



Competitive Dialogue

How Competitive Dialogue works in New Zealand

Developing this guide

The aim of this guide is to introduce you to the Competitive Dialogue process and offer some advice on how to use the process to its best advantage. This guide is intended as an initial reference only and does not replace sound procurement planning.

The Competitive Dialogue process was developed in the European Union (EU), which has strict regulations that govern how the process must be carried out. New Zealand is not bound by the same regulations.

If you need any advice about procurement planning, talk to the Ministry of Business, Innovation and Employment's (MBIE) Government Procurement branch. You can contact the Government Procurement branch at: procurement@mbie.govt.nz

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About Competitive Dialogue

The benefits of Competitive Dialogue

Competitive Dialogue can:

- result in better quality fit-for-purpose tenders
- provide a range of innovative ideas
- deliver a solution that is fully customised to a complex problem
- reduce the time it takes to award the contract
- add value by building strong relationships with shortlisted suppliers.

Competitive Dialogue is a technical term for a tender process that was created in the European Union to allow more flexibility when dealing with complex or unusual procurements.

Competitive Dialogue is different from other tender processes because it allows agencies to thoroughly discuss each aspect of the procurement with suppliers **before** specifying the requirements and **before** inviting the suppliers to submit their full and final tenders or proposals.

This makes Competitive Dialogue very useful for procurements where you know what your needs are but you don't know how those needs can be met.

Agencies first invite, then shortlist qualifying suppliers to participate in the Competitive Dialogue process, which includes a structured dialogue phase.

The structured dialogue phase allows agencies to work in one-on-one sessions with each shortlisted supplier to develop possible solutions, usually from scratch.

Shortlisted suppliers compete against each other to put together the best solution(s). This creates a competitive tension that stimulates innovative ideas and can result in better value for money over the whole-of-life of the contract.

The dialogue phase may result in a single solution or a different solution with each supplier. The agency then finalises its specifications and invites the shortlisted suppliers to bid for the resulting contract opportunity.

A well-managed Competitive Dialogue process should result in better quality tenders, do away with protracted contract negotiations, build excellent working relationships and iron out potential problems before the contract is awarded.

This offers significant opportunities to get better strategic outcomes from complex or unusual procurements.



Competitive Dialogue is not the only way to talk to suppliers during a tender process. For more information on how engage with suppliers, see 'Guide to Constructive Market Engagement' at www.procurement.govt.nz

Using Competitive Dialogue

Market competition

Your Competitive Dialogue process won't work unless there are enough potential suppliers to promote genuine competition.

If your market research and analysis show there is no competition for the procurement, then you may need to consider alternative processes, eg planning a design contest or initiating research and development.

Market engagement

Competitive Dialogue is not the only way to talk to suppliers during a tender process.

Read our guide on 'Constructive Market Engagement' to learn more about effective ways to engage with the market.

Competitive Dialogue allows you to go into formal talks with shortlisted suppliers to solve a problem or take advantage of an opportunity in a competitive environment with no pre-determined specifications to limit innovation.

It's a useful tool for managing complex procurements where you know what you want to achieve, but you genuinely don't know what the solution will look like.

Competitive Dialogue works well for procurements where at least some of the following apply:

- the procurement is complex or unusual and there isn't an identified solution or an established market for the goods or services you want to procure
- you're not able to describe your requirements without discussing possible solutions with potential suppliers
- you're not sure how the procurement will work from a financial or legal point of view.

Typically Competitive Dialogue works well for complex procurements such as:

- infrastructure projects
- IT projects
- Public Private Partnership (PPP) and Private Finance Incentive (PFI) schemes.

Example

You need to find a way to cross a stretch of water, but don't know the best way to do it. There are many ways to get across, you could build a bridge, build a tunnel, contract a ferry service or maybe the market has alternate solutions you're not aware of.

You've no idea how to specify the requirements or which option is likely to offer the best value for money. The best way to get the result you want would be to talk to suppliers about what they can offer.

Using Competitive Dialogue will allow you to discuss the potential solutions before you decide your specifications.



If you're keen to use the Competitive Dialogue process and want some advice, contact MBIE's Government Procurement branch at procurement@mbie.govt.nz

The advantages of using Competitive Dialogue

Balancing the advantages with the costs of the process

Competitive Dialogue can be expensive and resource-intensive both for the agency and the participating suppliers.

It's important to **balance** the costs of the process against the **advantages** of the process eg the potential for increased value for money.

The cost of the process should be considered in the solution's total cost of ownership.

You can consider making payments to shortlisted suppliers for their participation in the dialogue phase, if you think the costs may be a participation barrier.

