs in place, as it allows the AE to identify potential problems and suppliers' or PEs' misconduct;
- Effective planning of future procurement initiatives, as information on previously concluded FAs is a critical component of the demand analysis for designing new editions of an FA.

Data and any kind of information should be collected in structured and standardized form, possibly using spreadsheets or other digital formats allowing more efficient data management. To the extent possible, rules, forms and channels for transmission of data should be part of the general conditions of the FA and made available to the AE. Data may also comprise any form of complaints about PEs-Suppliers relationship at the call-off stage.

**Price adjustment (if provided for in the FA):** An FA typically lasts from several months to a few years. Throughout the FA lifetime, market fluctuations, due to inflation, exchange rates or cost of labor or materials, do have an impact on awardees' production costs. In markets or economies where such fluctuations are expected to be non-negligible, the FA main documents may allow for adjustment of the price originally submitted by the Suppliers in their bids (the so-called "Base Price"). Should this be the case, the Contract Price – that is, the price paid for a specific call-off contract - will be equal to the Base Price of the Supplier modified by the price adjustment rules as included in FA.

**Suppliers' misconduct, suspension and termination of an FA:** An FA should always include rules and provisions to prevent and punish suppliers' misconduct, fraud or breach of FAs obligations. It is, however, essential to distinguish between breaches or violations of the FA rules, which are dealt with by the AE and may entail earlier termination of the FA with the involved supplier(s), from breaches or violations of the call-off contracts obligations, which are typically dealt with by the PE and may lead to the application of contract penalties and, possibly, earlier termination of the call-off contract.

Following are some situations that may be included in FA terms and condition, when AE may decide to terminate the FA:

- The Supplier has engaged in fraud and corruption
- During the term of the FA, the Supplier ceases to be qualified or eligible as per the FA qualification criteria
- Supplier becomes bankrupt or otherwise insolvent
- Supplier has proven responsible for serious or repeated non-compliance in a relevant number of call-off contracts or has refused to perform a relevant number of call-off contracts. In setting such a rule, the AE

should consider that an FA concluded with one single supplier is expected to provide for tighter rules against the case that the only supplier refuses to execute any call-off contract.

It is also important to emphasize that, upon earlier termination of the FA, no further call-off contract can be awarded under the FA. Nevertheless, all call-off contracts entered into under FA before its termination should continue in full force and effect unless otherwise specified.

Country case studies (particularly, UK and Chile) included in this Guidebook provide more details on management of FAs.

### ***3.3.7 The importance of monitoring to ensure effective use of and mitigate potential challenges of FAs***

From a market standpoint, there are several relevant areas:

- Where centralized purchasing agencies set up FAs that account for a sizeable fraction of the overall demand, the risks of oligopolies and driving suppliers that are not parties to the framework from the market increases – so structural impacts need to be assessed before FAs are set-up and monitored on ongoing basis. Early and ongoing supplier engagement is equally important to manage this risk
- As FAs are generally unresponsive to change, monitoring should assess on a regular basis whether an FA continues to offer value for money and continues to allow access to the best that the market can offer at that time
- A focus on aggregation and economies of scale may favor larger operators, and an efficiency emphasis can favor well-established firms, disfavoring SMEs – so the impact on SMEs should be assessed
- Pricing using hourly rates under FAs for services can become relatively expensive, especially where the combination of service-providers may vary. Assessing whether task-based or project-based pricing would offer better value.

From a process standpoint, the following are some key relevant areas:

- The relative ease of operation of FAs may lead procuring entities to use them whether or not they are really suitable or appropriate for the procurement at hand (especially, as noted above, if using them avoids administrative approvals and other processes) – so appropriate use should be monitored
- This may be particularly the case if hierarchical approvals are in place for other procurement methods but not needed for the second stage of FAs
- Monitoring for the risks of collusion especially in Model 2 FAs.

### 3.4 FAs for Emergency Situations

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The period immediately after the emergency situation is critical and government agencies are under a lot of pressure to respond quickly to the needs of the population. Public procurement units also feel this pressure and will be deciding over the purchase of goods and services with taxpayer money. On the one hand, the purchases are urgently needed. On the other, there is a risk that taxpayer money can be wasted if decisions are taken too hastily.

One instrument that can be helpful in this kind of situation is an FA. This should be part of any country's Disaster Risk Management plan<sup>45</sup>. Its aim is to have a procurement system ready that responds quickly to an emergency. But this quick response should not increase risks beyond what policymakers have defined as acceptable. Special procurement procedures for emergencies should be part of disaster management systems and should especially include tailored FAs.

The emergency FAs can encompass basic goods and services that are likely to be used in response to a serious emergency<sup>46</sup>. For example, it can include goods such as drugs and medical supplies, emergency housing, fuel, mattresses, blankets, food and water. The agreement will define prices, distribution/delivery conditions and other complementary criteria. This will enable procurement units to issue purchase orders against the agreement within minutes of an emergency.

There are a few considerations in the design of the FA that are important. These include:

**Delivery capacity:** In case of emergency, firms could themselves be affected by the emergency. In serious situations, the firms inside the agreement may be unable to produce and distribute. In some cases, it could be the lack of supplies for their own production that could create bottlenecks. Reducing this risk is important. Before an emergency occurs, it should be mandatory to know how resilient each vendor is when faced by a crisis. Another strategy is diversification. Having as many vendors as possible will help. Even better is if some of the vendors are from nearby countries that may be unaffected by the emergency.

**Price speculation:** During emergencies it is common to see some vendors trying to maximize prices. They will argue that this is justified by increased demand and supply shortages. Even suppliers with FAs might be tempted not to honor the contract issued through call-off and make money by selling at higher prices. The government must be tough on these kinds of cases. The cost to the supplier of not fulfilling the agreement must be significant. Setting ceiling prices

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<sup>45</sup> Shaping a procurement plan for emergencies, Felipe Goya, World Bank (<https://blogs.worldbank.org/endpovertynsouthasia/shaping-procurement-plan-emergencies>)

<sup>46</sup> <http://pubdocs.worldbank.org/en/315691568908208946/Emergency-Procurement-for-Reconstruction-and-Recovery-Toolkit.pdf>

can protect from price hikes during periods of high demand. Additionally, again, diversification is also advantageous.

There are many other things that can be done to make procurement easier under emergency situations. But FAs are one simple and straightforward tool that should be part of any Disaster Risk Management plan. One example of use of FAs for emergency situations is given below:

#### **Box-6: Use of FAs by International Red Cross<sup>47</sup>**

The International Federation of Red Cross and Red Crescent Societies (IFRC) is the world's largest humanitarian organization, providing assistance without discrimination as to nationality, race, religious beliefs, class or political opinions.

In 2001, IFRC introduced FAs with selected suppliers for standard items. FAs have been established with selected suppliers and the suppliers agree to supply a certain commodity at a certain price for a particular period of time. They are used for commodities where there is a high demand for large quantities of the same commodity. IFRC's experience shows that purchasing goods through an FA is more effective in securing the right price, and guaranteeing the quality, quantity and delivery terms.

FAs are also an integral part of the IFRC's global strategy for pre-positioned stock. Suppliers working within an FA also agree to reserve and store an agreed quantity of commodities either at their premises or at the regional warehouses in Dubai, Kuala Lumpur and Panama. This pre-positioning of stock means that we have a guaranteed stock level at any given time. The only exception to this is when replenishment is necessary after a large-scale sudden-onset emergency.

FAs are usually established at a global level, but they may also be used for regional and local needs.

**Global FAs:** Global agreements are used for standard relief and medical items which are needed in emergency operations. Such items include blankets, mosquito nets, tarpaulins, kitchen sets, jerry cans and vehicles, among others. This is our most common type of FA.

**Regional FAs:** Regional agreements are used to cover needs within a geographical region for goods that will be specifically used by communities of that region. An example of a regional FA is a hygiene parcel that includes items used by beneficiaries within that specific geographical region. We use regional agreements when a more tailored approach is required.

**Local FAs:** Local agreements are used to cover local needs within a specific country. If there is a tendency for a country to buy the same commodity on a frequent basis, then it makes sense to establish a local FA. We rarely use this type of agreement.

Emergency purchases are especially prone to corruption or misuse of public funds and thus it is highly desirable to put in place mitigation measures. One such measure is enabling oversight of procurement processes by taxpayers and civil society through timely disclosure of data and information. For example,

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<sup>47</sup> <https://www.ifrc.org/en/what-we-do/logistics/procurement/framework-agreements/>

during the recent COVID-19 crisis, Colombia<sup>48</sup> issued an emergency decree about expedited procedures to procure the necessary goods and services. The National Procurement Agency Colombia Compra Eficiente (CCE) asked all companies who can supply these critical products to register for inclusion in FAs. CCE verified information and accepted suppliers in FAs, allowing public agencies from all over the country to procure efficiently, and to compare online prices and characteristics. CCE also mandated disclosure of procurement data complying to Open Contracting Data Standard (OCDS), which makes it easier for monitoring. CCE also made a dashboard to identify emergency contracts.

FAs have been extensively used to tackle COVID-19 pandemic. For example, Government e-Marketplace (GeM) of India has made available about 300 categories of about 300,000 items to respond to COVID-19, which are offered by about 50,000 sellers. As on February 2021, cumulative order value for top 5 items was about US\$ 450 Million<sup>49</sup>.

In UK, Both CCS and UKUPC reported that FAs were of great use during the UK's Covid-19 response. CCS set up a web page for Covid-19 buyer information designed to link public sector buyers directly to suppliers with established FAs for items such as PPE, items to assist with introducing social distancing to workplaces and cleaning and sanitation products<sup>50</sup>. Likewise, UKUPS website has a guide for purchasing teams which lists “a variety of FAs which provide for return to work products nationally” along with details of which consortium is leading and managing the framework<sup>51</sup>. In addition to this, UKUPC issued a guide to members of all of the 8 higher education purchasing consortiums on what EU compliant FAs are already in place which could be used for universities to roll out full testing and analysis services for their staff and students.

Even though FAs may be very useful for predictable emergencies, e.g. weather-driven emergencies which it is known will happen (just not when and with what severity), they are less useful for pandemics which are not really predictable – maybe now we can estimate needs for the next couple of years so FA would be useful. However, since this is a ‘once in a generation’ crisis, hardly likely that an FA would be held in place for generation (for the next one)! There needs to be some definite expectation. However for prolonged pandemic (like COVID-19), new FAs could be quickly set-up, these may be helpful (e.g. see example of India's GeM and UK's CCS above).

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<sup>48</sup> <https://www.open-contracting.org/2020/07/16/open-for-business-colombias-data-driven-procurement-reforms-increase-competition/>

<sup>49</sup> <https://gem.gov.in/covid19-reports>

<sup>50</sup> <https://www.crowncommercial.gov.uk/covid-19/covid-19-buyer-information/>

<sup>51</sup> [https://ukupc.ac.uk/pdf/national\\_return\\_to\\_work\\_supplies.pdf](https://ukupc.ac.uk/pdf/national_return_to_work_supplies.pdf)

## 3.5 Use of Technology for Setting up and Operating FAs

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The opportunity of demand aggregation of lower-value procurements allows techniques and investments that would not be proportionate for individual purchases to be applied to improve outcomes. Among these, three areas are of significant potential: e-marketplace, e-procurement and standard tools.

### 3.5.1 E-Marketplace

An e-marketplace is a virtual online market where organizations register as buyers or sellers to conduct business-to-business e-commerce over the internet. There are many types of e-marketplace based on a range of business models. e-Catalogue (see 2.3.4 for detailed description) are most common example of e-Marketplace. E-Marketplaces may have additional features for example online mini-competition for Model-3 FA. Two examples of e-Marketplaces are discussed under country case studies e.g. UK's CCS ([www.crowncommercial.gov.uk/buy-and-supply/emarketplace](http://www.crowncommercial.gov.uk/buy-and-supply/emarketplace)) and India's GeM (<https://gem.gov.in>).

### 3.5.2 E-procurement

E-procurement is a term used to mean many different things, but includes four main areas of relevance in the FAs context:

- Enhancing external transparency: operating FAs online allows the procuring entity to reach a wider supplier base than in a paper-based world, at relatively lower cost and in more effective time-frames. Under a Model 3 FA, which the UNCITRAL Model Law requires to operate online for transparency reasons, the time required to admit new joiners to the FA can be short, forthcoming opportunities can be posted to encourage new joiners, and so forth. The Model Law was drafted over a decade ago: it is now common (and good) practice that FAs operate online
- Using internal IT tools to enhance the process efficiencies offered by FAs, including some compliance checks, and automated processes to support integrity through reducing opportunities for human interaction and asymmetrical distribution of information
- Using e-reverse auctions and e-submission of offers to allow the second-stage and mini competitions to be both rapid and open to larger numbers of participants (helping to mitigate the risks of collusion and anti-competitive behavior in Model 2 FAs)
- Using the FA to generate data for evaluation and monitoring purposes, which will be critical for the monitoring and evaluation of FAs and procedures to conclude and operate them.

Although not strictly an e-procurement function, the use of online approaches for market research – which, as noted above, when undertaken well is a key indicator of success for FAs - offers considerable benefits for the design and planning phase. Market consultations can be conducted transparently and, critically, the end of that phase and delineating the beginning of the procurement phase can be clear. One case study of use of technology for FA is given below:

#### **Box-7: Framework Agreements at the Touch of a Button**<sup>52</sup>

Accessing FAs for swift and compliant purchasing has never been quicker or easier, thanks to the launch of a new portal that gives instant access to the complete portfolio of FAs managed by NHS SBS - including buying guides and price lists.

Nearly 900 users have already signed up for a new online portal, which makes it quicker and easier for UK-based public sector organizations to access FAs in order to buy goods and services.

The unique FA portal, developed by NHS SBS and Level Global, a leading UK-based cognitive and artificial intelligence (AI) software provider, will help users identify which FA can be used to swiftly and compliantly purchase the products and services they need.

After a simple and intuitive registration process, users can access over 70 frameworks to find the goods, services or suppliers they require, before reviewing buying guides and contract information, including price lists, specifications and lead times. Users can also request services, such as mini-competition support via the portal.

By using AI, NHS SBS is improving a once manual process to deliver an intelligent and secure registration process. The portal will be further developed over time to deliver augmented AI-based services, such as bespoke commercial guidance that ensures accuracy and compliance with much shorter timescales for users.

As per Phil Davies, Director of Procurement at NHS, "Buying goods and services via an FA has huge benefits in terms of cost and compliance. With over 800 organizations accessing our FAs, we wanted to make it as easy as possible for our customers to extract maximum value from each agreement. The first phase of the FA portal allows users to search for appropriate FAs and sign up to use them online. Later, we plan to use AI technology to complete contract documentation for users, provide commercial guidance and enable our customers to interact directly with framework suppliers."

Simon Robinson, CEO of Level Global added "We are excited to partner with NHS SBS to deliver an FA portal, using our artificial intelligence cloud and cognitive agents, that delivers improved productivity, accuracy and engagement across the procurement lifecycle. The Level Global cognitive application ecosystem was designed specifically to support organizations like NHS SBS and revolutionize the way their people work and engage so they can focus on the things that matter most in the business."

Newly-launched FAs include Audio Visual Solutions; Clinical Managed Services; Patient Discharge Services and Medical Imaging Reporting Services.

In the next few months, FAs for Cloud Solutions; Cyber Security Services; Design, Furniture & Appliances and Outsourcing of Medical Support Services are expected to go live.

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<sup>52</sup> <https://www.sbs.nhs.uk/newsletter-may-2019-frameworks>

### 3.5.3 Standard tools for operating FAs

The benefits of standard tools in all areas of public procurement, are well-versed. In the FAs context, consolidating procurements allows tools to be developed to enhance outcomes in smaller-value procurements (which are traditionally considered at risk of poor outcomes, largely because of the lack of transparency and competition in the procedures involved). As planning is a key success indicator, the process of designing an FA can be required to follow pre-determined steps, centrally designed to mitigate risks and enhance outcome potential. Most procurement laws have standard methodologies, but these can be supplemented – as the World Bank has done – through the issue of standard bidding and other documents. The benefit of this approach is that it allows procuring entities to focus on what they are trying to procure, and not on designing the appropriate process – and from this perspective, the standard tools enhance capacity.

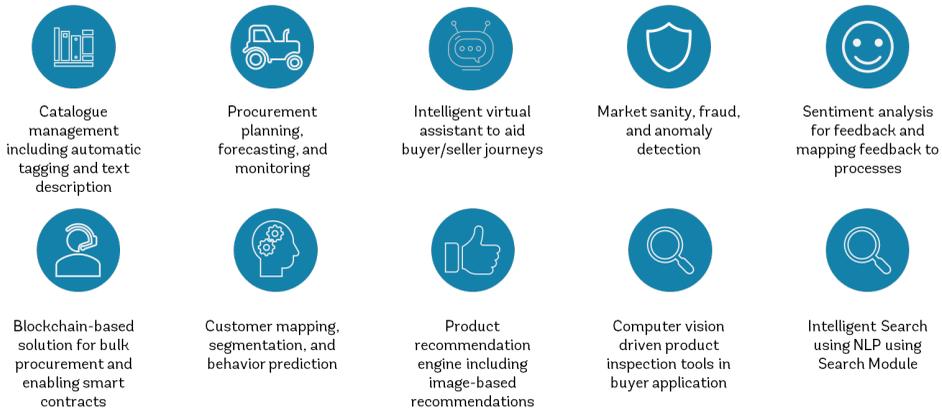
Taking the two areas – e-procurement and standard tools – together, the potential for automation of processes into a business process model is clear. Where there is a standard workflow as well as standard documents, procurement officials can be guided through the process of setting up and operating FAs, combining mandatory steps (which have to be completed before the next stage in the process can be undertaken) and steps involving the exercise of discretion, which can facilitate recording the reasons for the decisions taken. As the record requirement is one of the aspects of public procurement that is historically considered to be a low-compliance area, guiding the procurement official through the requirement and preventing next steps until the requirement is fulfilled can similarly enhance compliance and outcomes.

### 3.5.4 Artificial Intelligence (AI) and Machine Learning (ML)

AI and ML can be used for FAs in multiple ways. Some of these are described below:

- **Spend analysis** to identify frequency and extent of purchase of a particular item by various procuring entities to decide using FA for such items
- **Detecting price variability** for a particular item across multiple suppliers and procuring entities (under Model 2 and 3 FA)
- **Decide about price reasonableness before placing order.** This is not particular to FA but AI/ML may help in gathering and analyzing prices paid for an item procured by various agencies in recent past
- **Monitoring of use of FA.** In particular which supplier is receiving orders, performance of suppliers etc.

**Figure 2. Use of AI and other Technologies in India's GeM**



Some other potential areas are aggregation of needs; producing catalogues where appropriate; managing call-offs; invoicing (and payment for use, where applied); recording and reporting; and for generating savings reports. There may be many other potential areas for applying AI/ML in FA. However prerequisite for using any AI/ML tool is availability of procurement data in machine readable format and also proper codification of items.

# 4

## COUNTRY CASE STUDY: UNITED KINGDOM

# Chapter 4. Country Case Study: United Kingdom

## 4.1 The Procurement Landscape in the UK

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In the UK public procurement is subject to a legal framework of international obligations, directives and regulations enshrined in national law. The international frameworks that the UK is currently subject to are the European Union Procurement Directives and the World Trade Organisation Government Procurement Agreement.

With the UK leaving the EU officially on 1<sup>st</sup> January 2021, there will be changes to the legal frameworks which govern the UK's obligations, which will be touched on later. However, the existing procurement architecture has developed within the legal framework of EU membership.

The EU Procurement Directives operate on the basis of the EU Treaty principles of non-discrimination, free movement of goods, freedom to provide services and freedom of establishment, along with the principles of equality of treatment, transparency, mutual recognition and proportionality which have been established through case law of the European Court of Justice. The EU Directives dictate how procurements over a given threshold are advertised, how bidders are assessed, how contracts are awarded and what remedies are available to businesses when these rules are not adhered to. All EU member states are required to advertise public procurement over a certain threshold electronically on 'Tenders Electronic Daily', or TED, which is the online version of the 'Supplement to the Official Journal' of the EU, dedicated to European public procurement.

The UK has transposed the requirements of the EU Directives into national law by the Public Contract Regulations 2015 (PCR 2015), the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations. These regulations include the rules from the EU Directives and some UK specific rules such as exceptions for the defense and security sector, additional requirements for sub-threshold procurements and policies above the legislative requirements. All UK Public sector procurement under EU threshold amounts is subject to a legal framework which encourages free and open competition and value for money and reflects many of the requirements for above threshold procurement. They are designed to enable buyers to run procurements faster, with less red tape, and with a greater focus on getting the right supplier and best tender in accordance with sound commercial practice.

