

# Procurement Case Studies

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# 1 Context

## RIBA's 'Building Ladders of Opportunity'

The RIBA's report '*Building Ladders of Opportunity: How reforming construction procurement can drive growth in the UK economy*' contains background on the need for reform of public construction procurement, and the RIBA's detailed recommendations on how to achieve this. These detailed recommendations fall under the heading of three main recommendations to Government:

**1 Further examine the best ways to drive efficiencies and savings to ensure the public procurement system functions in the best interests of all those it serves.**

**2 Embed processes that ensure buildings are sustainable by focusing on design outcomes.**

**3 Create a competitive market by increasing access and allowing the public sector to take full advantage of UK design talent.**

Throughout these Case Studies, we have inserted references to the more detailed recommendations from this report that are aimed at dealing with the specific issues identified. All references to recommendations in this document are to recommendations in '*Building Ladders of Opportunity*'.

The full report is available on [www.architecture.com](http://www.architecture.com).

## The RIBA Procurement Survey 2012

This section provides a brief summary of the results of a survey undertaken for the RIBA by Mirza & Nacey Research. The high survey response rate leads to a statistical accuracy of  $\pm 5\%$  at the 95% confidence level.

Full results from the survey are available on [www.architecture.com](http://www.architecture.com).

### Summary

- In 2011 the UK architectural profession spent £40m preparing OJEU process bids, equivalent to 29% of the fee earnings they derived from an estimated £138m of OJEU-derived work.
- Medium-sized and larger practices prepare more bids than smaller practices. The total spend for these practices on bid preparation is therefore higher.

Given their attendant costs, OJEU processes could be perceived as intentionally focused on non-construction inputs and outputs, instead focussing on e.g. seeking to de-risk projects.

- Approaching half of all stage 1 bids (42%) were restricted pre-qualification questionnaires (PQQs). Other significant bid types were open bids and competitive pre-qualification. Design competitions account for 5% of the bids reported.

The survey shows that the types of OJEU procedures most often used are not those which evidence suggests that architectural practices would prefer to undertake.

Design competitions, which are primarily focused on design quality, are considered by some to be more economical for bidders than two stage procedures, and are popular with practices (especially amongst micro businesses). It is not possible to confirm from the survey results the perception that the number of practices entering design competitions is high (which would result in a very low success rate).

Similarly, it has been reported to the RIBA that the vast majority of skilled practitioners across the country are either excluded from the predominant bid type, the PQQ process (as a result of their practice size or financial standing), or choose not to participate, citing the high costs involved.

## A. Costs

- OJEU related work accounts for an estimated £138m of architects' fee earnings, and 11% of their total turnover.
- In 2011 the architectural profession spent over £40.2m submitting OJEU bids.
- For those practices submitting OJEU bids the average cost amounted to 29% of the derived fees.
- Practices submitting OJEU bids spend on average (mean) £33,000 preparing each bid, with larger practices over 30 spending above £100,000 while smaller ones spend less than £2,500.
- The average (median) cost for undertaking both stages of a restricted procedure is £5,500.
- Where practices on frameworks are called upon to enter framework mini-competitions these cost them an additional £3,750 (median average). The total median average cost for undertaking a restricted procedure through three stages (i.e. requiring mini-competition) is £9,250.
- For two stage procedures the analysis suggests that the cost to practices of securing a single winning bid is £45,000, taking into account the bid success rate – i.e. including the total cost of unsuccessful bids.
- The survey reports no correlation between bid costs and contract values.

## B. OJEU procurement procedures

- Architectural practices submitted an estimated 14,500 bids in 2011 of which approximately 6,500, the largest number, were on 2 stage restricted procedures.
- 1% of all the practices that responded submitted more than 50 bids during 2011. The majority of these practices were located in London while the remainder were in southern England.
- 9% of responding practices submitted more than one bid per month in 2011.
- As noted above, over half of all bids submitted were PQQs (estimated at 5,480 bids submitted in 2011), at a median cost to practices of £2,500 each. The bid-type with the least number of submitted bids in 2011 was the

competitive dialogue (390 bids in 2011, at a median cost to practices of £4,500 each), followed by negotiated procedure bids. Negotiated procedure bids were the least expensive to practices, at a median cost of £1,000, 626 bids submitted in 2011 with a success rate of 75% – the highest success rate for all bid-types. (*Recommendation 1.4.2 recommends that Government increase the use of the negotiated procedure.*)

### Framework mini-competitions:

- 13% of all practices participated in such mini-competitions arising from framework agreements.
- Smaller practices participate in fewer mini-competitions than larger practices; the rate of participation was least (1%) for practices with one architectural staff member and greatest for the largest practices – 44% of practices with over 30 architectural staff members participated.
- There was insufficient data to determine the fees received for mini-competitions by the smallest practices, however average (mean) fees ranged from £17,893 for practices with 6 to 10 architectural staff to £217,778 for the largest practices.
- Framework mini-competitions are a significant glass ceiling for micro businesses.
- It is worth highlighting that practices achieving a single winning bid via any of the contracts awarded through the OJEU procedures frequently do not obtain any subsequent commissioned work.
- In 2011, 9% of PQQs (the most frequently submitted bid type) had three bidders or fewer, 32% had 4 to 9 bidders, 49% had 10 to 99 bidders and 9% had more than 100 bidders.
- In contrast the two least frequent bid types had fewer bidders per bid: for competitive dialogues 87% of bids had fewer than ten bidders while 82% of negotiated procedures had 1 to 3 bids.
- 19% of design competitions (an estimated total of 845 bids in 2011) had over 100 bidders at a median cost of £5,000 to each practice. (*Recommendation 1.3.7 recommends that Government introduce ways of capping the number of tenderers to make procurement more manageable for public clients.*)

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### C. Access

- 55% of architectural practices have never reviewed an OJEU notice or have done so once a year or less, and 58% did not bid for OJEU work in 2011. However 24% review the notices once or more a fortnight.

