

PROCUREMENT GUIDANCE



Competitive Dialogue

How to undertake a Competitive Dialogue
Procurement Process

October 2017



THE WORLD BANK
IBRD • IDA

Published October, 2017 – First Edition

Copyright © 2017

The World Bank
1818 H Street NW
Washington DC 20433
Telephone: 202-473-1000
Internet: www.worldbank.org

Disclaimer

This work is a product of the staff of The World Bank. The findings, interpretations, and conclusions expressed in this work do not necessarily reflect the views of The World Bank, its Board of Executive Directors, or the governments they represent.

Rights and Permissions

The material in this work is subject to copyright. Because the World Bank encourages dissemination of its knowledge, this work may be reproduced, in whole or in part, for noncommercial purposes as long as full attribution to this work is given. Any queries on rights and licenses, including subsidiary rights, should be addressed to:

Office of the Publisher
The World Bank
1818 H Street NW
Washington, DC 20433
USA
Fax: 202-522-2422
Email: pubrights@worldbank.org.

Common abbreviations and defined terms

This section explains the common abbreviations and defined terms that are used in this guidance. Defined terms are written using capital letters.

Abbreviation / term	Full terminology / definition
Applicant	A firm or joint venture that submits an Application in response to an invitation for Prequalification or Initial Selection.
Application	A document submitted by an Applicant in response to an invitation for Prequalification or Initial Selection.
Bank	IBRD and/or IDA (whether acting on its own account or in its capacity as administrator of trust funds provided by other donors).
Bid	An offer, by a firm or joint venture, in response to a Request for Bids, to provide the required Goods, Works or Non-consulting Services.
Bidder	A firm or joint venture that submits a Bid for Goods, Works, or Non-consulting Services in response to a Request for Bids.
Borrower	A Borrower or recipient of Investment Project Financing (IPF). This term may include any entity of the Borrower that is involved in the implementation of a project financed by IPF.
Business Day	Any day that is an official working day of the Borrower. It excludes the Borrower's official public holidays.
Contract Award Notice	The published award of contract notice as described in the Procurement Regulations, Paragraphs 5.93 to 5.95.
Final Proposals	The final Proposal submitted at the end of the Competitive Dialogue process.
Fraud and Corruption	The sanctionable practices of corruption, fraud, collusion, coercion and obstruction defined in the Anti-Corruption Guidelines and reflected in Annex IV (paragraph 2.2a) to the Procurement Regulations.
IBRD	International Bank for Reconstruction and Development.
IDA	International Development Association.
Initial Selection (IS)	The shortlisting process used prior to inviting request for Proposals in the procurement of Goods, Works or Non-consulting Services.

Abbreviation / term	Full terminology / definition
Interim Proposals	An outline solution provided by Proposers at an early stage of the Competitive Dialogue process.
Investment Project Financing (IPF)	The Bank's financing of investment projects that aims to promote poverty reduction and sustainable development. IPF supports projects with defined development objectives, activities, and results, and disburses the proceeds of Bank financing against specific eligible expenditures.
GPN	General Procurement Notice.
Most Advantageous Proposal	<p>Most Advantageous Bid/Proposal is the Bid/Proposal of the Bidder/Proposer that meets the qualification criteria and whose Bid/Proposal has been determined to be:</p> <ul style="list-style-type: none"> a. substantially responsive to the request for bids/request for Proposals document; and b. the highest ranked Bid/Proposal
Notification of Intention to Award	The notice transmitted to Bidders/Proposers informing them of the intention to award the contract, as described in the Procurement Regulations, Paragraphs 5.72 to 5.77.
Prequalification	The shortlisting process which can be used prior to inviting request for bids in the procurement of Goods, Works or Non-consulting Services.
Probity Assurance Provider (Probity Auditor)	A third party that provides specialist probity services for concurrent monitoring of the Procurement Process.
Procurement Documents	A generic term used to cover all Procurement Documents issued by the Borrower soliciting applications/bids/Proposals. It includes: prequalification document, initial selection document, request for bids document, request for Proposal documents, forms of contracts and any addenda.
Procurement Process	The process that starts with the identification of a need and continues through planning, preparation of specifications/ requirements, budget considerations, selection, contract award, and contract management. It ends on the last day of the warranty period.
Procurement Policy	Bank Policy, "Procurement in IPF and Other Operational Procurement Matters."
Procurement Regulations	The "World Bank Procurement Regulations for IPF Borrowers".
Proposal	An offer, in response to a request for Proposals, which may or may not include price, by one party to provide Goods, Works,

Abbreviation / term	Full terminology / definition
	Non-Consulting Services or Consulting Services to another party.
Proposer	An individual entity or joint venture that submits a Proposal for Goods, Works, and Non-consulting Services in response to a request for Proposals.
RFB	Request for Bids as a selection method.
RFP	Request for Proposals as a selection method.
SPN	Specific Procurement Notice.
Standard Procurement Documents (SPDs)	Procurement documents issued by the Bank to be used by Borrowers for IPF financed projects. These include Prequalification documents, Initial Selection documents, Request for Bids documents, and Request for Proposals documents.
Standstill Period	The period following the Notification of Intention to Award as described in the Procurement Regulations, Paragraphs 5.78 to 5.80.
VfM	Value for Money.

Contents

- Section I. Overview of a Competitive Dialogue process 3**
- Section II. Stages of a Competitive Dialogue process 7**
- Stage 1 - Planning for a Competitive Dialogue 7**
 - Choosing Competitive Dialogue..... 7
 - Justifying the choice..... 7
 - Fit for purpose 8
 - Governance 8
- Stage 2 - Early market engagement..... 19**
 - Preparing the market 19
 - Novel or unique solutions 19
 - Proposers' costs 19
- Stage 3 - Advertise and Initial Selection 21**
 - Advertise 21
 - Initial Selection 21
 - Sufficient number 22
- Stage 4 - Interim Proposals and dialogue.....24**
 - Request for Interim Proposals..... 24
 - Alternative Proposals 25
 - Phase 2 steps in the process 27
- Stage 5 - Final Proposals, evaluation and contract award29**
 - Request for Final Proposals 29
 - Proposal Evaluation 30
 - Planning for the Proposal evaluation..... 30
 - Evaluation checks..... 31
 - Evaluation of technical Proposals 31
 - Evaluation of financial Proposals 32
 - Phase 3 steps in the process 33
 - Contract Award..... 35
- Stage 6 - Contract implementation36**

Proposer Behaviour 36

Contract implementation 37

Annex A – Good practice tips 39

Annex B – Probity Auditor 41

Annex C - Sample Terms of Reference for Probity Audits..... 45

Section I. Overview of a Competitive Dialogue process

Purpose

This Guidance is designed to provide Borrowers with a practical toolkit to support designing and undertaking a Competitive Dialogue Procurement Process.

This Guidance complements and expands on the procedures for Competitive Dialogue described in Annex XIII of the Procurement Regulations. Each Competitive Dialogue process “needs” to be carefully designed and customized to fit the project, in order to maximize the effectiveness of this procurement selection arrangement.

Background

Competitive Dialogue is an interactive multistage Procurement selection arrangement that allows for dynamic engagement with Proposers. As such, it is a highly effective Procurement Process for complex, high-value and/or innovative contracts. Competitive Dialogue is most suitable for undertaking procurements where:

1. a number of alternative solutions, that satisfy the Borrower’s requirements, may be possible, and the detailed technical and commercial arrangements required to support those solutions require discussion and development between the Borrower and Proposers; and
2. due to the nature and complexity of the procurement, the Borrower is not objectively able to:
 - a. adequately define the technical or performance specifications and scope to satisfy its requirements; or
 - b. adequately specify the legal and/or financial arrangements of the contract.

The Borrower should justify the use of Competitive Dialogue and include the rationale in the Project Procurement Strategy for Development (PPSD).

Under a Competitive Dialogue process, following Initial Selection, the Borrower enters into dialogue with each Proposer. The aim is to identify and define the “means” best suited to satisfy the Borrower’s “needs”.

The “needs” are the Borrower’s requirements as described in the Standard Procurement Documents (SPDs), while the “means” are a Proposer’s solution, which includes technical, financial and legal aspects, for delivering the “needs”

The Borrower’s “needs” should be clear and specific, and the Competitive Dialogue process should be used to determine the range of options available for delivering them and ultimately the solution that offers the Most Advantages Proposal (MAP) determined by the Proposal evaluation criteria. In many instances the “needs” are expressed in terms of functionality or performance. However, the “means” of delivering those “needs” should not be specified by the Borrower, as the purpose of the Competitive Dialogue process is to identify the best way of satisfying those “needs”. Basically, the Competitive Dialogue process analyses Interim

Proposals and through ongoing dialogue each Proposer develops an appropriate customized solution. The dialogue continues until “needs” and “means” are matched.

Stages of a Competitive Dialogue process

The Competitive Dialogue process can be broken down into the following stages, each of which should be completed thoroughly to ensure a successful procurement is achieved.

