

# Competitive Dialogue and Competitive Procedure with Negotiation

## Planning and preparation

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## Planning and preparation – 1

- In the planning/preparation phase a Contracting Authority should plan in detail how it will run the procurement
- Decisions taken in the planning and preparation stage i.e. before a procurement is launched are often difficult to change later without the risk of challenge for breach of the principles of equality of treatment and non-discrimination (e.g. any changes to the evaluation criteria or sub-criteria/their weighting)
- Value for money is not just how the award process is run - it needs effectively management of the contract, so contract management planning needs to start early(numbers/skills)



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## Planning and preparation – 2

- Confirming that dialogue/negotiation is needed to ensure effective award of the contract
- Ensuring that there is written legal justification for the use of dialogue/negotiation where necessary
- Securing sufficient skilled internal resources to award process
- Preparing specification/contract conditions clearly understandable to interested parties/likely to attract competition/ which achieves Contracting Authority's needs
- Linking the objectives of the procurement to priorities based on citizens needs directly (or indirectly by meeting the Contracting Authority's needs)

## Planning and preparation – 3

- Ensuring specification appropriately defined (combining functional and technical requirements as appropriate) and reviewing validity of volume assumptions/segmentation of use (e.g. by age, gender, location etc. according to service priorities)
- Learning from market consultation/past experience/territorial experience
- For infrastructure projects determining the most appropriate financing model (e.g. public finance, private finance, preferred form of private finance etc.) and delivery model (e.g. public sector, private sector, mixed capital entity etc.)

## Planning and preparation – 4

- Assessing attractiveness of opportunity for bidders (e.g. expected profit margin, risk areas, other known similar contracts etc.)
- Developing an understanding of possible solutions (strengths, weaknesses, risks etc.)
- Addressing internal project governance issues (e.g. decision making processes/authority levels, appropriate senior oversight, means for documenting procurement decisions etc.)
- Deciding how to use/commission/manage external experts
- Define short listing criteria and evaluation criteria/sub-criteria and weighting
- Define short listing and evaluation methodology

## Planning and preparation – 5

- Guidance to evaluators about how to apply short listing/evaluation criteria to offers
- Determining minimum/preferred number for short list
- Designing an appropriate format for responses by interested parties and tenderers (including pricing format for tenders)
- Determine objectives, scope, structure and timetable of dialogue/negotiation i.e. uncertainties/risks to be addressed, communication channels with candidates etc.
- Setting a timetable which allows sufficient time for procurement process (bidders and Contracting Authority) - allowing more than minimum time limits?

## Planning and preparation – 6

- Level of detail in procurement documents
- KPIs and targets for them/how related to priorities), input requirements, process requirements
- Drafting review clauses which meet requirements of Art.72(1)(a), Directive 2014/24/EU i.e. which are “clear, precise and unequivocal” and which “state the scope and nature of possible modifications or options as well as the conditions under which they may be used”
- Defining how to address contract changes requested by the economic operator
- Assessing risks/preparing risk register, including particular transaction /procurement phase risks and how they will be addressed

## Planning and preparation – 7

- Assessing the appropriate contract length/possible need for break clauses bearing in mind any known expected or possible market change from developments in delivery models
- Appropriateness of scope and extent of operating risk transfer to bidders
- Addressing potential conflicts of interest related to politicians, senior officials and professional advisers/use of a dynamic process for managing them
- Assessing “should cost” (for works, services and supplies)/realism of budget for procurement
- Appropriate security for ICT/cloud services

## Planning and preparation – 8

- Advertising the contract in a way which is both lawful and designed to attract the capable and deter those not capable of delivering the contract
- Robustness of Public Sector Comparator for infrastructure projects
- Avoiding launch before planning and preparation is complete/organisational pressures to do so
- Timing of launch likely to maximise interest
- Sufficiently broad targeting of advertisement/promotion of competition, especially where there is an incumbent supplier
- Defining contract management structures/resourcing, information needs/information access etc.
- Assessing possible view of auditors, regulators etc/need for auditor assessment

## Competitive Dialogue and the Competitive Procedure with Negotiation – Planning and preparation

### QUESTIONS AND ANSWERS