Public procurement rules in the UK have long allowed for contracting authorities to aggregate requirements and either undertake collaborative procurement or

establish purchasing consortia. However, this has evolved from two or more contracting authorities aggregating spend to increase buying power to the establishment of professional buying groups known as Central Purchasing Bodies (CPB). When rolling out the PCR 2015, UK legislation formalized the understanding that contracting authorities were indeed complying with their legal obligations by purchasing through CPB.

In the UK, CPB can either be national organizations, such as Crown Commercial Services, whose agreements are accessible to all public sector bodies, or they may specialize in specific sectors such as the UK Universities Purchasing Consortia, or they may simply have a geographical focus such as the Yorkshire Purchasing Organisation. There is also a healthy market of private sector procurement agencies which are permitted National Procurement Officers status if agreements are established in the name of at least one public sector contracting authority such as 2Buy2, a procurement agency based in Wales who have been granted this status.

The changes introduced in the PCR 2015 also made electronic communications mandatory and explicitly permitted electronic catalogues. Some procurement routes such as auctions had long been fully electronic. However, it is only since October 2018 that it has been mandatory for all procurement routes, including FAs in the UK. Contracting authorities must either use the EU wide TED portal, or for under threshold procurement, the UK's electronic system, Contract Finder.

## 4.2 Use of FA in the UK

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Procurement accounts for roughly one third of public expenditure in the UK, making it the single biggest component of public spending. According to the Institute for Government, in the UK in 2017/2018 £284 billion was spent on buying goods and services from external suppliers<sup>53</sup>. It is understandable therefore that there is a lot of pressure on contracting authorities to evidence value for money (VFM) across all categories of spend. The procurement regulations above are obviously intended to lead to VFM but implementing the procedures can result in lengthy, resource intensive procurement processes and can often cause conflicts with local government objectives such as protecting small and medium sized enterprises (SMEs), local suppliers or increasing spend with women-owned or BAME-owned businesses.

There are many reasons that FAs are a popular choice for contracting authorities. For example, **high costs involved with undertaking EU compliant tendering**. A 2013 report by the Centre for Economics and Business Research (CEBR) found that “the average total cost of a competitive procurement process

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<sup>53</sup>

[https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG\\_procurement\\_WEB\\_4.pdf](https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_procurement_WEB_4.pdf)

(or competition) is £45,200, with £8,000 of those costs falling on the public body seeking to attract bids.”<sup>54</sup>

**Low value spends of individual contracting authorities** is another reason that FAs are attractive. Even for areas of regular spend which never reach the thresholds for advertising through OJEU and Contracts Finder, many smaller public bodies will lack the buying power to attract the best deals.

Finally, FAs are helpful during **urgent/emergency requirements**. Within all the regulations, there are emergency provisions which allow for exceptions to the procurement rules in situations of extreme urgency, where buyers may proceed straight to a negotiated process or directly to single sourcing. But the rules are clear that you cannot utilize these provisions due to lack of planning or resources and doing so during a period of high demand often results in inflated market prices.

Therefore, FAs, where fully compliant tenders are run to establish a supplier or pool of suppliers from whom contracting authorities may call-down goods or services, are the most popular solution for combining requirements across multiple purchasing bodies to pool procurement resources and achieve economies of scale.

Time is saved by the organizations calling-down from frameworks as specifications of goods or services are pre-approved, due diligence is carried out in advance and terms and conditions under which call-down contracts for specific purchases can be made are all set in advance.

FAs do not need to commit either party to purchase or supply. There is much flexibility to commercial structures. FAs may be concluded with a single provider or with several providers. Prices can be set for the length of agreement or can be flexible. Prices can have fixed elements and index linked flexible elements for longer agreements. Ceiling prices allow for mini-competitions and reverse auctions. There is no mandatory standstill period for call-off contracts.

FAs are not a new concept for UK. Indeed, a study into the use of FAs in the UK construction industry in 2010 found that “the emergence of Framework Agreements as part of construction vocabulary can be traced to the ‘green shoots of economic recovery’ in the early 1990s.” However, there were no specific provisions for them in European or UK procurement law until around a decade later. The Procurement Lawyers Association’s study of the use of FAs in public procurement in the UK mentions “in 2004 the Public Sector Directive introduced, for the first time, explicit provisions into European Union public procurement law covering the setting up and running of FAs by contracting

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<https://ec.europa.eu/docsroom/documents/15458/attachments/1/translations/en/renditions/native>

authorities. The use of framework agreements was not, however, a new practice or concept within the European Union at that time.”

The purchasing consortia are set up to reduce the admin burden of procurement processes, aggregate spend on commonly used items and to increase the buying power of public bodies in the UK. Every single purchasing consortia uses FAs to achieve these aims. However, getting a consolidated, accurate picture of the amount of procurement spend going through these frameworks is not possible currently due to the lack of centralized data collection and publication. Indeed, when compiling the report referenced above, the Institute for Government stated that they were “only been able to produce the results presented in this report after carrying out complex analysis of the data available from disparate government accounts, spending records and individual contracts.”<sup>55</sup> Despite this, the individual purchasing bodies collate data on the use of their agreements by their members and this gives us insight into the extent of the use of FAs in the UK.

### 4.3 Crown Commercial Service

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The largest of these purchasing bodies is Crown Commercial Service (CCS). Their agreements are open to all public and third sector organizations in the UK, including central government. CCS manages approximately 100 commercial agreements for a wide range of products and services from paper to building materials and language services. Their agreements are used by over 18,000 customers and in 2019/20 these customers realized benefits totaling over £1 billion in their 4 focus areas of Buildings, Corporate Services, People and Technology<sup>56</sup>.

As an executive body sponsored by the UK Cabinet Office, CCS’s service is free to use for all public sector bodies in the UK. There are no joining fees or management charges for suppliers either.

Use of CCS agreements is not mandatory for public bodies. The aim for CCS is that public bodies utilize the agreements as they are the best route to market. FAs have had a reputation of being a bit clunky to use and CCS have, in the past, been described as an FA factory. For these reasons you won’t see much use of the term ‘framework agreement’ on their website. However, approximately 85-90% of their commercial agreements are FAs.

CCS customers have five routes to market available through CCS, 4 of which can be FAs. CCS maintain online catalogues for goods such as IT hardware and office

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[https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG\\_procurement\\_WEB\\_4.pdf](https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_procurement_WEB_4.pdf)

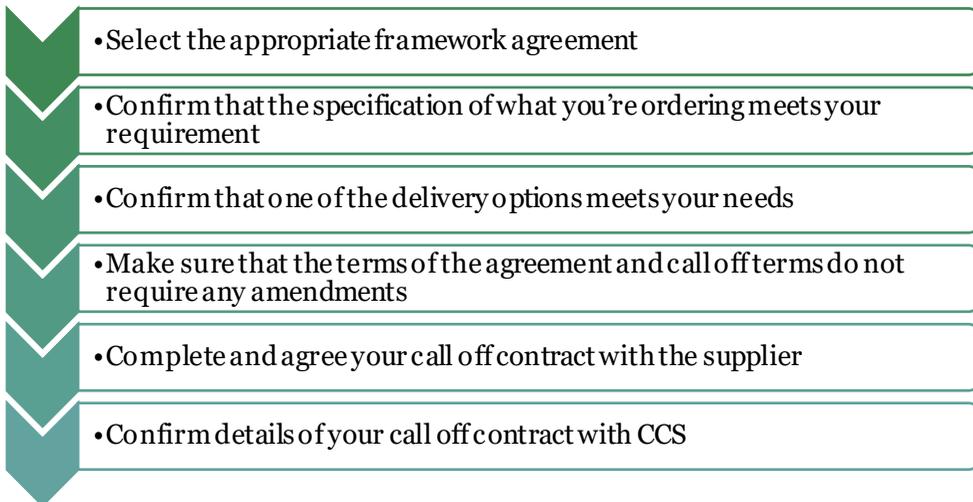
<sup>56</sup> <https://www.crowncommercial.gov.uk/about-ccs>

supplies from which CCS customers can order directly. Behind these catalogues sit FAs with multiple suppliers with spend going through CCS itself. For a few categories of spend and where there is either an FA with only one provider or if certain criteria are met on multiple supplier FAs, organizations can make direct award to the supplier themselves. However, most of CCS's FAs have multiple suppliers and for these FAs organizations run further competitions themselves, which can lead to even more competitive pricing. If CCS does not have an appropriate commercial agreement in place, organizations can request aggregation with other public bodies and CCS will then either conduct an e-Auction or may tender for a new FA.

The procurement process for the purchasing authority will differ depending on how it was concluded and the nature of the goods and/or services that are being purchased. However, the processes for concluding a contract can be broadly defined as below.

The first flow diagram describes the process for direct award and the following flow diagram describes the process for those agreements requiring a further competition to be run.

#### DIRECT AWARD



## FURTHER COMPETITION

- Select the appropriate framework agreement
- Develop a specification of your requirements
- Invite suppliers to put forward proposals for your requirement
- Assess suppliers' proposals against set criteria
- Award the call-off contract
- Confirm details of your call off contract with CCS

The last purchasing option available from CCS is the use of dynamic purchasing systems (DPS). These are like FAs in that terms and conditions of resulting contracts are determined through an initial tender process and there is no obligation on either party to purchase from the agreement (contracting authorities) or provide the goods and services at the time of secondary competition (supplier). However, once a DPS is established, suppliers may be added to it at any time as long as they pass the same initial tender process and there must always be a secondary competition, i.e. direct award is not permitted. Utilizing a DPS as an alternative to FAs will be discussed later.

Other advantages for the purchasing authorities as noted by CCS include that “CCS vets and reviews suppliers regularly. This saves you time finding suppliers and checking their reliability”, “contracts include performance management, obliging suppliers to improve value and service over time”, “contracts comply with public sector procurement regulations”, “standardized contract terms reduce administration” and the FAs are “free to use for public sector and third sector organizations”<sup>57</sup>.

The commercial benefits that CCS FAs bring are impressive. In 2018/19 CCS saved their customers over £189 million on Energy. In 2019/20 they generated £172 million in commercial benefits on building related services. In 2019/20 the helped police and emergency services save £28.9 million on common goods and services. The third sector also reaps benefits from utilizing CCS agreements. In 2019 UK charities achieved commercial benefits of 4.7 million through using CCS agreements. These commercial benefits are not restricted to any one nation of the UK. In 2018/19 public and third sector agencies in Scotland achieved commercial

<sup>57</sup> <https://www.crowncommercial.gov.uk/about-ccs/>

benefits totaling over £44 million, in Wales this figure was over £17 million and in Northern Ireland it was over £5 million.<sup>58</sup>

## 4.4 Other Central Purchasing Bodies (CPBs)

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Aside from CCS, there are over seventeen CPBs in the UK who aggregate requirements of their member organizations and let FAs for commonly used goods and services. As already stated, these are usually split either by regional delineations, specific sectors, or a mix of both. One such CPB is Southern Universities Purchasing Consortium (SUPC). SUPC is the largest by spend of the CPBs for Universities. Members span from Falmouth University in the far west of the country to the University of East Anglia, from Kent University in the South East to Nottingham University in the midlands and include the world-famous Oxford and Cambridge Universities.

All public sector CPBs work very closely with each other to avoid replicating the goods and services offered. The purchasing consortiums for higher education are no different and are all members of the UK Universities Purchasing Consortia (UKUPC) meaning that members of an individual consortium have access to FAs let by all other consortiums. UKUPC also act as the overarching body for recording spend and savings and regularly release benefit statements showing impact statements. In 2018-19 over 900 higher education institutions spent £1.9 billion through 133 FAs, that means approximately 20% of the estimated £10 billion spent by higher education institutions on goods and services is spent through these FAs<sup>59</sup>. The savings which members benefitted from in that year amounts to £87.3 million in ‘cashable benefits’ and £79.1 million in ‘non-cashable benefits.’

Unlike CCS, most of these other CPBs are not fully funded through the Cabinet Office and must recover the costs from tendering. This is usually done in one of two ways. Either by levying a ‘marketing fee’, usually as a percentage, to the call-downs by other contracting authorities or by charging suppliers directly who then build a percentage into the charge of the goods onto the contracting authority at call-down. This benefit of the former option is that the greater the use of the framework the smaller the fee and the benefit of the latter is that the transaction remains entirely between the supplier and the contracting authority placing the call-down contract.

## 4.5 FA Business Processes

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Apart from processes described under previous sections, critical processes used by UK agencies during lifecycle of an FA are described in following paragraphs.

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<sup>58</sup> <https://crowncommercial.pagetiger.com/digitalbrochure/1>

<sup>59</sup> [https://ukupc.ac.uk/pdf/UKUPC\\_Impact\\_Statement\\_201819.pdf](https://ukupc.ac.uk/pdf/UKUPC_Impact_Statement_201819.pdf)

### 4.5.1 Market Consultation

Early market engagement sessions are now common in the public procurement sector in the UK. In fact, Crown Commercial Services (CCS) has published guidance on Pre-Tender Market Engagement<sup>60</sup> and in the midst of the Covid-19 pandemic, released updated guidance on how best to conduct pre-tender market engagement online<sup>61</sup>. Early market engagement is essential when setting up FAs as it gives ample opportunity to the buyers to understand the landscape of the entire market and for the suppliers in that space to have an opportunity to input into more relevant tenders.

Suppliers will engage in multiple procurement opportunities across many sectors. Buyers can benefit from their expertise by way of suggestions on how tenders should be designed, how to incorporate innovations during the life of the FA and how to design award criteria so that purchasing bodies yield best value from the tender exercise.

During market engagement, purchasing organizations must be certain that suppliers are given an opportunity to “input but not influence” the procurement processes as suppliers will understand best which evaluation and award criteria are “strongest” in terms of reaping greater value for buyers and which may be open to exploitation.

There are many examples where poor market engagement led to a “lack of understanding of the capabilities of suppliers in the market”. For example, if an FA with low projected spend is pitched at large suppliers, low volumes may not be appealing enough for them to invest in either submitting a bid or making the adaptations to their businesses to meet the requirements of products or services under FA. In such cases, it is highly likely that no fully compliant bids will be received. However if SMEs are targeted instead, they would value this business as well as the opportunity to gain valuable experience delivering to public sector clients which may boost their chances of winning future business.

### 4.5.2 Category Management

Category management underpins the procurement process for most professional procurement organizations in the UK, as category managers have the deep knowledge of the specific market capabilities and ways of operating, which is instrumental for designing the structure of FA tenders. Each team invests time in researching the goods, services, and suppliers relevant to their category through engaging heavily with the buyers, undertaking data analysis of spending trends, and developing a sourcing strategy which is appropriate for each category or

<sup>60</sup> <https://assets.crowncommercial.gov.uk/wp-content/uploads/RM1043.7-Buyer-pre-tender-market-engagement-PTME-guidance-1.pdf>

<sup>61</sup> <https://www.crowncommercial.gov.uk/news/conducting-pre-tender-market-engagement-virtually>

subcategory. This provides assurance to buyers that each category is being analyzed and assessed in the same structured way. Buyers with smaller budgets or fewer procurement resources available will also reap additional benefits from access to FAs let by CPBs with good category management at the heart of their operations.

One of the perceived disadvantages of long-term FAs is that they may restrict the ability to introduce innovations throughout the life of the FA. Strong category management processes which involve not only contracted suppliers but the entire market, will enable purchasing organizations to remain aware of the latest developments available in the products and services within their categories. Category managers can thereby create FAs which account for and include relevant changes in the market and ensure that their FAs do not become obsolete during the life of the agreement.

For suppliers, the benefit of good category management is that buyers will develop an in-depth understanding of the market and its inherent risks and opportunities and have a greater appreciation of the external factors affecting suppliers in those markets.

How categories are split by the CPBs and the subcategories sitting within each main category may differ amongst different sectors or organizations and this split should itself be reviewed regularly. For example, travel management was an important category for many organizations till early 2020. However, the effects of restricted movements brought about by the Covid-19 global pandemic have probably forced these organizations to revisit this requirement and instead consider boosting their IT category teams to accommodate new ways of working remotely.

As per 2Buy2, excellent category management is not only knowing about the products themselves but critically understanding the supplier base as well as the “specific and occasionally unique circumstances of the market into which the goods or services are being provided” as it is the combination of these three knowledge bases, which assists category managers to determine appropriate procurement routes.

One of the risks of introducing category management is creating a ‘siloeffect’ i.e. a scenario where category managers focus entirely on discrete categories, developing an increased specialization in those topics but becoming unfamiliar with other key areas.

### **4.5.3 Management of FAs**

CPBs, which are letting the FAs on behalf of other buyers, rely on regular comprehensive feedback from buyers to monitor the performance of the suppliers. However, majority of buyers using FAs do not submit any feedback,

except when something has gone wrong with Supplier. Of course, where they are common themes among the negative experiences, these must be communicated to the suppliers.

One such example is from the SUPC travel FA. The tender included award criteria related to providing a UK based call-center or providing a local office through which could process customer services. During the life of the FA, the supplier changed its business profile and began utilizing a call-center in another country. The supplier went through the correct process of advising this change to the CPB in order to remain on the FA and it was agreed that as long as there was not a drop in service levels, the change would be permitted. Throughout the life of the FA, multiple buyers escalated performance issues to SUPC. Most of the complaints were regarding responsiveness of call-center. It became clear that a common theme was arising and that the supplier was unable to maintain the service levels using the overseas call-center. SUPC were able to provide evidence of the drop in service levels and first worked with the supplier to try to improve service levels. This proved unsuccessful and eventually the supplier was requested to reinstate the UK call-center or remove itself from the FA.

It is observed that feedback is more forthcoming when the buyers have been involved in establishing requirements and KPIs from inception of the tender stage, as it creates a feeling of ownership of the FAs among buyers. However, if there is a level of disconnect between the CPB letting the FA and the buyers, the feedback loop is likely to suffer.

Agencies directly letting FAs are more involved in active contract management of FAs. This is particularly true for FAs, where the drawdown quantities are not guaranteed. If the expectations, potential remedies and dispute resolution pathways are not set out clearly in advance, suppliers can be frustrated with the realities of the contract in which case contract management “focuses on placating suppliers rather than improving efficiencies and driving forward performance”. Setting clear aims for the FA and establishing a shared understanding of what good performance looks like from inception are key.

It is important that regular touchpoints are built into the FA and communicated early in the tender process to build in this expectation early. This will not only make it easier for the CPBs to maintain good relationships with suppliers throughout the life of the FA but it will also establish a strong pattern of feedback loops from individual buyers. One way of building this into the user journey is by automating the call-off process and gathering feedback throughout the process.

KPIs linked to payment incentives are regularly used by UK CPBs for managing very high value and complex agreements. However, these can be difficult to implement for FAs where the buyers are from a number of different organizations, such as in those let by CCS. From the supplier’s point of view, KPIs

are more relevant and acceptable when aligned with individual call-offs, than as part of the overarching FA.

#### 4.5.4 Logistics Management

The very basis of FAs is that exact details of what will be called down is not established in the initial procurement and can be determined at a later stage. In addition, unless you are working with suppliers who regularly undertake transportation for multiple clients, your supplier base isn't necessarily going to have any competitive advantage over the freight costs your own purchasing team can achieve. There are very few instances where a particular supplier is also an established provider of logistics services. The decision to include freight services in FAs is highly dependent on the purpose of the FA and how it is managed.

However, for CPBs who are letting FAs on behalf of other buyers, it is not common practice to include an assessment of the logistics since each buyer utilizing the FAs will have their own requirements and often these won't be known in advance.

For this reason, organizations such as SUPC will omit specific freight requirements from evaluation and award criteria of the FAs and instead they will supply info on where buyers are based and state that exact requirements with locations, frequency, means and documentation required will be determined at the call-off competition stage.

On occasion it is a requirement for freight quotes to be evaluated at secondary procurement stage. Procurement regulations in the EU and UK dictate that the same evaluation criteria used for evaluating the FAs must be used at secondary procurement stage. Therefore, it is sometimes necessary for CPBs to include requests for logistics quotations. In these instances, CPBs tender using either historical examples from previous iterations of the agreement or scenarios based on the highest probability of use. In both such cases these are used purely for cost comparison.

For organizations where timely, cost-effective delivery is of utmost importance, such as for emergency response, logistics experts are involved in designing the tenders even when logistics aspects aren't directly or explicitly incorporated in the requirements, i.e. FAs for provision of goods only. They use an iterative design process to consider how the FA will be used during emergency responses and structure evaluation criteria accordingly.

2Buy2 suggests that reserving the right to undertake the logistics components through a third party is advisable to ensure that costs for these components are not "unfairly increased due to demand". This gives buyers the flexibility to contract for these services themselves and increase potential VFM.

