

EU Procurement Procedures

Definitions OF EU Procurement Procedures

There are currently 4 different award procedures available under the Public Sector Directive/Regulations for this type of initiative. These are open, restricted, competitive dialogue, competitive procedure with negotiation

1. Open
2. Restricted procedure
3. Competitive Dialogue
4. Competitive Procedure with Negotiation

1. Open procedure

The Open procedure is a one-stage procurement process which covers exclusion grounds, selection criteria and award criteria. An Open procedure means that any organisation can respond to the advertised Contract Notice, request/download the procurement documents and submit a tender. All tenders must be evaluated in line with the methodology and criteria set out in the procurement documents.

Use of the Open procedure

The Open procedure is best used where:

- The requirements are **typically straightforward**, with a relatively simple Selection and Award process; and
- It is anticipated that only a small number of organisations will respond to the advertised Contract Notice.

Advantages of the Open procedure
Increased competition due to the potentially high volume of responses
Organisations of all sizes have the opportunity to submit a tender, increasing the opportunity for a number of innovative proposals/solutions
Advantageous for simple and straightforward requirements (e.g. stationery)
Providing full tender documentation (at the outset) enables candidates to make an informed decision as to whether they can satisfy the requirements, or choose to discount themselves from the competition
Overall timescale reduced (no pre-qualification stage)

Disadvantages of the Open procedure
Resource implications of a potentially lengthy tender evaluation (due to a high volume of responses)
Increases the risk of challenge (more responses and time invested/transaction costs in preparing a tender as opposed to a Selection Questionnaire)
Poor quality bids (due to the fact there is an increased chance of being unsuccessful and a limited timescale)
No opportunity to discuss / refine bids

2. Restricted procedure

The Restricted procedure is a two-stage process:

- Stage One (Selection) - Suppliers are alerted to express an interest to a contract opportunity by obtaining and submitting a Selection Questionnaire (SQ); this will be used to establish their capability, experience and suitability etc. The purpose of the SQ is to select a shortlist of 5 (or more) suppliers which are likely to meet the tender requirements.
- Stage Two (Award) - Shortlisted suppliers which meet the selection criteria are then invited to tender. All tenders are evaluated in line with the methodology and award criteria set out in the tender documentation.

Use of the Restricted procedure

The Restricted procedure is best used where:

- It is anticipated that a large number of suppliers will respond to the advertised Contract Notice; or
- The requirements are typically complex, with a relatively detailed Selection and Award evaluation process.

Advantages of the Restricted procedure
Restricts the number of organisations invited to tender (making the tender evaluation more manageable)
Enables a detailed Selection assessment (i.e. Stage one of the procedure)
Helps improve the quality of bids (due to the fact there is an increased chance of a bidder being successful and the contracting authority has selected their shortlist of "pre-qualified" suppliers)

Disadvantages of the Restricted procedure
Speculative SQ's being submitted due to the fact that the full tender documentation may be unavailable at the Selection stage
Increased timescales
Added resource cost and potentially unnecessary burden for suppliers (making the contract opportunity appear unattractive to some)
No opportunity to discuss / refine bids

3. Competitive Dialogue procedure

Competitive Dialogue is a multi-stage process.

Typically, expressions of interest will be shortlisted at the pre-qualification stage and participants invited to initial dialogue sessions. The OJEU process will be conducted in successive stages, with the option of reducing the number of bidders at each stage accordingly. Following closure of dialogue, final tenders will be invited and a preferred bidder identified.

During the OJEU process, the council will be open to innovation and current market initiatives as bids are refined.

Use of the Competitive Dialogue procedure

The Competitive Dialogue procedure is best used where:

The requirement is complex or not fully definable.

Advantages of the Competitive Dialogue procedure
Restricts the number of organisations invited to tender (making the tender evaluation more manageable)
Allows for more market innovation
Enables a best fit solution to be developed through detailed dialogue

Disadvantages of the Competitive Dialogue procedure
Increased timescales
Added resource cost and potentially high burden for both suppliers (making the contract opportunity appear unattractive to some) and Council
Use of process has to be justified

4. Competitive Procedure with Negotiation

Similar to Competitive Dialogue however:

The competitive with negotiation procedure allows the contracting authority flexibility around whether to negotiate - it is possible to reserve the right (by stating this in the OJEU advertisement) not to negotiate and to simply award the contract based on initial tenders submitted.

This reservation is not possible in the competitive dialogue procedure.

That said, the competitive dialogue procedure contains more flexibility around negotiation with the winning bidder (provided this does not modify the essential aspects of the contract or procurement or amount to a distortion of competition). It is not possible to negotiate following submission of final tenders if you are using the competitive with negotiation process.

Advantages of the Competitive Procedure with Negotiation
Can cut straight to award if negotiation is not required following initial bids

Disadvantages of the Competitive Procedure
Can't negotiate detailed final terms with winning bidder once selected