

UNPACKING PUBLIC SECTOR FRAMEWORK AGREEMENTS IN SOUTH AFRICA

**Ron Watermeyer,
Jonathan Klaaren &
Samuel Laryea**

(2025) 12 APPLJ 48

ABSTRACT

Various forms or variants of framework agreements have evolved in South Africa following the promulgation of National Treasury's Supply Chain Management Regulations in 2005. There are currently very different understandings and interpretations amongst those responsible for procurement as to what is permitted under these agreements. This uncertainty has resulted in a hesitancy to implement these efficient and effective tools, which have the potential to significantly improve service delivery in South Africa.

This contribution, firstly, identifies the international concepts, principles and approaches associated with framework agreements. We, thereafter, unpack the framework agreement variants which have evolved in South Africa within two distinctly different procurement system paradigms, and we outline the soft law approach which has developed in South Africa within the paradigm associated with the procurement of infrastructure, and which is now incorporated into ISO 10845-1:2020. The contribution finally explores the underlying reasons for the confusion surrounding framework agreements and proposes an approach to promote such agreements in a manner which ensures that best value is achieved.

UNPACKING PUBLIC SECTOR FRAMEWORK AGREEMENTS IN SOUTH AFRICA

Ron Watermeyer

BScEng(civil), DEng

School of Construction Economics and Management, Faculty of Engineering and the Built Environment, University of the Witwatersrand, Johannesburg

Jonathan Klaaren

BAHons, LLB, MA, PhD, JD

School of Law, Faculty of Commerce, Law, and Management, University of the Witwatersrand, Johannesburg

Samuel Laryea

BScHons, PhD

School of Construction Economics and Management, Faculty of Engineering and the Built Environment, University of the Witwatersrand, Johannesburg

1 Introduction

The Chartered Institute of Procurement and Supply ("CIPS") suggests that "framework arrangements ... represent a 'smarter' way of purchasing than placing 'one-off' orders for recurrent contracts for works or supplies". The CIPS recognises that the "key aim of a framework agreement should be to establish a pricing structure; however this does not mean that actual prices should be fixed but rather that there should be a mechanism that will be applied to pricing particular requirements during the period of the framework".¹ Constructing Excellence, a construction industry membership organisation in the United Kingdom ("UK"), regards a framework agreement as a "general term for agreements that set out terms and conditions for making specific purchases (call-offs)". This UK body points out that a framework agreement "can be merely an agreement about the terms and conditions that would apply to any order placed during its life and becomes a contract when an order is placed".²

The World Bank³ ("the Bank") describes framework agreements as "contractual arrangements for fixed or variable volumes of products or services provided over a fixed period". The Bank, in essence, regards framework agreements as a descriptor of a contract type and a

¹ CIPS Knowledge works knowledge summary: 1.

² Constructing Excellence.

³ World Bank 2023: 19, 43, 82.

contracting arrangement alongside other types of contract, such as lump sum, turnkey, performance-based, unit price, time-based, build-own-operate, and build-operate-transfer contracts. The Bank, furthermore, points out that once a framework agreement is established, it generally provides a fast and efficient way to procure goods, works or services in a manner which represents best value for money.

Various forms or variants of framework agreements have evolved in South Africa in the wake of the Supply Chain Management (SCM) Regulations ("the SCM Regulations"), which were promulgated by National Treasury in 2005 in terms of the Public Finance Management Act 1 of 1999 ("PFMA") and the Local Government: Municipal Finance Management Act 56 of 2003 ("MFMA"). These include what has been termed transversal term contracts, panels or lists of approved service suppliers, and framework agreements or contracts. Some even regard any term contracts to be framework agreements. Different understandings and interpretations as to what is permitted under these agreements exist amongst those responsible for the procurement of goods and services for consumption and those responsible for the procurement of infrastructure and goods and services for the construction, repair or maintenance of infrastructure. So much so that twenty years after the promulgation of the 2005 SCM Regulations, this uncertainty still causes a hesitancy to implement these efficient and effective tools which have the potential to significantly improve service delivery in South Africa. This is further compounded by a lack of understanding and perceived differences in the approach that international regulators have taken in developing rules for the implementation of framework agreements.

This contribution aims to:

- outline and discuss the international concepts, principles and approaches associated with framework agreements;
- unpack the variants of framework agreements which have evolved in South Africa within two distinctly different procurement paradigms namely, the procurement of general goods and services and the procurement of infrastructure and associated goods and services;
- outline the soft law approach which has evolved in South Africa for the procurement of infrastructure and associated goods and services, which is now incorporated in international standards;
- explore the reasons for the confusion surrounding framework agreements; and

- outline an approach to ensure that framework agreements are effectively used and best value is achieved through their use.

2 International framework agreement practices

2.1 Framework agreement concepts

Framework agreements for the procurement of goods, services and works have evolved internationally over the last few decades. A good starting point in understanding what constitutes a framework agreement is to look at how they have been framed by the European Union ("EU") and other influential procurement regulatory bodies.

The EU Council Directive 90/531/ECC of 17 September 1990⁴ ("the Directive") defines a framework agreement as "an agreement between one of the contracting entities ... and one or more suppliers or contractors, the purpose of which is to establish the terms, in particular with regard to the prices and, where appropriate, the quantity envisaged, governing the contracts to be awarded during a given period". The Directive treats a framework agreement for the supply of goods, services or works as a contract. Contracting entities are permitted to use a procedure without a prior call for competition to call off contracts based on a framework agreement, provided that the framework agreement was put in place in accordance with the provisions of the Directive.

Subsequent to the EU Directive, other regulators (and legislatures), such as the United Nations Commission on International Trade Law ("UNCITRAL"), the World Bank, and the UK Parliament have made provision for framework agreements. The common and general principles in these regulatory approaches to framework agreement are outlined in table 1 and may be summarised as follows:

- 1) A framework agreement for goods, works or services is put in place following a competitive procurement process in accordance with the requirements of the regulator.
- 2) The parties to a framework agreement may comprise one or more contracting authorities and one or more suppliers.

