



Competitive Dialogue procedure - Current trends

The emerging evidence of practice to date in the dialogue phase is that different decisions are being made about the number of phases in the dialogue, the objectives of the dialogue sub-phases, how the phases are conducted, the time to be allowed for the dialogue phase, the information to be requested from bidders in the dialogue sub-phases, whether or not elimination of solutions should occur during the dialogue phase and, crucially, the position which the Contracting Authority needs to arrive at by the end of the dialogue phase.

The current methods of conducting the dialogue phase may be summarised as follows:

- Inviting several solutions, then narrowing the differences between them towards a single merged solution ie to use the early part of the dialogue phase to develop a hybrid solution (one based on the best features of the solutions proposed by the different participants). This, of course, would require their agreement in the light of the confidentiality provisions in Directive 2004/18
- Inviting outline solutions and then one or more progressively more detailed solutions
- A consecutive approach ie dialogue first on technical/operational aspects and then on financial aspects of the offer
- Starting from a provisionally preferred solution of the Contracting Authority and inviting bidders to comment on it by marking up the solution as the basis of the dialogue.

All of the approaches described here are compatible with the legal requirements for the Competitive Dialogue procedure in general and the dialogue phase in particular. But the fact that they are legally permissible does not mean that, in terms of the likelihood of securing value for money for the public sector, they are necessarily equally effective.

The main conclusions emerging from these different approaches are that:

- Most of the approaches have, in practice, led to at least two sub-phases within the dialogue phase
- There has not always been sufficient clarity about the objectives of each sub-phase ie what the Contracting Authority needs to have achieved at the end of each sub-phase
- The methods used in the dialogue phase have converged towards written submissions by bidders, regular one to one discussions between the parties, presentations by bidders, availability of information through extranets, access by bidders to relevant personnel of the Contracting Authority and submission of interim solutions by bidders
- The time allocated in practice by Contracting Authorities for the dialogue phase has varied widely, with the observed range being between one and eight months

- There are practical difficulties associated with the approach of inviting outline, then detailed solutions because of the pressure that it creates on the Contracting Authority if it has failed to devote sufficient resources to understand the issues associated with the project in detail and to work out its approach to them in advance of discussions with bidders, thus placing it at a disadvantage in the dialogue
- It is difficult in practice to separate out the technical/operational and financial aspects of a bid because of the links between the cost of project and its scope, duration and performance standards.

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