

White Paper

# Making effective use of the Competitive Dialogue process to select a preferred bidder

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## Contents

Evaluating Competitive Dialogue	2
When should you use Competitive Dialogue?	2
Description of the process	3
Divergent solutions	3
Cost of bidding/dialogue	4
Reassurance of good pre-qualification	4
Strong competition	4
Don't expect everything for nothing	4
Protect intellectual property	5
Multiple phase down-selection	5
Ensuring 'Safe Dialogue'	6
Ensuring equal and fair feedback	6
AWARD® does more than evaluation	7
Getting the criteria right	7
About Peter Marshall	8
About Mike Ross	8
About Commerce Decisions	9
About QinetiQ	9

## Evaluating Competitive Dialogue

Competitive Dialogue (alternatively named Interactive Tendering, Dialogue RFP or Negotiated Competitive Procurement) procedures are intended to give public authorities the opportunity to overcome the challenges of uncertainty in the procurement process by allowing them to talk to bidders throughout. But is it an opportunity to be creative, more flexible and efficient – or an excuse to be vague?

Drawing on Commerce Decisions' pioneering experience of working with these procedures, we look at some of the issues with their use, and how in combination with a disciplined approach to evaluation they can provide a powerful tool in achieving value for money.

## When should Competitive Dialogue be used?

Probably the most effective way to describe when to use Competitive Dialogue is to contrast it with a traditional Request for Proposal (RFP) or Invitation to Tender (ITT) procedure.

- Traditional procedure. There is often a pre-qualification process, and only short-listed candidates are invited to submit a proposal.
- Competitive dialogue procedure. There is a pre-qualification process. Short-listed candidates are invited to take part in a dialogue process during which the nature of the project may be discussed and possible solutions may be developed. When the dialogue process is complete, final tenders or best and final offers are invited.

The selection process under a traditional procedure typically leads to an evaluation of each tenderer's solution and capabilities, followed by the preferred bidder being asked to sign the Authority's contract. Invariably, the contract is pre-prepared in a standard format, and issued along with the Invitation to Tender.

The important difference with Competitive Dialogue is that all the bidders could potentially offer completely different solutions – meaning that a single, pre-prepared contract is unlikely to be suitable.

The dialogue part of Competitive Dialogue is about working with bidders to get them to the stage that they can present a solution that meets the needs of the Authority and propose or respond to a contract with a firm pricing proposal. This means that they will need to enter into a two-way conversation with the Authority to allow them to test their solution for feasibility, test assumptions, understand the required standards and constraints, and make a full analysis of the risks.

## Description of the process

The process begins with the publication of the needs of the Authority, along with the evaluation criteria. Very importantly, we advocate that these are comprehensively articulated before the publication of the opportunity notice or invitation documents. The Authority then uses a qualification process to decide which companies it wishes to take forward into the Competitive Dialogue. It is often sensible to make provision for a second, interim down-selection process that will focus the dialogue on the best contenders for the final tender evaluation.

Over a period of time – usually a number of months – the Authority enters into a series of recorded dialogues with the contenders to help them refine their understanding and solutions, understand the risks and constraints, and put together a form of contract.

On a pre-arranged date, the final evaluation is carried out against a set of criteria designed to measure the 'economic advantage' of each offer; these criteria normally address the quality and deliverability of the proposed solutions and the cost to the Authority of adopting each of them. It is normally considered good practice to evaluate the cost to the Authority, rather than the price charged by the Bidder.

Often different solutions will have dramatically different financial implications, regardless of the charges each bidder chooses to make. Again, the basis on which the cost comparisons will be conducted should be fully understood and declared at the outset.

Once a preferred supplier has been chosen, there should be no changes to the proposed solution or agreed contract that would alter the basic proposition on which the supplier was selected. To do otherwise would jeopardise the integrity of the competition and raise the risk of delays and costs associated with legal challenge.

