

Introduction

- This pack provides an overview of various structures which can be considered when establishing a group procurement operation
- It assumes that the operation may procure a range of things including goods, facilities, services and intellectual property
- References to "OpCos" are to the various Operating Companies for whose benefit procurements may be undertaken. These may be in multiple jurisdictions
- References to "ProcCo" are to the central procurement entity which coordinates and undertakes the procurements for the OpCos

Structures for Group Procurement Operations

Introduction

Key Issues

Buy Sell

Agency

Third Party
Rights / Licence

Binding
Framework

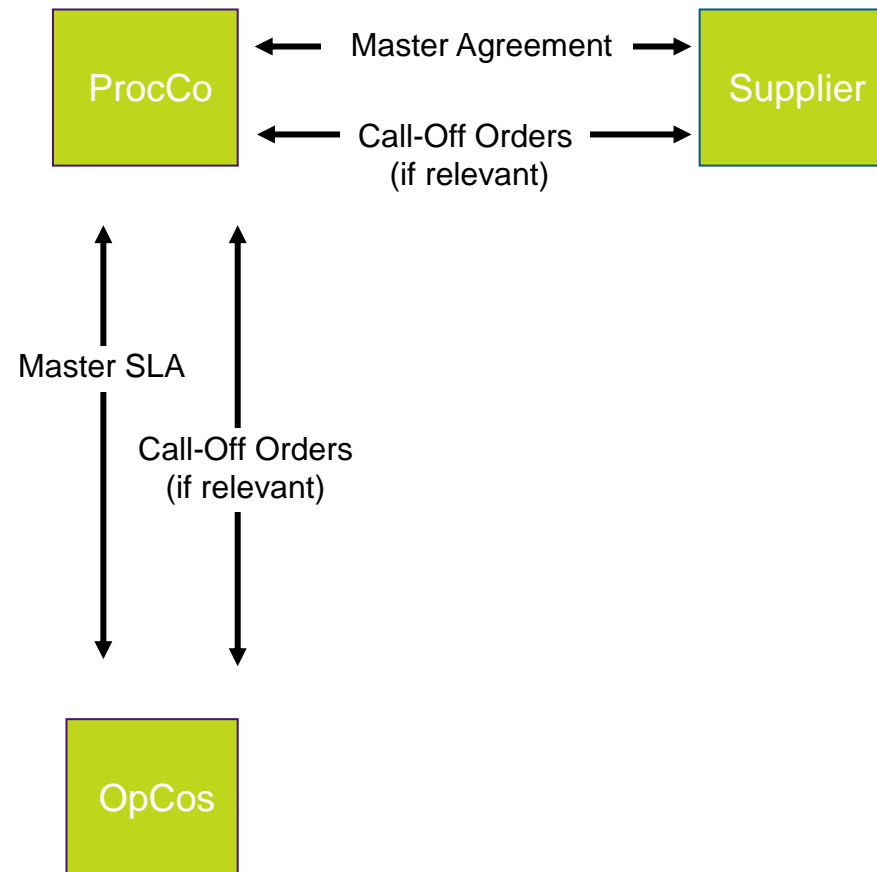
Negotiating
Framework

Advisory

Key Issues to consider

Authority/ Decision making	What authority is effectively delegated by the OpCos to ProcCo? How much control over key risks/expenditure decisions are OpCos (as corporate entities) surrendering to ProcCo? Is this compatible with directors' duties etc? Are all OpCos wholly owned or are there any third party shareholdings (JVs etc)?
ProcCo remuneration/ cross charging	What should be the financial arrangements between the OpCos and ProcCos? How will underlying costs of procurement deal be recharged? Will ProcCo earn a margin or commission? How will that be recharged? Will this be compatible with tax transfer pricing rules (broadly, remuneration should be arms length pricing, reflecting ProcCo risk)?
"Commitment risk"	What are the "commitment risks" inherent in the procurement? Commitment risks are those inherent in global/framework procurement deal – for example, minimum spend, group exclusivity or preferred supplier commitments. How are these risks (e.g. underspend against minimums committed) shared with OpCos?
"Service risk"	What are the "service risks" inherent in the procurement? Service risks are those associated with actual sourcing of the services (or goods/facilities) – for example, service failures, IP infringements. How are these risks (e.g. a large scale service failure which exceeds a global liability cap) shared with OpCos?
Inter-OpCo risk share	How are risks associated with the procurement shared between the OpCos? If there is a global underspend against global minimum spend, how is shortfall shared? If there is a global service shortfall, how are recovered damages allocated particularly if a global liability cap is exceeded)?
Regulation	Are the services themselves regulated? Would "re-provision" (i.e., ProcCo buy them and resell to OpCos) raise regulatory issues or require ProcCo to have regulatory approvals? Are the services sufficiently significant to trigger contractual or regulatory restrictions on outsourcing imposed on OpCos?
ProcCo added value	Will the OpCos simply consume the externally supplied services? Alternatively, will ProcCo add value to, enhance or change the services or combine them with other things provided from within the group.
Administration/ Complexity	How will the sourcing arrangements be administered? Which elements of the relationship (e.g. global negotiations) will be managed by ProcCos and which (e.g. placing of specific orders) will OpCos handled directly? How much does ProcCo need to have awareness of what OpCos are doing?
Conduct of claims	How will claims against (or from) suppliers be managed? To what extent should issues (or resulting claims) relating to individual services problems be coordinated by ProcCo or run individually by OpCos? Will procurement make it easier or more difficult to prosecute claims?
Acquisitions/ Separation	How will global procurement deal work in the context of group changes? Will new acquisitions (or new joint ventures) be able to benefit from (or be bound by restrictions in) global deal? What is impact on sale of a business?