⁴ EU Council Directive 90531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

- 3) The term of the framework agreement is confined to between three and four years but may be longer in exceptional cases.
- 4) Framework agreements may be closed, which means that a supplier that is not initially a party to the framework agreement may not subsequently become a party. Alternatively, they may be open, in which case additional suppliers may be admitted to the framework agreement during the term of such an agreement.
- 5) Framework agreements can be put in place in terms of a single-stage or two--stage process. In the two-stage process, the supplier is selected and a contract under the framework agreement is awarded during the second stage.
- 6) The framework agreement may contain all or some of the terms governing the provision of work which may be called off over the term of the agreement.
- 7) Call-offs from framework agreements may be undertaken with or without reopening competition amongst suppliers. Competition is:
 - a) not reopened where there is only one supplier or where the framework agreement sets out all the terms governing call-offs and objective criteria or a mechanism exists which can be applied to choose one supplier over other suppliers; and
 - b) reopened in the form of a mini-competition, based on quotes or proposals, where the framework agreement does not set out all the terms governing call-offs or where there is no objective criteria or mechanism to prefer one supplier over another in terms of (a).

Table 1: Different approaches to regulating framework agreements

Document	Concept of the agreement	Overview of selected provisions
<p>Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC: 94/114, 94/115</p>	<p>An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.</p>	<p>Framework agreements can be put in place with a single supplier or not less than three suppliers. If with a single economic operator, contracts based on that agreement are awarded within the limits of the terms laid down in the framework agreement. If with multiple economic operators:</p> <ul style="list-style-type: none"> • Where the framework agreement sets out all the terms, <ul style="list-style-type: none"> - contracts are awarded without reopening competition by applying the terms governing the provision of the work and the objective conditions for determining which of the economic operators is to perform the work; or - with the reopening of competition where such possibility has been stipulated in the procurement documents and such documents specify which terms may be reopened for competition. • Where the framework agreement does not set out all the terms governing the provision of the work, contracts are awarded through reopening

		<p>competition to economic operators.</p> <p>The term is not to exceed four years, save in exceptional cases.</p>
<p>UNCITRAL Model Law on Public Procurement 2014</p>	<p>An agreement between the procuring entity and the selected supplier (or suppliers) or contractor (or contractors) concluded upon completion of the first stage of the framework agreement procedure.</p>	<p>The framework agreement procedure is conducted in two stages: a first stage to select a supplier(s) and a second stage to award a procurement contract under the framework agreement to a party to the framework agreement.</p> <p>In a closed framework agreement, no supplier that is not initially a party to the framework agreement may subsequently become a party. In an open framework agreement, a supplier may, in addition to the initial parties, subsequently become a party.</p> <p>Second-stage competition takes place where certain terms and conditions of the procurement that cannot be established with sufficient precision when the framework agreement is concluded are to be established or refined. Framework agreement procedure without second-stage competition takes place under a closed framework agreement in which all terms and conditions of the procurement are established when the agreement is concluded.</p>

<p>The World Bank Procurement Regulations for IPF Borrowers 2023:42, 43</p>	<p>An agreement with one or more firms that establishes the terms and conditions that will govern any contract awarded during the term of the framework agreement (a call-off contract).</p>	<p>The terms and conditions usually include the fee rate, charge rate or pricing mechanism. A multi-supplier framework agreement allows a borrower to select from a number of firms, helping to ensure that each procurement represents best value for money.</p> <p>Framework agreements are put in place through an open competitive procurement.</p> <p>A secondary procurement for the call-off process takes one or both the following forms:</p> <ul style="list-style-type: none"> • a mini-competition based on objective criteria for call-offs such as: <ul style="list-style-type: none"> - competitive quotes based on the lowest evaluated cost or - competitive proposals from some or all of those admitted to a framework agreement, based on expertise, proposed solutions and value for money, • direct selection based on objective criteria for call-offs or balanced division of supply or scope or task. <p>Framework agreements can be a closed panel framework whereby the panel remain unchanged or an open panel framework.</p> <p>The term is not to exceed three years but can be extended for another two.</p>
-----------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		The framework agreement is not an exclusive agreement, and the same or similar goods, services and works may be procured from non-framework agreement suppliers.
Procurement Act (UK) of 2023:38-42 (Uses the term "framework" which includes a framework agreement)	A contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers.	<p>A framework may provide for the future award of a public contract following a competitive selection process, or without competition between suppliers in circumstances where:</p> <ul style="list-style-type: none"> • only one supplier is party to the framework, or • if the framework sets out the core terms of the public contract, and an objective mechanism for supplier selection is applied. <p>Provision is made for an "open framework", ie a scheme of frameworks that provides for the award of successive frameworks on substantially the same terms.</p> <p>The term may not exceed eight years in a defence and security framework or a utilities framework, or otherwise four years.</p>

2 2 Recommended usage of framework agreements

The World Bank suggests that from the point of view of the procuring entity, framework agreements may be an appropriate form of purchasing under the following circumstances:⁵

⁵ World Bank 2023: 43.

- where demand is satisfied through frequent reordering or selection of consulting services based on the same or similar requirements or set of specifications;
- when aggregating the demand could lead to volume or scale discounts where different contracting authorities procure the same goods, works or services;
- in emergency situations; or
- where no single firm is considered to have sufficient capacity.

Shifting the focus to infrastructure, the International Standards Organisation ("ISO") in ISO 22058⁶ suggests that framework agreements in the delivery of infrastructure are appropriate where:

- available budgets and the detailed scope of work are uncertain, the need for goods or services involves repetitive work of a similar nature over a period, a quick response time is required, or long-term relationships are desirable to achieve efficiencies or desired project outcomes; and
- the client wishes to foster collaborative relationships and to move away from a delivery model based on a series of isolated, highly transactional relationships.

