

MUNICIPAL INFRASTRUCTURE SUPPORT AGENT (MISA) FRAMEWORK CONTRACTS USER'S GUIDE

**CONTENT EXTRACTED FROM STANDARD ON INFRASTRUCTURE PROCUREMENT AND
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EASE OF USE.**

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FOREWORD

The Municipality Infrastructure Support Agent (MISA) has been tasked by National Treasury to establish Framework Contracts that are related particularly to municipal infrastructure for water and sanitation, and other related services. MISA was given the consent to establish Framework Contracts by National Treasury through the Office of the Chief Procurement Officer (OCPO).

Framework Contracts are set up according to the process outlined in the Standard for Infrastructure Procurement and Delivery Management (SIPDM) that was issued in October 2015 by National Treasury.

Framework Contracts are suited to the provisions and application of the Supply Chain Management Regulations issued in terms of Public Finance Management Act (*see Regulation 16A6.6*) and the Municipal Finance Management Act (*SCM Regulation 32*) which permit one organ of state to make use of another organ of state's contract that is put in place by means of a competitive procurement process. It is therefore possible for a framework contract to be put in place by one organ of state and be used by another organ of state to meet their needs.

In order to implement a Framework Contract as developed by MISA, an organ of state will start by identifying their specific needs, develop a detailed scope of the services required on a specific project, budget for and allocate funds for the project before initiating the use of the Framework contracts through a written request by its Accounting Officer to MISA's Accounting Officer. MISA's Accounting Officer shall give consent to the request after verifying that the services required for the project are indeed aligned to the scope of the Framework Contract requested for.

It is important that the Supply Chain Management (SCM) policies of the organ of state or municipality intending to use these Framework Contracts makes provision for SCM Regulation 32 of the Municipal Finance Management Act clause 16A6.6 of SCM Regulation of the Public Finance Management Act.

Definitions

employer: organ of state intending to or entering into a contract with a contractor

framework agreement: an agreement between an organ of state and one or more contractors, 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

gate: a control point at the end of a process where a decision is required before proceeding to the next process or activity

gateway review: an independent review of the available information at a gate upon which a decision to proceed or not to the next process is based

infrastructure:

- a) immovable assets which are acquired, constructed or which result from construction operations; or
- b) movable assets which cannot function independently from purpose-built immovable assets

infrastructure delivery: the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, refurbishment, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

infrastructure procurement: the procurement of goods or services including any combination thereof associated with the acquisition, refurbishment, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

organ of state: an organ of state as defined in section 239 of the Constitution of the Republic of South Africa

package: work which is grouped together for delivery under a single contract or an order

portfolio: collection of projects or programmes and other work that are grouped together to facilitate effective management of that work to meet a strategic objective

procurement document: documentation used to initiate or conclude (or both) a contract or the issuing of an order

procurement strategy: selected packaging, contracting, pricing and targeting strategy and procurement procedure for a particular procurement

programme: the grouping of a set of related projects in order to deliver outcomes and benefits related to strategic objectives which would not have been achieved had the projects been managed independently

stage: a collection of logically related activities in the infrastructure delivery cycle that culminates in the completion of a major deliverable

value for money: the optimal use of resources to achieve intended outcomes

REFERENCES

Acts of Parliament

The following referenced Acts of Parliament are indispensable for the application of this document:

- Architectural Profession Act, 2000 (Act No. 44 of 2000)
- Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)
- Constitution of the Republic of South Africa, 1996
- Construction Industry Development Board Act, 2000 (Act No. 38 of 2000)
- Engineering Profession Act, 2000 (Act No. 46 of 2000)
- Landscape Architectural Profession Act, 2000 (Act No. 45 of 2000)
- Local Government: Municipal Finance Management Act, 2003 (Act No.56 of 2003)
- Municipal Systems Act, 2000 (Act No. 32 of 2000)
- National Archives and Record Services of South Africa Act, 1996 (Act No. 43 of 1996)
- Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)
- Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
- Project and Construction Management Professions Act, 2000 (Act No. 48 of 2000)
- Public Finance Management Act, 1999 (Act No. 1 of 1999)
- Quantity Surveying Profession Act of 2000 (Act No. 49 of 2000)
- South African Schools Act, 1996 (Act No. 84 of 1996)

Standard

- Standard on Infrastructure Procurement and Delivery Management, 2015

1. Control framework for infrastructure procurement

1.1 General

1.1.1 Infrastructure procurement shall be implemented in accordance with the provisions of the control framework indicated in Figure 1. which contains:

- a) procurement gates (PG);
- b) framework agreement gates (FG);
- c) reporting points, where applicable, for interfacing with the Construction Industry Development Board's (CIDB) register of projects; and
- d) a gate relating to the interface with a financial management system (FS).