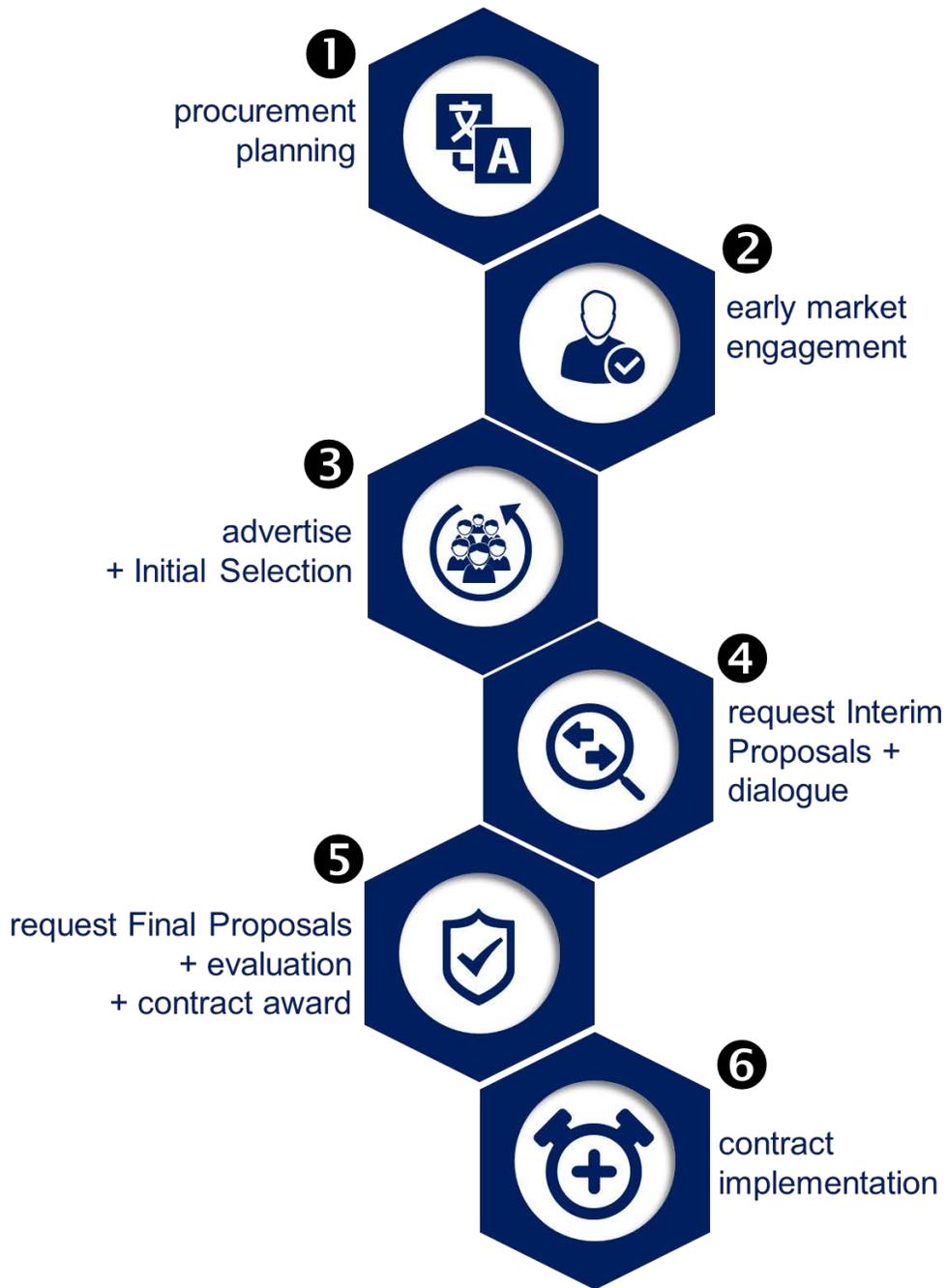


Figure 1 – Key stages in a Competitive Dialogue Selection Arrangement

STAGE 1:	Planning for a Competitive Dialogue	Before Borrowers begin a Competitive Dialogue, they should ensure they have fully planned for the complexity and duration of the process. This includes establishing appropriate work streams, appropriate resources and dedicated teams.
STAGE 2:	Early market engagement	Borrowers should consider how to prepare the market and stimulate competition.
STAGE 3:	Advertise and Initial Selection	The use of Initial Selection is mandatory in a Competitive Dialogue. Rated criteria are used and only the best Applicants (normally not less than 3 and not more than 6) are Initially Selected.
STAGE 4:	Request Interim Proposals and dialogue	Proposers submit Interim Proposals that address the Borrower’s “needs”. One-on-one dialogue between the Borrower and each Proposer leads to a refinement of the proposed solutions.
STAGE 5:	Request Final Proposals, evaluation and contract award	Once the dialogue phase closes the Borrower invites the submission of Final Proposals and undertakes final evaluation of the Proposals
STAGE 6:	Contract implementation	During contract implementation, the Borrower “needs” to have strong oversight in place, supported by active and well-resourced contract management.

Section II. Stages of a Competitive Dialogue process

Stage 1 - Planning for a Competitive Dialogue

Choosing Competitive Dialogue

There are a range of Procurement selection methods and arrangements available to Borrowers in undertaking a high value, complex and /or innovative contract. Competitive Dialogue is one of these Procurement selection arrangements.

In making the decision to choose a Competitive Dialogue Procurement selection arrangement, Borrowers should consider the following tests:

1. are the “needs” clear, but the “means” of delivering these “needs” undefined?
2. does the Borrower want to encourage and allow innovation, and refrain from defining the “means” through which the “needs” should be delivered?
3. could the “needs” be met through several different solutions?
4. are there several potential options that could be adopted to provide the commercial element of the overall solution?
5. is the contract unique or unusual, when no previous procurements have been undertaken by the Borrower for similar requirements?
6. is the Borrower sure that other Procurement selection methods and arrangements do not allow for the required level of collaboration between the Borrower and Proposer to allow the development of an acceptable solution?
7. does the Borrower have sufficient resource to devote to an intensive Procurement Process that may last 12 to 18 months, and require a high level of input, resource and cost (especially in relation to preparation, rounds of dialogue and Proposal evaluation)?
8. is there the potential for a high level of market interest and therefore strong competition?
9. have other Procurement selection methods and arrangements, such as the use of a Request for Proposals, with a negotiation stage, been assessed and discounted as not appropriate for the contract?

If the answer to most, if not all, of these questions is “yes”, then Competitive Dialogue is an appropriate Procurement selection arrangement to adopt for the contract.

Justifying the choice

Borrowers will be required to prepare a PPSD. The PPSD should set out the justification for the use of Competitive Dialogue as the Procurement selection arrangement for the contract. This justification should be supported by answering the questions set out above.

Fit for purpose

Competitive Dialogue processes are normally unique and the advantage of this Procurement selection arrangement over other procurement selection arrangements is that there is no set formula for designing one, therefore Borrowers can design a Procurement Process that best suits the procurement being undertaken. However, a typical Competitive Dialogue process is normally more complex and time consuming than other procurement selection arrangements, and “needs” effective planning to be successful. Competitive Dialogue is not an instrument that solely focuses on price and its primary purpose is not about reducing costs due to budgetary pressures. Competitive Dialogue used appropriately is about identifying the most suitable technical, commercial and legal solution and delivering optimum value for money, by providing a very effective Procurement Process to meeting complex Borrower “needs”.

Borrowers should consider the key factors, detailed in Figure II, when designing their Competitive Dialogue process. The list is not exhaustive and a project’s requirements should be thoroughly assessed before starting a formal Competitive Dialogue process to ensure sufficient planning and resources are in place to allow for an efficient and effective Procurement Process.

A Competitive Dialogue process should not begin until the Borrower is fully satisfied that the Procurement Process has been appropriately planned and key factors detailed in Figure II have been addressed. The Procurement Plan must set out the approach and processes to be adopted to deliver the Competitive Dialogue process.



Figure II – Key factors in planning a Competitive Dialogue Selection Arrangement

Governance

Competitive Dialogue is normally used for high-value, complex and/or innovative contracts. As such, it is important that the Procurement Process is conducted within a clear and well defined governance framework.

Such a framework should be designed, agreed and put in place before commencement of the Competitive Dialogue and should take into account the following considerations:

- a. **Governance Body:** The allocation of responsibility for final approvals of key decisions during the dialogue process to a governance body. The governance body may already exist in relation to planning the project, but if not, one should be created. The governance body should need to consider key decisions to keep the Competitive Dialogue proceeding without delay, such as:
 - i. the results of the Initial Selection;
 - ii. the Competitive Dialogue RFP for issue;
 - iii. any down-selection;
 - iv. the closure of the dialogue phase;
 - v. the selection of the Most Advantageous Proposal; and
 - vi. the contractual documentation for signature.
- b. **Competitive Dialogue Lead:** The allocation of responsibility for leadership of the Competitive Dialogue process to a senior and experienced person (ideally working full-time on the procurement) who will lead the Competitive Dialogue process, head the Competitive Dialogue team and report to the governance body. It is advisable for the Competitive Dialogue Lead to appoint a specialist procurement advisor to have oversight and responsibility for undertaking the procurement. The Competitive Dialogue Lead will need to work closely with work stream sub-teams to coordinate the work, effort and timing.
- c. **Competitive Dialogue Team:** The appointment of a Competitive Dialogue team that will support the Competitive Dialogue lead in implementing the procurement. The Competitive Dialogue team should include sub-teams dedicated to managing the individual works streams, for example: price/cost, technical, commercial/financial, and legal. Work stream teams may be supported by specialist advisors, as appropriate. The Competitive Dialogue team will need to work full-time implementing the procurement. The Competitive Dialogue team's tasks may include:
 - i. preparing Procurement Documents;
 - ii. participating in the evaluation of Applications and Proposals;
 - iii. organizing, leading and participating in dialogue sessions; and
 - iv. preparing minutes of Proposal evaluations and dialogue sessions.
- d. **Specialist Advisors:** The appointment of specialist advisors with experience in each of the work stream topics and Competitive Dialogue, if appropriate.
- e. **Decision Making:** The creation of a clear and unambiguous allocation of authority, decision making and delegation between the teams / personnel listed in (a) to (d) above.
- f. **Procurement Management Plan:** The creation of a management plan and processes for undertaking the Competitive Dialogue, which should be updated regularly .to provide a full audit trail of the Procurement Process.

1. Probity Auditor

The Procurement Regulations require the Borrower to appoint an independent Probity Assurance Provider (Probity Auditor), acceptable to the Bank, to oversee the integrity of the entire Competitive Dialogue process. The governance framework designed for the Competitive Dialogue process should recognize this requirement and ensure that the Probity Auditor has access to all relevant and appropriate aspects of the project management and governance arrangements. The Probity Auditor should attend all key meetings to ensure that the governance arrangements in place are robust.

The Probity Auditor will provide independent scrutiny of the Competitive Dialogue process. This includes scrutiny of, for example:

- a. overall governance and management of the procurement;
- b. evaluations of Applications and Proposals;
- c. procurement decision making;
- d. the dialogue phase with each Proposer; and
- e. the conduct of any negotiations that take place.

The Probity Auditor should be able to attend all dialogue meetings to ensure that a competitive process takes place and that no unfair advantage or disadvantage is given to any of the Proposers as result of these dialogue meetings. The Probity Auditor should also be given access to all key procurement information and material, including the Initial Selection and RFP documents, and all submissions received from Proposers, including clarification questions and their responses.

Where the Probity Auditor is a single person, dialogue sessions should be organized in such a way as to allow attendance at all meetings, meaning that dialogue sessions should be sequential and not simultaneous. Where the Probity Auditor is a firm, the lead Probity Auditor should attend all cross-work stream dialogue sessions with each Proposer and all governance meetings and Competitive Dialogue team meetings at which key decisions are to be made.

The Probity Auditor should receive copies of all agendas for, and minutes of dialogue meetings, plus any written information or material that the Proposer provides at a dialogue meeting.

Annex B provides more information on the selection of a Probity Auditor and Annex C provides a draft specification for commissioning a Probity Auditor.

2. Personnel

Competitive Dialogue requires skilled personnel from various backgrounds to assist in the planning, preparation, evaluation, dialogue and contract award. Borrowers should assess their current staffing capacity and capability in areas such as procurement, finance, legal, technical expertise, contract management and any other relevant areas, to identify where additional support may be required. As part of the PPSD, Borrowers should include a capability and capacity plan to explain how they will obtain the specialist capability and capacity to implement the Competitive Dialogue process. The implementation and operationalization of

the capacity and capability plan should be integrated into the project plan and included within the PAD.

The Competitive Dialogue lead should have a strong understanding and recent experience of management of complex procurements, and if possible a Competitive Dialogue process.

Factors and skills to be taken into account when deciding the composition of the Competitive Dialogue team and work stream sub-teams, which are multi-disciplinary, include:

- a. experience in governance and management of complex Procurement Processes;
- b. experience of planning and conducting a Competitive Dialogue;
- c. experience of developing appropriate evaluation criteria for Initial Selection and undertaking Proposal evaluation of complex Proposals;
- d. negotiation skills and experience of close involvement in Proposer selection and awarding major contracts; and
- e. comprehensive financial expertise to, for example, express financial aspects of the project requirement within RFP documents, evaluate financial Proposals and aspects of the Competitive Dialogue, understand the Borrower's financial position and governance processes to ensure contract affordability and value for money.

Legal advice provided by experienced commercial lawyers should be available to the Competitive Dialogue lead and Competitive Dialogue team from the outset. The Final Proposal detailing the agreed outcome of the dialogue between Proposer and Borrower will be documented in the contract. The contract "needs" to clearly allocate the risks and responsibilities of each party. Legal resource should be deployed throughout the Competitive Dialogue process to ensure that "needs" and "means" are accurately captured in the legal drafting.