You don't have to do this but if you do decide to, include the payments in your total cost of ownership calculation.

- It encourages effective market research, early engagement with the market and good procurement planning.
- It provides a structured process that allows you to approach the market, when you are unsure of the solution.
- It allows you to work separately with each shortlisted supplier to identify and develop possible solutions.
- It maintains competitive tension between suppliers that drives better value for money, which isn't always the cheapest price.
- It promotes innovative solutions.
- It offers an opportunity to build effective working relationships with potential suppliers during the dialogue phase.
- It may produce a single optimal solution or several individual solutions all of which are tailored to meet your requirements.
- Many of the contract details are sorted out during the dialogue phase which:
 - results in better quality solutions
 - decreases 'teething' problems
 - shortens delivery lead times
 - prevents scope-creep and price-creep
 - reduces the time it takes to close the contract.



You can read about the total cost of ownership in MBIE's 'Guide to the Total Cost of Ownership' at www.procurement.govt.nz

Competitive Dialogue is unique

Competitive Dialogue is different from other procurement processes because you don't have to specify your requirements **before** you approach the market.

In Competitive Dialogue, your agency will work with shortlisted suppliers to develop potential solutions in structured dialogue sessions that are unique to the process. You'll only need to specify your requirements **after** you've used the dialogue sessions to work out the solution(s) that will meet your needs.

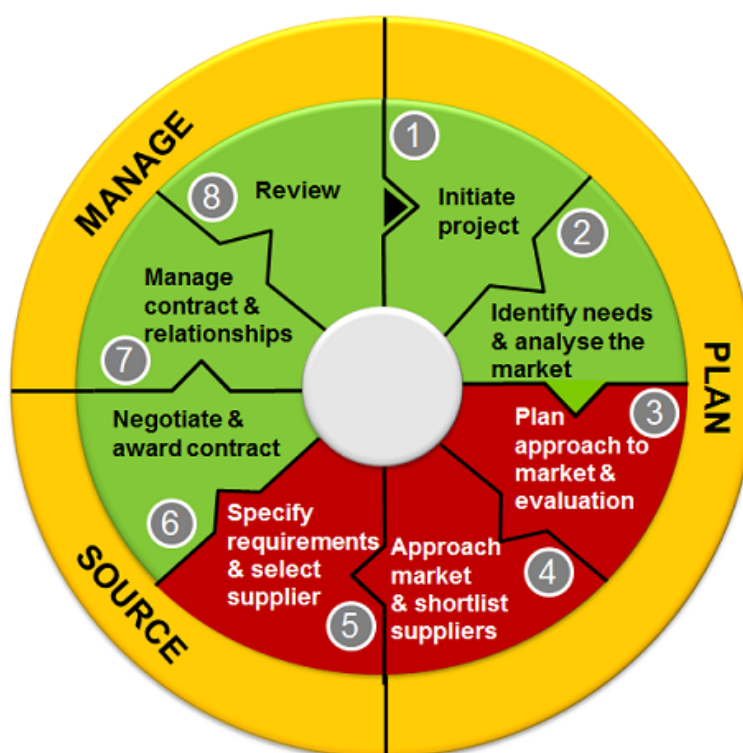
In the Competitive Dialogue process solutions are not limited by pre-determined specifications and this gives suppliers an excellent opportunity to come up with new ways of doing things. Suppliers' innovation and ideas, and not the specifications drive the solutions.

The procurement lifecycle represents good procurement process and it applies to all procurement processes, including Competitive Dialogue. However, the order the procurement lifecycle stages are carried out in a Competitive Dialogue process differs because of its unique structured dialogue sessions.