According to ISO 6082⁷ and ISO 22058,⁸ a framework agreement in infrastructure projects enables:

- early contractor involvement, ie the practice of appointing a contractor before the design is complete to obtain construction knowledge, experience and inputs earlier than normal to reduce costs and minimise wastage, before the price for detailed design and construction is agreed;
- projects to be delivered incrementally as it enables cost risk to be contained because the client only commits to discrete portions of the project; and
- performance improvement over time, including that of promoting socio-economic or secondary objectives.⁹

⁶ ISO 22058:2022: 11.

⁷ ISO 6082:2025: 52.

⁸ ISO 22058:2022: 11.

⁹ See, in general, Laryea and Watermeyer 2024.

The number of packages within a project, a programme of projects or a portfolio of projects establishes the number of contractual relationships which need to be put in place, overseen and administered. Framework agreements can reduce the need to approach the market for resources and the number of relationships to be managed. They, furthermore, provide programming flexibility, particularly where there is a fixed annual budget.

3 South Africa's public procurement system

In order to explore the South African understanding of framework agreements, it is necessary to first outline the reigning constitutional precepts and implementation paradigms.

3.1 Constitutional requirements

Procurement is a subject-matter of, and is thus regulated by, the Constitution of the Republic of South Africa, 1996 ("the Constitution"). The term "procurement" appears in the heading to section 217 of the Constitution while "procurement policy" appears in section 217(2). Section 217(1) prescribes that, "when an organ of state ... contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective". This section frames the system objectives for procurement.¹⁰

These constitutional provisions have been subject to authoritative judicial interpretation. In 2013, the Constitutional Court ("CC") in the case of *Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency*¹¹ ("*All Pay I*") observed that the tendering system an organ of state devises "must be fair, equitable, transparent, competitive and cost-effective. This requirement must be understood together with the constitutional precepts on administrative justice in section 33 and the basic values governing public administration in section 195(1)."¹² It, thus, appears that for the CC the provisions relevant to public procurement extend beyond section 217 to include sections 33 and 195 of the Constitution. Accordingly, the constitutional imperatives for a procurement system for the contracting of goods and services require the system to:

- be fair, equitable, transparent, competitive and cost-effective, and to embrace a procurement policy providing for categories of

¹⁰ Penfold & Reyburn 2013: Chapter 25.

¹¹ *Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency* (CCT 48/13) [2013] ZACC 42 (29 November 2013).

¹² Para 31.

preference and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination;

- promote the efficient, effective and economic use of resources in an accountable, ethical and development orientated manner; and
- enable administrative action that is lawful, fair and reasonable.

3.2 Procurement systems

Over the last few decades, there has been a global change in the way that the public sector functions.¹³ Three basic paradigms have emerged – administration, management and governance. Table 2 characterises procurement systems in terms of these three paradigms. Section 217(1) of the Constitution has been implemented under all three of these paradigms.¹⁴

Table 2: Characteristics of the different paradigms for procurement systems¹⁵

Paradigm	Defining characteristics of the supply chain management system
Administration	<p>System is administrative in nature and rule-driven where compliance with rules and ticking of boxes is more important than project outcomes.</p> <p>Highly centralised decision-making where management discretion is discouraged.</p> <p>System is unresponsive, inefficient, slow, and incorporates inappropriate bureaucracies.</p>
Management	<p>System provides a wide range of options enabling a strategic approach to procurement to be taken to improve project outcomes, both in terms of strategy and tactics.</p> <p>Decision-making is decentralised.</p> <p>Emphasis is on clear accountability, efficiency, effectiveness, and project outcomes.</p>
Governance	<p>Governance enables alignment of choices with organisational strategic objectives and values,</p>

¹³ Phillips 2018: 16–19.

¹⁴ Watermeyer & Phillips 2020: 57–59.

¹⁵ Watermeyer & Phillips 2020: 57, 58.

	stakeholder aspirations and collaborative relationships between "buyers" and "sellers" or "suppliers".
--	--------------------------------------------------------------------------------------------------------

National Treasury has interpreted section 217(1) of the Constitution to be the acquisition component of supply chain management which forms an integral part of the financial management system.¹⁶ The Construction Industry Development Regulations (2004) interprets procurement in an infrastructure context as "procurement in the construction industry, including the invitation, award and management of contract" which links to the delivery of projects. This aligns with the ISO 10845-1 definition which defines procurement as the "process which creates, manages and fulfils contracts".

The CC's extension of the public procurement system to include sections 33 and 195(1) of the Constitution introduces two important foundational concepts, namely reasoned judgement and value for money. Reasoned judgement needs to be exercised to achieve value for money, which is the desired outcomes of the procurement system. The constitutional imperatives of sections 33 and 195(1) jar with the administration paradigm indicated in table 2 where the focus is on the "ticking of boxes" or the application of mechanistic approaches to ensure compliance rather than value for money. By contrast, the management and governance paradigms align and fit well with the concepts of reasoned judgement and value for money.

3 3 Administrative versus strategic procurement systems

Procurement can be characterised as being administrative or strategic in nature. An administrative procurement system is one which is best suited to the buying of well-defined and specified goods or services using standard documents in a simple bidding or purchasing process. This type of procurement system operates as a back office or an administrative, clerical function. It can be located within a financial management system under a chief financial officer.

Strategic procurement, on the other hand, is a front office or strategic function which needs to be linked to the department or directorate responsible for delivering projects and services. Its distinguishing features include the allocation of risk between the parties to a contract, business needs being satisfied through multiple contracts or different solutions, multiple interfaces and interdependencies between contracts, and uncertainties when contracts are concluded. Strategic procurement,

¹⁶ Watermeyer, Klaaren & Laryea 2024:6.

in this sense, requires a strategic and tactical approach with many options to approach the market and a range of delivery models and approaches to mitigate and allocate risk.¹⁷

Administrative procurement systems fit well with the administrative paradigm, whereas strategic procurement systems require at least a management paradigm and preferably a governance paradigm to support effective implementation. For purposes of this contribution, we, thus, distinguish between the administrative paradigm associated with the procurement of general goods and services and the strategic paradigm associated with the procurement of infrastructure and associated goods and services.

