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# The Law and Economics of Framework Agreements



**CHRIS YUKINS**  
Professor  
George Washington  
University Law School



**GIAN LUIGI ALBANO**  
Head of Division  
CONSIP-Italy



**KEITH MCCOOK**  
General Counsel, State Fiscal  
Accountability Authority (SFAA)  
State of South Carolina



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# *Exploiting the Potential of Framework Agreements*

**Gian Luigi Albano, Ph.D.**

[gianluigi.albano@consip.it](mailto:gianluigi.albano@consip.it)

[galbano@luiss.it](mailto:galbano@luiss.it)

[www.gianluigialbano.com](http://www.gianluigialbano.com)

# Roadmap

- How not to be misled by the babel of (public procurement) idioms
- Why do Framework Agreements look so “attractive”?
- “It’s the economy, stupid!”
- Framework Agreements and e-Catalogues
- Competition **for** and **in** Framework Agreements
- Sensitive dimensions and savvy buyers’ temptations



Why Are  
Frameworks an  
Important Legal  
Topic?

Different labels  
hide the same  
idea

- IDIQ contracts
- MAS program
- Framework Agreements (EU)
- Price Registration System (BR)
- Panel contracts (AU)
- ...

...but...

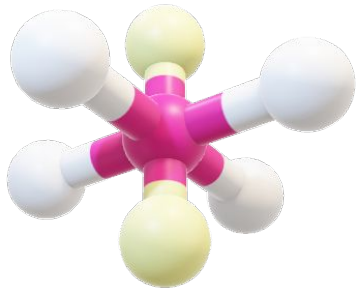




# The universally stable chemical composition of Framework Agreements

## A two-stage procedure:

- first stage, where all or part of the terms of the contracts to be awarded are defined (*master contract, framework agreement*)
- second stage, where the actual contracts are awarded (*specific contracts, task-order contracts, call-off contracts, marchés subséquents*)



This idea may result useful in quite a few different situations:

- repeated purchases by a single buyer (or procuring entity)
- purchases by different buyers (centralized procurement through a dedicated organization; joint procurement; buyers consortia; cooperative purchases through a leading entity)

**Main goal: To streamline the procurement process for repeated purchases of similar, albeit not identical, supplies/services/civil works.**

**The just-in-time feature of framework agreements is enhanced when supply chains work smoothly**

## The main pros

- **Higher administrative efficiency**
- **Higher buyer's bargaining power** through demand aggregation
- **Low-value contracts more “visible”**
- **Balance between contract standardization and tailoring**



## The main cons

- **Potential barrier to entry for smaller vendors**
- **Risk of mismatch between vendors' proposals and buyers' needs**
- **Risk of anticompetitive behavior both at the award and at the call-off stage**

“It’s the  
economy,  
stupid!”

