

1st July, 2023

PREFACE

One of the principal mandates and powers of the Ministry of Finance, as provided under section 104 (i) of the Public Finance (amendment) Act of Bhutan 2012 is to issue rules, manuals, directives, instructions or notifications ensuring an equitable, transparent, competitive and cost-effective procurement system in the country. While the framework contract has been implemented more than a decade ago, the lack of Guidelines has resulted in formulating terms and conditions which were not uniform. To provide a proper guide to formulate a uniform framework contract, the Guidelines for Framework Contract 2023 is formulated.

Ministry of Finance in the exercise of the power conferred by the section 104 (i) of the Public Finance (amendment) Act of Bhutan 2012 hereby adopts Guidelines for Framework Contract 2023 vide 141st Policy and Planning Coordination Meeting on 20th February, 2023 which shall come into effect from 1st July 2023.

Any queries, clarification, interpretation on this standard bidding document contact:

Procurement Management and Development Division
Department of Procurement and Properties
Ministry of Finance
Email – pmdd@mof.gov.bt
Contact – 336962

ABBREVIATIONS

FC - Framework Contracts

PRR - Procurement Rules and Regulations

PA - Procuring Agency

CPI - Consumer Price Index

SBD - Standard Bidding Document

NSB - National Statistical Bureau

BSB - Bhutan Standard Bureau

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INTRODUCTION

1. This guideline is developed for procurement practitioners of the Royal Government of Bhutan. It provides an overview on how to design, establish and operate a Framework Contract (FC) under Procurement Rules and Regulations 2023.
2. This guideline explains the key concepts, outlines FC procedure and provides guidance. It focuses on FC for procurement of goods, works and non-consulting services, wherever applicable.

DEFINITION

3. The PRR 2023 defines Framework Contract as a contract awarded in accordance with the procurement rules, whereby the Procuring Agency and the supplier agree to the terms and conditions over a given period of time.

OTHER APPLICABLE LEGAL INSTRUMENTS

4. This guidelines should be read in conjunction with:
 - 1) Procurement Rules and Regulations 2023;
 - 2) Standard Bidding Documents for Procurement of Goods (above Nu. 0.5 million);
 - 3) Standard Bidding Documents for Procurement of Goods (up to Nu. 0.5 million);
 - 4) Standard Bidding Documents for Procurement of Works (above Nu. 5 Million);
 - 5) Standard Bidding Documents for Procurement of Small works (up to Nu. 5 Million);
 - 6) Standard Request for Quotation - Canteen Services;
 - 7) Standard Request for Quotation - Catering Services;
 - 8) Standard Request for Quotation - Event Management; and
 - 9) Standard Request for Quotation - Hiring of Vehicles.

GENERAL RULES

5. Following are the general rules of application:
 - 1) FC must be established through an open competitive Bidding process;

- 2) The terms of the FC shall be one year until we come up with implementable formula with indices;
- 3) There can be one or more Procuring Agency that are allowed to procure as single user or multi-user;
- 4) There can be one or more supplier selected to procure as a single-supplier or multi-supplier; and
- 5) There is no obligation on a Procuring Agency to procure the item as well as quantity indicated in the Bidding Document.

INTENT

6. The intent of FC is to achieve value for money, efficiency in the procurement process, and security of supply and fit for purpose.

APPLICATION

7. This guidelines shall apply to:
 - 1) anticipated procurement of goods, works and non-consulting services;
 - 2) purchase of common, off-the-shelf goods and services. *Example: Office supplies, hardware items, furniture, fuel, catering services, vehicle hiring, canteen services, supply of spare parts, maintenance of vehicles and construction materials etc.;*
 - 3) procurement where there is a high volume of repeat orders;
 - 4) emergency situations, to maintain supply security at times;
 - 5) minimize administrative burden and shorten lead times;
 - 6) multiple suppliers where a single supplier has no sufficient capacity; and
 - 7) range of suppliers in separate locations to ensure geographic coverage.
 - 8) strong and on-going (continuous or repeated) demand over a period of time from various Procuring Agencies;
 - 9) procurement where the timetable or scope of work cannot be fully provided for in a regular procurement contract;
 - 10) use of rates of other government Procuring Agencies after negotiation and signing different contract; or

11) procurement where for economic, technical or financial reasons, the frequency or extent of the Procuring Agency's requirements cannot be determined with sufficient accuracy in the tendering documents. **Examples:** *Spare parts for routine equipment maintenance, office supplies such as stationery and pens, and medical supplies such as bandages are common examples of the types of goods that might be purchased under a framework transaction. Routine maintenance services, like plumbing and electrical repairs, are some of the types of technical service needs that may be procured efficiently under framework contracts.*

PARTIES TO FRAMEWORK CONTRACT

8. The FC shall define the parties identifying the:

- 1) name of the lead Procuring Agency;
- 2) name of the Procuring Agency;
- 3) name of the central agency; and
- 4) name of the supplier.