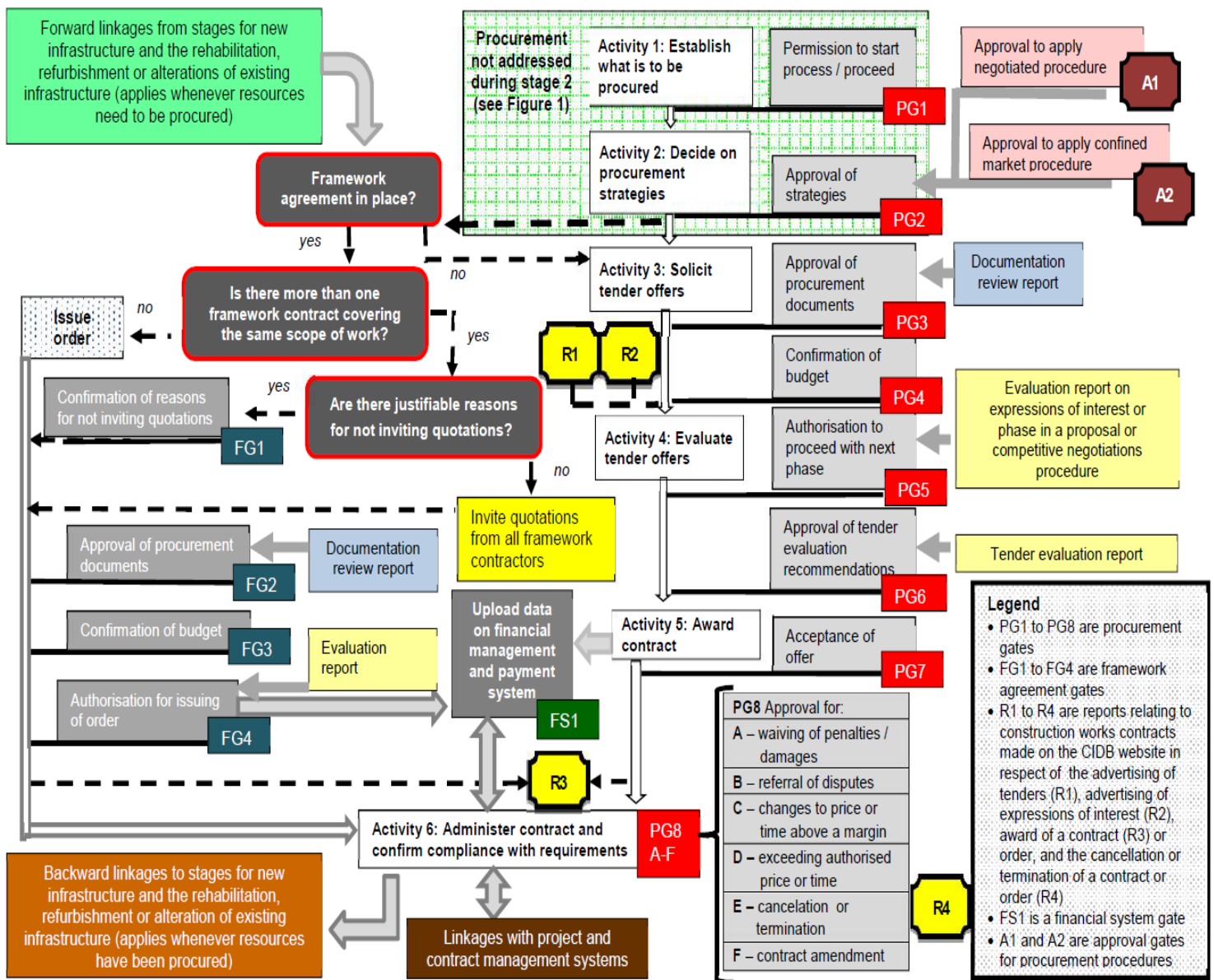


Figure 1. Control Framework for Procurement (Acquisition and Contract Management) Process

1.1.2 The approval of procurement documents at **Procurement Gate (PG) 3** or **Framework Agreement Gate (FG) 2** shall be based on the contents of a procurement **documentation review report**.

1.1.3 It is important to note that where the procurement relates to the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure, such a report shall be prepared by one or more persons who participated in the review and who are registered as:

- a) a professional engineer or professional engineering technologist in terms of the Engineering Profession Act; or
- b) a professional quantity surveyor in terms of the Quantity Surveying Professions Act.

