

**ENHANCING THE INTERACTION BETWEEN
CONTRACTING AUTHORITIES AND BIDDERS
CONCERNING THE APPLICATION OF THE COMPETITIVE
DIALOGUE IN THE NETHERLANDS**

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INTRODUCTION

Bidders as well as contracting authorities see the competitive dialogue as a procedure with much potential, but the application of the competitive dialogue can be more effective en more efficient. Therefore the competitive dialogue should be used more often by contracting authorities and bidders would like to have more influence on the design of the procurement procedure. The research indicates that the competitive dialogue is an ambivalent procedure: both parties involved in the procedure balance between the wish to cooperate and the sensed need of keeping information to themselves because of competition. Further research is needed to find out how the two principles of cooperation and competition during the competitive dialogue procedure are related and how that influences the interaction and design of the procedure.

These are the main conclusions of the empirical research of interaction between contracting authorities and bidders which is the first project surpassing research concerning the application of the competitive dialogue in the Netherlands. Based on a theoretical framework the research investigates the lessons-learned of this relatively new procurement procedure. Almost all contracting authorities and

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candidates, who are involved in the application of the competitive dialogue in the Dutch construction sector, have been approached to cooperate in a survey. Although the limited empirical data (response 43,8% of the contracting authorities; 63,9% of the candidates, together covering 15 of the 16 projects), this research provided useful information to improve the application of the competitive dialogue in the Netherlands. The results of the survey give an impression of how clients and contractors experience interaction by the competitive dialogue in reality. This impression of reality, following out of the survey has been discussed during a workshop with candidates, clients and knowledge institutions. In this research recommendations are formulated that could tribute to a better application of the competitive dialogue. This summary contains a situation outline including possible solutions. The complete research report contains (see references, only available in Dutch) more possible solutions and recommendations which will be presented on the IPPC 2008.

THE COMPETITIVE DIALOGUE SHOULD AND COULD BE USED MORE OFTEN

The purpose of the competitive dialogue is to enable the public authority to identify and define the means best suited to meeting its objectives in an intervening stage between the tender announcement and the submission of final tenders. Main regulations about the set-up of the dialogue procedure are given, but authorities are free to design the details of the dialogue themselves. Because contracting authorities as well as candidates are in need to find a match between supply and demand both parties reckon the competitive dialogue as a procurement procedure with great potential. Especially within complex projects. The competitive dialogue is a procedure that corresponds to this need.

The application of the competitive dialogue leads according the survey to solutions that better matches the demand of the contracting authorities (100% of the contracting authorities and 84% of the bidders). Also is stated that the application of the competitive dialogue leads to a better Value for Money ratio according 100% of the contracting authorities and 66% of the bidders.

However, one of the bottlenecks of the competitive dialogue is that it can only be used if the project is “particularly complex” according to the European Directive. But the legal criteria are ambiguous and

jurisprudence is not available. This retains the use of the competitive dialogue in the Netherland especially when compared to the usage in the United Kingdom. The number of projects where the competitive dialogue had been used is very limited while there is a strong need for a higher project deal flow. On the one hand because of the possibilities the competitive dialogue offers, on the other hand because of the higher deal flow which is needed to create an organisation around the competitive dialogue to retain people and knowledge.

Critical Success Factors in Competitive Dialogue

The application of the competitive dialogue requires a new way of working. The dialogue between contracting authorities and candidates preceding the procurement is emphasized in the competitive dialogue. The behaviour of the persons involved in the procurement of the competitive dialogue is even more a critical success factor in comparison to other procurement procedures due to the intense interaction. Trust, mutual respect, open communication, common responsibility, the necessary flexibility and off coarse communicative competencies are needed to produce a good match. The behaviour of one party can not been seen apart from the behaviour of other parties. Action results in reaction and so a defensive stand from one party can result in a defensive stand of others. Therefore risk avoiding behaviour conflicts with the competitive dialogue. Both parties have to put effort in the process and show courage to make the process effective and efficient. Eventually both parties will take the advantages of this. Interaction contributes to the aspiration to maximize quality and minimize costs.