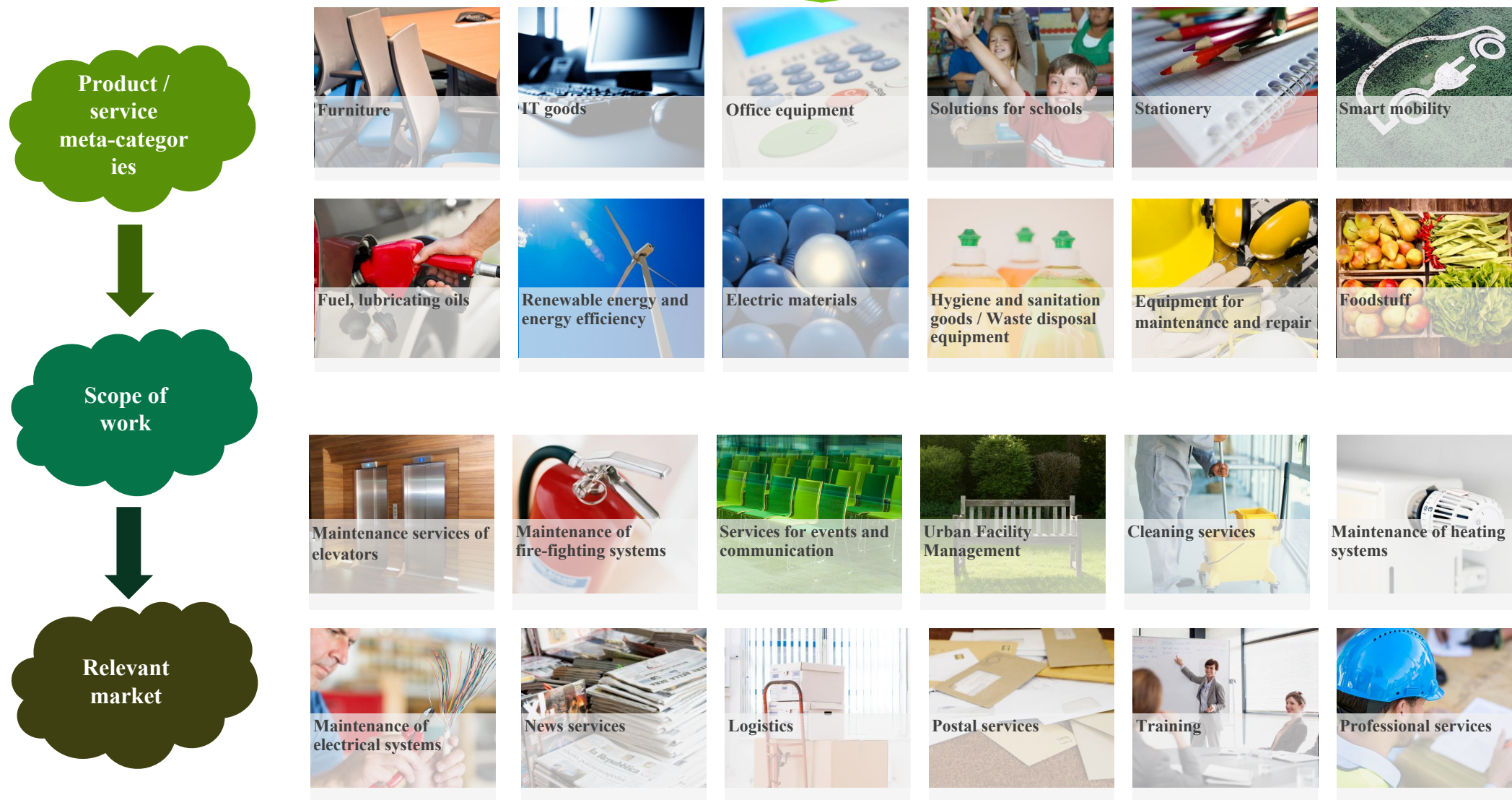
- **Transaction costs** (“getting what you need as fast as possible”)
- **Efficiency** (“getting the good guys aboard”)
- **Matching** (“pairing the buyer’s need with the best-fit solution”)
- **Economies of scale** (“buying in bulk may allow vendors to produce at a lower unit cost, which may result in lower bids/prices”)
- **Competition** (“a race among firms either at the first or at the second or at both stages of a FA may deliver better value for money”)



Should  
Interagency  
Contracting  
Have Legal  
Constraints?

# Framework Agreements and (e-)Catalogues

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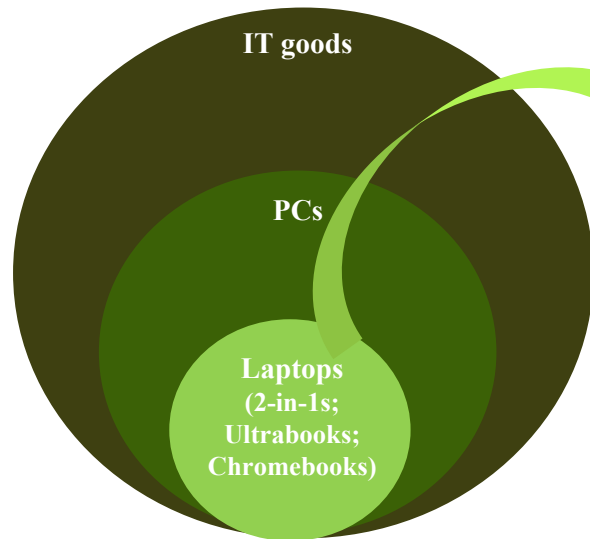




A joyful “Lego”  
approach to  
Framework  
Agreements



# Using “Lego-like” bricks to build (and better understand) Framework Agreements



Relevant features	Model 1	Model 2	Model 3	Model 4
Processor (speed)				
USB ports (number&types)				
Screen (size)				
Energy efficiency ( $\approx$ energy consumption)				
Price				





Should there be  
legal constraints  
on  
modifications?



