

## JCT 2005 FRAMEWORK AGREEMENT

Framework Agreements are generally put in place to carry out programmes of work and in so doing seek to achieve benefits arising from economies of scale, early contractor involvement and opportunities to develop efficiencies. They are generally used for longer term public sector and private sector procurement.

The JCT Framework Agreements are new additions to the JCT suite and come in legally binding or non-binding form. They are suitable for use where it is intended to have a collaborative approach with a view to achieving progressive improvements in the way work is performed.

The Framework Agreement is intended to encourage collaboration between all the key parties and personnel involved in a given project or programme of projects. Although the Framework could be used in connection with a single 'one-off' project the Guide acknowledges that *'...frameworking arrangements are really only likely to pay dividends on larger, lengthier projects which give the project participants the opportunity and incentive to invest in people, processes and products and develop as a team.'*

Whilst the Framework is essentially a two party agreement between an Employer and a 'Service Provider', it is anticipated that the Employer will enter into identical Framework Agreements with a number of different Service Providers who may then themselves enter into further Framework Agreements with other Service Providers lower down the supply chain thereby creating a 'web' of bilateral Framework Agreements sufficient to ensure collaboration of all key 'Project Participants'.

Rather than being a stand alone contract, the Framework Agreement is an umbrella agreement, designed for use with underlying contracts (traditional project specific construction and engineering contracts, sub-contracts and supply agreements). The Framework Agreement contain several provisions which could have a bearing upon the formulation and administration of the underlying contracts but the intention is for the underlying contract to define and determine the rights and responsibilities of the parties.

The main aim of the Framework Agreement is to provide a complementary, supplemental framework of 'best practice' provisions designed to encourage parties to the underlying contracts to work with each other and with all other Project Participants in an open, co-operative and collaborative manner and in a spirit of mutual trust and respect with a view to achieving a number of mutually beneficial 'Framework Objectives'. The Framework Agreements lists 9 Framework Objectives and these are as follows:

- Zero health and safety objectives
- Team working and consideration of others
- Greater predictability of out-turn cost and programme

- Improvements in quality, productivity and value for money
- Improvements in environmental performance and sustainability and reductions in environmental impact
- Right first time with zero defects
- The avoidance of disputes
- Employer satisfaction with product and service
- Enhancement of Service Providers reputation and commercial opportunity

*'Performance Indicators'* (to be inserted in the *'Framework Particulars'*) are then used to monitor and assess the Service Provider's progress in achieving the Framework Objectives.

The Framework Objectives will not be achieved overnight and the Framework Agreement envisages the implementation of the measures necessary to achieve the Framework Objectives over a period of time - the *'Framework Term'*. The Framework Agreement will sit above the underlying contracts carried out by the Service Provider for the Employer during the Framework Term.

The Framework Agreement has been designed for use in both the public and private sectors. Public sector clients must be reminded that framework agreements do not generally preclude the necessity for compliance with EU Public Procurement Rules. The Guide to the Framework Agreement sets out the following considerations in this respect:

- Individual underlying contracts may be regarded as connected contracts resulting in the aggregation of contract values within the thresholds set by the EU for contracts which need to comply with the Public Procurement Rules.
- Whilst Framework Agreements give no guarantee of future work, if they give or seek to give a contractor or supplier preferential expectations of public works they may be construed as anti-competitive irrespective of EU Public Procurement Rules.
- Similarly, whilst the Utilities Directive allows certain contracting entities the opportunity to let a programme of utility contracts under a framework agreement without the need for calls for competition for each underlying contract, these must not be misused in order to hinder, limit or distort competition.
- The EU has recently adopted a new Consolidated Directive on public procurement and this will have the effect of restricting the duration of public sector framework agreements to 4 years.

The JCT documents relevant to the Framework Agreement are as follows:

#### [Framework Agreement \(FA 2005\)](#)

This version is for the use where the parties wish to be legally bound by the Framework Agreement. It is intended to be legally and contractually binding and enforceable.

#### [Framework Agreement \(Non-binding\) \(FA/N 2005\)](#)

As its name suggests this version is for use where the parties do not wish to be legally bound by the Framework Agreement. In effect it is a *'gentlemen's agreement'* that is intended to create a collaborative working environment.

The JCT Guide to their Framework Agreements suggests that this Non-Binding version *'will probably be the more appropriate means of implementing the cultural and practical changes envisaged'*

### **Arrangement of the Framework Agreement**

The Framework Agreement (binding version) comprises the Agreement, 28 clauses, Framework Particulars and the Attestation. The clauses are as follows;

1. Definitions
2. Interpretation
3. Supplement to Underlying Contracts
4. The Role of the Framework Agreement
5. The Framework Objectives
6. Legal Status of Framework Agreement
7. Contracts (Rights of Third Parties) Act 1999
8. Applicable law and jurisdiction
9. Organisational structure and decision making
10. Collaborative working
11. The Service Provider's Supply Chain
12. Sharing of information and know how
13. Communications protocol
14. Confidentiality
15. Risk assessment and risk allocation
16. Health and safety
17. Sustainable development and environmental considerations
18. Value engineering
19. Change control procedures
20. Early warning
21. Team approach to problem solving
22. Performance indicators
23. Termination
24. Settlement of disputes



- 25. Mediation
- 26. Adjudication
- 27. Arbitration
- 28. Legal proceedings

The non-binding version has the same clauses without clause 8, applicable law, and clauses 24 –28 concerning disputes and dispute resolution.

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