Contracting Model 1: Buy/Sell



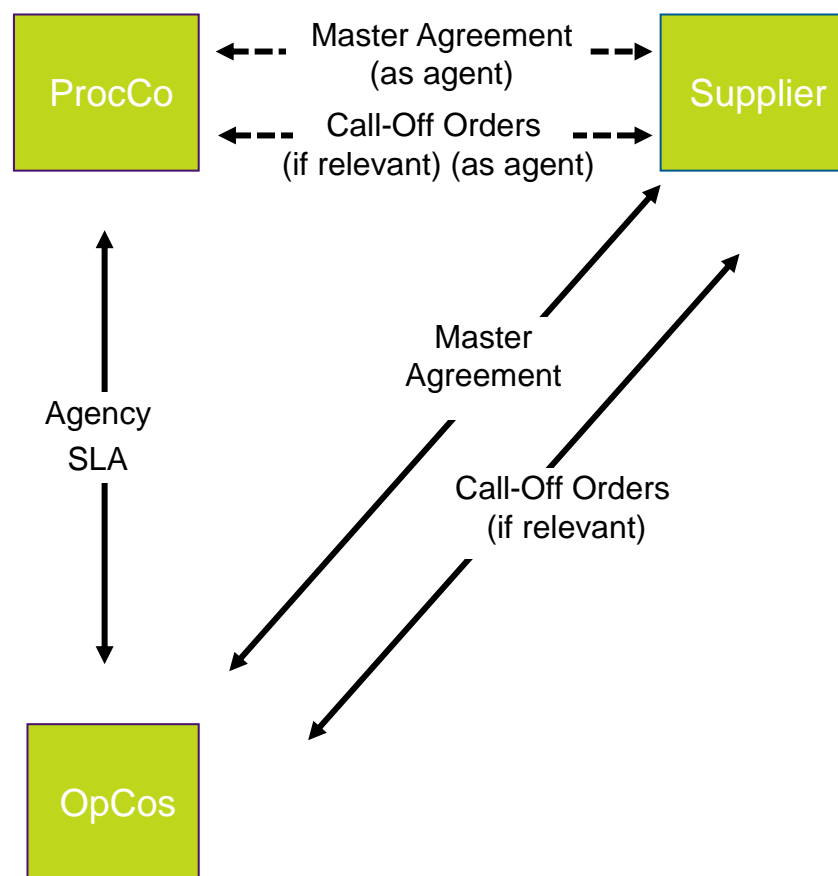
Key Features

- ProcCo enters into all contracts with Suppliers as legal principal
- ProcCo and OpCos enter into "back to back" contracts (i.e., buy services and onward supply them to OpCos)
- OpCos have no direct contracts with Suppliers
- ProcCo and Suppliers agree terms under Master Agreements
- Framework SLA reflects similar principles between ProcCo and OpCos
- Where relevant, Call-Off Orders may reflect specific periodic commitments
- ProcCo will have legal liabilities to both Suppliers and to OpCos
- Framework SLA can be structured to pass risks from ProcCo to OpCos or to leave risk in ProcCo
- ProcCo will make profit/loss determined by margin on resale to OpCos and any losses arising from process

Key Issues

- How much risk should remain in ProcCo?
- What profit margin should ProcCo make (transfer pricing rules will expect profits to reflect level of risk borne)?