## Divergent solutions

The first of the issues to be addressed is the common misperception that, because solutions diverge, requirements have to change over the dialogue period. If this were the case, there would be a need to create a separate evaluation regime for each of the contenders. This would, of course, contravene all principles of fairness and create a wide swathe of problems.

Competitive Dialogue was intended for situations where the Authority is not in a position to define the technical means by which their needs can be satisfied. It is acceptable not to know what solution is needed, but the Authority must be very clear about the problem they want solved.

Therefore, the statements of needs (as related to the fundamental requirement) and the criteria by which solutions will be assessed are firmly fixed before the competition is started. It is clear, however, that the means of meeting the Authority's needs, along with the financial and legal arrangement with which they are packaged, may become very different for each bidder. It is therefore vitally important that the evaluation criteria relate to the achievement of the underlying needs of the Authority, rather than the means by which these needs will be met by the technical solutions.

The criteria should be open and flexible enough to allow any potential solution to the underlying needs to be assessed on a fair and equal basis. Hence, the criteria need to be developed and declared at the start of the process and remain unchanged throughout.

## Cost of bidding/dialogue

Recent history is well populated with stories of complex projects that could not attract bidders. Normal business concerns, such as risk and the prospect of repeat business, are insignificant when industry considers the cost of bidding large projects using Competitive Dialogue.

The problem is quite straightforward: the Public Sector wants a solution to their problems; sometimes they also expect complex financing deals or innovative ways to offset risk and stretch shrinking budgets. Very often, the amount of work involved in finding, testing, proving and financing a solution is a large fraction of what should be the overall final bill. To make matters worse, there is every chance that the innovative solution they invent gets out 'into the wild' and ends up being presented as another bidder's work. There are a number of ways to overcome these fears – and most of them will be the first things industry looks at when deciding whether or not they should bid.

## Reassurance of good pre-qualification

The cost of bidding is considerable. It is important that the Authority reassures bidders that they will only proceed through dialogue with viable initial proposals. Bidders will be concerned that they could be kept in the competition just to keep the front-runner on their toes or to make up the numbers.

At pre-qualification, a set of sharp, focused questions that clearly relate to the ability of the bidder to be an acceptable contractor and compete effectively will assure them that they have been invited to participate in dialogue based on their merit, rather than some arbitrary reason that suits the 'political' needs of the Authority.

## Strong competition

Evaluation criteria that are carefully chosen, weighted and published beforehand will be welcomed by all bidders as well as providing benefits to the Authority. They add clarity to the evaluation process and provide encouragement to the stronger bidders – who can see that they are well placed to meet the needs of the Authority – to invest more in engaging in the Competitive Dialogue process in order to compete most effectively.

Conversely, bidders who are more poorly placed to meet the needs of the Authority will be discouraged from competing and will either withdraw or seek to minimise their costs. The net effect for the Authority is stronger competition between well-placed bidders and a reduction in the effort needed to weed out the weak bidders.

## Don't expect everything for nothing

Most Competitive Dialogue selection processes involve some element of design, invention or problem solving. For the bidders, this work will be their stock-in-trade and may be something that they are often paid for doing. Not only could the Authority be asking them to do work for free in advance of getting contract – they might only have a small chance of getting the contract in the end. No business grows by doing work for nothing: if there is paid work out there to pitch for, then this is where their effort is going to go.

Public procurement regulations can provide for bidders to be paid for the work they do, usually when the competition has been reduced to three or more contenders following pre-qualification. However, before public funds are spent on such a venture, it is sensible at least to ascertain that the company being paid is capable of entering into a contract such as that being competed – and that their solution has a likelihood of meeting the Authority's needs.

## Protect intellectual property

At the start of this section, we looked at the implications of bidders pitching in with different solutions and in particular how the evaluation should focus on how closely their solution meets the needs of the Authority. In such cases, it is usual to give bidders an assurance of confidentiality at the outset, as their ideas become their assets in the competition, forming the basis of a solution that best meets the needs of the Authority and win the contract.