3.4 Current regulatory framework for procurement

The current South African regulatory framework for procurement is embedded in the SCM regulations issued in terms of the PFMA and MFMA. The PFMA's SCM regulations require departments and most public entities to establish supply chain management ("SCM") units within the office of the chief financial officer. The MFMA's SCM regulations require, wherever possible, that a SCM unit be established under the direct supervision of the chief financial officer. This is understandable, given that SCM was conceptualised as a financial management system.

The only differentiators in the SCM regulations issued in terms of the PFMA and MFMA between general goods and services and infrastructure and related goods and services (bids relating to the construction industry)¹⁸ are found in the requirements for bid documents. The SCM regulations require that such documents be in accordance with National Treasury's General Conditions of Contract ("GCC") and instructions, save for bids in the case of the construction industry where the prescripts of the Construction Industry Development Board ("CIDB") apply.¹⁹

National Treasury's GCC, which was last amended in 2010, is a very basic contract for goods or services where risks are low. It covers the basic rights and obligations of the parties to a contract and includes matters encountered prior to the formation of the contract. It requires an amendment to the contract to give effect to a variation or modification to the contract or to ratify any extension of time for delivery or performance of the services. The GCC is required to be included without amendment in all bid documents. Special Conditions of Contract ("SCC") relevant to a

¹⁷ JSR 2022a and 2022b.

¹⁸ The Construction Industry Development Board Act 38 of 2000 defines the construction industry as "the broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment".

¹⁹ National Treasury Regulations, 2005: Regulations 16A6.3(a) & 32.

specific bid may be compiled separately to supplement the GCC, which prevail if a conflict arises. The GCC and, if applicable, the SCC, are used in conjunction with standard bid forms, such as a preference schedule, declaration of interest and pricing schedule, when compiling a bid document.

In contrast, the CIDB prescripts include a Standard for Uniformity in Construction Procurement which was first published in 2004. This standard includes a standard structure for compiling procurement documents, standard conditions for calling for an expression of interest and standards conditions of tender. These CIDB provisions have formed the basis of the first editions of ISO 10845 Parts 1 to 4, which were published in 2010/11. The CIDB Standard endorses a range of standard forms of contract comprising both local and international contracts covering supplies, term services, consulting services, and engineering and construction works (such as those developed by the International Federation of Consulting Engineers ("FIDIC") and the NEC contracts developed by the Institution of Civil Engineers). These standard forms of contract cover the full range of risk allocations in construction works contracts and permit flexible allocations of risk. They also provide both priced-based and cost-based pricing strategies, ie strategies to secure financial offers and to remunerate contractors in terms of the contract.

The SCM regulations issued in terms of both these Acts²⁰ permit one organ of state to participate in any contract put in place following a competitive tender process by any other organ of state.

4 Framework agreements for general goods and services

This contribution explicates the types of framework agreements in use in South Africa, noting first in this part of the discussion, two types that are used within the administrative paradigm for general goods and services – panels and transversal term contracts – followed in part 5 with a discussion of another type – pricing framework agreements – used in the second paradigm identified above for the procurement of infrastructure and associated goods and services.

4.1 Panels

In the appointment of consultants, National Treasury made provision for the establishment of a list or panel of approved professional service providers through a competitive bidding process.²¹ The intention to establish a panel or list is advertised. Those participating in the process

²⁰ National Treasury Regulations, 2005: Regulations 16A6.6 & 32.

²¹ National Treasury Practice Note 2003: 21, 22.

are required to complete a questionnaire. Admission to the list and criteria is linked to the numeric value in terms of which applicants are measured in respect of their responses such as "qualifications, experience, acceptability, facilities and resources, etc.". Those admitted to the panel or list are approached and, depending on the circumstances, are appointed following the obtaining of quotes on a rotation basis or according to a bid procedure. This panel or list is updated at least quarterly.

Various organs of state have adopted a similar approach for a range of services. Some have referred to this process as a framework agreement. This approach, however, is inconsistent with the common and general principles outlined in part 2 of this contribution and, in our view, should not be regarded as a framework contract.

4 2 National Treasury's transversal term contracts

ISO 6707-2:2017 defines a term contract as "a contract that enables the client to order work during a prescribed period at agreed rates". The regulations issued in terms of the PFMA²² make provision for an institution to opt to participate in transversal term contracts facilitated by the National Treasury or a provincial treasury. Such participation prohibits a participating organ of state to solicit bids for the same or similar product or service during the term of such a contract.

A relevant treasury is responsible for putting in place transversal term contracts where two or more procuring institutions require common goods or services, and for managing contract amendments and attending to complaints. Organs of state wishing to participate in transversal contracts forward their applications for consideration, indicating the contract, items or services that they are interested in. Participating organs of state are required to place orders, receive goods and services and pay suppliers timeously.²³

The 2025 National Treasury Transversal Contracting Contact List lists 63 transversal term contracts, most of which relate to the supply of goods, particularly medical supplies, while the remainder relate to services such as ambulance, rescue and courier services and the rental of aircraft and helicopters.²⁴ National Treasury typically put in place a contract based on the National Treasury GCC, with or without SCC, together with an agreement which is supplementary to the SCC. A circular or covering

²² National Treasury Regulations, 2005: Regulation 16.A6.5.

²³ National Treasury 2017: 6, 7.

²⁴ National Treasury 2025.

letter is issued to participating organs of state which includes contract pricing, the applicable SCC and any particulars relating to the contract.

Participating organs of state are required to verify the correctness of the supplier's invoices for deliveries made in terms of the contract. Payment of prices other than the contract prices is regarded as a fruitless expenditure. Where contracts make provision for monthly price amendments, such amendments are posted on a website.

Call-offs take place in different ways, depending on the nature of the required goods and services. For example, suppliers can be ranked in geographical areas and the highest ranked supplier is invited to submit a quote based on the contract. If they are unable to supply, the process is repeated with the next-ranked supplier. The participating organ of state may establish its requirements and invite one or more suppliers to submit a proposed solution. An order is issued for the selected proposal.