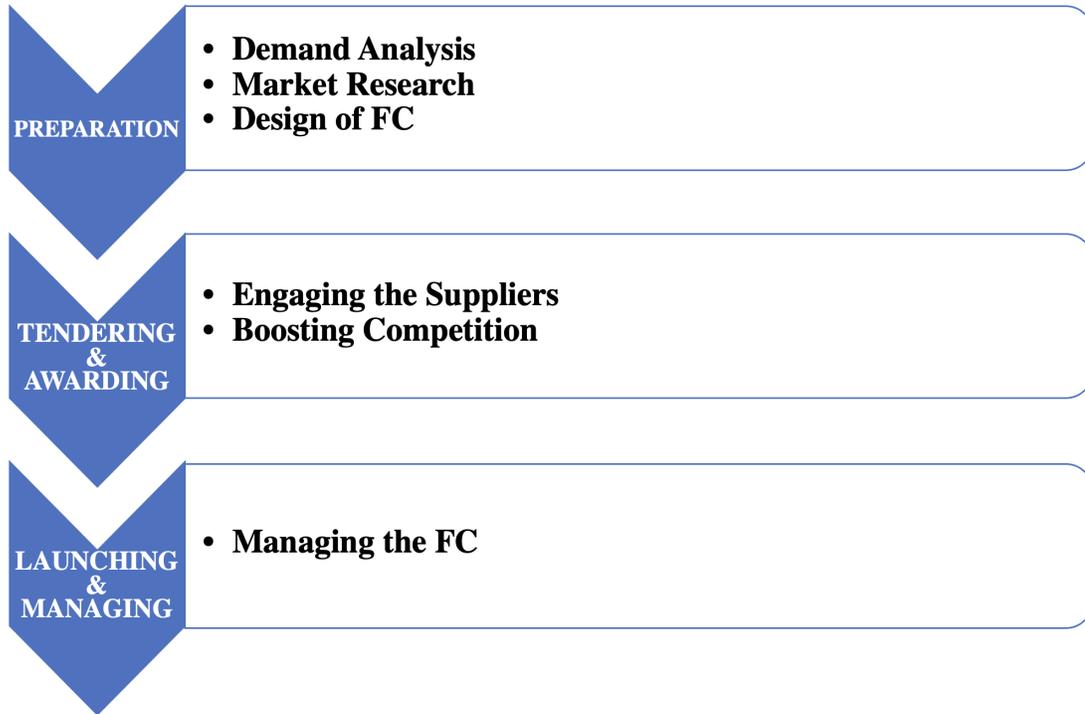
9. For clause 8 of this guidelines, parties are defined as follows:

- 1) **Lead Procuring Agency:** Lead Procuring Agency is appointed to manage and administer FC on behalf of a group of Procuring Agencies. In addition, the Lead Procuring Agency can also be the potential purchaser. The group of Procuring Agencies must be named in the Bid Notice. *Example: a Dzongkhag Administration can be the Lead Procuring Agency and the group of Procuring Agencies can be the Gewog Administrations/Regional Offices.*
- 2) **Procuring Agency:** Procuring Agency is a single agency who will manage the FC as both administrator and potential purchaser; *Example: The Department of Procurement and Properties is the sole administrator as well as the purchaser.*
- 3) **Central Agency:** the Central Agency is established to manage and administer FC on behalf of a group of agencies but it is not a purchaser. All other groups of Procuring Agencies must be named in the Bid Notice. *Example: CPPMD is the central agency for procurement of laptops of all other government agencies.*

- 4) **Supplier:** Supplier is an eligible individual or legal entity that participates in a competitive procedure defined by this guideline.

