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# **ATTACHMENT 2**

**COMPETITIVE DIALOGUE PROCEDURE**

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The competitive dialogue procedure is a type of tender procedures according to the Act, whereby the contracting authority has the opportunity to negotiate with the participants of the procedure, which is one of the reasons why this tender procedure is suitable for use in public tenders for innovations.

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## Legal Framework of the Competitive Dialogue Procedure

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The competitive dialogue procedure stems from the provisions of Article 30 of the Directive and was implemented into Czech law on its basis. It is contained in Article 68 and Article 69 of the Act. The competitive dialogue procedure has some elements in common with the negotiation with prior publication procedure. For the purposes of awarding public tenders for innovations, however, this methodology considers the competitive dialogue procedure to be more appropriate.

### **Difference Between the Competition Dialogue Procedure and the Negotiation with prior publication procedure**

The two basic differences between the two types of procedures are as follows:

- A lower degree of definition of the tender conditions in the competition dialogue procedure;
- The purpose of the negotiations; and
- The possibility to act even after submission of tenders in the competitive dialogue procedure.

### **Definition of the Tender Conditions**

In the competition dialogue procedure, the Act assumes that the contracting authority has an idea of its need but does not have a specific idea of the way to solve it. In contrast to Article 61(4) of the Act, where in the case of the negotiation procedure, the contracting authority is obliged to define the minimum technical specifications in the tender dossier, in the case of the competitive dialogue procedure, such a definition is not foreseen by the Act. The reason is that the minimum technical specifications at the time of announcement may limit potential participants. Therefore, the tender dossier has a more general form in the case of the competition dialogue procedure.

### **Purpose of Negotiations**

Another difference is the possibility of negotiations. Both the negotiation with prior publication procedure and the competition dialogue procedure allow negotiations in the phase prior to submission of tenders. However, the purpose of the negotiations is different in both of the tender procedures. In the case of negotiation with prior publication procedure, the aim of the



negotiations is to clarify the details of the offered solutions. In the case of the competitive dialogue procedure, suitable solutions are only found during negotiations.

### **Possibility to Act even After Submission of Tenders in the Competitive Dialogue Procedure**

In the case of the competitive dialogue procedure, the possibility to also negotiate the tender of the selected supplier is given by Article 69(8) of the Act. The purpose may be to clarify the tender or contractual terms. Basic parameters must be maintained with reference to Article 6 of the Act.

### **Difference Between the Competitive Dialogue Procedure and the Innovation Partnership Procedure**

The competitive dialogue procedure has some features in common with the innovation partnership procedure. The basic differences between the two types of procedures include:

- Application assumptions;
- The possibility to select multiple partners in the innovation partnership procedure;
- The assumption of research and development in the innovation partnership procedure given by the Act.

### **Application Assumptions**

The assumptions for applying the innovation partnership procedure are much more narrowly specified than those for the competitive dialogue procedure. For the announcement of an innovation partnership procedure, it is essential that the market cannot satisfy the needs of the contracting authority without the development of an innovative solution, i.e., the solution in this case does not exist on the market. There are more grounds for the use of this type of procedure in the Act in the case of the competitive dialogue procedure, and they will be dealt with in more detail in the next section.

### **Possibility to Select Multiple Partners in the Innovation Partnership Procedure**

One of the advantages of using the innovation partnership procedure over the competitive dialogue procedure may be the possibility to select multiple suppliers (partners) if the contracting authority is not sure which supplier will be more successful in the subsequent research and development. This option is not available in the case of the competitive dialogue procedure. After the end of the competitive dialogue stage, according to the Act, the contracting authority is obliged to select only one supplier with whom to sign a contract.

### **Assumption of Research and Development in the Innovation Partnership Procedure**

In the innovation partnership procedure, the Act directly states that the stages of innovation partnership will follow the sequence of steps in the research and development process. On the

other hand, the Act does not focus on the development phase of the competitive dialogue procedure, because the competitive dialogue procedure can also be applied in other cases.

