



Use of Alternative Procurement Procedures for ICT Projects

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INTRODUCTION

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All sewn up in one Question....


When asked to undertake a procurement what do you need to try and guarantee?



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3 Pillars of Effective Public Procurement




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Supply/Service Options

- Purchase, lease or rental options
- May include siting or installation
- What about?
 - Maintenance costs
 - Installation costs
 - Training costs
 - Costs of consumables
 - Duration of maintenance and support
 - Need for upgrades over a long period of time?
 - Duration of relationship?



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PROCUREMENT HEADLINES

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Critical Components

- SPECIFICATION OF REQUIREMENTS
- CRITERIA (two elements / stages)
 - Element 1 (*What have the economic operators done in the past*)
 - Selection/ Qualification
 - Financial and Economic Standing
 - Technical Capacity
 - Element 2 (*How are the economic operators going to solve my problem?*)
 - Award Criteria (MEAT)
 - Qualitative
 - Quantitative

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Critical components (cntd.)

COMPETITIONS to award....

Contract (*With a clearly defined outcome*)

Contract with an option (also clearly defined)


- Option is at the discretion of the Contracting Authority, subject to satisfactory performance, budget availability, ongoing need, etc.)

Framework (maximum duration of 4 years – or longer)

- Single Party
- Multi party
 - Mini competition
 - Ranking/ Cascade

Contract from a Framework


Frameworks ideal for contracts of a repetitive nature!



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How much will it cost?

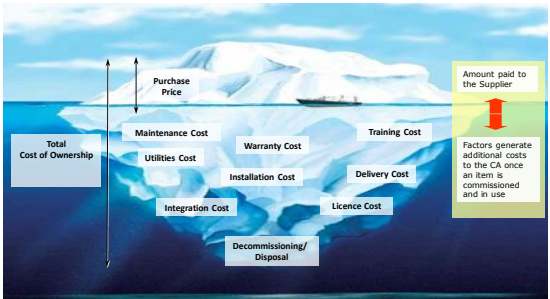
- Take the total amount payable, net of VAT
 - plus any **options** and **renewals**
- Include all relevant costs
 - capital, running, consumables, training, etc.
- Define lifetime assessment
 - Total cost of ownership / Duration of contract
- For a series of contracts
 - contracts for the same supply/service with the same supplier/category of supplier
 - take the total value – AGGREGATION
- For contracts awarded in lots
 - take the total value of all lots
- For framework agreements
 - take the total maximum value of all potential contracts



NOTE:
No subdivision of requirements to be used to avoid correct procedure

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Total Cost of Ownership



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Don't !


- Over specify
- Discriminate
- Be ambiguous



A new tanker arrives on site in Qatar: The newly appointed American Manager tells the local supervisor to ensure that the tanker is clearly labeled: "Diesel Fuel" in Arabic and "No Smoking" in Arabic. This is what he got.

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Choice of Procurement Procedures



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The Public Sector Directive provides many routes to contract award

Standard procedures generally employed by public authorities:

- Open – a single stage procedure whereby any interested party can submit a tender;
- Restricted – a multi-stage procedure whereby any interested party can apply for qualification, but only the top 5 scoring applicants are invited to tender.
- ONE COMMON FEATURE – both procedures demand a clear specification of requirements

Common Features of Open & Restricted

- Neither procedure facilitates
 - Any negotiation
 - Discussion on solutions with the market
 - Changes to specification of requirements
- Ideal procedures for known, easily to define requirements – i.e. the majority of public sector requirements

Would Market Consultations help?

- Market Consultation is permitted with the market before launching a contract award procedure.
- Aim is to seek advice in preparing the specification.
- Most effective method
 - Publish a Prior Information Notice (PIN) as a mechanism for targeting potential market
 - Advisable to talk to at least 3 companies responding to the PIN
 - Inform them you are only having general discussions and no commitment or preference is given

Preliminary Market Consultations

- Before launching a procurement procedure,
 - contracting entities **may** conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.
- Contracting entities may seek or accept advice from independent experts or from market participants.
 - That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

What to do when you need something different..

However, on occasion, a more flexible arrangement is required which would:

- Enable contracting authorities define the problem but allow the market define the solution
- Enable contracting authorities to look at alternatives
- Facilitate innovation
- The European Commission had this in mind in the 2014 Directives

2014/24/EU – Procedures to Facilitate Flexibility

The 2014 Directives clearly define three procedures when the requirement is not a standard off-the-shelf easily definable requirement:

- Competitive procedure with Negotiation
- Competitive dialogue
- Innovation Partnership

Recital 42 of Directive 2014/24/EU

There is a great need for contracting authorities to have additional flexibility to choose a procurement procedure, which provides for negotiations. A greater use of those procedures is also likely to increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate of cross-border tenders. Member States should be able to provide for the use of the competitive procedure with negotiation or the competitive dialogue, in various situations where open or restricted procedures without negotiations are not likely to lead to satisfactory procurement outcomes.