## 4.6 Suppliers perspective

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Suppliers can also benefit from entering centralized FAs in the public sector. Firstly, the sheer volume of the buying organizations that you can reach is an obvious advantage. As the CCS website states, suppliers can reach 17,000 buyers who spend £12bn a year through their agreements.

CCS promotes their agreements to supplier by advising them that they “can sell large volumes of their products and services to UK public sector organizations as though they were supplying a single customer”.<sup>62</sup> As SUPC explains, by concluding an FA, suppliers benefit from fewer commercial approaches and fewer due diligence processes to complete. This means suppliers only need to complete the UK Government’s “Standard Selection Questionnaire”<sup>63</sup> (SSQ) once. The questionnaire is a mandatory part of the procurement process for all spend over certain thresholds. The SSQ requests information about the organization, their technical and professional capabilities and requests statements are made against a set list of mandatory and discretionary grounds for rejection. It is quite lengthy and can be quite time consuming to complete, especially when dealing with multiple public bodies.

A recent case study by Scotland Excel into the benefits for suppliers of participating in their FA for Tyres for Vehicle and Plant found that the agreement was able to support Scottish business and local economic development.

As per a Supplier of Scotland Excel, “The framework has allowed our business the opportunity for significant growth. We now service 10 local authorities through the Scotland Excel framework. We have found the councils to be open in their communications with us, treating us fairly and encouraging a partnership approach to business. Not only has the increase in business allowed us to grow our revenue, it has given us increased buying power and negotiation tools which have benefited our business as a whole.”<sup>64</sup>

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<sup>62</sup> <https://www.crowncommercial.gov.uk/about-ccs/>

<sup>63</sup> <https://www.gov.uk/government/publications/procurement-policy-note-816-standard-selection-questionnaire-sq-template>

<sup>64</sup> [http://www.scotland-excel.org.uk/home/Resources/Case-study-pages/CaseStudy\\_76937.aspx](http://www.scotland-excel.org.uk/home/Resources/Case-study-pages/CaseStudy_76937.aspx)

## 4.7 Dynamic Purchasing Systems (DPS)

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DPS were established in the 2006 EU procurement regulations and further refined in the new regulations released in 2015. To set up a DPS, tenders are run in a similar way to FAs, according to the expected spend threshold, but suppliers are grouped either by region or category of services/goods. Mini competitions are then run for individual regions or categories only. The key differences between a DPS and an FA are that DPS do not restrict the number of suppliers that can be included in each group.

For a DPS you have a high-level category of product or service with detailed specifications of requirements only released at the mini-competition stage. This means that the initial procurement phase is often quicker and less complicated than those for setting up FAs. But consequently, contracting authorities need to be very prescriptive about the requirements at the secondary stage of procurement. For the procurement body managing the DPS, they can be labor intensive to maintain versus an FA since you have 5/6 suppliers on an FA but can have up to 50 or 60 suppliers on a DPS. However, because the detailed specification can be set at the secondary stage, it means that contracting authorities can focus in on specific criteria they have as strategic aims. This means local authorities that have a mandate to, for example, promote the local economy or encourage women-owned or BAME-owned business may do so without this being fixed for all users of the framework. In this way, a DPS might be better suited to achieving these sustainability criteria for contracting authorities.

A DPS works at its best when teamed with software or an online platform through which contracting authorities can select suppliers. A perfect example of this is 2Buy2's Maintenance Booker. As supplier on the CCS managed 'G-Cloud' FA, 2Buy2 sell their digital platform called Maintenance Booker. It is a systemized DPS of maintenance service providers with suppliers grouped regionally. For example, if a contracting authority requires gutter clearance and they're based in Yorkshire, they will select their region and Maintenance Booker will suggest a small group of pre-qualified suppliers who will participate in a mini competition to deliver the services. The platform gathers rating data from the service users on the suppliers on the DPS and once the service user has completed their review, then the supplier is able to provide feedback on the service users. This way there is a constant review of the performance on the suppliers without the requirement for formal KPIs.

Another advantage of DPS over FAs is that in a DPS the managing body may add suppliers at any time provided they meet the minimum entry requirements set at the start of the process. This aspect means that when the procurement agency is onboarding new contracting authorities to use the DPS, it is possible to include their preferred suppliers. In the example of the Church of England requirement



for communion wine and wafers above, each individual church would have been able to add their usual local suppliers to DPS rather than being restricted to 1 or 2 national suppliers.

Two areas where a DPS is not as useful as an FA are for quick ad hoc purchases, and for sectors where specifications of goods change regularly, that is, in sectors where buyers are looking for innovation within a product or service. FAs are preferable for quick ad hoc requirements because you can establish circumstances which allow for direct contract placement at the secondary procurement stage, but with a DPS you must always run a competition. Likewise, with an FA you can write in clauses that allow for the suppliers to present product or service innovations on a set regular basis through the life of the agreement. Whereas with a DPS, unless you have foreseen what the changes to the goods and services may be this is not permissible.

Decisions on whether to use DPS or a framework comes from critical supplier intelligence gathering. If you know the current supplier base for the aggregated contracting authorities is usually lots of local SMEs then may not want to run a nationwide tender since you can hurt and distort the market, this is where DPS is more appropriate.

# 5

## COUNTRY CASE STUDY: UNITED STATES

## Chapter 5. Country Case Study: United States<sup>65</sup>

### 5.1 The Procurement Landscape in the US

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The U.S. procurement market is one of the largest in the world, and the procurement law which guides that market, a regulatory regime which is both complex and mature, offers important lessons for other procurement systems around the world. US spent about 9.4% of its GDP or about US\$ 1.82 Trillion on public procurement during 2017<sup>66</sup>.

The Federal Acquisition Regulation, 48 C.F.R. (FAR)<sup>67</sup> is the principal regulation governing federal procurements. The FAR applies to all executive departments, military departments, and independent establishments as defined in 5 U.S.C. §§ 101, 102, and 104(1), as well as to wholly owned government corporations as defined in 31 U.S.C. § 9101. These departments and entities have separate supplements to the FAR that apply to their procurements. There are some entities not covered by the FAR.

The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) has primary responsibility for public procurement policies and regulation. The OFPP shapes the policies and practices that federal agencies use to acquire the goods and services they need to carry out their responsibilities. Under FAR 1.202, the FAR is maintained through the coordinated action of the Defense Acquisition Regulations Council (which represents the US Department of Defense) and the Civilian Agency Acquisition Council (which represents non-defense US government agencies).

### 5.2 Use of FA (IDIQ Contracts) in US

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Competitive negotiations came to dominate federal procurement by the late twentieth century. In the 1990s, however, and partly as a result of enabling legislation in the Federal Acquisition Streamlining Act of 1994, a different contracting method – known most commonly in the U.S. federal system as “indefinite-delivery/indefinite-quantity” (IDIQ) contracting – came to the front ranks of federal contracting methods.

This method is commonly referred to as “catalog” contracting, as contractors will typically agree to sell an array of goods and services to the government under a master catalog contract, known as a “framework agreement” in other jurisdictions (such as the European Union). The master catalog contract generally will set forth ceiling unit prices; when the contracting agency (or

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<sup>65</sup> This case study only refers to federal level FAs in USA

<sup>66</sup> <https://www.open-contracting.org/wp-content/uploads/2020/08/OCP2020-Global-Public-Procurement-Spend.pdf>

<sup>67</sup> [www.acquisition.gov/far](http://www.acquisition.gov/far)

another user agency) orders from the master contract, however, the ordering agency may negotiate lower prices, sometimes by running a “mini-competition” among the contract holders. The government originally may award only a small, fixed number of master contracts (known as a “closed” framework under the UNCITRAL Model Law) or may allow additional vendors to join the arrangement over time (an “open” framework). How the arrangement is structured – for example, how long the master catalog contracts are valid, how many vendors hold master contracts, and how orders under those master contracts are notified and competed – can have profound impacts on the success of the contracting method.

There are two different types of catalog contracts in the U.S. federal system, the Multiple Award Schedules (MAS) contracts administered by the U.S. General Services Administration (GSA) under FAR Part 8, and the IDIQ contracts run by other agencies (typically purchasing agencies providing centralized services to other user agencies) under FAR Subpart 16.5. The two regimes differ in small but important ways, for example in the notice and transparency regarding opportunities and awards, in the extent of competition, and in whether awarded orders can be protested (what abroad might be called challenges to “framework contracts” understanding FAs). The legal origin of IDIQ contracts is the Federal Acquisition Regulation (FAR) section 16.504(a) (48 CFR 16.504). IDIQs are also sometimes called “Task Orders” or “Delivery Order Contracts.” IDIQ contracts are a subtype of Indefinite Delivery Contract (IDC), which is a “vehicle that has been awarded to one or more vendors to facilitate the delivery of supply and service orders”. An IDIQ contract allows for a certain amount of contract process streamlining, as negotiations can be made only with the selected company (or companies), and such contracts are exempt from protest, per Federal Acquisition Regulations Subpart 33.

Probably the most important difference between IDIQ contracts and the GSA Multiple Award Schedule contracts is how they control for price. Unlike “closed” IDIQ contracts, which force vendors to compete to join, as noted the GSA MAS contracts are “open” frameworks – they are standing catalog contracts, and new contractors can apply to join at any time. As a result, it is very difficult to use competition between contractors to control price or quality as contractors join the standing arrangements, for it would be difficult to demand competition from such potentially disparate vendors and still maintain a robust and efficient open framework. The GSA MAS contracts therefore harness competitive forces outside the government marketplace, in the commercial marketplace, to control prices: under a “most favored customer” provision known as the “Price Reductions Clause,” MAS contractors must vow to reduce their MAS prices if they reduce their commercial prices. Although GSA has announced that in the future it intends to rely more on prices paid data and less on this most favored customer strategy – among other things, a most favored customer commitment creates

onerous fraud risks for contractors – the clause highlights the special challenges raised by an “open” FA, such as GSA’s MAS contracts.

Under an IDIQ contract, the government must order, and the contractor must provide, a minimum agreed-upon quantity of products or services, also known as a minimum guarantee. In addition, the contractor must provide any other quantities ordered by the government up to a stated maximum. An order, which is placed when a concrete need arises, obligates funds and authorizes work. Orders must be within the scope, period of performance, and maximum value and or quantities agreed to in the contract.

### 5.3 Multiple and Single Award IDIQ Contracts

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“Multiple-award IDIQ contracts” refers to situations when contracts are awarded to two or more contractors under a single solicitation. These contracts allow agencies to establish a group of prequalified contractors to compete for future orders under streamlined ordering procedures once agencies determine their specific needs. Contracting officers must avoid situations in which contractors specialize in one or a few areas of the work, creating the likelihood that orders would be awarded noncompetitively.

“Single-award IDIQ contracts” refers to situations when only one contract is awarded under a solicitation. These contracts may have been competed or may have been awarded on a non-competitive basis. If a contract is awarded without competition, it must follow certain procedures, for example, a justification and approval document must be prepared and approved. Single-award IDIQs are used under certain circumstances, such as when only one contractor is capable of providing the products or services.

A contracting officer determines whether, for a specific solicitation, to award multiple IDIQ contracts or only one. The FAR establishes a preference for “multiple-award contracts.”

The ordering processes for a multiple-award IDIQ contract and single-award IDIQ contract differ somewhat. For orders under single-award IDIQ contracts, once a requirement is known, contracting officials can place an order following the procedures outlined in the contract. When multiple-award IDIQ contracts have been awarded, and a need arises, the requirement must be generally competed, through “fair opportunity”, among all of the IDIQ contract holders. The specific procedures required to provide fair opportunity differ based on the dollar value of the orders. Contracting officers must provide each contractor a fair opportunity to be considered for each order unless exceptions apply. Exceptions to fair opportunity requirements for orders are permitted in certain circumstances, such as when only one source is capable of providing the particular products or services sought. Beyond the requirement to meet a minimum guarantee, contractors can choose to submit offers or not.

## 5.4 Pricing Approaches under IDIQ contracts

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Prices for well-defined products are usually established at time of IDIQ contract award (first stage). However, for the products which are not well-defined and services, prices are discovered at order stage (second stage). For IDIQ Contracts with a mix of well-defined and less-defined products and services, price are established at IDIQ Contract award stage but refined at Order levels (second stage).

## 5.5 Spend through IDIQ Contracts

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Over 21% of the awards (in terms of Dollar value, during 2014) were made through second-stage competitions under IDIQ contracts. As per a report from GAO, from fiscal years 2011 through 2015, the proportion of spending by federal agencies on indefinite delivery/ indefinite quantity (IDIQ) contracts remained stable and accounted for about a third of total government contract obligations. Agencies obligated more than \$130 billion annually on these types of contracts.

About two-thirds of government-wide IDIQ obligations were for services, with the remainder for products. Although the Federal Acquisition Regulation (FAR) states a preference for multiple-award IDIQs, the majority of dollars government-wide, approximately 60 percent, were obligated through single-award IDIQs. About 70 percent of single-award IDIQ obligations and more than 85 percent of order obligations under multiple-award contracts were competed. Contracting officials at DOD cited flexibility as the main advantage for using IDIQ contracts, noting that it was easier and faster to place an order under an existing IDIQ contract than to award a separate contract when a specific need arose.

## 5.6 Reasons cited for use of IDIQ contracts

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The contracting officers from Departments of Defense (DOD) provided following reasons for using IDIQ contracts (not in any particular order):

- Easier and faster to place an order under an IDIQ contract than to solicit and award a separate contract each time a need arose
- Price and technical approach can still be evaluated at the time of placing an order, but the overall turnaround time, they said, is significantly less than for a new contract
- More efficient to track funds and requirements for different customers through orders, rather than making modifications to stand-alone contracts for the same purpose

- Close-out of orders from IDIQ contracts was much faster, as each order can be closed-out individually when the last payment is made rather than waiting until the entire contract was complete
- Provide more funding flexibility as funds are obligated as needed through orders and not at contract award—as may be required for some other types of contracts
- Once the minimum guarantee is satisfied on an IDIQ contract, there is no further government obligation to procure additional products and services under an IDIQ contract
- By not needing to specify an exact quantity or timing of delivery at the time of contract award, program offices can accommodate unforeseen needs on an ongoing basis through issuance of orders
- Since the need for testing and training varies depending on the customer, these requirements were less defined at contract award, and will be more clearly specified at the time of order.

Another study<sup>68</sup> by Jorge A. Rueda-Benavides and Douglas D. Gransberg of Iowa State University compares the objectives and motivation of using IDIQ contracts by four agencies in transport sector namely Central Federal Land Highway Division (CFLHD), New York State Department of Transportation (NYSDOT), Florida Department of Transportation (FDOT) and Missouri Department of Transportation (MoDOT). The results are given in following table:

Motivations	CFLHD	NYSDOT	FDOT	MoDOT
<b>Cost-related objectives</b>				
Reduce preconstruction cost	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reduce construction cost				<input type="checkbox"/>
Encourage price competition	<input type="checkbox"/>			
More value for agency' money			<input type="checkbox"/>	
<b>Schedule-related objectives</b>				
Reduce/compress/accelerate project delivery period	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Flexibility in delivery scheduling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Quality-related objectives</b>				
Increase quality	<input type="checkbox"/>	<input type="checkbox"/>		
Reduce risk related to contractor poor performance	<input type="checkbox"/>			
Reduce risk of contractor default	<input type="checkbox"/>			

<sup>68</sup> <https://core.ac.uk/download/pdf/81696289.pdf>

Motivations	CFLHD	NYSDOT	FDOT	MoDOT
<b>Contract administration-related objectives</b>				
Funding flexibility	<input type="checkbox"/>			
Cooperative relationship between agency and contractor(s)		<input type="checkbox"/>		<input type="checkbox"/>
Reduced agency staffing requirements		<input type="checkbox"/>		
Usefulness in emergency situations	<input type="checkbox"/>			
Limited owner's commitment (contractual minimal quantity)		<input type="checkbox"/>		
Reduce change orders				<input type="checkbox"/>
Minimize unbalanced bids				<input type="checkbox"/>

Above table shows that all four agencies share the desire to compress the delivery schedule, reduce pre-construction costs, and gain scheduling flexibility. Only two agencies (CFLHD and NYSDOT) reported the potential to incentivize contractor performance by indicating quality-related objectives. It is also interesting to note that agencies cited more contract administration objectives than the classic cost, schedule and quality objectives. This testifies to the administrative flexibility that is inherent to IDIQ contracts, mainly due to the ability to deliver multiple small projects using a single procurement action that may extend across several years.

## 5.7 Reach-out to Contracting Community

There are a number of federal databases available online which are regularly relied upon in the procurement community. Firms that will use IDIQ agreements to enter the federal market often will look to databases, such as the Schedules Sales Query database, published by the sponsoring centralized purchasing agency, the U.S. General Services Administration, in an effort to gain market information. A number of private firms aggregate and sell data from the federal market. This is not to say, however, that opportunities and awards in the federal government are uniformly transparent. Data on pending and approved federal purchases through IDIQ contracts, for example, are notoriously incomplete.

# 6 COUNTRY CASE STUDY: INDIA

## Chapter 6. Country Case Study: India

### 6.1 The Procurement Landscape in India

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India is one of the largest economies among developing countries, which spent about 20% of its GDP or about US\$ 530 Billion on public procurement during 2017<sup>69</sup>. The Constitution of India authorizes the Federal and State Governments to contract for goods and services but it does not stipulate any procurement policies or procedures. There is no federal level legislation exclusively governing public procurement and the principal policy instrument is General Financial Rules (GFR) last modified in 2017. In addition a few legislations such as the Contract Act 1872, Sale of Goods Act 1930, Prevention of Corruption Act 1988, Arbitration and Conciliation Act 1996, etc. are also applicable to public procurement. In 2017, the government issued the Public Procurement (Preference to Make in India) Order 2017 (revised subsequently) which grants purchase preference to local suppliers based on certain conditions so as to promote manufacturing and production of goods and services in India.

Some of the States namely Tamil Nadu, Karnataka, Andhra Pradesh, Assam, Punjab and Rajasthan have enacted state-specific legislation that govern procedure for procurement in these states

Main oversight bodies for public procurement are Comptroller & Auditor General of India (CAG) tasked with audit of government expenditure to ensure value for money; the Central Vigilance Commission (CVC) tasked with ensuring transparency and objectivity in public procurement; the Competition Commission of India (CCI) to check anti-competitive elements; and the Central Bureau of Investigation (CBI) engaged for investigation and prosecution of the criminal activities in the procurement process such as corruption issues.

### 6.2 Use of FA (Rate Contracts) in India

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A Rate Contract<sup>70</sup> (which is similar to Model-1 FA) is an agreement between the purchaser and the supplier for supply of specified goods (and allied services, if any) at specified price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract. These were first introduced many decades back. No quantity is mentioned nor is any minimum drawl guaranteed in the Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/or the purchaser are entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other giving 15 (fifteen)

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<sup>69</sup> <https://www.open-contracting.org/wp-content/uploads/2020/08/OCP2020-Global-Public-Procurement-Spend.pdf>

<sup>70</sup> [https://doe.gov.in/sites/default/files/Manual%20for%20Procurement%20of%20Goods%202017\\_0\\_0.pdf](https://doe.gov.in/sites/default/files/Manual%20for%20Procurement%20of%20Goods%202017_0_0.pdf)

days' time. However, once a supply order is placed on the supplier for supply of a definite quantity in terms of the rate contract during the validity period of the rate contract, that supply order becomes a valid and binding contract.

In view of Government e-Marketplace (GeM) coming into operation (see next paragraph), federal government in India has allowed use of Rate Contract only for specialized and engineering items. However state governments still extensively use rate contracts for a large number of items.

The Central Purchase Organization shares all the relevant details of the rate contracts on its website. The user entities can place online supply orders. If an entity directly procures Central Purchase Organization's rate contracted goods or services from the suppliers, the prices to be paid for such goods or services shall not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase should be in line with those specified in the rate contract.

The goods or services for which Rate Contracts are to be concluded by Central Purchase Organization should meet following requirements:

- Should be required by more than two organizations;
- For which prices are likely to be stable or where Rate Contracts could be finalized with provision of price variations to account for fluctuation of market rates of raw materials etc.;
- For which Rate Contract is convenient to operate and annual draws are economical.

Rate contracts may not be suitable for goods or services of low value and which are required by the users in very small quantities; and for the scarce, critical or perpetually short supply goods or services.

The period of a Rate Contract should normally be one year for stable technology products. However, in special cases, shorter or longer period not more than two years may be considered.

The process described above is for federal government. States' procedure may slightly vary.