Improve Demand Specifications

The new way of working is being expressed, amongst other things, in the demand specification which in practice contains to many detailed requirements. The contracting authority should aspire to a *lean demand specification* and the candidates should *minimize the elaboration*. A large majority of the bidders declares to elaborate more than is being asked. This is influenced by the emphasis on the “lowest” prise and the risk distribution.

One must aspire to a functional (solution free) demand specification. To make use of market creativity more effectively the pickets of the demand specification shouldn't be too close together. The possibilities for the contracting authority to adjust the demand specification with the

bidders after the interaction should also be investigated. For this, a market consultation could be used. One could also think of a pre dialogue. The contracting authority could consult the market by launching a very wide demand specification and afterward filling in the gaps with the (selected) candidates. The official procurement procedure could start after finalizing the demand specification.

More Influence during the Procurement Procedure

Another important conclusion of this research is that bidders would like to have more influence during the procurement procedure. Not merely regarding the demand specification but also concerning the structure of the dialogue e.g. the number of dialogues, the agenda on the products which must be sent in. These aspects are closely related to the transaction costs which both parties would like to repress. The dialogue should be reduced to the essence. The headlines should be discussed, not the details. The runtime and number of dialogues and products should be minimized and one should aspire to minimal elaboration before procurement. This is a task for both the contracting authority and the bidders.

SOME CLOSER LOOKS ON THE RESULTS OF THE SURVEY

The number and level of detail during the dialogue conversations; the way how price and quality criteria are related during the evaluation; and the abstractness of specification are the most important aspects influencing the quality of the solutions offered by the candidates. The choices contracting authorities make when designing the competitive dialogue procedure seem directly or indirectly (via those three major aspects) to affect the quality of the solutions offered.

Number of Dialogue Conversations

With regard to the number of dialogue stages and conversations, the survey results point out that the number of dialogue conversations overall is regarded as good. In the situation where the contracting authority decided to offer maximum opportunities to conduct dialogue to the candidates, several candidates stated that the number of dialogue conversations was too large, leading to too many detailed questions. Although candidates in this particular situation were not obliged to take part in each conversation, the survey shows that candidates will not pass easily. Candidates then used the last conversations to fine-tune and

polish the draft versions of the dialogue products and preliminary tenders. Part of the candidates (36%) and contracting authorities (57%) think that less dialogue conversations would have led to comparable results. This statement is supported better by candidates taking part in projects with a large number of dialogue conversations than by candidates taking part in projects with a smaller number of conversations ($p=0,0004$). It is therefore not surprising that a major part of the candidates (97%) has the opinion that the number of dialogue conversations should be determined after discussion with them. The majority of contracting authorities (71%) shares this opinion (Table 1).

TABLE 1
Characteristics of the First 16 Dutch the Competitive Dialogue Projects

	Contract type	Estimated sum (€million)	# conversations	# candidates per dialogue stage
A. Tunnel	DBFM	1300	19	5-3-3
B. Traffic junction, several transport functions	Alliance	130	8	5-3
C. Traffic junction, unlocking of a city	DBM	639	?	5-5-3-3
D. Broadening of a highway with aqueducts.	D&C	700	5	5-5-5-5-5
E. Tax office	DBFMO (15 years)	27	11	5-3-3
F. Detention centre	DBFMO (25 years)	89,5	9	3-3-3
G. Broadening of a connecting road and parallel railroad	D&C	195	3	5-5-5
H. Large-scale maintenance on infrastructure objects (6x)	D&C	13,8 - 62,4	3 to 4	5-5-5
I. Military base	DBFMO (25 years)	250	?	5-3-3
J. Office towers	DBFMO (20 years)	183	?	5-3
K. Sluice renovation	D&C + M (10 - 15 years)	60	?	?-4

