Market Involvement throughout the Planning Lifecycle
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Chapter 4

Public-private interaction in contracting:
Governance strategies in the competitive dialogue of Dutch infrastructure projects
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Abstract
The competitive dialogue (CD) procurement procedure aims to structure and facilitate public-private interaction in procurement. In this article we examine CDs of four complex Dutch road infrastructure projects and explore how the mix in public-private interaction between the three governance strategies of cooperation, competition and co-ordination is influenced by various external influences. We found that public authorities’ strict legal co-ordination can structure the CD-process, but may divert attention from necessary interaction on project-specific complexities. Combined with private contractors’ focus on competition, this does not stimulate public-private cooperation. We conclude that the CD is a promising tool for facilitating public-private interaction, but, in practice, the optimal mix of governance strategies is not achieved. We recommend strengthening cooperation by stimulating public and private tender organizations to collaboratively search for opportunities to deal with complexity in planning.

4.1 Introduction
Time and cost overruns in the construction of infrastructure projects (Flyvbjerg et al., 2002) illustrate government’s difficulties in dealing with increasing complexity of current infrastructure planning. Governments can no longer solely act as the dominant and most powerful actor in a hierarchically controlled top-down process (Handy, 1990). Increasing interaction of government with other actors involved in planning is often considered an alternative way of addressing the complexity; see collaborative and communicative planning discussions (Healey, 1997). In infrastructure planning, increased involvement of business organizations is an example of such stronger actor involvement (Edelenbos & Teisman, 2008).

In procurement of road infrastructure, a confrontation between plan development and implementation takes place, when plans are worked out towards and translated into projects. Public-private interaction at this stage might help to deal with the complexity experienced in developing infrastructure projects. It could enable private parties to gain a better understanding of public needs and proposed contracts, and also make public authorities receive more creative and innovative, better grounded and constructible bids (Lenferink et al., 2012a).

In order to better address legal, financial and technical complexity the European Commission has introduced the competitive dialogue (CD) procurement procedure (see directive 2004/18/EC articles 1.11 and 29; EC, 2004). In CDs, public procuring authorities and private bidders engage in pre-bid public-private dialogues over public wishes and desires and proposed private solutions. The CD procedure is implemented for complex national road infrastructure projects in the Netherlands by Rijkswaterstaat,
the executive agency of the Ministry of Infrastructure and the Environment. Initially, its implementation suffered from a slow start and a low deal flow (Balance and Result, 2008). However, compared to other European countries, the CD is currently applied more often by Dutch national government and predominantly in road infrastructure projects (De Mars & Craven, 2010). The CD was applied twenty-seven times by Rijkswaterstaat in the period March 2006 – September 2012 (TED, 2012). As a result, experiences with CD procedures have increased.

The CD is aimed to deal with complexity and implies a combination of the governance strategies of co-ordination, competition and co-operation (Robinson et al., 2000). The CD is applied by government to structure and regulate (co-ordination) procurement. The procedure carefully co-ordinates interaction through which public parties and private parties work out the project and possible solutions together (cooperation). The CD is aimed to select and award the private party that offers most value for money (competition). The mix of these governance strategies is context and project dependent and may be influenced by project complexity characteristics. It is unclear how the mix of governance strategies is reached in CD projects, which project complexity characteristics play a role in reaching this mix, and how the governance mix affects public-private interaction in CDs.

In this article we aim to gain greater insight into public-private interaction in Dutch CD procedures. More specifically, we explore how complexity (the main precondition for applying the CD procedure; EC, 2004) influences the mix of the cooperation, competition and co-ordination governance strategies. In addition, we explore how this mix depends on the growing level of Dutch experience with applying the CD. To this end we investigated four recent large Dutch infrastructure projects where CDs have been applied through semi-structured interviews with experts from involved public procuring agencies and private contractors.

Research on the CD has primarily focused on its probable consequences not on actual experiences in practice. Most of the studies focus on legal complexities involved (see Burnett, 2009), for example comparing the CD with other procedures (Nagelkerke et al., 2008), exploring legal differences in application of the CD across Europe (Arrowsmith & Treumer, 2012), or investigating the relation between procurement procedures, including CD, and public-private partnerships (Tvarnø, 2006). Solino and De Santos (2010) discuss probable effects of the CD procedure from a transaction cost economics perspective. In project management literature, procurement procedures, such as the CD, have been investigated for the role of cooperation in dealing with current-day challenging project contexts (Eriksen & Westerberg, 2011). Korthals Altes and Taşan-Kok (2010) discusses procurement procedures from a governance perspective on relational networks. In contrast with the studies above, Hoezen (2012) focuses on practical experience with the CD procedure and examines negotiations in Dutch CD
practice. However, she does not further explore the relation of the CD procedure with governance and public administration.

Until now, the CD has not been investigated from a governance point-of-view, although, as explained above, governance strategies are explicitly included in the procedure’s character. This article provides insight into how public and private parties currently interact in CDs and how this interaction could potentially be improved in future complex projects. These Dutch insights are relevant for practitioners in infrastructure planning in European countries, such as the United Kingdom and France (Burnett, 2009), where the procedure has also recently been introduced. Investigating public and private experiences could provide insights in how governance strategies can help to deal with project complexity, which is relevant for public administration and project management. The observations provided in this article specifically link to theoretical discussions on governance in planning (Martens, 2007), on the potential role of private parties in public-private partnerships (Teisman & Klijn, 2002; Steijn et al., 2011), and on collaborative planning in a complex society (Healey, 2007).

