

THE FRAMEWORK AGREEMENT

Benefits, risks and policy recommendations for harnessing its potential in public procurement

POLICY RECOMMENDATIONS

in the field of public procurement in the Republic of Moldova

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Benefits, risks and policy recommendations for harnessing its potential in public procurement

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Introduction

Framework agreements are becoming increasingly recognized at an international level as **effective procurement methods**, allowing contracting authorities – both at the central and local level – to efficiently balance demand and supply, with the **major advantage of greater flexibility**. However, in the Republic of Moldova, this method of awarding public procurement contract is little used by contracting authorities in the acquisition of goods, works or services. During the first semester of 2018, **35 procurement procedures were initiated by framework agreement**, resulting in **213 subsequent contracts amounting to 8 756 867.0 lei**¹.

The reasons for the non-utilization of the framework agreement by contracting authorities in the Republic of Moldova are related to: gaps in the primary and secondary legislation affecting this way of awarding procurement contract, the complexity of the procedure, but also the lack of experience and understanding of this method by the authorities. In order to help all actors involved in the procurement process, but also the general public, understand the relevant information we will begin with an explanation of basic notions:

Framework agreement – an agreement concluded between one or more contracting authorities and one or more economic operators to determine the conditions for the contracts to be awarded over a specified period of time, in particular, the prices and, where appropriate, the envisaged quantities.

Subsequent contract – a pecuniary agreement concluded in writing between the economic operator or one of the economic operators with whom a framework agreement has been concluded – on one side, and the contracting authority party – on the other side. This contract materializes the latter's request for the procurement of goods, the execution of works or the provision of services under the Public Procurement Law no. 131 of 3 July 2015, and which are covered by that Framework Agreement.

Awarding documentation – documentation containing all information related to the subject-matter of the framework agreement and its awarding procedure, including the stipulations specifying the technical conditions for the goods / services / works according to contracting authority's needs in relation to the subject-matter of the framework agreed which is to be signed including the requirements in relation to the quality of materials / goods, applicable standards and technical regulations, environmental protection, labor protection, technologies used, transport, inspections, tests, verifications, modifications, measurements, etc.

Technical offer – a bid document, elaborated on the basis of the requirements of the specifications, established by the contracting authority;

Financial offer – bid document, which provides the information required by the awarding documentation on unit prices, tariffs, and financial and commercial conditions;

Awarding procedure – steps to be taken by the contracting authority and the tenderers in order for the framework agreement to be considered valid. The awarding procedure after which the conclusion of the framework agreement, follows the same technical steps and as the open tender or restricted tender procedure.

¹ https://tender.gov.md/sites/default/files/document/attachments/raport_aap_2018_tr02__0.pdf

1. The legal framework

1.1. International legislative acts

In order to create a level playing field for all enterprises of EU Member States, the EU legislation has enshrined harmonized procurement rules. They regulate the way in which public authorities and certain utility operators acquire goods, works, and services. The rules are set out in three main EU directives, which are transposed into the national legislation of each member state and apply to public procurement auctions whose monetary value exceeds a certain threshold. For lower bids, national rules apply. However, these national rules must also comply with the general principles of EU legislation.

EU directives:

- 1. DIRECTIVE 2007/66 / EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 11 December 2007 amending Council Directives 89/665 / EEC and 92/13 / EEC as regards the improvement of the effectiveness of review procedures in respect of contracts procurement.
- 2. DIRECTIVE 2014/24 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 26 February 2014 on public procurement and repealing Directive 2004/18 / EC
- 3. DIRECTIVE 2014/25 / EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17 / EC.

1.2. Legislative and normative national acts

The framework agreement is regulated in section 5 of the Public Procurement Act no. 131/2015 „Special Procedures for the Award of Public Procurement” Article 61. Although the current public procurement law was enacted more than two years (01.05.2016), and it has been, meanwhile, amended several times, no new Regulation on the Framework Agreement has been developed and approved to properly regulate this issue. The secondary legal framework in this respect dates back to 2012, the year in which it was approved

the Framework Agreement as a special way of awarding the public procurement contract, by Government Decision no. 826².

With the entry into force of the new Law no. 131/2015, together with the latest amendments of 2018 and with the implementation of the new SIA RSAP (MTender) electronic procurement system, it is necessary to develop and approve

² <http://lex.justice.md/viewdoc.php?action=view&view=doc&i-d=345409&lang=1>

a new Regulation on the Framework Agreement. Otherwise, the weaknesses of the secondary legal framework not only do not permit the use of this special procedure by contracting authorities but also generate inefficient use of public resources for the procurement of certain goods or services.