Transversal term contracts can be described as a form of framework agreement as they fall within the characteristics of framework agreements as established in part 2 above.

5 Framework agreements for the delivery of infrastructure

This part of the contribution outlines the content and history of the soft law approach to framework agreements which has evolved in South Africa within the paradigm associated with the procurement of infrastructure. This soft law approach has now been incorporated into ISO 10845-1:2020.

5.1 Pricing framework agreements

For the supply of basic goods or the provision of routine and repetitive services, it is relatively straight-forward to establish framework agreements as the price for the goods or services or work done can be a quantity multiplied by a rate. It is much more challenging to put an effective framework agreement in place where the price for the work relates to a scope of work which is not yet defined in sufficient detail to enable it to be priced and includes risk pricing to cover risk events that may arise during the performance of a contract for which the contractor is not responsible. It is, furthermore, more difficult in infrastructure projects where there are significant site establishment and de-establishment costs and there is little or no repetition in work of a similar nature under uniform conditions.

A key pragmatic question in the strategic procurement we endorse is thus: how does one sensibly price for work not yet scoped or which is incapable of being precisely priced without attracting undue risk pricing? Another key question is, how do you transparently determine the price of items that are not included in price lists or pricing schedules incorporated in a framework agreement or if changes arise from risk events for which the contractor is not responsible?

Two pricing strategies are available, namely price-based and cost-based: Price-based pricing strategies (bills of quantities, price lists or schedules and activity schedules) are only suitable in situations where the work is of a repetitive nature and scope is known. Cost-based strategies, on the other hand, are suitable where a scope of work is yet to be defined in sufficient detail to enable it to be priced. ISO 6707-2:2017 defines the following cost-based pricing strategies:

- “cost reimbursement contract – contract based on cost expended;
- cost plus contract – cost reimbursement contract under which the contractor is paid for their actual expenditure plus a percentage or other sum as previously agreed; and
- target cost contract – cost reimbursement contract under which a preliminary target cost is estimated and, on completion of the work, the difference between the target cost and the actual cost is apportioned between client and contractor on an agreed basis.”

We will subsequently address the questions posed above by discussing the South African evolution of the framework agreement contract type within the paradigm for the procurement of infrastructure and associated goods and services. After noting the prevalent form of contract deemed suitable for such procurement in South Africa, we sketch the evolution of framework agreements for infrastructure, and finally detail the incorporation of this approach within the relevant ISO standard.

5 2 Identifying a suitable form of contract

Like for all procurements, those using framework agreements look for a suitable form of contract. Unlike the FIDIC and other local standard forms of contract, the NEC forms of contract provide both cost-based and price-based pricing strategies (see table 3) for works and services and cover the full range of basic contract types that are encountered on infrastructure projects, namely supply, term service, professional service, and engineering and construction contracts. Cost is defined in the NEC Engineering and Construction Contract (“ECC”) in terms of people, equipment, plant and materials, charges, manufacture and fabrication, design, insurance and subcontracts, the details of which are described in

the contract. Provision is also made for disallowed cost which is deducted from cost as defined in the contract. All contractor costs not included in cost as defined in the ECC is treated as being included in a fee percentage applied to cost. Cost includes only amounts calculated using tendered rates and percentages and other amounts at open market or competitively tendered amounts. Adjustments to prices for compensation events (risk events which are not at the contractor's, supplier's or consultant's risk) are assessed based on cost as defined in the contract plus a fee percentage agreed at the time of contract formation which covers profit, overheads, finance charges, insurances, etcetera.

Table 3: Pricing options provided in the NEC Engineering and Construction Contract

Main Option	Definition of price for work done to date (which is paid incrementally)	Definition of the prices
A: Priced contract with activity schedules	The lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the bill of quantities.	The total of the prices for each group of completed activities and each completed activity which is not in a group.
B: Priced contract with bill of quantities	The lump sum prices for each of the activities on the activity schedule.	The total of the quantity of the work which the contractor has completed for each item in the bill of quantities multiplied by the rate and a proportion of each lump sum, which is the proportion of the work covered by the item which the contractor has completed.
C: Target contract with activity schedule	The lump sums and the amounts obtained by multiplying the rates by the quantities	The total defined cost which the project manager forecasts must be paid by the

	for the items in the bill of quantities.	contractor before the next assessment date plus the fee.
D: Target contract with bill of quantities	The defined cost plus the fee.	
E: Cost-reimbursable contract		
F: Management contract		

Early contractor involvement in construction contracts, with or without design responsibilities, can be achieved through the selection of a cost-based pricing strategy provided for in the NEC ECC. For example, a contractor can be appointed on a cost reimbursable basis (Option E) to undertake the planning and design of a project in the first stage of a project and on a target contract basis (Option C) for the second stage of the project where a target cost can be negotiated using a build-up of cost uplifted by the percentage fee when there is sufficient project information available to agree a target cost.²⁵

The NEC Term Service and NEC Professional Services contracts also include cost-based pricing options. All the NEC contracts (long and short) include adjustments for changes in the project scope or conditions (compensation events) to be made transparently based on cost as defined in the contract uplifted by a tendered fee percentage. The NEC3 Term Service Contract and the NEC3 Professional Service Contract also include standard provisions for call-offs in the form of the issuing of task orders during the term of the contract, and permit any task started before the end of the term to be completed after the term of the contract. The NEC3 Supply Contract also makes provision for the issuing of batch orders in the NEC3 Supply Short Contract. The NEC3 family of contracts, with or without modifications for call-offs, are accordingly suitable for use as a base document in framework agreement contracting arrangements in a single stage.²⁶

The NEC family of contracts also includes a framework contract. This contract is a head contract which needs to be used in conjunction with one of the NEC engineering and construction, supplies, professional

²⁵ NEC3 2016: 3, 4 & 5.

