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Dear Mr Todd

RE: FOI request: Copy of contracts for infrastructure services awarded to 16 suppliers 2006-08-08.

Thank you for your communication of 4th October in which you raise a number of issues relating to the infrastructure services framework agreement. This reply also seeks to answer the points you raised in your message to Lesley Leon on 5th October.

A number of the issues raised are directly associated with EU procurement regulations and in particular framework agreements. I've detailed below a brief generic overview of framework agreements.

The new public sector procurement Directive, which replaces the existing Directives covering public procurement of services, supplies and works, includes a provision (Article 32) on framework agreements for the first time. The UK Regulations, which implement this new Directive, will cover this provision in Regulation 19 and came into force on 31 January 2006. I confirm that they are additionally covered by regulation 30 (1) (a).

A framework agreement is a general term for agreements with providers which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. Such agreements set out the terms and conditions for subsequent call-offs but place no obligations, in themselves, on the procurers to buy anything. With this approach, contracts are formed, in EU Directive terms when goods, works and services are called off under the agreement. I confirm that the contracting authority in the case of your enquiry is BECTA. However, it should be noted that contracts under the framework may be placed by any of the eligible bodies named in the notice: the Department for Education & Skills, local authorities and local education authorities in England and the equivalent bodies in Wales, Scotland and Northern Ireland, individual educational institutions which may also include those in the post-16 sector, Academies, Local Education Partnerships under the Building Schools for the Future programme, Becta and other non-departmental public bodies and agents of all of the foregoing

There should be no scope for substantive amendments, through negotiation, to the terms established by the framework agreement itself. However, this does not mean actual prices should always be fixed, but rather that there should be a mechanism that will be applied to pricing particular requirements during the period of the framework. It should also be possible to establish the scope and types of goods and/or services that will need to be called-off. There should not be any objection to upgrading the product, service or works required so long as it remains within the scope of the original specification.

It will be necessary to advertise the framework itself in the OJEU, if its estimated maximum value over its lifetime exceeds the relevant EU threshold and the procurements in question are not covered by one of the exclusions set out in the Directives. Contracting authorities which act as central buying organisations may set up and advertise framework agreements on behalf of other contracting authorities.

Framework agreements can be concluded with a single provider or with several providers, for the same goods, works or services. In the latter case, there must be at least three providers, provided that there are sufficient candidates satisfying the selection criteria and which have submitted compliant bids meeting the award criteria. When awarding call-offs (individual contracts), under framework agreements, authorities do not have to go through the full procedural steps in the EU Directives again so long as the rules were followed appropriately in the setting up of the framework agreements themselves. However, the relevant EU Treaty provisions and Treaty-based principles, including non-discrimination, still apply at this stage, and authorities need to be careful to ensure that nothing is done which is discriminatory, improper or which distorts competition.

Where a framework agreement is concluded with just one provider, call-offs under the agreement should be awarded on the basis of the terms laid down in the agreement, refined or supplemented by other terms in the framework agreement but not agreed at that time. It is the same principle as that applying to a normal contract, except that, with a framework agreement, there will be an interval between the awarding of the framework itself and the calling-off of the goods, works or services under it. There can be no substantive change to the specification or the terms and conditions agreed at the time that the framework is awarded.

Where frameworks, for the same goods, works or services, are awarded to several providers, there are two possible options for awarding call-offs under the framework.

One option is to apply the terms of the framework agreement. Where the terms laid down in the framework agreements are sufficiently precise to cover the particular call-off, the authority awards the call-off without reopening competition. However, in order to ensure value for money, the authority

should award the call-off to the provider who is considered to provide the most economically advantageous (value for money) offer based on the award criteria used at the time that the framework was established.

A second option is to hold a mini-competition, where the terms laid down in the framework agreements are not precise enough or complete for the particular call-off, a further or mini competition should be held with all those suppliers within the frameworks capable of meeting the particular need. This does not mean that basic terms can be renegotiated, or that the specification used in setting up the framework can be substantively changed. Substantive modifications to the terms set out in the framework agreement itself are not permitted. It is more a matter of supplementing or refining the basic terms to reflect particular circumstances for the individual call-off. Examples of such terms are:

- particular delivery timescales;
- particular invoicing arrangements and payment profiles;
- additional security needs;
- incidental charges;
- particular associated services, eg installation, maintenance and training;
- particular mixes of quality systems and rates;
- particular mixes of rates and quality;
- where the terms include a price mechanism;
- individual special terms (e.g. specific to the particular products/services that will be provided to meet a particular requirement under the framework).