# Travelling through the galaxy of Framework Agreements

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## E-commerce-platform-type

- Minimal technical standards only
- Multi-award
- Ceiling prices
- Free choice by each procuring entity
- Virtually no constraints on quantities



- Transaction costs (low)
- Efficiency (low)
- Matching (high)
- Economies of scale (low)
- Competition (low)
- Discretion (high)



## Centralized procurement (most extreme form)

- Minimal technical standards
- Single-award
- Quality and Price competition
- No discretion allowed to each procuring entity
- Constraints on quantities



- Transaction costs (low)
- Efficiency (high)
- Matching (low)
- Economies of scale (high)
- Competition (high)
- Discretion (low)

# Main families of Framework Agreements (admittedly EU-flavored...)

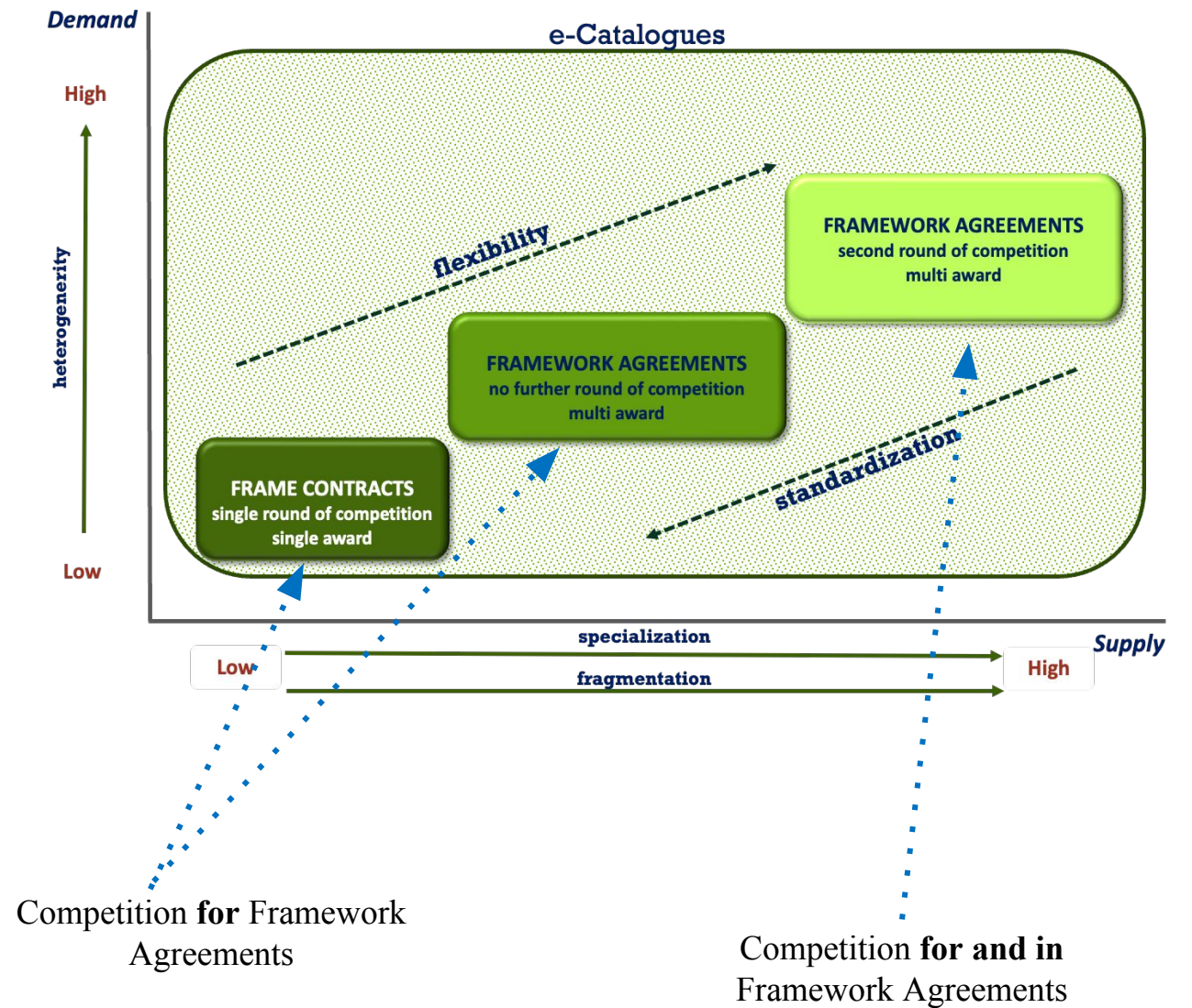
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		Completeness of the Agreement (=master contract)		
		Complete All conditions laid down	Incomplete Not all conditions laid down	
Number of Awardees	1 Awardee	<b>«Frame Contracts»</b>  Call-off: purchasing orders («click-and-buy orders»)	<b>Single-award incomplete</b>  Call-off: Some conditions need to be further specified/completed (and, possibly, criteria that define how conditions will be completed)	
	N ≥ 2 Awardees	<b>Multi-award complete</b>  • Call-off: Criteria for awarding contracts are to be defined and made <b>public</b> (in the EU, criteria need to be <b>objective</b> )	<b>"Hybrid"</b>  • <b>Criteria are to be foreseen to determine:</b> <ul style="list-style-type: none"> <li>□ Which call-off contracts can be awarded without a further round of competition</li> <li>□ Which call-off contracts need a further round of competition</li> </ul>	<b>Multi-award incomplete</b> (FA « <i>strictu sensu</i> » in the EU)  • Call-off contracts to be awarded <b>only</b> by using a further round of competition