- How does ProcCo bind OpCos to its purchasing decisions?
- How to ensure any OpCo claims pass effectively through ProcCo to Supplier?
- VAT/Sales tax analysis required. For goods, delivery method relevant

Contracting Model 2: Agency



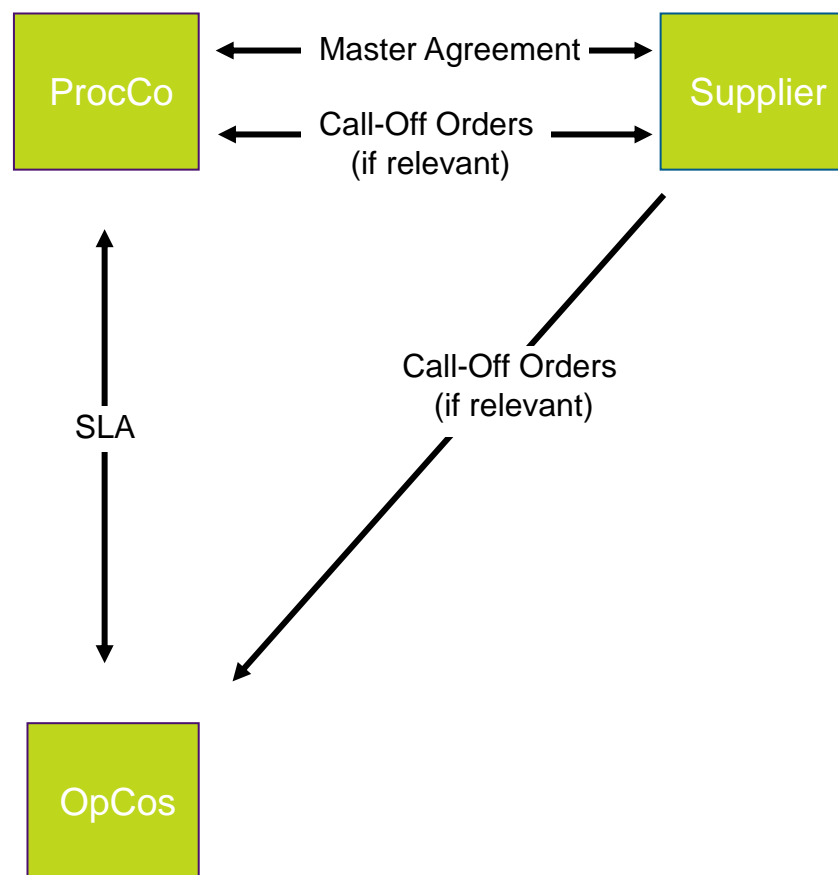
Key Features

- ProcCo enters into all contracts with Suppliers as legal agent of the OpCos
- OpCos appoint ProcCo as their agent to enter into agreement under Agency SLA
- OpCos have all legal rights/obligations under contracts with Suppliers
- ProcCo does not have its own legal rights and obligations
- Master Agreement contains overarching commitments and overall legal terms and conditions
- Where relevant, Call-Off Orders may reflect specific periodic commitments
- Risks automatically vest in OpCos – no substantive risks for ProcCo
- ProcCo paid a commission by OpCos