### 6.3 India's Government e-Marketplace (GeM)<sup>71</sup>

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In order to improve transparency of decision-making in the public procurement process and to reduce malpractices, the Government of India decided to set up an online marketplace for public procurement, a Government-to-Business platform

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<sup>71</sup> <https://gem.gov.in>

(G2B). An online marketplace (or e-commerce marketplace) is a type of e-commerce site where products or services are offered by a number of sellers and all the buyers (i.e. the government agencies and departments) can select the products and services offered by any of the sellers, based on their own criteria. This enables a competitive pricing structure and implies the government procures more cost-efficiently.

The platform was launched in August 2016. To provide the legislative support to this initiative, the General Financial Rules (GFR), 2017 mandated use of GeM by all the federal government departments and entities. Even though state governments are not mandated to use GeM, based on advantages of this system, most of the states voluntarily entered into Memorandum of Understanding (MoU) with GeM. As a result, now almost all the states in India are using GeM.

GeM also provides the buyers with an option to select only MSMEs and choose a seller from amongst them<sup>72</sup>. This has helped buyers in significantly increasing share of MSME purchases in their overall procurement of goods and services.

The Government e-Marketplace Special Purpose Vehicle (GeM SPV), a Non-Profit Company (100% owned by Government) under the Ministry of Commerce, Government of India has been incorporated under the Companies Act, 2013 to develop, manage and maintain the GeM platform. For financial sustainability, GeM charges 0.5% of transaction value up to INR 500 Million while percentage fee goes down for larger transactions beyond this. No fee is charged from MSME suppliers, which are awarded a large number of contracts.

GeM is an example of open multi-supplier FA, where all terms and conditions (including price of items) are finalized and purchaser could simply put purchase order by clicking on desired item. Another novelty of GeM is option of second stage competition through bidding or reverse e-auction. Hence it is a variation of Model 1 (but instead of closed it is open for new vendors to join and the Vendors are free to modify offered price anytime) and Model 3 (if bidding or e-reverse auction is used among listed vendors). The business processes are described below:

1. **Registration of Vendors:** GeM is an open portal, wherein any seller / service provider can register<sup>73</sup> (subject to meeting essential requirements like having valid identity/registration documents). While registering, Vendor also enters data like number of years of experience, financial

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<sup>72</sup> <https://www.centreforpublicimpact.org/case-study/indian-governments-e-marketplace-gem>

<sup>73</sup> The GeM registration process is driven by principles of ease, convenience and minimal data entry. Registration is trust based (self-certified) and validated exclusively through online integration with domain databases. Aadhaar (citizen identification number) is used as the primary user identification proof. User accounts are regularly monitored to detect inactive accounts

turnover/profit and loss etc. They also mention the locations they want to serve.

2. **Adding an Item on GeM:** Product specifications on GeM have been standardized, known as Technical Parameters (TPs)<sup>74</sup>. Every listing on GeM is against these TPs, under the relevant category. To ensure price reasonableness, Vendors are required to display discount offered on Maximum Retail Price (MRP) of that item.
3. **Purchase Options:** There are 3 purchase options namely direct purchase (catalogue mode)<sup>75</sup>, bidding and e-reverse auction (e-RA). While opting for second stage competition, Purchaser can select either bidding or e-reverse auction. Also, bidders' qualifications (like minimum number of years of experience, financial turnover etc.) could be defined. Portal will allow only those vendors to participate in second stage competition who meet these minimum qualification requirements. Additionally, purchaser will define delivery location, delivery period etc. While using e-RA, start and end time as well as minimum decrement are also defined by Purchaser.
4. **Demand Aggregation:** Demand Aggregation allows buyers to aggregate demand across buying teams. For instance, the central Ministry can aggregate common or aggregate demand across states under a common bid. While the bid is centralized, orders invoices and payments thereon can be assigned to individual and multiple agencies on GeM.
5. **Bunching/Bundling:** Bunching is a process of buying multiple goods in a single order i.e. through a single seller whereas bundling is a similar process of buying goods along with related services. The GeM platform allows bunching/bundling of multiple goods / services as per pre-defined categories where sellers selling these multiple goods / services are available.

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<sup>74</sup> The TPs on the GeM platform are demand driven, market-aligned, consultative and dynamic. In a scenario where the buyer finds the Technical Parameters defined on the GeM platform for any good or service as not sufficiently comprehensive and requires parameters to be either added or modified, the buyer shall be able to inform GeM of its requirements. This process is inbuilt into the platform to the extent possible. Standard Operating Procedures (SOPs) for such upgrades and updates of TP of GeM catalogue is dynamic and evolving, without compromising on the need to keep the GeM catalogue generic at all times

<sup>75</sup> Awarding contract to lowest (L1) supplier is also possible through comparing prices of same item offered by different vendors, but without any bidding or e-RA

6. **Multi-cart:** The GeM platform provides its buyers with the multi-cart feature that allows the buyers to have many carts simultaneously. This enables the buyer to save the items in the cart for a specified duration.
7. **Category and Catalogue Management:** Category is created by GeM with skeleton technical specifications (with UNSPC code). Product Approval Team reviews and approves any product uploaded by the Seller. Only approved products are displayed to buyers. In order to ensure that the Buyers get genuine products at the most reasonable prices, GeM has classified its Catalogue in four Quadrants
  - **Quadrant 1:** High value items (e.g. Automobiles) are listed in this quadrant, which will be only sourced from GeM validated OEMs.
  - **Quadrant 2:** Medium value items which require after-sales technical support (such as computers) are included in in this quadrant, which will be sourced from either from GeM validated OEMs or validated OEM authorized resellers.
  - **Quadrant 3:** Other medium value items (such as furniture or textiles) are included in this quadrant, which will be sourced either from OEMs or OEM authorized resellers. When re-seller is uploading a new catalogue, it would go to OEM first for approval.
  - **Quadrant 4:** Low end items (e.g. soaps, stationery) are listed in this quadrant, which can be sourced from any seller. When re-seller is uploading a new catalogue, it would go to OEM first for approval.
8. **Price Reasonability Tools:** GeM has embedded multiple features so that Buyers may ascertain on price reasonability of products before placement of Orders. These include
  - **Price Trends** – Helps Buyers to ensure reasonability of rates quoted by Sellers
  - **Price Comparison from Other Marketplaces** – Tool available for Buyers to compare rates with other websites
  - **Price Comparison in GeM:** GeM provides the facility to compare multiple products in the GeM Marketplace.
9. **Seller Rating:** A strong vendor rating system will reward good performance of sellers by giving them opportunity for more business. Sellers will also be able to improve upon their ratings by focusing on specific areas and fake/inactive sellers will be weeded out, hence ensuring only genuine sellers get to do business with government. GeM uses following parameters for the Seller Rating:
  - Coverage
  - Timely Delivery
  - Quality of Order Fulfillment
  - Reliability

10. **Buyer Classification:** Based on timeliness of release of payments, buyers are classified as Red (more than 30 payments due for more than 70 days), Orange (more than 20 payments due for more than 70 days) and Green (remaining cases). This feature is introduced to help the Sellers make informed decisions. Sellers will not be penalized for rejecting orders from “Red” class buyers.
11. **Logistics and Product Quality Management:** GeM does not have any role in delivery and this responsibility is entirely taken care by Seller. However delivery performance is monitored (and used in Supplier rating described above). In some cases, buyer takes the logistics responsibility. GeM has a “Local Filter” option to limit participation from the same geographical area, so that logistic defaults can be minimized. For Geographical Tag Products, GeM proposes to use Block-chain technology for tracking transportation from origin to destination. For product quality assurance, some Agencies are empaneled by GeM and buyers can opt for getting the products tested by them.
12. **Integrated Incident Management:** Incident Management can be used by Buyers and Sellers to raise issues for any Pre-order placement and/or Post-order placement deviations:
  - Pre-order placement Incident management will deal with the deviations in the Product Catalogue, Seller Registration, Seller Authorization.
  - Post-order Placement Incident Management will deal with the contract deviations by the Seller.
13. **Change Management:** Apart from regulatory support making use of GeM mandatory, GeM also conducts a large number of trainings for both buyers and sellers; and provide handholding through Help Desk.

As of February 2021, GeM had 2,247,662 listed products, 1,061,314 Sellers & Service Providers with transaction value of about US\$ 12 Billion. GeM has set an ambitious target to achieve transaction value equivalent to 4-5% of India's GDP in a few years' time.

One of the unique advantage of GeM is to provide access to the small and medium enterprises (SME) as well as women-owned businesses. Currently 40% of suppliers belong to these categories securing about 58% of the orders in terms of value.

Table-3 below provides a comparison between GeM and similar platforms in other countries.

**Table 3: Comparison of GeM with its other Peers (2019)**

Platform				
Country	<b>Chile</b>	<b>Singapore</b>	<b>Korea</b>	<b>India</b>
Established	<b>2003</b>	<b>2000</b>	<b>2002</b>	<b>2016</b>
Total GMV	US\$ 10-12 Bn	US\$ 16-17 Bn	US\$ 63 Bn - Centralized (PPS): US\$31 Bn; Decentralized: US\$ 32 Bn	US\$ 12 Bn
Suppliers	125,000+	42,000+	340,000+	1,061,314 +
Buyers	15,000+	10,000+	44,000+	49,954 +
Revenue model	Funded by Government - 10-15 Mn USD grant annually	One time registration fee of 320 SGD to sellers for more than one account	Mix of fixed and variable fee. Buyers charged slab wise transaction fee	Initial grant for a period of two years, after which Self Sustaining
Operating model innovations	<b>Analiza</b> - Online information about public procurement processes <b>Observatorio</b> - Ombudsman and whistleblower protection <b>MicroCompra</b> - direct purchases channel	<b>GeBIZ Mall</b> - goods and services at promotional prices through electronic catalogues.	<b>Integrated Shopping Mall</b> – fixed price for repetitive purchases <b>Online construction cost calculator</b> - construction cost management system	Integrated public procurement <b>marketplace</b> , Realtime paperless verification of credentials, real-time prices, reasonability feature  Audit trail, embedded compliances in workflow
Pricing	Internal and external procurement specialists; Alliance with Inter-American Government Procurement Network (RICG) for tracking prices across LatAm countries	In-house and external procurement specialists to identify price benchmarks and get independent market data; Demand aggregation	In-house and external procurement specialists to identify price benchmarks for and get independent market data	Market determined prices suitably guided by price band at point of listing, Price reasonability tools (historical purchase price and price crawling on 3 <sup>rd</sup> party sites).
Product Management	Work groups with suppliers associations; catalogue updated every 6 months based on feedback/discussions.	Regular interactions with forums of supplier/buyers; management by category heads/procurement experts	Regular interactions with forums of supplier/buyers; management by category heads/procurement experts	CCM <sup>76</sup> & Forums, involvement of OEM in Catalogue Management <sup>77</sup> , Industry association MOU, SCOGem <sup>78</sup>

<sup>76</sup> Category Creation Meeting

<sup>77</sup> <https://assets-bg.gem.gov.in/resources/pdf/quadrant-policy-of-gem.pdf>

<sup>78</sup> Standing Committee on Government e-Marketplace

## 6.4 Project-level FA - National Dairy Support Project

The Government of India's National Dairy Development Board (NDDB) has used FAs as a central component of its strategy for improving value-for-money in procurement of dairy equipment and allied items under World Bank-financed National Dairy Support Project (NDSP) with remarkable success. About 150 end-implementing agencies (EIAs), dispersed across the country, used FAs under this Project for procurement of dairy equipment and consumables.

NDDB mainly used open FA (Model-3). These FAs involved two stage competition. In first stage, evaluation of proposals was done on factors other than price and NDDB signed the FAs with the proposers who met the specified qualification criteria and whose proposal was otherwise substantially responsive. In the second stage mini-competition, Purchase Orders were placed by EIAs to the FA Holder offering lowest price and complying with delivery requirements (as required by EIAs).

In few cases, NDDB also used Model-1 FA. In these cases both technical and financial proposals were invited together and FA was signed with the Proposer whose Proposal has been determined to be substantially responsive and who has quoted lowest evaluated price. EIAs issued the Purchase Orders directly to the Supplier during the validity of FA indicating details like quantity, delivery location, delivery schedule etc. These were "Closed" FAs.

Once the FAs signed by NDDB, EIAs were informed about them. NDDB closely monitored use of these FAs through a web-based system. NDDB also conducted inspection and testing of supplied items on sample basis and also monitored the price quoted for same item across the country.

A total of 91 FAs were set-up under NDSP. Cumulative amount of purchase orders issued under these FAs is INR 6526 Million (approx. US\$ 100 Million). On average, FA resulted in average 10.37% saving over procurement of same items through non-FA methods. This saving resulted in better value for money as more EIAs could be supported in overall financial envelope. Additional benefits such as lesser efforts needed from EIAs in placing purchase orders as well as time saving (in comparison to non-FA methods) have not been monetized for the purpose of calculation of this saving.

Based on a survey of users, 94% of EIAs agreed that the use of FAs resulted in economy (saving) in comparison to alternative procurement methods. Moreover, 100% of the EIAs felt that use of FAs resulted in efficiency (faster delivery and less efforts from EIAs) in comparison to alternative methods. 89% of the EIAs admitted that FA resulted in better quality of items (due to centralized inspection and testing). Very few disadvantages were cited and major one was the lack of flexibility to customize the requirements, which was mentioned by 5% of EIAs.



74% of the suppliers conveyed that FAs have resulted in timely payments. 95% of the suppliers admitted that FAs resulted in better quality assurance of items supplied. 42% of the suppliers felt that assured payments, shorter procurement cycle time and simplified process are the major advantage of using FAs. On potential challenges, almost 73% of the suppliers reported no disadvantage of FAs. Only 13% felt that FAs resulted in lesser opportunity for innovation/ customization and lesser competition.

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COUNTRY CASE STUDY:  
BRAZIL

## Chapter 7. Country Case Study: Brazil

### 7.1 The Procurement Landscape in Brazil

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Brazil spent about 8.2% of its GDP or about US\$ 168 Billion on public procurement during 2017<sup>79</sup>. According to article 22, XXVII of Brazilian Constitution, the Union has the exclusive competence to legislate on general rules for bidding and public procurement, in all modalities, that shall be applicable by the other entities. Thus, although it is possible for States and Municipalities to issue local and regional public procurement regulations, the general contracting regime defined by the Union must be observed. The main legislation concerning the public procurement is Federal Law 8666/93 which establishes the general rules for public bidding and contracts. It is worth mentioning that recently the Brazilian Congress has voted and approved the Law Project No. 4253 / 20 that shall replace the regime of Law No. 8666/93 (“Public Bidding Law”).

In addition, there is also the provision for Prices’ Registration (Law No. 10520/2002) and the Differentiated Public Contracting Regime (“Regime Diferenciado de Contratações Públicas”), provided for Law No. 12462/2011. The complex contracts are governed by Law No. 8987/1995 (in case of public service concessions, permissions and authorizations) and Law No. 11079/2004 (that sets forth the public-private partnership contracts). Finally, the state-owned companies have their own public procurement framework, governed by Law No. 13303/2016 as well as its internal procurement regulations, which also establishes specific type of contracts (such as the efficiency contract and the strategic partnerships), as well as the bidding procedures.

According to the Brazilian procurement legislation, Bidding Act (Act Number 8666/93), any federal government department must use competitive tendering as a procedure to make a purchase of a good, perform a work, or acquire a service through third parties. In the Brazilian legislation, competitive bidding is defined as the administrative procedure whereby the public administrator selects, among all applications submitted for the supply of works, goods or services, which one best serves the public interest, and awards to the winner the right to supply to the government.

The federal government departments may use the following forms of procurement for goods, works and services: (i) Open Competitive Bidding (or a reverse auction<sup>80</sup> in which any supplier is allowed to submit a bid), (ii) Pre-Qualified Bidders (or a reverse auction in which only suppliers with solid track

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<sup>79</sup> <https://www.open-contracting.org/wp-content/uploads/2020/08/OCP2020-Global-Public-Procurement-Spend.pdf>

<sup>80</sup> Under Reverse “Auction”, the bidders are allowed to submit only one price bid and the contract is awarded to lowest responsive bidder.

record of providing goods for the government are allowed to bid), (iii) Invited Bidders (or a reverse auction in which only invited bidders are allowed to bid), (iv) Open Hybrid Competitive Bidding (or a reverse auction followed by a reverse English auction<sup>81</sup> in which any supplier is allowed to submit a bid), and (v) Open Electronic Competitive Bidding (or an electronic reverse English auction in which any supplier is allowed to submit a bid).

The value and type of product or service determines the form of procurement to be used. In general, goods, services and works of high values must be acquired through Open Competitive Bidding, while those of lower values can be acquired through Invited Bidders. For intermediate values, one can purchase them through Pre-Qualified Bidders. Open Hybrid and Electronic Competitive Bidding can be used for purchasing of standardized goods and services of any value. However, they cannot be used for construction and engineering services.

## 7.2 Use of FA (Price Registration) in Brazil

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The Brazilian System of Price Registration or *pregão* registro de preços (PR) is a pooled procurement system in which several public agencies and entities gather and organize a joint competitive bidding to acquire/purchase goods, and suppliers offer goods and services at uniform prices and terms for all members of the PR. The public entities may contract the winning supplier to provide goods and services and order shipments of various sizes at their own convenience and without a predetermined frequency within a period of 12 months. As in the standard individual procurement system, the administration authority must specify the reserve price, that is, its willingness to pay for the goods/services. The reserve price is also determined through a wide market survey. The Price Registration System (RP) was implemented in Brazil in 2001 through Decree Number 3.931 of 19/09/2001 aiming to cut down the red tape and the high transaction costs in public awarding caused by the Bidding Act (Act Number 8.666/93). It is governed by Federal law 7.892/2013 (updated in August 2018).

The procurement transactions in the Price Registration system must rely on an Open Competitive Bidding, Open Hybrid or Electronic Competitive Bidding. Lowest price is the only award criterion allowed in PR.

According to the Brazilian law, the Price Registration system should be employed when a set of off-the-shelf goods or services are required by more than one agency, entity, or government programs along a year; and when, by the nature of the goods, it is not possible to stipulate precisely the demand for them.

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<sup>81</sup> Under Reverse “English Auction”, the price starts high and decreases as sellers bid for the item until one seller is left with lowest price bid and any lower bid isn’t received during the given time period.

The buyers in a Price Registration pool are classified as manager-participant, no-manager-participant, and free-rider. A manager-participant is the public entity responsible for the procurement procedures in the PR (e.g., invitation of suppliers for competitive bidding, market research, specification of the demanded goods and quantities, definition of the reserve price, and running the auction), and also for managing all information in the procurement transaction. A no-manager-participant is a public entity that participates in the purchase of goods and helps the manager to organize the procurement procedures. A free-rider, in contrast, does not participate in the procurement process, but he can apply for the acquisition of goods and services at prices and terms convened between the original pool and the awarded supplier as long as the total purchased quantities remain below the legal maximum.

A PR can be established by one contracting entity or jointly by a group of entities that pooled their procurement demands. Within the limits established in the PR, the procuring entities have the autonomy to determine the quantity to be purchased and the number of orders they issue within an established PR during the agreement period, and it is even possible for procuring entities to not issue any order. However, procuring entities that established a PR for a group of products, cannot use other procurement methods in order to procure those products.

Any Supplier firm that meets the requirements set by the managing agency may apply to be admitted as a new signatory of the PR minutes, the document that certifies the convened price.

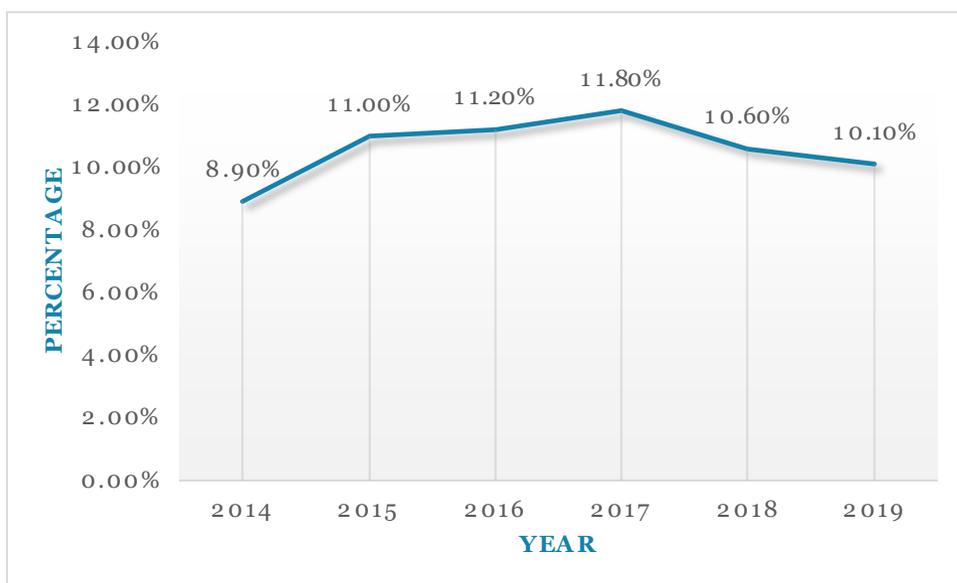
The RP enables (i) higher speed in contracting, (ii) better inventory management and control, (iii) better budget execution and (iv) fewer bidding processes. Such benefits arise out of higher flexibility of the RP that makes easier for the entities and public bodies to procure goods and services, allowing them to join a PR System at their own convenience. Naturally, such aspects assure better public management. On the other hand, the Price Registration System (RP) also holds the benefits arising out of the Bidding Act as any RP should be made according to the selection and award criteria provided by such legislation, especially that the RP has the “lowest price supplier rule” as selection decision rule, which is a good mechanism for selection of suppliers for standardized products.

