



Competitive Dialog: the new bidding modality

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Draft Law number 6814/2017, approved by the Federal Senate in December 2016, will soon be submitted to a public hearing at the House of Representatives. The bill brings several changes to the current rules for tenders and contracts, among which the introduction of a new bidding modality, called Competitive Dialog, deserves special consideration.

The Competitive Dialog, provided for in Article 25, subsection VI of said bill, establishes the possibility for the Public Administration to conduct dialogs with previously selected bidders, in order to develop one or more alternatives that can meet the needs of the Public Administration. After the dialog phase ends, there is a period during which the bidders submit their final proposals to carry out the object of the bid.

This modality is inspired by the so-called "Competitive Dialog" (<https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=celex%3A32014L0024>), established by the European Directive 2014/24, approved by the European Parliament on February 26, 2014. In the European model, the "Competitive Dialog" confers greater flexibility to public bodies to define the projects, allowing for the implementation of previous dialogs between the Public Administration and the market, in order to adapt the market solutions to the public demands when the objects of the bidding are either too innovative or extremely complex, such as innovative concepts in the field of information technology or robotics.

In the Brazilian Draft Law, the bidding modality may only be used in the following hypotheses: (i) when the object involves technological or technical innovation, the possibility of execution with different methodologies, or the possibility of execution with technologies subject to restricted domain in the market; ii) when it is necessary to define and identify various means that may meet the needs of the government, or the most appropriate technical solutions, or technical requirements that allow for the implementation of the previously defined solution, or legal structure of the contract; (iii) when using open and closed methods of bidding does not allow for a proper assessment of the variations among proposals.





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It appears, therefore, that the Competitive Dialog follows the trend of improving the forms of cooperation between the private sector and the Public Administration, doing away with the dogma that the State is able to provide the technologies and solutions best suited to the needs of society, thus allowing for the bidding process to generate knowledge of new products and technologies, and creating the conditions for the public agent to choose the best technique, always respecting the principles governing the Public Administration.