In the following section, a theoretical framework is provided which elaborates on public-private interaction, and the CD procedure is described further. Section 4.3 deals with the research design. In Section 4.4, experiences are described by exploring organizational issues and complexity factors in Dutch practice. Section 4.5 links these findings to the governance strategies of cooperation, co-ordination and competition. Finally, we provide conclusions in Section 4.6.

4.2 Theoretical framework

4.2.1 Mixing governance strategies in public-private interaction

Ashby (1956) and Nooteboom (2007) recognize that variety is required to deal with complexity. Variety provides options for government to react to the unforeseen developments in complex contexts. However, such options need to be within government’s capacity (Nooteboom, 2007): Government cannot see, handle or grasp solutions that are too far out-of-the-box and outside its capacity. Public-private interaction can help to provide for more variety, but can also help to increase government’s capacity to handle variety. The increased capacity is caused by the learning effect as a result of interaction. Such interaction can be facilitated through CDs in which different models of organization are combined. Three models are generally distinguished in planning and public administration literature: the market model, the network model, and the hierarchical model (see Bevir, 2011; Davies, 2005; Powell, 1990; Thompson et al., 1991; Rhodes, 1996). We relate three governance strategies to these models, competition to the market model, cooperation to the network model and co-ordination to the hierarchical model (Robinson et al., 2000; similar strategies can be found in Bemelmans-Videc et al., 1998; Lemos & Agrawal, 2006; Martens, 2007) (see Figure 4.1).
Competition can be defined as “a process of selection, turmoil and change where disequilibrium conditions prevail” (Thompson et al., 1991, p6). The driver of competition is rent-seeking behavior of market parties. Its advantages are flexibility, variety and especially cost efficiency as a result of actors competing for resources. However, as Erridge and Nondi (1994) have pointed out, competition in its extreme form is incompatible with achieving value for money. Asymmetries in knowledge and experience (Stiglitz, 1998) occur in the client-supplier relation in procurement (Sanderson, 2008) and are present between private market parties. These asymmetries can dominate competition and make it geared towards achieving cost efficiency only, disregarding possibilities to increase value (e.g. through innovation).

Cooperation is connected to the network model (see Powell, 1990) or partnership model (Blomqvist, 2002), which can be situated between the market and hierarchy models (Demil & Lecocq, 2006). Through cooperation social relations are formed “between mutually dependent actors which form themselves around policy problems or clusters of resources” (Klijn et al., 1995, p. 439). Cooperation may lead to increased project quality because of the shared risks and information and the joint development of products (Blomqvist, 2002). Too much cooperation could also have some drawbacks, including non-commitment in endless rounds of negotiation, which may result in a lack of transparency, decreased democratic legitimacy of planning processes and distortions of the level playing field.

Co-ordination can set outlines for interaction: freedom needs to be provided to private parties to compete and cooperate, but also boundaries need to be set by a coordinating public actor. We regard co-ordination therefore as protecting government’s core responsibilities by providing rules to actively steer and regulate behavior of actors (in line with ‘central coordination’ or ‘hierarchy’, Dahl & Lindblom, 1992). The main advantages of a hierarchical model include cost efficiency through economies of scale as a result of exploiting the monopoly position of government and a structured, stable and directive approach to planning (Blomqvist, 2002). Although co-ordination could lead to stability and efficiency, it could turn out to be stifling and lead to failure if applied excessively (Doak & Karadimitriou, 2007).
The traditional approach to infrastructure planning can be characterized as mainly hierarchical: a dominant government works out desired end products in detail (Lenferink et al., 2012b), leaving limited opportunities for competition. Over the last decades it has become clear that hierarchical approaches, which solely rely on government co-ordination, are impossible in complex settings (Handy, 1990; Healey, 2007). It is increasingly difficult for governments to adapt to changing values and demands of complex society, leading to government failure (Van der Heijden, 1996). Over the years, competition has been introduced in planning, for example through the new public management concept (Osborne & Gaebler, 1992). As a result, market involvement is stimulated and government is redefining its role and responsibilities. Cooperation has also received increased attention in infrastructure planning, which is reflected in the rise of collaborative and communicative planning and other related interactive planning approaches at the end of the 1990s (Healey, 1997; Glasbergen & Driessen, 2005). Although collaborative approaches imply cooperation and partnerships, they are traditionally aimed at residents group and third party involvement. Cooperation with private business organizations, such as construction and engineering companies, seems to receive less attention in planning and public administration. Such market parties possess knowledge and experience in project development, construction and operation (Lenferink et al., 2012b), which competition and cooperation can help to unlock. Therefore an approach needs to be found with different coexisting organization structures (Stoker, 2004), which is neither central, nor top-down (Kickert, 1997), and incorporates elements of the market and network organization models (Rhodes, 1996; Kjaer, 2004).

