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Guidelines for the implementation of the framework agreement

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# Introduction

The public procurement system in the Republic of Serbia was established on the basis of European Union directives in the field of public procurement, the principles of transparency, equal treatment, freedom of competition and the prohibition of discrimination, and is regulated by the provisions of the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, Nos. 91/19 and 92/23, hereinafter referred to as: PPL) which prescribe the types of public procurement procedures that contracting authorities can carry out in order to award contracts for the public procurement of goods, services or works, as well as techniques and instruments that can be used in public procurement procedures.

The framework agreement (hereinafter referred to as: FA) represents one of the techniques that can be applied in public procurement procedures, designed as a “tool” that provides a significant contribution to the efficiency, economy and greater security of procurement. Precisely because of this nature of this technique, Directive 2014/24/EU in its introductory remarks [[1]](#footnote-1)recommends a wider application of FA in practice.

According to data from the Annual Report on Public Procurement in the Republic of Serbia for the period from 1 January 2023 to 31 December 2023[[2]](#footnote-2) in 2023, a total of 17,233 FA were concluded, which is an increase of 13.5% compared to 2022. In the aforementioned report, it was also stated that the contracting authorities failed to anticipate the possibility of concluding FA learning in a situation where they are not able to determine the exact quantities of procurement items, which is one of the characteristics of FA, which makes this technique extremely useful.

Considering that there are several types of FA, depending on whether they are concluded with one or more bidders, as well as based on the method of awarding individual contracts in the case of agreements with several bidders, in practice the contracting authorities often chose the simplest model – framework agreement with one bidder, due to the complexity of other options.

Bearing in mind the aforementioned, with the aim of wider and more effective application of FA, within the project “Efficient public procurement and sustainable supply chains (ESG) for improving competitiveness”, implemented by NALED with the support of the Swedish Agency for International Development and Cooperation – SIDA, these were prepared guidelines, as a tool that will help contracting authorities to better understand and apply the FA in practice.

# Basic rules and principles of FA

##  **1.** **Understanding FA**

FA is one of the important tools in the modern public procurement system, primarily because of its flexibility and efficiency. It is recommended as a way to optimize the procurement process, especially in situations where it is not possible to accurately determine the needs, quantities or time when the need will arise.

According to the PPL, FA is a special technique that can be used in public procurement procedures. It is defined as an agreement between one or more contracting authorities and one or more bidders, which determines the conditions and manner of awarding the contract during the period of validity of the FA, especially in terms of price and, where appropriate, quantity[[3]](#footnote-3). In essence, the FA serves as a basis for future contracts to be concluded based on the agreement. Instead of the public procurement procedure ending with a public procurement contract, in this case it ends with the conclusion of the FA, and with individual contracts or purchase orders, which are concluded in the manner and under the conditions defined by the FA, the procurements that are the subject-matter of that agreement are implemented.

*Key steps in FA*

The first stage of the FA is the selection of a business entity (or economic operators), using the public procurement procedure, to be a party (or parties) to the FA. The second stage is the awarding of a procurement contract (or issuing purchase orders) to a business entity that is a party to the FA, applying the rules and conditions defined by the provisions of the FA.

It should be noted that FA does not in principle establish a legally binding contract between the parties. Rather, it is an arrangement that describes the conditions and rules that the procuring entity will apply when it wishes to procure goods, services or works that are the subject-matter of the FA from economic operators that are parties to the FA.

One of the most common dilemmas is precisely the difference between FA and public procurement contracts. In order to better understand FA, **some of the key differences between public procurement contracts and FA** are highlighted below.

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| **1.** | **NATURE** |
| **Public procurement contract** | **FA** |
| It is concluded for the purpose of delivery of certain goods, services or works under pre-agreed conditions, after the public procurement procedure has been carried out. The contract directly obligates the contracting parties to carry out the work in accordance with the agreed conditions, which means that **the fulfillment of the contractual obligations is binding for both parties.** Namely, a public procurement contract is a bilaterally binding legal transaction, in which the contracting party pays the agreed price for delivered goods, services or performed works to the other contracting party. The PPL defines it as a freight contract concluded in writing between one or more bidders and one or more contracting authorities, the subject-matter of which is the procurement of goods, the provision of services or the performance of works. | It does not immediately lead to the execution of the subject-matter of procurement, but serves as a basis for later conclusion of individual contracts/issuance of purchase orders based on which the subject-matter of procurement will be executed (deliver goods, provide services or perform works). As such, it sets the framework for future contracts, but does not directly oblige the contracting authority to purchase. Therefore, **it is not binding** in terms of the execution of the procurement subject until an individual contract is concluded. It should be noted that FAs are generally concluded without the obligation to conclude any individual contract based on them (so-called non-binding FAs). However, it is also possible to conclude a binding or partially binding FA, because there is no provision in the PPL that prohibits this. Thus, the FA can be binding in its specific part, scope, only for the bidder or for both parties, etc. However, in practice binding FA are much less common than non-binding ones. In this regard, it should be understood that this obligation still does not exclude the conclusion of an individual contract on the basis of the FA, but only the established obligation to conclude an individual procurement contract that is the subject-matter of that agreement. |
| **2.** | **FINANCIAL OBLIGATIONS** |
| **Public procurement contract** | **FA** |
| The conclusion of the contract creates a financial obligation of the contracting authority to make payments for the goods delivered, services provided or works performed, according to the established deadlines. Article 152, paragraph 7 of the PPL prescribes that **the obligations assumed by the public procurement contract must be in accordance with the budget regulations, that is, with the rules on the disposal of financial resources.**  | It does not imply the assumption of financial obligations. Financial obligations arise only when an individual contract is concluded/a purchase order is issued based on the FA. This points to a clear conclusion that **the contracting authority does not have to dispose of financial resources at the time of initiating the public procurement procedure with the aim of concluding the FA and concluding the FA,** but this obligation arises when it concludes the contract based on the FA.  |
| **3.** | **FLEXIBILITY** |
| **Public procurement contract** | **FA** |
| The contract has **less flexibility** because it contains precisely defined terms, quantities, deadlines and prices. Once concluded, its application is binding and fixed. Its nature is characteristic for the procurement of clearly defined goods, services or works when the exact quantities and deadlines are known to the contracting authority. | It allows **greater flexibility** because all conditions, quantities or exact deadlines do not have to be precisely defined in advance. It sets framework conditions for future individual contracts (quantities, prices, delivery dates, etc.), but allows specific conditions to be defined later, depending on current needs. Therefore, FA is suitable for situations when the contracting authority cannot precisely determine the quantities or the time of need for the subject-matter of procurement, such as procurements that are repeated from year to year or procurements of uncertain volume. When it comes to the indicative quantities in the FA, the actual implementation of the quantities through individual contracts may vary depending on the needs of the contracting authority, and may be lower or higher than the quantities defined in the FA.  |
| **4.** | **DURATION** |
| **Public procurement contract** | **FA** |
| The PPL **does not define how long a contract on public procurement can last**, it is valid until the performance of the contractual obligation (delivery of goods, completion of services, works, etc.), so the contract itself determines its duration, which is related to the delivery of goods, completion of works or execution service.  | It can be concluded for a period of **up to four years**, during which individual contracts can be concluded several times according to the needs of the contracting authority. An exception is possible, and it can be concluded for a longer period of time when it is justified by the nature of the subject-matter of the procurement, but in that case the contracting authority must state the explanation in the public invitation[[4]](#footnote-4). |

## **2. Advantages and potential challenges of FA**

FAs have many advantages, but require careful management to avoid potential problems. With proper implementation, they can significantly improve the public procurement system, ensure efficiency and reduce costs, but it is important that contracting authorities recognize the challenges in order to maximize the benefits.

* **Advantages of FA**

The advantage of FA, as already mentioned, is reflected in its **flexibility**, as it allows the contracting autohirites to define the general procurement conditions without the obligation to specify exact quantities or deadlines. In addition, the FA contributes to **the reduction of administrative burden and time efficiency**.Namely, the use of FA reduces the need to repeat public procurement procedures for the same goods, services or works, because once a FA has been concluded, it allows the contracting parties to conclude individual contracts in accordance with their needs, during its duration, without additional lengthy public procurement procedures, which reduces the administrative burden of the contracting authority, but also saves time that would otherwise be spent on implementing new public procurement procedures. **Security of supply** is also one of the important advantages of FA, as the contracting parties who conclude FA have greater certainty that the required goods, services or works will be available when they need them, without the need to carry out a new procurement procedure each time. This is especially important for the procurement of basic resources such as fuel, medicines, hygiene products, etc.

* **Potential FA challenges**

Although they have numerous advantages, the implementation of FA also brings certain challenges that the contracting authorities must take into account. FAs in a certain way **lead to the closure of the market**, especially when they are concluded for a long period of time, and especially with one bidder, because they are closed systems within which procurements are awarded to bidders included in the agreement, which limits the market for new bidders who are not part agreement, and it can potentially have a negative impact on the contracting authority, as it relies on a limited number of bidders. Although FAs provide flexibility, long-term agreements **may become unfavourable to the contracting authority or bidders if market conditions change**. Also, despite the fact that FAs reduce the number of public procurement procedures, **they are challenging to monitor and manage** a large number of suppliers, especially in cases where competition is re-opened.

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| ***Recommendation*** *- Due to all the numerous advantages that FA brings, they are especially recommended for procurements that are often repeated or where it is difficult to accurately predict the needs or the time when the need arises. However, in order to avoid challenges, contracting authorities must carefully plan and monitor the implementation of the FA, with a clear definition of the conditions and obligations of all parties. Also, the inclusion of multiple bidders is recommended in order to ensure competition and flexibility during the term of the agreement.* |

## **3. The role of FA in centralised public procurement**

Centralised public procurement is a mechanism through which the body for centralised public procurement carries out procurement procedures for the needs of several contracting authorities. The role of centralisation is to, through the unification of needs, ensure more favourable procurement conditions, reduce the administrative burden and achieve greater savings. One of the key mechanisms used in such procurements is FA. The FA in centralised public procurements as a procurement technique is applied because it enables a larger number of individual procurements for different contracting authorities to be included in one procedure over a longer period of time. Bodies for centralised public procurement assume responsibility for the organisation of the public procurement procedure, the selection of bidders and the conclusion of the FA on behalf of other purchasers.

One of the important advantages of implementing FA in centralised public procurement is the achievement of cost savings. By combining the needs of different contracting authorities within one procedure, a larger volume of orders is achieved, which enables suppliers to offer more favourable conditions. In this way, smaller purchasers who otherwise would not be able to obtain favourable prices can gain access to more favourable offers through centralisation.

The use of FA in centralised public procurement reduces the administrative burden for individual purchasers, especially those with small capacities. Instead of each procuring entity conducting its own public procurement procedure, a once-implemented public procurement procedure and conclusion of the FA by the centralised procurement body enables the contracting authorities involved in the FA to have quick and easy access to procurement conditions and suppliers during the duration of the agreement.

In addition, centralised procurement through FA enables standardisation of the quality of goods and services. Through unique technical specifications, all purchasers using the FA receive goods or services of the same quality, which facilitates control and monitoring of contract implementation. For example, in the health sector, centralised procurement of medical equipment through FA allows all hospitals to receive equipment of the same standard within a single procurement, which reduces variability in quality and enables better planning. One of the good examples of centralised procurement through FA is the procurement of IT equipment for state bodies. This FA allows government authorities to purchase computers, servers, network equipment and software, with pre-defined technical characteristics and prices, as needed. In this way, equipment standardisation, cost reduction, and acceleration of the procurement process for individual contracting authorities are achieved.

FA are a proven effective tool for achieving better managed and controlled public spending through centralised public procurement.

## **4. Types of FA**

The PPL envisages several types of FA, which differ in the number of bidders with whom contracts are concluded and the method of awarding individual contracts. Thus, there are single-bidder FA and multi-bidder FA, whereby multi-bidder FAs have several different ways of awarding individual contracts.

*An overview of FA types*

**1. FA WITH ONE BIDDER**

FA with one bidder implies the establishment of an agreement between the contracting authority (one or more) and only one bidder. In this case, all terms of the contract, such as price, delivery dates, technical requirements and other conditions, must be clearly defined in the FA. When the need arises for the implementation of individual contracts within the scope of this agreement, the contracting authority concludes them directly with the selected bidder, without the need for additional negotiations or re-opening of the competition.

The main advantage of this type of agreement is its efficiency, because the contracting authority quickly and simply receives the necessary goods, services or works that are the subject-matter of the FA. However, such agreements may limit competition, which may lead to less savings in spending public funds.

**2. FA WITH MULTIPLE BIDDERS**

FA with multiple bidders implies the establishment of an agreement with two or more bidders selected in the public procurement procedure. This agreement allows the contracting authority to choose the most favourable bidder for the implementation of individual contracts, either without re-opening the competition, through the re-opening of the competition or partially without opening the competition and partially with the re-opening of the competition.

