

Competitive Dialogue and Competitive Procedure with Negotiation – Implementation

Closing dialogue/negotiation and call for final tenders

Michael Burnett and Martin Oder
30 November 2022



© EIPA 2022 - www.eipa.eu

1

Competitive Dialogue Procedure – Closing dialogue and call for final tenders – 1

- Contracting Authority continues dialogue until it can identify solution/solutions capable of meeting its needs
- Need to formally end dialogue and call for tenders
- Knowing when to close the dialogue phase/call for final tenders i.e. when expecting:
 - Affordable, deliverable, unconditional final tenders which meet needs of project
 - Sufficient final tenders to ensure competition (value for money and legal perspective)
 - “No surprises” at final tender stage



© EIPA 2022 - www.eipa.eu

2

1

Competitive Dialogue Procedure – Closing dialogue and call for final tenders – 2

- Determining format of final tenders
- Contracting Authority asks candidate to submit their final tenders on basis of solution/solutions presented during dialogue
- Tenders should contain all elements required and necessary for performance of project
- Remind candidates of time to submit final tenders
- Determine form of final tenders/linkage to interim submissions (especially explanation of any price/ methodology change since interim submissions)
- Reconfirm importance of unconditionality of tenders

Competitive Dialogue Procedure – Closing dialogue and call for final tenders – 3

- Determine indicative *ex ante* interpretation of “clarify, specify, optimise”, essential aspects of tender and elements which, if changed after receipt of tenders, will distort competition (to maintain value for money, need to be restrictive in scope/broad in definition of essential aspects of tenders or the procurement?)
- Determine indicative *ex ante* interpretation of scope of post-tender negotiation with winning bidder to “confirm financial commitments or other terms contained in the tender by finalising the terms of the contract” and what would materially modify essential aspects of tenders or the procurement and thus distort competition (to maintain value for money, need to be restrictive in scope/broad in definition of essential aspects of tenders/the procurement and of material modification?)

Competitive Dialogue Procedure – Closing dialogue and call for final tenders – 4

- Annex IX - Call for tenders must include:
 - The deadline for receipt of tenders, which must take account of the complexity of the contract and the time required for drawing up of tenders and comply with the principle of equality of treatment
 - The address to which tenders must be sent
 - The language or languages in which the tenders must be drawn up

NB See also other requirements of Annex IX(1)(a),(d),(e) - shown above on slide on launch of dialogue

Competitive Procedure with Negotiation – Negotiation – 1

- Negotiation on tenders submitted to improve content except final tender (how many rounds of tenders?)
- Minimum requirements and award criteria may not be subject to negotiations
- Can award on basis of initial tenders without negotiation if indicated in contract notice or invitation to confirm interest (when justified? defining conditions in advance?)

Competitive Procedure with Negotiation – Negotiation – 2

Some rules similar to Competitive Dialogue:

- Obligation not to reveal confidential information from economic operators without their agreement (how to designate confidential information? how to secure “agreement”? how to resolve disputes?)
- Disclosure of information from an economic operator by agreement may not be in form of a general waiver
- Possibility to conduct negotiations in stages and eliminate candidates using award criteria if mentioned in the contract notice/invitation to confirm interest/ another procurement document
- Need to formally end negotiations/set deadline for final tenders

Competitive Procedure with Negotiation – Negotiation – 3

Call for tenders - see Annex IX(1)



Competitive Dialogue and the Competitive Procedure with Negotiation – Closing dialogue/negotiation calling for final tenders

QUESTIONS AND ANSWERS