Key Issues

- How much authority to bind OpCos should OpCos delegate to ProcCo?
- At what point must OpCo management approve commitments?
- How does ProcCo give Master Agreement commitments (e.g. OpCos' collectively spend €X) as agent of individual OpCos?
- VAT/Sales tax analysis required. For goods, delivery method relevant
- Transfer pricing assessment of commission level

Contracting Model 3: Third Party Rights/Licence



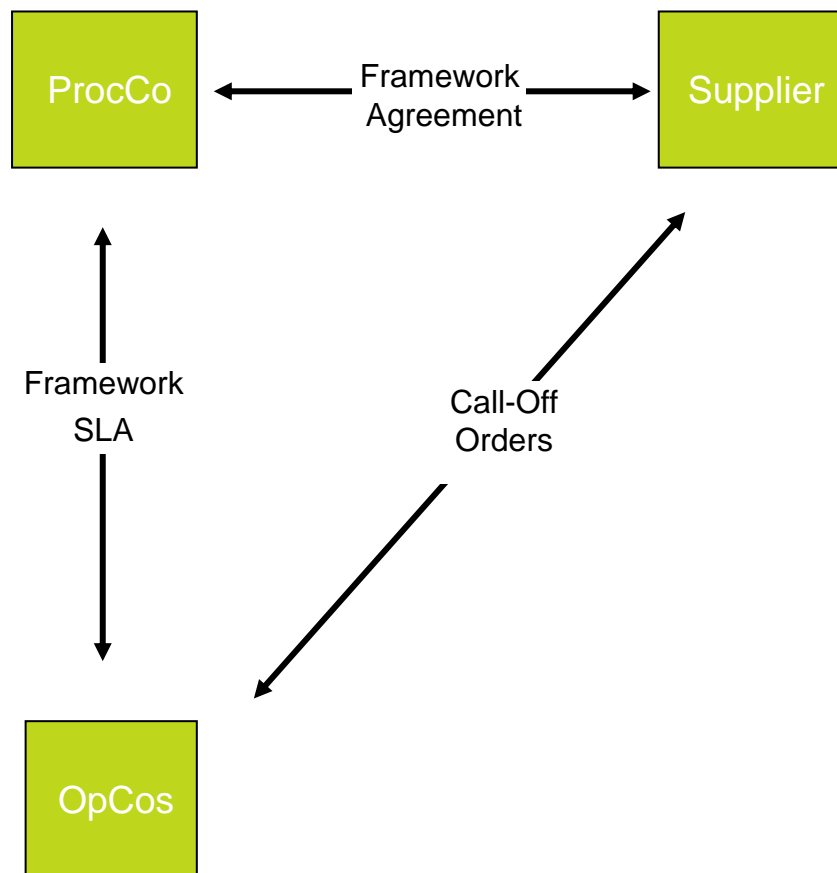
Key Features

- ProcCo enters into all contracts with Suppliers as principal
- ProcCo agrees all terms
- ProcCo pays all charges to Supplier
- OpCos receive benefits (e.g. rights to use IPR or access services) and have direct enforceable rights against Supplier
- OpCos have no obligations to the Supplier
- ProcCo undertakes all obligations including payment and any indemnities etc
- ProcCo and OpCos enter SLA - recharges appropriate costs and gets back-to-back indemnities as appropriate
- Risks vest in ProcCo except to the extent passed on to OpCos
- ProcCo paid a commission by OpCos via recharges