While the survey did not explicitly explore reasons not to bid, anecdotal reports suggest that practices may consider the system too burdensome and/or they feel excluded from OJEU procedures. They may also choose to work in other sectors.

### D. Success rates

- In 2011 for 2 stage restricted procedures the overall success rate was 7% (i.e. a 1 in 14 success rate). The use of a further framework mini-competition route reduces this success rate still further.
- Practices of between 3 and 10 architectural staff had a slightly lower success rate (5%); practices with 11 to 30 architectural staff had a slightly higher success rate of 11%.
- None of the responding practices with fewer than 3 architectural staff had any success achieving awards through restricted procedures; however it should be noted that the sample for the smaller practices was extremely small.
- For a 2 stage competitive dialogue procedures the success rate is 9% overall.
- Single stage procedures appear, perhaps unsurprisingly, to have a higher success rate: for open bids the success rate is 19% whilst for negotiated procedures it is 75% (a reflection of the fewer bids submitted per procedure).

### E. Perceptions

Respondents were asked what they considered to be the most important factors involved in winning a bid – based either on their personal experience and perceptions, or on formal feedback from bids undertaken.

Financial criteria and the size of practice were the criteria that respondents perceived as most important to winning a bid, with a perception that design quality and technical skills were least important. (*Recommendation 2 outlines the importance of focusing on design outcomes.*)

This is an interesting view of clients' perceived priorities, and tallies with other anecdotal reports from architects.

## 2 Case study: Belgian schools framework; an exemplary procurement

### Contributed by Sarah Williams of AEDAS 15 December 2011

The procurement was a design, build, finance and operate style framework procurement in Belgium, with one multi-headed client and external finance from a large bank.

A PQQ stage was first undertaken with Flemish and Dutch speaking local architects for a total of around 100 schools.

- Lots were subdivided into three groups defined by building type i.e. small, medium or large.
- Architectural practices were invited to bid of one, two or all three lots.
- There was a simple PQQ application stage, which mainly comprised submission of CV's and experience.

Framework selection was undertaken and call off was done via a mini-competition under the framework.

The framework was broken down into small bundles of between two and four schools in each bundle.

Of the 2 schools in this example:

- The first was valued at €18m and the second at €10m; with only the higher value school subject to competitive design.

Many of the principles of RIBA's 'intelligent commissioning' proposals were in evidence (see *Recommendations 1.2.3 and 1.2.4*). In particular:

- The lead project manager was an architect.
- A very thorough full brief (room schedule and sizes), performance and cost model (construction costs estimates) was prepared prior to competition.
- Client pre-consultation and schematic (Stage A&B) design were prepared beforehand.

Five architectural practices off the framework were then 'picked out of a hat' to be invited forward to the design competition stage for the 2 schools.

Two months were allowed for the design competition submission. The competition submission documentation was constrained to a maximum total of x20 A3 sheets (*Recommendation 1.3.5 recommends that Government limit and tailor tender materials to facilitate more efficient assessment*) covering and comprising:

- Main vision (weighted approximately 40%);
- Sustainability;
- Cost; and
- Team.

The cost planning submission was undertaken by the architectural team and measured against the cost model, and remained transparent throughout the works.

*(Recommendation 2 recommends that Government embeds processes that ensure buildings are sustainable by focusing on design outcomes, and 2.1.1 notes that team and design selection should be based on the Brook's method, which similarly places importance on quality elements of bids before financial.)*

On entering the design competition all architectural teams were invited to look around the site together for a Q&A. After 1 month all teams were again invited back for further Q&A.

The competition submissions were assessed within an agreed deadline and followed by interview prior to award.

*(Recommendation 1.3.4 recommends that Government defines expeditious and universal time limits for pre and post qualification, award, and appointment.)*

After award stage the architects will be developing full working drawings to RIBA stage F1 and providing predominantly design intent drawings, with contractors providing further detailed design work, with sufficient time to do so.

A shortlist of contractors was then drawn off the contractor framework with 5 invited to tender on a full drawings and specifications package. Independent Project Insurance was used throughout and requirements were for cover of approx £1m Professional Indemnity Insurance, which was considered to be proportionate to the scale of the project.

*(Recommendation 1.4.4 recommends that Government limits liability and risk in public procurement contracts and promotes the adoption of Independent Project Insurance.)*

The negative aspects of the project are that design teams are paid at completion stages rather than monthly. The contractual conditions are also onerous in terms of architects' liabilities, although this is apparently fairly standard in Belgium.

# 3 Case study: a public client's view

## Interview of a Framework Manager by David Levitt OBE 30 November 2011

### A. Procurement selection process

#### Q1. How and by whom are bids evaluated and what are their skills? Do they think there might be any shortfalls in the procurement/briefing process?

A. This medium size Registered Provider (RP) has a dedicated 'procurement manager' who is a quantity surveyor by background, recruited from the private sector. The dedicated internal project manager is also part of the review process. Tenders on large projects take a long time to evaluate, often necessitating the employment of outside consultants.

#### Q2. What evidence is there of the costs involved in competing under EU rules for contracts above and below the OJEU thresholds?

A. The cost of evaluating tenders is not inconsiderable but the RP tries to eliminate at PQQ stage consultants whom they think are too small, based on minimum turnover, in order to save them unnecessary work in tendering. A recent PQQ for a medium size regeneration scheme produced 18 PQQ's which took 2 people 2 days to evaluate. They agree that tendering for small architectural practices involves a disproportionate amount of work compared with larger ones. 4 to 6 firms would then be invited to tender. As a way of attracting tenders from elsewhere in Europe the OJEU process is singularly useless and in practice does not work for practical reasons (distance versus size of contract etc.).