Should  
additional  
customers be  
allowed to join  
a standing  
agreement?

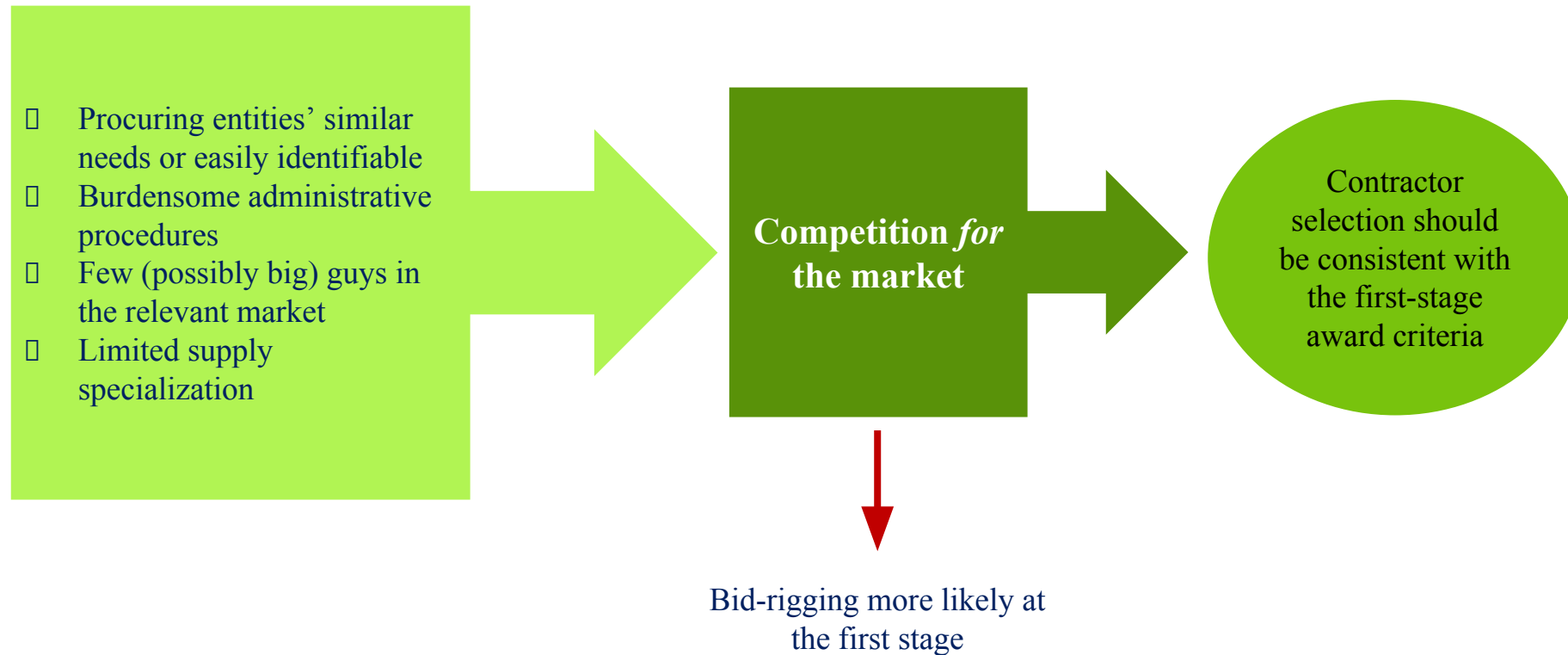
# The nature of competition



Should there be  
a quantity cap  
on orders under  
an existing  
agreement?