²⁶ Watermeyer 2013: 21–26.

services or term services contracts. Procedures relating to how a framework contractor is selected, the management of the process of defining the scope of work and agreeing the price, what the conditions will be, and how the work will be executed need to be developed by the user. It provides a high-level framework without promising work.²⁷ The NEC Framework Contract can be used in a single- or two-stage process, depending upon the degree of completeness of the other NEC contracts that are referenced. It formalises the operation of a panel in the absence of an associated NEC contract. The modification of a standard alone NEC contract to accommodate a single-stage framework agreement is in our view the preferable option.

5.3 Evolution of framework agreements for infrastructure projects

To sketch the evolution in South Africa of framework agreements for infrastructure projects, this contribution makes use of two case studies and an account of subsequent soft law policy development.

In the first case study, a contracting model was developed in 2007 for the replacement of approximately 2500 km of asbestos water mains in eThekweni Metropolitan Municipality where the precise location of such pipes was not known. The pipes had to be located before each water district could be designed and ultimately priced. The project was further complicated in that water had to be provided to consumers while pipes were being replaced. The adopted model was based on the NEC3 ECC target contract Options C or D (see table 2). One programme manager, four consultants and four contractors were appointed on the same day. Expenditure on this project from a standing start on 1 July 2007 up to 1 September 2008 was approximately R400 million. Up to 80 km of water mains were installed in trenches dug by hand per month. The project also achieved significant socio-economic outcomes in terms of contractor development and employment creation.²⁸

In a second case study, the University of the Witwatersrand commenced with its first major capital expansion programme focusing on the construction of new campus facilities in 2007 using government grant funding. The initial contracts, based on the traditional approach to delivering building projects, resulted in significant cost overruns. A change in contracting strategy was embarked upon in 2008 to improve project outcomes. Framework contracts based on the NEC3 ECC target contract Option C were used to facilitate early contractor involvement and a collaborative contracting approach. Over time, call-off mechanisms along the lines of the NEC3 Term Service Contract were introduced. Every three years the market was approached to afford others the opportunity

²⁷ NEC3 2016: 21 (Procurement and contract strategies).

²⁸ Watermeyer, Larkin, Kee and Thumbiran 2009:31-37.

to contract with the university. One framework contractor was appointed for the main campus and one for the education campus. This change in contracting strategy was a major contributor in enabling the university to deliver a R1,5 billion programme over a five-year period with the difference between the final cost and the control budget of less than 6%.²⁹

The University of the Witwatersrand was appointed as the implementing agent for the first phase of the two new universities (Sol Plaatje University and the University of Mpumalanga) in 2011. The Wits team used mainly framework contracts to deliver the first phase of the project (2011 to 2016) involving the issuing of approximately 700 orders. These framework agreements were based on the NEC ECC Options C and F, the NEC3 Professional Services Contract (Option G: Term service) and NEC3 Supply Short Contract as a basis for framework agreements for works, consulting services, and for furniture, fittings and equipment respectively. This contracting approach enabled the time between the political decision to develop a new university and the receiving of the first intake of student to be just 28 months. Facilities were delivered at the start of each academic year within cost norms.³⁰ The handing over of the framework agreements to the newly-appointed staff of the two new universities enabled a R1,3 billion per annum programme to continue without interruption.³¹

The Western Cape Education Department, due to a lack of capacity on the part of Western Cape Department of Transport and Public Works and increasing demand for maintenance and upgrading of schools, took the pioneering step in 2014 of appointing two management contractors (NEC3 ECC Option F) to implement with single point accountability the maintenance, repair and upgrading of 122 schools at a cost of R172 million. Approximately 65% of projects were completed on time and the total cost overrun over 30 months was +4.43%.³²

The documentation of framework agreement procedures and practices took place in parallel to the aforementioned projects. The CIDB published Inform Practice Note 15: Framework agreements during August 2008. ISO 10845-1:2010, which is based on the South African constitutional imperatives for procurement and the CIDB Standard for Uniformity in Construction Procurement, includes provisions developed with CIDB's participation for framework agreements. In April 2012, the Western Cape Provincial Treasury published a Standard for a Construction Procurement

²⁹ Laryea & Watermeyer 2014.

³⁰ Laryea & Watermeyer 2020.

³¹ NUPMT 2018.

³² Laryea & Watermeyer 2017.

System which made provision for framework agreements including governance arrangement for the issuing of orders from such agreements.

National Treasury, drawing upon these two Western Cape standards, published in October 2015 a Standard for Infrastructure Procurement and Delivery Management ("SIPDM") and a Model SCM Policy for Infrastructure Procurement and Delivery Management. These documents were issued under a PFMA instruction and under a circular to municipalities and municipal entities for adoption by their councils. Provisions for framework agreements and the associated governance arrangements were an integral part of the SIPDM.

National Treasury withdrew the SIPDM in favour of a Framework for Infrastructure Delivery and Procurement Management ("FIDPM") in May 2019. According to National Treasury this was, amongst other things, done in recognition that there is "one institutional Supply Chain Management (SCM) system with differentiated procurement processes as opposed to two SCM systems". FIDPM excludes provisions for framework agreements but recognises the CIDB prescripts which include reference to the SANS 10845 standards (the South African adoption of the ISO 10845 standards) as documents which are necessary to implement the standard.

5.4 ISO 10845-1 approach to framework agreements

ISO 10845-1 was revised in 2020. The framework agreement provisions were updated and revised to include governance arrangement for framework agreements in line with what was provided in the SIPDM.

ISO 10845-1:2020 defines a framework agreement, along similar lines to the European Union Directive 2014/24/EU on public procurement, as an "agreement between an employer and a contractor, the purpose of which is to establish the terms governing orders to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged". It also defines an order as an "instruction to supply goods, carry out construction works and/or provide services under a framework agreement".

The approach to framework agreements as set out in ISO 10845-1:2020 may be summarised as follows:

- Framework agreements may be entered into with one or more contractors by inviting tender offers using a selection method provided for in ISO 10845-1 to enter into a suitable contract for the required work, using stringent eligibility and evaluation criteria to ensure that contracts are entered into with only those contractors who have the capability and capacity to provide the required goods, services or works.