Technical advice, appropriate to the subject matter, is essential to ensure that the requirements ("needs") are clearly defined and that the team has the ability to test whether Proposers' solutions offer a "means" that meet these "needs". Such advice should cover all aspects of the deliverables being procured to "meet" the "needs" whether this relates to design, construction, implementation or service delivery.

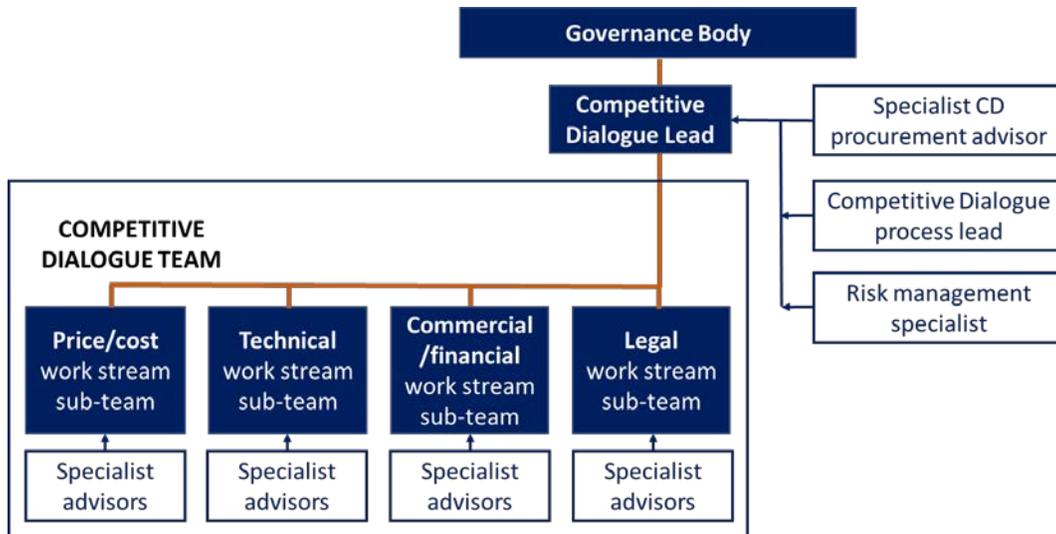


Figure III – Management structure for Competitive Dialogue procurement

3. Timescales

Competitive Dialogue can take significantly longer than other Procurement Processes. Given the level of complexity, it is not unusual for a Competitive Dialogue to run for 12-18 months or more to complete. Borrowers should plan for a timescale that is realistic and allows sufficient time to work with Proposers to develop solutions that satisfy the requirement, but which also maintains momentum and focus.

In particular, sufficient time should be allocated to:

- a. **Dialogue:** Each round of dialogue should allow sufficient time for meaningful engagement between Borrower and Proposers. At least a full day with each Proposer should be set aside for the dialogue itself, as well as sufficient time, for preparation, writing up minutes, and time for the parties to fulfil agreed actions and develop Proposals further between dialogue rounds. A common approach is to undertake dialogue rounds in four week cycles, with a week of dialogue, preceded by a week’s preparation time and two weeks’ post-dialogue to work on Proposal development. Particularly complex procurements may require several rounds of dialogue, 6-8 is not uncommon, including an initial round to ensure that Proposers have a full understanding of the RFP content, the Borrower’s “needs” and the Procurement Process to be followed.
- b. **Proposal Evaluation:** Proposal evaluation can be highly time consuming and resource intensive. Evaluation may involve the entire Competitive Dialogue team, work stream sub-teams, and in some instances a wider group of stakeholders, all of who will need to diarize time to undertake such evaluation alongside their normal duties, if they are not full-time dedicated to the Competitive Dialogue process.
- c. **Approvals:** Key decisions may require governance body approval, or authorization from a higher authority within the Borrower’s organization. This will be in addition to “no objections” from the Bank, which may be required to adhere to meeting cycles or governance processes outside the scope of the Competitive Dialogue process.

Sufficient time for these processes to take place should be planned into the project timeline.

- d. **Probity Assurance:** Probity Assurance “needs” to be factored into planning and decision making, including documentation review, meeting attendance, review of minutes of meetings/dialogue and reporting.

Key events	Completed by week	Time between events
CD planning and establishing teams	8	
Early market engagement	10	2
Advertise Initial Selection	16	6
Receive Applications, evaluate and Initially Select	20	4
Invite Interim Proposals including time to respond	26	6
Receive Interim Proposals and dialogue round 1	32	6
dialogue round 2	37	5
dialogue round 3	41	4
Invite Final Proposals and time to respond	47	6
Receive Final Proposals, evaluate and select MAP	53	6
Award contract	55	2
Project start up and contract implementation	59	4

Figure IV – Example timeline for Competitive Dialogue Selection Arrangement

4. Work streams

Work streams should align with the key elements of the Proposal such as price/cost, technical, commercial/financial and legal. Whilst each work stream is discrete there may be some overlap between them, which will require careful management.

For example, as price/cost is evaluated separately from technical aspects under the two-envelope system, a price/cost work stream should be established that allows these aspects to be considered and discussed on a confidential basis separately from the technical solution.

If design forms a major part of the requirement and evaluation, this may merit a discrete work stream to conduct dialogue focused on that aspect of the solution.

A mechanism should exist to allow cross-cutting issues to be managed between work streams, for example, by commencing or ending a dialogue session with a cross-work stream dialogue. In addition, the Competitive Dialogue process management should ensure that input from one work stream is regularly provided to the other workstreams, where required.

Dialogue should be structured to allow all aspects of the Borrower's requirements to be discussed at least once during the dialogue process. Dialogue session agendas should be planned in advance so that each work stream can cover all key areas adequately over the course of the dialogue period. Proposers may be asked to submit material in advance of dialogue meetings relating to their developing Proposals. Borrowers should have time to consider such material and provide feedback during the subsequent dialogue session.

The requirement for additional dialogue on specific topics should be agreed at the end of each dialogue session to ensure that all Proposers are given sufficient and equal opportunity to engage with the Borrower.

5. Location

Dialogue is resource intensive, and it is not unusual for thirty (30) or more people to be involved at any one time, especially if multiple work streams exist. Dialogue rounds will need to be accommodated in a venue capable of allowing a plenary session involving such a number to be housed in one room and dependent on the Probity Audit arrangements, alongside space for 3-4 work streams to be in dialogue at the same time in separate rooms, and for parties to be able to conduct confidential discussions outside of the dialogue.

Since it is usual for the Borrower to host dialogue meetings, it should be borne in mind that Proposers may have to bring teams potentially from overseas to attend dialogue sessions, which will also have a bearing on location in terms of making the Procurement Process logistically feasible and affordable.

6. Administration

The task of making logistical arrangements and ensuring a sound audit trail to support the Competitive Dialogue is significant. Borrowers should ensure that adequate administration and secretariat resources are in place.

In particular, arrangements for preparing and issuing dialogue session agendas, preparing, reviewing and approving minutes should be put in place and agreed between all parties. This will help ensure that responsibility for noting and agreeing action points and matters agreed during dialogue sessions are allocated. Consideration should be given to the use of recording equipment during dialogue sessions to maintain a full record of discussions. The Proposer's consent to recording should be obtained in writing in advance of the dialogue sessions. Copies of the unedited recordings should be made available to the Proposer with whom the Borrower was meeting.

7. Communication

A protocol for communication between parties should be agreed. This should cover:

- a. the route through which all formal communication between Borrower and Proposers should take place, for example, via the Competitive Dialogue lead or work stream leads. Care should be taken to avoid formal communication taking place outside of official routes to ensure that a full audit trail can be maintained.
- b. the use of an on-line procurement 'portal' (which the Bank has established as being adequate and appropriate) should be used to issue and receive all documentation, such as, RFP, clarifications, agendas and minutes and submissions from Proposers. The system must be capable of providing an audit trail and protecting each Proposer's confidential and commercially sensitive information.

8. Commercial confidentiality

Confidentiality is fundamental to ensuring fairness and integrity in the Procurement Process. In addition to the confidentiality of the Proposal evaluation, as required by the Procurement Regulations, Borrowers shall not disclose information marked by an Applicant or Proposer as confidential to another Applicant or Proposer. Confidential information may include proprietary information, trade secrets and commercially or financially sensitive information. In a Competitive Dialogue, this includes a Proposer's design and proposed solution, new ideas, and innovation. Ensuring confidentiality gives Proposers reassurance that their commercially sensitive information will be protected.

Failure to maintain confidentiality will undermine the integrity of the Competitive Dialogue process, the willingness of Proposers to put forward credible solutions and may result in Complaints that, if upheld, may mean the cancellation of the Competitive Dialogue process. Considering the high costs of preparing Proposals under Competitive Dialogue, Proposers will be reluctant to be involved in a Competitive Dialogue process unless they are given absolute reassurance on confidentiality.

It is usual for the Borrower to circulate answers to all Proposers in relation to clarifications and queries. Borrowers must identify if a clarification or query from one Proposer relates to the confidential or commercially sensitive information of another. Where it does, such information must not be released and the requesting Proposer advised that no answer will be given to protect confidentiality.

Proposers submitting a clarification or query should indicate whether they consider their clarification or query to be commercially confidential to them, and thus the question and answer not to be shared with other Proposers. If the Borrower considers that, in the interest of open and fair competition, the clarification or query cannot be responded to on a confidential basis, the Proposer should be informed and allowed to withdraw the clarification or query if they prefer for it not to be shared with other Proposers.

9. The level of detail in borrower specification

Competitive Dialogue is most appropriate when procuring a high value, complex and/or novel requirement where several different solutions can meet the Borrower's requirements ("needs"). Dialogue is essentially a process of working with each Proposers individually to develop a solution ("means") that delivers the required output(s) ("needs").

It is important, therefore, to ensure that Proposers fully understand the the Borrower's requirements leading to the required output(s) and that these are expressed in sufficient detail in the RFP for Proposers to be able to develop an Initial Proposal outlining the initial solution that meets those requirements.

At one extreme, Borrowers may have developed a highly-detailed specification that sets out very clearly what the expected outputs should be. This may take the form of a reference design, for example, that Proposers are expected to follow. In such a scenario, it is unlikely that Competitive Dialogue is an appropriate procurement selection arrangement, since the form of the solution is largely prescribed, with little value to be derived from the dialogue process.

At the other extreme, the Borrower may provide only a very high statement of need, with little direction given to Proposers as to the form their solutions should take. While this provides significant scope for innovation and for Proposers to use their expertise and experience to develop high value solutions, it increases the risk that Proposers will be unable to develop a solution that meets the requirement and therefore runs the risk that the dialogue process will not result in an acceptable solution.

Where possible, it is recommended that Borrowers adopt a position somewhere between these two extremes. This means developing a problem definition, or statement of need, or business/performance requirements in enough detail to provide Proposers with a clear picture of the output required and clear steer towards an acceptable solution, while leaving room for innovation and for the development of value added ideas during the dialogue process.

One way of doing this is to develop a high-level reference design, for example, that contains mandatory elements, if any exist, (that Proposers must adhere to) and advisory elements (that Proposers can deviate from by agreement with the Borrower if the deviation offers an acceptable solution). For example, in a hospital contract, the Borrower may require certain hospital departments to be located adjacent to each other for specific clinical reasons, and so such adjacency may be deemed mandatory. Other departments could be in different configurations, with no mandatory adjacency applicable, but which merit discussion in dialogue to explore viable configurations.