An alternative approach is to use the dialogue as a mechanism for industry to participate in the process whereby the Authority develops a solution that will meet their needs, after which all contenders pitch for the contract to provide that chosen solution. We call this the 'converged solution' approach. The only reward industry gets from the 'solutions search' phase is the privileged chance of winning the contract in the end. There is little incentive for industry to think of newer, better or cheaper ways of solving the Authority's problems, as the fruits of their innovation immediately become available to their competitors – and could be used against them.

If considering this approach, it is vital that the interests of industry are considered in the design of the process – and that the competitive dynamics that drive value-for-money are allowed to operate.

## Multiple phase down-selections

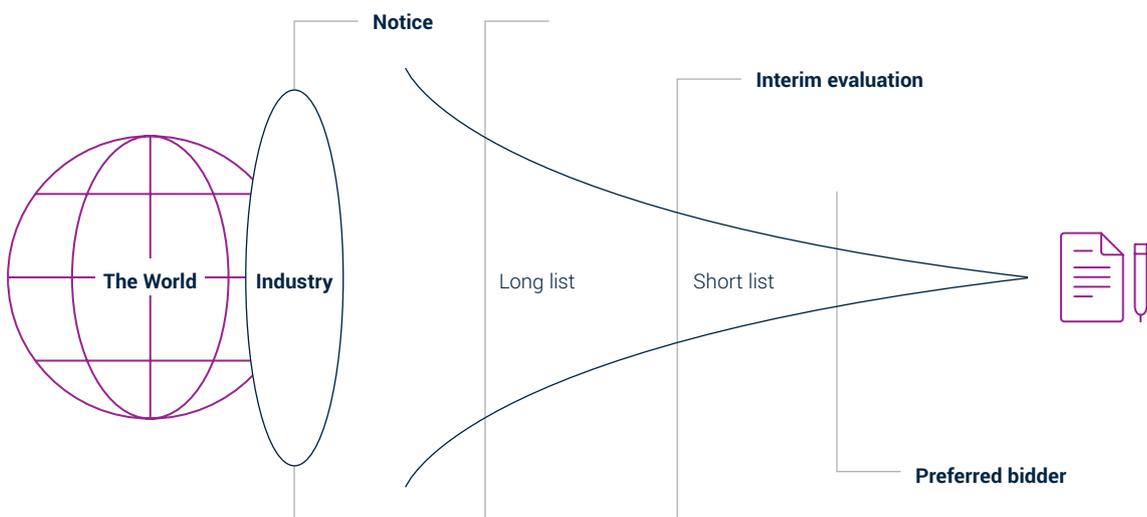
Competitive Dialogue is invariably expensive for industry. It can also be expensive for the Authority, tapping internal resources and diverting energy from other tasks that need to be carried out to meet programme objectives.

Rather than take all bidders through to the final tender evaluation, it is often wise to consider an interim evaluation to reduce the field to the specified minimum of three. The question is; how to carry out a fair, open and honest evaluation on interim solutions without inviting challenge?

In the Qualification stage, the Authority will have eliminated companies with whom they could not possibly consider entering into contract, or whom they considered unlikely to be capable of competing effectively. The final tender will definitively select the solution that most closely meets the needs of the Authority. So what can possibly be evaluated in the interim that will allow the Authority to knock bidders out of the competition? The answer could be to allow the bidders to do it themselves.

In the next section, we describe the unique facility that Commerce Decisions and AWARD offer to address all these issues.

**Figure 1. Multiple phase-down selection**



## Ensuring 'Safe Dialogue'

All dealings with bidders during dialogue must be fair and equal. The traditional means of doing this is to conduct tightly controlled meetings. These meetings need to be carefully managed and minuted, which will, with the best will in the world, result in stilted conversation. They are also open to the charge that some bidders have been treated preferentially or have been given additional useful information. As dialogue progresses, it is vital that information passing both ways is recorded and that an audit trail of all communications is provided.