#### Q3. Do they encourage consortiums and if not what do they see as the problems?

A. The employment of consortia is an issue but does not rule out a tenderer if their consortium arrangements are perceived as being well organised and tight.

#### Q4. Their views on why there has been an increasing use of framework (aggregated) contracts – is it purely cost or are there other factors? Do they use mini-competitions between consultants who are already on their frameworks for specific projects, and if so are they required to submit design proposals and re-tender fees for each of those projects?

A. Establishing frameworks is extremely useful as a means of being able to quickly call on the services of consultants, at

short notice, to perform a range of minor commissions within the framework ceiling. As I understand it consultants who are in the framework are not required to submit mini bids for small projects. The system is used by many RPs as a means to circumvent the OJEU process and they have a long list of 'approved suppliers'.

#### Q5. Would they be interested in more individual lots if bid time and costs were significantly reduced?

A. Lots are not cost dependent. The aim of a framework is to engage with our suppliers to provide a regular stream of work so that they can understand our business and our objectives to our mutual benefit. If more Lots are used then these benefits reduce.

#### Q6. How many of their framework consultants do they ever deploy, are there consultants they haven't/don't ever use and why?

A. This happens frequently with other RPs which have far too many architects on their frameworks – say 30–40. This RP only has 8, all of whom do get employed.

#### Q7. Do they require their framework consultants to undertake free feasibilities or feasibilities at less than market rates?

A. On the whole we do not. We employ various methods in competitive situations, in order to spread the risk, such as paying for feasibilities at cost with the promise of the full fee if the bid is successful.

### B. Quality

#### Q8. What weighting in PQQ criteria assessments do they give to the fee bid and in relationship to qualitative questions?

A. 70% to quality, 30% to cost.

*(Recommendation 2.1.1 recommends that team and design selection should be based on the Brook's method.)*

#### Q9. What do they think about the often unsatisfactory results of novation in terms of eventual build quality and other possible options?

A. The probable answer is that the terms of the novation have not been sufficiently thought through, leaving the architect vulnerable to being sidelined. The idea of the client retaining someone from the design team to oversee quality post contract is seen as a positive step.

*(Recommendation 1.2.5 recommends the introduction of new contracts for the appointment of tier 2 suppliers.)*

**Q10. What do they think about disincentives for retaining concept architects for later stages of a project due to the imposition of VAT on clients, while contractors pay no VAT?**

**A.** This was recognised as a problem without any obvious solution except that the employer can try to impose restrictions on the way in which the contractor uses the architect's service.

**Q11. What do they think about the loss of both design and build quality that results from employing cheaper specialist post contract consultants (usually technicians) in place of the original architects elected for their design skills at bidding stage?**

**A.** This is a reprehensible practice which this RP does not employ. In any case the saving is insignificant.

**Q12. Is Whole Life Costing (or NPV) ever used pre-commencement to evaluate work?**

**A.** This RP would encourage architects to compete on the basis of the importance of whole life costings, rather than an overwhelming emphasis on the need to demonstrate their ability to design 'a la mode'.

**C. Complexity**

**Q13. Recognizing the sheer complexity and costs for architects negotiating different forms of legal agreement, what progress has been made towards a standard acceptable form?**

**A.** This RP is actively trying to pursue an agreed form of RIBA form of agreement. They see no point in having to appoint solicitors every time.

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## Commentary on the interview

### A. Procurement selection process

**Q1.** Bids made by the design team are assessed by those trained in construction cost management. There is no appropriately qualified design assessor involved in bid evaluations.

*(Recommendation 1.2.3 recommends that Government provides guidance to public clients on how to value and manage design and project delivery at all identifiable stages of the process.)*

**Q2.** For a medium size regeneration scheme only 18 PQQs were received. The fact that 'the RP tries to eliminate at PQQ stage consultants who they think are too small, based on min. turnover' is clear evidence of a non-quality focused based and onerous approach to selection criteria being used as a blunt tool for thinning the number of tenders. Access into the system for small practices is also seen as disproportionately expensive.

*(Recommendation 3.2.4 recommends that Government ensure financial standing criteria are proportionate to the project and the contract.)*

**Q3.** They perceive consortia submissions as an issue, and not on equal terms.

*(Recommendation 3.2.2 recommends that Government permits more consortia practice.)*

**Q4.** To undertake minor/small works the framework of large practices is used for calling them off because of the systemic efficiency. This is a problem for achieving market access for smaller companies to those smaller value works for which they may otherwise be more suited.

*(Recommendation 3.1 recommends that Government should provide clear guidance to public clients on when 'aggregation' is appropriate, as well as bundling and the use of lots. Recommendation 3 recommends creating a competitive market by increasing access and allowing the public sector to take full advantage of UK design talent.)*

**Q5.** This was a question about whether there might be value in having framework lots for e.g. the lower value works identified in Q4. This RP however appear to prefer a one size fits all approach.

*(Recommendation 3.1 is also relevant here.)*

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**Q6.** There is an enormous disparity in the numbers of designers on frameworks, which requires better management.

**Q7.** On the whole, feasibilities are undertaken at cost (i.e. less than the market rate) with the consultants carrying the risk for the clients success (i.e. many site bids are successful on the basis of the financial offer made by the client), irrespective of their success or otherwise.

## **B. Quality**

**Q8.** Whilst they have 'quality' weighted at 70% and finance 30%, RIBA Procurement Survey 2012 evidence suggests a perception that financial criteria predominant in any weightings.

**Q9.** It is acknowledged that architects are liable to be 'sidelined' with an anticipated consequential detriment to value for money, so that consideration of employing the architect via a 'reverse novation' rather than having to employ an additional architect is considered to have potential.

**Q10.** They recognise VAT as a disincentive to the free selection of the most appropriate form of contract for the delivery of quality.