Key Issues

- Is deal principally acquisition of rights/benefits or are there substantive obligations?
- Which risks should sit within ProcCo and which passed on to OpCos?
- On what basis is ProcCo remunerated? Is this in line with Transfer Pricing
- VAT/Sales tax analysis required. For goods, delivery method relevant

Contracting Model 4: Binding Framework



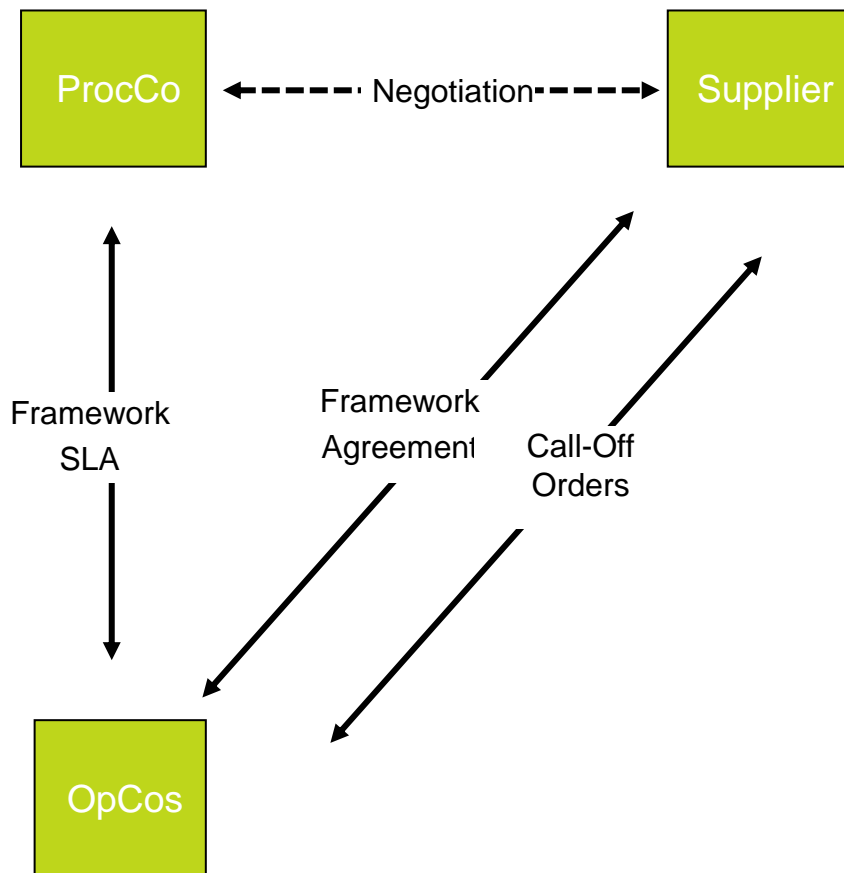
Key Features

- OpCo's agree a scope of "authority" for ProcCo under Framework SLA
- ProcCo negotiates a Framework Agreement setting out group wide commitments (e.g. spend/price)
- ProcCo enters into Framework Agreement as principal
- ProcCo accepts "commitment" risks under Framework Agreement but "back-to-backed" under Framework SLA (if within SLA authority)
- OpCos enter into Call-Off Contracts (i.e., actually purchase the services from suppliers)
- OpCos have all legal rights/obligations under supply contracts
- ProcCo has no liability for the services
- ProcCo paid a commission by OpCos

Key Issues

- How much authority is given to ProcCo under SLA?
- How does ProcCo give Master Agreement commitments (e.g. OpCos' collectively spend €X) and "back to back" to individual OpCos?
- VAT/Sales tax analysis required. For goods, delivery method relevant
- Transfer pricing assessment of commission level