National legal framework (primary and secondary) currently in force:

- **Law no. 131 of 03.07.2015** on public procurement³.
- **Government Decision no. 986 of 10.10.2018** regarding the approval of the Regulation on the functioning of the State Register of Public Procurement created by the Automated Information System „State Register of Public Procurement” (MTender);
- **Government Decision no. 985 of 10.10.2018** regarding the approval of the Regulation on accreditation of electronic purchasing platforms within the Automated Information System „State Register of Public Procurement” (MTender);
- **Government Decision no. 705 of 11.08.2018** regarding the approval of the Technical Concept of the Automated Information System „State Register of Public Procurement” (MTender);
- **Government Decision no. 826 of 07.11.2012** for the approval of the Regulation on the framework agreement as a special way of awarding the public procurement contract;
- **Government Decision no. 1420 of 28.12.2016** for the approval of the Regulation of the list of qualified economic operators.

³ Law no. 131 transposes Directive 2014/24/EU of 26 February 2014, of the European Parliament and of the Council, on public procurement and repealing Directive 2004/18/EC, and which was published in the Official Journal of the European Union L 94 of 28 March 2014, with the amendments EU Commission Regulation 2017/2365 of 18 December 2017 amending Directive 2014/24/EC of the European Parliament and of the Council, as regards the thresholds for the application of procurement procedures and Directive 89/665 / EC of 21 December 1989 on the coordination of laws, regulations and administrative provisions relating to the application of review procedures against the awards of public procurement contracts of goods and works, published in the Official Journal of the European Union L 395 of 30 December 1989.

2. What is a framework agreement

2.1. Concepts and definitions

Under the Republic of Moldova's legislation on public procurement, the **framework agreement** is an agreement between one or more contracting authorities and one or more economic operators **with the purpose of establishing the conditions for contracts to be awarded within a specified period**, in particular, the prices and, where appropriate, the envisaged quantities.

The contracting authority concludes a framework agreement for certain goods, services or works of a recurring character, with pre-set minimum and maximum limits for a fixed period of time (usually up to 4 years), and whose quantity can only be estimated, without pre-setting exactly the necessary for the whole year (food, airline tickets, auto repair, car services).

Public procurement legislation establishes a special awarding scheme, called a "framework agreement", which allows for an agreement between the buyer/buyers (contracting authorities) and the seller/sellers (economic operators - winning bidders) for a maximum quantity, and subsequently, at predetermined, times parts of the agreement should be delivered (similar to order-based deliveries).

International practices and regulations provide for the following types of framework agreements:

- ▶ The European Union, in its 2014 public procurement directive, defines framework agreements as „agreements between one/several contracting authorities and an operator/economic operators... until the setting of the terms governing the contracts to be awarded over a given period of time ... with regard price and quantities.”
- ▶ The United States has adopted different options such as Government-wide Acquisition Contracts (GWAC), Indefinite Delivery / Indefinite Quantities (IDIQ) Contract, and Multiple Award Schedules (MAS), which involves multiple contracting with the development of the competition at the subsequent contracting stage in the delivery process itself.
- ▶ The United Nations Commission on International Trade Law (UNCITRAL) defines a framework agreement as a transaction to ensure the supply of a product or service for a certain period of time.

All of the above definitions on the framework agreement have two common features:

- 1. aggregating** the demand for goods and services to be delivered/provided at certain time intervals;
- 2. carrying out the procedure in two steps.**

From a legislative point of view, the framework agreement is not sufficiently regulated, making it difficult to be used in practice. Although the framework agreement is stipulated in Law no. 131/15, the lack of regulation to this end makes its employment impossible, as only a regulation provides the mechanisms necessary for using a procurement method, and this also true in the case of the framework agreement.

From an applicative point of view, the framework agreement is very little known by contracting authorities, and therefore they are reluctant to apply this special procurement method. The reluctance of contracting authorities can also be explained by the lack of authorities' capacities and insufficient professional training of public procurement specialists in implementing the framework agreement.

2.2. The evolution of framework agreements in the Republic of Moldova

At present, in the Republic of Moldova, the framework agreement is not sufficiently used and capitalized as a special way of public procurement. Contracting authorities have initiated the use of framework agreements in public procurement procedures since 2013 following the approval by the end of 2012 of Government Decision no. 826 of 07.11.2012 for the approval of the Framework Agreement Regulation as a special way of awarding the public procurement contract.