## 7.3 Extent of Use of Price Registration

PR has been used quite extensively for some of the sectors and items in Brazil. For example, historical data show that the share of PR was more than 90% during the year 2009 for items like medical sets and assemblies, hospital furnishings, equipment and utensils, and medical and surgical instruments and supplies<sup>82</sup>.

Following two charts<sup>83</sup> show the trend of use of PR in Brazil over the years in terms of number and volume (value) of procurement at federal level.

**Figure 3. Number of Purchases through the Price Registration as Compared to the Total Number of Purchased Items - Federal Government Procurement**



It may be observed from above chart that the number of purchases using PR has been in the range of 8% to 12% over the years. Though there was a period of growth up to 2017, the numbers are coming down thereafter.

<sup>82</sup> <http://www.ippa.org/images/PROCEEDINGS/IPPC5/Part2/PAPER2-19.pdf>

<sup>83</sup> Based on “portal.transparencia” and “compras.dados”

**Figure 4. Volume of Purchases through the Price Registration as Compared to the Total Volume of Purchased Items – Federal Government Procurement**



The volume of purchases using PR has been in the range of 13% to 23% over the years with no definite trend. Even though PR may be predominant procurement methods for some items, it forms about one-fifth of overall procurement spend at federal level, which is still significant.



COUNTRY CASE STUDY:  
ETHIOPIA

## Chapter 8. Country Case Study: Ethiopia

### 8.1 The Procurement Landscape in Ethiopia

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The Executive, Legislative and Judicial branches of the Government of Ethiopia are governed under the Constitution of the Federal Democratic Republic of Ethiopia (FDRE). The Constitution provides for a federal government and nine regional states (one regional state was recently included) with two chartered cities (Addis Ababa and Dire Dawa). The Constitution confers enumerated powers and responsibilities upon the Federal Government, which has the power, for instance, to formulate and implement national policies, plans and strategies concerning the overall economic and social developments and to formulate and execute national policies and strategies. The FDRE Constitution also allocates significant powers and responsibilities to Regional State Governments and the two chartered cities. The Regional State and the chartered cities have their own constitution, and also promulgate their own proclamations, regulations, directives and manuals. Ethiopia spent about 8.3% of its GDP or about US\$ 6.8 Billion on public procurement during 2017<sup>84</sup>.

Public Procurement in Ethiopia adopts three layers of structure with a mix of decentralized and centralized procurement arrangement. The public procurement is implemented at Federal, Regional and Woreda (local) level. In some regions, there is also zonal structure which is an administration in between the regional and Woreda level. There are more than 1,200 public bodies (ministries at federal level and sector offices at regional level) who have established procurement structure and carry out their own procurement. In addition, more than 1,200 local administrations established procurement units that are responsible for consolidating demand and procuring centrally through competitive methods.

With the establishment of the Federal Public Procurement and Property Disposal Service (PPPDS), FA was introduced for the first time in Ethiopia in the year 2010. The federal PPPDS is responsible to set up the FAs that are used by more than 187 public entities and higher education institutes by issuing call-off orders.

### 8.2 Rules and Regulations Governing FAs

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The highest authority of the Federal Government is the House of People Representatives elected every five years through the general election. Decrees of the House of People Representatives become Proclamations once it is adopted. This body issues the Ethiopian Federal Government Procurement and Property Administration Proclamation which is the key primary legislation on federal

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<sup>84</sup> <https://www.open-contracting.org/wp-content/uploads/2020/08/OCP2020-Global-Public-Procurement-Spend.pdf>

public procurement. Subsequently, the Council of Ministers issue Regulations, the Federal Ministries issue Directives and the public bodies can issue manuals. The Regional State and the chartered cities have also their own respective House of People Representatives who have parallel duties and responsibilities like its Federal counterpart. Hence, each region issues proclamations through their own respective House of Peoples Representatives.

The Federal Government FA procurement is guided by the Federal Government Procurement and Property Administration Proclamation. The proclamation defines FAs and includes the general procedures to establish FA. The procedures include provisions such as the FA shall be awarded through open bidding procedure, the agreement to remain valid for three years, and the order that public bodies place with the suppliers for goods and services of their requirements under the FA shall confirm to the terms of the FA regarding price, terms of payment and other matters related to the execution of procurement.

Next to the proclamation, the governing procurement legislation is the Federal Government Public Procurement Directive, issued by the Ministry of Finance, which includes the detail procedures in carrying out the FA procurements. In the Directive, the duties and responsibilities of the PPPDS including monitoring the performance of FA suppliers, bid invitation procedures and content, bidding document preparation, evaluation and award, and contract administration are clearly stated. The Federal Public Procurement and Property Administration Agency (PPPAA) publish the Public Procurement Manual, Manual on Public Procurement Complaint Procedure, and Manual on the use of FAs and Standard Bidding Documents to be used by the federal public bodies. In regional states and the city administrations, these documents are issued by the respective Finance Bureau.

The Manual on Framework Agreements issued by the PPPDS provides more coverage and explanation on the use of FAs. It defines FA as “a basic agreement with supplier which sets out terms and conditions that allow public bodies to order goods or services throughout the term of the agreement under the terms and conditions specified in that framework agreement”. It also provides some basic requirements for the FAs. For example, FA sets out the terms and conditions for subsequent call-off contracts but, does not oblige an entity to place purchase orders using the FA unless the demand arises. Hence, contracts are formed only when goods or services are called off by issuing purchase order under the FA. Entities do not even have to issue any minimum number or value of orders through the FA, and the FA does not guarantee any minimum or maximum amount of expenditure. Issuance of purchase orders to obtain the goods or services hereunder is wholly within the discretion of public bodies. Furthermore, nothing in the agreement should be construed to limit public bodies from using other suppliers (outside the FA) to supply goods or services, similar to those on the FA. FA established by one entity can be accessed by other

public bodies, provided such bodies are partly or wholly financed by the federal government, higher education institutions, or public institutions. Ethiopian FA is a special type of Model 1 FA concluded by using the lowest-price criterion, but without specifying in advance the number of awardees. Only the maximum number of awardees is made public.

This Public Procurement and Property Administration Agency has prepared the FA-Standard Bidding Document (FASBD) - Goods and Related Services for use by the Public Procurement and Property Disposal Service. For procurement of goods and services which are commonly used by public bodies, or have national significance as well as recurrent requirements of similar items in desired quality and at prices attributable to economies of scale resulting from bulk purchases, the PPPDS and other public bodies are required to use this FA SBD. The SBD includes provisions of price adjustments, the terms and conditions of the price adjustment as well as the manner of its application, the list of beneficiary institutions, and the duration of the FA.

### 8.3 Institutional Arrangements Governing FAs

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The proclamation that defines the powers and duties of the executive organs of the Federal Republic of Ethiopia provides the Ministry of Finance the powers and duties to establish procurement and property management system of the Federal Government and supervise implementation of the same. Accordingly, the Ministry of Finance supervises PPPDS, the entity responsible for carrying out the procurement of goods and services falling under the list of common user items through FA. The Ministry of Finance also supervises the procurement regulatory body of the Federal Agencies - PPPAA. The regional states and the two city administrations also follow the same structure for the operation of the FAs and established a central unit responsible for the procurement of common user items through FAs. Unlike the Federal government, in the regional states and the two city administrations, the Bureau of Finance serves as a regulatory body.

At federal level, the list of common user items shall be identified and communicated to PPPDS and the public bodies by the PPPAA. Hence, the public bodies shall use the list as a reference and submit their annual procurement requirements to the PPPDS. The PPPDS prepares its own procurement plan by consolidating the requirements received from the public bodies. The regional states and the city administrations also use the list of common user items published by the federal PPPAA as a reference.

## 8.4 Extent of Use of FAs

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At Federal level, the PPPDS prepares and issues invitation to bid and performs all the procurement processes. The evaluation is conducted on item by item basis and the successful lowest bidder for each item is guaranteed to take 60% of the estimated quantity demand. The second-lowest and the third-lowest bidder are offered the option of matching the lowest bidder's price. If both accept, then it is split equally for the remaining 40%. If only one accepts the counteroffer, this bidder receives 40% of the estimated quantity. If no lower ranked bidder accepts this counter offer the lowest bidder receives 100% of the estimated quantity. The PPPDS signs FA with the successful bidder which is valid for up to three years. The signed agreement with suppliers is communicated to the beneficiary public bodies with the list of supplier(s) to whom the public bodies can issue purchase orders. After signing of the agreement, the FA provides the supplier with initial grace period of two months and one month preparation time to start delivery for imported and locally produced items respectively. After the initial period is elapsed, delivery shall be made after 14 days of receipt of purchase order from the public bodies.

In the regional states and the two city administrations too, it is their respective PPPDS that consolidates the procurement plan and perform all the procurement activities until finalization of FA. The signed agreement is disseminated to the beneficiary entities so that they can place purchase orders when the demand arises.

At federal level, 108 number of FAs are in operation covering more than 500 number different categories of items which covers the period 2019-2021. Annual value of purchase orders issued under these FAs is approx. US\$ 128 million.

Although all regional states and the two chartered cities established their own central procuring unit for FA, their experience in implementation of the system varies significantly. Relatively, the Addis Ababa (AA) City Administration and the Oromia Regional state are better placed in the use of the FA. The AA city started operation about five years back in 2016 by procuring furniture and ICT items. Currently; it expands the common user item list by adding stationery, tonners and uniform clothes. The total number of items included in the FA also increased from 18 to 250 between 2016 and 2020. The average annual expenditure of these items reached to about USD 6.5 million. Similarly, the Oromia regional state is procuring ICT, stationery, tonners, tires, sanitary materials, and uniform clothes with average annual expenditure of about USD 3.49 million through FA.

# 9 COUNTRY CASE STUDY: ITALY

## Chapter 9. Country Case Study: Italy

### 9.1 The Procurement Landscape in Italy

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Italy spent about 10.2% of its GDP or about US\$ 199 Billion on public procurement during 2017<sup>85</sup>. Public Procurement in Italy is governed by Legislative Decree No. 50 of 18 April 2016 (the Code), structured on 220 articles and XXII annexes. The Legislative Decree is commonly referred to as the Code of Public Contracts. The legal framework also includes some articles from Presidential Decree No. 207 dated 5 October 2017 and a number of decrees (about 50) by the Italian Ministry of Infrastructure and Transport and guidelines of the National Anticorruption Authority (ANAC). The legislative framework is compliant with the European directives of 2014. The codes are applicable to the state, all regional and local authorities, bodies governed by public law and associations formed by one or more such authorities or one or more such bodies governed by public law. Private entities could be considered as contracting entities if operating in special sectors or when certain conditions are fulfilled (e.g., they hold a concession).

The Code regulates FAs in article 54. FAs may be used for works, services and supplies. In order to conclude an FA, the contracting authorities are required to launch a procurement procedure provided by the Code. Except in exceptional cases, the duration of the FA cannot exceed four years for ordinary sectors and eight years for special sectors. As provided by article 54 of the Code, an FA may be concluded with one or more suppliers. Contracts based on FAs concluded with several suppliers may be awarded following different procedures, provided by article 54 of the Code.

Responsibility for public procurement is shared among two main bodies at national level. The Department of European Union Policies is in charge of relations between the Italian government and EU institutions, including for procurement policy. It has the primary responsibility for the coordination of public procurement policies at the national, regional, and local level, in particular with respect to elaborating the Italian position in procurement matters vis-à-vis EU institutions. The Ministry of Infrastructure and Transport is mainly in charge of proposing draft legislation and performs a consultative function for contracting authorities regarding the correct implementation of EU rules. In addition, the Department of Development and Economic Cohesion (DPS) is charged with balancing economic and social development of underdeveloped areas in the country. This includes translating and implementing EU cohesion policy objectives and EU Directives into the national policy framework. It is also

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<sup>85</sup> <https://www.open-contracting.org/wp-content/uploads/2020/08/OCP2020-Global-Public-Procurement-Spend.pdf>

in charge of managing and assessing national investments made through the use of EU Structural Funds.

Consip, a publicly owned stock company, acts as the central purchasing body on behalf of the state. It was created to implement the Programme for Rationalisation of Public Expenditure. In 2013, Consip's role was strengthened to include a greater focus on e-procurement. Until 2014, Italy's independent Authority for the Supervision of Public Contracts (AVCP) was mandated with supervising compliance with procurement rules and procedures. The AVCP had extensive functions with respect to procurement including dispute resolution, identifying and reporting potential illegal conduct to the Criminal Court and to the Court of Auditors, and reporting to the Parliament and to the Government. It also carried out an advisory function, as it could propose legislation to the Ministry of Infrastructure. Since 2014, the responsibilities of the AVCP were transferred to the National Anticorruption Authority (ANAC). Importantly, the ANAC is also responsible for collecting data on procurement through the Public Procurement Observatory. Italy's Court of Audit also oversees public procurement. According to the Group of States against Corruption (GRECO), the Court of Audit performs high quality work<sup>86</sup>.

## 9.2 Use of FA in Italy

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FAs have been used in Italy since the earliest 2000's for aggregating public bodies' demand for goods and services, both for central and local government. Although at the European regulatory level FAs were first foreseen in 2004 (see Directive 2004/18/EC) and transposed into the Italian Code for Public Contracts in 2006, the Italian legislator created an *ad hoc* provision for demand aggregation in the 2000 Budget Law. This provision, virtually equivalent to a single-award FA with fixed conditions, was instrumental for Consip S.p.a. (Consip henceforth), the government's Centralized Procurement Body (formally defined as a Central Purchasing Body - CPB - by Directive 2004/18/EC), to carry out the first and most ambitious program of centralization for goods and services ever attempted by the Italian policy makers.

At the earliest stage of the program, FAs were used to aggregate demand for fixed-line and mobile telephone services as well as facility management services and stationery. Retrospectively, the first two seem to have been quite appropriate solutions, whereas the third case suffered, among other things, from a disproportionate high value of geographical lots - which hampered the participation of SME's - and the fourth did not allow for a variety of solutions, and, consequently, did not meet completely final users' expectations. Because the Italian Constitution entrusts Regions (21 administrative entities) with the

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<sup>86</sup> [https://ec.europa.eu/regional\\_policy/sources/policy/how/improving-investment/public-procurement/study/country\\_profile/it.pdf](https://ec.europa.eu/regional_policy/sources/policy/how/improving-investment/public-procurement/study/country_profile/it.pdf)

mission of providing healthcare services, CPBs started to be established at the regional level to aggregate (regional) demand for goods and services in healthcare procurement. This mission has evolved over the past 15 years to cover other product and services categories.

Overlapping competences and activities induced the Italian legislator to take a more decisive step to design the system so as to make demand aggregation at different government levels more effective, thus avoiding redundancies and the risk that public buyers might find themselves facing competing purchasing solutions. To this end, law decree No. 66 in 2014 foresaw the:

- Creation of an official list of “Aggregating Bodies” (including CPBs as well as other public bodies with the mission of aggregating demand at the local level) to be held and updated periodically by ANAC (the Italian National Anticorruption Authority).
- Creation of a “Technical Working Group (TWG) of the Aggregating Bodies” coordinated by the Ministry of Economy and Finance (MEF), and within the TWG a “Leading Committee” in order to:
  - select product and services categories which *all* public bodies (including central and local government, regions, provinces, municipalities, and healthcare institutions) have to procure by means of purchasing solutions provided by the Aggregating Bodies;
  - draft **guidelines** for designing solutions for demand aggregation.
- Creation of a **fund** managed by the MEF to finance the adoption of purchasing solutions for demand aggregation. The fund works as an incentive device and is allocated to AB’s depending mostly on i) the fraction of public bodies’ expenditure for each single product/service category which is channeled through AB’s purchasing solutions; ii) the variety of product/services managed through AB’s solutions; and iii) the degree of cooperation among different AB’s (that is, purchasing solutions jointly awarded by different AB’s).

All CPBs in the set of AB’s have gathered experience over the last 15 years in handling both closed and open FAs. Within the subfamily of closed FAs, those with fixed conditions, and particularly the ones with a single awardee, have the lion’s share. This experience is at stark contrast with the practice of FAs in the UK, where most if not all FAs awarded by the Crown Commercial Service, the government’s CPB, foresee a second round of competition at the call-off stage (that is, multi-award FAs with not all conditions specified at the first stage).

The presence of different AB’s operating at different government levels raises the question about the extent to which public authorities’ demand for goods and service is aggregated through various families of FAs. Although there exists no

readily available report, it is still possible to undertake a reasonable exercise to make a ballpark estimate. ISTAT, the Italian Institute for National Statistics, estimates the Italian Public Sector's Intermediate Consumption was worth approximately €100 billion in 2019. Needless to say, not all budget items included in intermediate consumption are susceptible to be purchased through demand aggregation purchasing techniques.<sup>87</sup> It has been argued that a 55% share of the overall aggregate might in principle be managed through FAs. The difficulty lays in fact in estimating the value of public contracts channeled through the procurement systems of the AB's on a *yearly basis*.

The information provided by ANAC in its yearly report to the Italian Parliament about the estimated value of procedures (open and restricted) managed by the AB's in 2019 is only a starting point. That is, knowing that this value was approximately 34 billion in 2019 does not provide any hint about the value of awarded contracts and the average durations of awarded contracts. However, browsing over some of the official reports produced by the MEF<sup>88</sup> to the Italian Parliament on the "National Centralized Procurement Program", managed by the MEF itself, it is illustrated that the (estimated) yearly value of public purchases through FAs awarded by Consip was worth 4.1 billion in 2018. On average this value is between 20% and 30% of the estimated value of aggregated procedures. By projecting these percentages on the overall value of estimated procedures managed by AB's in 2019, one gets a figure not far away from €9-10 billion in 2019, that is, a rough 16% of the €55-billion-worth share of intermediate consumption, susceptible to be handled by aggregation techniques, is in fact managed by AB's.

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<sup>87</sup> For instance, the value of tanks purchased by the Italian Army contributes to intermediate consumption, but it seems fairly unreasonable to use FA as purchasing technique for weapons.

<sup>88</sup> The latest report about year 2019 can be accessed through [www.dag.mef.gov.it/razionalizzazione\\_acquisti/documenti/Programma\\_di\\_razionalizzazioni\\_MEF\\_per\\_l'anno\\_2018\\_-\\_Relazione\\_Parlamento.pdf](http://www.dag.mef.gov.it/razionalizzazione_acquisti/documenti/Programma_di_razionalizzazioni_MEF_per_l'anno_2018_-_Relazione_Parlamento.pdf)

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COUNTRY CASE STUDY:  
CHILE

## Chapter 10. Country Case Study: Chile

### 10.1 The Procurement Landscape in Chile

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Chile spent about 4.7% of its GDP or about US\$ 12.37 Billion on public procurement during 2020. Public Procurement in Chile is governed by Act No. 19,886 of 30 July 2003 about the Administrative Contracts Bases for Supply and Provision of Services, and its regulation, Decree No. 250 of 24 September 2004. Framework Agreements (Convenios Marco) have been used in Chile since 2003 and as per law, ChileCompra is responsible for setting-up and managing FAs. These FAs are set-up using open bidding processes. Public Entities are obliged to contract through FAs if the required good or service is available through this system, unless they are able to obtain more advantageous conditions on their own, which shall be objective and demonstrable, and in which case they may contract outside the FAs. FAs are generally awarded to multiple suppliers, which are classified by categories of goods and services in a public catalog. Public entities can directly contract with any supplier available on the catalog through the issuance of a purchase order up to contract value of 1,000 UTM<sup>89</sup> (approximately US\$ 73,786). Beyond 1,000 UTM, the public entity is required to conduct a competition among all the suppliers on the catalog for appropriate category of goods or services required<sup>90</sup>. In this case, as general rule, the contract is awarded to the tenderer offering the lowest price.

