

Open Frameworks, Lotting, and the “Single Supplier” problem

Background

An interesting question recently arose in discussion with a contracting authority which was in the process of awarding an open framework under Section 49 of the Procurement Act 2023ⁱ.

The contracting authority had decided to award the open framework in the form of a number of Lots, which is relatively frequent practice when awarding frameworks in general, to provide for specific geographical coverage, or to divide the framework on the basis of particular specialisms. For example, a framework of roofing contractors may have one lot specialising in steel roofs, and another lot specialising in slate roofs.

The contracting authority in this case was concerned about what would happen if any particular lot only attracted a single compliant tender. It was concerned about this, because of the wording of Section 49(6) Procurement Act 2023 (Act), which reads:

(6) If a framework under an open framework is awarded to only one supplier, the framework, and the open framework, must expire before the end of the period of four years beginning with the day on which the framework is awarded.

Does this mean that, if an open framework is divided into lots, and if one or more of those lots attracts only a single capable supplier, then that lot, or indeed the whole open framework, converts into a closed, traditional style framework, limited to four years in duration?

What does the Procurement Act 2023 say about dividing Frameworks into Lots?

The Act and its accompanying guidance has relatively little to say about the lotting of frameworks, either open or traditional. Chapter four of the Act, governing both kinds of frameworks, does not mention lotting at all. The concept of lotting is introduced in Section 18 of the Act, which places a duty on contracting authorities to consider dividing public contracts into lots where there is an appropriate reason to do so. Section 45 of the Act provides that a framework is, in itself, a contract. Therefore we may at least assume that it is lawful to divide frameworks into multiple lots.

The Cabinet Office guidance on frameworks under the Actⁱⁱ, at paragraph 17, briefly discusses lotting, confirming at least that frameworks may be divided into lots. Neither the Act nor the Cabinet Office guidance makes any reference to any specific additional rules regarding lots in relation to an open framework.

The Cabinet Office guidance on lotting under the Actⁱⁱⁱ does not make any reference to frameworks. The Explanatory Notes to the Act^{iv} are also silent on lotting within open frameworks. To the extent

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that the Explanatory Notes reference Section 49(6) of the Act, they talk about a single supplier being “awarded a framework” (not “awarded a lot”).

What does the Procurement Act 2023 say about Open Frameworks with only one supplier?

Having established that there are no additional provisions in the Act, or the Cabinet Office guidance, in relation to this issue, we shall have to rely entirely on the wording of the relevant paragraph of Section 49 of the Act, which is worth looking at again:

(6) If a framework under an open framework is awarded to only one supplier, the framework, and the open framework, must expire before the end of the period of four years beginning with the day on which the framework is awarded.

Note, again, that this makes no reference to lots, nor to contracts. It refers to a “framework” being awarded to only one supplier. In the context of the open framework rules, each time the arrangement is re-opened to competition, the resulting list of suppliers is technically to be treated as a new framework. However, there is no suggestion that where a framework under an open framework is divided into lots, each of these lots must be treated as a *separate* framework. Thus, when the open framework is first procured, one framework is created. Later, then the open framework is re-opened to the market, the first framework ends and a second framework is created, and so on with each re-opening of the over-arching open framework.