**Q11.** They perceive fragmenting work stages to allow the use of 'plan drawers', in order to achieve savings in construction stage, as a reprehensible practice.

**Q12.** They perceive whole life costing or NPV evaluations as valuable.

*(Recommendation 2.2.3 recommends that the Government prioritises defining the principles of whole life costing.)*

## **C. Complexity**

**Q13.** They support a standardisation of contract forms as a method of simplification.

*(Recommendation 1.2.6 recommends that Government encourage appropriate standardisation in all public procurement contracts.)*

# 4 Case study: a developer's view

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## Notes from an interview of David Roberts, Director of Igloo by Walter Menteth 7 December 2011

Igloo is a private developer that has serious concerns about procurement processes under public sector frameworks for land acquisition/development. Igloo is committed to achieving sustainability, health and well being.

### Issues identified

When asked to compete (with their design teams) for land development acquisitions; a brief, development parameters and planning framework is established and provided.

- The qualitative assessment criteria for this is often generally weighted 30% with financial aspects weighted at 70% of the bid. (*Recommendation 2.1 recommends focusing on processes and incentives that drive quality and outcomes*).
- Where they have developed innovative funding mechanisms to align with long term public policy considerations, little consideration is being given to these. They feel their bid is being marked down whilst more 'traditional' land transactions with short term objectives are prevailing. They feel this may be largely due to lack of knowledge by the assessing parties. (*Recommendation 1.2.1 recommends that Government establishes guidance and minimum requirements for public client training, as well as the recruitment and retention of qualified staff*.)
- An example was quoted of a significant site tender where Igloo were given 8 weeks to tender, and over a subsequent 4 month period had to respond to 5 changes to the development scenario of the brief, (there were 7 scenarios in the original bid), for a scheme which at that stage still remained to be determined. (*Recommendation 1.2.2 recommends that Government establishes clear, detailed guidance on 'intelligent commissioning' and scoping work, which includes provisions on thorough brief preparation*.)

Igloo perceives a need for more 'intelligent commissioning' where:

- Qualitative criteria are given a greater weighting;
- There is alignment with other public policy objectives;
- The approach is more forensic and supportive.

### Igloo would support:

- Independent reviews/or 'independents' being brought in to ensure alignment and provide adjudication of issues.
- A need for adequate time for the preparation of bids based on better briefing, and a reduction in the time taken to make a tender determination. (*Recommendation 1.3.4 recommends that Government define expeditious and universal time limits for pre and post qualification, award, and appointment*.)

Igloo is concerned at the possible imposition of more upfront costs in the preparation of their bids, (e.g. evidencing in greater detail how set objectives would be achieved), where such work and attendant costs might be better addressed at a later stage in the procurement process. They were also concerned about proposals which would prescribe how they construct their bids (as opposed to the outputs sought).

# 5 Case study: over complex and costly PQQs

## Compiled by members of RIBA's Procurement Reform Group

This case study relates to a recent PPQ for a large further education establishment and is an example of bad procurement practice.

The PQQ related to a 4 year framework with 12 lots and a maximum of 37 operators; the anticipated number of tenderers at award stage being 118.

The total estimated value of services for all lots across the entire framework for the full 4 year duration is between £21,700,000 and £48,700,000.

- **Lot 1** Architectural Services (major works)  
Value £4,000,000 and £7,000,000
- **Lot 2** Architectural Services (minor works)  
Value less than £4,000,000
- **Lot 3** Cost Consultancy (QS)  
Value £2,000,000 and £5,000,000
- **Lot 4** Project Management  
Value £2 250 000 and £5,500,000
- **Lot 5** M&E (minor works)  
Value £1,000,000 and £3,000,000
- **Lot 6** M&E (major works)  
Value less than £1,000,000
- **Lot 7** Structural Engineer  
Value £2,000,000 and £5,000,000
- **Lot 8** Building Surveying/Clerk of Works  
Value £2,000,000 and £4,000,000
- **Lot 9** CDM Co-ordinator  
Value £1,000,000 and £3,000,000
- **Lot 10** BREEAM energy consultant  
Value £150,000 and £400,000
- **Lot 11** Approved Inspector  
Value £ 200,000 and £500,000
- **Lot 12** Space Utilisation services  
Value £100,000 and £300,000

Two central London firms with considerable experience of submitting bids, having appraised this particular notice commented:

**'We have worked for them in the past, so thought we should apply. We downloaded the PPQ documentation. We estimate it will take 50 hours to complete. The client must have paid several thousand pounds for this advice and work.'**

**If as is likely 500 firms apply across the framework (a modest average of 13.5 per No. of operators to be appointed) and our estimate of time is correct, the equivalent fee expenditure could be around £1.5 million, just to achieve a long list – with more work to follow at the next (award) stage.'**

**For the PQQ stage submission alone the bidders costs for a total works value of between £21.7m and £48.7m on the above estimate amounts to between 6.9% and 3% of the contract's overall value. 3 No. of the lots to be shared between 6 operators (lots 10,11 and 12) have works of a maximum value of £500,000 over 4 years.'**

**Michael Coombs, Director, Alan Baxter and Associates LLP**

**'As we are currently working with the client on a £70m project, we took the decision to submit the PQQ for their new 4 year framework agreement. The complexity of the PQQ required major input from senior personnel. However, we failed to reach the award stage. We received a score sheet without explanation, simply numbers attributed – the numbers being identical for the two Lots. Given the effort put into the submission, we would expect, quite reasonably, a comprehensive justification of the scores given. The lack of such justification leaves the assessment meaningless.'**

**We are concerned that significant resources, human and financial, are being wasted.'**

**Ian Ritchie, Director, Ian Ritchie Architects**

# 6 Case study: framework access issues

## Compiled by members of RIBA's Procurement Reform Group

This Framework is:

- Run by a Local Authority controlled company
- A 4 year framework with a total value between £21,400,000 to £29,250,000 and open without limitation to all the following organisations working within that region:
  - Local Authorities, Central Government Departments and their executive agencies;
  - National Health Service (NHS) bodies, incl. hospital trusts, acute trusts, community hospitals, primary care trusts; Police Forces and other emergency services; Airport Authorities;
  - Registered providers (RPs); Registered Charities;
  - Educational establishments; Non-departmental Public Bodies (NDPBs); all other designated contracting authorities in the Public Contracts Regulations 2006; and
  - Utilities.