10. Risk Management

The Competitive Dialogue team and sub teams should establish a risk management process. An example is set out in Figure V.



Figure V – Example risk management process and protocols

Borrowers should consider the appointment of a dedicated risk management specialist, who takes responsibility for the management of all risk processes including:

- identification,
- analysis - assessment and quantification,
- management – avoid, mitigate, transfer, accept,
- review.

The specialist should work closely with the Competitive Dialogue lead and across all the work streams in order to create a comprehensive risk management plan and risk register.

It is recommended that Borrowers undertake a series of risk workshops with the Competitive Dialogue team members, selected key stakeholders and others within the Borrower's organization who understand the risks likely to be involved and can assume ownership over them. The workshops should focus on determining a range of project and procurement risks. Typical risk categories that might be considered include:

- Procurement Process risks,
- political, policy and legislative risks,
- Borrower organization's risks,
- reputational risks,
- technical and design risks,
- cost and affordability risks,

- g. contractual/legal risks,
- h. timeline risks,
- i. environmental, social, health and safety risks,
- j. implementation/construction risks,
- k. operation and performance risks.

These risks, once identified, may be further allocated between a range of categories depending on which party would bear the risk, for example, risks:

- a. borne by the Borrower,
- b. borne and priced by Proposers,
- c. that are unquantifiable,
- d. that would have a major impact on the price/cost of the contract that cannot be managed by any party, for example, inflation or interest rate movements.

Risks can then be further analyzed by their probability and their impact, for example, those that:

- a. are deemed to have a very high, high, medium or low risk of being realized during the Procurement Process and contract lifespan,
- b. those that would have an insignificant, minor, moderate, major or catastrophic impact (financial or otherwise) if realized during the Procurement Process and contract lifespan.

Following assessment of all the risks, each risk should be allocated to an owner who is responsible for its management. This should be recorded in the risk register.

The risk register should be maintained as a live document and regularly updated with the risk profile for the procurement and kept under constant review. The top risks should be reported to the governance body on a regular basis.

Stage 2 - Early market engagement

Preparing the market

Borrowers should consider the best approach for assisting the market to prepare to respond to the Competitive Dialogue. This involves maximizing interest in the procurement by alerting potential Applicants to the upcoming procurement.

Early market engagement may be initiated through:

1. advertising internationally in relevant industry journals, sites, publications;
2. arranging group meetings/awareness sessions targeting potential Applicants/Proposers;
3. undertaking “road shows”;
4. liaison with trade associations; and
5. publishing a draft of the Initial Selection document and/or draft RFP document and inviting industry feedback (before advertising the General and Specific Procurement Notices).

This process should start as soon as the procurement activities are known, as documented and agreed in the PPSD, so that the market has the maximum amount of time available to mobilize bid teams and assemble joint ventures, if appropriate.

Novel or unique solutions

In some cases, the use of Competitive Dialogue will involve the relevant market developing a novel or unique solution. Where this is the case, Borrowers will need to give full consideration to ensuring that potential Applicants/Proposers understand the requirements (“needs”) and the Competitive Dialogue process.

A key element of the market preparation process should be devoted to raising awareness of the Competitive Dialogue and ensuring that potential Applicants have a very clear understanding of the Competitive Dialogue process that the Borrower intends to apply. This will help potential Applicants fully understand the implications in terms of time, resource commitment (financial and personnel and levels of market participation (number of Proposers to be invited to take place in the Competitive Dialogue).

Borrowers should note that it is not unusual for Competitive Dialogue processes to take longer than anticipated and planned, and that any delay will cause increases in costs for Applicants / Proposers.

Effective planning and resource provision should help Borrower avoid damaging the level of competition by creating a situation where Applicants or Proposers withdraw because of failure to fully appreciate what was expected of them during the Procurement Process.

Proposers’ costs

Competitive Dialogue is highly complex, time consuming and resource intensive for both Borrowers and Applicants / Proposers alike. Once Initially Selected, Proposers will be making a significant financial commitment in entering into a Competitive Dialogue process, an

investment that will be lost if the Proposer is not successful. Therefore, Applicants are likely to have strict internal company processes that determine whether they want to participate in a Competitive Dialogue.

In markets where Competitive Dialogue is a relatively novel concept, potential Applicants / Proposers may be reluctant to make such a commitment and this may be detrimental to the level of competition that can be secured for the procurement. Therefore, early market engagement is a critical activity in encouraging market involvement and providing information that allows potential Applicants to make an informed decision on participation as well as identifying any factors that may be a barrier or disincentive for their participation.

In addition, Borrowers should give thought to the level of competition likely to be present and consider if it may be necessary to incentivize potential Applicants and Proposers to take part in the Procurement Process by committing to underwrite some, or all of their Proposal preparation costs, incurred while participating in the dialogue stage of the process. This means that unsuccessful Proposers will not be at significant financial risk. If it is deemed that the use of such an instrument is desirable, this should be fully justified in the PPSD and detailed in the Initial Selection and RFP documents.

In considering this, Borrowers should explore the option of setting a cap on the level of underwriting that the Borrower can offer and to the number of Proposers to whom this offer would be available, for example, it may be restricted to Proposers taken to the final stage of dialogue, after down-selection at the Interim Proposal stage.

Stage 3 - Advertise and Initial Selection

Advertise

Timely notification of procurement opportunities is essential in competitive procurement.

This need for timely notification is critical to a Competitive Dialogue process and the optimum time for placing an advert should be considered as part of the early market engagement process.

A General Procurement Notice (GPN) is required for all procurement financed by the Bank that is expected to involve open international competitive procurement (except for operations involving a program of imports).

In addition, Borrowers should also consider what level of advertising (content, scale and medium) and will encourage the appropriate level of interest and participation from the market.

The Borrower is required to prepare and submit to the Bank a GPN before beginning any procurement activity under a project. The Bank arranges for the publication of the GPN in UN Development Business online (UNDB Online) and on the Bank’s external website.

Initial Selection

Every Competitive Dialogue is initiated through an Initial Selection, as outlined in figure IV.

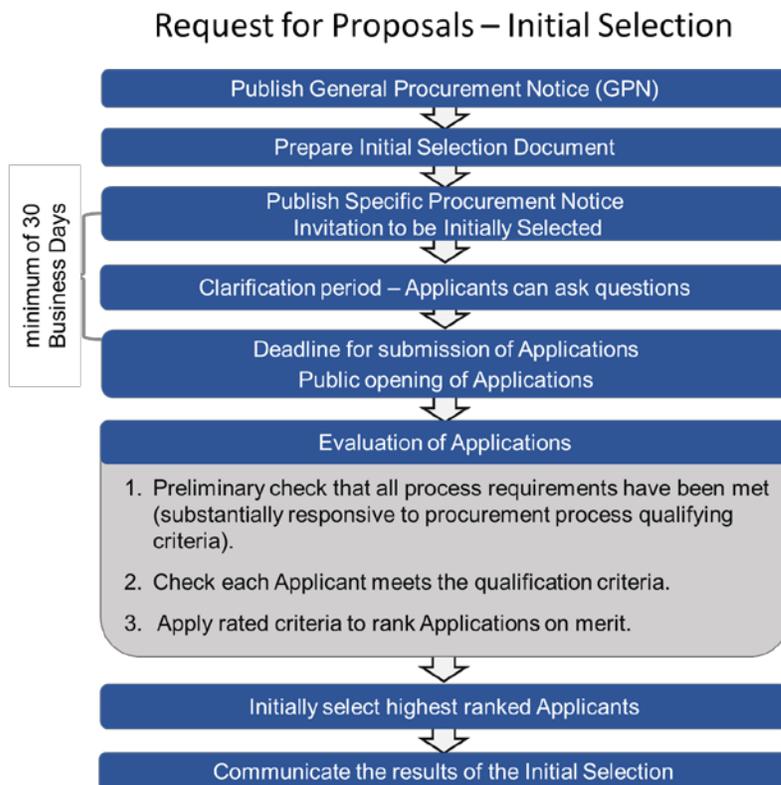


Figure VI – Initial Selection Phase 1 process flow chart

The Initial Selection process normally comprises of the following steps:

Step 1: Issue Initial Selection document:

- a. **Initial Selection document:** prepare the Initial Selection document using the Bank's Standard Initial Selection document.
- b. **Specific Procurement Notice:** prepare the SPN inviting Applications for Initial Selection, using the Bank's template. When the Initial Selection document is ready for distribution, publish the SPN giving sufficient time for Applicants to obtain the Initial Selection document and prepare and submit their Applications (a minimum of 30 Business Days).
- c. **Clarifications and addenda:** respond to any request for clarifications from prospective Applicants in writing, and forward a copy of the response to all prospective Applicants. Any amendment to the Initial Selection document as a result of additional/modified information or clarifications should be in writing and be communicated to all prospective Applicants.

Step 2: Receipt and public opening of Applications.

- a. **Application submission and opening:** Applications are to be submitted by the deadline. However, the Borrower may accept Applications received after the deadline, unless otherwise specified in the Initial Selection document. The Borrower prepares a record of the opening of Applications and distributes a copy of the record to all Applicants.

Step 3: Evaluation of Applications to identify the firms/joint ventures to be Initially Selected and invited to participate in the dialogue phase of the process.

- a. **Evaluation of Applications:** evaluate Applications based on the criteria specified in the Initial Selection document. Firstly, Applicants are assessed against qualifying criteria. All Applicants that meet the qualifying criteria are ranked based on an assessment against rated criteria. Initially Select not less than three and more not than six Applications.
- b. **Communication of results:** communicate the results of the Initial Selection process to all Applicants.

Sufficient number

The Initial Selection process results in a number of Applicants who will be invited to submit Interim Proposals. The list should include a sufficient number, normally not less than three and not exceeding six. The Bank may agree to a list comprising a smaller number when not enough qualified Applicants have expressed an interest. Normally this is a sufficient number to ensure adequate competition throughout the dialogue phase.

Factors in deciding the number of Applicants to Initially Select include:

1. dialogue is a highly resource intensive process and can be extremely difficult to manage effectively if the number of Proposers is large – any more than six would most likely be unmanageable

2. competitive tension “needs” to be maintained throughout the dialogue process. Usually a minimum of three Proposers will provide competitive tension. Taking only two Proposers to dialogue creates a risk that if one Proposer withdraws for any reason, then all competitive tension will be lost.

Stage 4 - Interim Proposals and dialogue

Request for Interim Proposals

During this stage, as detailed in figure VII, the Borrower issues a Request for Proposals (RFP) to each Initially Selected Applicant (now Proposers). This invites Proposers to submit their Interim Proposals. Interim Proposals outline each Proposer's initial design and proposed solution.

The Borrower then enters into dialogue with each Proposer separately. The dialogue will comprise of a series of meetings with each Proposer covering all aspects of the solution, for example, design, technical, price/cost, financial/commercial, legal. During the dialogue phase the Borrower can down-select Proposers.

Down-selection is the process where a Proposer(s) is eliminated from further stages of the dialogue process. This is done to reduce the number of solutions to be discussed during dialogue normally because their solution is not meeting the requirements and doesn't merit further consideration. Down-selection should take place by applying the evaluation detailed in the Proposal evaluation model. However, at this stage as the detail of the financial Proposal may only be in outline, it is acceptable for the financial evaluation to be allocated a lower weighting than in the Final Proposal evaluation. This approach to "Down" should be clearly described in the RFP. The evaluation of technical Proposal section of this guidance provides further details on proposal evaluation.