An effective combination of co-ordination, competition and cooperation would balance the objectives of government and market parties involved, as proposed in the co-opetition concept (Brandenburger & Nalebuff, 1996; Van Buuren et al., 2010). However, effective public-private interaction between government and market may be difficult: competition is a dominant driver in the interaction with market parties in CDs (Lenferink et al., 2011). Carefully applied co-ordinative procedures may stimulate cooperation and ensure fair competition through public-private interaction: co-ordination could make procedures more efficient and more effective by providing structure and certainty; competition can stimulate more cost effective and innovative solutions; and cooperation can make process and solutions better fit to the project context and parties’ ambitions. The question is how to combine these strategies in CD procedures for complex infrastructure projects? Especially since, in CDs, external factors also influence the mix of governance strategies. This influence can differ between projects, as each CD is context and project specific. Furthermore, learning effects may occur as experience with the CD procedure is gained. For example, the organizational set-up may be improved to better balance governance strategies (see Figure 4.2).
4.2.2 The competitive dialogue procedure

The European Union provides four procedures for procuring public works: the open, the restricted and the negotiated procedure and the competitive dialogue (CD) procedure (EC, 2004). In the open procedure, any party is invited to tender. There are no possibilities for short-listing candidates or for interaction on the contract. In the restricted procedure the contract authority shortlists candidates to tender and interaction on the contract is not allowed. In the negotiated procedure there are no detailed rules as to how interaction should take place or when interaction should end before contract signature, but interaction is only possible after potential contractors have submitted an offer. The European Commission questioned the appropriateness of this procedure in complex projects as substantive negotiations with a preferred bidder could distort competition (OGC, 2008). In addition, the European Union was looking to stimulate innovation (Nagelkerke et al., 2008; Petersen, 2010a). Therefore, the CD was introduced in 2004, which compared to other procurement procedures, incorporates a structured approach to the public-private interaction (Essig & Batran, 2005) and prohibits extensive interaction after a preferred bidder is chosen (EC, 2004; OGC, 2008) (see Table 4.1).

Public-private interaction in CDs, as translated into Dutch practice, can take place through three channels. First, in dialogue meetings, the procuring authority and candidate meet to discuss matters. The agenda-setting for such meetings is free: both parties can bring in discussion points. Dialogue meetings include formal decisions and are closed to the public. A second channel is through specialist meetings, in which specialists of both parties discuss in an informal and consultative setting. A last channel is the questions and answers tool, through which candidates can ask either individual or
general questions on project issues. The contracting authority decides whether questions are individual, and thus confidential, or general, and thus open to all participants.

Table 4.1: Main characteristics of the process of the CD procedure and the role of interaction.

<table>
<thead>
<tr>
<th>Aim</th>
<th>Identifying and defining the means best suited to satisfy the needs of the procuring authority.</th>
</tr>
</thead>
</table>
| Start | Publishing project notification and participation invitation in Official Journal of European Union.  
Selecting the requests of the consortia to participate on pre-qualification criteria. |
| Interaction | Contract aspects may be discussed with chosen candidates during dialogue that can involve several rounds.  
Individual dialogues with level playing field (non-discriminatory) are facilitated. |
| Submitting offers | Final tenders are made on basis of solution or solutions presented and specified during dialogue.  
Clarifying, specifying, fine-tuning submitted tenders at request of contracting authority is allowed.  
Changes which distort competition are prohibited. |
| Selection | Most economically advantageous tender (price and quality) is selected on basis of award criteria in contract notice or descriptive document.  
The selection can be performed in stages. |

Based on EC, 2004; Nagelkerke et al., 2009.

According to article 1.11 of the 2004/18/EC guideline (EC, 2004), CDs can only be applied in case of complex settings, where open or restricted procedures will not allow the award of the contract. Projects are complex if contract authorities are (a) not objectively able to define the technical means for satisfying their needs or objectives, and/or are (b) not objectively able to specify the legal and/or financial make-up of a project (see Tvarnø, 2006). Although Dutch national guidelines on the CD-procedure exist (Nagelkerke et al., 2009), implementation of the CD differs from project to project. In each case, it is necessary to translate the general European procedure, which “does not regulate the conduct of the dialogue in detail” (EC, 2005), into a project-specific set-up that takes into account the specific institutional and local setting (similar to the implementation of nature development in ‘structural’ and ‘specific contexts’, Vikolainen et al., 2012). This organizational set-up can for example include information distribution, timing of the stages, and the relation with other projects.

4.3 Research design

4.3.1 Operationalisation

In this article we focus on practical experiences, by investigating external influences that may affect public-private interaction in the CD. Dutch practice is first investigated by describing organizational issues, which public and private tender teams have to deal with. Project organizations have to account for the institutional setting when applying the CD: they make the procedure fit local stakeholders and local practice. Such issues
include management of time, information and human resources in the organization of CD procedures. Subsequently, three complexity factors are investigated that may influence public-private interaction in the CD: financial, technical and legal complexity. These factors are easy to comprehend for the involved actors because they directly relate to the justification for applying the CD procedure (see EC, 2004). Financial project complexity relates to financial rewards and compensations in both dialogue and contract. Technical complexity consists of opportunities and risks that arise from technical and physical characteristics of a project, which can comprise the construction method, and area and actors included in the project scope. Legal complexity is operationalized by legal roles and contractual responsibilities in the procedure and the contract (see Table 4.2).

Table 4.2: Definition and factors of contextual influence on balance of public-private interaction.