The public procurement framework is understood to cover 40+ local authorities. The framework is for the design and technical services for new build, refurbishment and maintenance of all construction facilities (municipal, cultural, residential, infrastructure, industrial, commercial buildings) across a vast swath of central England.

### A. Evaluation and outcomes

A total of 35 lots were advertised with a total of 113 potential contract appointments invited. However, only 41 contracts were let, with a number of firms winning multiple contracts for different lots (7 in the case of one consultant). Only 26 different firms were appointed across the entire framework (23% of the potential appointments). Despite there apparently being no average project works valued over £500,000 few micro businesses or SMEs have gained any access to this framework.

Of those firms winning multiple lots a number are also procurement advisors for public procuring authorities.

The client also has a national framework with single suppliers (i.e. only one company on each framework). The project management and QS framework and the Design and Technical Services framework is currently let to three of the same companies who have also won awards onto this framework. A local authority, and the only one who secured contracts on this framework is also a member authority of the company which runs the framework organiser.

### B. Key points

1. This framework has bundled together construction work from high to low values, so that small projects can no longer be undertaken outside the framework, by small firms.

*(Recommendation 3.1 recommends that Government should provide clear guidance to public clients on when 'aggregation' is appropriate, as well as bundling and encouraging the use of lots.)*

2. The way it is set up essentially excludes small practices and privileges those who have been part of the framework (or done local authority work) previously.

*(Recommendation 3 recommends that Government creates a competitive market by increasing access and allowing the public sector to take full advantage of UK design talent.)*

3. The overwhelming majority of the work/budget is set aside for design-and-build projects that architects cannot access through a framework – but need connections with major developers (in essence privileged for these projects).

Again, this typically excludes small and young practices.

4. The narrow advertising of the framework meant most architects did not get to hear about it.

5. Despite the region's size, 24 of the 41 contracts have been let to firms based outside the region (approximately 60%).

6. Although architectural contracts were advertised as being assessed on the basis of 'most economically advantageous tender', weightings for price are never less than 40%.

*(Recommendation 2.2.1 recommends that award of a construction contract should always be to the 'most economically advantageous tender'.)*

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## C. Analysis of the lots

### Architectural Services Lots 1–5

- Including landscape design, interior design/space planning and clerk of works.
- 17 contract appointments invited; only 5 contracts awarded.

#### Example Lot 4

- Estimated value over 4 years £750,000 to £1,000,000; average project value approx. £500,000.
- 3 appointments invited (& 3 made with all appointees being awarded contracts to other multiple lots).

### QS with Project Management Lots 6–10

- 20 contract appointments invited; only 4 contracts awarded.

#### Example Lot 7

- Estimated value over 4 years £250,000 to £1,500,000.
- The average project value called off in this lot is to be approx. £500,000.
- 3 appointments invited.

### Building Services Lots 11–15

- 15 contract appointments invited; 5 contracts awarded.

#### Example Lot 11

- Estimated value over 4 years £600,000 to £800,000.
- The average project value called off in this lot is to be approx. £50,000. 3 appointments invited.

### Structural Engineers Lots 17–20

- 12 contract appointments invited; only 3 contracts awarded.

#### Example Lot 17

- Estimated value over 4 years £500,000 to £700,000. The average project value called off in this lot is to be approx. £50,000. 3 appointments invited

### Building Surveyor Lots 21–25

- 19 contract appointments invited; only 5 contracts awarded.

### Example Lot 23

- Estimated value over 4 years £500,000 to £700,000.
- The average project value called off in this lot is to be approx. £50,000.
- 3 appointments invited.

### CDM Co-ordinator Lots 26–30

- 15 contract appointments invited; only 3 contracts awarded.

### Example Lot 29

- Estimated value over 4 years £250,000 to £400,000.
- The average project value called off in this lot is to be approx. £50,000.
- 3 appointments invited.

### Land surveyor/Topographical Lot 31

- Estimated value over 4 years £1,600,000 to £2,000,000.
- The average project value called off in this lot is to be approx. £50,000.
- 3 contract appointments invited.
- 3 awarded all to parties receiving other contracts.

### Ground Investigation/Geotechnical Lot 32

- 3 contract appointments invited; 3 awarded.
- Estimated value over 4 years £1,600,000 to £2,000,000.
- The average project value called off in this lot is to be approx. £50,000.

### Commercial Surveyor Lot 33

- Estimated value over 4 years £250,000 to £400,000.
- The average project value called off in this lot is to be approx. £62,500.
- 3 contract appointments invited; 3 awarded.

### Planning Consultant Lot 34

- Estimated value over 4 years £500,000 to £750,000.
- 3 contract appointments invited; 3 awarded all to parties receiving other contracts.

### Water Management Lot 35

- Estimated value over 4 years £1,500,000 and £2,000,000.
- 3 contract appointments invited; 3 awarded.

# 7 Case study: barriers to SME access

**Contributed by Roger Skehan,  
Director of Oddy Builders  
January 2012**

## A. Introduction

In 2009 Oddy Builders Ltd., a small contractor based in Leeds with a turnover in 2008 of £4.4m, applied for Lots -1 B, C and D (see below) onto a local authority contractors' framework which was for three years duration.