During the first semester of 2018, according to the data of the Public Procurement Agency, 35 procurement procedures were carried out through framework agreements, as a result of which 213 contracts were concluded with a total value of 8 756 867,0 lei.

Tabel nr. 1. Public Procurement contracts signed by the contracting authorities of the Republic of Moldova

Years	Number of framework agreements	Number of subsequently concluded contracts	Value of procurements made through framework agreements, lei
2013	5	14	985 068,50
2014	24	79	7685 259,88
2015	27	78	18 270 907,29
2016	15	70	698 985,60
2017	28	75	3 365 216,00
2018, I semester	35	213	8 756 867,00

Source: Developed by the Author on the basis of the Public Procurement Agency Activity Reports

In the above table, we can observe that over the last five years, the evolution of framework agreements and the value of public procurement under framework agreements have had a positive trend in 2013-2015 and a negative one in 2015-2016. Subsequently, from 2016, the use of framework agreements has returned to a positive trend that continues to this day. During this period, there has been a steep rise in both the number of initiated framework agreements and the number of subsequent contracts concluded, as well as an increase in the total value of public procurement procedures conducted by the means of framework agreements, a value which rose 4.8 times. In 2018 there was an increase in both the number of concluded framework agreements and in that of subsequently signed contracts as well as in that of the value of public acquisitions conducted in this way. This conclusion can be drawn from data which is so far available only for the first semester of 2018.

As regards the object of public procurement under framework agreements, it is predominantly used for the procurement of air transportation services. In the last 3 years, contracting authorities have also concluded framework agreements for the procurement of various commercial and related services such as various transportation equipment and spare parts; engineering services; printing and related services, as well as office machinery, equipment, and accessories, except computers, printers, and furniture. In 2018 there was a diversification of goods and services acquired through the initiation and conclusion of framework agreements, which indicates a wider use of this special procurement procedure by the authorities.

There are some discrepancies between the data in the Public Procurement Agency reports and the one published on the website under the section „Framework Agreements” on framework agreements and subsequent contracts concluded by contracting authorities. On the website of the Public Procurement agency, data concerning framework agreements and subsequent contracts are available starting with 2017. According to these data, in 2018 (I semester), the contracting authorities carried out 22 procurement procedures through a framework agreement, and as a result, 101 contracts were concluded (the total estimated value of which is 24 million lei). This data contradicts that of the Agency’s above-mentioned report (for the first semester of 2018), which mentions 35 framework agreements and 213 subsequent contracts in the same period of 2018. These discrepancies generate confusion and lack of credibility. To eliminate these discrepancies, it is recommended that the Public Procurement Agency review and update the data on the concluded framework agreements and their value, so that the data in the activity reports coincide with those published on the web page. If it is contracting authorities that do not report to the appropriate Agency, then it is necessary to make them accountable and apply sanctions for non-compliance.

According to the same sources, framework agreements are used only by central public authorities and predominantly for the procurement of air transport services/ticket purchase for air travel. The table below shows the contracting authorities with the most (value-wise) procurement procedures conducted by the means of a framework agreement.

Table no. 2. Contracting authorities with the most acquisitions conducted through framework agreements, I semester 2018

	Contracting Authority	Number of framework agreements	Number of subsequent contracts	Estimated value of procurements, million lei
1	The Organization for Attracting Investments and Promoting Moldovan Exports	3	9	8,0
2	The Parliament’s Secretariat	3	13	2,3
3	Facilities Department of the Ministry of Defence	1	5	2,1
4	National Olympic Committee of the Republic of Moldova	1	4	2,0
5	National Agency for Curriculum and Evaluation	1	3	1,7
6	National Office of Vine and Wine	1	5	1,5
7	Ministry of Foreign Affairs and European Integration	1	7	1,5
8	The Ministry of Finance	1	5	1,2
9	Ministry of Education, Culture and Research	1	7	1,0
10	Independent Nautical Sports Federation of the Republic of Moldova	1	5	1,0
11	Canoe Kayak Federation	1	4	1,0

Source: compiled by the author on the basis of data available on www.tender.gov.md

3. Terms of use of the framework agreements

3.1. How to conclude a framework agreement

The contracting authority has the obligation to conclude the framework agreement by applying the open tender or the restricted tender procedure, in accordance with art. 58 (4) of the Law no. 131/15. According to the same art. 58 (5), by way of exception from the provisions of paragraph (4), for the conclusion of a framework agreement, the contracting authority has the right to apply other procedures only in the specific circumstances provided by Law no. 131/15.