PROCESS

Preparation of FC



10. The process for preparation shall be as follows:

Demand analysis

- 1) The demand analysis which is the inception and needs analysis stage is the time at which the need for an FC is conceptualized and measured.
- 2) The main objective of the demand analysis is to analyze the supply process and subsequently measure the type and value of potential demand, using information such as:
 - A. the geographical distribution of the Procuring Agencies;
 - B. identifying total annual needs in terms of:
 - (i) total demand value;

- (ii) total demand value by Procuring Agency type and geographical area; and
 - (iii) a detailed description of already procured products and services.
- 3) The Procuring Agency shall conduct demand aggregation and consolidation of the requirements and analyze past contracts, spending, and quantities purchased.
- 4) In case of Lead or Central Procuring Agency initiating procurement process, the consolidated demand aggregation shall be submitted to the Lead or Central Procuring Agency by the Procuring Agencies.

Market research

- 5) The Procuring Agency shall conduct market research and analysis to develop a thorough understanding of the nature of the market, how it works and how it impacts upon your approach to the market and overall procurement strategy.
- 6) The extent of market research will depend on:
 - (i) the nature and scope of the goods or services;
 - (ii) the degree of difficulty in specifying the requirements;
 - (iii) the level of risk to the agency if there is failure in the delivery; and
 - (iv) whether it is a one-off purchase or ongoing procurement.
- 7) The following are some of the common options to obtain information about the market:
 - (i) Internet research;
 - (ii) Request for information (RFI);
 - (iii) Previous experience; and
 - (iv) Industry bodies.
- 8) The market research and analysis shall assess market-related risks and opportunities that will affect the preferred approach-to-market strategy. The market research and analysis shall be consolidated into a list of conclusions and implications that are used to select a *fit-for-purpose* approach to market for the contracts in the project.
- 9) Supply market shall be efficiently managed through:
 - (i) knowing suppliers in the market;
 - (ii) obtaining information on administrative and technical specifications on the characteristics of the products or services which will be included in the tender specifications;

- (iii) creating a financial estimate of the contract;
- (iv) defining labels or norms like eco labels, ISOs or sustainability requirements to be included in the tender specifications; and
- (v) choosing the tender procedure taking into consideration that open tender is the standard procedure.

Design of framework

10) Basic steps to design FC are as follows:

- (i) determine the subject matter (e.g. toner and ink, other office supplies);
- (ii) agree on the main principles;
- (iii) determine the expected amount of supply, the forecasted expenditure and estimated savings;
- (iv) determine the quality (minimum technical specifications);
- (v) define delivery to the required points, relevant terms and timing;
- (vi) choose procurement process;
- (vii) divide into lots;
- (viii) define the qualification and awarding criteria;
- (ix) define the contract terms and conditions, supply conditions, update of the FC and monitoring procedures.

Contents of Bidding Document

- 11) The Procuring Agency shall use appropriate Standard Bidding Documents (works, goods or services) of the Royal Government of Bhutan to establish FC
- 12) The appropriate Standard Bidding Documents of the Royal Government of Bhutan shall be chosen depending on the nature of procurement.
- 13) The Bidding Document shall include amongst other, the following:
 - (i) definitions and the duration of the FC;
 - (ii) estimated quantity;
 - (iii) type of procurement process;
 - (iv) clarifications and rectifications in the procurement process;
 - (v) qualification and evaluation criteria to award FC;

- (vi) tender documents (administrative and technical specifications and annexes);
- (vii) minimum validity period of the Bid;
- (viii) deadline of the Bid;
- (ix) award criteria;
- (x) obligations of the contracting parties;
- (xi) duration of contracts under the FC;
- (xii) conditions and payment terms;
- (xiii) service levels, minimum technical and functional requirements;
- (xiv) reporting and monitoring; and
- (xv) penalties.

Tendering

Engaging Suppliers

- 14) Where applicable, pre-bid meetings shall be conducted with the potential suppliers to increase transparency and trust in the procurement process.
- 15) The pre-bid meeting can be conducted for dissemination of information on tender documents and discussion on the following:
- (i) objectives;
 - (ii) type of procedure, duration, lots/package and set-up;
 - (iii) evaluation and award criteria;
 - (iv) minimum technical and functional requirements;
 - (v) conditions to participate in the tender;
 - (vi) product update and changes in the offer; and
 - (vii) any other critical issues.