This type of agreement increases competition and allows flexibility at the choice of bidders, which can result in lower prices and better terms. However, they are more complex to manage and may require more resources in the implementation phase.

**2.1. FA without re-opening the competition**

In cases where all conditions are clearly defined in advance in the FA, the contracting authority can award individual contracts without the need to re-open the competition. In this type of agreement, the contracting authority only assigns an individual contract to one of the bidders with whom a FA was concluded according to predetermined criteria (e.g., price, delivery capacity, etc.), that is, an individual contract is automatically awarded according to those criteria.

The advantage of this approach is its speed and administrative simplicity, but in this case the scope for further improvement of prices or conditions is narrowed because there is no additional competitive pressure in the phase of awarding individual contracts.

**2.2 FA with re-opening of competition**

When a FA with several bidders is concluded, it is possible, according to the legal provisions, to re-open the competition among the selected bidders for each individual contract. This procedure allows the contracting authority to further improve the conditions and ensure a better price or quality of service at the time of contract implementation. Bidders already included in the FA then submit their bids for that particular contract.

The advantage of this approach is that it enables constant optimisation of conditions in accordance with current market circumstances, which can mean additional savings. However, the procedure can be administratively demanding and slower due to the need for new bidding cycles.

**2.3. Without the opening of competition in part and with the re-opening of competition in part**

This type of agreement combines both approaches – depending on the circumstances, individual contracts can be awarded either without re-opening of competition (when all conditions are predefined) or with re-opening of competition (when conditions need to be further optimised). This approach gives more flexibility to the contracting authorities, because they can decide which option is optimal depending on the specific situation.

The contracting authority can use this type of agreement, for example, in the case of the procurement of IT equipment, where certain specifications are clearly defined (e.g., the price for a basic computer model), while for more specific equipment (e.g., servers or special software packages) it can re-open the competition among the selected bidders as would achieve the best price and procurement conditions.

The main advantage of this approach is its flexibility, as it enables the adaptation of procedures to specific needs and circumstances. However, its implementation may require more administrative resources and attention to properly balance the need for efficiency and ensuring competition.

## **5. When to use FA**

The PPL does not define in which situations it is possible to use the FA, for which items of procurement and which public procurement procedure is applied when concluding the FA.

Although FA can cover all types of goods, services and works, its application is not always justified or appropriate for every procurement item. Therefore, when considering the conclusion of the FA, the contracting authority must assess the expediency in relation to its specific needs and circumstances in each individual case.

Therefore, if the procuring entity can precisely define all procurement parameters in advance, it may be more efficient to use a classic contract instead of an FA. For example, the construction of a hospital, which requires precisely defined technical specifications and deadlines and is built according to pre-made design and technical documentation, is not suitable for FA, because it is a unique project with clear parameters. In such cases, a classic construction contract would be a more appropriate choice.

In practice, the role of FA is particularly highlighted in the following cases:

#### when it is not possible to precisely determine the quantities of the procurement items,

#### when there is a need for purchases that are continuously repeated from year to year, and

#### in the case of unpredictable needs regarding the time of execution of the procurement item.

#### ****1. IT IS NOT FEASIBLE TO PRECISELY DETERMINE THE QUANTITIES OF THE SUBJECT-MATTER OF PROCUREMENT****

One of the most common situations in which FA is applied is when the contracting authority cannot accurately predict the exact quantities of goods, services or works that it will need during a certain period. FA enables the determination of approximate quantities of procurement items, while specific procurements are carried out according to real needs that arise during the duration of the agreement. An example can be the procurement of office supplies. Although it is possible to roughly predict what types of supplies will be needed (e.g., paper, pens, folders), the exact quantities may vary due to changes in the scope of work. FA enables goods to be procured according to specific needs, without the obligation to order pre-defined quantities and unnecessary creation of stocks.

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| ***Note:*** *It should be emphasised that, in any case, special attention should be paid to the determination of the approximate quantities and they should not be determined "indicatively", but on the basis of objective analyses of expected needs, on the basis of previous experience, etc. One of the important dilemmas is the issue of permissible deviations from the framework quantities, considering that the PPL does not specify the limits of these deviations. Even though the limits are not defined, a significant deviation from the estimated approximate quantities may indicate bad planning or the wrong choice of the most favourable offer, so you should be careful in this connection and have a clear explanation for such deviations.* |

#### ****2.** **PROCUREMENTS**** THAT ARE CONTINUOUSLY REPEATED

Contracting authorities, in accordance with their business needs, have a significant number of procurement items (the same goods, services or works) that they need every year or continuously for a longer period of time. The FA has a significant role in these cases. Instead of conducting a new public procurement procedure for each procurement every year in accordance with the financial plans that are adopted mainly for one budget year, the FA provides the opportunity to carry out the public procurement procedure in one year and conclude the FA that will last for several years (four at the longest, except in exceptional cases), and that individual purchases are carried out according to actual needs and in accordance with the financial plans for that budget year.

As an example, regular purchases of medical supplies in hospitals, such as protective gloves, bandages and other consumables, can be taken. FA enables hospitals to quickly and efficiently acquire the necessary material during the entire period of validity of the agreement, and in accordance with the regulations governing the budget system, i.e., the disposal of financial resources.

**3. UNPREDICTABLE NEEDS IN TERMS OF IMPLEMENTATION TIME**

When the needs of the contracting authority are unpredictable in terms of the procurement implementation time, the FA enables efficient response. Instead of implementing urgent and emergency public procurement procedures, the contracting authority can rely on the FA and order goods, services or works immediately upon indicating the need, under the conditions established in advance by the FA. For example, when urgent rehabilitation of roads is necessary after natural disasters or sudden damage, the contracting authority can engage a suitable contractor in a short period of time if it has concluded an FA for maintenance and repair of roads.

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| ***Recommendation*** *- Taking into account all of the above, contracting authorities should consider the possibility of applying FA for certain items of procurement, especially for those where they cannot precisely determine the amount and time of need, such as office supplies, computer and office equipment, drugs and medical funds, construction works on building and road maintenance, vehicle and equipment maintenance services, etc.*  |

## **6. Principles and basic rules for FA application**

The application of FA requires full compliance with the principles of public procurement and the rules prescribed by the PPL, in order to ensure transparency, equality of economic operators and ensure competition. Therefore, it requires precise planning and proper implementation in order to achieve its purpose and benefit the contracting authority.

1. **COMPLIANCE WITH PUBLIC PROCUREMENT PRINCIPLES**

The contracting authority is obliged, as in any public procurement procedure, in all stages of the procedure, starting from the announcement of the public invitation, until the conclusion of the FA, but also in its implementation, to ensure compliance with the principles of public procurement in order to avoid any irregularities or corrupt activities.

The aforementioned is also derived from Article 66, paragraph 6 of the PPL, which stipulates that the FA and the contract concluded on the basis of the FA cannot be used in a way that would prevent, limit or violate competition and equality of bidders.

The contracting authority must not create more favourable conditions for individual bidders, nor favour anyone, both in the phase of conducting the public procurement procedure with the aim of concluding the FA, as well as in the phase of its implementation. Employers are obliged to conclude contracts on public procurement in accordance with the conditions established in the FA, that is, the contract cannot contain essential changes to the conditions established in the FA, as prescribed by Article 66, paragraph 10 of the PPL. This provision is also a consequence of the intention to maintain respect for the principles on which the PPL is based throughout the duration of the FA. Also, the implementation of the FA, i.e., the award of individual contracts, must be accompanied by transparency, which is primarily reflected in the publication of data and notices about the concluded contracts based on the FA, as well as the decision on the award of contracts based on the FA in the case when the FA was concluded with the re-opening of competition.

1. **PLANNING FA**

Before starting the public procurement procedure with the aim of concluding the FA, it is crucial that the contracting authority properly plans the procurement and clearly sees its needs, so that the outcome of the procurement will be successful. This means that the contracting authority must carefully analyze its future needs and market conditions so that the FA is in line with those needs and provides the necessary flexibility.

Although FA is particularly applicable in situations where the contracting authority cannot precisely determine quantities, it is necessary for contracting authorities to determine approximate quantities when planning purchases. Regardless of the fact that these quantities do not have to be completely precise, they must be viewed as objectively as possible, both for the correct determination of the estimated value of the public procurement, and for the effective implementation of the procurement.

The estimated value of the FA is determined as the maximum value of all contracts that the contracting authority plans to conclude during the duration of that FA. Therefore, the task of the contracting authority is to take into account the total value of all contracts that it intends to conclude during the duration of that FA, which, among other things, also achieves by determining the approximate quantities. When determining the estimated value of FA, contracting authorities must take into account the rules that apply to the method of determining the estimated value of public procurement[[5]](#footnote-5).

The contracting authority adopts an annual procurement plan, and in that plan it is not obliged to indicate that it intends to carry out a public procurement procedure for a specific procurement item with the aim of concluding the FA, although it has that option[[6]](#footnote-6). The contracting authority determines the subject-matter and estimated value of the FA and, along with other mandatory elements of the procurement plan[[7]](#footnote-7), enters the procurement into the procurement plan for the year in which it plans to implement the public procurement procedure. It is a frequent dilemma of the contracting authorities whether in the following years, when they award contracts based on the FA, they should include those procurements based on the FA in the procurement plans. The procurement plan refers to the public procurement procedures that are carried out on the basis of that plan, and as the public procurement procedure ends with the conclusion of the FA, its further implementation does not imply the implementation of a new public procurement procedure, and thus neither is it included in future public procurement plans in the years in which FA are implemented.

1. **DURATION OF FA AND CONTRACTS CONCLUDED ON THE BASIS OF FA**

One of the key rules that contracting authorities must follow when applying the FA relates to the duration of the agreement. According to the PPL, the maximum duration of the FA is four years, except in special cases when a longer duration is justified due to the nature of the procurement.

Therefore, a longer duration of the FA of four years can be justified only in exceptional situations, when it is necessary to apply the agreement for a longer period of time due to the specificity of the subject-matter of procurement or the complexity of the delivery. For example, in the case of infrastructure maintenance, such as water supply systems or energy facilities, it could be justified to conclude an FA for a period longer than four years due to the technical requirements and scope of the works. However, the contracting authority must be able to justify this decision and provide adequate justification for such an approach. In the event that, for the aforementioned reasons, the contracting authority foresees the duration of the FA for longer than four years, it is obliged to justify it and state it in the public invitation.

The time limit applies exclusively to FA, but not to contracts concluded based on them.

The first rule that must be kept in mind is that the public procurement contracts, which result from the FA, must be concluded before the FA expires. However, the duration of those contracts does not necessarily have to be the same as the duration of the FA - it can be shorter or longer, depending on the specific needs of the contracting authority. For example, the contracting authority, on the basis of the FA concluded for a period of three years, acquires air conditioners with servicing during the warranty period. In that case, it is allowed to conclude an individual contract during the duration of the FA, and for it to last even after the expiration of the FA as long as the warranty period and the contracted servicing of the air conditioner lasts.

On the other hand, the contracting authority must not abuse the rights from the FA in order to avoid the application of public procurement procedures. The conclusion of individual contracts based on the FA must move within the limits and in accordance with the logic of the FA itself, so it would not be allowed to conclude contracts for an unusually long period of time just before the expiration of the FA just to avoid the obligation to implement a new public procurement procedure. This kind of behavior would be an abuse and a violation of the principles of public procurement. This is precisely what the provision of Article 66, paragraph 6 of the PPL refers to, as stated in point 1 of this section of the guidelines.

1. **PARTIES TO THE FA**

**The FA, as stated above, is a closed system, which means that it is used only by those who concluded it, that is, those for whom it is intended. Therefore, neither new bidders nor new purchasers can join the concluded FA.**

**When it comes to purchasers, the FA can be used by those purchasers who concluded it or the purchasers on whose behalf it was concluded or the purchasers for whom it can be clearly concluded from the procurement documentation that it is intended for them. Unlike bidders who are signatories to the FA, the contracting authority does not have to be a signatory to the FA, but it must be clear that it is intended for them. In this sense, the contracting parties who are parties to a particular FA should be clearly indicated from the very beginning, by name or in another way, such as referring to a certain category of contracting parties, so that the contracting party can be easily and unambiguously identified.**

1. **PUBLIC PROCUREMENT PROCEDURES FOR CONCLUSION OF FA**

**The contracting authority may conclude the FA by applying any type of public procurement procedures provided for by the PPL, taking into account the rules and conditions prescribed for each type of procedure. Nevertheless, the open procedure is, primarily due to its broadest transparency and availability to all interested economic operators, the most prevalent in practice. According to data** from the Annual Report on Public **Procurement in the Republic of Serbia for the period from 1 January 2023 to 31 December 2023**[[8]](#footnote-8)**, the share of the open procedure is 97% in the total value of concluded contracts.**

**Other public procurement procedures involving negotiation, as well as the restrictive procedure, are used in specific circumstances when an open procedure is not appropriate or possible. These procedures are rarer, but necessary, e.g., in cases where, due to the complexity of the procurement subject, technical requirements or market conditions, it is not possible to conduct an open procedure.**

1. **APPLICATION OF ELECTRONIC AUCTION AND ELECTRONIC CATALOGUE WITH FA**

Special instruments such as electronic bidding and electronic catalogues also find their role in FA.