The contracting authority has the obligation to establish the economic operator or economic operators that are part of the framework agreement by applying the qualification and selection, awarding criteria and the assessment factors stipulated in the tender documentation.

With a single economic operator:

- Respecting the main commitments that the economic operator has assumed through the technical proposal submitted in the award procedure;
- With the unit price that the economic operator has provided for in the offer and on the basis of which will be determined the price of each contract subsequently awarded.

With more economic operators:

- If the contracting authority concludes the framework agreement with several economic operators, their number may not be less than 3 insofar as there are sufficient economic operators who have fulfilled the qualification and selection criteria and have presented admissible offers (Article 58 of Law 131/15, paragraph 13).
- If the number of candidates fulfilling the qualification and selection criteria is lower than the minimum number indicated in the notice of participation in accordance with paragraph (13), the contracting authority has the right to choose between continuing the award procedure only with the candidate(s) fulfilling the necessary requirements or withholding the procedure under the conditions set out in Art. 67 of Law 131/15.

In this case, the conclusion of the framework agreements can take place in the following ways:

- **Without the resumption of competition**, in accordance with the terms and conditions set out in its contents, if the framework agreement sets out all the terms and conditions governing the supply of goods, the provision of services, the performance of the works which form the subject matter and the objective conditions determining which of the economic parties to the framework agreement will provide the goods, the services and will execute the works.
- **With the resumption of competition** between economic operators that are party to the framework agreement, if the framework agreement does not establish all the terms and conditions governing the supply of goods, the provision of services or the execution of the works which are the object of **the agreement**.

- **Partially without resumption of competition** between economic operators, only if this possibility has been stipulated in the tender documentation developed under the framework agreement awarding procedure and if the framework agreement sets out all the terms and conditions governing the supply of the goods, the provision of services and the execution of the works which are its object.

It should be noted that the contracting authority has the obligation to consult in writing with the economic operator, demanding from the latter, if necessary, the filing of the bid whenever it intends to award a public procurement contract stemming from a framework agreement.

If the framework agreement is concluded with several economic operators and the subsequent contracts are to be awarded by resuming the competition, the contracting authority has the obligation, whenever it decides to purchase the goods/services/works that are subject to the respective framework agreement, to simultaneously submit an invitation to participate to all economic operators signatories of the framework agreement.

3.2. Establishing the estimated value

As far as the estimation of the value of a framework agreement is concerned, the provisions of paragraph 12 of GD 826 provide that it is considered to be the estimated maximum value without VAT for all public procurement contracts expected to be awarded under the framework agreement, within the timeframe of its application.

The Working Group responsible for the awarding procedure has the obligation to draw up a document in which the estimated value is showed being based on the quantities related to the object of the framework agreement and the estimative unite price(s). The estimative unit price must include all payable amounts, excluding VAT, for the completion of a unit of the product/service/work which is the object of the framework agreement.

Within this document, the Working Group is also required to estimate the value of the largest subsequent contract that could be awarded during the lifetime of the framework agreement in a manner similar to that described in the previous paragraph. The contracting authority is not entitled to conclude a framework agreement whose duration exceeds 4 years, except in exceptional circumstances, which it can justify in particular by the specific object of the contracts to be awarded under the framework agreement.

4. Content and clauses of a Framework agreement

With a single economic operator:

- Obligations which the economic operator has assumed through the technical proposal presented in the awarding procedure, the description of the services and their level of quality, the description of the goods/services works and their level of quality, the time/terms, of delivery or execution from the moment of conclusion of the contract, the guarantees offered, any other elements that have been taken into account in the process of analyzing and evaluating technical proposals;
- The price/tariff per unit, other financial or commercial commitments stipulated by the economic operator in its financial proposal;
- Specific conditions, adjustment coefficients, and adjustment formulas as appropriate;
- Any other elements/clauses deemed necessary.

With more economic operators:

- Elements/conditions that remain unchanged throughout the duration of the framework agreement;
- The maximum number of economic operators with which the framework agreements are concluded, according to the provisions of the notice for participation;
- Items/conditions that will be subject to the resumption of competition for the award of subsequent contracts.