Boosting competition

- 16) Recommendations for boosting the competition during the implementation of a FC include:
- (i) Conduct a thorough market survey to:

- a) ensure that tender specifications allow suppliers to Bid and do not exclude some suppliers;
 - b) plan the lots/package; and
 - c) focus the FC on the right products.
- (ii) Information sessions for suppliers:
 - a) on tender documents, for specific tender; and
 - b) to notify the market about forthcoming procurement;
- (iii) Creating lots/Packages:
 - a) create appropriate lots/packages, regionally and by size; and
 - b) limit the number of lots/packages awarded to the same supplier to allow the inclusion of more suppliers;
- (iv) Adaptation to market reality:
 - a) define selection criteria in proportion to the scope and financial estimate of the contract;
 - b) adapt the requirements to the market solutions with suppliers bringing references of already delivered supplies to document their past experience; and
 - c) use a clear price adjustment mechanism.;
- (v) Selection criteria:
 - a) give a clear description and fair determination of award criterion; and
 - b) allow sufficient time to draft and introduce the offers;
- (vi) Boosting the competition by avoiding Bid Rigging:
 - a) Bid rigging or collusive tendering is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - b) Bid rigging includes any agreement either written or oral between Bidders that limits or reduces competition in a tender. The agreement may be between a Bidder and a potential Bidder who does not actually submit a Bid; and
 - c) Competition can be boosted by avoiding the Bid rigging or collusive tendering.

Awarding

11. The evaluation criteria and methodology should be provided in the Standard Bidding Documents for evaluating the suppliers awarding the FC.

Example, The PA may award one FC in each Region/Dzongkhags

12. Procuring Agency shall select the best evaluated Bidder and award the contract as:

Single supplier

- 1) There will be one winning Bidder for each item or lot who shall supply the required goods, works and services.

Multiple suppliers

- 2) The Procuring Agency may award the contract to multiple suppliers for each item or lot. Multiple supplier strategy may be adopted:
 - (i) when there is a tie in the price among two or more Bidders; or
 - (ii) where the price can be negotiated among the required number of best evaluated Bidders.

Example: If an agency decides to award an item to 3 Bidders, the price of the item shall be negotiated among the three best evaluated Bidders at the price of the winning Bidder.
- 3) The proportion of supply volume among the Bidders shall be determined by the Procuring Agency and may award the contract to multiple suppliers who will be the winning Bidders.
- 4) For high end products like laptops etc., if the 2nd or 3rd Lowest Evaluated Bidder wishes to withdraw the Bid, the 1st Lowest Evaluated Bidder is liable to supply the proportioned volume supposed to be supplied by other two Bidders.
- 5) If any Bidder withdraws the Bid amongst others, because of the requirement to supply at the rate quoted by the 1st Lowest Evaluated Bidder as may be applicable, they will be liable for forfeiture of Bid Security for the failure to supply their proportionate volume.
- 6) If 1st Lowest Evaluated Bidder fails to supply as provided in the clause 12 (4), he will be liable for forfeiture of Bid Security.

Standstill period

13. The Procuring Agency to establish FC shall be governed by the standstill period and processes prescribed in the Standard Bidding Documents therein.

Performance Security

14. The winning Bidder shall deposit the PS before signing and concluding the contract. The PS shall be a lump sum amount determined by the Procuring Agency based on the estimated quantity indicated in the Bidding Document or 10% of the MoQ of the items awarded.
15. Failure by the winning Bidder to submit the Performance Security mentioned in clause 14 or to sign the Contract provided in clause 16 and 17 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily. Such a failure shall be considered as “withdrawal” and all relevant clauses shall apply.

Termination of contract

Termination for Default

16. The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
 - 1) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser; or
 - 2) if the Supplier fails to perform any other obligation under the Contract; or
 - 3) if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption in competing for or in executing the Contract.
17. In the event the Purchaser terminates the Contract in whole or in part, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for

such similar Goods. However, the Supplier shall continue performance of the Contract to the extent not terminated.

Termination for Insolvency

18. The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination shall be without compensation to the Supplier, provided that such termination shall not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

Termination for Convenience

19. The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
20. The Goods that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
 - 1) to have any portion completed and delivered at the Contract terms and prices; and/or
 - 2) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and for materials and parts previously procured by the Supplier.