Table 1. Procurement activities and gates associated with the issuing of an order in terms of Framework Agreement

Activity*	
1 FG1	Confirm justifiable reasons for selecting a framework contractor where there is more than one framework agreement covering the same scope of work
2	Prepare procurement documents
3 FG2	Obtain approval for procurement documents
4 FG3	Confirm that budgets are in place
5	Quotations amongst framework contractors not invited: Issue draft order documentation and consult with contractor and prepare evaluation report Quotations amongst framework contractors invited: Invite quotations from all framework contractors participating in the agreement, receive and evaluate submissions and prepare evaluation report
6 FG4	Authorise the issuing of the order
7	Log order onto management system
8	Issue order to contractor
9	Notify issuing of order to oversight person
10	Administer orders in accordance with contract and confirm compliance with requirements

1.1.4 The review of procurement documentation associated with the issuing of an order shall confirm that:

- a) any standard templates required by the organ of state have been correctly applied;
- b) the necessary approval has been obtained for additional clauses or variations to the standard clauses in the conditions of contract not provided **for** in the organ of state’s approved templates or the contract;
- c) the scope of work adequately establishes what is required and the constraints to the manner in which the contract work is to be provided;
- d) the provisions for competition amongst framework contractors, if relevant, and the selected options are likely to yield best value outcomes; and
- e) the risk allocations are appropriate.

1.1.5 The review conducted to confirm the provisions of the above clauses shall identify sections, if any, which require amendments or improvements.

1.1.6 The documentation review report shall:

- a) list the names and qualifications of the team members;

- b) confirm that the documents are in accordance with the requirements of the standard in infrastructure procurement and delivery management;
- c) capture any comments or opinions which the team may wish to express; and
- d) recommend that the procurement documents be accepted with or without modifications.

1.1.7 The authorization to proceed to the next phase (Procurement Gate 5), the approval of tender evaluation recommendations (Procurement Gate 6) and the authorization for the issuing of an order (Framework Agreement Gate 4) shall be based on the contents of an evaluation report.

1.1.8 The evaluation report shall be prepared by one or more persons who are conversant with the nature and subject matter of the procurement documents or the framework contract, and who are registered as:

- a) professional engineer or professional engineering technologist in terms of the Engineering Profession Act;
- b) a professional project manager or a professional construction manager in terms of the Project and Construction Management Professions Act; or
- c) a professional quantity surveyor in terms of the Quantity Surveying Profession Act.

1.1.9 All communications with respondents and tenderers during the procurement process to obtain information and clarifications shall be made in writing through the employer's agent named in the submission or tender data. Records of all communications in this regard shall be made and retained for auditing purposes.

1.1.10 The person responsible for authorising an order shall, prior to authorising the issuing of an order:

- a) confirm that the required goods or services, or any combination thereof, are within the scope of work associated with the relevant framework contract; and
- b) consider the recommendations of the evaluation report where competition amongst framework contracts takes place or a significant proportion of the total of the prices is negotiated, based on the financial parameter contained in the framework contract, and either confirm the reasonableness of such recommendations and sign for the acceptance of the order, or refer the evaluation report and recommendation back to those who prepared it.

1.1.11 Annual procurement plans shall be prepared to cover the procurement of goods or services, or any combination other than that relating to new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure which exceeds the threshold for quotations.

2. Acquisition Management

2.1.1 An organ of state may request in writing to make use of one or more framework contracts entered into by another organ of state. Such a request, signed by the accounting officer or accounting authority of that organ of state, shall:

- a) outline the scope and anticipated quantum of work associated with the work that is required;
- b) provide a motivation for the use of the framework agreement; and
- c) detail the benefit for the state to be derived from making use of the framework agreement.

The accounting officer or accounting authority may approve a request made to make use of the organ of state's framework contract, conditionally or unconditionally, if:

- a) the framework agreement was put in place following a competitive tender process;
- b) confirmation is obtained that the framework contract is suitable for the intended use, and the required goods, services and works fall within the scope of such contract;
- c) the framework contractor agrees in writing to accept an order from that organ of state;
- d) the organ of state undertakes to pay the contractor in accordance with the terms and conditions of the agreement; and
- e) the term of the framework agreement does not expire before the issuing of the required orders.

2.1 Framework agreements

2.1.1 Framework agreements may be entered into with contractors by:

- a) inviting tender offers 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; and
- b) entering into a limited number of contracts based on the projected demand and geographic location for such goods, services or works.