Electronic auction can be applied either for the conclusion of the FA or in the phase of awarding an individual contract based on the FA. Namely, the contracting authority has the possibility to decide, in the process of re-opening the competition on the basis of the FA with several bidders, that the award of individual contracts is preceded by an electronic auction, if the content of the procurement documentation, and especially the technical specifications of the procurement subject, can be precisely determined[[9]](#footnote-9).

In addition, the contracting authority has the option, if the FA was concluded with several bidders by submitting bids in the form of an electronic catalogue, to determine that the re-opening of competition for individual contracts takes place on the basis of updated catalogues[[10]](#footnote-10).

The rules of procedure in case of application of electronic bidding and electronic catalogs are governed by special provisions of the law and functionalities of the Public Procurement Portal (hereinafter referred to as: the Portal).

# Public procurement procedure and implementation of the FA

## **1. Public procurement procedure**

The process of implementing the public procurement procedure includes a series of activities, and below are presented the key activities through the open procedure, the application of which is the most common in practice, with an emphasis on issues related to the conclusion of the FA.

*Figure 3 Key activities in the public procurement process*

##### **Procurement plan and FA**

The contracting authority can start the public procurement procedure if the public procurement is foreseen in the annual public procurement plan. Exceptionally, when it is not possible to plan public procurement in advance or for reasons of urgency, the procedure can be initiated even though public procurement is not foreseen in the public procurement plan, however, due to the nature of FA, this possibility is generally not applicable.

In the procurement plan, the contracting authority is not obliged to state that it applies the FA technique, even though it has that option. If the contracting authority wishes to indicate in the procurement plan that it is planning to conclude an FA for a specific procurement, in accordance with the functionality of the Portal when creating the plan, in the “Technique” column, using the drop-down menu, select one of the options ”Framework agreement with one economic operator” or “Framework agreement with several economic operators”. The fact that the contracting authority has indicated in the procurement plan that it applies the FA technique for a specific procurement item has no influence on the further implementation of the procedure. Therefore, even though the contracting authority did not mark the above, it can apply the FA technique, but it can also not apply it, just as it can also apply a different type of FA in the process than the one it marked, without the obligation to change the procurement plan.

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| ***Note:*** *The estimated value of the public procurement includes the value of all contracts that the contracting authority intends to conclude based on the FA[[11]](#footnote-11).* This does not mean that the financial plan must have secured funds for all contracts that will be concluded on the basis of FA, but must have them at the moment of concluding an individual contract based on FA, when the assumption of financial obligations arises*[[12]](#footnote-12)*.  |

##### **Decision on implementation of the public procurement procedure and FA**

The contracting authority makes a decision on the implementation of the public procurement procedure, which contains the information prescribed in Article 91 of the PPL, which does not include the information that the FA technique is applied, but it is preferable to state this already in the decision, so that the public procurement commission, whose composition is determined by the decision had clear instructions for the preparation of procurement documentation.

The decision states the valid estimated value of the public procurement. If the public procurement is divided into lots, it is necessary to state the total and estimated value of each individual lot.

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| ***Note:*** *When it comes to lots and FA, it should be borne in mind that it is not possible to apply different types of FA for different lots in one public procurement procedure, which means that the contracting authority must determine the procedure so that in all lots it concludes FA with one bidder or FA with multiple bidders. In addition, it is not possible for a contract to be awarded in one party, and an FA in another, which means that when the public procurement procedure is carried out with the aim of concluding an FA in each party, there must be an FA.*  |

* **Public procurement procedure**

Procurement documentation is prepared by the contracting authority and sent for publication on the Portal using the functionality of the Portal.

**Public invitation** – The public invitation created by the Portal on the basis of the data entered by the contracting authority during the creation of the procurement documentation contains FA data, namely:

* whether an FA is established with one or more economic operators,
* the number of economic operators if the FA is with several economic operators,
* the duration of FA and the reasons for a duration longer than four years if it is foreseen,
* other data, such as data on the value or scope and frequency of contracts awarded on the basis of FA, if specified by the contracting authority.

**Tender documentation** – Article 93 of the PPL and the Rulebook on the content of tender documentation in public procurement procedures[[13]](#footnote-13) prescribe the elements that must be contained in the tender documentation. The tender documentation regulates the technical specifications of the subject-matter of procurement, criteria for the qualitative selection of a business entity, criteria for awarding contracts/FA, but it also includes, among other things, the FA model, which defines the manner and conditions of awarding individual contracts depending on the type of FA.

* **The FA with one bidder** should contain all the essential data that are important for the implementation of the procurement subject, because contracts based on the FA are awarded within the limits of the conditions provided for in the FA, which essentially means that the contract is concluded within the limits of the offer submitted in the procedure public procurement for the final education of FA. Therefore, depending on the subject-matter of procurement, it is recommended that the FA contains data such as: the price or the way in which the price will be formed for future contracts (e.g., price per unit of measure, price adjustment methodology in case of changes in market conditions, etc.), delivery terms, quality, technical characteristics, obligations and responsibilities of the parties regarding delivery, quality control and possible guarantees, etc. In addition, it is necessary to define how individual contracts will be awarded or purchase orders will be issued based on the FA. The PPL does not prescribe special procedures that should be applied when awarding individual contracts, in the sense of making decisions on the award of contracts or communication through the Portal, but in the manner defined by the FA (e.g., by mail), an invitation to conclude an individual contract or issue a purchase order is sent.
* **An FA with multiple bidders** contains elements that differ depending on whether individual contracts are awarded without re-opening of competition or with re-opening of competition or partly without and partly with re-opening of competition.
* **Without re-opening the competition**, the FA should first of all contain all the conditions for the delivery of goods, the provision of services or the performance of works. In addition, there must be specific and clear conditions for the selection of the bidder from the FA with whom the individual contract will be concluded. The above means that an individual contract is concluded with a certain bidder within the limits of the offer submitted by it in the public procurement procedure for the conclusion of the FA, and the selection of that bidder among those with whom the FA was concluded is made in accordance with the rules, that is, the conditions which are pre-determined FA. In terms of how to determine the bidder from the FA to whom the individual contract will be awarded, practice knows different approaches (the so-called cascade system, rotation system, system of dividing the FA into equal parts, selection system according to the most favourable group of items, etc.).

A reserve (cascade) system is a system in which the invitation to conclude individual contracts would be delivered to only one supplier, and if the latter is unable to execute it, the invitation would be sent to the next supplier from the FA and so on until the last one. The reserve system provides greater certainty to the contracting authority that the contract will be implemented, because it minimises the possibility of non-execution of the contract by the other contractual party, given that there are several suppliers.

The system of division into equal parts and the system of rotation would be especially justified in cases where the same or approximately the same offers are expected (e.g., when the contracting authority specifies a price or cost element in the offer in the form of a predetermined price or cost[[14]](#footnote-14)). In the system of division into equal parts, the contracting authority would distribute the same or approximately the same part of the scope of the FA to all suppliers, while taking care of the implementation of individual contracts so that this balance would not be more seriously disturbed. In a rotation system, supplier 1 would get the first contract, supplier 2 the second and so on.

The theory also mentions the possibility of establishing a quota system, where each supplier, a signatory of the FA, would receive a certain quota for the implementation of its part of the work, according to its placement. For example, the most favourable bidder would receive a quota of 1:2, the second-placed 1:3, and the third-placed 1:4, which means that the most favourable bidder would realize twice as many contracts (jobs) as the third-placed. This system seems fair to the suppliers, but it can always be contested from the point of view of the principles of cost-effectivness, because why, for example, would the third-placed bidder get the job at all, even if only a negligible part.

In the system of selecting the most favourable group of items, i.e. grouping of services or works, the contracting authority concludes contracts with each of the suppliers for the group of items (services, works) for which they submitted the most favourable offer.

In this case as well as in the FA with one bidder, the awarding of individual contracts is not done through the Portal, but the procedure is defined in the FA.

* **With the re-opening of competition**, the FA should contain information that individual contracts will be awarded through the opening of competition among the bidders with whom the FA was concluded, and that for each individual contract, all bidders included in the FA will be invited through the Portal to submit their bids. In this case, the selection of the most favourable offer is made on the basis of the criteria for the award of the contract, which the contracting authority specifies in the tender documentation of the procedure for concluding the FA and they can be specified in the part of the criteria for the award of the contract and in the FA itself. The opening of the competition implies that the contracting authority prepares the invitation to submit bids and the tender documentation, which corresponds to the specific need, and delivers it to the bidders, who are included in the FA, through the Portal. Offers are submitted and opened on the Portal, and the contracting authority makes and publishes on the Portal the decision to award the contract or possibly suspend the procedure if the conditions prescribed by the PPL are met. When re-opening the competition, it is possible to apply the rules of electronic bidding or electronic catalogues, and in that case it is necessary to state precisely in the FA.
* FAs **partially without and partially with re-opening of competition**, as a combined type of FA in which the previously mentioned two methods are applied, should contain elements provided for the award of individual contracts without re-opening of competition, as well as elements for re-opening of competition. This means that, on the one hand, all the conditions for the delivery of goods, the provision of services or the performance of works and the manner in which the bidder from the FA will be selected with which an individual contract will be concluded without opening competition, and on the other hand , the criteria are determined according to which it is determined when the re-opening of competition will be carried out and the conditions from the FA that can be subject to the re-opening of competition.

Taking into account that all issues of importance for the award of individual contracts are regulated by the FA itself, in these guidelines, some examples of the FA model with one and several bidders are given, in which the key elements are described, and which can be further adjusted in accordance with the nature of the subject-matter of the procurement and FA.

**Expert evaluation of bids and allocation of FA** – The contracting authority performs an expert evaluation of bids in accordance with the rules prescribed by the PPL and the conditions defined by the procurement documentation and, based on the report on the procurement procedure, makes a decision on the allocation of FA, which it publishes on the Portal within three days from the date of adoption.

When it comes to the number of economic operators with which the contracting authority intends to conclude a joint venture, in the case of a joint venture with several bidders, the contracting authority can conclude a joint venture with a smaller number than specified in the public invitation, or even with one, if it does not receive a pre-determined number of bids that meet conditions for awarding FA. This means that the contracting authority does not necessarily have to suspend the public procurement procedure if it has not received a predetermined number of acceptable bids. However, the question arises as to whether it makes sense to conclude a FA with one bidder if it is foreseen to conclude a FA with the re-opening of competition. Although the PPL does not define that in such a case, the conclusion of a joint venture with one bidder is not possible, the conclusion is drawn from the very nature of the joint venture with the re-opening of competition, because if the joint venture is concluded with one bidder, then there is no competition, so the meaning of that type of joint venture is lost.

* **Conclusion of the FA**

After the contracting authority has performed an expert evaluation of the bids and has made a decision on the conclusion of the FA, in accordance with the rules prescribed in Articles 151 and 152 of the PPL, the conclusion of the FA with the selected bidder/s is approached, and the contracting authority has the obligation to submit the FA for signing to the selected bidder/s within 10 days from the date of finality of the decision.

In a situation where a FA is concluded with several bidders, it is necessary for all selected bidders to sign the same FA, so it is not possible for each of the selected bidders to sign a separate FA, although this is often a question in practice, primarily due to the simpler organisation of signing.

In the event that the selected bidder refuses to conclude the FA, the contracting authority has the option to conclude the FA with the next most favourable bidder, and in that case the contracting authority has the obligation to make a new decision on concluding the FA. This rule applies equally to the situation when concluding an FA with one bidder and when concluding a FA with several bidders. It should be noted that this is a possibility for the contracting authority, and not an obligation, so it can suspend the procedure in the mentioned case, which implies making a decision on suspension of the procedure[[15]](#footnote-15).

In the case of a joint venture with one bidder, if the chosen one refuses to conclude a joint venture, the contracting authority shall act in one of the following ways:

* if it decides to award FA to the next most favourable bidder, it makes a new decision on FA allocation;
* if it decides not to award FA to the next most favourable bidder, it makes a decision to suspend the procedure;
* if there are no other bidders, make a decision to suspend the procedure (although for this case it is not explicitly stated to make a decision, it is still necessary to do so, because otherwise the contracting authority will not be able to publish the relevant notification from Article 109 of the PPL).

