

Competitive Dialogue and Competitive Procedure with Negotiation – Implementation

Tender evaluation/selection of winning bidder

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Contract award

- Award basis
- Award criteria and weighting
- Evaluation methodology



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Contract award basis/award criteria (Art 67, Directive 2014/24/EU)

- In Competitive Dialogue must use best price-quality ratio (no restriction for Competitive Procedure with Negotiation)
- Criteria (non-exhaustive examples):
 - quality e.g. technical merit, aesthetic/functional characteristics, accessibility, design for all users, social/environmental/innovative characteristics and trading and its conditions
 - organisation/qualification/experience of staff to perform contract, where quality of staff can have significant impact on contract performance
 - after-sales service/technical assistance, delivery conditions e.g. delivery date/process/period or period of completion

Contract award criteria

- State criteria and relative weighting
- Relative weightings can be expressed as a “range with an appropriate maximum spread”
- Where not possible for “objective reasons” to set weightings criteria shall be set out “in decreasing order of importance”
- Social and environmental criteria - Permissible if linked to subject matter of contract

Competitive Dialogue Procedure – Evaluation of tenders

- Evaluation of tenders in accordance with evaluation criteria and methodology
- Different evaluation methodologies are possible i.e. financial then technical, technical then financial, setting minimum pass scores for technical evaluation, first evaluating one or more essential technical criteria before evaluating others, first assessing affordability
- Application of life cycle costing methodologies
- Definition of abnormally low tenders
- Need to give guidance to evaluators about how to apply evaluation criteria to offers

Competitive Dialogue Procedure – Evaluation of tenders – Key issues – 1

- Tenders may be “clarified, specified and optimised” at request of Contracting Authority but must not mean “changes to the essential aspects of the tender or the public procurement” if such changes are “likely to distort competition or have a discriminatory effect” (Art 30(6), Directive 2014/24/EU)
- Allowing sufficient time to evaluate final tenders
- Treatment of *prima facie* non-compliant tenders, treatment of minor mistakes, corrections
- Need for equality of treatment in “clarify, specify, optimise”

Competitive Dialogue Procedure – Evaluation of tenders – Key issues – 2

- What is an unconditional tender?
- What are “essential aspects” of a tender or public procurement?
- Selection of winning bidder

Competitive Procedure with Negotiation

- Limited post tender flexibility defined by Art 56(3), Directive 2014/24/EU (i.e. no more than in Open or Restricted Procedure)

“Verify that the final tenders are in conformity with the minimum requirements and comply with Article 56(1), assess the final tenders on the basis of the award criteria and award the contract in accordance with Articles 66 to 69”

Awarding the contract – Main challenges – 1

- Deciding whether or not to have a formal tender opening and how to conduct it
- Ensuring that bidders can't unilaterally change their offers after submission
- Need for equality of treatment in "clarifying/specifying/optimising" post-tender
- Ensuring that offers submitted late or not procedurally compliant are not eligible for evaluation
- Excluding offers where bidders have attempted to improperly influence the bidding procedure
- Sustainability of offers defined as, or close, to being abnormally low

Awarding the contract – Main challenges – 2

- Ensuring that evaluators apply defined evaluation criteria/methodology to offers
- Explanation of price and methodology change since first submissions/later dialogue phase
- Understand the financial model of the winning bidder and its implications for quality of delivery of outcomes
- Recording justification of decisions in application of award criteria such that it would pass third party scrutiny (e.g. auditors, regulators, parliamentary scrutiny, judicial bodies if challenged etc.)

Awarding the contract – Main challenges – 3

- Ensuring that contract awarded not materially different from that originally advertised (to minimise risk of legal challenge from those who chose not to express interest in the contract)

Competitive Dialogue and the Competitive Procedure with Negotiation – Tender evaluation/selection of winning bidder

QUESTIONS AND ANSWERS