

## Competitive dialogue

A competitive dialogue is a way of tendering whereby you enter into a dialogue with a number of selected market parties. You work together with these parties towards finding the best solution for your organisation. Competition-sensitive information will remain confidential. After a structured process that usually requires significant investment from the participating parties, you will award the contract to one of the tenderers.

### 1. How does the competitive dialogue work?

The competitive dialogue is, as explained above, a form of tender. The process therefore needs to be open, fair and transparent. Accordingly, you should prepare in advance a document that sets out what you want to achieve and how the process is to be conducted. You should then invite the market parties to participate in the dialogue. In most cases, an independent jury will select a restricted number of parties on the basis of predetermined criteria.

A competitive dialogue enables you to make optimum use of the knowledge and creativity of the participating market parties. The dialogue can cover all aspects of the contract. Certain information, such as the innovative concepts of market parties, may be exchanged on the basis of confidentiality.

Even *during* the dialogue you can gradually reduce the number of participating parties further, on the basis, of course, of predetermined criteria.

The final result is a request that is in tune with the innovative offers available on the market. The parties that at that stage remain 'in the race' can then tender for the contract.

### 2. When would you use a competitive dialogue?

A competitive dialogue is often useful if you have a requirement for which no solution, or no clear solution, is yet known. In such a case you want to make optimum use of the creativity of the market in order to find an innovative solution.

As a form of tendering, the competitive dialogue does not need to be complicated and you can also apply it to smaller projects. The Dutch government has built up considerable experience with this process.

Currently, a competitive dialogue may only be used for particularly complex contracts. This requirement will lapse in the new EU Directive for tendering processes, which will be incorporated into Dutch law by no later than 2016. Where innovation is involved, it is usual for the contract to be particularly complex, because you do not yet know what the solution will be. A contract is regarded as particularly complex if you are unable to determine any of the following matters at the outset:

- The contract specifications
- The required funding
- The legal preconditions

The competitive dialogue is used not only for the procurement of innovation, but also for large infrastructure and ICT projects. The competitive dialogue will also be regularly adapted in

combination with Design, Build, Finance and Maintain constructions (DBFM). There is a detailed manual setting out the procedure for a competitive dialogue with DBFM.

#### *Preconditions*

A competitive dialogue requires a detailed procedure. There are a number of preconditions:

1. You have the time to solve your problem. It is usually of a longer duration than a normal tendering process. The exact duration depends on the scope and complexity of the contract and can vary from between one and several years.
2. You know what problem you wish to solve. A need analysis can help.
3. You have an idea of what is already on the market. A market survey will help you find this information.
4. Your organisation supports the choice for a competitive dialogue and is willing to make the required capacity available from amongst the various relevant disciplines.

### 3. Step-by-step plan

#### Step 1: a detailed design

A competitive dialogue is a search, together with the market parties, for the most suitable solution for your organisation. Where necessary, as a government body you can adapt your requirement during the dialogue. Precisely because there is room for dialogue, it is very important to demarcate clear parameters within which the dialogue is to be conducted. A common way to achieve this is to engage the party with responsibility for the dialogue - the internal contracting authority – to draw up the *scope* and *critical success factors* in advance.

- The scope is the reach or extent of the competitive dialogue. Essentially, the issue here is: what is included within the project and what is not? Various guidelines can be found online to assist in defining the scope of a project.
- Critical success factors are factors that determine whether or not your goal will be achieved. What elements are necessary to make the project a success? Often the eventual award criteria are based on these critical success factors.

During the dialogue the organisation will be faced with making decisions. Often a decision needs to be taken quickly. To be able to do this effectively, it is useful if you have already identified the stakeholders and risks. You can do this by means of an environment analysis and a risk analysis.

#### Step 2: the project team

A well-appointed project team is essential for a successful competitive dialogue. Of course you need to think of the contracting authority, as well as of the following areas of expertise:

1. Project management, including process management and project management.
2. Substantive expertise: technical and operational, plus the end user.
3. Financial: especially important if you opt for a less usual financial construction, such as a lease. Or if you are assessing lifecycle costs.
4. Legal: knowledge of the tendering process, the content of the contract and contract management.

Also bear in mind that:

- It is often sensible to appoint a single person to maintain contacts with the market, so that you can be sure that all market parties acquire the same information.
- The organisation must be able to handle confidential information.

### Step 3: organisational preparation

We explore below a number of organisational issues preparatory to the dialogue. Substantive preparation should be set out in the process guide (see step 5).

#### *Assessment committee*

To ensure the assessment is as objective as possible it is wise to appoint an assessment committee.

The tasks of the committee are:

- To select the businesses that may participate in the dialogue phase.
- To assess interim results during the dialogue, especially if you propose to eliminate some of the parties during the dialogue phase.
- To assess the eventual tenders on the basis of the award criteria.

#### *Communications*

Especially if you are searching for an innovative solution it is important to carefully consider the way in which to bring your request to the attention of the right market parties. From which quarter do you expect the best ideas to come? Which parties have a network that you would be interested in using? A general communications plan and a distribution list for the procurement of an innovation can assist in this task. It is a requirement that you also publish notice of the competitive dialogue on TenderNed. In addition, you should place notice on the innovations market in order to reach out to innovative businesses.

#### *Payment*

Parties that participate in a dialogue are often paid for their contribution, since they are involved in a complex contract that requires the selected parties to think about the best solution. It requires the parties to invest a lot of time and effort. The payment will cover only a part of the investment made by a business. When requesting goods, take account of the costs that the parties will necessarily incur. Estimate the time that such businesses will spend and their hourly costs. Decide how much you are prepared to pay. Payment of between one third and one half of these costs seems reasonable. The biggest incentive for participating businesses will be the prospect of the contract, but it is also possible that the work is useful to them even if they are not awarded the contract.