Most information from bidders will be confidential, but if they ask questions, the Authority must consider carefully whether the answer should be passed back only to them, or broadcast to all bidders. Questions from bidders will be of benefit to the Authority, as they will give greater insight into what they consider important in compiling their responses. Documents issued or updated in the course of the dialogue must be made uniformly available to all bidders and an assurance mechanism put in place to ensure that they all gain access simultaneously when new documents are issued.

A common comment from bidders during prolonged procurement processes is that they dislike working in an information vacuum. Indeed, lack of feedback about the quality of their response is believed to be a major factor in bidders withdrawing from contests before the submission date.

Bidders investing relatively large amounts of time and money in preparing a proposal will be on the constant lookout for clues about how their bid is likely to fare in the final evaluation. All these factors contribute to Competitive Dialogue being regarded as a high risk, expensive and time consuming way of carrying out procurement. In fact, it can be a very effective, efficient and fair way to get to contract award. An alternative to bidders' meetings, ad hoc information exchange and complicated document control is to use AWARD as the main environment within which the dialogue will take place. With the right process, discipline and tools, Competitive Dialogue can be straightforward.

## Ensuring equal and fair feedback

The traditional method of ensuring equal and fair treatment of bidders during Competitive Dialogue is to ensure equality of process as applied to each bidder – each bidder having the same number of meetings, the same contact time with the Authority, the same time between set points of the process, the same time to respond to requests from the Authority, etc.

Applying consistent process is clearly an important part of ensuring fair play, but this does not guarantee that each bidder has been provided with the same level or quality of information they need to optimise their solution so that it best meets the needs of the Authority. However, an approach to ensuring even-handedness in the quality information provided to bidders is close to hand.

We have already emphasised the importance of the beginning of the process by articulating evaluation criteria that measure the degree to which each solution will meet the underlying needs of the Authority. The criteria can – and have to be – equally applicable to all bidders regardless of the nature of their solutions to the Authority's needs. These evaluation criteria can now be used as the basis for providing feedback to bidders during the dialogue.

By conducting the Competitive Dialogue as an incremental evaluation of the evolving solutions, the Authority is able to provide objective feedback to all bidders – helping them optimise their solutions – and helping to ensure uniformity in the quality of the information provided. This approach ensures that the effort expended during the dialogue is firmly focused on those factors that contribute to the satisfaction of the Authority's needs.

Incremental evaluation during the dialogue has to be carefully considered and planned from a practical perspective; ensuring it can be conducted with an acceptable level of resource and within appropriate timescales is clearly important. It is easy to dismiss incremental evaluation as impractical during dialogue given the commonly held misconception that evaluation takes months and is conducted against a large (and detailed) criteria set.

However, one useful implication of having aligned the criteria with the fundamental needs of the Authority is that the criteria are inherently abstract, high level and fewer in number. With careful planning and suitable technology, it is possible to conduct incremental evaluations with increasing degrees of robustness as bidders evolve and firm up their solutions.

## AWARD® does more than evaluation

AWARD® is a software solution that enables groups of people to collaborate in negotiation and decision-making processes. Accessed via a standard web-browser over the internet, on a corporate/restricted network or installed on a secure local network (offline), the system is highly robust and secure.

AWARD® has been accredited by a number of Government and Defence departments globally to support strategic procurement projects.

AWARD® enables people in different organisations and at different locations to interact in a manner that is structured, controlled and fully auditable. As such, AWARD® provides the perfect environment in which to manage and control the distribution of information during all phases of the dialogue process. It provides a mechanism by which geographically dispersed stakeholders can participate efficiently in the dialogue process while establishing and maintaining a robust audit trail throughout.

AWARD® allows bidders to communicate securely, upload documents, and inspect libraries of documents controlled by the Authority. For the Authority, AWARD® fully manages the evaluation of bids (be it qualification, incremental evaluation of evolving bids or evaluation of final proposals) and provides highly robust, transparent and defensible audit, reporting and debriefing capabilities.