Thus, as the dialogue progresses, it may become apparent that some Proposers are demonstrating clear ability to develop solutions that will meet the Borrower's requirement whereas Proposals of others are less well developed and are at risk of failing to meet the requirement or deliver an affordable solution.

It may be appropriate, therefore, to include in the dialogue process an Interim Proposals step (or more than one should this prove necessary or desirable) from the Proposers. Normally using the evaluation criteria specified in the RFP, an assessment of Proposals can be used to establish the relative positions of the Proposers and their direction of travel towards viable solutions. The outcome of this evaluation may provide an indication of whether it might be preferable at this point to down-select one or more Proposers from the dialogue process and continuing dialogue with the remaining Proposers.

Consideration should be given to the timing of an Interim Proposals. It should take place early enough in the dialogue process to avoid Proposers continuing to develop proposals, at a high cost given the complexity involved, that ultimately will fail to meet the requirements or have little likelihood of being selected as the preferred solution. However, it should not take place so early as to deny Proposers the opportunity to present well-developed solutions capable of full evaluation. An example would be in a procurement designed with six rounds of dialogue, with an Interim Proposal requested after round two.

Once the evaluation has taken place, the Borrower will have the information required to support a decision as to whether to down-select. At this point, a Proposer may be eliminated from the dialogue process, where it is clear that there is a significant risk that they will not be

able to deliver an acceptable, value for money solution. If there is no evidence of any Proposer falling behind the others, then a Borrower should continue with all the Proposers.

The process for down-selection should be unambiguously set out in the RFP, making it clear that the Borrower reserves the right to down-select but is not obliged to do so.

Alternative Proposals

It is possible that a Proposer may wish to bring forward, in addition to their main Proposal, an alternative Proposal. An alternative Proposal is a solution that deviates in some way from the requirement set out by the Borrower, usually because the Proposer believes that such an alternative solution might offer better value for money or enhance innovation within their Proposals that might offer the Proposer a competitive advantage.

For example, a Proposer may bring forward a solution whereby the Borrower or a third party provides certain elements of the requirement, rather than the Proposer. Alternatively, the Proposer may develop a design that does not adhere to mandatory elements of the specification, but which appears to offer cost savings.

The Borrower should specify from the outset of the dialogue process whether alternative Proposals will be considered. If alternative Proposal are not permitted, this should be stated within the RFP. If the Borrower is willing to consider alternative Proposals, the process for evaluating any such Proposals should be considered carefully and set out in the RFP. If alternative Proposals are permitted, Proposers should also be required to submit a compliant Proposal, that is, one that fully adheres to the Borrower requirements, alongside the alternative Proposal so that the benefits arising from the alternative Proposal can be properly evaluated. The advantages of the use of alternative Proposals are that they can maximize the opportunity for Proposers to develop value for money and innovative solutions that may improve the delivered solution in some way.

However, the use of alternative Proposals can present difficulties in a Competitive Dialogue procurement. They can often be difficult to evaluate, as the presence of an alternative Proposal, by its very nature, means that all Proposals can no longer be evaluated on comparable basis. The Borrower may be required to undertake significant work to carry out a full like for like evaluation, and significant additional dialogue may be needed to establish if the alternative Proposal is viable.

Where a Borrower decides to allow alternative Proposals, they should develop a Proposal evaluation approach for undertaking and dealing with them and clearly state in the RFP the basis on which any decision made to allow or disallow these in the dialogue process.

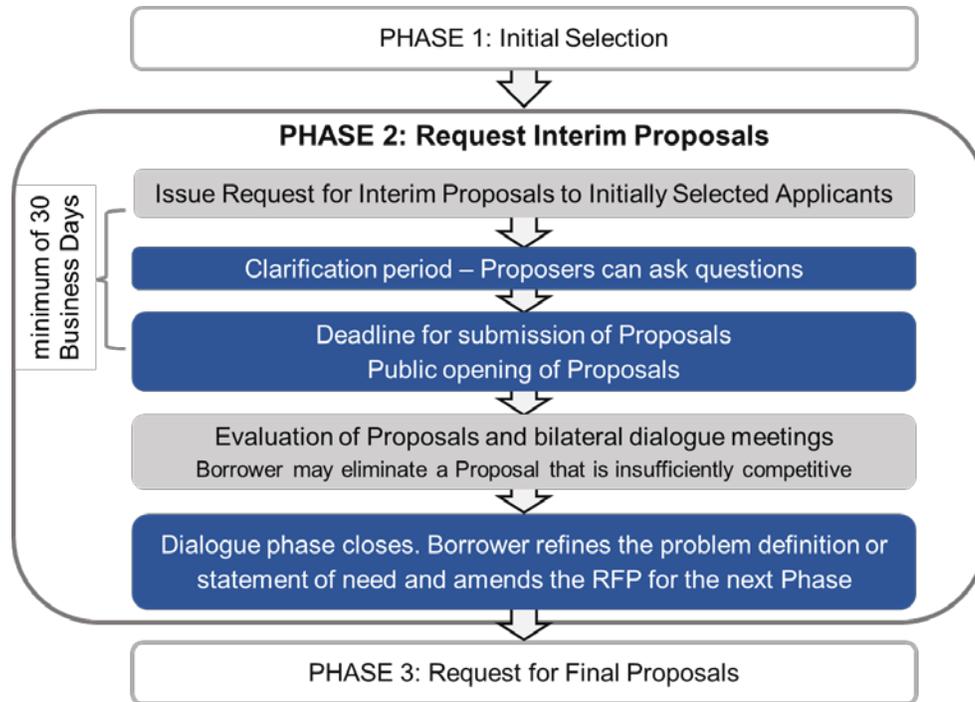


Figure VII – Request for Interim Proposals Phase 3 process flow chart

For Phase 2, Request for Interim Proposals, Borrowers use the Bank’s Standard Procurement Documents for Competitive Dialogue (this model RFP is in development at the time of publication).

The Phase 2, Request for Interim Proposals comprises all documentation required for Proposers to fully understand the contract requirements. The key elements include:

1. full description of the problem definition, or statement of need, or business/performance requirements, outputs and/or results that require to be achieved;
2. the Procurement Process and timeline;
3. details of how the dialogue will be conducted and the timeline;
4. commercial parameters;
5. contract agreement that will apply;
6. evaluation criteria and methodology to be applied to the selection of the Most Advantageous Proposal; and
7. process for down selecting Proposals during dialogue.

Each of these elements should be fully drafted prior to commencement of the Competitive Dialogue so that:

1. momentum can be maintained with no delay once the dialogue has started; and
2. the risk of any one Proposer influencing the content of the RFP once procurement has already started is removed.

Phase 2 steps in the process

Step 1 - Request for Interim Proposals

The Borrower issues a RFP document to the Initially Selected Applicants (Proposers). Normally a one-envelope process is used at this phase. Clarifications and addenda may be made.

Step 2: Development of Interim Proposals

Following receipt of the RFP, Proposers develop their Interim Proposals, which set out, at a high level, the Proposer's initial thinking in relation to the likely form that their solution will take. Interim Proposals should provide solutions to the Borrower's problem definition or statement of need, or business/performance requirements as defined in the RFP. Interim Proposals are opened at a public opening.

Step 3: Initial assessment of Interim Proposals

The Borrower makes an initial assessment of the Interim Proposals against the evaluation criteria and using the evaluation methodology described in the RFP.

The aim of the assessment is to:

1. consider the ability of the "means" being proposed (the solution) to satisfy the Borrower's "needs" (the problem definition, or statement of need, or business/performance requirements); and
2. prepare feedback to each Proposer that will inform the subsequent dialogue.

Step 4: Dialogue

During this step the Borrower enters into dialogue with Proposers. This involves the Borrower holding a series of separate, confidential bilateral meetings (rounds) with each Proposer to discuss all aspects of the Proposal. Each dialogue meeting will focus on specific aspects of the proposed solution. Each aspect should align with the work streams described earlier, for example: technical, price/cost, commercial/financial and legal. Each Proposer must be given an equal opportunity to participate in each dialogue round, unless they are eliminated from the process (see down-selection).

The Borrower should indicate, in the RFP, the number of anticipated rounds of dialogue that are planned to take place. However, additional rounds can take place to reach the necessary degree of certainty as to the proposed solutions. There is no limit to the number of rounds that may be necessary.

Rounds should be structured and Proposers notified, in the RFP, the topics to be discussed and the timing for each meeting (dialogue sessions). Arrangements for rounds may include:

1. An initial meeting to ensure that Proposers fully understand the content of the RFP and to provide an opportunity for clarification. The meeting is also likely to be the first time that the Borrower and Proposer teams will have met, so the session presents an opportunity to build relationships and agree how dialogue with each Proposer will be

conducted. This meeting may take place separately from the first round of dialogue described below and scheduled as a precursor to it.

2. A dialogue round that will focus specifically on Interim Proposals. Interim Proposals will have been submitted in advance of the dialogue session so that the Borrower may make an initial assessment of their content. The dialogue round will provide an opportunity for Proposers to explain the thinking behind the proposed solution, and for the Borrower to seek clarifications and provide feedback.

Feedback should be sufficiently detailed and robust to allow the Proposer to gain certainty that their solution is likely to be acceptable to the Borrower and that they may continue to develop it. If the solution, or any aspect of it, is not acceptable to the Borrower, this dialogue session is the time at which this should be made clear to the Proposer so that no further time is wasted on developing a solution that is not likely to meet the requirements.

3. Further rounds of dialogue will focus on all aspects of the proposed solution and organized in accordance with the Borrower's work streams.

Step 5 – Testing readiness

A final dialogue round should take place focused on testing the readiness to close dialogue and invite Final Proposals. It is recommended that this round is preceded by inviting draft Final Proposals that reflect the dialogue and feedback. A draft Final Proposal is an initial version of the Final Proposal. Where the Borrower intends to apply this process, details must be clearly set out in the RFP.

A draft Final Proposal should be written in exactly the same format as the Final Proposal. It will not, however, be formally evaluated. Instead, it should be reviewed with a view to identifying areas of Proposals that are not yet compliant or where further work is required, through dialogue, to allow the Proposer to complete the design of their solutions and submit fully compliant Proposals.

Once the Borrower is satisfied that two or more compliant and acceptable solutions have emerged the Borrower should close the dialogue phase.

Step 6 - Closure of dialogue

This step involves formally bringing the dialogue phase to a close. The Borrower should make a formal declaration to that effect. No further dialogue or discussions between the Borrower and Proposers are allowed after this closure.

Following closure of dialogue the Borrower should refine the problem definition or statement of need or business/performance requirements and should prepare addenda to the RFP to convert it into the Phase 3 RFP.

Stage 5 - Final Proposals, evaluation and contract award

Request for Final Proposals

During this stage the Borrower, as per figure VIII, should issue a Request for Final Proposals to each Proposer remaining in the Procurement Process (i.e. to those that have not been down-selected). Final Proposals should be evaluated and the Most Advantageous Proposal identified. Following the Standstill Period the Borrower may award the contract.