Competitive Procedure with Negotiation ~ Recital 45

- *The competitive procedure with negotiation should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. In particular, contracting authorities should indicate beforehand the minimum requirements which characterise the nature of the procurement and which should not be changed in the negotiations.*

Competitive Procedure with Negotiation

- Generally suitable when the requirement can be defined to some degree
- Operates as follows:
 - Qualification stage
 - Tender stage
 - Negotiation stage
- Key feature – still demands a specification – but a minimum based specification
- Only those tenderers meeting the minimum can be invited to negotiation

Summary of Competitive Procedure with Negotiation

- A procedure which requires a minimum based specification and submission of a tender from tenderers
- Facilitates negotiation / discussion on all aspects of tenders submitted (under each of the Award Criteria specified)
- Ideal when public authorities can specify a good degree of the requirement but there may need to be discussion on technical solutions and also discussion on costs
 - For example specification may not be achievable within a budget. This procedure enables discussion on changes to specification (as long as minimum requirement is protected) to bring it within budget

Competitive Procedure with Negotiation

- Once firms are deemed qualified, a tender document with a minimum specification and award criteria must be issued to at least 3 – subject to that number qualifying
- Successive reduction can be applied (must be indicated in OJEU notice / qualification questionnaire) – i.e. the initial tenders can be evaluated against the award criteria and a reduced number invited to subsequent negotiation round or rounds
- The negotiation can discuss all aspects of the tenderers' offer with a view to improving their subsequent tenders
- Negotiation can take place on costs and technical solutions – so long as minimum requirements are protected and complied with
- Once a final tender "BAFO" is invited, no further negotiation can occur

Competitive Dialogue Procedure

- Ideal when the contracting authority is not in a position to define a solution and/or when multiple solutions may exist in the market place
- Involves the following stages:
 - Qualification stage
 - Dialogue stage(s) – can be multiple
 - Tender stage
 - Clarification / verification / negotiation
- Successive reduction of solutions can be applied after each dialogue
- Dialogue stages can be used to refine and hone solutions

Competitive Dialogue Procedure

- At least 3 should be invited to dialogue stage – subject to that number qualifying
- A descriptive document should be issued to all qualified parties outlining the problem to be solved; any conditions which are minimum requirements (if any); award criteria to be applied (at dialogue and tender stages – no amendment to criteria allowed)
- Successive reduction of solutions can be applied after each dialogue round
- Dialogues must protect the unique confidential solutions of participants
- Dialogue stages can be used to refine and hone solutions

Competitive Dialogue Procedure

- Only those identified with a viable solution are invited to tender.
- Tenders invited in competitive dialogue procedure are unique to each tenderer.
- Same award criteria are used during both the dialogue stages and tender stage

Summary of Competitive Dialogue Procedure

- Excellent procedure for fairly evaluating different solutions to solve a problem
- Takes a bit more time, but is suitable for facilitating innovation and identification of solutions to enable a transparent procurement procedure when the public body knows the problem, but not how to solve it

Innovation Partnership

Recital 49

Where a need for the development of an innovative product or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be met by solutions already available on the market, contracting authorities should have access to a specific procurement procedure in respect of contracts falling within the scope of this Directive. This specific procedure should allow contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided that such innovative product or service or innovative works can be delivered to agreed performance levels and costs, without the need for a separate procurement procedure for the purchase.

Innovation Partnership

- Article 31.2
- *The innovation partnership shall aim at the development of an **innovative product, service or works** and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities and the participants.*
- Solutions under the Innovation Partnership **cannot** be delivered via existing solutions

Innovation Partnership

- Involves multiple stages as follows:
 - Qualification – using a qualification questionnaire;
 - Issuing documentation setting targets and payments and operation of successive phases including reviews and decisions after each phase and include Award Criteria;
 - May start with all parties being invited to undertake a feasibility study / present a plan which would be assessed against the award criteria;
 - You may need to get some ideas of costs / timelines at an early stage;
 - Intermediate targets and payment in instalments are to be provided for, and the partnership may be terminated, or the number of partners reduced after each phase.

Innovation Partnership

- Follow-on phases with some or all parties would be on the basis of implementation against agreed targets, with agreement on fees for follow-on work;
- At each phase the Contracting Authority makes a decision on whether to end the partnership /“contract” and must provide reasons for elimination;
- Clarify / verify / negotiate at each round;
- Tender stage – inviting only those parties deemed to have a viable “solution” to tender on the basis of their solution with a view to entering into a formal agreement to purchase with one or more of them.

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Negotiation during Innovation Partnership

- The process allows for clarification and verification at all stages
- However negotiation may only happen at stages which occur prior to final tenders being received
- Minimum requirements and award criteria are not subject to negotiation
- *Unless otherwise provided for in this Article, contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof*

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Summary of Innovation Partnership

- The Innovation Partnership Procedure facilitates the establishment of a structured partnership with one or more partners which covers the research and development (R&D), prototyping/piloting and commercial acquisition phases
- Excellent to work with economic operators to solve problems in all aspects of public life

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Thank you

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