The procurement process and evaluation was undertaken on behalf of the local authority by a major consultant with the submission on 16th March 2009. Oddys' bid was unsuccessful. Following this they raised queries and subsequent concerns with the local authority and their agents regarding the unfair bias in the process against small businesses; the agent did not respond and the local authority denied the accusation.

## B. Local authority framework analysis, lots and areas

- **Lot 1** in 7 geographic areas Works values £10,000–£200,000;
- **Lot 2** in 3 geographic areas Works values £200,000–£500,000;
- **Lot 3** in 1 geographic area Works values £500,000–£1,000,000;
- **Lot 4** in 1 geographic area Works values £1,000,000–£3,500,000;
- **Evaluation** Of a total 519 marks 8 questions had a maximum score greater than 30 marks (with 81% of all marks).

## C. Key Points

1. The local authority used the same questionnaire and a consistent marking scheme irrespective of lot values.
2. In particular, those with turnovers over £100m scored 30 points whilst turnovers less than £5m could only score a maximum of 5 points. With a similar marking regime also covering profit, for two questions 2.4 and 2.6, the overall difference in scores was 50 points, representing approximately 10% of the total score. (*Recommendation 3.2.4 recommends that Government ensure financial standing criteria are proportionate to the project and the contract.*)
3. The local authority considered it important for best practice to award a high score for environmental, H&S, equal opportunities, and membership of the Considerate Contractors Scheme. Larger companies with dedicated

resources, more comprehensive and extensive generic plans invariably scored higher than SMEs. Potential cost premiums for using generic approaches for short term, lower value works were these may be inappropriately disproportionate and where waivers might be sensible were highlighted, but not considered relevant.

4. The local authority and their agent relied upon the applicants to make accurate statements without adequate verification or checks. A number of companies fined by the OFT for 'bid rigging' secured contracts. Upon this information being communicated to the local authority no action was taken. However, tenderers declaring a small deduction of LADs received a punitive deduction of -10 marks for question 6.4. Only 1 company admitting to the deduction of LAD's made it through the PQQ process.

5. As a new entrant to the public procurement market, Oddys applied for Contractors' Health and Safety (CHAS) certification prior to their submission and notified the agent accordingly. Unfortunately, their certification was only received and forwarded after the submission deadline. For question 5.4 they received none of the 30 marks.

6. Because they relied upon the CHAS detailed review as part of the accreditation process Oddys had not attached their full policies as part of the application, and did not then receive marks across various other sections of the submission.

7. The local authority required a Service Continuity Plan. Larger companies invariably scored higher than SMEs because these plans on lower value contracts of shorter duration with lower risk are proportionately smaller.

8. Whilst Oddys had to provide 10 projects and referees, they were not able to ascertain whether references were sought, returned or not, nor what mark they received. 100 marks were attached to this part of the PQQ.

## D. Outcomes

All contractors appointed on this framework had a turnover in excess of £35m, or were subsidiaries of larger organisations, and tended to win across multiple Lots and/or multiple geographic areas.

The local authority and their agent both subsequently asserted that alternative opportunities arose for SMEs to work for the public sector in the region, citing schools with partially independent funding. So Oddys tendered for a schools bid. It transpired that the agent selected the list on behalf of the school and rejected those not on the framework.

# 8 Case study: framework management

## Compiled by members of RIBA's Procurement Reform Group

The following examples outline a number of issues encountered by tenderers in connection with poorly managed frameworks.

**1.** Unfortunately, there is often “not even any guarantee of work at the end” of a framework selection, and there is often no fair or equitable selection for call offs. Frequently, contractors on frameworks and aggregated contracts are neither invited forward nor do they receive any works throughout the contract period, despite repeat works being allocated to other framework consultants. As an example, of a total of 21 framework awards across two small practices (Stockwoolstencroft Architects and Walter Menteth Architects) no commissioned work was received. Case Study 2 is an example of good practice in this area.

**2.** One public client held its first (PQQ) and second (award) stage framework selections and did not subsequently confirm any contractual appointments until a service provision was called upon; at which time a third stage was entered into, and the consultancy's services were used for extensive 'works at risk' spanning 4 months (design work to RIBA Stage C+) in conjunction with new fee negotiations, and without the contracting authority ever concluding its contractual exchange (Walter Menteth Architects).

**3.** Consultancies may be required to undergo further selection processes having been appointed to an aggregated contract by way of a 'mini tender' to attempt to win works projects under the contract. It is now the norm for this to require a complete building design (up to RIBA Stage D) for presentation at interview along with particular method statements, renewed evidence of previous experience etc. and yet another fee bid, in competition against the other framework consultants, with all work being required to be undertaken for free.

In one reported case, this mini tender process extended over 6 months. Contracts are typically awarded on the basis of the fee bid as the sole determining factor, without reference to any other criteria, be they appropriateness of proposals, design or quality (Greenhill Jenner Architects).

*(Recommendation 1.4.2 recommends increasing the use of the negotiated procedure and recommendation 1.4.3 recommends that Government should work with the RIBA to promote and improve the use of design competitions.)*

**4.** When consultancies win tenders onto an aggregated contract, if the public client then merges or forms part of a consortium, the original consultants are removed without appointment to any works contract, and the contract is effectively retendered. The considerable expenditure outlaid by applicants on initial tendering is subsequently wasted.

*(Recommendation 3.1 recommends that Government should provide clear guidance to public clients on when 'aggregation' is appropriate, as well as bundling, and encouraging the use of lots.)*

**5.** There is an unintended requirement for public clients to re-tender projects for architectural services at different stages (for instance between feasibility stage and full design stage, or if the project crosses an EU cost boundary), which can result in the full process described above being re-enacted. This maybe despite the end result sometimes being a foregone conclusion: i.e. the reappointment of the original architect. This can incur enormous time loss and cost on their parts.