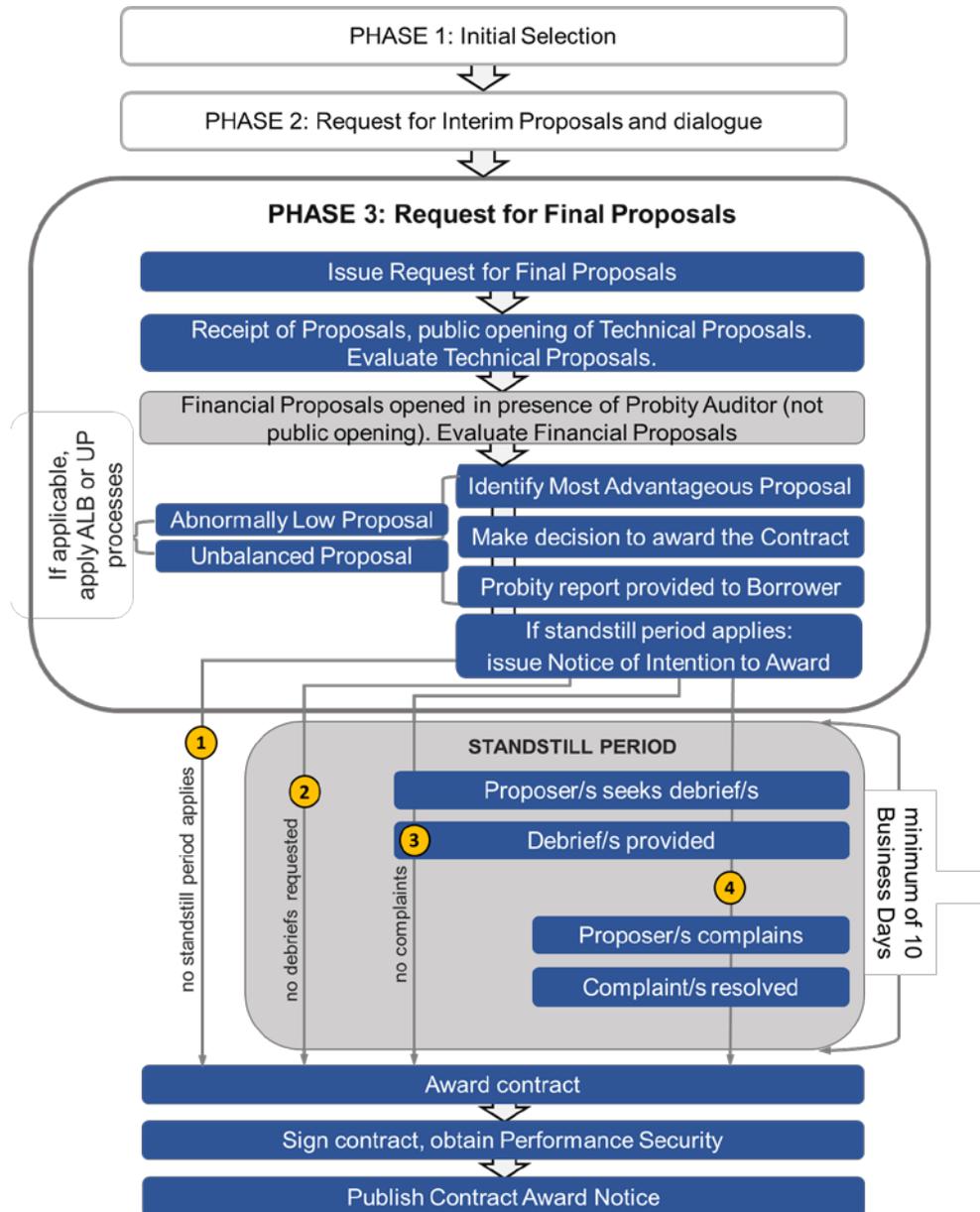


Figure VIII – Request for Final Proposals Phase 3 process flow chart

Proposal Evaluation

The purpose of Proposal evaluation is to determine the 'Most Advantageous Proposal'. Competitive Dialogue involves the application of rated criteria. In this circumstance the Most Advantageous Proposal is the Proposer that meets the qualification criteria and whose Proposal has been determined to be:

1. substantially responsive to the RFP, and
2. the highest ranked Proposal.

The process by which Proposals are to be evaluated should be agreed prior to going to market and set out in detail in the RFP. Proposers need to clearly understand how their Proposals will be evaluated. This will influence their approach to developing their solutions as they will have a full understanding of what the Borrower considers most important, whether this is price or qualitative aspects of solutions, and which among the qualitative aspects is given the most weight – for example, design, operational management approach, construction plans etc.

The Most Advantageous Proposal evaluation allows for the optimum combination cost and non-cost attributes to be considered. It is not necessarily the lowest priced Proposal. The evaluation process should therefore be designed to assess both technical Proposals (qualitative) and financial Proposals (quantitative) elements and for these to be combined to allow an overall evaluation.

There are several ways in which this can be achieved. A common method is the quality and cost method, in which separate scores are developed for financial Proposals (quantitative) and technical Proposals (qualitative), with each being given a weighting out of 100. For example, price may be given a weighting of 55% and quality 45%. This weighting can be adjusted according to the importance accorded by the Borrower to either element.

Planning for the Proposal evaluation

The Borrower should ensure that adequate resource is available to conduct Proposal evaluation, which is generally a highly resource intensive process.

The following should be considered when planning for evaluation:

1. **Evaluation team:** those who need to be involved in the evaluation process should be identified from the outset and provided with sufficient guidance to enable them to be able to carry out the evaluation role effectively.

Typically, members of the Competitive Dialogue team and sub-teams, supported by such specialist advisors as may be required, will be involved in evaluation. However, this group may need to be augmented by others with specific knowledge and understanding, ideally from a user perspective, of the “needs” being satisfied by the procurement

2. **Timetabling:** the periods of time during which evaluation will take place “needs” to be known from the outset as part of the procurement timetable as set out in the RFP. Time should be scheduled in the diaries of those to be involved in evaluation well in advance.

3. **Separation of technical and financial Proposals:** measures should be put in place to ensure that those involved in evaluation of the technical Proposals are not aware of and are unable to access information relating to the evaluation of the financial Proposals. It is important that price as a single factor is not allowed to influence the assessment of technical solutions. Care should be taken in structuring Proposal requirements to ensure that price/financial elements are not included in technical Proposals to be evaluated by the technical team/s.
4. **Governance Body:** members of the governance body should not be involved in the evaluation process so that they can maintain an independent governance role in reviewing and approving the evaluation recommendation.
5. **Security:** Proposals must be kept in a safe place and treated as commercially confidential. No unauthorized person should be able to access this information. Technical and financial Proposals must be kept separately. Access should be carefully controlled.

Evaluation checks

Before initiating the evaluation of Final Proposals, the Borrower should carry out a process that covers:

1. a compliance check to ensure that the Proposals received are in accordance with instructions and requirements of the RFP;
2. an updated check on Proposers to ensure that they still meet the qualification criteria; and
3. an initial review noting points for clarification, which should be issued to Proposers and responses required as quickly as possible so that evaluation is not delayed. Proposers are not permitted to amend their Proposals at this stage. They are only permitted to provide clarity and additional explanation where required on the content on their Final Proposal submission.

Evaluation of technical Proposals

The technical evaluation score will be derived from a combination of scores awarded to the different elements of Proposals under evaluation, with each element being given a weighting in accordance with the importance attached to it by the Borrower and as described in the evaluation model detailed in the RFP. For example, in an infrastructure contract, design may be the most important qualitative aspect of the contract and so would be given the highest weighting among the various elements in the Proposal evaluation.

It should not be necessary to allocate any part of the technical score to commercial aspects of Proposals if the financial (price) evaluation element is designed robustly. For example, the quality of the financial part of any Proposal can be translated into a price adjustment as noted above.

Similarly, any derogation from the standard contract issued with the RFP put forward by a Proposer can be either rejected as being unacceptable, rendering the Proposal non-compliant if that position is maintained in the Final Proposal, or given an inferred financial value as

described above. This would render unnecessary a technical score, as all aspects of contractual dialogue can be reflected in the financial score.

The design of the technical evaluation should be part of a coherent process that considers the problem definition, or statement of need, or business/performance requirements and how Proposers are required to demonstrate their ability to describe a proposed solution. Evaluation can be based on pass/fail criteria and scored rated criteria. Key considerations in designing the evaluation criteria and evaluation methodology include:

1. develop a description of the required contract output (the problem definition, or statement of need, or business/performance requirements);
2. a set of questions designed to test the ability of Proposals to deliver a workable solution that meets the problem definition, or statement of need, or business/performance requirements;
3. the questions are grouped into relevant strands (for example, questions relating to design, operation, community benefits or management), with each strand given an overall weighting within the technical score;
4. each question within each strand is given a weighting with the total being the overall weighting for the strand;
5. inclusion of a minimum threshold to be set for the overall technical score below which a solution would be deemed unacceptable and therefore non-compliant;
6. whether there are any evaluation elements where a particularly low score would render the submission non-compliant; and
7. the use of the draft Final Proposal process described above to ensure that Proposers are aware of such shortcomings and are given the opportunity to address these before submitting their Final Proposal.

The result should provide an evaluation framework that allows all aspects of a Proposers submission to be explored and tested against the problem definition, or statement of need, or business/performance requirements.

Where an interim evaluation is to be used, for example, to down-select during dialogue, the same evaluation criteria should be applied in the evaluation of Final Proposals. However, Borrowers should give thought to the financial weighting applied in Interim Proposals evaluation as it is unlikely that Proposers will have developed robust pricing at an early stage in dialogue and so it may not be appropriate to place a high weight on financial Proposals. A weight of 5-10 % may be sufficient to allow financial Proposals to be included in evaluation without giving it undue emphasis. Similarly, it may be preferable for Proposers to focus their efforts on certain aspects of their solution in the early stages of dialogue, for example design. Where dialogue leading up to the Interim Proposals has focused on specific aspects of Proposer solutions, these areas should be given the higher weightings in evaluation of Interim Proposals, with areas not yet discussed in detail in dialogue so far given lower weight.

Evaluation of financial Proposals

The most common approach to scoring financial Proposals is for the lowest priced Proposal to be given the maximum score available under the price/cost criteria and for other Proposals to

be scored in relation to the lowest. Again, there are several approaches that can be taken to this and it is for Borrowers to decide on the methodology that works best for their contract.

The Banks standard RFP contains a suggested approach that is considered good practice, summarized below.

1. each Proposal is scored out of 100;
2. the 100 points available are allocated between technical Proposals (quality) and financial Proposals (price), for example, 55 points for technical, 45 for financial;
3. technical criteria are developed and given weightings based on their relative importance, to add up to the total (for example, 45) points available; and
4. some quality criteria may not be allocated a score but may be designated as 'pass/fail'.

What constitutes price in the evaluation of financial Proposals should be considered carefully and defined clearly in the RFP. Points to consider for inclusion within the definition may include:

1. the schedule of payments to be made by the Borrower to the Proposer under the contract to be agreed between the parties over the lifetime of that contract;
2. any costs that will be incurred by the Borrower as a direct result of the Proposals brought forward but not included in the above payment stream – for example, the effect that the solution has on the Borrower's own cost base if this is a differentiating factor between solutions;
3. the inferred cost of any risk that the Borrower had envisaged being borne by the Proposer, but which the Proposer is seeking to pass back to the Borrower. This value could be developed by assessing the financial impact that the Borrower would sustain should the risk be realized, combined with the estimated probability of risk realization to give a risk-adjusted value; and
4. Any other adjustment made to price that the Borrower deems appropriate as a result of evaluation of information supporting the price Proposals that indicates that certain aspects of the price calculation are not sufficiently robust to be relied upon as a true reflection of the price that will be paid.

