Competitive Dialogue

Competitive Dialogue allows bidders to submit initial solutions after being successful at the selection stage. It allows you to negotiate proposed solutions with bidders. This may help to open up cross-border markets by encouraging bidders to discuss possible solutions.

Quickfire Guide

Quickfire Guide

When to Use Competitive Dialogue

Competitive Dialogue may be beneficial where:

- greater flexibility is needed - for example, highly complex and risky projects
- you are procuring innovative projects
- you are unable to specify your requirements e.g. your technical, financial or legal solutions. Therefore bidders may have a major role in defining the solution
- you cannot assess without in-depth dialogue on what the market can offer
- the Open or Restricted Procedures may not deliver the expected outcomes.

You cannot use this procedure when your requirements can be provided by many different market operators, or it is an off-the-shelf service or supply.

The use of Competitive Dialogue must always be justified, although there is no need to include that justification in your Contract Notice. Unlike the Competitive Procedure with Negotiation, here the specification requirements concentrate on your organisation's needs without having to detail the nature, characteristics or solutions to be offered.

Please Note

In all cases "days" are calendar days and not working days. The final day must however be a working day in Scotland.

The Pros and Cons of a Competitive Dialogue

Open or close

Advantages of Competitive Dialogue are:

- it allows organisations to clarify, specify or optimise the final bids
- your negotiations with your ultimate preferred bidder may also confirm financial commitments or other terms contained in the tender to finalise the contract. This helps, for example, in situations where a preferred bidder needs to secure final planning permission for a project before the contract can be concluded.

Care should be taken before selecting this route:

- you must ensure that you legally satisfy the criteria of using Competitive Dialogue
- you should be aware that this process is costly and resource intensive for you and bidders
- this procedure is likely to result in a significant increase in procurement timescales.

Competitive Dialogue Stages and Timescales

A Competitive Dialogue has several stages. These are detailed below:

1. Publish Minimum Requirements, Award Criteria and their Weightings

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You should publish your minimum requirements, award criteria and their weightings. These cannot be changed during the negotiation process.

If your process will be conducted in successive stages, this must be stated in the Co ntract Notice or descriptive document.

The day after the Contract Notice is sent for publication, at least 30 days must elapse before the closing date for receipt of selection stage information.

Note that after this stage there are no further set minimum timescales for submissions, however timescales must be reasonable. When fixing time limits, you must take account of the complexity of the contract and the time required for writing bids. You must set out an indicative timeframe in the Contract Notice and/or a descriptive document.

You must allow any bidder to submit a request to participate in response to a Contract Notice within the time limit set.

2. Invite Selected Candidates to Participate

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You then invite the selected candidates to participate in the dialogue, using an Invitation to Take Part in Dialogue (ITPD). There is no minimum period specified for bids in response to this document, but it must be reasonable.

You may limit the number of suitable bidders who meet your selection criteria to be invited to participate in the procedure. You should invite at least three bidders (if three or more meet selection criteria) to the dialogue process in order to ensure genuine competition.

Bidders do not submit tenders before starting dialogue with your Organisation.

3. Negotiations/Dialogue

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Following this initial response, you may decide to have several stages of negotiations/dialogue in order to develop solutions and reduce the number of solutions (if indicated in the contract notice or the descriptive document).

If there are successive stages, you must ensure that in the final stage the number of solutions remaining make for genuine competition. This means there must be enough solutions or qualified bidders.

You can decide on the number of dialogue stages.

You may reduce the number of bidders by applying the award criteria to suppliers' proposals during multiple dialogue stages before using the criteria again to assess bidders' final bids.

During the dialogue, Organisations must ensure equal treatment of all participants.

Any clarifications, specification, optimisation, additional information or negotiations must not involve changes to the essential aspects of the tender. You must not provide information in a discriminatory manner which may give any bidder an advantage over others.

4. Conclusion of Dialogue

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You must inform all bidders when the dialogue is being concluded.

You must invite each remaining bidder to submit their final tender on the basis of the solution(s) presented and specified during the dialogue.

5. Deadline for Receipt of Final Tenders

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After the Invitations to Submit Final Tenders are sent out, you must set a deadline for receipt of final tenders. There is no minimum period specified but these must be proportionate by taking into account the contract complexity and the time required to prepare and submit a bid.

You must extend the time limits for the receipt of tenders so that all bidders concerned are aware of all of the information needed to produce tenders e.g. where additional information has been requested by a supplier in good time and is not supplied at least six days before the time limit fixed for the receipt of tenders, or where there are significant changes made to the procurement documents.

The length of extension must be proportionate to the importance of the information or change.

6. Contract Award

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Final tenders may be further clarified before award of the contract, but this must not involve the essential aspects, cause discrimination, or distort competition. You apply the award criteria to assess bidders' final bids and award the contract.

Care and Support Services

Open or close

For many care and support services contracts, an organisation may use the procurement procedures, tools and techniques of its choosing. You should follow a procurement procedure, as a matter of best practice, that is proportionate to the value of the contract and to take account of some fundamental considerations (for example, the **Principles of Procurement** and **Fair Work Practices**).

When doing so, you may choose to adapt or streamline the Competitive Dialogue procedure described in the **Public Contracts (Scotland) Regulations 2015**. If you do so, you are not obliged to follow the detailed procedural requirements set out in those Regulations. You should therefore not refer to the Regulations in the tender documentation issued to participants, as this may create an expectation that the detailed procedural requirements will be followed. In all cases, you should ensure that the procurement process is described accurately and clearly and then adhered to.

Irregular and Unacceptable Tenders

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You can use Competitive Dialogue where all of the submissions you have received for an Open or Restricted Procedure are classed as either irregular or unacceptable.

A tender is *irregular* where:

- it does not comply with the **Procurement Documents**
- it was received late
- there is evidence of collusion or corruption
- it has been found by you to be abnormally low

A tender is *unacceptable* where:

- it was submitted by a bidder that does not have the required qualifications; or
- the price tendered exceeds your Organisation's budget (as determined and documented before the Procurement Procedure started.

Variants

Open or close

You may authorise or require variant bids. However this must be specified in the Contract Notice.

Your Procurement Documents must set out the minimum requirements and how the variant will be evaluated. Variants cannot be considered unless:

- they are specified within your **Procurement Documents**
- they are linked to the subject matter of the contract
- they meet the minimum requirements.

All variant bids should be evaluated using the same criteria as the standard bids and compared on a like-for-like basis.

You should also consider whether to allow potential bidders to offer different TUPE scenario options within their bids. If so, you must provide clear directions to bidders to ensure that bids are compared on a like-for-like basis.

Issuing Documents

Open or close

The Invitation to Submit a Final Tender is a procurement document that can only be finalised in the course of the actual dialogue. As a result it does not need to be made available at the same time as the Contract Notice.

The procurement documentation relevant to the first part of the procedure (up to and including the Invitation to Take part in Dialogue (ITPDs) must be made available:

- through the internet
- for free
- simultaneously
- by electronic means
- include all ITT documents (unless exclusions apply, for example confidentiality) when the Contract Notice is published. In such cases another, non-internet method must be used to provide the information.

Principles of Procurement

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The activities you undertake at this stage must be carried out in a carefully managed manner that supports the **Principles of Procurement**.