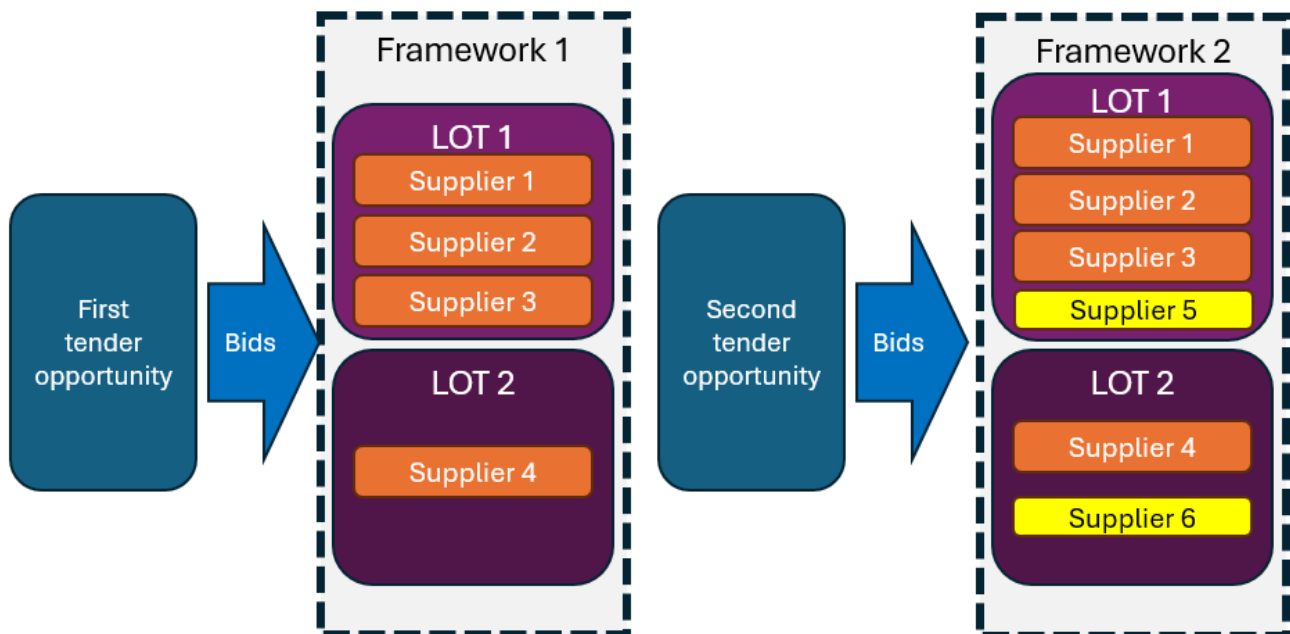
Therefore, in a situation in which an open framework consisting of multiple lots has been put out to tender, either for the first time, or as a result of a second or subsequent award procedure, the limitation in Section 49(6) of the Act will only be triggered, if only one supplier is appointed to the *entire framework*. The limitation in Section 49(6) of the Act does not arise if only one supplier is appointed to a particular lot, so long as the rest of the framework includes other suppliers. It is the number of suppliers on the *whole framework* which must be greater than one, not the number of suppliers per lot.

If Parliament had intended for a limitation to the term of an open framework to be triggered where a particular lot admitted only one supplier, even if the framework in totality contained multiple suppliers, then it must be assumed that Parliament would have indicated this, either in the Act or the Explanatory Notes, or at least that the Cabinet Office would have said so in the accompanying guidance. No such statement or indication is made in any of these sources. Therefore we can conclude that the limitation in Section 49(6) of the Act is not triggered in this instance.

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Visual example

To illustrate the position further, see the diagram below.



In the example shown in the diagram, an authority is establishing an open framework split into two lots. The first tender procedure results in a framework with three suppliers admitted onto Lot 1, and one supplier admitted to Lot 2. The *framework*, however, has four suppliers in total. Thus the provision in Section 49(6) of the Act limiting the entire open framework to a four-year term, is not triggered. The open framework may operate as normal. Later, when the open framework is re-opened to competition, this provides an opportunity for new suppliers to bid (as the Act intends), and in this example, the second framework awarded under the open framework now has six suppliers in total.

In conclusion, contracting authorities setting up and operating open frameworks, whilst being generally encouraged to ensure that sufficient competition is promoted, are not under any obligation in law to appoint multiple suppliers to every lot, every time, provided that the overall framework has more than one supplier.

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ⁱ Procurement Act 2023 (2024 c.54)

ⁱⁱ Cabinet Office: ‘Guidance: Frameworks’ (2026), available at:
<<https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-define-phase/guidance-frameworks-html>>

ⁱⁱⁱ Cabinet Office: ‘Guidance: Lots’ (2026), available at:
<<https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-define-phase/guidance-lots-html>>

^{iv} UK Government: ‘Explanatory Notes, Procurement Act 2023’

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