Contract signing

21. The Procuring Agency will conclude a FCs with each successful Bidders and prepare individual FCs for each successful Bidders. The FC may not be in the name of the Procuring Agency when there is:
 - 1) Lead Procuring Agency; and
 - 2) Central agency.
22. The suppliers are required to sign and return the FC. When there is more than one purchaser i.e lead Procuring Agency and central agency, FC should be signed by them on behalf of all Procuring Agencies.

Dispute settlement

23. The disputes arising out of the FC shall be resolved complying with the provisions mentioned in the Standard Bidding Documents.

Review

24. After the FC has been established, the PAs shall regularly review its usage and the following information as deemed necessary may be screened through the review process:

- 1) Whether the FC is being used for which it was created;
- 2) Whether the FC meets the anticipated needs;
- 3) Does the panel comprise sufficient capability and capacity to deliver quality outcomes;
- 4) Whether FC has delivered anticipated efficiency in terms of time, cost and resources;
- 5) Whether there is evidence that Value for Money is achieved;
- 6) Any complaints from suppliers;
- 7) Total savings achieved from FC;
- 8) Total spend being placed through FC;
- 9) Other benefits realized; and
- 10) Lesson learnt to improve the operation of FC in future.

Managing FC

25. The contract shall be managed by the following:

- 1) Lead Procuring agency:**
 - (i) Lead Procuring Agency shall issue supply order on the rates as per the contract agreement document;
 - (ii) The Procuring Agencies shall use the rates of the lead Procuring Agency to issue the supply order and make payment from their own budget account; and
 - (iii) The Procuring Agency and the supplier shall be bound by the contract terms and conditions of the lead Procuring Agency.

- 2) Procuring Agency:**
 - (i) The Procuring Agency shall issue supply orders as per the rates agreed in the contract document and shall be bound by the terms and conditions agreed thereby.

3) Central Agency:

- (i) The Procuring Agency shall issue supply orders using the rates of the central agency;
- (ii) The payment shall be made by the Procuring Agencies from their own budget account;
and
- (iii) The Procuring Agency and the supplier shall be bound by the contract terms and conditions of the central agency.

Bid Securing Declaration

- 26. The Bidder shall furnish as a part of its Bid, a Bid-Securing Declaration using the Bid Securing Declaration Form and a specific validity.
- 27. In exceptional circumstances, prior to the expiration of the Bid validity period, the Purchaser may solicit the Bidder's consent to an extension of the Bid validity period. The request and responses shall be made in writing.
- 28. The validity of Bid Securing Declaration shall be suitably extended.
- 29. The Bid-Securing Declaration shall be executed:
 - 1) If the Bidder withdraws the Bid during the period of Bid validity; or
 - 2) In the case of a successful Bidder, if the Bidder fails within the specified time limit to sign the Agreement.
- 30. In case Bid Securing Declaration is executed the Bidder shall deposit the Bid Security amount specified by the Procuring Agency within the duration specified by Purchaser.
- 31. In case the Bidder fails to deposit the Bid Security amount within the given period, Bidder shall be debarred from being eligible for Bidding or submitting Bid in any of the Procuring Agencies for a period of one year as determined by the Debarment Committee constituted under existing Debarment Rules.

Complaint & review

- 32. The grievance shall be reviewed in pursuant to the Rules of Procedure of the Independent Review Body.

Liquidated damages

33. if the Supplier fails to deliver any or all of the Goods by the date(s) of delivery within the period specified in the Contract, the Purchaser may, without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the Contract of the delivered price of the delayed Goods in pursuant to relevant sections of PRR 2023. Once the maximum is reached, the Purchaser may terminate the Contract.

Change Orders and Contract Amendments

34. The Purchaser may at any time order the Supplier through notice to make changes within the general scope of the Contract in any one or more of the following:
- A. specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
 - B. the method of shipment or packing; and
 - C. the place of delivery.
35. If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Purchaser's change order.
36. Prices to be charged by the Supplier might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar goods.
37. Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment by the parties.

Rules making power and amendments for SBD

38. The SBD for framework contract shall be approved by the Ministry of Finance in consonance to this guidelines and the PRR 2023.
39. The SBD for framework contract shall be dynamic and amended upon amendment to PRR 2023, these guidelines and upon necessity.