- The term of a framework agreement should typically be between three and four years.
- Framework agreements may not commit the employer to any quantum of work beyond the first order or bind the employer to make use of such agreements to meet its needs – the client is free to approach the market whenever better value in terms of time, cost and quality can be obtained.
- Orders may only cover goods or services, or any combination thereof, falling within the scope of work associated with the agreement, and may not be issued after the expiry of the term of the framework agreement but may be completed even if the completion of the order is after the expiry of the term.
- Framework agreements covering the same scope of work may only be entered into with a limited number of contractors (typically not more than three and certainly not more than five), based on the projected demand and geographic location for such goods, services or works.
- The issuing of orders from framework agreements where several framework agreements cover the same scope of work may be made with and without requiring competition amongst such contractors. Competition for orders needs to take place where there is no justifiable reason for issuing an order to a particular framework contractor, supplier or supplier.

The default position in ISO 10845-1 is that opening competition is an exception to the rule. Competition is only reopened where there are no justifiable reasons for not doing so or if better value or outcomes can be obtained. Hence, the need to keep the number of framework agreements covering the same scope of work to a small number.

ISO 10845-1 also includes the governance arrangements for procurement embedded in the SIPDM in the form of a control framework which include decision gates (see tables 4 and 5). Decision gates provide an opportunity to authorise continuance of procurement activities, confirm compliance with requirements, and provide information which creates an opportunity for corrective actions to be taken. This formalises the way in which key procurement processes are performed, forms part of a quality management system, enables risks to be appropriately and proactively managed, and facilitates the auditing of the system.

Table 4: Procurement activities and gates associated with the formation and conclusion of contracts

Activity		Gate	Activity associated with the gate
1	Establish what is to be procured.	PG1	Obtain permission to start with the procurement process.
2	Decide on procurement strategy.	PG2	Obtain approval for procurement strategies that are to be adopted including specific approvals to approach a confined market or the use of the negotiation procedure.
3	Solicit tender offers.	PG3	Obtain approval for procurement documents.
		PG4	Confirm that budgets are in place.
4	Evaluate tender offers.	PG5	Obtain authorisation to proceed with next phase of the tender process in the qualified, proposal or competitive negotiations procedure
		PG6	Confirm recommendations contained in the tender evaluation report.
5	Award contract.	PG7	Award contract.
		GF1	Upload data in financial management and payment system.
6	Administer contracts and confirm compliance with requirement.	PG8A	Obtain approval to waive penalties or low performance damages.
		PG8B	Obtain approval to notify and refer a dispute to an adjudicator.
		PG8C	Obtain approval to increase the total of prices at the award of a contract or the issuing of an order, excluding price adjustment for inflation, by less than 10 or 20% in the case of general goods and infrastructure goods and services respectively.
		PG8D	Obtain approval to increase the total of prices at the award of a contract or the

Activity	Gate	Activity associated with the gate
		issuing of an order, excluding price adjustment for inflation, by more than 10 or 20% in the case of general goods and infrastructure goods and services respectively.
	PG8E	Obtain approval to cancel or terminate a contract.
	PG8F	Obtain approval to amend a contract.

Table 5: Procurement activities and gates associated with the issuing of an order

Gate	Activity
FG1	Confirm justifiable reasons for selecting a framework contractor where there is more than one framework agreement covering the same scope of work.
FG2	Obtain approval for procurement documents.
FG3	Confirm that budgets are in place.
FG4	Authorise the issuing of the order.

6 Conclusions

Influential international regulators have made provision for the use of framework agreements as far back as 1990. Over time the contractual arrangements for fixed or variable volumes of products or services provided over a fixed period have matured. There is also considerable commonality in the way that international regulators currently regulate framework agreements. Framework agreements can be put in place using a single-stage or a two-stage process. Call-offs or orders issued in terms of a framework agreement, depending on whether the agreements include all the terms or only some of the terms, may be issued with or without the reopening of competition amongst framework contractors. Framework agreements can bind the procuring institution to make exclusive use of such agreements or can permit that the market is approached to obtain better value if need be.

Framework agreements for basic goods and services are relatively straightforward to put in place, as such goods and services can be readily

priced and call-offs are a multiple of unit rates. Such agreements can be implemented under an administrative procurement system paradigm as part of a financial management system. Calls-offs or issuing of orders can follow a mechanistic approach in the selection of a supplier where there are more than one suppliers to an agreement. However, framework agreements for infrastructure and associated goods and services are far more complex as they require the putting in place of cost-based pricing strategies, the building up of market-related prices and the application of tendered mark-ups for profit and overheads. Such framework agreements are best implemented under a management or preferably a governance procurement system paradigm as part of a strategic operational system. Reasoned decision-making is required in the selection of a supplier and acceptance of a quotation for an order or call-off in the pursuit of value for money. This is consistent with the CC's thinking in linking sections 195 and 33 to section 217 of the Constitution.

Transversal term contracts, which are used extensively in South Africa and provided for in the PFMA SCM regulations, are a form of framework agreement. The thinking behind this approach is to take advantage of bulk purchasing. The putting in place of a transversal term contract following an open bidding process is clearly understood. However, what is not clear from the current National Treasury guidelines as to how choices are made in selecting suppliers is how large discrepancies in tendered prices are handled if, for capacity reasons, contracts are entered into with such discrepancies. Furthermore, it is not clear as to what checks and balances are in place to ensure that over the term of the framework agreement prices remain market related, particularly in the light of the regulation which prohibits participating institutions from pricing the same or similar goods and services from the market. As the public procurement regime undergoes a period of reform, the governance and market-relatedness of transversal term contracts should be clarified and revisited.