Contracting Model 5: Negotiating Framework



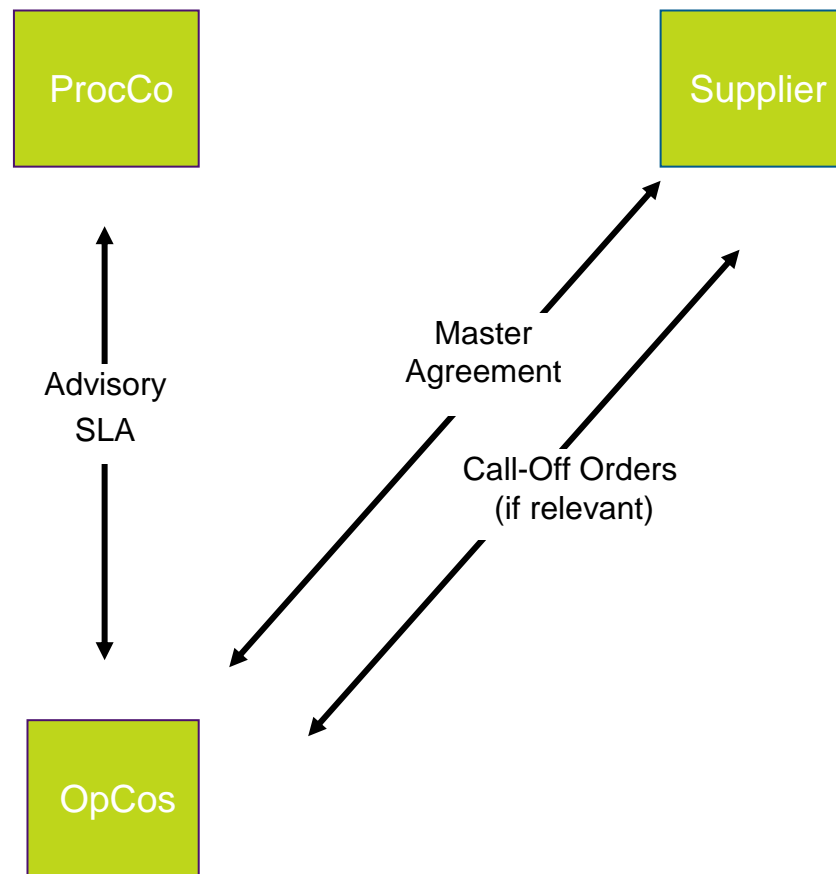
Key Features

- ProcCo consults with OpCos and negotiates framework terms with Suppliers reflecting OpCo requirements
- ProcCo presents agreed framework agreement to OpCos
- OpCos enter into Framework Agreements (separately or jointly)
- Where relevant OpCos place Call-Off Orders (separately or jointly)
- OpCos have all legal rights/obligations under contracts with Suppliers
- ProcCo does not have its own legal rights and obligations
- Risks automatically vest in OpCos – no substantive risks for ProcCo
- ProcCo paid cross charge by OpCos reflecting value of negotiating role

Key Issues

- Does ProcCo add real value?
- What cross charge is appropriate and aligned with any applicable Transfer Pricing requirements?
- VAT/sales tax analysis required. For goods, delivery method relevant

Contracting Model 6: Advisory



Key Features

- ProcCo acts as a centre of excellence
- ProcCo gather market intelligence and technical expertise for the benefit of the group
- OpCos engage ProcCo as an advisor Advisory SLA
- OpCos negotiate and enter into all Master Agreements (and, where relevant, Call-Off Agreements)
- ProcCo does not engage in any supplier-facing negotiations
- ProcCo does not enter into any contracts or have any legal rights and obligations with Suppliers
- OpCos may pay ProcCo small cross charge reflecting advisory work
- Risks automatically vest in OpCos – no substantive risks for ProcCo

Key Issues

- Does ProcCo add real value?
- What cross charge is appropriate and aligned with any applicable Transfer Pricing requirements?
- VAT/sales tax analysis required. For goods, delivery method relevant

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