The procurement lifecycle



The Competitive Dialogue procurement lifecycle



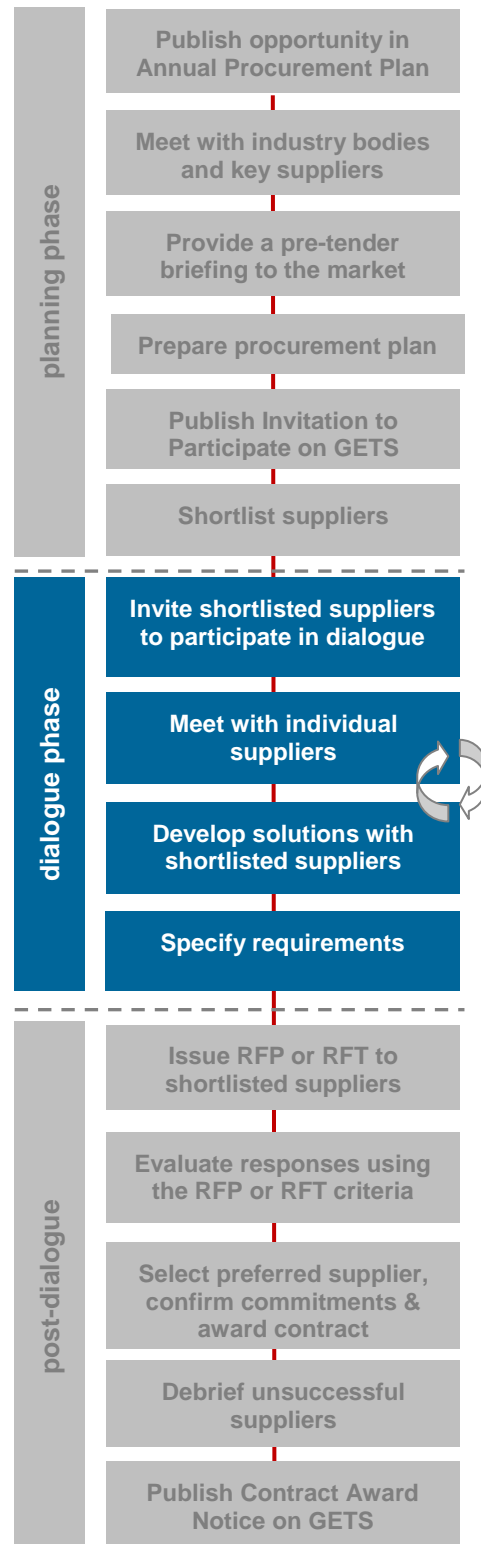
The order the procurement lifecycle stages are carried out is different for the Competitive Dialogue process. The differences are highlighted in red.



For more information on the procurement lifecycle see MBIE's *Guide to Mastering Procurement* at www.procurement.govt.nz

The Competitive Dialogue process

There are three phases in Competitive Dialogue: the planning phase, the dialogue phase and the post-dialogue phase. Here is an **example** of a typical Competitive Dialogue process. The dialogue phase is unique to the Competitive Dialogue process.



Invitation to Participate

You'll need to publish a Notice of Procurement on GETS to invite potential suppliers to participate in your competitive dialogue process. This is called an Invitation To Participate (ITP).

It's important to give potential suppliers sufficient time to respond to your ITP.

The minimum time periods for submitting responses to an ITP are set out in the [Government Rules of Sourcing](#) (Rule 31b).

Notice of Procurement

Before you publish your Notice of Procurement, decide:

- whether you will look for a single or multiple solutions
- whether suppliers agreeing to share their intellectual property and innovation will be a condition of participating in the procurement
- who will own any new intellectual property that is developed in the dialogue sessions.

The planning phase

Early planning and engagement with the supplier market is good practice for any procurement, but is especially important in a Competitive Dialogue process.

It's important that all procurement processes are conducted in an open, fair and transparent way that promotes the values and standards set out in the [Principles of government procurement](#), the [Government Rules of Sourcing](#) and other good practice guidance.

Shortlisting suppliers

A successful process depends on engaging with the right number of suppliers. Three suppliers can often be a good number to shortlist because:

- you need enough suppliers to create genuine competition for the contract opportunity, but not so many that suppliers drop out because they think there is less chance of winning
- it's not practical to enter into detailed dialogue sessions with a large number of suppliers
- you may need to pay suppliers for their commitment to the dialogue phase.

Preparing for the dialogue

It's important to carefully plan how you will manage the dialogue phase. You must explain the process to each shortlisted supplier so they know what to expect and when.

This may be the first time that some suppliers have taken part in a competitive dialogue process.

To prepare for the sessions you will need to:

- decide how many sessions you will need
- set a realistic timetable
- decide who will lead in the sessions for your agency
- plan how you will structure each session including:
 - who from your team and the supplier's team will attend
 - how you will record the discussions
 - how you will protect the information and ideas discussed.

Structuring the dialogue

Structure the dialogue sessions so that you discuss the technical solution and the key commercial issues in the earlier phases of the dialogue.

Let suppliers know as early as possible what you will be discussing in each of the sessions.

Provide suppliers with detailed papers that set out the issues that you will cover, and any new information, before each session begins.

The timetable

You must give suppliers enough time to analyse your needs and requirements so they can provide considered responses.

Suppliers will need to arrange for their people and advisers to attend the dialogue meetings. Make sure that you allow enough time for suppliers to do this, then set a tight but realistic timetable and stick to it.

