

Book Review

Michael Burnett with Martin Oder, *Competitive Dialogue - A Practical Guide*, EIPA, 2009, ISBN 13 978-90-6779-214-1

The competitive dialogue is the most publicized change brought about by the new public procurement regime. Its inception is attributed to three reasons: i) the inability of open or restricted procedures to facilitate the award of complex public contracts, including concessions and public-private partnerships, ii) the exceptional nature of negotiated procedures without prior advertisement and iii) the restrictive interpretation of the grounds for using negotiated procedures with prior advertisement.

The public sector Directive establishes the competitive dialogue as an award procedure, alongside open, restricted and negotiated procedures. The competitive dialogue must be used exceptionally in cases of particularly complex contracts, where the use of the open or restricted procedures will not allow the award of the contract, and the use of negotiated procedures cannot be justified. A public contract is considered to be particularly complex where the contracting authorities are not able to define in an objective manner the technical specifications which are required to pursue the project, or they are not able to specify the legal or financial make-up of a project.

The procedure is very complex, as it has three main phases and many options within these phases. Firstly, the advertisement phase obliges contracting authorities to publish a contract notice or a descriptive document outlining their needs and basic specifications of the project. After that phase and before launching a competitive dialogue for the award of a contract, contracting authorities may, using a technical dialogue, seek or accept advice which may be used in the preparation of the specifications, provided that such advice does not have the effect of precluding competition.

Secondly, a selection phase reduces the candidates to be invited to the competitive dialogue according. The minimum number of candidates should be 3 but it could be lower if there is sufficient evidence of competitiveness in the process or the limited number of initial respondents to the contract notice precludes the invitation of at least 3 candidates.

Thirdly, the competitive dialogue is opened by the commencement of the award phase. Contracting authorities must open a dialogue with the candidates selected in accordance with, the aim of which is to identify the means best suited to satisfying their needs. They may discuss all aspects of the contract with the chosen candidates, ensuring equality of treatment among all tenderers. In particular, they must not provide information in a discriminatory manner which may give some tenderers an advantage over others. Contracting authorities may not reveal to the other participants' solutions proposed or other confidential information communicated by a candidate participating in the dialogue without prior agreement granted from that candidate.

The competitive dialogue has addressed many of the features that are important during the award of complex projects and are currently being addressed by negotiated procedures with prior advertisement. In comparison with these procedures, the competitive dialogue allows also for a limited number of participants (3 in number), introduces a staged approach to tendering, permits elimination of participants during its internal phases and restricts the award of a contract to complete offers

Burnett and Oder, in *Competitive Dialogue - A Practical Guide*, have produced a skilful and complete depiction of the legal and policy issues surrounding the competitive dialogue. The book is divided into six substantive chapters. In Chapter 1, the authors provide an introduction to the framework of the competitive dialogue, with a detailed overview of the EU legal framework on public procurement. Chapter 2 follows with the current use of the competitive dialogue and the reasons contracting authorities and economic entities might consider having recourse to its provisions. Chapter 3 proceeds to discuss an implementation overview, bringing into play best practice mapping in its conceptual, planning and implementation phases. Chapter 4 moves into providing a practical guide into the conduct of the competitive dialogue and the inherent technical elements of the procedure. Chapter 5 focuses on the phases of the competitive dialogue *post-tender*, when the contracting authority manages the process of concluding the award process with the preferred bidder. Finally, Chapter 6 provides insights into the future utilisation of the competitive dialogue, by offering a critical assessment of actions and policies of European Institutions and Member States' contracting authorities on the application of the competitive dialogue.

Burnett and Oder are well known and respected commentators and practitioners on public procurement and public private partnerships. In their current work, they have produced an imaginative piece of empirical study which supplies invaluable insights to current issues in the application of public procurement law and policy.

The authors provide in a most competent and authoritative way a dynamic analysis of the competitive dialogue as an award procedure specified in the public procurement directives, the current and future dimensions in its regulation and the ever important best practice perspective of its use by contracting authorities. The authors have produced an excellent and most appreciative contribution to the academic and practitioner literature on public procurement. Their work is technical, inter-disciplinary and openly invites future research into the impact assessment of the functioning of the competitive dialogue in different legal regimes within the European Union

Burnett and Oder, in *Competitive Dialogue - A Practical Guide*, have produced an essential practitioner's guide into the complex area of concluding public contracts.

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