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## Assumptions for Applying the Competitive Dialogue Procedure

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The assumptions for applying the competition dialogue procedure are the same as the exhaustively defined conditions for applying the negotiation procedure with prior publication and are defined in Articles 60(1) and (2) of the Act as follows:

- “a) The needs of the contracting authority cannot be met without adaptation of the performances that are readily available on the market,*
- b) The performance of the public tender includes a proposal for a solution or an innovative solution,*
- c) The public tender cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity, or the legal and financial make-up connected with the subject-matter of the public tender, or*
- d) Technical specifications cannot be established by reference to technical documents pursuant to Article 90(1) and (2).”*

It is also possible to apply this type of tender procedure: *“The contracting authority may also apply a negotiated procedure with prior publication where a previous open or restricted procedure was cancelled pursuant to Article 127(1).”*

For the purposes of this appendix to the Methodology, only the grounds stated in letters a) and b) will be discussed in more detail.

### **The Needs of the Contracting Authority Cannot be Met Without Adaptation of the Performances that are Readily Available on the Market**

A solution exists on the market that the contracting authority believes may satisfy its needs or solve its problem, but this solution is not yet adapted for the contracting authority. At the same time, the contracting authority does not exclude the possibility that there may also be another solution, yet unknown to them. If the contracting authority announces a competitive dialogue, the content of the dialogue, when applying letter a), will be how to modify the solution for the contracting authority. This may be e.g., a discussion of the range of options and modifications.



### **The Performance of the Public Tender Includes a Proposal for a Solution or an Innovative Solution**

In the case of letter b), a completely new solution that does not exist on the market may be the subject of a public tender, as is the case with the innovation partnership procedure.

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## **Stages of the Competitive Dialogue Procedure**

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The following stages are included in the competitive dialogue procedure for public tenders for innovations:

- Preparation before announcing the public tender
- Stage 1 – Evaluation of applications for participation
- Stage 2 – Competitive dialogue and negotiation
- Stage 3 – Signing the contract and starting the implementation
- Commencement of use

### **Preparation**

As with the innovation partnership procedure, it would be appropriate to include the following steps in particular (for more information, see the Methodology and this attachment):

- Market analysis;
- Preliminary market consultations and preliminary notification for establishing the tender conditions and informing possible suppliers;
- Determining the expected value; and
- Establishing the tender conditions.

### **Stage 1 – Evaluation of Applications for Participation**

According to the Act, Stage 1 includes the following steps:

1. Commencement of the competitive dialogue procedure – the period of **30 days** until the receipt of applications for participation begins;
2. Receiving requests for participation;

3. Evaluation of applications (with a possible reduction of the number of participants pursuant to Article 111 of the Act, exclusion); and
4. Call to participate in the dialogue – the deadline for submission is not set;

In principle, the technical qualifications should be set as openly as possible, with the knowledge that, for example, small and medium-sized enterprises may not be able to meet demanding qualification conditions.

The result is an invitation to the unexcluded participants to participate in a competitive dialogue.

## Stage 2 – Competitive Dialogue and Negotiation

The following procedure is included in Stage 2:

1. Invitation to participate in a competitive dialogue (the discussion may be conducted, for example, based on pre-specified questions listed in the invitation);
2. Negotiations – these may take place in successive phases with the aim of reducing the number of solutions offered. Be careful not to share confidential information. In this step, it is possible to reduce the number of participants pursuant to Article 112 of the Act; and
3. End of dialogue and call for proposals.

Negotiations are conducted with each participant separately with regard to the protection of confidential information. Conducting negotiations may be difficult for the contracting authority at first, and it is necessary to prepare for it. It is advisable for experts who know the market well to take part in the negotiations. If the negotiations take place several times and the participants help the contracting authority in formulating the tender conditions, but are subsequently not selected as partners, it is possible to provide them with remuneration for their participation pursuant to Article 16(4) of the Act.

The result of Stage 2 is the receipt of tenders.

## Stage 3 – Selection of a Tender and Start of Implementation

The contracting authority selects the most suitable tender based on the criterion of economic advantage of the tenders, where quality will play a major role. The lowest price criterion is excluded. After selecting the tender, the contracting authority is entitled to clarify the details of the tender and the contractual terms.

The stage ends with the signing of a contract.



## Commencement of Use

Commencement of use is part of the purchase of the subject of performance in the case of a public tender for innovations. Without providing the innovation to the end user (contractor) there may be no innovation. If the solution will be developed from the beginning, it is necessary to count on the corresponding length for the completion of performance.