Level of Detail of the Dialogue Conversations

The survey goes deeply into the contents of the dialogue. According to the majority of candidates and contracting authorities, the level of detail of the dialogue conversations should be not too high. The survey reveals though, that a large group of projects conducted detailed conversations regularly. This could stem from the fact that candidates specify more than directly is asked by the contracting authority. 72% of the candidates confirm to do so. The majority of candidate respondents (61%) thinks that candidates should get more influence on the contents of the dialogue. Although part of the contracting authorities (43%) shares this view, the larger part disagrees. This is not surprising, since 71% of the contracting authorities think that the dialogue in their specific project would not have gained in usefulness when candidates had had more influence on the contents, against 37% of the candidates. 66% of the candidates share the opinion that too many dialogue products were asked. A little more than half of the contracting authorities (57%) share this view. Analysis of the answers to the open questions shows that candidates have this opinion because the contracting authorities ask many details, too many related to how the final tender was evaluated. Remarks were made like “In this manner, the contracting authority makes sure that all tenders are of high quality. Thus, price will be the most important aspect at the end”. Contracting authorities confirm this: “Now I see what we did with certain dialogue products, I think we would not have asked for them”.

Minimize the Elaboration

The survey did not contain any questions regarding the number of candidates per dialogue stage or regarding short-listing. Answers to the open questions “What changes should be made for better application of the competitive dialogue procedure in the future?” and “How should contracting authorities and candidates cooperate?” touch upon this subject though. Some candidates state that they would intensify the procurement by short-listing from 5 to 3 candidates after the first dialogue stage. Others just point out that competition between 3 candidates should be enough. One contracting authority states that one should keep the dialogue as simple as possible, with a limited number of candidates. These remarks seem to stem from the high transaction costs rather than from the end product point of view.

CONCLUDING REMARKS

Contracting authorities as well as candidates are in need to find better ways to match between supply and demand in complex projects. Trust, mutual respect, open communication, common responsibility, the necessary flexibility and off course communicative competencies are needed to produce a good match. The results of the survey give an impression of how clients and contractors experience interaction by competitive dialogue in reality and how the application of the competitive dialogue can be more effective en more efficient. The application of the competitive dialogue leads according the survey to solutions that better matches the demand of the contracting authorities (100% of the contracting authorities and 84% of the bidders). Also is stated that the application of the competitive dialogue leads to a beter value for Money ratio according 100% of the contracting authorities and 66% of the bidders.

Both parties reckon the competitive dialogue is a procedure with great potential, but the striving of both client and contractors after diminishing uncertainties, makes that it is not used optimally. The level of detail during the dialogue conversations; the way how price and quality criteria are related during the evaluation; and the abstractness of specification are the most important aspects influencing the quality of the solutions offered by the candidates. The choices contracting authorities make when designing the competitive dialogue procedure seem directly or indirectly (via those three major aspects) to affect the quality of the solutions offered. This and other risk avoiding behaviour make that the competitive dialogue procedure is not used in an optimal manner. Next to that, the legal criteria for "particular complexity" are ambiguous, restricting the use of the competitive dialogue in the Netherlands. Jurisprudence is not available, which limits the actions of parties involved in the competitive dialogue procedure.

FURTHER RESEARCH

The research indicates that the competitive dialogue is an ambivalent procedure: both parties involved in the procedure balance between the wish to cooperate and the sensed need of keeping information to themselves because of competition. On the one hand, the intensive dialogue is used to get close to one another, but at the other hand, the

competition with a minimum of two other contractors is a barrier to openness and trust. Further research is needed to find out how the two principles of cooperation and competition during the competitive dialogue procedure are related and how that influences the interaction and design of the procedure.

ACKNOWLEDGEMENT

We would like to thank PSIBouw and the involved steering committee.¹ Thanks are due to Mieke Hoezen, André Doree, Hans Boes and Hans Voordijk for their work on the survey. Many thanks as well to the respondents to the survey and the experts involved in the brainstorm sessions and interviews.

NOTES

This research is part of a larger research project of PSIBouw “O206 Application of integrated forms of contract:”. The objective of this project is to develop knowledge about the application of integrated forms of contract so as to enhance the competences of organizations that make use of DCGC. See <http://www.psibouw.nl> → English → Projects → O206.

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