<table>
<thead>
<tr>
<th>Definition</th>
<th>Investigated factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organizational issues</td>
<td>Issues in the organizational setting and set-up of the CD procedure</td>
</tr>
<tr>
<td>Financial complexity</td>
<td>Complexity caused by financial project and contract characteristics</td>
</tr>
<tr>
<td>Technical complexity</td>
<td>Complexity caused by technical, physical project characteristics</td>
</tr>
<tr>
<td>Legal complexity</td>
<td>Complexity caused by procurement procedure and contract characteristics</td>
</tr>
</tbody>
</table>

4.3.2 Methodology

We selected four projects that have completed the CD procedure from a limited amount of available Dutch cases (see Corbin & Strauss, 2008): the A10 Second Coentunnel project (A10), the Passage A2 Maastricht (A2), the A15 Maasvlakte-Vaanplein (A15) and the A12 Utrecht-Veenendaal (A12). All cases are considered as complex and large for the Netherlands. However, they vary in nature of complexity and aim of the public-private interaction (see Table 4.3), which enable us to assess the influence of project context and complexity on experiences with public-private interaction in CD procedures.
## Table 4.3: Characteristics of the investigated projects.

<table>
<thead>
<tr>
<th></th>
<th>A10 Second Coentunnel</th>
<th>Passage A2 Maastricht</th>
<th>A15 Maasvlakte-Vaanplein</th>
<th>A12 Utrecht-Veenendaal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Degree and type of complexity</td>
<td>High (especially legal)</td>
<td>High (especially technical)</td>
<td>High (especially technical)</td>
<td>Moderate</td>
</tr>
<tr>
<td>Nature of complexity</td>
<td>Environmental impact of tunnel (air quality), one of first DBFM contracts, one of the first CDs</td>
<td>Parallel procedures of planning and procurement, one of first CDs, real estate development incorporated</td>
<td>Expansion through highly populated and densely industrialized area, incorporated tunnel and bridge construction</td>
<td>Limited room for accommodating the expansion of the highway</td>
</tr>
<tr>
<td>Aim of public-private interaction</td>
<td>Project control (esp. budget control)</td>
<td>Project quality</td>
<td>Project control (esp. budget control)</td>
<td>Project control (esp. time control)</td>
</tr>
<tr>
<td><strong>Organizational characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duration process</td>
<td>35 months</td>
<td>35 months</td>
<td>25 months</td>
<td>18 months</td>
</tr>
<tr>
<td><strong>Financial characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction costs</td>
<td>1200 million Euros</td>
<td>700 million Euros</td>
<td>1400 million Euros</td>
<td>300 million Euros</td>
</tr>
<tr>
<td>Contract value</td>
<td>600 million Euros</td>
<td>630 million Euros</td>
<td>1095 million Euros</td>
<td>260 million Euros</td>
</tr>
<tr>
<td>Average bidding costs</td>
<td>7 million Euros</td>
<td>10 million Euros</td>
<td>unknown</td>
<td>unknown</td>
</tr>
<tr>
<td>Financial compensation</td>
<td>2,75 million Euros</td>
<td>3 million Euros</td>
<td>Approx. 2 million Euros</td>
<td>Approx. 1,1 million Euros</td>
</tr>
<tr>
<td><strong>Technical characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goal project</td>
<td>Extra capacity</td>
<td>Environmental quality and safety</td>
<td>Extra capacity</td>
<td>Extra capacity, enhanced safety</td>
</tr>
<tr>
<td>Character</td>
<td>Extra tunnel and renovation of existing tunnel</td>
<td>Construction of tunnel with real estate development</td>
<td>Extra lanes between the Maasvlakte and interchange</td>
<td>Extra lanes between interchange Lunetten and Veenendaal</td>
</tr>
</tbody>
</table>
Regarding the organizational characteristics: the CD processes took at least 18 months, in which the two more recent projects (the A12 and A15 projects) took less time to complete the CD procedure than the older ones. The projects do not show notable differences in their financial characteristics. With regard to the technical characteristics, the primary goal of the A2 project is to enhance environmental quality and safety, whereas the other projects are mainly aimed at increasing capacity. Regarding the legal characteristics, the long period between selection of the preferred bidder and contract close in the A10 case is noteworthy. At this stage problems with air quality arose that needed to be solved first. In the case of the A2 project a different contract type (Design & Construct) was chosen, which, in contrast to the other cases, also included real estate development.

Experiences with the CD in these projects were primarily investigated by conducting 19 semi-structured interviews with practitioners and experts on predetermined subjects: CD process; organizational, financial, technical, and legal issues; and future of CD and public-private interaction. The interviewees could bring in personal experiences and own discussion topics (Liamputtong & Ezzy, 2005). In addition, document analysis complemented the findings and provided for necessary further interpretation (Dubois & Araujo, 2007). In-depth interviews were chosen because of the explorative nature of this research, which enabled us to obtain inside information of closed and confidential procurement procedures, and on topics that were considered sensitive or controversial. Fourteen project-specific interviewees were selected from the public parties, based on
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4.4 Public and private experiences with the competitive dialogue

4.4.1 Organizational issues

The interviewees indicated that in general the setup of the dialogues has recently undergone a positive development. Public and private parties involved feel that the consistency and objectivity of the selection mechanism have improved and observe that the awarding criteria are more transparent and better worked out in the more recent dialogues of the A12 and the A15, as compared to the two earlier projects. Three specific organizational issues that may influence the public-private interaction were addressed by the interviewees: information management, human resources management and time management.

Because of inclusion of financing and maintenance components in new integrated contract forms, such as DBFM (Design-Build-Finance-Maintain), more information is needed up-front in the planning process, before procurement starts. The public interviewees indicate this as a difficult issue. A public official indicated that it is ‘difficult to obtain all the relevant information’ and ‘distribute information efficiently to the market’. Especially information coming from other public organizations, such as road districts, can be absent or outdated. Simultaneously, private interviewees struggle with an information overflow. In their opinion, when starting up the CD, contracting authorities often just hand over a bulk of data and they have to spend some time arranging, selecting and prioritizing the data. In addition, consortia state that involvement of foreign bidding parties, as occurred in the A15 case, also delays the project or affects quality of the bids: Tender documents had to be translated and foreign companies were not as aware of specific conditions as their Dutch counterparts.

