

Term Maintenance and Refurbishment Contract

Introduction The Term Maintenance and Refurbishment Works Contract (TMRC) may be used to address urgent maintenance requirements or where certain types of planned maintenance and refurbishment are envisaged, in a way that is cost effective, provides value for money and does not involve a new procurement process each time unscheduled or certain types of planned maintenance and refurbishment works have to be carried out.

The type of planned maintenance and refurbishment work that this contract may be used for are those where the work cannot be accurately defined in advance and for which one of the other fixed price lump sum contracts (i.e. PW-CF1 to PW-CF6) is not suitable. Where the nature of the works can be clearly defined then PW-CF1 to PWCF6 should always be used in preference to the TMRC since this represents better value for money.

The Contract Principles The TMRC may be awarded as a standalone contract or in conjunction with a Framework Agreement. A standalone contract is awarded to a single contractor whereas the Framework Agreement may be used for single or multi-operator frameworks.

The difference between the TMRC as a standalone contract and the single operator framework agreement is that the single operator framework option allows the Employer to retain a reserve participant. In the event of a breach of the framework rules by the participant they can be removed and replaced with the reserve participant.

Under the TMC as a standalone contract or when used with the framework agreement no contractual obligation arises until the Employer issues a Task Order, and no obligation for payment arises until that task is completed to the satisfaction of the Employer.

In both cases a formal agreement is signed by the Employer and the Contractor(s). In the case of the TMRC as a standalone contract the Standard Agreement should be used whereas the Framework Agreement is used where a single or multi-operator framework is required – both the Instructions to Tenderers for the open and restricted procedures include drop-down menus to indicate whether the Framework Agreement is being used.

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Tender and Award

The TMRC as a standalone contract or in conjunction with the Framework Agreement may be awarded on the basis of the most economically advantageous tender (MEAT) or the lowest price.

The most economically advantageous tender is the tender with the highest score once the marks awarded under all award criteria are totalled in accordance with the formula in Appendix 3.

The lowest price is the lowest Notional Tender Total and this is also used to determine the price score that is used in any MEAT evaluation. Rates are supplied by the tenderer in response to the pricing document issued as part of the tender, the Notional Tender Total is calculated using those rates with pre-determined notional quantities for those rates in the pricing document.

The open procedure may be used regardless of whether the TMRC is to be awarded in conjunction with the Framework Agreement or as a standalone contract however it must be used where the TMRC is to be used in conjunction with a multi-participant framework.

In the case where a single participant framework is to be set up and it is envisaged that the aggregate value of Task Orders to be awarded will exceed €250,000 then the contracting authority may consider the use of the Restricted Procedure.

Small to Medium Enterprises (SMEs) should not be disadvantaged in tendering for maintenance and refurbishment work. The key objective of Government as set out in Circular 10/10 is to ensure that SME participation in public procurement is not undermined in any way. The two key elements in ensuring that this does not happen are that: (i) the scope of work awarded under a single contract is not so large as to prevent an SME having the capacity to carry out the works, and (ii) that the duration of a contract does not preclude SMEs from competing for other work in a particular area over an extended period of time. Where a contracting authority determines that the total value of work of a maintenance and refurbishment nature under its control exceeds the framework limits set out below the authority should consider splitting the total workload into lots within defined geographic areas to ensure that it is procured and executed in lot sizes that facilitates SMEs. Splitting the workload into lots should also deliver improved value for money for the contracting authority

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Framework Agreement - General principles

The Framework Agreement is a complementary document to the TMRC and cannot be used independently. The Framework Agreement is intended to allow contracting authorities make use of the TMRC within an approved multi-participant or single participant framework structure. Framework agreements allow contracting authorities to reduce the administrative burden of tendering by awarding a pre-determined number of places on a framework following a transparent and competitive process from where contracting authorities may award contracts with those contractors in accordance with the framework rules.

The aggregate value of the contracts (Task Orders) to be awarded off the Framework Agreement is limited to the values set out at the end of this note which are below the European Union threshold for works contracts. These values may not be increased beyond the levels set, however lower value thresholds may be set where appropriate.

The principles of the Framework Agreement are:

- (i) A competitive initial open tendering process, based on notional quantified works described in the pricing document, which is used to establish a framework;
- (ii) On-going competitive mini-competitions within multi-participant frameworks and;
- (iii) The issuing of a Task Order to the framework participants to carry out specific items of work.

There is no obligation under the contract for a contracting authority to order any work that the contract covers. The contractual obligation only becomes effective when a Task Order is issued.