### 10.2 ChileCompra

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ChileCompra is the central procurement agency in Chile. Its roles are twofold: support public entities and developing procurement policies for the country; and implementing collaborative procurement instruments in order to obtain savings for the government. ChileCompra was established in March 2003. In 2020, ChileCompra facilitated more than US \$12.37 billion in purchases through its platform [www.mercadopublico.cl](http://www.mercadopublico.cl). Purchases are made independently by the public entities, but ChileCompra is responsible for market regulation and management of the electronic platform, where transactions are made.

Due to the free access to the online general marketplace, [www.mercadopublico.cl](http://www.mercadopublico.cl), the participation of small and medium enterprises (SME) increased from 20% (at the time of launch of platform) to 95% (in 2020). Hence the portal also translated into significant benefits for employment and job creation in Chile. However, these 95% SME suppliers could win 59% contracts (in terms of value) and 69% (in terms of number). The Government of Chile has recently announced the

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<sup>89</sup> Unidad Tributaria Mensual, please see [https://www.sii.cl/valores\\_v\\_fechas/uf/uf2021.htm](https://www.sii.cl/valores_v_fechas/uf/uf2021.htm)

<sup>90</sup> This requirement was however relaxed during COVID-19 pandemic for a limited period

creation of the “Compra Ágil” portal in ChileCompra, which focuses on government purchases under 30 UTM (approx. US\$ 2,200) from SMEs. These small purchases represent 80% of all purchases made by the public entities.

During the year 2020, the volume of procurement through FAs was around US \$ 2,173 million, representing 18% of the total procurement through the ChileCompra system. In terms of transaction numbers, 592,956 purchase orders were issued under FAs, which represents 37% of the total number of purchase orders through the system in 2020. More than 130,000 products are available at ChileCompra platform under 27 FAs with about 4,000 suppliers and 850 public entities using it. Public entities are obliged to use ChileCompra’s FAs unless they find better options outside.

### 10.3 FAs used by ChileCompra

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For the ChileCompra Directorate, the main objective of FAs is to facilitate the procurement process of highly standardizable goods or services, commonly and frequently used across multiple entities, while ensuring at minimum the achievement of the market price. These FAs are set-up through open bidding procedure and can be awarded to one or multiple suppliers. Through the electronic platform [www.mercadopublico.cl](http://www.mercadopublico.cl) - which is the biggest electronic marketplace in the country - public entities are connected to suppliers within a transparent and efficient system based on a solid regulatory framework whose governing principles are universality, accessibility, and non-discrimination. The e-platform has been built with high e-commerce standards: 100 percent cloud, flexibility, high security standards, standardized products and state-of-the-art price quotation tools.

The electronic catalog of FAs is called “ChileCompra Express”, it is an example of open multi-supplier FA, where all terms and conditions (including price of items) are finalized and purchaser could simply put purchase order by clicking on desired item. Hence it is a variation of UNCITRAL Model 1 (but instead of closed it is open for new vendors to join and the Vendors are free to modify offered price anytime). When the option of second stage competition is used, it is similar to UNCITRAL Model 3 FA.

Since 2018, the design of FAs has been improved in order to increase in competition levels, which resulted in savings for the government with market-specific analysis. Those savings exceeded CLP 8,250 million between June 2020 and April 2021, especially for Furniture, Desk and Health Insurance. FAs also allow greater access to this business opportunity for firms. For example, the terms of validity of FAs has been reduced from 6 years to 2 years or less.

FAs are designed for transversal and frequently purchased products. Transversal products are those that are acquired by multiple entities, such as a pencil or a notebook. Frequently purchased products are those that are purchased multiple times over a given period of time, such as perishable food. Other procurement

approaches are recommended for products that are not transversal or not purchased frequently.

Critical processes used by ChileCompra for an FA are described below:

### **10.3.1 Market Consultation**

The process of market engagement takes place before FA bidding, during the bidding process, after the closing of the bidding process and the contract award.

Before bidding:

- Publication of the annual purchase plan by procuring entities.
- Meetings with relevant buyers of the item.
- Publications of “Request for Information (RFI)”.
- Meetings with major suppliers of the item.
- Meetings with trade and social associations that may be involved.

During the Bidding Process:

- Dissemination through mass media and social networks.
- Questions and answers session on the bidding rules.
- Clarification of situations or facts that may be misunderstood.
- Responses to issues experienced by suppliers and buyers during the bidding period.

After the closing of the bidding process and the contract award:

- Inform awarded suppliers.
- Management of contracts and suppliers.
- Constant monitoring of products and suppliers in order to maintain or improve commercial conditions for procuring entities during the validity of the FA.

### **10.3.2 Change Management**

During the preparation for introducing FAs, a specific “adoption plan” is defined for each FA, involving all stakeholders (suppliers, buyers, trade associations, social associations, members of civil society, regulatory institutions, etc.). In the “adoption plan”, change management strategies are developed for each of the stakeholders based on the characteristics of each of them, defining specific action plans to facilitate the adoption of new procurement approach. In addition, standard responses to frequently asked questions are prepared and posted on the Help Desk. Finally, all the information associated with each FA is available on the institutional webpage [www.chilecompra.cl](http://www.chilecompra.cl), particularly on the Help Center <https://ayuda.mercadopublico.cl/>.

### 10.3.3 Category Management

In the first step, following criteria are applied to identify “candidate” products to be purchased through FAs:

- Distribution of purchases viz. goods or services commonly purchased by most public entities;
- Composition of purchases viz. goods or services with high average contract values and whose distribution of purchases is concentrated in contract values greater than 30 UTM (approx. US \$ 2,200);
- Cost of centralization via FAs viz. for procuring entities, the administrative cost of making purchases via the FAs must be less than the administrative cost of procuring independently;
- Alternative purchase mechanisms - review other purchase options other than FAs;
- Price savings - assess whether FAs achieve better prices and better commercial conditions than other procurement options.

After having selected one or more items that meet the above conditions, it is necessary to identify the categories and types of products to procure through the FA. The design of the product catalog should fulfill the needs of procuring entities and meet the requirements of the FA, and it is done through market analysis, modeling, interviews and meetings with stakeholders and market consultations.

The construction of the catalog begins by selecting the Types of Products (TP) that meet the two selection criteria for FAs: products purchased frequently and by multiple entities. Then, within the selected Types of Products, the individual products that meet the selection criteria are identified. For the selected Types of Products that will be in the new FA, ChileCompra identifies the specific products through the use of data from previous purchases as well as data obtained from external catalogs (e-commerce).

The last step is to set the purchasing and supply volumes for each selected product. In this step, the product characteristics and specifications for each Type of Product are defined, considering the needs of procuring entities and the market offerings. The methodology for building the new catalog is based on objective information from data on previous transactions, which can also be replicated for the design of all FAs.

Finally, the products awarded through the FA bidding process are cataloged on the electronic platform according to the types of products and categories to which they belong, as well as the geographic regions of the awarded suppliers.

### 10.3.4 Management of FAs

FAs are managed operationally, commercially and administratively during their validity period, generating actions that ensure the correct and efficient use of the electronic catalog. For this, the public and private markets are periodically

examined in order to analyze prices, products, suppliers and stakeholders involved in each FA, thus ensuring an updated product catalog. In addition, networks of the main players in the market are assessed to identify aspects that may allow offering more advantageous purchasing conditions for procuring entities. Likewise, with respect to the management of each FA during their validity period, monitoring procedures are applied as stipulated in the FA, and compliance with the contract and service conditions is monitored and ensured.

On the other hand, management of electronic catalog involves monitoring the prices contained in the catalog, adding new products to the catalog (based on the requirements of procuring entities or as decided by the ChileCompra Directorate), and resolving requests for updating of commercial and other conditions, prices and / or products, submitted by the suppliers awarded the FAs. Some products are discontinued based on reasons as defined in the FA (for example, products not being procured, price dispersion, etc.).

Finally, in this phase, incidents received through the user service platform or communicated directly by users are resolved, meetings are held with suppliers as appropriate, and commercial and technical activities related to non-renewals or early termination of FAs are coordinated.

### **10.3.5 Logistics Management**

For FAs related to goods (not services), the logistical aspects are included in description, which refers updated transportation cost, if any. There are usually two options: for some products transportation cost is included in the catalog and for remaining products, the cost of transportation is not displayed, but to be communicated by Supplier in the offer. Given the geography of Chile, and the distribution of public institutions throughout the country, logistics approaches are evaluated<sup>91</sup> for each FA to arrive at best strategy to facilitate competition. However in all the cases, the distribution and final delivery of the products remains the responsibility of supplier.

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<sup>91</sup> Specific analysis for each item: significance of transportation costs with respect to the price of the product itself (for example, the price of computers is high relative to its transport cost, so the latter is less relevant, but the opposite is true for furniture), size of products (for example, the weight and volume of a computer is relatively low, so it does not have a very high shipping cost, while the volume of a furniture - desk, armchair, etc. - is quite high, so the cost of dispatch is higher), behavior of other sellers in the private market with respect to the transport of this type of products (how private e-commerce charges for transportation: how do they calculate the cost per piece / weight, check if they offer free shipping for a certain purchase amount, etc.), the way procuring entities buy (for example, there are some agencies that buy certain goods in a centralized way -which brings us closer to a national firm- and there are other products that are bought in a more decentralized way -and that would tend to be a regional-level firm), and finally if economies of scale can be achieved (for example, dispatch for a macrozone by grouping geographical regions according to their demands and distances).

# ANNEXURES TO GUIDEBOOK

## Annexure- 1. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance<sup>92</sup>

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### Article 33: Framework agreements

1. Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.

A framework agreement means 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.

The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and in paragraphs 3 and 4.

Those procedures may be applied only between those contracting authorities clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators party to the framework agreement as concluded.

Contracts based on a framework agreement may under no circumstances entail substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

For the award of those contracts, contracting authorities may consult the economic operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

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<sup>92</sup> Full text available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>

4. Where a framework agreement is concluded with more than one economic operator, that framework agreement shall be performed in one of the following ways:

- (a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents for the framework agreement;
- (b) where the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned, partly without reopening of competition in accordance with point (a) and partly with reopening of competition amongst the economic operators parties to the framework agreement in accordance with point (c), where this possibility has been stipulated by the contracting authorities in the procurement documents for the framework agreement. The choice of whether specific works, supplies or services shall be acquired following a reopening of competition or directly on the terms set out in the framework agreement shall be made pursuant to objective criteria, which shall be set out in the procurement documents for the framework agreement. These procurement documents shall also specify which terms may be subject to reopening of competition.

The possibilities provided for under the first paragraph of this point shall also apply to any lot of a framework agreement for which all the terms governing the provision of the works, services and supplies concerned are set out in the framework agreement, regardless of whether all the terms governing the provision of the works, services and supplies concerned under other lots have been set out.

- (c) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.

5. The competitions referred to in points (b) and (c) of paragraph 4 shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the procurement documents for the framework agreement, in accordance with the following procedure:

- (a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;

- (b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each 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;
- (c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;
- (d) contracting authorities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the procurement documents for the framework agreement.

**Article 34: Dynamic purchasing systems:**

1. For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, and shall be open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria. It may be divided into categories of products, works or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.

2. In order to procure under a dynamic purchasing system, contracting authorities shall follow the rules of the restricted procedure. All the candidates satisfying the selection criteria shall be admitted to the system, and the number of candidates to be admitted to the system shall not be limited in accordance with Article 65. Where contracting authorities have divided the system into categories of products, works or services in accordance with paragraph 1 of this Article, they shall specify the applicable selection criteria for each category.

Notwithstanding Article 28, the following time limits shall apply:

- (a) the minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent. No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent;
- (b) the minimum time limit for receipt of tenders shall be at least 10 days from the date on which the invitation to tender is sent. Where

appropriate, Article 28(4) shall apply. Article 28(3) and (5) shall not apply.

3. All communications in the context of a dynamic purchasing system shall only be made by electronic means in accordance with Article 22(1), (3), (5) and (6).

4. For the purposes of awarding contracts under a dynamic purchasing system, contracting authorities shall:

- (a) publish a call for competition making it clear that a dynamic purchasing system is involved;
- (b) indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used and the technical connection arrangements and specifications;
- (c) indicate any division into categories of products, works or services and the characteristics defining them;
- (d) offer unrestricted and full direct access, as long as the system is valid, to the procurement documents in conformity with Article 53.

5. Contracting authorities shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting authorities shall finalize their assessment of such requests in accordance with the selection criteria within 10 working days following their receipt. That deadline may be prolonged to 15 working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met.

Notwithstanding the first subparagraph, as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, contracting authorities may extend the evaluation period provided that no invitation to tender is issued during the extended evaluation period. Contracting authorities shall indicate in the procurement documents the length of the extended period that they intend to apply.

Contracting authorities shall inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

6. Contracting authorities shall invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with Article 54. Where the dynamic purchasing system has been

divided into categories of works, products or services, contracting authorities shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender.

They shall award the contract to the tenderer that submitted the best tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest. Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

7. Contracting authorities may, at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit a renewed and updated self-declaration as provided for in Article 59(1), within five working days from the date on which that request is transmitted.

Article 59(4) to (6) shall apply throughout the entire period of validity of the dynamic purchasing system.

8. Contracting authorities shall indicate the period of validity of the dynamic purchasing system in the call for competition. They shall notify the Commission of any change in the period of validity, using the following standard forms:

- (a) where the period of validity is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;
- (b) where the system is terminated, a contract award notice referred to in Article 50.

9. No charges may be billed prior to or during the period of validity of the dynamic purchasing system to the economic operators interested in or party to the dynamic purchasing system.

## Annexure-2: UNCITRAL Model Law Chapter VII - Framework agreements procedures<sup>93</sup>

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### Article 2. Definitions

(e) “Framework agreement procedure” means a procedure conducted in two stages: a first stage to select a supplier (or suppliers) or a contractor (or contractors) to be a party (or parties) to a framework agreement with a procuring entity, and a second stage to award a procurement contract under the framework agreement to a supplier or contractor party to the framework agreement:

(i) “Framework agreement” means an agreement between the procuring entity and the selected supplier (or suppliers) or contractor (or contractors) concluded upon completion of the first stage of the framework agreement procedure;

(ii) “Closed framework agreement” means a framework agreement to which no supplier or contractor that is not initially a party to the framework agreement may subsequently become a party;

(iii) “Open framework agreement” means a framework agreement to which a supplier (or suppliers) or a contractor (or contractors) in addition to the initial parties may subsequently become a party or parties;

(iv) “Framework agreement procedure with second-stage competition” means a procedure under an open framework agreement or a closed framework agreement with more than one supplier or contractor in which certain terms and conditions of the procurement that cannot be established with sufficient precision when the framework agreement is concluded are to be established or refined through a second-stage competition;

(v) “Framework agreement procedure without second-stage competition” means a procedure under a closed framework agreement in which all terms and conditions of the procurement are established when the framework agreement is concluded.

### Article 58. Award of a closed framework agreement

1. The procuring entity shall award a closed framework agreement:

(a) By means of open-tendering proceedings, in accordance with provisions of chapter III of this Law, except to the extent that those provisions are derogated from in this chapter; or

(b) By means of other procurement methods, in accordance with the relevant provisions of chapters II, IV and V of this Law, except to the extent that those provisions are derogated from in this chapter.

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<sup>93</sup> Full text of Model Law and a Guide to Enactment that explains how to use the Model Law are available at <https://uncitral.un.org/en/texts/procurement>.

2. The provisions of this Law regulating pre-qualification and the contents of the solicitation in the context of the procurement methods referred to in paragraph 1 of this article shall apply mutatis mutandis to the information to be provided to suppliers or contractors when first soliciting their participation in a closed framework agreement procedure. The procuring entity shall in addition specify at that stage:

- (a) That the procurement will be conducted as a framework agreement procedure, leading to a closed framework agreement;
- (b) Whether the framework agreement is to be concluded with one or more than one supplier or contractor;
- (c) If the framework agreement will be concluded with more than one supplier or contractor, any minimum or maximum limit on the number of suppliers or contractors that will be parties thereto;
- (d) The form, terms and conditions of the framework agreement in accordance with article 59 of this Law.

3. The provisions of article 22 of this Law [Acceptance of the successful submission and entry into force of the procurement contract] shall apply mutatis mutandis to the award of a closed framework agreement.

### **Article 59. Requirements for closed framework agreements**

1. A closed framework agreement shall be concluded in writing and shall set out:

- (a) The duration of the framework agreement, which shall not exceed the maximum duration established by the procurement regulations;
- (b) The description of the subject matter of the procurement and all other terms and conditions of the procurement established when the framework agreement is concluded;
- (c) To the extent that they are known, estimates of the terms and conditions of the procurement that cannot be established with sufficient precision when the framework agreement is concluded;
- (d) Whether, in a closed framework agreement concluded with more than one supplier or contractor, there will be a second-stage competition to award a procurement contract under the framework agreement and, if so:
  - (i) A statement of the terms and conditions of the procurement that are to be established or refined through second-stage competition;

- (ii) The procedures for and the anticipated frequency of any second-stage competition, and envisaged deadlines for presenting second-stage submissions;
  - (iii) The procedures and criteria to be applied during the second-stage competition, including the relative weight of such criteria and the manner in which they will be applied, in accordance with articles 10 [Rules concerning description of the subject matter of the procurement and the terms and conditions of the procurement] and 11 [Rules concerning evaluation criteria and procedures] of this Law. If the relative weights of the evaluation criteria may be varied during the second-stage competition, the framework agreement shall specify the permissible range;
  - (e) Whether the award of a procurement contract under the framework agreement will be to the lowest-priced or to the most advantageous submission; and
  - (f) The manner in which the procurement contract will be awarded.
2. A closed framework agreement with more than one supplier or contractor shall be concluded as one agreement between all parties unless:
- (a) The procuring entity determines that it is in the interests of a party to the framework agreement that a separate agreement with any supplier or contractor party be concluded;
  - (b) The procuring entity includes in the record required under article 25 of this Law [Documentary record of procurement proceedings] a statement of the reasons and circumstances on which it relied to justify the conclusion of separate agreements; and
  - (c) Any variation in the terms and conditions of the separate agreements for a given procurement is minor and concerns only those provisions that justify the conclusion of separate agreements.

3. The framework agreement shall contain, in addition to information specified elsewhere in this article, all information necessary to allow the effective operation of the framework agreement, including information on how the agreement and notifications of forthcoming procurement contracts thereunder can be accessed and appropriate information regarding connection, where applicable.

### **Article 60. Establishment of an open framework agreement**

1. The procuring entity shall establish and maintain an open framework agreement online.
2. The procuring entity shall solicit participation in the open framework agreement by causing an invitation to become a party to the open framework

agreement to be published following the requirements of article 33 of this Law [Solicitation in open tendering, two-stage tendering and procurement by means of an electronic reverse auction].

3. The invitation to become a party to the open framework agreement shall include the following information:

- (a) The name and address of the procuring entity establishing and maintaining the open framework agreement and the name and address of any other procuring entities that will have the right to award procurement contracts under the framework agreement;
- (b) That the procurement will be conducted as a framework agreement procedure leading to an open framework agreement;
- (c) The language (or languages) of the open framework agreement and all information about the operation of the agreement, including how the agreement and notifications of forthcoming procurement contracts thereunder can be accessed and appropriate information regarding connection;
- (d) The terms and conditions for suppliers or contractors to be admitted to the open framework agreement, including:
  - (i) A declaration pursuant to article 8 of this Law [Participation by suppliers or contractors];
  - [(ii) If any maximum limit on the number of suppliers or contractors that are parties to the open framework agreement is imposed in accordance with paragraph 7 of this article, the relevant number and the criteria and procedure, in conformity with paragraph 7 of this article, that will be followed in selecting it;]
  - (iii) Instructions for preparing and presenting the indicative submissions necessary to become a party to the open framework agreement, including the currency or currencies and the language (or languages) to be used, as well as the criteria and procedures to be used for ascertaining the qualifications of suppliers or contractors and any documentary evidence or other information that must be presented by suppliers or contractors to demonstrate their qualifications in conformity with article 9 of this Law [Qualifications of suppliers and contractors];
  - (iv) An explicit statement that suppliers or contractors may apply to become parties to the framework agreement at any time during the period of its operation by presenting indicative submissions, subject to any maximum limit on the number of suppliers or contractors and any

declaration made pursuant to article 8 of this Law [Participation by suppliers or contractors];

- (e) Other terms and conditions of the open framework agreement, including all information required to be set out in the open framework agreement in accordance with article 61 of this Law [Requirements for open framework agreements];
- (f) References to this Law, the procurement regulations and other laws and regulations directly pertinent to the procurement proceedings, including those applicable to procurement involving classified information, and the place where those laws and regulations may be found;
- (g) The name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the procurement proceedings without the intervention of an intermediary.