In the case of an FA with several bidders, if one or more selected bidders refuse to conclude an FA, the contracting authority shall act in one of the following ways:

* if it decides to award the FA to the next most favourable bidder (one or more of them, if more than one selected rejected the conclusion of the FA), it makes a new decision on the FA award;
* if it decides not to award FA to the next most favourable bidder, it makes a decision to suspend the procedure;
* if there are no other bidders, make a decision to suspend the procedure or may decide to make a new decision on awarding the FA to those bidders who have not given up on the conclusion of the FA.

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| ***Example 1:*** *The contracting authority has foreseen the conclusion of a public procurement with 5 bidders. 7 bidders participated in the procedure and the contracting authority selected the 5 most favourable bidders in accordance with the criteria for the award of the FA and made a decision on the award of the FA. After submitting the FA for signing, one (or more) of the selected bidders rejects the conclusion of the FA. In that case, the contracting authority has two options, to perform a new expert evaluation of the bids and make a new decision on the conclusion of the FA or to make a decision on the suspension of the procedure.* ***Example 2:*** *The contracting authority has foreseen the conclusion of a public procurement with 5 bidders. 5 bidders participated in the procedure and the contracting authority selected all 5 bidders in accordance with the criteria for awarding the FA and made a decision on the award of the FA. After submitting the FA for signing, one of the selected bidders refuses to conclude the FA. In that case, the contracting authority has two options, namely: to make a new decision on the conclusion of the FA (in this case by choosing 4 bidders) or to make a decision to suspend the procedure.* **Note:** Although the PPL does not require the contracting authority to award the contract to the next most favourable bidder/s in the mentioned cases, the contracting authority must carefully assess whether the suspension of the procedure can be effective.  |

##### **Publication of FA data and notices of concluded FA**

In accordance with Article 152a of the PPL and the Rulebook on the method of publication and the type of data on contracts and contract amendments that the contracting authorities publish on the Public Procurement Portal[[16]](#footnote-16), within 30 days from the date of conclusion, publish on the Portal, in the Register of Contracts, data on the concluded FA. In addition, within 30 days from the date of conclusion of the FA, the contracting authority is obliged to send for publication the notification about the FA award on the Portal in accordance with Article 109 of the PPL.

The publication of the necessary data in the Register of Contracts is a prerequisite for the publication of notices on the FA, which means that first the data is published in the Register of Contracts, and then the notification of the allocation of the FA.

When it comes to FAs concluded in centralised public procurements, announcements regarding FAs in the Register of Contracts are made by a centralised body.

If, on the basis of Article 27 of the PPL, the FA is concluded, the FA is also recorded in the Register of Contracts, within 30 days from the conclusion of the FA.

## **2. Performance of FA and individual contracts**

In accordance with the rules and conditions prescribed by the FA, the contracting authority concludes individual contracts or issues purchase orders. There is no obstacle to conclude both contracts and purchase orders under one FA , which should be indicated in the TD, i.e., in the FA model. Each type of FA carries with it rules for awarding individual contracts.

*Key activities in the process of FA performance*

##### **Conclusion of individual contracts**

**FA with one bidder** – Contracts are concluded in accordance with the conditions established in the FA. The aforementioned implies that the subject-matter of the individual contract must be within the scope and scope of the FA, and the total value of all individual contracts concluded during the duration of the FA must not exceed the maximum value of the FA. The price per individual contract should be in accordance with the price established in the FA. In case the price is not fixed, it is determined on the basis of the price adjustment parameters which are precisely defined in the FA. The method and term of payment should be clearly defined in the individual contract and in accordance with the FA.

The contracting authority sends a written invitation to the bidder for the performance of the procurement item, which contains details such as: exact quantity, type of goods/services/works, delivery or performance period and other specific conditions that are in accordance with the FA or submits an individual contract for signing that contains the specified elements.

**FA with multiple bidders without re-opening the competition** – Contracts are concluded in accordance with the conditions for the execution of the procurement subject-matter (delivery of goods/provision of services/performance of works) and conditions for the selection of bidders who will execute the contract. As in the case of a single-bidder FA, the subject-matter of the individual contract must be within the scope and volume of the FA, and the total value of all individual contracts concluded during the duration of the FA must not exceed the maximum value of the FA. Individual contracts are awarded in accordance with the rules defined in the FA (cascade system, system of division into equal parts and rotation system, quota system, according to the most favourable group of items, etc.)

In any case, the price per individual contract should be in accordance with the bidder's price, which is defined in the FA, that is, the price submitted by the bidder in the public procurement procedure for awarding the FA. In the event that the price is not fixed, it is determined based on the price adjustment parameters that are precisely defined in the FA. The method and term of payment should be clearly defined in the individual contract and in accordance with the FA.

The contracting authority sends a written invitation to the bidder that is determined in accordance with the rules of the FA for the execution of the procurement subject, which contains details such as: exact quantity, type of goods/services/works, delivery or execution period and other specific conditions that are in accordance with the FA or deliver individual contract to be signed that contains the specified elements.

**FA with multiple bidders with re-opening of competition** – Conclusion of individual contracts in accordance with the FA concluded with multiple bidders with re-opening of competition foresees an additional process (the so-called mini-tender) in which bidders who are part of the FA resubmit their bids for the specific needs of the contracting authority.

Before the conclusion of the individual contract, the contracting authority invites all bidders who are signatories to the FA to submit new bids. This invitation is delivered through the Portal.

The invitation contains details of the specific conditions required for a specific procurement: quantity, quality, technical specifications, delivery time, payment terms and other relevant information.

Bidders who are in the FA submit an offer based on the precise requirements of the contracting authority. The contracting authority awards an individual contract on the basis of pre-defined criteria for the award of contracts, which means that the criteria for the award of individual contracts have already been determined in the public procurement procedure for the award of FA. The contracting authority must define a reasonable deadline for the submission of bids, taking into account the complexity of the procurement subject and the time needed by bidders to prepare their bids. Bids are evaluated on the basis of predetermined criteria and methodology defined in the call for bids. After the expert evaluation of the bids, the contracting authority makes a decision on awarding the contract to the bidder who submitted the most favourable bid, which is published on the Portal within three days from the date of submission. The contracting authority can conclude a contract with the selected bidder even before the deadline for submitting a request for the protection of rights, i.e., before the finality of the said decision.

**FA with several bidders partly without re-opening the competition and partly with the re-opening of competition** – Conclusion of individual contracts in accordance with the FA concluded with several bidders, where it is stipulated that part of the contract is concluded without re-opening the competition, and part with the re-opening of the competition, clear requirement rules to ensure transparency and fairness in both procedures. This hybrid model involves proceeding in the manner described above for FA with multiple bidders without re-opening competition in accordance with the rules defined by FA and in the manner described for FA with re-opening of competition when, in accordance with FA, the opening of competition is foreseen. In the first case, the procedure is not carried out through the Portal, while in the second case, the procedure is carried out through the Portal.

##### **The procedure for re-opening the competition – mini-tender**

1. ***Preparation of the call for bids (mini-tender)***
* The contracting authority prepares a detailed description of the specific procurement needs, including technical specifications, performance conditions, deadlines, quantities depending on the nature of the procurement subject in accordance with the FA.
* Contract award criteria that are predefined by FA must be respected in this mini-tender.
* The contracting authority can, although the PPL is not defined, designate a committee or a person who will conduct the mini-tender. The above should be regulated by an internal act.
1. ***Inviting all bidders with whom the FA was concluded***
* All bidders who have entered into an FA are invited to submit their bids.
* The invitation is prepared and sent simultaneously to all bidders through the Portal.
* The invitation contains all the relevant information: an appropriate deadline (a sufficiently long deadline for submitting bids, taking into account factors such as the complexity of the procurement subject and the time required for the preparation and drafting of bids) for submitting bids, technical specifications, contract award criteria and other necessary data.
1. ***Submission of offers***
* Bidders who are interested submit their bids within the stipulated period.
* Offers must be submitted in accordance with the technical specifications and conditions specified in the invitation.
* Offers are submitted through the Portal.
1. ***Evaluation of received offers***
* The contracting authority reviews and evaluates all received offers in accordance with the pre-set criteria from the FA and additionally defined conditions in the mini-tender.
1. ***Award of contract***
* After the evaluation, the contracting authority makes a decision on the contract award/suspension of the procedure.
* The decision on the award of the contract/suspension of the procedure is published on the Portal within 3 days from the date of adoption.
1. **Conclusion of the contract**
* After the award of the contract, a concrete contract is concluded with the selected bidder, resulting from the FA.
* The contracting authority can conclude a contract with the selected bidder even before the finality of the decision on awarding the contract, i.e., before the deadline for submitting a request for the protection of rights[[17]](#footnote-17).

This procedure enables more efficient procurement within the already established FA, while at the same time maintaining competition among qualified bidders.

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| ***Note:*** *The Republic Commission can cancel the public procurement contract if, acting on a submitted request for the protection of rights or at the request of a person with active identification, it determines that the contracting authority has concluded a public procurement contract in violation of the terms and conditions of the FA[[18]](#footnote-18).*  |

##### **Publication of notices on concluded individual contracts**

The contracting authority is obliged, in accordance with Article 152a of the PPL and the Rulebook on the method of publication and type of data on contracts and amendments to contracts published by contracting authorities on the Public Procurement Portal (“Official Gazette of the Republic of Serbia”, No. 115/23) in the Register of Contracts publish on the Portal information about concluded contracts/orders based on FA, within 30 days from the date of conclusion.

The contracting authority is obliged to publish a quarterly summary notice on the award of contracts concluded on the basis of the FA within 30 days from the end of the quarter in which the contracts were concluded, i.e., the purchase orders were issued. The above means that for all concluded contracts/orders in the period from 1 January to 31 March, the quarterly summary notification should be published by 30 April, for those concluded in the period from 1 April to 30 June, the quarterly summary notification should be published by 30 July, for contracts concluded between 1 July and 30 September, the quarterly summary notice should be published by 30 October, and contracts concluded between 1 October to 31 December, the quarterly summary notice should be published by 31 January of the following year.

Therefore, each concluded individual contract/order based on the FA is first published on the Portal in the Register of Contracts, and then a summary quarterly notice is also published.

 If it is a matter of centralised procurement, the collective quarterly notice from Article 109, paragraph 2 of the PPL is published by the centralised body, and data on concluded individual contracts/orders in accordance with Article 152a of the PPL, is published by the contracting authority who concluded them.

##### **Reporting on the implementation of FA and individual contracts**

The contracting authority is obliged to publish on the Portal, in the Register of Contracts, information about all changes to the contract/FA within 10 days from the date of the change, based on Articles 156-161 of the PPL.

At the same time, within 10 days from the day of the change based on Art. 157 and 158 of the PPL, the contracting authority is obliged to send a notice on the amendment of the contract/FA for publication on the Portal.

The contracting authority is obliged to publish information about the termination of the contract/FA on the Portal, in the Register of Contracts, within 45 days from the date of termination of the contract/FA.

In this connection, information on whether the contract/FA has been executed, terminated, annulled or unilaterally cancelled, the date of its validity expiration, as well as the realised value, is published. The execution of the contract is considered to be the moment when both contracting parties have fulfilled their contractual obligations. If the realised value of the contract is higher or lower than the agreed value, it is necessary to justify the same on the Portal. Also, if the contract/FA is terminated, annulled or canceled, the reasons for the above must be explained on the Portal.

If we are talking about the FA concluded in centralised public procurements, as mentioned, announcements regarding the FA in the Register of Contracts are made by a centralised body (announcement of the conclusion of the FA, possible modification, execution), and each contracting authority publishes the data in in connection with their concluded contracts and issued purchase orders according to that FA (conclusion of contracts/purchase orders, possible changes, execution).

*Presentation of deadlines for publication on the implementation of FA/individual contracts*

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| **30 days** | Data on concluded contracts/orders based on FA |
| **30 days**  | Quarterly publishes a summary notice on the award of contracts concluded on the basis of the FA |
| **10 days** | Data on execution of the contract |
| **10 days** | Notification of changes to the contract/FA based on Art. 157 and 158 of the PPL  |
| **45 days** | Data on termination of contract/FA |

# Key issues and dilemmas for implementing FA

From this document, key **questions and dilemmas** related to **FA** implementation can be identified, as well as the answers that explain them.

1. Differences between FA and public procurement contracts

* **Question**: How do FA and a classic public procurement contract differ?
* **Answer:** The FA does not oblige the contracting authority to make the purchase immediately, but sets framework conditions for future contracts, while the public procurement contract immediately creates the obligation of delivery and payment. FA is more flexible and enables the conclusion of individual contracts according to needs, while the public procurement contract is fixed and contains precisely defined conditions, quantities and deadlines.