Another issue relates to human resources management. During preparation and implementation of the CD, changes in personnel often occur, at the public and the private side. Also, once the CD is completed and the construction begins, often substantial changes in personnel take place. Public and private interviewees unanimously acknowledge that this causes a loss of tacit knowledge and negatively influences personal trust-relations, generated during informal moments in the CD process. Also availability of personnel causes problems. Recently the deal flow of regular Dutch infrastructure projects in which the CD is applied has increased. Besides the regular workload, 30 additional road infrastructure expansion projects are
included in the so-called Urgency Approach (Rijkswaterstaat, 2010a). One of the selection elements the approach is assessing competences of key personnel in the contractors' project organization. As the Urgency Approach receives priority projects were developed faster than usual, contractors assign their best personnel to those projects. This makes it difficult for public and private parties to appoint qualified, experienced people to other projects. A private interviewee indicates that his company 'has to be careful and selective in assigning their people' and 'has to make use of less experienced employees for the regular projects'. Assigning less experienced people can lead to organizational inefficiencies, because lessons learned from previous procurement procedures are not taken into account.

Current time pressure on tenders potentially has positive and negative consequences for the process and outcomes of CDs. Time pressure mainly consists of political pressure on procuring organizations by setting strict deadlines, which, if not met, have serious consequences for budget or political approval of a project. Time pressure can result in shorter procurement procedures and lowered transaction costs, which is unanimously mentioned by private parties as a major concern in CDs (in line with Petersen, 2010b). This was clearly experienced in the A2 case. Combining real estate with infrastructure development allowed for an integral dialogue on a technical, content-wise basis, which, however, also made procurement relatively lengthy and costly. High transaction costs caused a participant to intentionally disqualify itself from being awarded the contract. Through time pressure, transaction costs can be lowered. However, time pressure can also have negative consequences. By increasing time pressure, less time is available for interaction on technical, legal and financial aspects, which form the legal basis for applying the CD procedure.

4.4.2 Financial complexity
Public and private interviewees both indicate that financial complexity influences interaction in the CD. Public parties are inexperienced with an active role of finances in the public-private interaction, which, in their opinion, challenges their traditional co-ordinative role. Private parties also acknowledge the financial complexity, but do not experience this as an issue in the public-private interaction. They predominantly experience financial complexity when consortia are set-up and when finances need to be secured for the final bid. The interviewees addressed some specific issues regarding the financial complexity, which will be discussed below: the role of financial actors, the preferred bidder debt funding competition and the compensation for CD participation.

The financial complexity of the investigated projects is greater than in regular road development projects, as confirmed by the interviewees. In the D&C contract of the A2 case, the increased financial complexity is caused by the multiple sources of public funding: from national, provincial and municipal governments. In the A10, A12, and A15 DBFM projects financing is not only a public concern, but part of the contract
scope. Inclusion of a private Finance-component in the contract made CDs complex because of what a government official described as a 'lack of experience with an active and visible role of financiers in procurement'. Interviewees indicated that involvement of committed financiers can limit opportunities for interaction and innovation because of their focus on risk avoidance, using proven solutions and making constructible bids. Although experience with this issue is growing, financing remains a complex issue because of the economic crisis.

The difficulties with private financing of infrastructure projects can be accommodated for by organizing a preferred bidder debt funding competition, as proposed in the more recent A12 and A15 cases (Rijkswaterstaat, 2009b; 2009c). In such a competition, also proposed by HM Treasury (2006) for application in the UK, not all bidders have to provide fully committed bids during the dialogue. Only the preferred bidder has to find financiers, after the CD has been completed (Rijkswaterstaat, 2009a). Possible advantages as perceived by government officials are that 'the financial market will not be stressed as much' and 'the procurement procedure might be shortened'. Recognized potential disadvantages are that financiers can give less input on the bids and financial clarity remains longer uncertain. In the investigated cases, opportunities for a debt funding competition have not been used, because market parties indicated that they could arrange for the committed financing upfront (see Rijkswaterstaat, 2011).

Another financial complexity issue is the compensation bidders receive for participation in the CD, which is insufficient according to private parties. This issue was especially being mentioned in the A2 case, where average bidding costs were three times higher than the compensation (see Table 4.3). Public parties acknowledge this issue in all projects, but respond for example that the compensation is 'higher than in most other countries' and that private parties have to see their contribution 'as part of a company’s research and development and as part of their entrepreneurial risk'. The public contracting authorities experience difficulties in estimating private party’s bidding costs. Reasons provided are a lack of knowledge or feeling for private bidding costs at the public side and that private parties do not take the financial compensation into consideration in their bidding strategy: they, as a public interviewee states, 'solely aim at getting awarded the contract', no matter what the bidding costs are. The private parties state that competition causes them to increase their effort in terms of time and money in order to win the contract.

4.4.3 Technical complexity
Public interviewees consider technical complexity as the main reason for applying the CD. Because of scarcity of space and high population density, many stakeholders are involved in infrastructure projects, increasing their complexity. The public parties consider interaction over technical aspects of proposed solutions as essential. The
private parties also want to discuss technical aspects of the project, but are cautious in discussing proposed solutions because of strong competition: private parties are afraid of cherry-picking. The interviewees addressed the following issues regarding technical complexity: the project and process limitations on technical interaction, the awarding criteria and the focus on risks and control.