4.1. Subsequent contracts

The duration of the last subsequent contract may not exceed the period of validity of the framework agreement.

Where the economic operator to which the contracting authority submits a request for the conclusion of a subsequent contract is not able to respond to this request because the quantity covered by the contract exceeds the estimated quantity, the contracting authority has the right to initiate a new award procedure for the acquisition of the entire quantity required.

4.2. Contractual clauses

According to existing regulations, the framework agreement has to stipulate at least:

With a single economic operator:

- Obligations which the economic operator assumed in the technical proposal;
- The unit price provided by the economic operator in the financial proposal and on the basis of which the price of each subsequent contract will be determined.

With more economic operators:

- Obligations which each economic operator has assumed through the technical proposal;
- The unit price included in the financial proposal.

In the subsequent contracts to be awarded under a framework agreement, the latter should also mention the essential elements/conditions that relate to:

- ❖ Obligations assumed by the economic operator/economic operators through the technical proposal submitted during the awarding procedure, in particular as regards (1) the technical characteristics – functional and performance – of the products to be supplied, (2) description of the services to be provided and their level of quality, (3) description of the works to be executed and their qualitative level, (4) the delivery/performance/execution terms from the moment of conclusion of the contract, 5) the guarantees offered, (6) any other elements that have been taken into account in the analysis process and the evaluation of the technical proposals;
- ❖ The unit price/ unit prices/unit prices, other financial or commercial commitments, which the economic operator/economic operators have foreseen in the financial proposals;
- ❖ Specific conditions / clauses that the contracting authority considers necessary.

At the same time, if the framework agreement is concluded with several economic operators and the subsequent contracts are to be awarded by resuming the competition, the framework agreement must also provide for:

- ✓ Elements/conditions that will not be the subject of any change throughout the duration of that agreement;
- ✓ Items/conditions that will be subject to the resumption of competition for the award of subsequent contracts.

As far as the **clauses of the subsequent contracts concluded under a framework agreement** are concerned, they will be expressly and in detail regulate such as the price of the contract, the method of payment of the price, the actual works to be carried out/the exact quantity to be delivered/the services to be rendered, the term of its fulfillment, etc.

Moreover, any framework agreement will stipulate the following principal obligations.

For the contracting authority:

- ✓ The obligation not to conclude with another economic operator, during the duration of the framework agreement, a contract for the purchase of the products/services/works stipulated in the respective framework agreement;
- ✓ The obligation to award contracts to the signatory economic operator(s) economic operators whenever it intends to purchase;
- ✓ If the framework agreement is concluded with several economic operators and the subsequent contracts are to be awarded by resuming the competition, the Contracting Authority has the obligation that whenever it decides to purchase the products/services/works subject to that agreement, it is to submit at the same time an invitation to participate at the renewed tender to all economic operators that are signatories of the framework agreement.

For economic operator(s):

The obligation to provide products, services or execute works, as stipulated in the respective framework agreement, whenever the contracting authority requests so (the request is to be made by concluding a subsequent contract).

5. The benefits of the framework agreement

The use of this special procurement method is likely to provide contracting authorities with a number of benefits and is mainly applicable in the case of repetitive procurement of products, services or works that extend over a specified period of up to 4 years. Without being exhaustive, we exemplify some of these benefits:

- The possibility for the contracting authority to conclude a framework agreement without actually owning at the date of the signing the necessary resources for the respective acquisition, with **financial resources being subsequently identified and allocated;**
- Throughout the duration of a framework agreement, and depending on its concrete needs, the contracting authority will be able to assign subsequent and related contracts, thus not requiring the organization of new procedures for additional goods, services or works, and thereby **streamlining the process of acquisition.**
- **Ensures greater transparency and competitiveness,** including due to competition within the framework agreement;
- Considerable reduction of administrative costs, time spent on procurement procedures and streamlining of human resources involved in the process.

6. Managing the risks involved in concluding a framework agreement

The use of the framework agreement by contracting authorities in the procurement of goods, services or works also involves certain risks which, if properly identified, can be properly managed in the event of their occurrence.

Risk: Publication of discriminatory, insufficiently detailed or incomplete qualification and selection criteria

- Qualification and selection criteria must be objective, non-discriminatory and proportionate to the complexity and purpose of the contract. They must reflect the specific needs of the authority but also provide for the concrete possibility for the economic operator to comply with the contractual conditions.