The dialogue process should allow time for price to be discussed with each Proposer and the value of any of the adjustments noted above made known to Proposers so that they can consider their position prior to finalization of their Proposals.

Phase 3 steps in the process

Step 1: Issue updated RFP

The Borrower refines and updates the RFP in light of the dialogue that has taken place. This may include:

1. clarifying and/or refining the problem definition, or statement of need, or business requirements, or technical documentation. This can either be through general

amendments that apply to all Proposers, or specific amendments to an individual Proposer to allow its specific solution to be rendered deliverable

2. any agreed amendments to the contractual agreement.

The Borrower then issues an updated RFP to Proposers (that have not been eliminated in Phase 2), in accordance with the Bank's SPD. A two-envelope process is normally used. One for the technical Proposal and the second for the financial Proposal.

Step 2: Submission of Final Proposals

Proposers submit their Final Proposals in accordance with the Phase 3 RFP. Final Proposals are received and opened in public. Only the technical Proposals are opened at this time. financial Proposals remain sealed and kept securely.

Step 3: Evaluation of technical Proposals

The Borrower evaluates technical Proposals against the evaluation criteria and methods described in the RFP. There should be no need to seek clarification from a Proposer. The dialogue phase has closed and no further discussions are allowed.

Step 4: Open financial Proposals

The Borrower opens the financial Proposals in the presence of the Probity Auditor. This is not normally done in public. This allows the Borrower to retain competitive tension in the process. The Borrower evaluates the financial Proposals against the evaluation criteria and methodology described in the RFP.

Step 5: Most Advantageous Proposal

Once Proposal evaluation is completed, the Borrower selects the Most Advantageous Proposal based on the criteria and evaluation methodology specified in the RFP.

Step 6: Finalize the solution

Once the Most Advantageous Proposal has been selected, the Borrower and preferred Proposer will finalize details of the solution and the contractual arrangement. This process only allows for clarification and confirmation and does not permit any material deviation from the Final Proposal that formed the basis of the Proposer's selection. The Borrower should not make any further changes to the problem definition, or statement of need, or business requirements.

Step 7: Probity report and Notification of Intention to Award

At this step in the process the Probity Auditor prepares the probity report and submits this to the Borrower with a copy to the Bank.

To ensure transparency and accountability the Probity Auditor's report (excluding all confidential and commercially sensitive information) should be sent as an attachment to the Notice of Intention to Award the contract, sent to all Proposers who were involved in the dialogue, and published on the Borrower's website.

Step 8: Standstill Period

As described in the Procurement Regulations, the Transmission of the Notification of Intention to Award initiates the Standstill Period: Where applicable, the Borrower provides debriefs and manages any complaints received that relate to the decision to award the contract.

Step 9: Contract Award Notice and Prior Review

On expiry of the Standstill Period, or following any complaints that were received being addressed, the Borrower shall publish the Contract Award Notice.

Contract Award

Following the Borrower's decision to award the contract, and before the Notice of Intention to Award the contract is transmitted, the Probity Auditor shall provide a probity report on all phases of the Competitive Dialogue process. The report shall be provided to the Borrower with a copy sent to the Bank.

Competitive Dialogue procurements are normally subject to prior review, irrespective of value or procurement risk levels because Competitive Dialogues by nature of the complexity of the selection method and arrangement are determined to be inherently risky.

The contract award process under Competitive Dialogue should adhere to the Procurement Regulations requirements for contracts that are subject to prior review.

Stage 6 - Contract implementation

Proposer Behaviour

Competitive Dialogue can lead to some unusual behaviors from Proposers. The process of successive rounds of dialogue seeks to bring “needs” and “means” together in a progressive and structure way. However, there can be a tendency among some Proposers to resist this process, particularly in the latter stages leading up to the award of contract and during the initial stages of contract implementation.

During the dialogue phase and early contract implementation, Proposers / the Contractor may seek to:

1. allow the “means” to move apart from the “need” to, for example, improve profit margins on the contract or to simplify the task of enacting contractual commitments; and
2. interpret aspects of the development of their solution as changes imposed by the Borrower rather than a refinement of the “means” by which the “needs” are delivered, and so pass on the risk, and therefore cost, to the Borrower.

Figure IX demonstrates the impact of these behaviors and Borrowers should guard against such behaviors and ensure that, in the period after contract award, the Contractor continues to seek to deliver the “needs” via the “means” agreed.

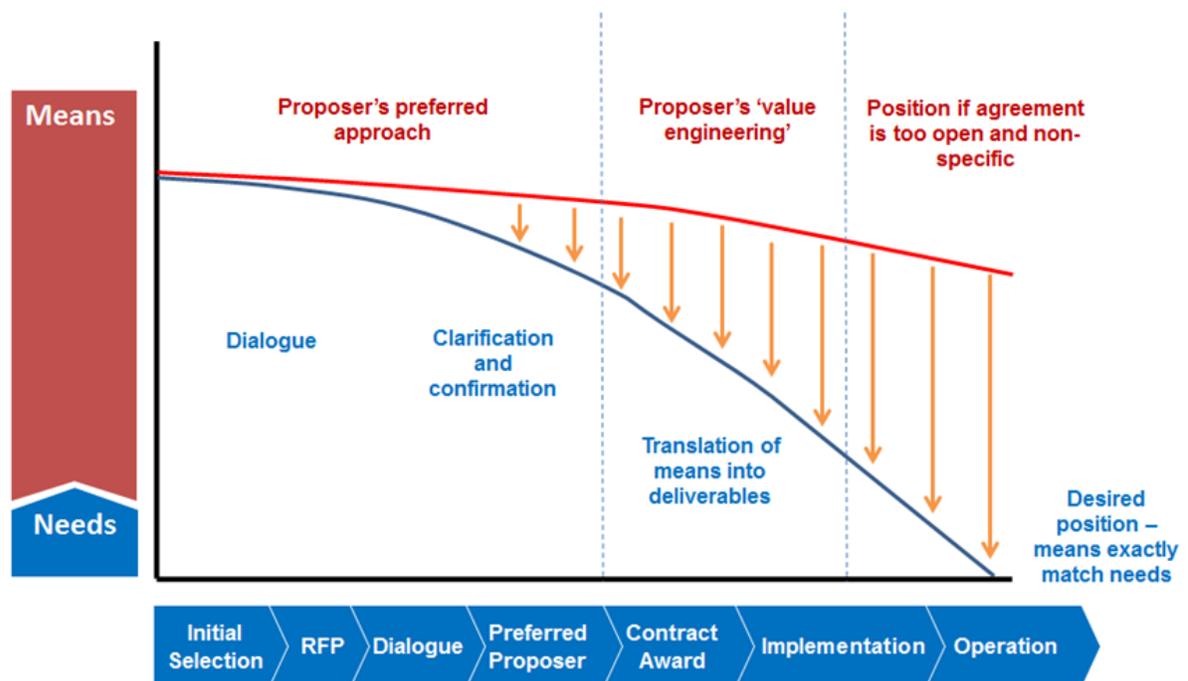


Figure IX – Competitive Dialogue behaviors

Contract implementation

It is essential that the Borrower prepares a contract management plan prior to the award of the contract describing how the contract will be managed. The contract management plan should be agreed with Proposer prior to contract award and incorporated into the contract.

Once the contract is awarded, contract implementation will continue to need careful oversight and management to ensure that the winning solution (the “needs” and the “means”) is fully delivered and not subject to unilateral scope reduction by the contractor.

Contract implementation may comprise several phases, for example:

1. **Implementation:** during contract implementation, the contractor will mobilize to begin work to implement its contractual responsibilities. This might involve, for example, a construction phase if a physical asset is to be created.
2. **Transitional hand-over:** in this a phase, the asset or service is ready to commence its operational phase. The Borrower is likely to require a period to transition from existing arrangements to the new environment that the contractor will be providing.
3. **Full operation:** the contract moves into its steady state, with full delivery of obligations specified in the contract being provided by the contractor.

In each of these phases, the level of contract oversight and management applied should need to be maintained, and so members of the Competitive Dialogue Team may be required to support contract management activities after the award of contract.

The management of the contract implementation can be highly resource intensive, with a high level of focus required on ensuring that the contractor delivers the solution proposed and accepted under the Competitive Dialogue procurement, and that the “means” delivered in reality continue to match the “needs” identified at the outset. It is preferable to have the involvement of Borrower staff with a strong working knowledge of the contractual arrangement.

Methods to ensure that contractual obligations are fulfilled include:

1. key performance indicators;
2. payment mechanisms agreed;
3. checking invoicing for accuracy;
4. checking the correct application of agreed indexation processes; and
5. careful management of any variation to contract.

The Borrower should ensure that there is a reasonable and realistic dispute mechanism, for example by appointing a standing dispute board. This can be set up prior to contract signing and may remain effective throughout the duration of the contract.

Annex A – Good practice tips

Good practice in Competitive Dialogue

In designing and undertaking a Competitive Dialogue process, Borrowers should consider the good practice points set out below.

Issue	Good practice
Dialogue not monologue	Competitive Dialogue should be a constructive Process with genuine two-way communication.
Dialogue not negotiation	The Proposer must develop the “means” to satisfy the “needs”. The process should be used to bring “needs” and “means” together.
Intellectual property	Protect Proposers’ intellectual property: <ul style="list-style-type: none"> • don’t selectively chose, that is, use one Proposer’s intellectual property to enhance the solution of another Proposer; • don’t reveal any element of a Proposer’s solution to anyone else without that Proposer’s written consent; and • agree with Proposers which elements of their solution and submissions are commercially confidential.
Issue resolution	Address the difficult issues that need to be resolved from the outset – don’t put them off until later and deal with the easy ones first.
Level playing field	Be completely transparent and fair with all Proposers: <ul style="list-style-type: none"> • provide every proposer with the same information in the same detail – nothing should be done that could give one Proposer an advantage over another: and • resolve as soon as possible any issues that may prevent equal consideration of all Proposers in dialogue as this may cause delay later.
Dialogue agenda	Make it clear at each meeting what is expected to be discussed and prepare fully for the meeting. At the same time, the process “needs” to be flexible so that Proposers can add items to the agenda and the Borrower can be ready to discuss these issues.
Feedback	Give good, clear, open and honest written feedback in dialogue sessions – this reduces the risk of misinterpretation, which could lead to challenge or failure to deliver “means” that meet the “needs”.
Clarity of focus	Be clear in dialogue about what is wanted – doing so will avoid Proposers wasting time on elements of a solution that are not

	required or repeating solutions that have already been eliminated as not acceptable.
Audit trail	Maintain a clear audit trail of dialogue, amendments, issues agreed, all minutes of meetings and follow up actions, all of which should be shared with the relevant Proposers and used to inform the updated RFP.
Communication	Ensure that there are good lines of communication between Borrower Competitive dialogue team members (including work stream sub-teams) who are undertaking the dialogue so that overlapping issues are addressed in a co-ordinated way.
Clarifications sought	Submission and response times must be reasonable – allow time to consider these properly, but not so long that delays are caused.
Closing dialogue	This should only take place once the Borrower is confident that “means” match “needs”. This will require sound judgment as to what remain material unresolved issues compared to points of minor clarification that take place prior to any contract award. All dialogues should close at the same time.