**6.** Frameworks are sometimes cancelled after completion of submissions and evaluation stages. A major London public sector body announced a tender for its Urban Design Framework in summer 2011. There were 13 lots, with 184 firms to be invited to tender across all Lots. Results were announced in January 2012, with Invitations to Tender due for issue in February 2012. The whole process was then cancelled in April 2012.

The cost to the construction industry and to the public purse in such instances is substantial. A single lot in this example had 45 bidders. It is estimated that if this was consistent across all lots, this might equate to 45 x 13 x a minimum of 3 man days per practice = 1,755 man days lost work. At 5 working days a week, 48 working weeks a year that's 7.3 working years, just on the bidder side.

The client has decided to restart the whole PQQ process, aggregating their framework with the GLA on the basis that they believe it makes sense to combine their services, because some (not all) of their services requirements are the same.

*(Recommendation 3.1 recommends that Government should provide clear guidance to public clients on when 'aggregation' is appropriate, as well as bundling, and encouraging the use of lots.)*

# 9 Case study: treatment of tier 2 suppliers

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## Compiled by members of RIBA's Procurement Reform Group

The following examples outline issues encountered by tier 2 suppliers.

### A. Contractors placing undue economic pressure upon consultancies

The public client, being unable to recover VAT when VAT increased from 17.5% to 20%, informed all its framework consultancies that it would offer 'speedy' payment terms in exchange for a 2.5% fee discount. The implication was that work on the framework would not otherwise be forthcoming. This was irrespective of the multiple 'mini' fee tenders it otherwise held under its framework.

*(Recommendation 1.1.4 recommends that Government consults on, defines and creates an independent national oversight authority to promote best practice.)*

### B. Tier 2 architectural consultants who have previously won a competitive tender onto a contractor's framework being required to enter the contractor's own individual and punitive 'success based' standard terms of agreement)

The agreement entitled consultants to only 20% of the fee up to contractual close for work projected to take nearly a year (contractors' stages 1&2). This is basically RIBA Stage F/G which should be 70% of the total fee due. Upon achieving contractual close a 20% deferred fee payment is released, making 40% overall.

The agreement stipulated, however, that you can only claim after completion of each work stage (a fee claiming process that is understood to be structured to take around 3 months due to the contractor's approval certification process). Hence only 10% of the total fee is actually received in the whole year required to get to RIBA Stage F/G leading up to contractual close. The example cited here was for a project with a construction cost of £2–3m. This is supposedly a success based fee structure, but as the contractor already had this Building Schools for the Future programme their risk was minimal.

*(Recommendation 1.2.5 recommends the introduction of new contracts for the appointment of tier 2 suppliers.)*

# 10 Case study: disproportionate turnover criteria

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## Compiled by members of RIBA's Procurement Reform Group

Financial thresholds used as selection criteria, when compared to project sizes, tend to favour large turnover practices. This does not necessarily ensure the selection of the most suitable service providers for the project size, with the appropriate specialist skills.

### Examples of disproportionate turnover criteria:

1. An annual turnover of £2.5m to undertake construction works up to a value of £5m. An annual fee income of £2.5m on a fee basis of e.g. 5.5% o/a eq. equates to approximate construction works cost turnover of £45.5m per annum.

2. Turnover requirement of £1m for undertaking construction works up to £500,000. An annual fee income of £1m on a fee basis of e.g. 5.5% o/a eq. equates to approximate construction works cost turnover of £18.2m per annum.

3. The essential requirement of one recent notice targeting young small design firms was an annual turnover of £500,000 for a newspaper stand with a value of approximately £25,000. An annual fee income of £0.5m on a fee basis of e.g. 5.5% o/a eq. equates to approximate construction works cost turnover of £9.1m per annum, where fee earning could, depending on the service, be anticipated to range between £2,000–£3,000.

4. Turnover of €375,000 per annum for a contract of €125,000 lasting 4 years, delivering an annualised income of €31,250.

5. Turnover of €1m per annum for a contract of €335,000 lasting 4 years, delivering an annualised income of €83,750.

These examples evidence inconsistencies and excessive multiples of a consultancy's likely derived fee, and are inappropriate to the scale of works.

*(Recommendation 3.2.4 recommends that Government should ensure financial standing criteria are proportionate to the project and the contract.)*

# 11 Case study: disproportionate insurance requirements

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## Compiled by members of RIBA's Procurement Reform Group

UK professional consultancies maintain Professional Indemnity (PI) insurance that is entirely practice based,. This is not common practice within Europe where individual project based PI insurance is the norm. The European system provides greater surety at less economic cost to the industry. The UK insurance position is questionably contrary to the principles of the EU public procurement Directive (2004/18/EC), as it deters transnational competition.

### Examples of disproportionate PI requirements:

- A local authority's insistence on the requirement for £5m PI cover for the design of a £300,000 house, from a practice currently holding £2m cover. The practice had already designed the house to RIBA stage D, and the local authority had expressed a strong interest in working with them. The insurance requirements appeared to be based on a request from the local authority's legal team (Riches Hawley Mikhail Architects, November 2010, who also reported their insurers had been receiving a significant rise in requests from architects involving disproportionate local authority insurance requirements).
- A Registered Provider's requirement for £10m PI cover for a £3m construction contract

In the UK PI insurance premiums may cost approx. £3–4.5k per £0.5m.per annum with run off typically 7 or 12 years (depending on the level of income and contract of works etc). For any small consultancy with an existing PI sufficient for this scale of work, raising their cover to the required level would incur a liability above the level of the projected fee income.

There is no value in the practice of including PI as a weighted or evaluated criteria.