Risk: Using „best value for money“ awarding criterion with the inclusion of irrelevant and/or non-quantifiable rating factors

- Evaluation factors should reflect real and obvious advantages that the contracting authority can obtain. The assessment factors and the methodology for their application must allow an adequate evaluation of bids and avoid as much as possible the subjective assessments on the side of the working group.

Risk: Rejection of the request of bidders to change the deadline for the submission of offers

- Among the most frequent mistakes made by contracting authorities in the process of concluding the framework agreements, is the setting of the minimum time required by the public procurement legislation (eg 20 days), which may often be insufficient to ensure healthy competition.

Risk: Discriminatory request for clarification at the stage of evaluation of applications/offers (non-observance of the principle of equal treatment)

- In order to ensure that the principle of equal treatment of candidates/bidders participating in the awarding procedure is observed, the clarifications required in respect of an issue must be formulated in the same manner and be requested from all candidates/bidders whose offers require this sort of clarification. At the same time, the time needed for the candidates/bidders to respond to one and the same aspect that needs to be clarified must be the same.

Risk: Substantial change in prices/charges for goods/services/works during a framework agreement extending for up to 4 years.

- To avoid this risk, it is recommended that the Authority use the price adjustment formula.

7. Conclusions and recommendations

The Framework Agreement, as a special way of awarding the public procurement contract, is a common procurement practice in different countries of the world, based on the multiple benefits that it offers, and in particular the advantage of eliminating risks in the process of repetitive procurement of goods, services and works, and which usually constitute the basic procurement activity of a contracting authority.

In conclusion, the use of the framework agreement is appropriate in situations where the contracting authority needs to purchase goods, services or works according to variable needs as well as depending on varying financial allocations during the budgetary periods to which the agreement is assigned.

In order to ensure the execution of the art. 58 of the Law no. 131 of 3 July 2015 on public procurement as subsequently amended and supplemented, as well as to ensure a unique methodology for public procurement of goods, works and services, the Public Procurement Agency, being the administrative authority subordinated to the Ministry of Finance, set up with the goal of strengthening the capacities of the contracting authorities and developing the skills of the business environment in the field of public procurement, and in order to monitor the

It is recommended that the Contracting Authority avoid:

1. Establishing the criterion by reference to a limited geographical area (*eg production unit established in the Republic of Moldova*);
2. Requiring similar experience specific to a particular type of construction work (*eg construction works of a school instead of civil engineering works*);
3. Requesting certificates or authorizations that are not relevant for the performance of the contract (*eg ISO 9001 from the manufacturer*).
4. The contract notice and tender documentation must contain the same criteria for clarification and selection.

compliance of the public procurement procedures as well as to carry out the analysis of the public procurement system in conformity with its attributions under art. 9, (letter a) of Law 131/15, **is to prepare and submit to the Ministry of Finance the proposal to amend and complete the secondary legislation in the field of public procurement, namely the special procurement procedure – the framework agreement.**

Recommendations for regulating authorities

(the Ministry of Finances, the Public Procurement Agency)

1. Elaboration and approval of a new Regulation on the framework agreement as a special way of awarding the public procurement contract in accordance with the Law no. 131/1999 on Public Procurement.

As mentioned in this document, there is a positive trend towards the use of the framework agreement by contracting authorities. Given that contracting authorities use the Framework Agreement without a

Regulation describing its implementation mechanism and the provisions of the existing Regulation do not comply with Law 131/15, the application of the Framework Agreement is misleading and maybe even flawed, which entails risks to contracting authorities.

The new Regulation should aim to supplement the primary legislation and/or to detail and specify provisions that are not explicitly foreseen in the primary legislation for the Framework Agreement.

It is recommended that the value of the guarantee submitted for the tender is to be specified based on the largest subsequent contract that to be signed.

- **The technical and professional capacity**, especially the similar experience is to be specified also based to the largest subsequent contract that is expected to be signed.
- **The submission and the opening of tenders** are to be carried out within the SIA RSAP (Mtender) system, and the exclusion of drafting minutes of opening tenders, and respectively the exclusion of the transmission, upon request, of a copy of the minutes of the opening session to all economic operators who submitted an offer.
- **To exclude the obligation of contracting authorities to present the Public Procurement Agency the report** on the awarding procedure, since this report is generated by SIA RSAP (MTender) system and available to the public.
- **To fully implement the framework agreement through the SIA RSAP (MTender) system.**
- **To establish modalities of communication through the SIA RSAP (MTender) system.**

2. To develop the standard framework agreement documentation, including the Framework Agreement blanks for each separate category: goods, works, and services, as well as the relevant documentation for the second stage, the Referencing and Contract Subsequent contracts. Standard documentation is recommended to be developed for each separate category: goods, works, and services.

