

# Competitive spirit

The competitive dialogue procedure will give contracting authorities more choice when procuring complex contracts. And it holds advantages for bidders too, says Andrew Finfer

**When planning a major project, the contracting authority must decide which public procurement procedure to use to acquire the necessary works, services or supplies. At present, contracting authorities have little choice when choosing which procedure to use, particularly if it is to be funded using the Private Finance Initiative.**

However, the introduction of the competitive dialogue procurement procedure in the Public Contract Regulations 2006, which are due to come into force in the UK by 31 January 2006, will give authorities a greater choice of procurement procedures.

## Complex contracts

A contracting authority may use the competitive dialogue procedure when it wants to procure a particularly complex contract and considers that the use of the open or restricted procurement procedures will not allow it to award the contract. A particularly complex contract is one where the contracting authority knows the desired outcome, but is either not able to define objectively the technical means of achieving it or is not able to specify the project's legal or financial make-up.

An authority that wants to use the open, restricted or negotiated procedure must also be able to specify what is needed to deliver the project; it must include a specification in the invitation to tender or negotiate. One example would be where an authority wished to carry out the regeneration of an area and wanted to provide the successful contractor with land for development in exchange for regeneration.

The authority knows that it wants to procure the regeneration, but is not able to specify what the regeneration will consist of in terms of changes to the built environment and the provision of facilities; nor is it able to specify the amount of land to provide in exchange.

Traditionally, if an authority is unable to specify the requirements for a particular project it employs a consultant to design the scope of the works, services and supplies needed to deliver the project.

This approach may have two disadvantages. First, the authority has no choice as to the design adopted unless it employs a number of consultants or conducts a design competition. Second, the authority may find (after it has paid the consultant for the design and specification of the project) that it cannot afford to procure the project. A well-managed competitive dialogue can avoid these pitfalls.

The competitive dialogue procedure allows a contracting authority to accrue the benefits of competition between contractors both in regard to the design of the project and the cost of the project.

Perhaps the single greatest advantage of a well-managed competitive dialogue procurement procedure is that the contracting authority will know before it issues the invitation to tender that the design of the project will meet its needs and that it can afford to deliver the project.

These advantages are secured by the bidders and the contracting authority discussing all aspects of the bidders' proposed solutions during the dialogue. Bidders also gain advantages from such an approach. Apart from the benefit of, in effect, drafting a specification that is advantageous to the bidder, the authority can ensure that bidders' participation costs are minimised.

A useful comparison may be drawn between the negotiated and the competitive dialogue procedures. An authority conducting post-tender negotiations with three bidders may require them to undertake work amending their bids. The effect of negotiations may be to waste some of the costs incurred by the bidder to produce their original bids.

## Check for suitability

In the competitive dialogue the authority can check initial proposals for suitability before the bidders incur additional costs by preparing them to be submitted in the invitation to tender. In this way bidders will not waste money producing proposals that do not meet the authority's needs or are unaffordable.

Experience gained in two competitive dialogue procedures to date suggests that the key to the successful procurement of a major project through the use of the competitive dialogue procedure is effective management.

A team capable of determining the needs and requirements of the contracting authority and managing the dialogue to produce a number of affordable solutions for the tender stage of the process will ensure a successful process.

The competitive dialogue procedure provides contracting authorities with the opportunity to procure affordable projects that meet their needs and requirements.

## Checklist

Using the competitive dialogue procedure

- Check that the contract to be procured is a complex contract
- Establish an effective procurement team
- Determine the contracting authorities needs and requirements
- Conduct the competitive dialogue to minimise bid costs and ensure competition in design and cost

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