2. Justification of using the framework agreement

* **Question**: In which situations is the application of FA most suitable?
* **Answer:** FA is suitable when it is not possible to precisely determine the quantities or timing of the need, such as recurring purchases, unpredictable resources or variable quantities (e.g., office supplies, medical equipment, road maintenance works...).

3. Taking over financial obligations by concluding the FA

* **Question**: Does the conclusion of the FA immediately create financial obligations for the contracting authority?
* **Answer:** No, by concluding the FA, the contracting authority does not assume financial obligations. Obligations arise only when individual contracts are concluded or a purchase order is issued based on the FA.

4. Determination of estimated value with FA

* **Question**: How should the contracting authority assess the value of the procurement when starting the procedure for concluding the FA?
* **Answer:** The estimated value of the FA is determined as the maximum value of all contracts that the contracting authority plans to conclude during the FA. This requires careful planning and analysis of needs, so that the estimated value is as realistic as possible.

5. Duration of the framework agreement

* **Question**: What is the maximum duration of FA according to the Law on Public Procurement?
* **Answer:** According to the Law on Public Procurement (PPL), the FA can last a maximum of four years, except in special cases when a longer duration is justified due to the specific nature of the procurement.

6. Using an open procedure to conclude FA

* **Question**: Does the contracting authority have to use an open procedure to conclude the FA?
* **Answer:** Although the open procedure is most often used due to its transparency, other public procurement procedures, such as restrictive procedures or other procedures, can be used in specific situations.

7. FA implementation challenges

* **Question**: What are the potential challenges in FA implementation?
* **Answer:** The main challenges include market foreclosures, especially in long-term single-vendor FAs, which can reduce competition. Long-term agreements may also become unfavourable if there are changes in market conditions.

8. Possibility of changing FA conditions during its duration

* **Question**: Is it possible to change the conditions of the FA after its conclusion?
* **Answer:** No, the FA can be changed during its duration only in accordance with the conditions and in the manner prescribed by the provisions of Articles 154 – 161 of the PPL. Individual contracts must comply with the conditions defined in the FA.

9. Awarding of individual contracts at FA with multiple bidders

* **Question**: How does the contracting authority award individual contracts when the FA is concluded with several bidders?
* **Answer:** Individual contracts can be awarded without re-opening of competition if the conditions are clearly defined in the FA, or with re-opening of competition among bidders to ensure more favourable conditions, as well as a combination of these two types.

10. Entry of new bidders into the FA after its conclusion

* **Question**: Can new bidders join the FA after its conclusion?
* **Answer:** No, once the FA is concluded, it does not allow the addition of new bidders or purchasers. Only those who are already involved in FA can participate in its implementation.

# FA models

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| ***Note:*** *The models of these FA are only a guideline for the contracting authorities in order to indicate the key elements of the FA, and above all, the way of concluding individual contracts. The contracting authority in all segments prepares the FA in accordance with the nature of the procurement subject and the specific FA, starting with the way in which the contractual parties will be defined (it can be one or more contracting authorities, a body for centralised procurement, and on the other hand, one or more suppliers, service providers or contractor) and further all the specifics regarding the execution of individual contracts (rights and obligations of the parties in the FA).* |

## **1. FA WITH ONE BIDDER**

**FRAMEWORK AGREEMENT**

**PP NO.** \_\_\_\_\_\_\_

**Entered into by and between:**

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|  |
| .................................................................................................. *(enter the name of the contracting authority)*seated at ............................................, street ......................................Tax identification number (TIN):.......................... Registration number:........................................represented by................................................ (hereinafter referred to as: contracting authority), |

and

.................................................................................................

seated at ............................................, street ......................................

Tax identification number (TIN):..........................

Registration number:........................................

represented by...................................................................

(hereinafter referred to as: supplier)

**The parties in the framework agreement agree:**

* that the contracting authority, in accordance with Article 52 of the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, Nos. 91/2019 and 92/23, hereinafter referred to as: PPL), conducted an open public procurement procedure for the subject-matter of the procurement \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(specify the subject-matter of the procurement),* with the aim of concluding a framework agreement with one bidder for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(specify the period for which the framework agreement is concluded - a maximum of 4 years, except justified cases)*;
* that the supplier submitted the Offer number ..................... of ......................... of the year, which is attached to the framework agreement and is an integral part of this framework agreement;
* that the contracting authority, based on the supplier's Offer and the Decision on the conclusion of the framework agreement number ............................... since ........................ chose the supplier for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(delivery of goods/provision of services/performance of works)* which are the subject-matter of this framework agreement.
* *that the framework agreement is concluded with a group of bidders who, in accordance with the offer, are jointly and severally obligated to the contracting authority to execute the procurement (to be completed in the case of a joint bid by a group of bidders);*
* *that the supplier entrusted the partial execution of the procurement to the subcontractor/s: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, street \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ no. \_\_\_\_\_\_, represented by the director \_\_\_\_\_\_\_\_\_\_\_\_ (to be completed only in the case of an offer with subcontractor/s; list all subcontractors entrusted with the partial execution of the procurement subject)*.*The supplier is fully responsible to the contracting authority for the execution of contractual obligations, regardless of the number of subcontractors.*

**SUBJECT-MATTER OF FRAMEWORK AGREEMENT**

Article 1

The subject-matter of the framework agreement is the determination of the conditions necessary for the conclusion of individual public procurement contracts \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(specify the name of the procurement subject-matter),* in accordance with the supplier 's Offer and Technical Specifications (Attachment No. 1 of this framework agreement), the Terms and Conditions of this framework agreement and the real needs of the contracting authority.

Article 2

The subject-matter of this framework agreement is the procurement of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(describe the subject-matter of procurement in more detail).*

**VALIDITY OF THE FRAMEWORK AGREEMENT**

Article 3

This framework agreement is entered into for the period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(specify the period for which the framework agreement is concluded)*, and enters into force on the day of signing by the authorised representatives of the contracting parties.

During the period of validity of this framework agreement, it is envisaged to conclude several individual contracts, depending on the actual needs of the contracting authority.

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| ***Note:*** *The contracting authority has the possibility to foresee that individual procurements are realised by issuing a purchase order to the supplier, in which case the text of the framework agreement should be adapted to the above.* |

**INVITATION FOR THE CONCLUSION OF AN INDIVIDUAL PUBLIC PROCUREMENT CONTRACT**

Article 4

This framework agreement does not represent the obligation of the Employer to engage the supplier for the execution of the procurement.

After the conclusion of the framework agreement, when the contracting authority needs the subject-matter of the procurement, the contracting authority will send an invitation to the supplier for the conclusion of the contract on public procurement.

An individual public procurement contract for signing is also submitted with the invitation .

The invitation from paragraph 2 of this article, in particular, contains the subject and scope of the procurement, the deadline for concluding the contract and other information appropriate to the subject-matter of the individual contract.

If the supplier does not sign the individual contract within the time specified in the invitation from paragraph 4 of this article or refuses to sign the individual contract, the contracting authority will implement a means of security for the fulfillment of contractual obligations from article 8 of this framework agreement.

Article 5

The supplier is obliged to perform \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(delivery of goods/provision of services/performance of works)* from Articles 1 and 2 of the framework agreement, based on the individual contract that will be concluded between the contracting authority and the supplier in accordance with this framework agreement.

When concluding individual contracts, essential conditions from this framework agreement cannot be changed. The individual contract on public procurement is concluded under the terms of this framework agreement with regard to the subject-matter of procurement, unit prices, methods and terms of payment, means of financial security.

**VALUE OF THE FRAMEWORK AGREEMENT**

Article 6

The total value of this framework agreement, according to the prices shown in the Price Structure Form (Attachment No. 1 to this Agreement), amounts to ............................... dinars (in letters: ........................................................... dinars), excluding VAT.

The quantities listed in the Price Structure Form are indicative and will depend on the actual needs of the contracting authority.

The total value of the framework agreement in implementation cannot exceed the amount of paragraph 1 of this article.

**METHOD OF PAYMENT**

Article 7

The contracting authority will pay the agreed price based on the individual contract to the supplier within 45 days from the day of receipt of the correct invoice, based on the delivered signed record of execution of the procurement subject.

The invoice must be issued and registered in accordance with the regulations established by electronic invoicing.

**FINANCIAL GUARANTEES**

Article 8

The supplier undertakes to provide the contracting authority with the signed framework agreement as a means of security for fulfilling the obligations from the framework agreement, which must be signed by a person authorised for representation with an original signature (not a facsimile) and recorded in the Register of Bills of Exchange and Authorisations maintained by the National Bank of Serbia. Along with the promissory note, it is necessary to submit a duly completed and certified promissory note authorisation - a letter that the promissory note can be collected, with the "no protest" clause, in the amount of 3% of the total value without VAT from Article 6, paragraph 1. of this framework agreement.

The contracting authority will collect the funds from the delivered promissory note for the fulfillment of the obligations from the framework agreement if the supplier does not fulfill its obligations within the deadlines and in the manner provided for in the framework agreement, does not sign an individual contract in accordance with this framework agreement or does not provide a means of security with the individual contract concluded by the contracting authority and the supplier on the basis of this framework agreement.

Article 9

The supplier undertakes to provide the contracting authority with the signed individual contract as a guarantee for the fulfillment of contractual obligations, its own blank promissory note, which must be signed by a person authorised to represent with an original signature (not a facsimile) and recorded in the Register of Promissory Notes and Authorisations maintained by the National Bank of Serbia. Along with the promissory note, it is necessary to submit a properly completed and certified promissory note authorisation - a letter that the promissory note can be collected, with the “no protest” clause, in the amount of 10% of the total value of the individual contract without VAT.

The contracting authority will collect funds from the financial guarantee for the fulfillment of contractual obligations due to non-performance, delay or irregular performance of the contractual obligations of the supplier.

Security funds last at least 30 days longer than the deadline for fulfilling the supplier's obligation that is the subject-matter of security.

**DEADLINE, PLACE, CONDITIONS OF PROCUREMENT, WARRANTY PERIOD, QUALITATIVE AND QUANTITATIVE ACCEPTANCE, ETC.**

Article 10

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| ***Note:*** *Depending on the subject-matter of procurement, the contracting authority defines all essential elements related to the implementation of the subject-matter of procurement, such as deadlines, place, conditions of execution, warranty periods, quantitative and qualitative acceptance, etc.* |

**CONTRACTUAL PENALTY**

Article 11

If the supplier, in accordance with the individual contract on public procurement concluded by the contracting authority and the supplier, does not fulfill the contractual obligations within the agreed period, it is obliged to pay the contracting authority an amount of 0.1‰ of the total price of the contracted item of procurement for each day of delay, the amount of the contractual penalty cannot exceed 10% of the total price of the contracted item of procurement.

The contracting authority’s right to collect the contractual penalty does not affect the contracting authority’s right to claim damages.

***FORCE MAJEURE***

Article 12

If, after the conclusion of this framework agreement, circumstances of *force majeure* occur that lead to hindrance or impossibility of the performance of the obligations defined in the framework agreement, the deadlines for the performance of obligations will be extended for the duration of the force majeure.

Force majeure means extreme and extraordinary events that cannot be foreseen, which occurred without the will and influence of the parties to the framework agreement and which could not be prevented by the party affected by force majeure. Floods, earthquakes, fires, political events (war, large-scale riots, strikes), imperative decisions of the authorities (import and export ban) and the like can be considered *force majeure.*

The party in the framework agreement affected by *force majeure* shall immediately notify the other party in writing of the occurrence of unforeseen circumstances and submit appropriate evidence.

**FINAL PROVISIONS**

Article 13

This framework agreement enters into force on the day of signing by the authorised representatives of the supplier and the contracting authority.

Article 14

For everything that is not regulated by this framework agreement, the provisions of the Law on Obligations, as well as other regulations that regulate this matter, will be applied.

Article 15

All disputes arising from the implementation of this framework agreement will be resolved by the parties to this framework agreement. In the event that an agreement is not possible, the jurisdiction is the Commercial Court according to the seat of the Employer.

Article 16

This framework agreement is concluded in 4 (four) identical copies, of which 2 (two) belong to each party in the framework agreement.

**CONTRACTING AUTHORITY SUPPLIER**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## **2. FA WITH MULTIPLE BIDDERS WITHOUT RE-OPENING COMPETITION**

**FRAMEWORK AGREEMENT**

**PP NO**. \_\_\_\_\_\_\_

**Entered into by and between:**

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|  |
| ................................................................................................. *(enter the name of the contracting authority)*seated at ............................................, street ......................................Tax identification number (TIN):.......................... Registration number:..........................represented by................................................................... (hereinafter referred to as: contracting authority), |

and the following suppliers:

.................................................................................................

seated at ............................................, street ......................................