The approach to framework agreements taken in the procurement of infrastructure and associated goods and services has evolved over time and has informed the content of the international standard ISO 10845-1 which, in turn, has been adopted as a South African national standard and endorsed by the CIDB as a best practice. Its potential to improve service delivery has been demonstrated. However, it requires a different mind-set for its implementation, which differs very much from that of an administrative procurement system paradigm within which transversal term contracts usually are implemented.

This type of framework contract requires strong and robust governance arrangements, client leadership, a strategic and tactical approach to procurement, high quality of procurement documents and a

collaborative culture to mitigate risks.³³ In its implementation, it also requires an in-depth understanding of contracts and different pricing strategies, as well as inputs from built environment professionals. Its use in the delivery and maintenance of infrastructure can be increased if the CIDB were to issue more practice notes and actively promote this soft law instrument in the form of SANS ISO 10845-1 to improve service delivery.

³³ Laryea & Watermeyer 2020.

Bibliography

Books, articles and papers

Laryea, S. & Watermeyer, R.B. 2014. Innovative construction procurement at Wits University. *Proceedings of the ICE-Management, Procurement and Law* 167:220–231.

Laryea, S. & Watermeyer, R.B. 2017. Comparison of two infrastructure project implementation models in a developing country. *Proceedings of the Institution of Civil Engineers-Management, Procurement and Law* 171:3–17.

Laryea, S. & Watermeyer, R. 2020. Managing uncertainty in fast-track construction projects: case study from South Africa. *Proceedings of the Institution of Civil Engineers - Management, Procurement and Law* 173:49–63.

Laryea, S. & Watermeyer, R. 2024. Using construction procurement strategy to achieve socio economic development objectives. *Heliyon* 10 [online] Available at: <<https://doi.org/10.1016/j.heliyon.2024.e33537>>.

Phillips, S. 2018. The ongoing evolution of government infrastructure procurement. *Civil Engineering* 26(1):16-19.

Penfold, G. & Reyburn, P. 2013. Chapter 25: Public Procurement. In Woolman, S., Roux, T. & Bishop, M. (Eds.) *Constitutional Law of South Africa*. 2 ed. Kenwyn, Cape Town: Juta.

Watermeyer, R., Larkin, D., Kee, A. & Thumbiran, I. 2009. Delivering infrastructure at scale: eThekweni Water and Sanitation experience in a pilot project. *Civil Engineering* 17(2):31–39.

Watermeyer, R.B. 2013. Unpacking framework agreements for the delivery and maintenance of infrastructure. *Civil Engineering*. 21(1):21-26.

Watermeyer, R., Klaaren, J. & Laryea, S. 2024. Thinking through the regulation of different types of procurement provided for in the Public Procurement Act. *African Public Procurement Law Journal* 11:45–72.

Online sources

CIPS Knowledge works knowledge summary. *Framework Agreements* [online] Available at: <<https://www/scribd.com/document/318162721/framework-arrangement-cips>> [Accessed 20 August 2025].

Constructing Excellence [online] Available at:
<<https://constructingexcellence.org.uk/tools/frameworkingtoolkit/wh-at-is-a-framework/>> [Accessed 20 August 2025].

Legislation and other forms of regulation

EU Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

EU Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. [online] Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31990L0531> [Accessed 19 August 2025].

ISO 6707-2:2017. *Buildings and civil engineering works – Vocabulary Part 2: Contract and communication terms*. Geneva: International Organisation for Standardisation.

ISO 6082:2025. *Construction project governance Guidance on delivery management*. Geneva: International Organisation for Standardisation.

ISO 10845-1:2020. *Construction procurement – Part 1: Processes, methods and procedures*. Geneva: International Organisation for Standardisation.

ISO 10845-2: *Construction procurement – Part 2: Formatting and compilation of procurement documentation*. Geneva: International Organisation for Standardisation.

ISO 10845-3. *Construction procurement – Part 3: Standard Conditions of Tender*. Geneva: International Organisation for Standardisation.

ISO 10845-4. *Construction procurement – Part 4: Standard conditions for the calling for expressions of interest*. Geneva: International Organisation for Standardisation.

ISO 22058:2022. *Construction procurement Guidance on strategy and tactics*. Geneva: International Organisation for Standardisation.

National Treasury. 2003. *Appointment of Consultants. Practice Note No SCM 3*.

National Treasury Regulation. 2005.

National Treasury. 2017. *Guide to Participation in Transversal Term Contracts Facilitated by National Treasury*.

National Treasury. 2025. *Transversal Contracting Contact List*.

NEC3. 2016. *Early Contractor Involvement*. [online] Available at: NEC_ECI_Jan2016-Web.pdf.aspx [Accessed 25 August 2025].

World Bank. 2023. *Procurement Regulations for IPF Borrowers. Procurement In Investment Project Financing Goods, Works, Non-Consulting and Consulting Services* 5 ed, Washington DC: The World Bank.

Reports and documents

Joint Strategic Resource (JSR). 2022a. Concept Note 2. *Concept Note on the Tension between the Draft Public Procurement Bill and Accounting Officer/Authority Responsibilities* Public Affairs Research Institute. [pdf] Available at: <<https://www.pari.org.za/wp-content/uploads/2023/06/CN2.pdf>> [Accessed 17 February 2025].

Joint Strategic Resource (JSR). 2022b. Concept Note 6. *Concept note on Centralisation versus Decentralisation of Public Procurement*. [pdf] Available at: <<https://www.pari.org.za/wp-content/uploads/2023/06/CN6.pdf>> [Accessed 17 February 2025].

New Universities Project Management Team (NUPMT) (2018). *Close out report of the new universities project management team on the development of new universities in Mpumalanga and the Northern Cape, 1 November 2011–31 July 2017*. [online] Available at: <<https://www.wits.ac.za/ipdm/guides/close-out-report/>> [Accessed 25 August 2025].

Watermeyer, R. & Phillips, P. 2020. Public infrastructure delivery and construction sector dynamism in the South African economy. *NPC Economy Series - Background Paper*. National Planning Commission.

Case law

Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (CCT 48/13) [2013] ZACC 42 (29 November 2013).