2.1.2 The term of a framework agreement shall not exceed:

- a) three years in the case of all organs of state other than a major public entity, a national government business enterprise or a provincial government business enterprise; or
- b) four years in the case of a major public entity, a national government business enterprise or provincial government business enterprise.

2.1.3 Framework agreements that are entered into shall not commit an organ of state to any quantum of work beyond the first order, or bind the employer to make use of such agreements to meet its needs.

2.1.4 The employer may approach the market for goods or services, or a combination thereof, whenever it considers that better value in terms of time, cost and the quality which may be obtained.

2.2 Orders:

- a) shall cover only goods or services, or any combination thereof, falling within the scope of work associated with the agreement which may not be amended for the duration of the contract;
- b) may not be issued after the expiry of the term of the framework agreement; and
- c) may be completed even if the completion of the order is after the expiry of the term.

2.2.1 The issuing of orders with a number of framework contractors covering the same scope of work may be made with and without requiring competition amongst framework contractors. Where competition is required amongst framework contractors, it shall be conducted in a non-discriminatory manner such that competition is not distorted.

2.2.2 Competition amongst framework contractors for orders shall take place where:

- a) there is no justifiable reason for issuing an order to a particular framework contractor, such as:
 - 1) the framework contractor provided the most economical transaction when the financial parameters included in the contract are applied, and has the capacity to deliver;
 - 2) the required goods, services or works cannot technically or economically be separated from another contract or order previously performed by a specific contractor;
 - 3) the service or works being instructed are largely identical to work previously executed by that contractor;
 - 4) the value of the order is less than the threshold for the quotation procedure;
 - 5) the schedule for delivery necessitates that each of the framework contractors be issued with orders on a continuous basis; or
 - 6) capacity to execute the order;
- b) the terms in the framework agreement are insufficiently precise or complete to cover the particular requirement, e.g. delivery time scales or time estimates to complete the order (productivity); or
- c) a better quality of service can be obtained through a competitive process.

2.3 The activities associated with the control framework indicated in Figure 2 are set out in Tables 1 and 2 whenever a negotiated, competitive selection or competitive negotiations procedure is applied, with the exception of the shopping procedure. Procurement Gates 6 and 7 may be combined in the case of the quotation procedure and the negotiation procedure where the value of the contract is less than the threshold set for the quotation procedure.

Activity		Sub-Activity*	
1	Establish what is to be procured (Applies only to goods and services not addressed in a procurement strategy developed in terms of 4.1)	1.1	Prepare broad scope of work for procurement
		1.2	Estimate financial value of proposed procurement
		1.3 PG1	Obtain permission to start with the procurement process
2	Decide on procurement strategy (Applies only to goods or services not included in a procurement strategy developed in terms of 4.1)	2.1	Establish opportunities for using procurement to promote developmental procurement policies, if any
		2.2	Establish contracting and pricing strategy
		2.3	Establish targeting strategy
		2.4	Establish procurement procedure
		2.5 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	3.1	Prepare procurement documents
		3.2 PG3	Obtain approval for procurement documents
		3.3 PG4	Confirm that budgets are in place
		3.4	Invite: <ul style="list-style-type: none"> tender offers; or expressions of interest (qualified procedure or restricted competitive negotiations procedure)
		3.5	Receive submissions
		3.6	Open and record submissions received
4	Evaluate tender offers	4.1	Evaluate and prepare evaluation report on submissions received
		4.2 PG5	Obtain authorisation to proceed with next phase of tender process
		4.3	Invite tender offers from qualified respondents or selected tenderers
		4.4	Open and record submissions received and, if necessary, repeat 4.1 to 4.4
		4.5	Evaluate tender offers and prepare a tender evaluation report
		4.6 PG6	Confirm recommendations contained in the tender evaluation report
5	Award contract	5.1	Notify unsuccessful tenderers of outcome
		5.2	Compile contract document
		5.3 PG7	Award contract
		5.4	Capture contract award data on management systems

	5.5 GF1	Upload data in financial management and payment system
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Table 2: Procurement activities and gates associated with the formation and conclusion of contracts above the threshold for the quotation procedure

- 2.3.1 The level of detail contained in the documentation upon which a decision is made at a gate shall be sufficient to enable informed decisions to be made to proceed to the next activity or to undertake a particular procedure.

- 2.3.2 The approvals or acceptances at each gate shall be retained for record and audit purposes for a period of not less than five years of such acceptance or approval in a secured environment, unless otherwise determined in terms of the National Archives and Record Services of South Africa Act.