# Competition *for* Framework Agreements

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Master  
agreements:  
should the legal  
competition  
requirements  
differ from  
normal contract  
awards?

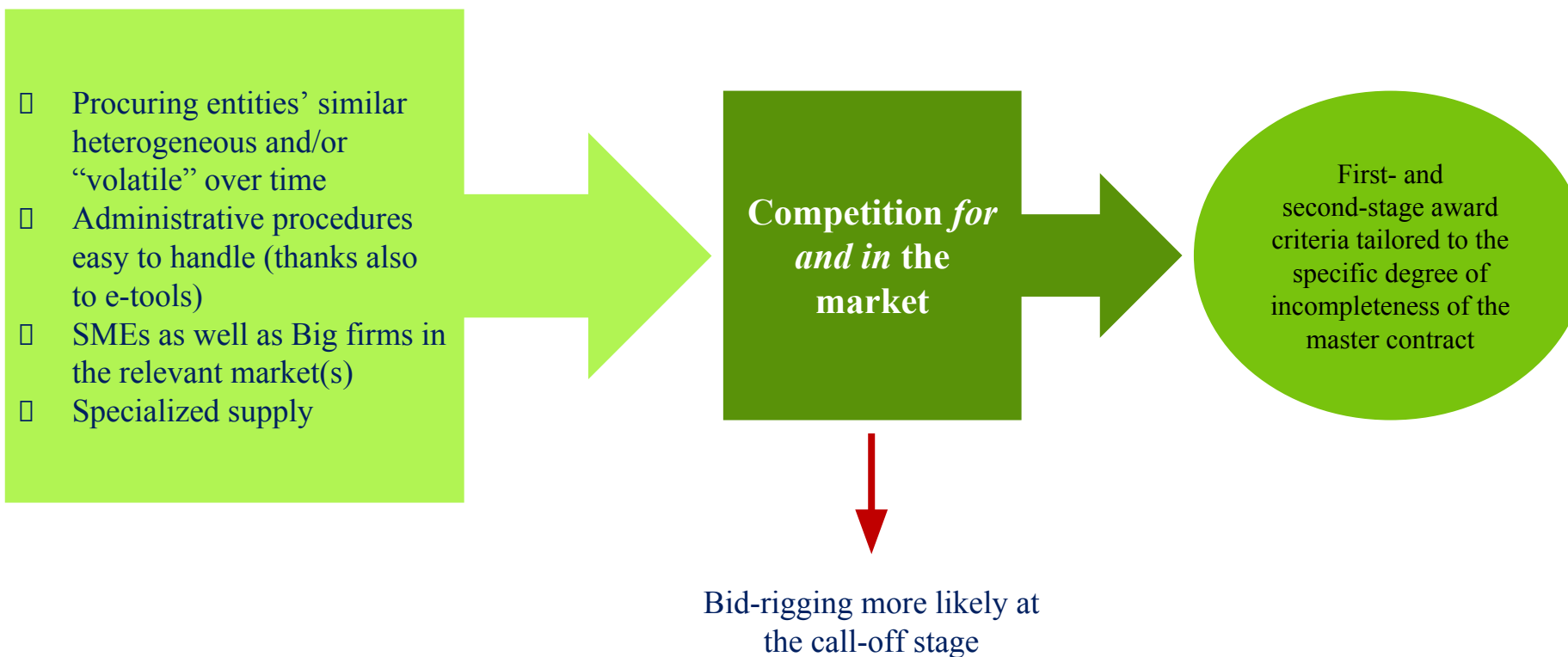




Should multiple  
awards of master  
agreements be  
presumed?

