

Better dialogue

IMAGE: DREAMSTIME

Competitive dialogue hasn't had the best press, but get it right and both buyers and suppliers will benefit, says **Peter Micklewright**

Competitive dialogue (CD) is a public procurement process which came into force in the UK at the start of 2006. Until then, the "negotiated" procedure (see *Law update*, 5 August), involving detailed negotiations with a preferred bidder, had been used for most complex procurements. But the European Union had questions about whether the negotiated procedure was anti-competitive, and purchasers were told to make less use of it in future.

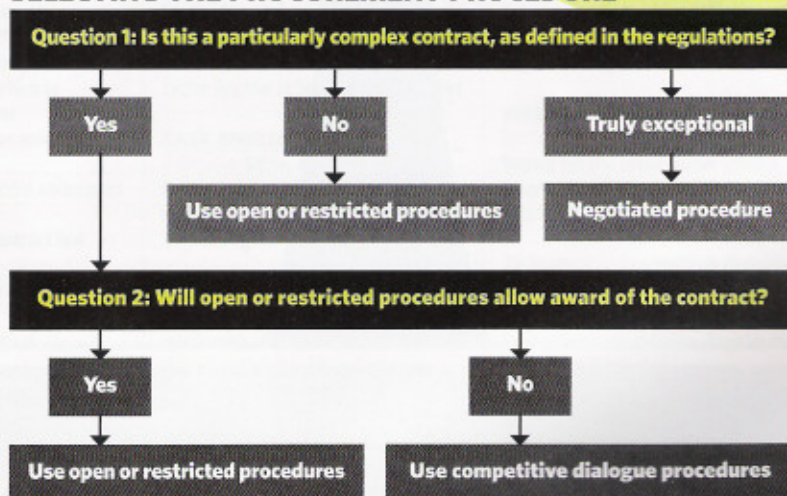
CD should only be used for procuring particularly complex contracts. The contracting authority, such as a council or NHS trust, needs to be able to show it is not objectively able to define the technical means to meet its needs and is not objectively able to specify the legal or financial make-up of the project. The diagram (right) shows what a contracting authority needs to consider when deciding which procedure to follow.

SUCCESS OR FAILURE?

Guidance from the Office of Government Commerce (OGC) has encouraged the use of CD. "Even where exceptions apply for complex procurements it may be sensible to follow CD to ensure a structured, rigorous, well managed and competitive process to ensure value for money," it says.

In the UK, CD has had significant take-up and the negotiated procedure is now rarely used, but legislation is not detailed and guidance is limited. The

SELECTING THE PROCUREMENT PROCEDURE



Treasury is currently undertaking a review of the impact and effectiveness of CD.

Many CD procedures are well run to time and budget. But it is more common for the process to be more expensive and to take longer than planned. Anecdotal evidence suggests CD is costing both contracting authorities and suppliers significantly more than the negotiated procedure. Suppliers' costs can be two or three times higher.

In addition, a recent report based on OJEU data found private sector firms were losing more than £45 million on withdrawn tenders (*Web news, 21 May*). Public sector organisations are also incurring increased costs because of the need to engage internal stakeholders more actively during the dialogue, and often feel the need to use external consultants to support the process.

If used appropriately there is no reason why CD should not benefit both suppliers and buying organisations. Contracting authorities can work closely with suppliers to develop a realistic contract model. Suppliers can have in-depth discussions to understand the requirements. This reduces the risk that "surprises" will come to light post-contract.

But the prevailing opinion is that the adoption of CD in the public sector has not been a complete success. Suppliers are becoming experienced in the CD tendering process, and so are becoming more adept at spotting if a CD procedure will be well run and kept within timescales. If they fear the process is likely to encounter

difficulties they may simply decide not to bid.

Nonetheless, unless there is major change of policy by the EU or the UK government the procedure is here to stay and will continue to be a key part of demonstrating transparency and propriety when buying goods and services with public money.

WHAT MAKES CD DIFFICULT?

The process is meant to be a dialogue that allows suppliers to explore and consider solutions to the buyer's requirements. This is held with several suppliers at the same time. The authority must be prepared for this dynamic debate.

There will be a high demand on stakeholders and key users to engage with the process early and partake in the dialogue meetings. These people must be empowered to make decisions and made aware of the demands that will be placed on them. The volume and complexity of work to be covered in the dialogue process is often underestimated, as is the control effort required to co-ordinate activities. The procurement team may also require more resources and have to handle greater complexity than any single vendor's team.

NINE STEPS TO SUCCESSFUL CD

With recent announcements concerning public sector spending, coupled with even more pressure to demonstrate effective procurement, the importance of delivering successful CD will increase.

Authorities are likely to come under increasing pressure to reduce the timescale and cost of conducting complex procurements. So what steps can be taken to improve this? Each CD is different, but consider the following:

1 Treat the process as a complex project with diverse participants, stakeholders, changing requirements and inevitably tight timescales. Ensure a

good programme director is in place supported by a project office and the appropriate administration tools.

The use of a rigorous programme management process such as PRINCE2, the OGC's project management methodology, should be considered. Be prepared to re-evaluate and re-plan at each stage.

2 Engage as early as possible with key stakeholders so they are aware of the resources, timescales and costs required.

3 The level to which the requirements are defined will have a significant impact on the process. You will probably spend more time in dialogue if your requirement is based on business output than if you have already partially specified the technical element of it.

4 Take the views of suppliers into account from an early stage. They can spot potential difficulties and it will increase their buy-in.

5 Limit the number of suppliers taken into the dialogue to five or six.

6 The dialogue phase itself will be intense. Representatives from the authority must be fully briefed, possibly available full-time and empowered to make decisions.

7 Fully utilise e-sourcing tools. It can reduce the resource requirement in both dialogue and evaluation.

8 There may be six or eight different projects within the dialogue phase. They need to be planned together. This again emphasises the need for a strong programme management team for the process.

9 The cost of the process for all parties can be significant. Any delays or extensions should be avoided.

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