### Step 4: market consultation and formation of consortiums

It may be wise to consult the market about the competitive dialogue that you plan to organise. A draft of the process guide (see step 5) can be a good starting point.

A market consultation can also enable businesses to find partners with which they can submit a joint proposal. This may be of particular interest if there are aspects to the contract that are suited to various organisations, or if you are seeking innovation from small organisations but would like to work with a large contract partner.

If you wish to encourage the formation of consortiums, allocate a part of the programme to this process. Give participants the opportunity to explain what they do and to network among themselves.

### Step 5: the process guide

The process guide to the competitive dialogue is a document that sets out the following:

- The expected results. These are usually specified in terms of function. They could be based on the critical success factors, the scope and the need analysis.
- The selection and award criteria.
- The structure of the process:
  - The number of parties to the dialogue.
  - The planning.
  - How and when documents are to be submitted.
- Preconditions, such as:
  - Confidentiality.
  - Intellectual property.
  - Payment to the participating parties.

Additional information can be added to the process guide during the dialogue. However, this information must consist of further detail or an explanation of the process guide; it may not conflict with the process guide.

If the process guide is definitive, it will be published in accordance with the communications plan you have drawn up pursuant to step 3.

### Step 6: selection of the market parties to participate in the dialogue

The parties that you should select to participate in the dialogue phase should be the parties that submitted the best tenders on the basis of the selection criteria as set out in the process guide. The basis of the selection depends very much on the contract that you wish to award.

If you are seeking innovation, it may be wise not to raise the barriers to participation too high. You should give greater weight to the ideas submitted than to the track record of a business. The scope and importance of the contract ought also of course to be considered. If it is a big contract, or the contract is crucial for operations within your own organisation, it goes without saying that you can extensive requirements on the tenderers.

#### *Completeness*

You should first test whether proposals are 'complete'. Have all documents been submitted? Have they been submitted on time? Does the tenderer satisfy the requirements set out in the process guide? It is sensible to draw up a checklist of the points to be checked. In principle, a tender will be rejected if it is not 'complete'. However, small omissions can be rectified later if it would be a disproportionate response to reject the tender for such omissions.

#### *Assessment*

Tenders that are 'complete' will then be assessed by the assessment committee on the basis of the selection criteria, and ranked. From these you will select a predetermined number of tenderers.

### *Number of participating market parties*

The minimum number of selected parties is three. In the case of big contracts it is usual to select three parties in order to limit the workload of both the contracting authority and the tenderers. If the project is small but innovative, then it could be very interesting here to select more parties. In the case of the 'bed disinfection facility' of the Erasmus Medical Centre all parties that satisfied the selection criteria were selected to participate. The dialogue was then conducted between ten parties. The selection process guide to the bed disinfection facility is available [here](#).

### **Step 7: the dialogue**

The dialogue is an optimisation process. The aim of the dialogue is to formulate your requirement in a way that results in you being offered the best solution for the functional specification as set out in the process guide. The dialogue enables you to have a feel for the situation in the market, without losing sight of your own interests. Would a small change to the document create, for example, a lot of room for tenderers to be innovative? Always keep your end goal in sight.

### *Rules*

- The market and government conduct confidential discussions. Market parties can talk freely within this environment about the potential solution that they have in mind.
- Tenderers may not be given information about the confidential solutions discussed by their competitors within the dialogue.
- All tenderers must have the same chances and therefore be given the same information, except with regard to the confidential information of their competitors. To ensure that chances are equal, you can work to an agenda for discussion points that is the same for all discussions.
- A market party may ask a confidential question. The answer will not be shared with other parties.
- It is possible to eliminate parties during the dialogue phase, following assessment of the interim results by the assessment committee. These results could be in the form of, for example, a project vision, an action plan or a first design. The criteria and the manner of assessment should be set out in advance in the process guide. Take note: if you reject a party on the basis of a certain design and in the next dialogue round another party produces a comparable design, this could cause the rejected party to ask questions.

### *Tips*

- The dialogue often begins with an introductory meeting at which you provide information to all the tenderers at the same time.
- It is often a good idea to agree in advance how many discussions there will be, or what the maximum number will be. This gives clarity to both sides.

### *Amending the contract documents*

As a result of the dialogue you will probably wish to amend the contract documents. Be careful if a confidential idea results in an amendment to the contract documents, for example in order to leave room for a particular solution. This must be done in such a way that the idea itself is not abandoned. If contract documents are amended, it is important that decisions within your own organisation are taken quickly.

### Step 8: definitive tender

At the end of the dialogue phase you should publish the definitive set of contract documents. All amendments and additional details are now complete and should be included. You should then invite the remaining parties to submit a tender.

### Step 9: award

The award must be made in accordance with MEAT (most economically advantageous tender). Apart from this, the award does not differ substantially from other types of tendering process. An independent assessment committee will assess the submitted tenders. The assessment procedure and the assessment criteria are set out in advance in the process guide. The assessment has a two-fold aim:

1. To select the best proposal.
2. To explain the reasoning behind the assessment. Remember that all parties have invested a lot of time in the tendering process. Good arguments for the decision are essential.

Your own organisation will have built up a lot of new knowledge during the competitive dialogue. Ensure that this knowledge is preserved during the performance of the contract, by keeping a proper record of it, communicating it to others or – which is often better still - continuing to involve people from the project team in the performance of the contract.

### 3. Further information

[Competitive dialogue](#)

[Competitive dialogue: a tool for innovation](#)

### 5. Source

This information was taken from the “Innovation Procurement for Contracting Authorities” document that was prepared by [PIANOo](#) in 2017.