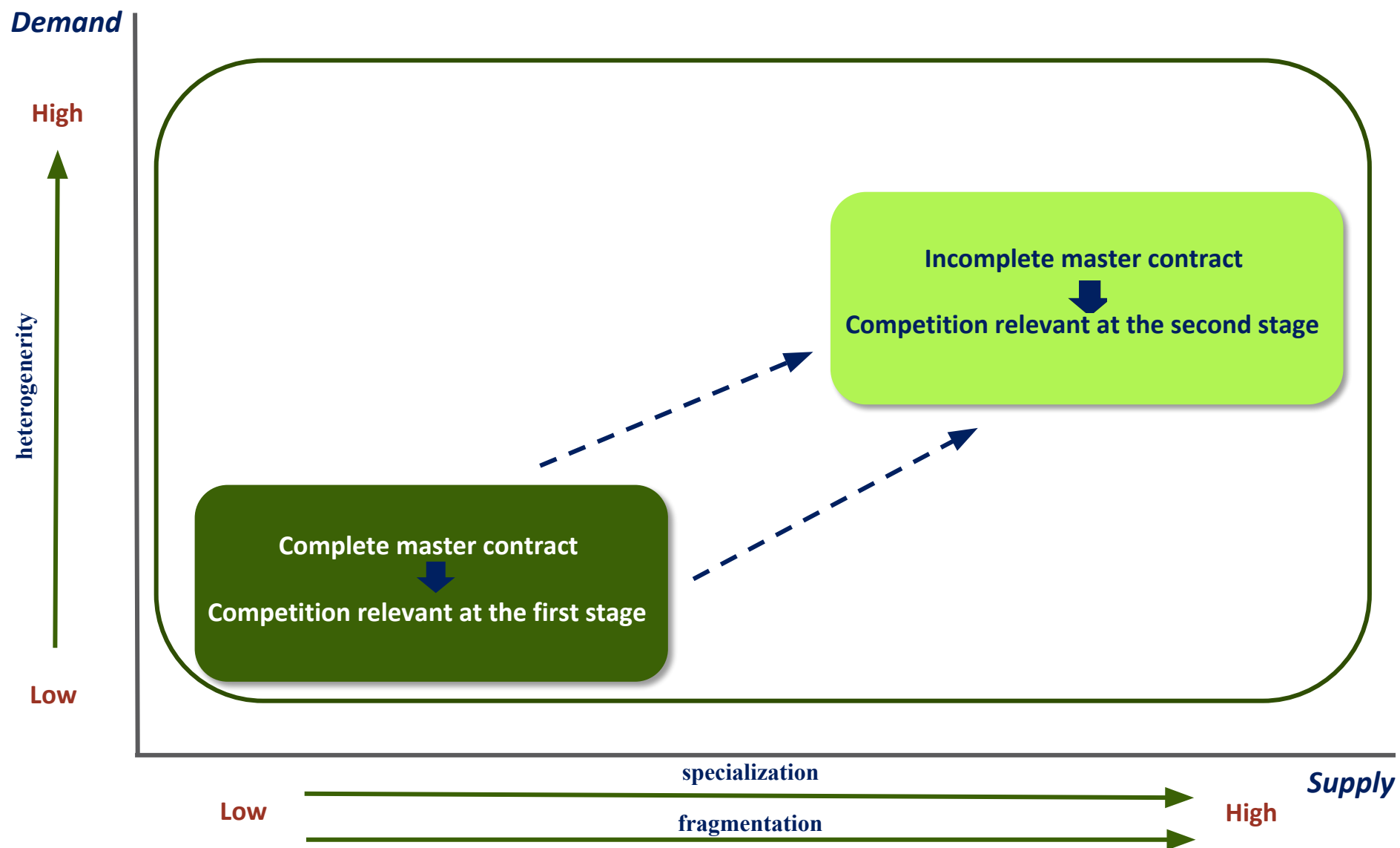
# Competition *for and in* Framework Agreements

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# Fine-tuning competition

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Which agency  
should be  
responsible for legal  
issues regarding (1)  
master agreements,  
and (2) second-stage  
orders/contracts?

# Sensitive dimensions and savvy buyers' temptations

When should we worry about Framework Agreements?

If the conditions below are *simultaneously* satisfied

- Highly incomplete master contract
- Loose selection of economic operators at the first stage
- No competition to award call-off contracts
- “Life-long” duration




- ❖ Closed “suppliers list”
- ❖ Risk of lack of integrity (“Why did buyer A choose firm Y?”)
- ❖ Difficulty to properly assess different procuring entities’ performance in terms of achieved value for money

Should “call-off”  
(orders/contracts)  
be subject to  
normal  
competition &  
transparency  
requirements?



Should “call-off”  
(orders/contracts)  
be protestable?





Should  
“piggy-backs” be  
allowed?

Main reference\*



\*<http://www.cambridge.org/lr/academic/subjects/law/international-trade-law/law-and-economics-framework-agreements-designing-flexible-solutions-public-procurement?format=HB>

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# Up next!

## Ethics

11:00am – 12:00pm