Tax identification number (TIN):..........................

Registration number:..........................

represented by...................................................................

(hereinafter referred to as: supplier 1),

.................................................................................................

seated at ............................................, street ......................................

Tax identification number (TIN):..........................

Registration number:..........................

represented by...................................................................

(hereinafter referred to as: supplier 2),

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seated at ............................................, street ......................................

Tax identification number (TIN):..........................

Registration number:..........................

represented by...................................................................

(hereinafter referred to as: supplier 3)

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| ***Note:*** *It is filled in according to the number of suppliers with whom the framework agreement is concluded.* *In the public invitation and the tender documentation, the contracting authority determines the number of suppliers with whom it concludes a framework agreement. The contracting authority can conclude a framework agreement with a smaller number than foreseen, if it does not receive a predetermined number of offers that meet the conditions for awarding a framework agreement.*  |

**The parties in the framework agreement agree:**

* that the contracting authority, in accordance with the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, Nos. 91/19 and 92/23, hereinafter referred to as: PPL) conducted an open procedure for the subject-matter of public procurement: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(enter the name of the subject procurement),* with the aim of concluding a framework agreement with several *suppliers*, without re-opening competition, for a period of \_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(specify the period for which the framework agreement is concluded - no longer than 4 years except in exceptionally justified cases);*
* that supplier 1 submitted offer number \_\_\_\_ of \_\_\_\_\_\_\_\_\_, which is attached to this framework agreement and forms an integral part of it (Annex number 1 of this framework agreement);
* that supplier 2 submitted offer number \_\_\_\_ of \_\_\_\_\_\_\_\_\_, which is attached to this framework agreement and forms an integral part of it (Annex number 1 of this framework agreement);
* that supplier 3 submitted offer number \_\_\_\_ of \_\_\_\_\_\_\_\_\_, which is attached to this framework agreement and forms an integral part of it (Annex number 1 of this framework agreement);
* that the contracting authority made the Decision on the conclusion of framework agreement no. \_\_\_\_\_ of \_\_\_\_\_\_\_, in accordance with which this framework agreement is concluded;
* that in accordance with the Decision on the conclusion of the framework agreement from the previous paragraph, the suppliers are ranked in accordance with the criteria for awarding the contract, so that the first-ranked supplier 1, the second-ranked supplier 2 and the third-ranked supplier 3.
* *that supplier \_\_\_\_\_\_ is a group of bidders consisting of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, street \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ no. \_\_\_\_\_\_, represented by the director of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (to be filled in in the case of a joint offer by one of the suppliers; list all members of the group of bidders), who, in accordance with the offer, are jointly and severally obligated to perform the procurement;*
* *that the supplier \_\_\_ entrusted the partial execution of the procurement to the subcontractor/s: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, street \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ no. \_\_\_\_\_\_, represented by the director of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (to be completed only in the case of an offer with subcontractor/s; list all subcontractors entrusted with the partial execution of the procurement)*.  *The supplier is fully responsible to the contracting authority for the execution of contractual obligations, regardless of the number of subcontractors.*

**SUBJECT-MATTER OF FRAMEWORK AGREEMENT**

Article 1

The subject-matter of the framework agreement is determining the conditions for concluding individual contracts on public procurement \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(specify the name of the subject-matter of procurement),* and in accordance with the conditions from the tender documents for this public procurement of PP No. \_\_\_, the offers of supplier 1, supplier 2 and supplier 3 and the Technical Specification (Annex 1 of this framework agreement), the provisions of this framework agreement and the actual needs of the contracting authority.

**VALIDITY OF THE FRAMEWORK AGREEMENT**

Article 2

This framework agreement enters into force on the day of signing by all participants in the framework agreement and is concluded for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_ years *(the contracting authority specifies the period for which the framework agreement is concluded),* from the date of entry into force.

During the period of validity of this framework agreement, it is envisaged to conclude several individual contracts, depending on the actual needs of the contracting authority.

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| ***Note:*** *The contracting authority has the possibility to foresee that individual procurements are realised by issuing a purchase order to the supplier, in which case the text of the framework agreement should be adapted to the above.* |

**VALUE OF THE FRAMEWORK AGREEMENT**

Article 3

The total value of this framework agreement amounts to: ...................... dinars (in letters:.........................................................), excluding VAT. *(The value of the framework agreement represents the estimated value of the public procurement, which was determined by the contracting authority as the maximum value of all individual contracts foreseen for the duration of the framework agreement in accordance with Article 31 of the PPL*.

The total value of all concluded individual contracts based on this framework agreement cannot be greater than the value from the previous paragraph.

**MANNER AND TERMS CONCLUDED IN INDIVIDUAL CONTRACTS**

Article 4

When the need of the Purchaser for the procurement in question arises, the contracting authority will award individual contracts without re-opening the competition between the suppliers.

When awarding individual contracts, essential conditions from this framework agreement cannot be changed. The individual contract on public procurement is concluded under the terms of this framework agreement regarding the subject-matter of procurement, prices, methods and terms of payment and means of financial security.

suppliers accept the obligation to conclude contracts during the validity of the framework agreement in accordance with their offers submitted in the public procurement procedure for the conclusion of the framework agreement, which form an integral part of this framework agreement.

The contracting authority will send an invitation to supplier 1 to conclude an individual contract, along with which it will also submit a contract in accordance with the model contract that is an integral part of the tender documentation for this public procurement of PP No. \_\_\_ and the offer of supplier 1, which forms an integral part of this framework agreement.

In the invitation and the contract, the contracting authority shall specify at least the quantity, the type of procurement item and the deadlines for execution *(the contracting authority defines the essential elements of the invitation, depending on the nature of the procurement item).*

If supplier 1 does not deliver the signed contract to the contracting authority within 7 days from the date of receipt of the invitation and the contract, or replies to the contracting authority that it is unable to perform the subject-matter of procurement, the Purchaser will send the invitation and the contract to supplier 2, in the manner provided for in paragraph 4. of this article.

The contracting authority will act as determined in the previous paragraph of this article and in the event that supplier 2 does not deliver the signed contract within 7 days from the date of receipt of the invitation and the contract or replies to the contracting authority that it is unable to perform the subject-matter of procurement, by sending the invitation and contract to the supplier 3.

**METHOD AND TERM OF PAYMENT**

Article 5

The contracting authority will pay the agreed price based on the individual contract to the supplier within 45 days from the day of receipt of the correct invoice, based on the delivered signed record of execution of the procurement subject.

The invoice must be issued and registered in accordance with the regulations established by electronic invoicing.

**FINANCIAL GUARANTEES**

Article 6

The supplier undertakes to provide the contracting authority with the signed framework agreement as a means of security for fulfilling the obligations from the framework agreement, which must be signed by a person authorised for representation with an original signature (not a facsimile) and recorded in the Register of Bills of Exchange and Authorisations maintained by the National Bank of Serbia. Along with the promissory note, it is necessary to submit a properly completed and certified promissory note authorisation - a letter that the promissory note can be collected, with the “no protest" clause, in the amount of 3% of the total value without VAT from Article 3, paragraph 1 of this framework agreement.

The contracting authority will cash in the given means of security from paragraph 1 of this article if the supplier does not perform its obligations within the time limits and in the manner provided for in the framework agreement, refuses to conclude an individual contract twice at the request of the contracting authority when it has been delivered to it in accordance with this framework agreement, or does not provide a means of security with the individual contract concluded by the contracting authority and the supplier on the basis of this framework agreement.

The supplier undertakes to provide the contracting authority with the signed individual contract as a guarantee for the fulfillment of contractual obligations, its own blank promissory note, which must be signed by a person authorised to represent with an original signature (not a facsimile) and recorded in the Register of Promissory Notes and Authorisations maintained by the National Bank of Serbia. Along with the promissory note, it is necessary to submit a properly completed and certified promissory note authorisation - a letter that the promissory note can be collected, with the “no protest” clause, in the amount of 10% of the total value of the individual contract without VAT.

The contracting authority will collect funds from the financial guarantee for the fulfillment of contractual obligations from paragraph 3 of this article due to non-performance, delay or irregular performance of the contractual obligations of the supplier from the individual contract.

Security funds last at least 30 days longer than the deadline for fulfilling the supplier's obligation that is the subject-matter of security.

**DEADLINE, PLACE, CONDITIONS OF PROCUREMENT, WARRANTY PERIOD, QUALITATIVE AND QUANTITATIVE ACCEPTANCE, ETC.**

Article 7

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| --- |
| ***Note:*** *Depending on the subject-matter of procurement, the contracting authority defines all essential elements related to the implementation of the subject-matter of procurement, such as deadlines, place, conditions of execution, warranty periods, quantitative and qualitative acceptance, etc.* |

**CONTRACTUAL PENALTY**

Article 8

If the supplier, in accordance with the individual contract on public procurement concluded by the contracting authority and the supplier, does not perform the contractual obligations within the agreed period, it is obliged to pay the contracting authority an amount of 0.1‰ of the total price of the contracted procurement subject for each day of delay, with the total amount of the contractual fines cannot exceed 10% of the total price of the contracted item of procurement

The contracting authority’s right to collect the contractual penalty does not affect the contracting authority’s right to claim damages.

**CANCELLATION OF THE FRAMEWORK AGREEMENT**

Article 9

Each contracting party may cancel the framework agreement in writing, at any time in accordance with the provisions of the Law on Contract and Torts, with a notice period of 30 days.

The contracting authority reserves the right to unilaterally terminate the framework agreement with a specific supplier at any time without observing the deadline from the previous paragraph in the event of:

* that the supplier fails to deliver the signed individual contract twice, at the request of the contracting authority,
* *the exit of an individual member from the joint group of suppliers, which is one of the signatories of this Agreement;*
* that the supplier does not provide a means of security for the successful execution of the individual contract in accordance with Article 6 of this framework agreement,
* termination of the individual contract concluded on the basis of this framework agreement, if the responsibility for termination lies with the selected supplier,
* abuse and fraudulent behavior of the supplier.

***FORCE MAJEURE***

Article 10

If, after the conclusion of this framework agreement, circumstances of *force majeure* occur that lead to hindrance or impossibility of the performance of the obligations defined in the framework agreement, the deadlines for the performance of obligations will be extended for the duration of the force majeure.

Force majeure means extreme and extraordinary events that cannot be foreseen, which occurred without the will and influence of the parties to the framework agreement and which could not be prevented by the party affected by force majeure. Floods, earthquakes, fires, political events (war, large-scale riots, strikes), imperative decisions of the authorities (import and export ban) and the like can be considered *force majeure.*

The party in the framework agreement affected by *force majeure* shall immediately notify the other party in writing of the occurrence of unforeseen circumstances and submit appropriate evidence.

**FINAL PROVISIONS**

Article 11

This framework agreement enters into force on the day of signing by the authorised representatives of all suppliers and the contracting authority.

Article 12

For everything that is not regulated by this framework agreement, the provisions of the Law on Obligations, as well as other regulations that regulate this matter, will be applied.

Article 13

All disputes arising from the implementation of this framework agreement will be resolved by the parties to this framework agreement. In the event that an agreement is not possible, the jurisdiction is the Commercial Court according to the seat of the Employer.

Article 14

This framework agreement is concluded in 4 (four) identical copies, of which 2 (two) belong to each party in the framework agreement.

**CONTRACTING AUTHORITY SUPPLIER 1**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUPPLIER 2**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUPPLIER 3**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## **3. FA WITH THE RE-OPENING OF COMPETITION**

**FRAMEWORK AGREEMENT**

**PP NO.** \_\_\_\_\_\_\_

**Entered into by and between:**

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|  |
| ................................................... .............................................. *(enter the name of the contracting authority)*seated at ............................................, street ......................................Tax identification number (TIN):.......................... Registration number:........................................represented by................................................ (hereinafter referred to as: contracting authority), |

and the following suppliers:

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seated at ............................................, street ......................................

Tax identification number (TIN):..........................

Registration number:........................................

represented by................................................

(hereinafter referred to as: supplier 1),

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seated at ............................................, street ......................................

Tax identification number (TIN):..........................

Registration number:........................................

represented by................................................

(hereinafter referred to as: supplier 2),

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seated at ............................................, street ......................................

Tax identification number (TIN):..........................

Registration number:........................................

represented by................................................