Most of the interviewed parties feel they did not experience as much technical interaction as expected on basis of the complexity argument in the EU directive. In the A10 case, the opportunities for interaction on technical issues were limited because the decision to apply a CD was made late in the process: several issues had already been decided upon, which narrowed down options for the private parties. In the A12 case the limited technical interaction can be explained by the project character: a relatively simple expansion of infrastructure, without technically challenging elements, although with limited available space. Another reason for limited technical interaction in all projects (A2, A10, A12, and A15) was, what a private interviewee described as, a ‘restrictive interpretation’ of the CD process. Open interaction about possible technical solutions took place in corridors and in informal specialist meetings, but was limited in the formal legalistic dialogue meetings. A commonly given reason is the cautious attitude of bidders and procuring authorities with regard to stating anything on record.

However, some developments in the CD also stimulate interaction on technical complexity. A major development addressed by the interviewees is the introduction of most economically advantageous tender (MEAT) awarding criteria. These criteria are based on both quality and price. In the A12 case, for example, the criteria specifically valued innovation by smart planning of construction works, limiting effects on traffic flow and on environmental nuisance and enhancing residents’ perception of the efforts to limit these effects. Local stakeholders, i.e. municipalities and residents, have been actively involved in judging the bids as members of the appraisal committees. This stimulated a broader dialogue with a collaborative character.

Nevertheless, in all projects, bidders displayed a cautious attitude with regard to discussing their proposed solutions in the dialogue, which was fuelled by concerns over controllability of the CD. Private parties indicated that they trust the procuring authorities’ intention to keep confidentiality, but also felt that a mistake would easily be made. This caused them to not discuss their proposed solution in the early dialogue stages and protect their competitive advantage. Instead they focused on what government officials describe as ‘finding irregularities, problems and openings in tender documents’ to make sure other bidders also perceived risks and took those into account in their bids.

The procuring authorities also demonstrated a cautious attitude. Reasons for this can be found in the character and development of the contracting authority, i.e.
Rijkswaterstaat. Over the years it experienced significant reorganizations to slim down the organization, but these negatively affected the technical knowledge within the organization (see Van den Brink, 2009). This seems to be a wider phenomenon; public agencies in other countries deal with the same issues (GAO, 2008). To keep control ‘they [Rijkswaterstaat] tend to ask for many details and products in procurement’, according to a private tender manager. The resulting detailed character of the dialogue limited opportunities for technical interaction and resulted in high bidding and transaction costs. This notion can also be found in other Dutch evaluative studies with a stronger legal focus (Hoezen, 2012; Kolkman & Floor, 2008). Government officials indicated that by gaining more experience with CDs they hope to overcome this.

4.4.4 Legal complexity

The private parties experience a strong emphasis on legal complexity in the CDs, which limits cooperation during the CD. Public parties justify this emphasis by the innovative character of the contracts chosen and the importance of a co-ordinated and structured CD. The interviewees addressed the following legal complexity issues: the over-presence of legal experts, the strictly applied guidelines and the central role of the contract.

In the investigated CDs, legal complexity is increased by the introduction of integral contracts and parallel execution of public planning procedures and tender procedures (see Lenferink et al., 2012a). As a response, there is a strong presence of legal experts from public and private parties in the dialogue. Several private parties mentioned ‘an over-presence of legal experts’, especially in the A12 case. This caused a legalistic attitude towards the setup of the dialogue. All rounds were performed strictly according to standardized Dutch CD guidelines. This also happened in rounds in which interaction did not provide added value: a private bidder stated that they ‘are experienced in delivering a sound draft business plan for the first selection stage’ and ‘do not need much interaction over this’.

Another issue is the emphasis put on legal guidelines for performing the dialogue, which limits opportunities for technical and financial interaction. A strong legalistic attitude caused interaction to be kept tight in order to maintain the level playing field. A cause for this is the decreasing availability of technical knowledge (see Section 4.4.3). The dialogues were set-up and performed in strictly bounded stages. This caused problems in the A12 and A15 cases. It was impossible to change earlier discussed and finalized contract documents on the basis of discussions in later dialogue stages (Rijkswaterstaat, 2011). This prevented private opportunities to be realized and limited future proactive involvement of private parties.

Another legal complexity issue is the role of the contract. During the dialogue, involved parties felt that ‘the contract and the legal experts took in a central place’, as one
public official describes. A reason is that the newly introduced integrated contracts are more complex: they include maintenance as in the A12, A15 and A10 DBFM contracts, or include real estate development, as in the A2 case. Although both public and private parties acknowledge that a contract is only the start of long-term public-private cooperation, legalistic and cautious attitudes cause the dialogue to be primarily aimed at setting-up and signing a detailed contract.

4.5 Analysis

4.5.1 Governance strategies

The complexity factors and organizational issues, as described in Section 4.4, influence co-ordination, competition and cooperation in the public-private interaction. In Table 4.4 the positive and negative experiences with the governance strategies are displayed for the investigated organizational issues, financial, technical and legal complexity.