Where a mini-competition is held for a particular call-off, the contracting authority should consult in writing (invite to tender) the providers within the framework which are capable of meeting the particular need. Contracting authorities should state the subject matter for the call-off for which tenders are being requested, and also a time limit which is sufficient to enable the selected providers to submit their bids for the particular call-off. This time limit should take account of the complexity of the call-off and the time needed for the different tenderers to submit their bids.

Tenders should be submitted in writing, and they should remain confidential until the time limit has expired. The contracting authority should award the call-off to the provider which has submitted the most economically advantageous tender on the basis of the award criteria set out in the framework itself focusing on the particular requirement. New award criteria may not be added, but weighting can be varied to reflect the particular requirement.

With regards to why prices are not set at the creation of the framework is because it is more appropriate to address this at the mini competition stage when the customer requirements are defined in a statement of requirement.

The framework runs for 3 years and past experience shows that price trends decline over time.

The framework is service based and not product driven. The framework contains six service elements from which Local Authorities/institutions can select those elements that best complement their existing services from a single supplier and thus provides customers with a solution that best suits their local needs. The 6 elements are;

1. Infrastructure Design: system design by qualified personnel, based on Becta Functional and technical specifications, taking into account legacy equipment
2. Infrastructure provision: enabling purchase of high quality, warranted equipment through regional aggregation
3. Infrastructure implementation: commission, test and install ICT equipment on school's behalf including integration of appropriate existing equipment
4. Infrastructure maintenance: purchase maintenance services from a framework supplier to include ongoing maintenance of existing systems and all future additions
5. Infrastructure service and support: technical support service compliant with Becta's Framework for ICT Technical Support (FITS)
6. Training services: operational training services for relevant staff and end users.

One benefit of the framework is that the suppliers have already been evaluated against a broad range of criteria and have therefore demonstrated a capability to provide an appropriate level of capability. It is interesting to note the evaluation process includes many practical assessments where the capability of the supplier is physically tested via a range of practical scenario evaluations. These include a design, provision and implementation evaluation scenario, a FITS (Framework for ICT Technical Support) / ITIL process implementation evaluation, an implementation, maintenance, service and support evaluation, cost analysis, training service evaluation, quality assurance evaluation. Suppliers are also assessed against a range of commercial issues such as financial strength, contract management, supply chain capability, references...

Some of the benefits of the framework include:

- Properly managed, reliable and sustainable ICT infrastructure is an essential foundation for pedagogical aspirations, giving improved teacher confidence and faster achievement of teaching and learning goals.
- Use of the Infrastructure Services Framework creates a service-oriented approach to ICT provision based on agreed standards and specifications with appropriate risk and responsibility for ICT transferred to suppliers.

- The reduction in management time spent on ICT can be utilised elsewhere.
- Aggregating requirements across institutions achieves better value for money than individual purchases.
- Predictable, sustainable costs allow simpler and effective financial planning and management.
- Technical support provided by framework suppliers is compliant with national standards and processes (FITS, ITIL or equivalent) reducing technical burden for schools.
- Adopting a functional approach allows the technical and non technical personnel to define their institutions needs in a non technical way.

Turning to the particular points you have raised with me and with Lesley Leon; as regards the URL for the Framework Agreement, at the moment we just have the Service Order Terms as these are what we would expect customers to need most, but we are preparing a "Becta templated" version of the Terms and Conditions of the Framework Agreements, as well since we've now had several requests for these. You also requested copies of the 16 Framework Agreements that we have concluded in this area. While we have no objection in principle to providing these, you might agree that, for ease of handling, a single copy of this generic document might suffice. They are all the same and a representative example is attached. However, if you do not agree with this proposal, please let me know. This is not a refusal to comply with your request but is only a clarification of the nature of the document and suggestion to reduce the administrative burden on us both.

I hope this response and explanation are adequate but if you require any further clarification or material, please let me know

Please contact me if you have any queries.

Yours sincerely

Lesley Cox
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