

# UNICE

**The European Conference on Public Procurement**

**29<sup>th</sup> September – 1<sup>st</sup> October 2004 – Oslo**

**Workshop I:**

**"Competitive Dialogue"**

**Powerful purchasing procedures for complex contracts**

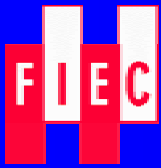
**RA Ulrich Paetzold**

**Director General**

**FIEC**

**European Construction Industry Federation**





created in 1905

27 countries  
34 federations

enterprises of  
- all sizes  
- all kinds of  
building and  
civil engineering  
activities

 Full Member

 Observer

 Co-operation Agreement



# **Competitive Dialogue (pre-directive)**

---

- **FIEC opposed to initial proposal:**
- **no "cherry picking"**
- **no "ideas stealing"**
  
- **adequate that not in the adopted directive**

# Competitive Dialogue (pre-directive)

- doubts whether procedure necessary
- negotiated procedure sufficient?
- **negotiated proc. not adequate**  
(influence of increasing PPP)

# Competitive Dialogue (pre-directive)

- initially, Commission:  
"construction contracts not complex"
- erroneous perception!
- **now first of the examples**

# Competitive Dialogue (Art. 29, Dir 2004/18)

---

- (1) Consider "particularly complex contract"**
  - (2) Publish a contract notice**
  - (3) Select candidates, open dialogue**
  - (4) Reduce number of solutions discussed**
  - (5) Dialogue until identification of solution possible**
  - (6) Declare dialogue concluded, ask for final tenders, clarification, specification, fine-tuning, addit. info.**
  - (7) Assess tenders, EMAT ("preferred bidder")  
ask for clarification, confirmation of commitments**
- **Award decision and award of contract**

# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

- **general view: procedure has merits**
- **in particular for PPP schemes**
  
- **but is it flexible enough for achieving "best value"?**

# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

- **text raises a number of questions and some concerns**
- **due to lack of practical experience?**
- **discussions and clarification necessary**



# Competitive Dialogue (Art. 29, Dir 2004/18)

---

(1) definition of "particularly complex":

- client objectively (=although not his fault)
- not able to define technical means and/or
- specify legal and/or financial make-up
  
- possible to fulfil conditions?

# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

**(1) principle of EMAT is positive**

- **list of criteria (Art. 53.1.a)**
- **environmental criteria in practice?**
- **production process? (Ann. VI)**
- **additional criteria? ("for example")**

# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

## **(3) confidentiality in the dialogue stage**

- **in addition to general principle (Art. 6)**
- **how to ensure in practice?**
- **different staff for each candidate?**
- **advantage for last dialogue?**

# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

**(3) not reveal information to others**

- **without the candidate's agreement**

- **concern that refusal might ,  
in practice, lead to exclusion**

# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

**(4) reduce number of solutions to be discussed at the dialogue stage**

- **by applying the award criteria**
- **in principle positive (cost aspect)**
- **transparency essential (equality)**

# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

**(5) dialogue until solution(s) identifiable**

- **"if necessary after comparing them"**
- **possible whilst respecting confidentiality and equality?**
- **"comparing" includes evaluation and preference**

# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

**(6) dialogue declared concluded**

- **ask to submit final tenders**
- **reasonable to ask all candidates for submission of a final tender, if client prefers one solution (para 5)?**
- **possible not to ask all?**

# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

**(6) tenders contain all the elements**

- **required and necessary for the performance of the project**
  
- **which margin for clarification, specification, fine-tuning or additional information?**



# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

**(8) prices or payments to the participants in the dialogue**

- **may be specified by the client**
- **should be mandatory**
- **also in the interest of the client**

# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

**(1) Member States may provide**

- **that contracting authorities may make use of the procedure**

- **will Member States implement?**
- **if so, how will they implement?**

# **Competitive Dialogue** (Art. 29, Dir 2004/18)

---

**(1) contracting authorities  
may make use of the procedure**

- **will they do so?**
- **needs top quality civil servants,  
although "objectively unable ..."**
- **and needs top quality contractors**

**WWW.FIEC.ORG**