## Getting the criteria right

Developing robust criteria and scoring guidance that reflect the strategy of the evaluation, the risk associated with the satisfaction of the requirements for the solution and the wider needs of the stakeholders is a time consuming task. It is also one that is critical to achieving a transparent, objective and flexible Competitive Dialogue process.

Commerce Decisions' Structured Criteria Development (SCD) methodology enables the creation of robust, fit for purpose, defensible criteria for use on procurement projects of any size, complexity and procurement approach. SCD is primarily focused on engaging key project stakeholders to support the definition of goals, the analysis of dependencies and the identification of assurance criteria. This establishes "what success looks like" and builds an assessment scheme focussed on the outcome sought. This is critical to ensuring an effective competitive dialogue process and allows evaluation of divergent solutions to be undertaken on a fair and equal basis.

The use of the SCD methodology has been proven to substantially reduce the risk of legal challenge and minimise the risk of failure to deliver the required project outcomes. For further detail regarding SCD, please see the dedicated white papers on this topic.

Commerce Decisions has a dedicated team of experienced consultants who have worked on some of the most important and high-profile competitive dialogue procurement projects globally. We have the people who know how to support the acquisition of a sustainable, innovative and globally competitive solution.

## About Peter Marshall

Peter Marshall is Professional Services Director, responsible for managing Commerce Decisions' consultancy and training services and assisting Commerce Decisions' clients to deploy best-practice processes and technology on their procurement projects. Peter has a wealth of experience developed over many years supporting requirements analysis and procurement process design.

He is a founder of Commerce Decisions and spearheaded the formulation of the Commerce Decisions' proprietary Structured Criteria Development decision-making methodology. Peter's expertise includes procurement strategy, RFX development, requirements management, planning and executing evaluations, negotiation and contractor de-briefing.

## About Mike Ross

Mike Ross is an experienced principal consultant and requirements analyst with over 25 years of IT-based consultancy experience. He joined Commerce Decisions in 2007, having worked previously as a freelance consultant with major consultancy firms such as PWC, IBM and directly for the Ministry of Defence.

With Commerce Decisions, Mike has had extensive experience in the deployment of AWARD® and the creation and implementation of a wide variety of assessment schemes. He has extensive experience of delivering Competitive Dialogue process advice and support. Mike is an expert practitioner of the Commerce Decisions' proprietary Structured Criteria Development decision-making methodology and leads the delivery of professional services in international markets.

## About Commerce Decisions

Commerce Decisions has been supporting strategic, high-risk procurements globally since 2001, and is at the forefront of best practice procurement. With a unique focus on complex evaluation, we have unrivalled experience in supplier evaluation and are a trusted provider of procurement services to the public and private sectors.

We deliver a robust and defensible procurement process to our clients, proven time and time again across many sectors including construction, transport, education, health, defence and facilities management procurements – to date, we have supported over 13,000 strategic projects, collectively worth over \$400billion. This enviable experience and in-depth knowledge has enabled us to develop proven methodologies, supporting clients to deliver the best possible outcome on strategic and complex procurement projects.

Headquartered in Oxfordshire, UK, and with offices in Canberra, Australia, and Ottawa, Canada, Commerce Decisions provides software and services to support the procurement and post contract review processes for both buyers and suppliers. For buyers we improve the efficiency and effectiveness of the evaluation process to make the best buying decision based on all the relevant criteria, underpinned by our AWARD® software. For bidders we improve the quality and timeliness of proposals to best meet the needs of the potential buyer and thereby give them the best chance of securing the contract, underpinned by our ADVANCE™ software.

## About QinetiQ

QinetiQ is a leading international provider of technology-based services and solutions to the defence, security and related markets. We develop and deliver services and solutions for government organisations, predominantly in the UK and US, including defence departments, intelligence services and security agencies.

In addition, we provide technology insertion and consultancy services to commercial and industrial customers around the world.