Annex B – Probity Auditor

Background

A probity audit is an assurance engagement, in which a Probity Auditor provides independent scrutiny of a Procurement Process and expresses an objective opinion as to whether the prescribed probity requirements have been adhered to. The conclusion expressed should be based on evidence gathered against prescribed criteria.

Independence is essential to a probity audit. A third party to the Procurement Process should be able to rely on the probity audit to obtain confidence that the probity requirements of that Procurement Process have been adhered to.

Key elements of a probity audit are:

- **Criteria** - These are the predetermined benchmarks used to measure and evaluate whether the probity requirements within the Procurement Process have been met. The criteria should be clarified and agreed prior to commencement of the audit.
- **Evidence** - The Probity Auditor is required to obtain sufficient, appropriate evidence for all established criteria. The Probity Auditor's decision must be supported by robust facts and documentary evidence. It is not sufficient for professional judgement to be used as the justification for decisions that are not otherwise supported by the facts and circumstances of the audit or sufficient relevant evidence. However, the Probity Auditor will use professional judgement as to whether the evidence is adequate to support the decision based on the determined criteria.

The results and opinion of the Probity Auditor as to whether the probity requirements have been met are documented in a probity audit report, which includes any significant issues that have been identified and that impact upon the opinion that the Probity Auditor provides.

Auditor Independence

Ensuring the independence of the Probity Auditor will help to make sure that they provide an objective and impartial view of probity within the Procurement Process.

The involvement of an independent Probity Auditor provides greater assurance to the Bank and to Bidders/Proposers wishing to do business with the Borrower as to the probity of the Procurement Process.

Determining Independence

A key element of independence is impartiality, which “means” being free from bias and not affected by influences or interests that compromise professional judgment.

Impartiality allows the Probity Auditor to act with integrity and to exercise objectivity in respect of the probity engagement. For a Probity Auditor to be impartial and free from bias, they should not be exposed to situations or relationships that may impair their objectivity with

respect to the engagement, or that may be perceived as impairing their objectivity with respect to the engagement.

Probity auditors must not only be independent in action but must also be perceived to be independent. The appearance of independence, as demonstrated by external facts and circumstances, provides an important indicator of actual independence.

There are many potential threats to independence as well as potential safeguards that mitigate these threats. A summary of these is provided below.

Threats to Independence

- **Self-Interest** - This occurs where the Probity Auditor stands to benefit from a financial or significant non-financial interest in a probity client (Borrower or Supplier). When evaluating the significance of the self-interest threat, consider the type of interest (direct or indirect) and the materiality of the interest.
- **Self-Review** - This occurs where a Probity Auditor reviews their own advice. For example, a Probity Auditor provides advice regarding probity within a Procurement Process and then conducts a probity audit over the procurement.
- **Advocacy** - This occurs where the Probity Auditor promotes, or may be perceived to promote, a Borrower's or Suppliers position to the point that objectivity may, or may be perceived to be, compromised. For example, this can arise where a Probity Auditor entity promotes a particular procurement approach to market and selection method which has not been reviewed for probity by a third party.
- **Familiarity** - This occurs where a close relationship between the Probity Auditor and a Borrower or Supplier causes the Probity Auditor to become biased to the Borrower or Supplier.
- **Intimidation** - This occurs where the Probity Auditor is deterred from acting objectively, by threats (actual or perceived) from other parties associated with the procurement. For example, a Probity Auditor may be threatened with replacement over a disagreement over a probity issue in the Procurement Process, or have their credibility threatened.

Safeguards for Independence

Where there is a potential threat to the independence of the Probity Auditor, the Borrower should determine whether there are any safeguards that could eliminate or reduce the threats to independence. Safeguards could include:

- A governance structure that provides oversight and support for probity within procurement.
- Training Borrower staff so that they are well informed with regard to probity requirements in Bank financed contracts.
- Following a structured process in the appointment of the Probity Auditor to ensure independence.

Conflict of interest

Conflicts of interest represent one of the potential threats to independence. A conflict of interest means having an interest (whether personal, financial or otherwise) which conflicts with, or may reasonably be perceived as conflicting with, the ability of the Probity Auditor to perform their obligations fairly and objectively. Perceived or potential conflicts of interest can be as damaging as actual conflicts of interest.

Recommended Practice

The issue of independence should be specifically considered and addressed prior to engaging a Probity Auditor. At this stage, potential threats to independence should be considered as well as any safeguards that might eliminate or reduce the threats to independence.

In the case of a Probity Audit, independence is essential. A third party to the procurement should be able to rely on the Probity Audit to obtain greater confidence regarding whether the probity requirements of that procurement have been adhered to.

Potential Probity Auditor should be required to divulge all potential threats to independence, including conflicts of interest, at the time of offer or as soon as any conflict becomes apparent during the probity service engagement. The Probity Auditor should be required to provide written assurance that they have no conflict of interest in the procurement, can remain objective and impartial throughout the engagement, and will provide notification of any conflict of interest, or compromise to independence, that arises during the Probity services engagement.

If the Borrower is advised of any threat to independence that has arisen during the probity service engagement, its impact on the engagement should be considered including how the threat will be managed.

Annex C – Sample Terms of Reference for Probity Audits

Project Background

PCU to complete information on the background of the project

Objective of the Assignment

The Probity Assurance Auditor will provide probity assurance services in relation to the Competitive Dialogue of contract for *(Insert the Name of the Project)* to ensure that:

- a. the Competitive Dialogue negotiation process is consistent with the applicable World Bank Procurement Guidelines, the Procurement Documents as issued to the Proposers and any applicable national policies or procedures;
- b. the Competitive Dialogue process as conducted is fair, balanced, transparent and conducted with integrity, so that no party is treated unfairly;
- c. risks are identified and mitigating actions are taken in a timely, effective manner;
- d. probity principles are applied and probity practices are applied with integrity.

Scope of Work

The Probity Assurance Auditor shall:

1. Examine and evaluate documentation, information and processes
 - a. *Review the Request for Proposals document, draft form of contract and the Propers submission;*
 - b. *Noting that the Borrower has already evaluated the bidder's bid as substantially technically responsive and taking into account the terms and conditions of the bidding documents as issued and the draft form of contract as subsequently provided by the Government to the bidder on (insert date), identify potential areas of vulnerability in the negotiation process, such as issues which might give rise to the risk of failure of the contract negotiations; these might include areas where certain aspects of the bidder's bid may not be entirely consistent with the technical or commercial requirements of the bidding documents or draft form of contract. Pay attention to these issues in the observation of the contract negotiations to ensure that, to the greatest extent possible, they are appropriately handled, negotiated and resolved by the parties during the contract negotiations.*
 - c. *Act as an independent observer of the Competitive Dialogue process, including written and face-to-face communications between the Borrower and Proposer and comment on all aspects of the Competitive Dialogue including:*
 - i. *briefing meetings and evaluation committee meetings held among Borrower officials to discuss the negotiations;*

- c. Document matters, obtain sufficient and appropriate information to support any conclusions on which reports are based, and identify any areas where information has been withheld by either party.*
- d. Prepare a signed, written final report describing the Borrower's performance when conducting the process.*

The report should present the purpose, scope and results of the probity assurance audit and include an expression of the Probity Auditor's opinion regarding the Objective of Assignment set out in paragraph xx above. Reports should highlight significant findings and recommendations and inform management of any major deviation from the applicable Procurement Guidelines and the reason for those deviations.

List of Reports, Schedule of Deliveries & Period of Performance

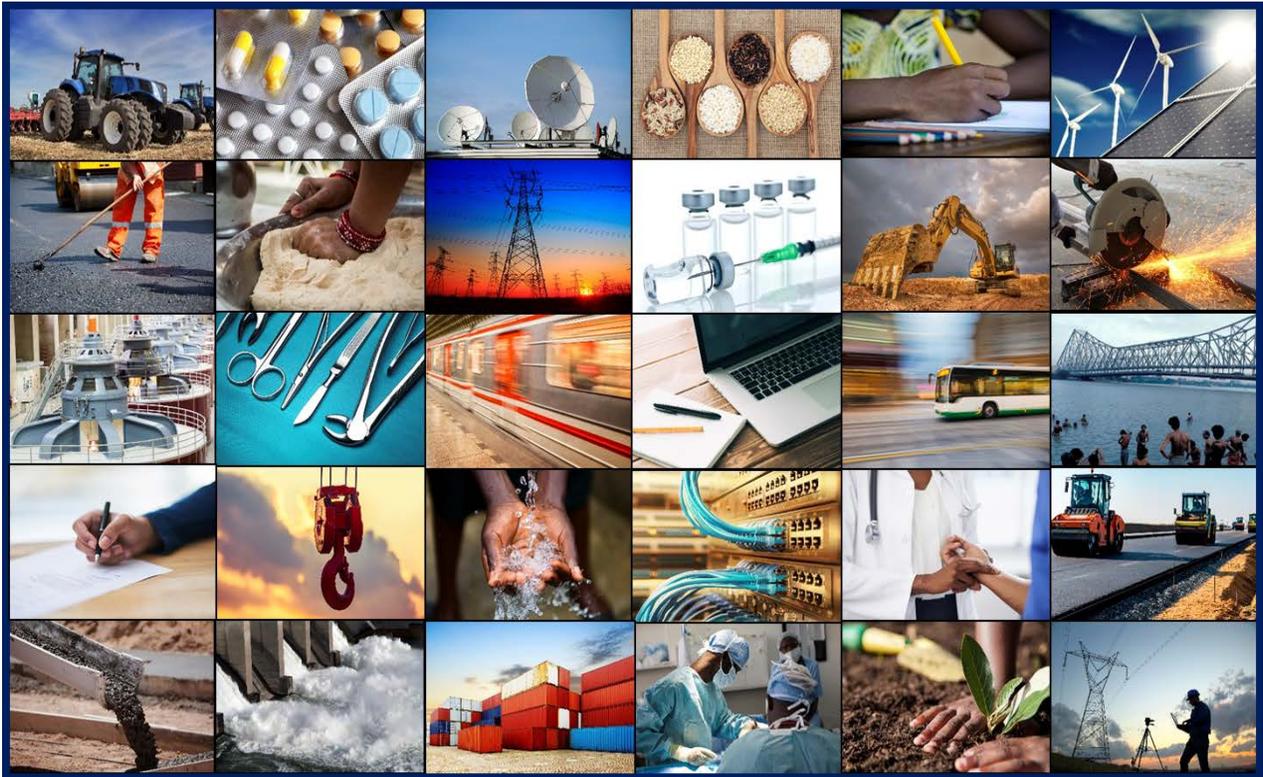
PCU to insert.

Data, Documents, Local Services, Personnel and Facilities to be Provided by the Client

PCU to list documents, data and information that the Government will make available to the Probity Assurance Auditor, as well as other local services, such as office facilities, internet access, secretarial services, local transportation etc. that the Borrower will provide.

Institutional and Organizational Arrangements and Reporting Relationship

PCU to describe to whom / which institution the Probity Assurance Auditor will be contracted and to whom s/he will report.



For additional information about the World Bank Procurement Framework, including Standard Procurement Documents (SPDs), Guidance, briefing, training and e-learning materials see www.worldbank.org/procurement