Competition may lead to flexibility, variety and cost efficiency (Blomqvist, 2002). In practice, we find this also in the investigated CD projects. However, it depends on the degree of interaction possible between public and private parties. Competition is stimulated by the improved selection and awarding mechanisms, such as the MEAT awarding criteria. These criteria can only be judged if solutions are worked out project- and context-specific, which market parties find difficult to do without sufficient interaction with the contracting agency over demands and wishes. Such interaction is limited because of strict co-ordinative guidance and the carefully maintained level playing field. This reflects the work of Stiglitz (1998), who noticed the necessity to accommodate for possible client-supplier asymmetries in information and power. However, it is not only competition that drives interaction. Although clearly present in the CD, competition is not as dominant as earlier studies would suggest (Hoezen, 2012), because co-ordination also plays an important role.

In theory, co-ordination attributes to a structured and stable directive approach (Blomqvist, 2002). This effect is noticeable in practice: it has resulted in more objective CD-processes, which helps to facilitate a well-functioning market. The experiences illustrate that co-ordination is achieved by developing detailed guidelines and strictly applying these, which structures interaction. This corresponds to the reasons for introducing the CD procedure: improving guidance and structure in negotiating contracts (OGC, 2008). However, in line with Van den Brink (2009) and Johansson (2012), we find that public agencies experience difficulties in abandoning the traditional directive, co-ordinative role. Private parties feel limited by a controllability reflex of the government, caused by unfamiliarity with letting go of responsibilities and allowing for competition and cooperation. This resulted in more strict co-ordination by the public parties, which, to a certain extent, is inherent to the position of government. As Kickert
(1997) explains “government cannot dominate and unilaterally, hierarchically dictate, but is, nonetheless, not completely horizontally equivalent to all other actors” (p. 738).

Cooperation may lead to an increase of quality, sharing of risks and information by jointly developing products (Blomqvist, 2002). Korthals Altes and Taşan-Kok (2010) find that trust relationships are not established or sought after in CD. This contrast with our findings in practice: public and private parties experience more opportunities to express their wishes and ambitions in the CD than other procurement procedures, and, through finding a common understanding, a basis for trust relations is established. CDs include public-private interaction that can provide insight in each other’s world. The introduction of the procedure seems to help facilitate interaction and prevent opportunistic behavior aimed at realizing short term gains (Kadefors, 2004; Laan et al., 2011). However, it can be difficult to achieve cooperation in the CD because of the conservative attitudes of public actors (fuelled by strong co-ordination) and private actors (fuelled by strong competition). As a result, dominating legal attitudes inspire conservative dialogues resulting in detailed long-term contracts, which do not provide flexibility to deal with society’s dynamic character and limit cooperation beyond the procurement stage.

Table 4.4: Positive and negative experiences with public-private interaction in CDs.

<table>
<thead>
<tr>
<th>Governance strategies</th>
<th>Competition</th>
<th>Cooperation</th>
<th>Co-ordination</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>External factors</strong></td>
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<tr>
<td><strong>Organizational issues</strong></td>
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<tr>
<td>- Projects compete for personnel</td>
<td>- Personnel changes limited tacit knowledge and trust building</td>
<td>- Inefficient information distribution</td>
<td></td>
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<tr>
<td>+ More transparent awarding criteria</td>
<td>+ Increased possibilities for public-private interaction</td>
<td>+ Professionalized set-up of dialogue</td>
<td></td>
</tr>
<tr>
<td><strong>Financial complexity</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>- Insufficient compensation for effort of private parties</td>
<td>- Public inexperience in interacting with financial institutions</td>
<td>- Inexperience in dealing with new financial arrangements</td>
<td></td>
</tr>
<tr>
<td>+ Increased financial focus on affordability</td>
<td>+ Stimulated cooperation with financial parties</td>
<td>+ Early insight in affordability and financial feasibility</td>
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<tr>
<td><strong>Technical complexity</strong></td>
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<tr>
<td>- Decision-making limits room for technical solutions</td>
<td>- Cautious, reserved public and private attitudes</td>
<td>- Detailed public co-ordination limits interaction</td>
<td></td>
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<tr>
<td>+ Interaction on public ambitions inspires competition</td>
<td>+ Context specific set-up of CD stimulates interaction</td>
<td>+ Increased third party involvement in awarding projects</td>
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<tr>
<td><strong>Legal complexity</strong></td>
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<tr>
<td>- Strictly followed procedures result in obsolete interaction</td>
<td>- Focus on contract limits attention to long-term cooperation</td>
<td>- Detailed contracts give false sense of control</td>
<td></td>
</tr>
<tr>
<td>+ Guidelines structure interaction and competition</td>
<td>+ Complex contracts introduce opportunities for interaction</td>
<td>+ Standardized contracts and guidelines structure the CD</td>
<td></td>
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</tbody>
</table>
4.5.2 Mixing strategies in the CD process

Experiences show that, in CD practice, the mix in public-private interaction seems to be dominated by competition and co-ordination. At the public side, tensions exist between co-ordination in order to maintain control in the CD with a maintained level playing field, and facilitating possibilities for competition and cooperation, e.g. by awarding cooperative capacities in context-specific project environments. Private parties display a strong drive for competition, which limits cooperative interaction on technical issues of proposed solutions. In general, the mix of governance strategies in the public-private interaction in the CD can therefore be situated near the competition-co-ordination axis in Figure 4.2.