The dialogue phase

The dialogue phase is made up of:

- inviting shortlisted suppliers to identify and develop potential solutions
- discussing your needs in detail with each supplier and refining your requirements as a result
- sharing your requirements as they are being refined with all of the shortlisted suppliers
- suppliers developing and refining their solutions to meet your emerging requirements.

For complex projects, the dialogue phase can be long. You'll need to carefully plan and manage the dialogue phase to make sure that:

- the process doesn't take any longer than it needs to
- you are able to specify your requirements at the close of the dialogue phase.

Conducting the dialogue sessions

Before the dialogue phase begins, you must make sure that the shortlisted suppliers understand:

- your needs and the outcome or result you need to achieve
- the critical success factors for the procurement
- how their bids will be assessed against the award criteria.

It's best if the same team attends all of the dialogue sessions with all of the suppliers. This allows you to compare the outputs of each meeting and develop a consistent view of each supplier and the solutions being developed. To maintain focus, you should hold the dialogue sessions over a relatively short period of time.

Developing solutions with suppliers

Competitive Dialogue focuses on developing new solutions in individual sessions with shortlisted suppliers.

You can do this in one of two ways, either by developing:

- a different solution with each shortlisted supplier
- a single solution where you use both:
 - generic elements that are common to the solution
 - particular elements of each supplier's solutions that they have **agreed** to share.

Make sure that participating suppliers know what to expect before you begin your dialogue sessions.

The post-dialogue phase

Closing the dialogue

The Competitive Dialogue process offers the most flexibility in its dialogue phase.

Keep the dialogue phase open until you are confident you have identified the solution(s) that best meet your needs.

Before you close the dialogue, make sure that the shortlisted suppliers:

- fully understand your requirements
- are able to submit final bids that will fully meet your requirements
- have a very clear idea about whether their bid will be acceptable to you.

The post-dialogue phase includes:

- inviting shortlisted suppliers to submit proposals or tenders
- evaluating responses
- selecting the preferred supplier, confirming their commitments and awarding the contract
- debriefing suppliers.

Inviting shortlisted suppliers to respond

Once you've closed the dialogue phase you must invite all of the shortlisted suppliers to bid using either a:

- request for proposal (RFP) based on the individual solution(s) that you have developed with each supplier in dialogue
- request for tender (RFT) based on one common solution developed in dialogue.

This is a closed tender. It is not advertised on GETS. You may not invite any other supplier, who has not been shortlisted, to bid.

You must make sure that you give your shortlisted suppliers sufficient time to respond to your invitation. The minimum time periods for responding to an RFP and RFT that follows an invitation to participate in a Competitive Dialogue process are set out in [The Government Rules of Sourcing](#) (Rule 31b).

Changes to requirements

If you need to provide extra information or change your requirements after you've invited your shortlisted suppliers to submit their responses, you must make sure that you:

- send any changes before the deadline for responses
- make the changes available to all participating suppliers, at the same time
- give suppliers enough time to respond to the changes, which may mean:
 - extending the deadline for responses
 - allowing suppliers who have already submitted their responses a fair opportunity to change them.

Evaluating responses

You should evaluate the bids based on the:

- award criteria that you set out in your RFP or RFT
- best fit-for-purpose
- best value for money, which isn't always the cheapest price.

Read MBIE's guide to 'Mastering Procurement' for more information about evaluating responses at www.procurement.govt.nz

Awarding the contract

It's good practice to let suppliers know where they stand after evaluating the responses.

Read the [Rules of Government Sourcing](#) for more information about awarding the contract (chapter 4).

Selecting the preferred supplier, confirming their commitments and awarding the contract

When you have identified the preferred supplier, you can ask them to clarify aspects of their winning bid and confirm their commitments before awarding the contract.

Debriefing unsuccessful suppliers

It's important to let suppliers know why they haven't been successful. At the very least you need to offer to debrief each supplier on:

- the reasons the proposal or tender was not successful
- how their proposal or tender performed against the award criteria
- the relative advantages of the winning proposal or tender
- any questions or concerns they may have.

If you provide good feedback, then your debrief will help:

- suppliers to improve tenders for future procurements
- maintain the relationship with the supplier
- minimise supplier complaints.

Publishing a Contract Award Notice

Make sure you publish a Contract Award Notice on GETS within 30 business days of all parties signing the contract, if the Government Rules of Sourcing apply to your procurement.



For more information on how to debrief suppliers see MBIE's 'Guide to Supplier Debriefs' and the 'Checklist for Supplier Debriefs' at www.procurement.govt.nz

Probity

Critical risks in the Competitive Dialogue process include:

- protecting suppliers' commercially sensitive information and existing intellectual property rights
- ownership of any new intellectual property rights.