3. To develop a Guidelines on the application of the framework agreement. In order to eliminate or reduce the reluctance of contracting authorities and to stimulate the use of the framework agreement as a special means of procurement, it is advisable to develop a guidance document on the application of the framework agreement. The guide is to be developed after the approval of regulation on the framework agreement and that of the standard documentation on the three distinct categories: goods, works, and services. The Public Procurement Agency, in exercising its attributions under art. 9 (letter d) of Law 131/15, with a view to providing methodological support and consultations for the implementation of the framework agreement, may draw up the Guidelines for the award of procurement contracts by the framework agreement method. At the same time, the Guidance can be developed through collaboration with civil society organizations active in the field of public procurement and/or attracting experts with extensive experience in the field of procurement.

4. **Training and capacity-building activities of contracting authorities on the application of the framework agreement for public procurement of goods and services.**

Following the approval of the framework agreement Regulation and following the development of the Guidelines on the application of the framework agreement, it is recommended to initiate specific training sessions for the implementation of the framework agreement. Training sessions are recommended to be provided to both contracting authorities and economic operators as this acquisition method is a new one for both parties.

The Public Procurement Agency, in exercising its attributions under art. 9 (d) of Law 131/15, in order to provide methodological support and consultations in the application of the Framework Agreement, may provide such training or may involve procurement experts in this respect. At the same time, the training sessions can be additionally provided by any other non-governmental organization that has as a field of activity the monitoring of public procurement as well as the strengthening of the capacities in the respective field and which has or may attract experts in the field of public procurement.

5. The mediatization and the information to contracting authorities on the benefits of using the framework agreement in procurement procedures.

Recommendations for the contracting authorities with regard to the usage of the framework agreement:

Contracting authorities must ensure compliance with the legal provisions at all stages prior to the award of contracts stemming from the concluded framework agreement, and the application of open and competitive procurement procedures (open tender or restricted tenders). Another important issue in the process of concluding a framework agreement is competition, which must not be restricted or distorted in any way.

1. At the stage of elaboration of the tender documentation with technical specifications:

- according to the needs of goods, services or works in the respective procedure;
- to avoid references to a particular trademark, manufacturer or economic operator so as to avoid leading to a particular economic operator, by including the phrase „or equivalent“;
- to indicate those evaluation criteria strictly stipulated by the legal framework;

2. To set reasonable terms for the preparation and submission of bids in order to ensure the widest possible participation of economic operators. By setting a realistic deadline, the Authority ensures an adequate level of competition. Otherwise, there is a risk that no offer will be made, which creates difficulties for the fulfillment of the procurement procedure, and consumes the time and resources of the authority.

3. At the bids evaluation stage, it is recommended:
 - to co-opt independent technical experts in working groups/evaluation committees;
 - request additional information and clarifications, in accordance with the principle of equal treatment, before deciding to exclude a bidder, and to allow for sufficient time to submit the required answers;
 - taking into account the resources of third-party supporters;
 - to provide a thorough motivation of the outcome of the evaluation.
4. At the stage of awarding the contract under a framework agreement, the contracting authority shall not modify the conditions set out at the start of the framework agreement. Also, at the drafting phase of the contract stemming from a framework agreement, it is recommended for authorities to introduce clauses that make the contractor liable to take risks commensurate with market practices. Otherwise, candidates will tend to either withdraw from the competition or try to evade by introducing reserves or by accepting them only formally.
5. At the contract management stage, their modification by the means of additional agreements is not allowed.
6. To apply the sanctions stipulated in the framework agreement and transposed into subsequent contracts, which is a mandatory step if the contractual obligations are not fulfilled. The failure to apply the sanctions would mean in fact the facilitation of those the initial conditions of the contract execution, a step incompatible with the principle of equal treatment and transparency. Similarly, the request to include economic operators who have admitted violations and are included in the Economic Operators' Ban List which managed by the Public Procurement Agency.

In view of the above, the contracting authority must ensure that it uses the framework agreement as an efficient and economical tool to acquire goods, services or works while at the same time not affecting its needs, or competition on the procurement market.

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