(hereinafter referred to as: supplier 3)

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| ***Note:*** *It is filled in according to the number of suppliers with whom the framework agreement is concluded.* *In the public invitation and the tender documentation, the contracting authority determines the number of suppliers with whom it concludes a framework agreement. The contracting authority can conclude a framework agreement with a smaller number than foreseen, if it does not receive a predetermined number of offers that meet the conditions for awarding a framework agreement.*  |

**The parties in the framework agreement agree:**

* that the contracting authority, in accordance with the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, Nos. 91/19 and 92/23, hereinafter referred to as: PPL) conducted an open procedure for the subject-matter of public procurement: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(enter the name of the subject procurement),* with the aim of concluding a framework agreement with several *suppliers*, without re-opening competition, for a period of \_\_\_\_\_\_\_ *(specify the period for which the framework agreement is concluded - the longest 4 years except in exceptionally justified cases);*
* that supplier 1 submitted offer number \_\_\_\_ of \_\_\_\_\_\_\_\_\_, which is attached to this framework agreement and forms an integral part of it (Annex number 1 of this framework agreement);
* that supplier 2 submitted offer number \_\_\_\_ of \_\_\_\_\_\_\_\_\_, which is attached to this framework agreement and forms an integral part of it (Annex number 1 of this framework agreement);
* that supplier 3 submitted offer number \_\_\_\_ of \_\_\_\_\_\_\_\_\_, which is attached to this framework agreement and forms an integral part of it (Annex number 1 of this framework agreement);
* that the contracting authority made the Decision on the conclusion of framework agreement no. \_\_\_\_\_ of \_\_\_\_\_\_\_, in accordance with which this framework agreement is concluded;
* *that supplier \_\_\_\_\_\_ is a group of bidders consisting of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, street \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ no. \_\_\_\_\_\_, represented by the director of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (to be filled in in the case of a joint offer by one of the suppliers; list all members of the group of bidders), who, in accordance with the offer, are jointly and severally obligated to perform the procurement;*
* *that the supplier \_\_\_ entrusted the partial execution of the procurement to the subcontractor/s: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, street \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ no. \_\_\_\_\_\_, represented by the director of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (to be completed only in the case of an offer with subcontractor/s; list all subcontractors entrusted with the partial execution of the procurement).*  *The supplier is fully responsible to the contracting authority for the execution of contractual obligations, regardless of the number of subcontractors.*

**SUBJECT-MATTER OF FRAMEWORK AGREEMENT**

Article 1

The subject-matter of the framework agreement is determining the conditions for concluding individual contracts on public procurement \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(specify the name of the subject-matter of procurement)*, and in accordance with the conditions from the tender documents for this public procurement of PP No. \_\_\_, the offers of supplier 1, supplier 2 and supplier 3 and the Technical Specification (Annex 1 of this Agreement), the provisions of this framework agreement and the actual needs of the contracting authority.

**VALIDITY OF THE FRAMEWORK AGREEMENT**

Article 2

This framework agreement enters into force on the day of signing by all participants in the framework agreement and is concluded for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_ years *(the contracting authority specifies the period for which the framework agreement is concluded),* from the date of entry into force.

During the period of validity of this framework agreement, it is envisaged to conclude several individual contracts, depending on the actual needs of the contracting authority.

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| ***Note:*** *The contracting authority has the possibility to foresee that individual procurements are realised by issuing a purchase order to the supplier, in which case the text of the framework agreement should be adapted to the above.* |

**VALUE OF THE FRAMEWORK AGREEMENT**

Article 3

The total value of this framework agreement amounts to: ...................... dinars (in letters:.........................................................), excluding VAT. *(The value of the framework agreement represents the estimated value of the public procurement, which was determined by the contracting authority as the maximum value of all individual contracts foreseen for the duration of the framework agreement in accordance with Article 31 of the PPL*.

The total value of all concluded individual contracts based on this framework agreement cannot be greater than the value from the previous paragraph.

**FINANCIAL GUARANTEES**

Article 4

The supplier undertakes to provide the contracting authority with the signed framework agreement as a means of security for fulfilling the obligations from the framework agreement, which must be signed by a person authorised for representation with an original signature (not a facsimile) and recorded in the Register of Bills of Exchange and Authorisations maintained by the National Bank of Serbia. Along with the promissory note, it is necessary to submit a properly completed and certified promissory note authorisation – a letter that the promissory note can be collected, with the “no protest" clause, in the amount of 3% of the total value without VAT from Article 3, paragraph 1 of this framework agreement.

The contracting authority will cash in the given means of security from paragraph 1 of this article if the supplier does not perform its obligations within the time limits and in the manner provided for in the framework agreement, refuses to conclude an individual contract twice at the request of the contracting authority when it has been delivered to it in accordance with this framework agreement, or does not provide a means of security with the individual contract concluded by the contracting authority and the supplier on the basis of this framework agreement.

The supplier undertakes to provide the contracting authority with the signed individual contract as a guarantee for the fulfillment of contractual obligations, its own blank promissory note, which must be signed by a person authorised to represent with an original signature (not a facsimile) and recorded in the Register of Promissory Notes and Authorisations maintained by the National Bank of Serbia. Along with the promissory note, it is necessary to submit a properly completed and certified promissory note authorisation – a letter that the promissory note can be collected, with the “no protest” clause, in the amount of 10% of the total value of the individual contract without VAT.

The contracting authority will collect funds from the financial guarantee for the fulfillment of contractual obligations from paragraph 3 of this article due to non-performance, delay or irregular performance of the contractual obligations of the supplier from the individual contract.

Security funds last at least 30 days longer than the deadline for fulfilling the supplier's obligation that is the subject-matter of security.

**MANNER AND TERMS CONCLUDED IN INDIVIDUAL CONTRACTS**

Article 5

After the entry into force of the framework agreement, when there is a need for the subject-matter of procurement, the contracting authority will send an invitation to submit an offer with the aim of concluding an individual contract to all suppliers with whom a framework agreement has been concluded.

The invitation to submit an offer will be sent to suppliers through the Portal.

In the invitation, the contracting authority shall at least state:

* Subject-matter of procurement
* The deadline by which the offer must be submitted (specifying the date and time)
* Criteria for contract award
* Other important data.

The suppliers will submit their offer via the Portal, in the manner and within the time limit specified by the contracting authority in the invitation to submit offers.

The criterion for the award of an individual contract, that is, the selection of the most favourable supplier, is the economically most favourable offer, based on the ratio of price and quality in accordance with the conditions of the tender documents for the conclusion of this framework agreement.

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| ***Note:*** *In this part of the framework agreement, the contracting authority specifies the criteria for awarding individual contracts, which will be applied during the opening of competition.*  |

After opening the bids, the contracting authority will make a decision on the award of the contract, which will be published on the Portal.

**METHOD AND TERM OF PAYMENT**

Article 6

The contracting authority will pay the agreed price based on the individual contract to the supplier within 45 days from the day of receipt of the correct invoice, based on the delivered signed record of execution of the procurement subject.

The invoice must be issued and registered in accordance with the regulations established by electronic invoicing.

**DEADLINE, PLACE, CONDITIONS OF PROCUREMENT, WARRANTY PERIOD, QUALITATIVE AND QUANTITATIVE ACCEPTANCE, ETC.**

Article 7

|  |
| --- |
| ***Note:*** *Depending on the subject-matter of procurement, the contracting authority defines all essential elements related to the implementation of the subject-matter of procurement, such as deadlines, place, conditions of execution, warranty periods, quantitative and qualitative acceptance, etc.* |

**CONTRACTUAL PENALTY**

Article 8

If the supplier, in accordance with the individual contract on public procurement concluded by the contracting authority and the supplier, does not perform the contractual obligations within the agreed period, it is obliged to pay the contracting authority an amount of 0.1‰ of the total price of the contracted procurement subject for each day of delay, with the total amount of the contractual fines cannot exceed 10% of the total price of the contracted item of procurement

The contracting authority’s right to collect the contractual penalty does not affect the contracting authority’s right to claim damages.

**CANCELLATION OF THE FRAMEWORK AGREEMENT**

Article 9

Each contracting party may cancel the framework agreement in writing, at any time in accordance with the provisions of the Law on Contract and Torts, with a notice period of 30 days.

The contracting authority reserves the right to unilaterally terminate the framework agreement with a specific supplier at any time without observing the deadline from the previous paragraph in the event of:

* that the supplier fails to deliver the signed individual contract twice, at the request of the contracting authority,
* *the exit of an individual member from the joint group of suppliers, which is one of the signatories of this Agreement;*
* that the supplier does not provide a means of security for the successful execution of the individual contract in accordance with Article 6 of this framework agreement,
* termination of the individual contract concluded on the basis of this framework agreement, if the responsibility for termination lies with the selected supplier,
* abuse and fraudulent behavior of the supplier.

***FORCE MAJEURE***

Article 10

If, after the conclusion of this framework agreement, circumstances of *force majeure* occur that lead to hindrance or impossibility of the performance of the obligations defined in the framework agreement, the deadlines for the performance of obligations will be extended for the duration of the force majeure.

Force majeure means extreme and extraordinary events that cannot be foreseen, which occurred without the will and influence of the parties to the framework agreement and which could not be prevented by the party affected by force majeure. Floods, earthquakes, fires, political events (war, large-scale riots, strikes), imperative decisions of the authorities (import and export ban) and the like can be considered *force majeure.*

The party in the framework agreement affected by *force majeure* shall immediately notify the other party in writing of the occurrence of unforeseen circumstances and submit appropriate evidence.

**FINAL PROVISIONS**

Article 11

This framework agreement enters into force on the day of signing by the authorised representatives of all suppliers and the contracting authority.

Article 12

For everything that is not regulated by this framework agreement, the provisions of the Law on Obligations, as well as other regulations that regulate this matter, will be applied.

Article 13

All disputes arising from the implementation of this Framework Agreement will be resolved by the parties to this Framework Agreement by agreement. In the event that an agreement is not possible, the jurisdiction is the Commercial Court according to the seat of the Employer.

Article 14

This framework agreement is concluded in 4 (four) identical copies, of which 2 (two) belong to each party in the framework agreement.

**CONTRACTING AUTHORITY SUPPLIER 1**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUPPLIER 2**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUPPLIER 3**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## **4. FA WITH MULTIPLE BIDDERS PARTIALLY WITHOUT AND PARTIALLY WITH RE-OPENING OF COMPETITION**

**FRAMEWORK AGREEMENT**

**PP NO.** \_\_\_\_\_\_\_

**Entered into by and between:**

|  |
| --- |
|  |
| ................................................... .............................................. *(enter the name of the contracting authority)*seated at ............................................, street ......................................Tax identification number (TIN):..........................Registration number:........................................represented by................................................ (hereinafter referred to as: contracting authority), |

and the following suppliers:

.................................................................................................

seated at ............................................, street ......................................

Tax identification number (TIN):..........................

Registration number:........................................

represented by................................................

(hereinafter referred to as: supplier 1),

.................................................................................................

seated at ............................................, street ......................................

Tax identification number (TIN):..........................

Registration number:........................................

represented by................................................

(hereinafter referred to as: supplier 2),

.................................................................................................

seated at ............................................, street ......................................

Tax identification number (TIN):..........................

Registration number:........................................

represented by................................................

(hereinafter referred to as: supplier 3)

|  |
| --- |
| ***Note:*** *It is filled in according to the number of suppliers with whom the framework agreement is concluded. In the public invitation and the tender documentation, the contracting authority determines the number of suppliers with whom it concludes a framework agreement. The contracting authority can conclude a framework agreement with a smaller number than foreseen, if it does not receive a predetermined number of offers that meet the conditions for awarding a framework agreement.*  |

**The parties in the framework agreement agree:**

* that the contracting authority, in accordance with the Law on Public Procurement (“Official Gazette of the Republic of Serbia”, Nos. 91/19 and 92/23, hereinafter referred to as: PPL) conducted an open procedure for the subject-matter of public procurement: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (enter the name of the subject procurement), with the aim of concluding a framework agreement with several *suppliers,* without re-opening competition, for a period of \_\_\_\_\_\_\_ *(specify the period for which the framework agreement is concluded - the longest 4 years except in exceptionally justified cases);*
* that supplier 1 submitted offer number \_\_\_\_ of \_\_\_\_\_\_\_\_\_, which is attached to this framework agreement and forms an integral part of it (Annex number 1 of this framework agreement);
* that supplier 2 submitted offer number \_\_\_\_ of \_\_\_\_\_\_\_\_\_, which is attached to this framework agreement and forms an integral part of it (Annex number 1 of this framework agreement);
* that supplier 3 submitted offer number \_\_\_\_ of \_\_\_\_\_\_\_\_\_, which is attached to this framework agreement and forms an integral part of it (Annex number 1 of this framework agreement);
* that the contracting authority made the Decision on the conclusion of framework agreement no. \_\_\_\_\_ of \_\_\_\_\_\_\_, in accordance with which this framework agreement is concluded;
* that in accordance with the Decision on the conclusion of the framework agreement from the previous paragraph, the suppliers are ranked in accordance with the criteria for awarding the contract, so that the first-ranked supplier 1, the second-ranked supplier 2 and the third-ranked supplier 3.
* *that supplier \_\_\_\_\_\_ is a group of bidders consisting of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, street \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ no. \_\_\_\_\_\_, represented by the director of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (to be filled in in the case of a joint offer by one of the suppliers; list all members of the group of bidders), who, in accordance with the offer, are jointly and severally obligated to perform the procurement;*
* *that the supplier \_\_\_ entrusted the partial execution of the procurement to the subcontractor/s: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, street \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ no. \_\_\_\_\_\_, represented by the director of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (to be completed only in the case of an offer with subcontractor/s; list all subcontractors entrusted with the partial execution of the procurement).*  *The supplier is fully responsible to the contracting authority for the execution of contractual obligations, regardless of the number of subcontractors.*

**SUBJECT-MATTER OF FRAMEWORK AGREEMENT**

Article 1

The subject-matter of this framework agreement is the determination of the conditions for concluding individual contracts on public procurement \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(specify the name of the subject-matter of procurement),* and in accordance with the conditions from the tender documents for this public procurement of PP No. \_\_\_, the offers of supplier 1, supplier 2 and supplier 3, the provisions of this framework agreement and the actual needs of the contracting authority.