4. Suppliers or contractors may apply to become a party or parties to the framework agreement at any time during its operation by presenting indicative submissions to the procuring entity in compliance with the requirements of the invitation to become a party to the open framework agreement.

5. The procuring entity shall examine all indicative submissions received during the period of operation of the framework agreement within a maximum of ... working days [the enacting State specifies the maximum period of time], in accordance with the procedures set out in the invitation to become a party to the open framework agreement.

6. The framework agreement shall be concluded with all qualified suppliers or contractors that presented submissions unless their submissions have been rejected on the grounds specified in the invitation to become a party to the open framework agreement.

[7. The procuring entity may impose a maximum limit on the number of parties to the open framework agreement only to the extent that capacity limitations in its communications system so require, and shall select the suppliers or contractors to be parties to the open framework agreement in a non-discriminatory manner. The procuring entity shall include in the record required under article 25 of this Law [Documentary record of procurement proceedings] a statement of the reasons and circumstances upon which it relied to justify the imposition of such a maximum limit.]

8. The procuring entity shall promptly notify the suppliers or contractors whether they have become parties to the framework agreement and of the reasons for the rejection of their indicative submissions if they have not.

## **Article 61. Requirements for open framework agreements**

1. An open framework agreement shall provide for second-stage competition for the award of a procurement contract under the agreement and shall include:

- (a) The duration of the framework agreement;
- (b) The description of the subject matter of the procurement and all other terms and conditions of the procurement known when the open framework agreement is established;
- (c) Any terms and conditions of the procurement that may be refined through second-stage competition;
- (d) The procedures and the anticipated frequency of second-stage competition;
- (e) Whether the award of procurement contracts under the framework agreement will be to the lowest-priced or the most advantageous submission;
- (f) The procedures and criteria to be applied during the second-stage competition, including the relative weight of the evaluation criteria and the manner in which they will be applied, in accordance with articles 10 [Rules concerning description of the subject matter of the procurement and the terms and conditions of the procurement] and 11 [Rules concerning evaluation criteria and procedures] of this Law. If the relative weights of the evaluation criteria may be varied during second-stage competition, the framework agreement shall specify the permissible range.

2. The procuring entity shall, during the entire period of operation of the open framework agreement, republish at least annually the invitation to become a party to the open framework agreement and shall in addition ensure unrestricted, direct and full access to the terms and conditions of the framework agreement and to any other necessary information relevant to its operation.

## **Article 62. Second stage of a framework agreement procedure**

1. Any procurement contract under a framework agreement shall be awarded in accordance with the terms and conditions of the framework agreement and the provisions of this article.

2. A procurement contract under a framework agreement may be awarded only to a supplier or contractor that is a party to the framework agreement.

3. The provisions of article 22 of this Law [Acceptance of the successful submission and entry into force of the procurement contract], except for

paragraph 2, shall apply to the acceptance of the successful submission under a framework agreement without second-stage competition.

4. In a closed framework agreement with second-stage competition and in an open framework agreement, the following procedures shall apply to the award of a procurement contract:

- (a) The procuring entity shall issue a written invitation to present submissions, simultaneously to:
  - (i) Each supplier or contractor party to the framework agreement; or
  - (ii) Only to those suppliers or contractors parties to the framework agreement then capable of meeting the needs of that procuring entity in the subject matter of the procurement, provided that at the same time notice of the second-stage competition is given to all parties to the framework agreement so that they have the opportunity to participate in the second-stage competition;
- (b) The invitation to present submissions shall include the following information:
  - (i) A restatement of the existing terms and conditions of the framework agreement to be included in the anticipated procurement contract, a statement of the terms and conditions of the procurement that are to be subject to second-stage competition and further detail regarding those terms and conditions, where necessary;
  - (ii) A restatement of the procedures and criteria for the award of the anticipated procurement contract, including their relative weight and the manner of their application;
  - (iii) Instructions for preparing submissions;
  - (iv) The manner, place and deadline for presenting submissions;
  - (v) If suppliers or contractors are permitted to present submissions for only a portion of the subject matter of the procurement, a description of the portion or portions for which submissions may be presented;
  - (vi) The manner in which the submission price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes;
  - (vii) Reference to this Law, the procurement regulations and other laws and regulations directly pertinent to the procurement proceedings,

including those applicable to procurement involving classified information, and the place where those laws and regulations may be found;

- (viii) The name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the second-stage competition without the intervention of an intermediary;
  - (ix) Notice of the right provided under article 64 of this Law [Right to challenge and appeal] to challenge or appeal decisions or actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Law, together with information about the duration of the applicable standstill period and, if none will apply, a statement to that effect and the reasons therefor;
  - (x) Any formalities that will be required once a successful submission has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract pursuant to article 22 of this Law [Acceptance of the successful submission and entry into force of the procurement contract];
  - (xi) Any other requirements established by the procuring entity in conformity with this Law and the procurement regulations relating to the preparation and presentation of submissions and to other aspects of the second-stage competition;
- (c) The procuring entity shall evaluate all submissions received and determine the successful submission in accordance with the evaluation criteria and the procedures set out in the invitation to present submissions;
  - (d) The procuring entity shall accept the successful submission in accordance with article 22 of this Law [Acceptance of the successful submission and entry into force of the procurement contract].

### **Article 63. Changes during the operation of a framework agreement**

During the operation of a framework agreement, no change shall be allowed to the description of the subject matter of the procurement. Changes to other terms and conditions of the procurement, including to the criteria (and their relative weight and the manner of their application) and procedures for the award of the anticipated procurement contract, may occur only to the extent expressly permitted in the framework agreement.

## Annexure-3: FAQs on setting up and operating FAs using UNCITRAL Model Law<sup>94</sup>

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### 1. What are the key points in choosing how many suppliers to admit to an FA?

Choosing between single and multi-supplier agreements reflects balancing value-for-money considerations and administrative efficiency in the context of the market and procuring entity's needs. Key points for consideration include:

#### **Single Supplier:**

- Award of entire business to one supplier generates economies of scale (e.g. price discounts) if there is a clear understanding of the extent of the procuring entity's needs
- Extent of discount may increase if the procuring entity's needs are for a significant quantity of the market and if there is commitment to purchase (minimum quantities, or entire needs, i.e. exclusive purchasing agreement)
- As much transparency about needs as possible will also help generate discounts, including confirming maximum quantities, frequency of orders, delivery terms as far as possible, and providing the best estimates available
- Requires effective planning, and certainty about the procuring entity's needs at the first stage (no subsequent competition or revision of offer)
- Can include an e-catalogue allowing for bundles of related items
- If one supplier can fulfil all anticipated needs and can provide security of supply (including surge in demand)
- Assess risks of "all eggs in one basket"
- Market should be stable (i.e. what market offers should not change)
- If market moves, may no longer offer good commercial terms
- Appropriate duration will be key
- Is relatively inflexible

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<sup>94</sup> For more contextual information on the implementation of the Model Law, see the Guide to Enactment, available at [https://uncitral.un.org/en/texts/procurement/modellaw/public\\_procurement/guide](https://uncitral.un.org/en/texts/procurement/modellaw/public_procurement/guide).

- Unless an exclusive purchasing agreement, that the procuring entity will be able to purchase outside the FA if market conditions change
- If not used as anticipated, may have negative impact on procuring entity's credibility and suppliers' confidence in the procuring entity, and so on any future procurements in the area.

### **Multi-Supplier:**

- Allows for the best supplier to be determined at the second stage, i.e. when the procuring entity's needs arise (through second-stage competition or through applying the terms of the FA to identify the best supplier, including through bundling)
- Planning process needs to consider the extent of second-stage competition for Models 2 and 3 FAs. For Model 2 agreements, the greater the extent of second-stage competition, the more administratively complex and lengthy the second-stage competition will be, the less predictable the first-stage offers will be of the final result (and the less beneficial first-stage competition will be)
- This situation is always the case with the indicative pricing and lack of first-stage competition that Model 3 FAs involve. In either case, effective budgeting may be more difficult than in Model 1 FAs
- Identifying the right number of suppliers to be included in a Model 2 FA to ensure effective competition at the second stage requires careful consideration of the market at the planning stage
- More flexible than single-supplier agreements, so can accommodate less certain needs or needs that vary or require refinement during the duration of the FA, and dynamic, volatile or developing markets where there is second-stage competition
- Offer value-for-money benefits where there is effective second-stage competition but as each supplier has less certainty about the extent of its likely orders, price discounts may be lower than in Model 1 FAs
- Allow for security of supply and diversity of supply sources where there are doubts that a single supplier can meet the entire needs of the procuring entity
- Allow for centralized purchasing as procuring entities' needs commonly vary.

## How many suppliers should there be in a multi-supplier FA?

- Under Model 3 FAs, the procuring entity cannot limit the numbers of suppliers admitted to the framework agreement itself – all qualified and responsive suppliers must be admitted
- Under Model 2 FAs, it is inherent in the nature of a closed FA that the procuring entity will limit the number of suppliers admitted to the framework agreement itself
- So one relevant consideration in choosing between Models 2 and 3 FA is whether a maximum number should be included. Doing so may be appropriate in a very competitive market in which there will be up to hundreds of qualified, responsive suppliers. Including all or most in these circumstances would not improve competition in practice (as economic theory indicates); would be administratively cumbersome and perhaps defeat the purpose of the FA. Additionally, unless each supplier has a realistic chance of winning a contract, it may not be encouraged to put in competitive offers from the price and quality perspective
- The procuring entity should also consider whether there should be a minimum number of suppliers by reference to its needs and the market at issue. A minimum might be needed to ensure security of supply in the context of the procurement concerned; to ensure effective competition at the second stage (bearing in mind the risks of collusion, the experience in request-for-quotations procedures, and the possibility that one or more suppliers may leave the procurement market or the market as a whole)
- If a maximum or minimum is to apply, it must be included in the solicitation documents (and the procurement record). Where there is a maximum, the solicitation documents should include the criteria and procedures for identifying the “best” suppliers. While having a simple number for the maximum appears straightforward, the procuring entity may have difficulty distinguishing suppliers and be at risk of challenge from those just below the cut-off point, and so a range from x to y could be helpful. Where there is to be a minimum, which could also be a defined number or a more flexible approach, the procuring entity should include in the solicitation documents what would happen if there are insufficient qualified and responsive suppliers at the first stage.

2. Are there any circumstances in which only some suppliers that are parties to the FA can be invited to compete for an order at the second stage?

This question is relevant for Model 2 and 3 FAs because there is a competitive second stage:

- At the second stage, under both Models, as a general rule, the procuring entity must invite all suppliers that are parties to the FA to take part in the mini-competition
- However, if not all suppliers are “capable of meeting the needs” of the procuring entity at the time of the second stage, the procuring entity can invite just those that are “capable”
- Relevant issues for assessing whether suppliers are capable include quantities (some suppliers may have indicated a maximum order); some may not be able to fulfil certain bundling arrangements or combinations; delivery locations may exclude some suppliers. All exclusions must be objectively justifiable and included in the record of the procurement
- Suppliers have a right to participate if they are capable, so the procurement officials should not exclude any marginal suppliers – otherwise, the decision may be challenged, delaying the entire process.

3. Can another procuring entity use an FA that we have set up?

- To meet transparency requirements, the procuring entities that can use the FA should be set out in the solicitation documents (and the law should include such a requirement). “Newjoiners” (in terms of procuring entities) would therefore not be permitted, and the invitation to tender or equivalent for all Models of FA must set out the name and address of the relevant procuring entity or entities where there is centralized purchasing. The policy reason behind this relatively inflexible stance is to provide appropriate certainty to suppliers (with the benefits noted above), recalling that different procuring entities may be differently viewed in terms of reliability and credibility by suppliers, who may offer different prices accordingly. Experience indicates that where there are such differences, prices tend towards reflecting the average or even the least reliable and credible, a point to be considered when setting up centralized purchasing arrangements.

#### 4. Should an FA be for a small number of related items? How broad should the description be at the first stage?

- This is a key design question and links the type of market, needs and Model of FA
- The law should provide that no material change to the description of the subject-matter of the FA can be made during the operation of the FA, to ensure that the initial terms of solicitation remain relevant so as to ensure effective competition and transparency
- Unrelated items may only be combined if it makes sense to do so
- Detailed technical specifications are inflexible and may limit the usefulness of the FA, so functional descriptions are generally preferable. They also help in counteracting the static nature of the FA, allowing for some technological developments (provided that the description of the subject-matter of the FA remains current)
- FAs in some systems, such as the United States at the federal level, may be concluded for a very broad category of procurement (e.g. “ICT equipment and associated services”), meaning that first-stage offers are not predictive of the final result. The effect is that all meaningful competition is at the second stage. From this perspective, the cost-benefit analysis of engaging in competition (rather than a responsiveness and qualification assessment) is likely to be negative. In addition, where the needs are so broadly expressed, there may be little benefit in any meaningful responsiveness assessment, and many qualification criteria may need to be re-checked. In these cases, a Model 3 framework would be the only appropriate option. Also, the procuring entity should be clear that there will be sufficient use of the FA – that there are sufficient repeated purchases – to justify the administrative overhead of running a procedure with two procedurally substantive stages, rather than procuring sequentially through other methods designed for low-value purchases (assuming that those methods are sufficiently transparent and competitive)
- The Models of FAs described in this Chapter generally imply narrower ranges of goods and services, which increases the likelihood of repeat purchases, narrows the field of qualified and responsive suppliers, and allows for more effective planning and budgeting
- In general terms, the more precise the description of the needs of the procuring entity (and the less the needs and market will vary during the term of the FA), the more first-stage competition will be

predictive of the final result, and the narrower any second-stage competition will be. A narrower or more precise description allows for standardization. Full standardization, meaning that a precise and technical description is available and appropriate, indicates that a Model 1 FA may be beneficial

- Where the core elements are standardized, but refinements are needed to meet individual procuring entities' needs (in centralized purchasing) or where some aspects of the needs vary (different bundles, delivery locations and times, for example), then a Model 2 framework is more appropriate. The more aspects of the procurement and/or market vary, the more likely it is that a Model 3 framework with a looser initial description and greater bundling possibilities will be appropriate
- Where there are bundling provisions, allowing partial offers (i.e. suppliers can offer some elements but not all) may be appropriate, though can make the second-stage competition more complex to run
- Grouping related items and refining terms at the second stage can be particularly helpful for emergency procurement planning (see also comments above about combined Model 1 and Model 2 FAs).

5. If the default rule is that second-stage prices must be lower than first-stage prices, how do we handle fluctuating markets e.g. commodities?

- This is a default rule, and is designed to protect the procuring entity from increased prices and reduced quality at the second stage, which would obviously compromise value for money and security of supply
- However, it can be varied where appropriate. Where the subject-matter is subject to price or currency fluctuations, or the combination of service-providers may vary, it may be counter-productive to try to set a ceiling price at the outset
- Prices need not be expressed in strict currency value, but can be set using a price adjustment mechanism linked to market benchmarks (e.g. daily spot price for oil), with a discount or additional element where appropriate
- Price volatility can therefore be addressed in a Model 1 FA through such a mechanism, or in Model 2 and 3 FAs through second-stage competition
- The procurement record would explain the need for not using fixed prices and an alternative mechanism selected, to allow for effective oversight.

6. Do the evaluation criteria have to be the same at both stages? Can we vary the evaluation criteria at the second stage?

- As it is the second stage that awards the procurement contract, having well-designed and appropriately-applied evaluation criteria is critical
- The Model Law requires the FA to set out whether the award at the second stage will be made to the lowest-priced or most advantageous offer, and all the evaluation criteria
- The basis of the award will normally, but need not, be the same as that for the first stage; for example, the procuring entity may decide that the first stage should select the most advantageous suppliers, but at the second stage, the lowest-priced responsive offer will be awarded the contract. In this context, the “best” suppliers are all considered to provide sufficient quality in their offers
- If the first-stage evaluation criteria limits flexibility at the second stage, a second-stage competition may not be effective in practice (and a Model 1 FA may be the better solution)
- On the other hand, the use of vague or broad evaluation criteria at the first stage can involve the risk of manipulation of relative weights or process to favor a particular supplier or suppliers at the second stage, and the use of unrelated or widely diverging criteria at each stage makes little commercial sense
- A balance is therefore needed, and it is recommended that the law or implementing rules should require the second-stage evaluation criteria to be disclosed at the first stage, with limited flexibility to vary or give greater precision to the first-stage evaluation criteria at the second stage
- More specifically, the rules should allow relative weights of the evaluation criteria at the second stage to be varied within a pre-established range or matrix set out in the FA and the solicitation documents – this preserves transparency while allowing flexibility
- This approach also accommodates the fact that multiple purchasers and/or a centralized purchasing agency might set up and/or use an FA, with different relative weights to suit their individual evaluation criteria
- It also accommodates FAs of longer duration.

## 7. Can we use a rotation method for purchase orders to keep suppliers interested?

- Under most legal rules, a procurement contract (second stage of an FA or generally) can be awarded only to the lowest-priced technically acceptable supplier or to the supplier with the most advantageous tender, reflecting price and non-price evaluation criteria
- The listed non-price evaluation criteria relate to the characteristics of the goods or services, the quality of the personnel in some procurement methods and socio-economic criteria (including margins of preference). Most systems limit non-price evaluation criteria either by requiring them to relate to the subject-matter of the contract or through a list of permissible criteria, which is unlikely to allow rotation of winning suppliers to be a “normal” evaluation criterion
- A way to allow for rotation as an evaluation criterion is therefore as an exceptional measure, which needs legal provision. One way of achieving this would be to allow socio-economic or sustainability evaluation criteria to ensure a fair spread of contracts. This is also a complex issue, and requires in-depth consideration
- Setting a maximum award amount for suppliers (i.e. preventing them from receiving more than a proportion of contracts or call-offs) can also be considered as part of the terms of the solicitation or FA<sup>95</sup>, but doing so also raises challenges in terms of ensuring effective competition and is also a complex approach.

## 8. If a supplier leaves a closed FA or stops participating, can we replace it?

- Only in a Model 3 (open) FA, thus highlights the need for assessing the need for any minimum and maximum number of possible suppliers at the planning stage in other Models.

## 9. How can we address the risks of corruption and collusion in a closed FA?

- The standard tools to prevent fraud and corruption in public procurement are, of course, highly relevant: good planning, transparency, monitoring; building capacity on the preventive side, and sanctions as appropriate on the enforcement side

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<sup>95</sup> There is a lot of discussion about the pros and the cons of the “rotation” award criterion at the second stage or the opportunity of splitting the overall value of the FA into shares and allocating them to the awardees according to the logic that the highest-ranked awardee receives the biggest share, the second-ranked awardee receives the second-biggest share etc.

- The scale of FAs offers strong interests and greater temptations
- From the planning side, avoiding excessive qualification requirements or restrictive specifications that limit access to the FA can favor collusion, especially in the context of closed FAs
- The bigger risks are at the second stage of Model 2 FAs, which in effect create an oligopolistic market, in which the participants know each other and can therefore price-signal – so collusion is relatively easy to initiate and maintain as compared with some other procurement tools
- Demand predictability and lack of substitutes can facilitate collusion
- In terms of mitigation strategies, the discussion above on ensuring sufficient participation in the FA is important in this context, as is monitoring outcomes (reduced participation in the mini-competition and unusual spreads of offers can indicate collusion), and insufficiently rigorous contract management can allow for under-delivery
- As elsewhere, transparency is an important tool, so designing and planning FAs should determine and then publicize functional specifications and clear evaluation criteria in order to avoid false representation of the FAs mechanism in the public
- Using the most advantageous tender as the evaluation basis can reduce predictability for second-stage competition (but may be reflected in ultimate prices)
- Liaison with competition authorities, business support agencies and business associations can assist in developing appropriate mitigation strategies.

#### 10. How long should an FA last?

- The EU Procurement Directive limits FAs to a legal maximum of four years' duration. The UNCITRAL Model Law provides for a legal maximum duration for closed FAs (Models 1 and 2), which the Guide to Enactment recommends be somewhere between 3 and 5 years (sufficiently long to cover the costs of setting up the procedure and allowing for its benefits to accrue)
- There need be no legal maximum duration for open FAs, because their openness allows for additional entrants and renewed competition, but they should be concluded for a fixed duration both for transparency reasons and to allow for a full market competition on a periodic basis

- Financial and budget procedures in a country may prevent FAs that extend over one financial or budgeting period
- This is a maximum, and should not be confused with an appropriate duration
- There is no “right” appropriate duration of general relevance – the rule of thumb is that it should last for no longer than the period in which significant market developments can be expected
- The period also should be assessed taking into account that there can be no material change to the description of the subject-matter of the FA (as discussed in FAQ).