The opportunities for interaction differ over time during the CD process. In the beginning many interaction opportunities exist, especially on public wishes and ambitions. However, strong competition and fear of cherry-picking make private parties reluctant to discuss ideas and proposed solutions. Instead, interaction is focused on obtaining background information and finding irregularities in the preconditions set by the public parties. In later stages, after the first selection round has taken place, private parties need to work out proposed solutions further, and therefore search for public input. However, public parties tend to limit this interaction. Instead they aim to control private parties by asking for details in their solutions and focus on maintaining the level playing field. As a consequence, private solutions can only limitedly be improved by the public input at this stage of the CD.

Because of the dominant co-ordination (hierarchy) and competition (market) in the CD, proposed private solutions are only limitedly discussed and detailed public preconditions are imposed. Both these governance strategies obstruct the dialogue over perceived problems and proposed solutions and cause that the competitive dialogue is not applied to its full potential. As a result, the CD cannot effectively connect with the dynamic society, in which network structures are increasingly relevant (Johansson, 2012).

The opportunities for interaction do not only differ during the CD process, but also differ between the CD projects. A reason is that projects differ: in technical complexity of the solution, in contract type and in scope of the project area. The cases of the A2 and the A12 seem to offer most opportunities for public-private interaction. As experience with the CD procedure is gained, regulation, process and structure have become clearer to the public and private parties. As a result, the more recent A12 and A15 projects have completed the CD in a shorter time period (see Table 4.3), lowering the transaction costs. Also, the more recent projects show that experience is gained with complexity issues. For example, in integrated contracts, active involvement of financial actors and the MEAT awarding criteria have become more familiar. The experiences show that through learning, interaction opportunities in the CD are becoming better
streamlined. Effective interaction can start earlier and can be focused on issues in which it provides added value: the complexities of the project.

4.6 Conclusions: strengthening public-private interaction

In this article we explored how CDs’ organizational set-up and how, in public-private interaction, complexity factors influence the governance strategies of cooperation, competition and co-ordination, and how the mix of strategies depends on practical experience. We conclude that although the CD facilitates interaction and helps to develop public-private relations, strong competition is intrinsically conflicting with trust-building necessary for cooperation (in line with Lenferink et al., 2011). The Dutch experiences show that public-private interaction in the CD procedure is facilitated, but that it could be strengthened by better balancing cooperation, competition and co-ordination. This article illustrates that within the limited experiences with the CD procedure in Dutch national road infrastructure planning, the framework of governance strategies as developed by Robinson et al. (2000), is dominated by two strategies: co-ordination (by the public parties) and competition (by the private parties). The unbalanced interaction leads to increased juridification, which obstructs cooperation in the CD (in line with Korthals Altes & Taşan-Kok, 2010).

Two important learning effects influence public-private interaction in the CD. First, improved learning with public-private interaction by increased application of the CD might decrease the insecurity that fuels the legal co-ordinative dominance of government. After all, analysis shows that involved public and private actors unanimously evaluate the CD procedures as positive: they feel that more transparent awarding criteria are developed and that transaction costs have been limited in more recent projects. Furthermore, until now, there have not been legal claims that justify the cautious legal attitudes. It seems to be a matter of time before involved parties are familiar enough with the CD to start abandoning their conservative attitudes and start discussing the creative and innovative solutions. To stimulate this process further, public and private insights and experiences should be collected and distributed: for example by facilitating discussion among the community of practice in informal platform meetings.

The second learning effect pertains to the way complexity is dealt with. The involved parties seem not to be aware that “context, complexity and governance are interrelated” (Kickert, 1997, p. 738). The applied strategies in the competitive dialogue are not aimed at addressing and dealing with complexity. The CD procedure facilitates opportunities to jointly explore the context in order to find ways to deal with complexity. For example a balanced governance mix to deal with complexity can be found by better utilizing incentives for public-private cooperation in MEAT awarding criteria and best value procurement (Rijkswaterstaat, 2010a; Rubery et al., 2012). Such project- and context specific opportunities could help stimulate cooperation, while
maintaining competition, and realize a development towards co-opetition (Van Buuren et al., 2010) within the co-ordinative framework of a CD procedure. Currently, existing opportunities to deal with complexity are not grasped because of strong co-ordination and competition. To improve this, involved parties should be made more aware of the opportunities for addressing complexity and the added value for money, which cooperation in the CD could provide. Transparent processes are essential when applying incentives for cooperation, because it can ensure that co-ordination and competition will not result in stifling overregulated CDs, with competition on price (see Ruberry et al., 2012). Further research could provide insight into how Dutch experiences with governance strategies relate to experience with in other European countries, for example by connecting to the work of Petersen (2010b) and Johansson (2012).

Besides fostering learning in CD procedures, we recommend gaining insight in the possibilities to expand public-private interaction beyond procurement. Interaction could be part of an on-going dialogue that spans the planning lifecycle (Lenferink et al., 2011) in which public and private parties gain continuous insight in each other's opinions, wishes and ambitions leading to improved relations. Conceptually, early public-private interaction in a pre-contracting stage could prepare public and private parties for CDs (Leendertse et al., 2012). Subsequent public-private interaction in procurement helps to come to a contract in which the stage is set for post-contracting public-private interaction in construction and maintenance, possibly through adaptive public-private project partnering and alliances (Domberger et al., 1997; Laan et al., 2011). Further research is needed to investigate whether and how added value of private party involvement can be used in other stages of the planning process to strengthen infrastructure projects. Although further research is needed, the findings in this article suggest that the CD can co-ordinate public-private interaction and provide for cooperation and competition to help cope with challenges of complexity in infrastructure projects.

References