There are four key components to the contract within the context of the Framework Agreement. These are:

- (i) the Term Maintenance and Refurbishment Works Contract which sets out the terms and conditions under which the works are to be carried out;

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Framework Agreement - General principles (continued)

(ii) the Framework Rules under which contractors (framework participants) are awarded work in the form of Task Orders (Task Orders are orders issued by the contracting authority to participant contractors to carry out specified works under the terms of the contract);

(iii) a maximum lump sum is included at award stage that expenditure is not permitted to exceed and;

(iv) a maximum time is included at award stage and after its expiry no further work can be ordered under the contract.

The key feature of the Framework Agreement is that it establishes a transparent, competitive and consistent set of Framework Rules through which contracting authorities can call off framework participants to carry out Task Orders.

The Framework Agreement can be used to establish two different types of frameworks:

- a) Multiple participant frameworks (*for general maintenance, refurbishment*),
or
- b) Single participant frameworks (*for response maintenance only*)

a) Multi-participant frameworks involve establishing a framework list of qualified participant contractors who can be called upon to carry out Task Orders under the terms of the TMRC. It is intended that contracting authorities will use multi participant frameworks for general maintenance and refurbishment works. Contracting authorities can determine the number of participants within a framework although there should always be a minimum of 5 participants. Contracting authorities must identify the desired number of participants (subject to receiving the minimum number of qualifying tenders) in their invitation to tender.

The Framework Agreement includes an optional provision for Reserve Participants. Reserve Participants are tenderers whose tenders meet the minimum conditions of suitability assessment but whose notional tender totals rank them outside the specified number of framework participants (i.e. tenderers ranked 6th or lower if the contracting authority specifies 5 Framework Participants). Under the Framework Rules, Reserve Participants can replace Framework Participants whose participation is terminated for any reason provided for under the Framework Rules or the TMRC.

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Framework Agreement - General principles (continued)

It is recommended that contracting authorities exercise this optional provision to help ensure that the specified number of Framework Participants is available to compete for Task Orders for the lifetime of the Agreement. The contract notice must stipulate how many Reserve Participants will be admitted.

Participants will be ranked depending on the award criterion indicated in the Particulars in the Instructions to Tenderers. There are two possible award criteria; most economically advantageous tender or lowest price. The Framework Rules will determine how participants will be called off the list to participate in a mini-competition or be awarded Task Orders in ranking order. In a multi-participant framework five of the six Framework Rule Options are available (A to D). However, *only three of the five can be applied within any single framework*. Contracting authorities must apply the Options as follows:

Option	Method	Restrictions on application
A	Mini-competition with all Participants	Must apply in all frameworks
B1	Mini-competition with restricted number of Participants	Either B1 or B2 can apply, but not both
B2	Mini-competition with 3 Framework Participants	
C	Application of Framework Contract rates	Either C or D can apply, but not both
D	Call off on Rotation	
E	All Tasks awarded to one Framework Participant	Only applies to single Participant Frameworks (see next section)

Contracting authorities must state which Options will apply in any multiple participant framework in their invitation to tender. Cost limits should apply to the application of each Option as follows:

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Framework Agreement - General principles (continued)

Option	Method	Cost Limits
A	Mini-competition with all Participants	No cost limits, can apply to Task Orders of any value
B1 or B2	Mini-competition with restricted number or 3 Participants	€50,000 limit, can only apply to Task Orders valued at <i>less than</i> €50,000
C or D	Application of Framework Contract rates or Call-off on Rotation	€20,000 limit, can only apply to Task Orders valued at <i>less than</i> €20,000 <i>or</i> to Task Orders of a particularly urgent nature

Cost limits have been applied to the Options in order to ensure an appropriate level of competition is preserved within a Framework Agreement. The cost limits outlined in the table are suggested limits. Contracting authorities should review the suggested limits to ensure that they are set appropriately for the works envisaged, given local market conditions, to ensure that the majority of the Task Orders issued are subject to competition. Contracting authorities should be mindful that the provision to award Task Orders of a particularly urgent nature under Options C or D must only be used where there is a genuine urgency to the performance of the Task which would be functionally compromised by the time required to carry out a mini-competition.

In relation to Options B1 and B2 the Framework Agreement sets out a suggested call off based upon a total of 10 framework participants, these are included under Rule 2.3(ii) in the case of option B1 and Rule 2.4(ii) in the case of B2. Should the number of framework participants be greater or less than the 10 set out then the Employer should use option (iii) under both Rules and set up their own matrix that favours the higher ranked participants as set out in Rule 2.2.

Rules 2.3(i) and 2.4(i) refer to an option for random selection, the principles of which are covered in greater detail in guidance note GN 2.3.1.1 which is available to download on the Construction Procurement Reform website.