In the first year of the framework agreement, the contracting authority plans to conclude at least one individual contract for public procurement from the previous paragraph of this article, namely: \_\_\_\_\_ *(the contracting authority defines here in more detail the type, scope, etc. that it plans to implement in the first year of validity of the framework agreement).* In the first year, the Employer will not re-open competition and will award contracts in the manner defined in Article 5 of this framework agreement.

After the first year, the quantity and number of contracts will depend on the actual needs of the contracting authority. The awarding of individual contracts will be carried out by the contracting authority with the re-opening of competition in accordance with Article 6 of this framework agreement.

**VALIDITY OF THE FRAMEWORK AGREEMENT**

Article 2

This framework agreement enters into force on the day of signing by all participants in the framework agreement and is concluded for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_ years *(the contracting authority specifies the period for which the framework agreement is concluded),* from the date of entry into force.

During the period of validity of this framework agreement, the conclusion of several individual contracts is foreseen, depending on the actual needs of the contracting authority.

**VALUE OF THE FRAMEWORK AGREEMENT**

Article 3

The total value of this framework agreement amounts to: ...................... dinars (in letters:.........................................................), excluding VAT. *(The value of the framework agreement represents the estimated value of the public procurement, which was determined by the contracting authority as the maximum value of all individual contracts foreseen for the duration of the framework agreement in accordance with Article 31 of the PPL*.

The total value of all concluded individual contracts based on this framework agreement cannot be greater than the value from the previous paragraph.

During the first year of the framework agreement, the unit prices stated in the supplier's offers that were submitted in the process of concluding the framework agreement are fixed and the individual contracts that are awarded in the first year in accordance with Article 5 of this framework agreement will be concluded according to the prices stated in those offers.

The price includes \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the contracting authority specifies here the special features and conditions that are included in the price, if any).

**MANNER AND TERMS CONCLUDED IN INDIVIDUAL CONTRACTS**

Article 4

The contracting authority will award individual contracts partly without re-opening the competition and partly with the re-opening of the competition in accordance with Article 67, paragraph 3, point 3) of the PPL.

When awarding individual contracts, essential conditions from this framework agreement cannot be changed. The individual contract on public procurement is concluded under the terms of this framework agreement with regard to the subject-matter of procurement, methods and terms of payment and means of financial security.

***Award of the contract without re-opening the competition***

Article 5

In the first year of validity of the framework agreement, when the need of the contracting authority for the subject-matter of procurement arises, the contracting authority will award contracts without re-opening the competition.

The suppliers accept the obligation to conclude contracts in the first year of validity of the framework agreement in accordance with their offers submitted in the public procurement procedure for the conclusion of the framework agreement, which form an integral part of this framework agreement.

The contracting authority will send an invitation to supplier 1 to conclude an individual contract, along with which it will also submit a contract in accordance with the model contract that is an integral part of the tender documentation for this public procurement of PP No. \_\_\_ and the offer of supplier 1, which forms an integral part of this framework agreement.

In the invitation and the contract, the contracting authority shall specify at least the quantity, the type of procurement item, \_\_\_\_\_\_ *(optionally add the place of delivery, etc.).*

If supplier 1 does not deliver the signed contract to the contracting authority within 7 days from the date of receipt of the invitation and the contract or replies to the contracting authority that it is unable to perform the procurement, the contracting authority will send the invitation and the contract to supplier 2, in the manner provided for in paragraph 3 of this article.

The contracting authority will act as determined in the previous paragraph of this article and in the event that supplier 2 does not deliver the signed contract within 7 days from the date of receipt of the invitation and the contract or replies to the contracting authority that it is unable to perform the subject-matter of procurement, by sending the invitation and contract to the supplier 3.

***Award of contract with re-opening of competition***

Article 6

After the expiration of the first year of validity of the framework agreement, when there is a need for the subject-matter of procurement, the contracting authority will send an invitation to submit an offer for the purpose of concluding an individual contract to all suppliers with whom the framework agreement was concluded.

The invitation to submit an offer will be sent to suppliers through the Portal.

The contracting authority shall state in the invitation:

* Subject-matter/type of procurement
* The deadline by which the offer must be submitted (specifying the date and time)
* Criteria for contract award
* Other important data.

The suppliers will submit their offer via the Portal, in the manner and within the time limit specified by the contracting authority in the invitation to submit offers.

The criterion for the award of an individual contract, that is, the selection of the most favourable supplier, is the economically most favourable offer, based on the ratio of price and quality in accordance with the conditions of the tender documents for the conclusion of this framework agreement.

|  |
| --- |
| ***Note:*** *In this part of the framework agreement, the contracting authority specifies the criteria for awarding individual contracts, which will be applied during the opening of competition.*  |

After opening the bids, the contracting authority will make a decision on the award of the contract, which will be published on the Portal.

**METHOD AND TERM OF PAYMENT**

Article 7

The contracting authority will pay the agreed price based on the individual contract to the supplier within 45 days from the day of receipt of the correct invoice, based on the delivered signed record of execution of the procurement subject.

The invoice must be issued and registered in accordance with the regulations established by electronic invoicing.

**FINANCIAL GUARANTEES**

Article 8

The supplier undertakes to provide the contracting authority with the signed framework agreement as a means of security for fulfilling the obligations from the framework agreement, which must be signed by a person authorised for representation with an original signature (not a facsimile) and recorded in the Register of Bills of Exchange and Authorisations maintained by the National Bank of Serbia. Along with the promissory note, it is necessary to submit a properly completed and certified promissory note authorisation - a letter that the promissory note can be collected, with the “no protest" clause, in the amount of 3% of the total value without VAT from Article 3, paragraph 1 of this framework agreement.

The contracting authority shall cash in the given security from paragraph 1 of this article if the supplier fails to submit an offer twice at the request of the contracting authority or refuses to conclude an individual contract when it is assigned to it in accordance with this framework agreement or does not provide a security with the individual contract that the contracting authority and If the supplier concludes on the basis of this framework agreement, it will not fulfill its other obligations stipulated in this framework agreement.

The supplier undertakes to provide the contracting authority with the signed individual contract as a guarantee for the fulfillment of contractual obligations, its own blank promissory note, which must be signed by a person authorised to represent with an original signature (not a facsimile) and recorded in the Register of Promissory Notes and Authorisations maintained by the National Bank of Serbia. Along with the promissory note, it is necessary to submit a properly completed and certified promissory note authorisation – a letter that the promissory note can be collected, with the “no protest” clause, in the amount of 10% of the total value of the individual contract without VAT.

The contracting authority will collect funds from the financial guarantee for the fulfillment of contractual obligations from paragraph 3 of this article due to non-performance, delay or irregular performance of the contractual obligations of the supplier from the individual contract.

Security funds last at least 30 days longer than the deadline for fulfilling the supplier's obligation that is the subject-matter of security.

**DEADLINE, PLACE, CONDITIONS OF PROCUREMENT, WARRANTY PERIOD, QUALITATIVE AND QUANTITATIVE ACCEPTANCE, ETC.**

Article 9

|  |
| --- |
| ***Note:*** *Depending on the subject-matter of procurement, the contracting authority defines all essential elements related to the implementation of the subject-matter of procurement, such as deadlines, place, conditions of execution, warranty periods, quantitative and qualitative acceptance, etc.* |

If the supplier, in accordance with the individual contract on public procurement concluded by the contracting authority and the supplier, does not perform the contractual obligations within the agreed period, it is obliged to pay the contracting authority an amount of 0.1‰ of the total price of the contracted procurement subject for each day of delay, with the total amount of the contractual fines cannot exceed 10% of the total price of the contracted item of procurement

The contracting authority’s right to collect the contractual penalty does not affect the contracting authority’s right to claim damages.

**CANCELLATION OF THE FRAMEWORK AGREEMENT**

Article 10

Each contracting party may cancel the framework agreement in writing, at any time in accordance with the provisions of the Law on Contract and Torts, with a notice period of 30 days.

The contracting authority reserves the right to unilaterally terminate the framework agreement with a specific supplier at any time without observing the deadline from the previous paragraph in the event of:

* that the supplier fails to deliver the signed individual contract twice, at the request of the contracting authority,
* *the exit of an individual member from the joint group of suppliers, which is one of the signatories of this Agreement;*
* that the supplier does not provide a means of security for the successful execution of the individual contract in accordance with Article 8 of this framework agreement,
* termination of the individual contract concluded on the basis of this framework agreement, if the responsibility for termination lies with the selected supplier,
* abuse and fraudulent behavior of the supplier.

***FORCE MAJEURE***

Article 11

If, after the conclusion of this framework agreement, circumstances of force majeure occur that lead to hindrance or impossibility of the performance of the obligations defined in the framework agreement, the deadlines for the performance of obligations will be extended for the duration of the *force majeure*.

Force majeure means extreme and extraordinary events that cannot be foreseen, which occurred without the will and influence of the parties to the framework agreement and which could not be prevented by the party affected by force majeure. Floods, earthquakes, fires, political events (war, large-scale riots, strikes), imperative decisions of the authorities (import and export ban) and the like can be considered *force majeure.*

The party in the framework agreement affected by *force majeure* shall immediately notify the other party in writing of the occurrence of unforeseen circumstances and submit appropriate evidence.

**FINAL PROVISIONS**

Article 12

This framework agreement enters into force on the day of signing by the authorised representatives of the supplier and the contracting authority.

Article 13

For everything that is not regulated by this framework agreement, the provisions of the Law on Obligations, as well as other regulations that regulate this matter, will be applied.

Article 14

All disputes arising from the implementation of this framework agreement will be resolved by the parties to this framework agreement. In the event that an agreement is not possible, the jurisdiction is the Commercial Court according to the seat of the Employer.

Article 15

This framework agreement is concluded in 4 (four) identical copies, of which 2 (two) belong to each party in the framework agreement.

**CONTRACTING AUTHORITY SUPPLIER 1**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUPPLIER 2**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUPPLIER 3**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_



SUSTAINABLE

CONSCIENTIOUS

EFFICIENT

Responsible Governance Project

1. Introductory note (60) of Directive 201/24/EU [↑](#footnote-ref-1)
2. https://jnportal.ujn.gov.rs/annual-reports-ppo-public [↑](#footnote-ref-2)
3. Article 66, paragraph 1 of the PPL [↑](#footnote-ref-3)
4. Article 66, paragraph 4 of the PPL [↑](#footnote-ref-4)
5. Articles 29 to 35 of the PPL [↑](#footnote-ref-5)
6. In the format of the procurement plan that is published on the Portal, FA may be entered in the “Technique” field. [↑](#footnote-ref-6)
7. Article 88 of the PPL [↑](#footnote-ref-7)
8. https://jnportal.ujn.gov.rs/annual-reports-ppo-public [↑](#footnote-ref-8)
9. Article 71, paragraph 1 of the PPL [↑](#footnote-ref-9)
10. Article 74, paragraph 6 and 7 of the PPL [↑](#footnote-ref-10)
11. Article 31 of the PPL [↑](#footnote-ref-11)
12. Article 152, paragraph 7 of the PPL [↑](#footnote-ref-12)
13. “Official Gazette of the Republic of Serbia”, No. 21/21 [↑](#footnote-ref-13)
14. Article 132, paragraph 2 of the PPL [↑](#footnote-ref-14)
15. Article 147, paragraph 1, point 7 of the PPL [↑](#footnote-ref-15)
16. “Official Gazette of the Republic of Serbia”, No. 115/23 [↑](#footnote-ref-16)
17. Article 151, paragraph 2, point 1 of the PPL [↑](#footnote-ref-17)
18. Article 233, paragraph 1, point 5 of the PPL [↑](#footnote-ref-18)