#### 11. Can we extend an FA?

- The law should not allow extensions to concluded FAs or exemptions from the prescribed maximum duration, to avoid the risk of abuse and favoritism
- There may be a wish to provide for extensions in exceptional circumstances, in which case transparency is key. Clear regulations and guidance will be required to ensure that any extensions are of short duration and limited scope, and available only where certain conditions are satisfied. For example, new procurements may not be justified in cases of a natural disaster or restricted sources of supply, when the public may be able to benefit from the terms and conditions of an existing FA
- For the same reasons, the award of a lengthy or sizeable purchase order or procurement contract towards the end of the validity of the FA should be avoided, not only because of the risk of abuse, but also because procuring entities may be procuring outdated or excessively priced items.

#### 12. If the market changes during the duration of the FA, can we amend the specifications or substitute items?

- Essentially, no. As noted above, the law should prohibit any change in the description of the subject-matter of the procurement as it would mean the original solicitation is no longer accurate. New suppliers might be interested, and the principle of fair treatment requires a new procurement procedure where the description so alters
- Allowing significant changes would also risk abuse
- Consequently, changes to the evaluation criteria at the second stage (which are designed to allow limited flexibility) must not by implication



change the overall description (e.g. if minimum quality characteristics were effectively waived)

- The use of functional descriptions as noted above can mitigate against the inflexibility of this provision
- Overly broad or vague descriptions to avoid inflexibility can compromise the integrity of the procedure (e.g. they may allow the FA to be used for administrative convenience and not for its intended purpose).

## Annexure-4: Legal and Regulatory Fitness Check for FAs

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Although some systems operated some types of FAs without express legal authorization, there are several common provisions in public procurement laws that are not compatible with the models of FAs we are considering (as described in Chapter 2), and additional provisions to ensure that they can operate effectively may be lacking.

Consequently, a “framework-readiness assessment” should be undertaken to ensure that FAs procedures can be operated effectively in the system under consideration. This Section will run through that assessment. It is assumed that all three Models of FAs will be provided for under the relevant law.

The starting-point is certain key features of a traditional procurement procedure that are provided for in public procurement laws. Given the scale of an FA, the analysis is based on open tendering or open competitive bidding (in EU terms, the open procedure), and assumes that there are no eligibility restrictions. These key features revolve around transparency requirements, which require the procuring entity to determine, before commencing the procedure, and then to publish in the invitation to tender and/or solicitation documents, the following items (among other standard-form requirements, such as notification of currency to be used):

1. Qualification criteria and how they will be applied
2. Description of the procuring entity’s needs, including specifications, minimum technical requirements for bids to be considered responsive, quantity of goods/services, time and location of delivery, terms of the procurement contract to the extent known, how to present price, criteria for assessing responsiveness
3. Evaluation criteria and how they will be applied, including whether the winning supplier is to be selected on the basis of the “most (economically) advantageous tender” or “lowest-price responsive bid”
4. Tender submission place and deadline.

Common standard provisions for open tendering or its equivalent state that, after examining and evaluating the tenders, the procuring entity shall accept the successful tender, and that the procurement contract comes into force when the notice of acceptance is sent to the winning supplier, generally after a standstill period. Thereafter a contract award notice is issued.

These rules and procedures sit awkwardly with the above Models of FAs because they do not envisage a two-stage procedure. Questions include:

- Do the rules cover the first and/or second stages of the procedure?
- Is the FA and/or Is a purchase order or second-stage award a procurement contract?
- How can the solicitation documents set out a fixed quantity for the subject-matter of the procurement, and precise delivery terms (quantity or quantities, date(s), location(s))? (Clearly, many of these elements will not be known in the FAs context.)
- Can procuring entities award a contract to more than one supplier? (The definition of a procurement contract may imply or state that only one supplier can be awarded the contract, effectively ruling out multi-supplier FAs.)
- Can there be more than one round of bidding, which would be required for second-stage competition? (The reference to a single tender deadline implies only one round of bidding, so second-stage competition will be excluded.)
- How are prices and the winning supplier to be determined at the first stage if there is to be second-stage competition?
- Where standstill and contract award notices are required only above a certain threshold, how are quantities to be treated? Must they be aggregated, or should each purchase order be counted separately?
- Will standstill periods apply to either or both stages? If to each purchase order at the second-stage, the speed of the procedure may be compromised.

Although some Models of FA could arguably be operated under traditional procedures, the safer course is to include dedicated legal rules for the system, so that these and related questions have clear answers. These rules can be found in the primary procurement law and/or secondary rules, decrees, and so forth. An initial question is in which of these categories of legal rule the provisions on FAs should be located.

The purpose of a primary procurement law is to provide all the *essential procedures and principles* for procurement in the relevant country. In the FAs context, the provisions at this level should enable the use of FAs, and set out clear rules that ensure that the procedures are transparent, competitive and promote integrity in the process (as all procurement systems should do, under the requirements of the United Nations Convention against Corruption). It is

important not to overburden the primary law with too much detail: more detailed rules that can provide clarity in how the primary law should operate in practice can be set out in supporting regulations, internal rules and guidance, which can be revised and updated as experience is gained, without requiring new Parliamentary approvals (which amendments to primary laws require). As FAs procedures are relatively novel techniques, and as many of the issues they raise in practice are market-related rather more often than law-related, guidance and other capacity-building tools will be very important to develop good practices. Guidance – such as Ministry standards – are not appropriate for the legal rules of the system, but should supplement and explain how to use those rules. The standard bidding documents and materials from the World Bank (available at its website – links provided in Annexure-7) can be helpful in this regard as the underpinning rules are very similar to those in the EU Directive and the UNCITRAL Model Law. Rules and procedures set out what the procurement officials must, must not and can do, and guidance, skills and experience will advise him or her on what is the best option.

## Annexure-5: FA-level Case Studies

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There are many reasons FAs can fail e.g. from lack of internal ownership within the organization letting the agreement to commissioning stakeholders having strong views about which suppliers they want to use only to find these suppliers have been unsuccessful in being awarded FA. Similarly, there are many factors contributing to success of an FA.

A few mini case studies have been included in this section to illustrate success and failure of some FAs from U.K. and Ukraine:

### **FAs by Southern Universities Procurement Consortium (SUPC), UK**

SUPC lets 15 large FAs which are available to all tertiary education institutions in the South of England, and through reciprocal arrangements, to other University purchasing groups across the country. SUPC estimates that 14 of these 15 FAs are very successful.

The FA, which is considered unsuccessful, is an agreement for Asbestos Consultancy and Removal Services. One of the main reasons this FA is unsuccessful is that there are lots of other FAs for the same or similar services available for the organizations within the consortium to utilize. The effects of this are two-fold. Firstly, the purchasing institutions can shop around the various contracting options to find one that includes their preferred suppliers, has terms and conditions preferable to the purchaser or is more suitable to their ways of working. Secondly, since FAs for these services are very common, the suppliers do not see it as a valuable route to market and may not offer their best terms or may decline to participate entirely.

One of SUPC's most successful FAs is for Books and Periodicals. Their agreement is the only framework available to consortium members for these products. This means that the suppliers are desperate to be awarded the agreement as it is the only route to market, and it means that all members of the consortia make use of the agreement.

The key difference between the two agreements, is the level of engagement from consortium members in the set-up stage. In the example of the Asbestos Consultancy and Removal Services, the agreement was initially requested by a single institution. It was commissioned without the appropriate level of research into whether it would be utilized across the group more widely. In contrast, the Books and Periodicals agreement was designed specifically to fill a noticeable gap and with very active participation from across the library sector. This has resulted in the institutions feeling a sense of ownership over the agreement and taking a keener interest in supplier management through its lifetime. This feeling of ownership is lacking for the Asbestos Consultancy and Removal Services agreement as once the tender was commissioned it was run entirely by the SUPC buyers with far less stakeholder engagement in the process.

Obviously, the assessment of a successful versus an unsuccessful FA has much to do with how you measure success. The most common measure, and the measure used in the examples listed above, is value of spend ground through the agreement. However, that measure can be misleading. For example, the SUPC FA for Travel Management was tendered with a predicted spend of circa. £250m per year. It was expected to be the first of the SUPC FAs to broach the £1 billion mark through its lifetime. The tender was concluded in August 2019, just before the Global COVID-19 pandemic struck. The pandemic has significantly impacted the use of the FA for many reasons, including travel bans from and to multiple countries in the last year and general disruption to the air travel market. Therefore, the spend under this FA has not reached anywhere near the projection and is closer to £15m than the £250m expected. Initially some lots even experienced negative spend due to the numbers of refunds that were processed.

It would be reasonable to conclude that this is an unsuccessful FA if simply looking at the value of spend. However, SUPC feels that this is still a very successful FA, both from the point of view of the suppliers and the commissioning bodies. Suppliers on this FA are experiencing one of the worst periods their businesses have ever endured. They are therefore enthusiastic to receive any business under the agreement and understanding of the extenuating circumstances surrounding its use over the past year. For the services users, it is the nature of the solutions offered and the extra support provided at this time from the supplier base on this agreement that provides the value for money. Many of the academics calling down the services from this agreement are heading into conflict areas, humanitarian camps or remote settlements. It is the services above and beyond basic travel agency services, such as the traveler tracking apps, specially negotiated academic fares and extra baggage allowances for specialist equipment which make this a highly successful and valued FA.

### **FAs by Ukrainian Post**

From 2019 Ukrainian Post became most successful pioneer of FAs for purchasing of fuel (diesel, benzine), gas, electricity, paper, insurance services etc. Notable success stories are FAs for purchasing fuel, gas and electricity.

Prices for fuel in Ukraine are very volatile and can change even between evaluation/award and contract conclusion so multi-vendors FAs for 2-3 years with well-defined price adjustment mechanism is best solution allowing to react immediately on price changes having all main market players in agreement for fast mini-competition. Ukrainian Post (using approximately 2500 vehicles requiring fuel) conducts mini-competition within FA for fuel every 10 days and issues contract in next 1-2 days.

In case of electricity and gas for heating (these markets were liberalized in Ukraine in 2019) which are not very volatile markets and partially are based on tariffs and license regulation, FAs work differently – still multi-supplier

agreement but with length of 4 years (allowed maximum) and mini-competition annually (or earlier in case the current supplier cannot perform contract obligations). So idea here is to secure few reliable suppliers to have uninterrupted supply of such important items for 12000 post offices throughout all country.

Main factors of success are as follows:

- Requirement of huge volumes by Ukrainian Post make its FAs very attractive for largest and most reliable market players encouraging them to propose good competitive conditions;
- Convenient e-FA interface and process implemented in national e-procurement system PROZORRO;
- Skillful and centralized FA management by Procurement department of Ukrainian Post Headquarter.

### **FAs by Odesa City Municipality (Department of Education), Ukraine**

In late autumn 2019 Odesa Municipality announced more than 70 open tenders for setting-up FAs with 4 years duration for different food products for schools and kinder gardens of the city with estimated value of around 40 Million US\$. Despite the fact that food products market is very competitive in Ukraine, in these particular cases tender conditions appear to favor certain companies restricting competition and better prices. Civil society activists could find out that all these companies are well interconnected with each other having accounts in same bank, offices in same building, leasing trucks from each other etc. All these signs of possible collusion were publicized and referred to Ukrainian competition body for investigation. Due to this pressure (civil society plays effective and influential monitoring and watch-dog roles in Ukraine) supplemented by strong attention of control and law enforcement bodies; Odesa municipality finally cancelled all these tenders.

Possible factors for failure in this case are:

- Restrictive tender conditions limiting competition;
- Poor procurement strategy, for example 70 FAs with cumulative value of US\$ 40 Million seem too much, discouraging market and complicating procurement process and contract management.

There are similar cases in other countries, where the FAs have been declared null and void due to problems in procurement process including by courts.<sup>96</sup>

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<sup>96</sup> [https://uk.practicallaw.thomsonreuters.com/7-383-9356?\\_lrTS=20200901204509092&transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/7-383-9356?_lrTS=20200901204509092&transitionType=Default&contextData=(sc.Default)&firstPage=true)

## Annexure-6: WTO GPA and FA

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The Agreement on Government Procurement (GPA) is a plurilateral agreement within the framework of the WTO, meaning that not all WTO members are parties to the Agreement. At present, the Agreement has 21 parties comprising 48 WTO members. Thirty-five WTO members/observers participate in the Committee on Government Procurement as observers. Out of these, 11 members are in the process of acceding to the Agreement. GPA aims to ensure fair, transparent and non-discriminatory conditions of competition for purchases of goods, services and construction services by the public entities covered by the Agreement. These principles are reflected in the following main elements of the Agreement's text:

- national treatment and non-discrimination — for covered procurement
- minimum standards regarding national procurement procedures - these provisions codify recognized international best practices in the area of government procurement
- transparency of procurement-related information.

Only those procurement activities that are carried out by covered entities purchasing listed goods, services or construction services of a value exceeding specified threshold values are covered by the Agreement.

### **Potential applications of GPA to FA**

FAs are used by many of the current GPA Parties, as well as in many other developed and developing countries, and in fact account for a significant proportion of overall procurement activity in many countries. While capable of generating important transactional efficiencies and other benefits, FA can however also pose significant challenges with respect to the maintenance of competition, accountability and – of particular concern in the GPA context – non-discriminatory procurement processes. Some potential areas are given below:

Provision of GPA	Practice under Framework Agreement (FA)	Potential Questions
<p><b>Article II Scope and Coverage Valuation</b></p> <p>6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:</p> <ul style="list-style-type: none"> <li>(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Agreement; and</li> <li>(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including: <ul style="list-style-type: none"> <li>(i) premiums, fees, commissions and interest; and</li> <li>(ii) where the procurement provides for the possibility of options, the total value of such options.</li> </ul> </li> </ul> <p>7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring contracts"), the calculation of the estimated maximum total value shall be based on:</p> <ul style="list-style-type: none"> <li>(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or</li> <li>(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.</li> </ul>	<p>Framework Agreements involve two stage procurement. During first stage, only estimated requirement is disclosed, which is non-binding on Purchaser or Supplier. In second stage purchase orders (single or multiple) are issued. There may be single or multiple Suppliers.</p> <p>It is quite possible that FA intends to serve "x" number of procuring entities but end-up serving "x+y" number of procuring entities.</p>	<p>Whether Paragraph 6 and 7 will apply to estimated value of FA; OR Purchase Orders issued under FA?</p> <p>Assume a scenario where the estimated value of procurement was lesser than the applicable threshold for covered procurement. However, because of additional users the actual value of purchase orders may cross the threshold for covered procurement. How this will be dealt?</p>

Provision of GPA	Practice under Framework Agreement (FA)	Potential Questions
<p><b>Article IV General Principles</b>  <b>Conduct of Procurement</b></p> <p>4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that: a) is consistent with this Agreement, using methods such as open tendering, selective tendering and limited tendering;</p>	<p>Though discouraged by almost all the countries, there is a possibility that FA may be negotiated with a single party (particularly in an emergency situation).</p>	<p>Whether GPA provides any flexibility to apply methods other than open tendering, selective tendering and limited tendering? What is the significance of “such as” in this paragraph?</p>
<p><b>Article VIII: Conditions for Participation</b></p> <p>1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.</p>	<p>“Closed” FA do not allow entry of additional Suppliers during validity period of FA (though it is publicized when setting up FA initially).</p>	<p>Whether closed FA comply with this requirement of GPA?</p>
<p><b>Article XV: Treatment of Tenders and Awarding of Contracts</b>  <b>Treatment of Tenders</b></p> <p>1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.</p>	<p>Some of the FAs require the Supplier to agree not to offer better terms/prices to third parties than those it has agreed with the Purchaser to the contract. For example, the so called <b>Fall Clause</b> which could generally be described as a legally enforceable assurance to the buyer that it would not end up paying more than the price at which the same vendor may have sold or be selling a similar product to another government-sector buyer under a separate contract.</p>	<p>Whether such practices meet the “Fairness” criteria of GPA?</p>
<p><b>Article XV: Treatment of Tenders and Awarding of Contracts</b>  <b>Awarding of Contracts</b></p> <p>5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted: a) the most advantageous tender; or b) where price is the sole criterion, the lowest price</p>	<p>Some of the FA may have different approach for award of FAs, for example for security of supply reasons, to place orders under the FA by rotation.</p>	<p>Given that the GPA requires the award to be based on the most advantageous tender or lowest price, whether such practices are acceptable for covered procurement?</p>

It may be helpful for GPA Parties to deliberate on above issues while using FAs. They may also consult WTO Secretariat, if necessary.



Publication	Author	Link/Publisher
Manual on Framework Agreements	OECD	<a href="https://www.oecd.org/gov/ethics/manual-framework-agreements.pdf">https://www.oecd.org/gov/ethics/manual-framework-agreements.pdf</a>
More Effective Federal Procurement Response to Disasters: Maximizing the Extraordinary Flexibilities of IDIQ Contracting	Kevin Wilkinson	Air Force L. Rev. 231 (2007), <a href="https://heinonline.org/HOL/P?h=hein.journals/airfor59&amp;i=233">https://heinonline.org/HOL/P?h=hein.journals/airfor59&amp;i=233</a>
Pooled Procurement in Brazil: Theory and Evidence from the Brazilian system of Price Registration	Klenio Barbosa	<a href="http://www.ippa.org/images/PROCEEDINGS/IPPC5/Part2/PAPER2-19.pdf">http://www.ippa.org/images/PROCEEDINGS/IPPC5/Part2/PAPER2-19.pdf</a>
Public Procurement and Framework agreements: the application of competition law to contracting authorities in a procurement context	Balshøj, Dorthe K	Djoef Publishing (2018)
Request for Bids - Goods - Framework Agreement (1 envelope process)	The World Bank	<a href="http://pubdocs.worldbank.org/en/379561515790710017/SPD-RequestForBids-Goods-Framework-Agreement-Jan-2018.docx">http://pubdocs.worldbank.org/en/379561515790710017/SPD-RequestForBids-Goods-Framework-Agreement-Jan-2018.docx</a>
Request for Offers for Framework Agreements, Procurement of Goods under COVID-19 Emergency Response Operations	The World Bank	<a href="http://pubdocs.worldbank.org/en/760171591650945760/COVID19-emergency-response-StreamlinedProcurement-GOODS-FrameworkAgreement.docx">http://pubdocs.worldbank.org/en/760171591650945760/COVID19-emergency-response-StreamlinedProcurement-GOODS-FrameworkAgreement.docx</a>
Sample Bidding Document for Price Registration System	Municipality of Sítio D'Abadia, Brazil	<a href="http://www.sitiodabadia.go.gov.br/arquivos/pdf/1590063731Edital%20e%20anexos.pdf">http://www.sitiodabadia.go.gov.br/arquivos/pdf/1590063731Edital%20e%20anexos.pdf</a>
SRP – Sistema De registro De preços (price registration system)	Government of Brazil	<a href="https://www.gov.br/compras/pt-br/assuntos/fornecedores/midia/sistema-de-registro-de-preos-srp.pdf">https://www.gov.br/compras/pt-br/assuntos/fornecedores/midia/sistema-de-registro-de-preos-srp.pdf</a>
Standard Bidding Documents for FA	The FDRE Public Procurement & Property Administration Agency (Ethiopia)	Goods ( <a href="http://www.ppa.gov.et/index.php?option=com_joomdoc&amp;task=document.download&amp;path=documents%5Cprocurement%5Csbid%5CSBD-Goods-FA-FFinal.doc">http://www.ppa.gov.et/index.php?option=com_joomdoc&amp;task=document.download&amp;path=documents%5Cprocurement%5Csbid%5CSBD-Goods-FA-FFinal.doc</a> )
		Non-Consultancy Services ( <a href="http://www.ppa.gov.et/index.php?option=com_joomdoc&amp;task=document.download&amp;path=documents%5Cprocurement%5Csbid%5CSBD+Non-Con-FA-FFinal-B.doc">http://www.ppa.gov.et/index.php?option=com_joomdoc&amp;task=document.download&amp;path=documents%5Cprocurement%5Csbid%5CSBD+Non-Con-FA-FFinal-B.doc</a> )
The Law and Economics of Framework Agreements: Designing Flexible Solutions for Public Procurement	Caroline Nicholas and Gian Luigi Albano	Cambridge University Press (2016)
The U.S. Federal Procurement System: An Introduction	Yukins, Christopher R.	UPPHANDLINGSRÄTTSLIG TIDSKRIFT 69, GWU Law School Public Law Research Paper No. 2017-75, GWU Legal Studies Research Paper No. 2017-75, Available at <a href="https://ssrn.com/abstract=3063559">https://ssrn.com/abstract=3063559</a> or <a href="http://dx.doi.org/10.2139/ssrn.3063559">http://dx.doi.org/10.2139/ssrn.3063559</a>



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The World Bank  
1818 H Street NW  
Washington, DC 20433