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Framework Agreement - General principles (continued)

b) Single participant frameworks involve establishing a framework with a single participant contractor. It is intended that contracting authorities will use single participant frameworks for *response maintenance work only*. Response maintenance is maintenance work of a time critical nature with a small monetary value (generally less than €5,000 per Task Order).

Contracting authorities may choose to use this type of framework for response maintenance work if they feel that a continuous relationship with a single participant is the most appropriate means of ensuring that short response times are achieved. Contracting authorities should use a Framework Agreement only if it intends to establish a list of reserve participant contractors. If the contracting authority does not intend to establish a list of reserve participants it need only use the Term Maintenance and Refurbishment Works Contract by itself.

Only one Framework call-off Option, Option E, applies in a single participant framework.

Specialists

Specialists may be used with the TMRC, however the Employer must put together a framework of specialists separately in advance of the tender process for the TMRC. Specialists are employed by the Contractor for the Task Orders where their input is required.

Details of the specialists that are required to be used must then be included in the Schedule to the Form of Tender (FTS 12) and details of their tendered terms included at Appendix 2 to either ITT W6 or ITT W7 depending on whether a restricted or an open procedure is to be used.

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Limits

The limits that apply to the use of this contract are:

- (i) The Maximum Sum included in the contract shall **not exceed €2.0m** and;
- (ii) The maximum duration shall **not exceed 2 years** in the case of multi participant frameworks and **shall not exceed 4 years** in the case of a single participant framework or standalone contract.

Both these limits must be stipulated in the appropriate section of the Schedule to the Form of Tender and Schedule (FTS12). In the case of the contract duration this runs from the date that the tender accepted section of the FTS12 is sent in accordance with clause 1.7 of the TMRC.

Related Documents

The Capital Works Management Framework documents associated with the TMRC are:

- (i) The Term Maintenance and Refurbishment Works Contract – PW-CF11
- (ii) Framework Agreement – FA
- (iii) Standard Agreement (for use with the TMRC as a standalone contract) – SA
- (iv) Instruction to Tenderers – Restricted Procedure (initial procurement) ITT W6
- (v) Instruction to Tenderers – Open Procedure (initial procurement) ITT W7
- (vi) Form of Tender and Schedule – FTS 12
- (vii) Invitation to tender (mini-competitions) – FA-ITT
- (viii) Model Form of Task Order – TO

Of the above documents (ii) and (vii) are exclusively for use where a single or multi-participant framework is being used with the TMRC, other documents may be used with the TMRC as a standalone contract and the single or multi-participant framework.

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Awarding the Contract

Where the TMRC is to be awarded as a standalone contract, unsuccessful tenderers are to be notified using *R.na8* where a restricted procedure is used or *O.na7* where the open procedure is used. When used as a standalone contract the TMRC may only be awarded to a single tenderer, the successful tenderer shall be notified using *R.na7* or *O.na6* depending on the procurement procedure used. Once those requirements set out in the letter to the successful tenderer have been met, the 'Tender Accepted' section of the successful tenderer's Form of Tender may be issued and the contract comes into existence. It is recommended that both parties sign the Standard Agreement which is to be found on the website under the listing for the PW-CF11.

Awarding places on the Framework

Where the Framework Agreement is to be used in conjunction with the TMRC, those unsuccessful tenderers shall be notified using either *O.na7* where an open procedure was used or *R.na8* where a restricted procedure was used (note the restricted procedure may be used only when setting up a single-participant framework).

Those who are to be awarded a place on the framework should be notified using either *O.na6* where an open procedure was used or *R.na7* where a restricted procedure was used. Those who have been selected as Reserve Participants should be notified using either *O.na6* or *R.na7* depending on the procurement procedure, however the letter should clearly indicate that they have been selected as Reserve Participants.

Once those requirements set out in the letter to the successful tenderer have been met, the 'Tender Accepted' section of the Framework Participant's Form of Tender may be issued and the contract comes into existence.

The Framework Agreement which is to be found under the listing for PW-CF11 should be executed by all Framework Participants as soon as possible after the 'Tender Accepted' is sent.

Should a place become available on the Framework and a Reserve Participant is offered that place, the letter notifying them should set out the remaining value of work that may be awarded off the Framework and the remaining period which the Framework has left to run. Prior to issuing the 'Tender Accepted' section of their Form of Tender they should be asked to confirm that the items requested in the original letter to successful tenderers are in place and the remaining terms of the Framework. The remaining value of work available and period of time to run should be appended to their Framework Agreement.

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