It's important to develop a probity plan that sets out the probity risks and plans for how you will manage them.

Appointing an independent probity auditor to the procurement can help manage these risks.

Guidelines for intellectual property

Cabinet has endorsed the following guidelines:

- [Guidelines for the Treatment of Intellectual Property Rights in ICT Contracts](#) available at ict.govt.nz
- [Cabinet Guidelines for Intellectual Property from Public Service Research Contracts](#) available at procurement.govt.nz
- [NZ GOAL framework](#) available at ict.govt.nz

See also [Government Rules of Sourcing](#), Rule 61.

Managing ideas and information

Sharing information and ideas

Competitive Dialogue is about capturing innovation to create new solutions. You want suppliers to come up with new ways of doing things.

This means asking your shortlisted suppliers to share their ideas and sensitive information about their business with you. You must protect this information unless the suppliers have agreed to share it as a condition of participating in the process.

The best way to do this is to ask your shortlisted suppliers' to identify and agree their existing intellectual property (IP) and commercially sensitive information in non-disclosure agreements.

Suppliers' ideas are their IP and you'll need to enter into a non-disclosure agreement with each of your shortlisted suppliers before you begin your dialogue sessions.

This is important so you can differentiate any existing IP from any new IP that is developed in the dialogue sessions when you co-create solutions with your suppliers.

Unless the supplier agrees to it beforehand in writing, you must not disclose any of the information set out in the non-disclosure agreement.

Ownership of new intellectual property

Before you approach the market, you'll need to decide how you will deal with any new IP that you develop with suppliers in dialogue.

You should set out your intentions about the ownership, licensing and future commercialisation of any new IP in your Notice of Procurement.

Allowing the supplier to commercialise the new IP encourages innovation and economic development.

There standard options for the ownership of any new IP are:

- The supplier owns the new IP but licenses the agency, and all other State Services agencies to use it.
- Your agency owns the new IP but licenses the supplier to use the IP and to commercialise it.
- Your agency owns the new IP and commercialises it.

Your reputation as a credible buyer

A poorly managed procurement process could impact the government's and your agency's reputation as a credible buyer. This is no different for the Competitive Dialogue process.

You can protect your reputation by making sure you **don't**:

- use Competitive Dialogue when a standard process would be better for the procurement
- lock into a particular solution too early
- unfairly advantage a 'favourite' supplier
- disclose or use your suppliers' intellectual property or commercially sensitive information without their consent.

Competitive Dialogue risks

Good procurement is about being risk aware, not necessarily risk averse.

Like all procurement processes, your Competitive Dialogue process will get a better result if you make sure you have a good process and manage the risks.

If competitive dialogue is the most appropriate procurement process proportionate to the value, risk, and complexity of the procurement it can help you achieve value for money over the whole-of-life of the contract.

Risks to think about include:

- using the Competitive Dialogue when a standard procurement process would work better
- a poor understanding of the competitive dialogue process leading to unplanned costs for both your agency and suppliers
- poor planning increasing timelines and making the procurement hard-to-manage
- suppliers choosing not to participate or dropping out of the process because they are worried about:
 - the perceived chances of winning the contract compared to the cost of participating in the process
 - the length of time the process will take
 - protecting their intellectual property and commercially sensitive information
 - how the Competitive Dialogue process works.

Managing the risks

Good practice guidance

- Be fair, open and transparent.
- Plan how and when you will engage with the market.
- Make sure suppliers know what to expect.
- Treat all suppliers the same.
- Share the same information with all shortlisted suppliers.
- Be open to new players, new ideas and new solutions.
- Do not use or disclose commercially sensitive information without the supplier's written consent.
- Keep an open mind and do not get 'sold' on one solution.
- Keep records of your meetings.

To manage the risks, it's best to make sure that:

- you set a realistic timeline for the process
- you think through all of the strategic elements of the project before you advertise the contract opportunity
- that everyone involved in the procurement understands the process
- you consider the cost of the Competitive Dialogue process when you calculate the total cost of ownership for your procurement
- your procurement team has the capacity and access to the technical, commercial, financial, probity and legal skills needed to manage a competitive dialogue process
- you plan for how to mitigate or manage any probity risks or risks associated with Competitive Dialogue
- Competitive Dialogue is the right process for your procurement. If you're not sure, talk to MBIE's Government Procurement branch.



Contact MBIE's Government Procurement branch at procurement@mbie.govt.nz for advice on your Competitive Dialogue process.