*(Recommendation 1.4.4 recommends that Government should limit liability and risk in public procurement contracts and promote the adoption of Independent Project Insurance.)*

# 12 Case study: a model local authority's view

**Notes from an interview of London Borough of Southwark's (LBS) Simon Bevan, Head of Planning; Michael Tsoukaris, Group Manager Design & Conservation; and Sam Fowler, BSF Project Director, by Walter Menteth April 2012**

## **A. Planning Procurement & selection processes**

### **Q1. How does LBS strategically embed architectural quality?**

**A.** Architecture and the public realm is placed high on the authority's agenda to promote sustainable environments of long term quality. This importance is emphasised through planning and development briefs.

Through early stage planning opportunities LBS also identifies potential for embedding quality. LBS expects and seeks delivery partners/private developers to identify and deploy the best appropriate design talent. It has a dedicated Design & Conservation department lead by a qualified architect recruited from the private sector which informs policy and encourages early and staged planning application reviews for all significant developments through a well established Design Review Panel.

In its major regeneration programmes design has been a key consideration through procurement and delivery. With its development partners it has instigated design competitions within major developments such as the Elephant & Castle development, directly, through agreements on land sales and otherwise.

When procuring the Local Education Partnership for its BSF schools programme for example it has prioritised design placing architectural quality central to the selection of its partner. Southwark was one of the first London boroughs to establish its own Design Review Panel. The Panel introduces an independent rigour to the strategic assessment of design and a way of embedding architectural quality through the planning process.

### **Q2. How does LBS ensure architectural quality is achieved through their planning process?**

**A.** A lack of continuity and consistency between the quality aspired to in designs approved at planning stage and completed buildings was a noted concern which LBS believes required address.

Quality thresholds are sought through the planning process at application stage and, to ensure construction and detail quality, by conditions. For conditional approval for all significant developments LBS also require submission of large scale detail drawings of exemplary and salient aspects. Compliance requirements are scrutinised and enforced for sign offs to be achievable.

This makes a significant contribution to maintaining quality although it might be perceived by some to place unexpected requirements upon development teams unfamiliar with their approach. LBS consider that although a lot of their developers are return clients, a guide setting out the procedures and expectations of their approach could be valuable.

### **Q3. How does LBS ensure architectural quality is achieved through their own procurement process?**

**A.** LBS have used a variety of approaches within its procurements to achieve high quality outcomes. For all construction procurements, LBS uses a 'Most Economically Advantageous Tender' approach as opposed to lowest price. (*Recommendation 2.2.1 recommends that award of a construction contract should always be to the 'most economically advantageous tender'.*)

The Building Schools for the Future (BSF) programme was supported through procurement by strong Client Adviser arrangements and through the delivery of projects through the Local Education Partnership a similar Design Quality Manager role is embedded. This team member works closely with and challenges designers, contractors, planners and client stakeholders to ensure that through the design and delivery of projects design quality remains a key focus. Similar arrangements are now in place for the Aylesbury regeneration programme. (*Recommendation 1.2.3 recommends that Government provides guidance to public clients on how to value and manage design and project delivery at all identifiable states in the process.*)

LBS have engaged architect led design teams through open design competitions for the delivery of new primary schools with positive outcomes. ([www.architecture.com/Files/RIBAProfessionalServices/CompetitionsOffice/Resultsbooklets/SouthwarkSchoolsfortheFuture.pdf](http://www.architecture.com/Files/RIBAProfessionalServices/CompetitionsOffice/Resultsbooklets/SouthwarkSchoolsfortheFuture.pdf)).

Within its project management team an internal architectural role supports procurement, design and delivery with a view to establishing design 'gateways' at key points with the project process. Section 106 agreements have been used to provide design quality definitions, and to ensure the design and accessibility standards sought are met.

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**Q4. What factors might be identified which influence LBS's own procurement processes?**

**A.** They seek to procure a delivery team with the minimum number of interfaces, with, wherever possible, a single point of contact making use of pre-procured partnerships and frameworks such as the IESE.

Where an open tender is used, this one stop shop approach affects the value of services overall and potentially limits opportunity to smaller architectural practices. A key challenge experienced through traditional procurement approach is balancing design quality and innovation with strong contract management and deliverability. LBS also operates an approved list from which suppliers are selected.

**Q5. Do LBS think there might be any shortfalls in the procurement/briefing process?**

**A.** In their BSF programme, for example, the quality of appraising and pre-briefing has had a direct bearing on success in the process, procedures and outcomes. Good guidance is essential along with a fully tested brief, budget and schedule of accommodation. (*Recommendation 1.2.2 recommends that Government establishes clear, detailed guidance on 'intelligent commissioning' and scoping work, including common minimum standards, a key part of which is a thorough brief and budget.*)

Architects and developers need to be capable of responding with flexibility to markets, budgets, the local authority's and stakeholders' requirements. Expectations have been well met in the majority of cases but where shortcomings have occurred they have been due to weaknesses identified in the above areas.

**Q6. Do Localism and the NPPF provide opportunities to improve quality?**

**A.** There are 2 pilot neighbourhood plans developing within Southwark, and the programme is fully supported by LBS. Although no outputs have yet been agreed encouraging indications are reported. Neighbourhood plans are intended to give communities the opportunity to develop a distinctive vision for their local area and this appears to be what is developing in the two pilot areas.

The emphasis on sustainability within the NPPF provides opportunity to evaluate quality over a building's whole life and within its context and this is welcomed. Local communities have expressed concerns over the cheap materials and poor maintenance of recently completed developments. An emphasis on quality in public procurement could offer longer term benefits to the community through a greater emphasis on quality of accommodation of future residents and a whole life approach to building design. LBS confirmed their commitment towards achieving the best appropriate design quality and expressed continued interest in use of Design Competitions which from their experience and in appropriate circumstances was capable of achieving this objective. (*Recommendation 1.4.3 recommends that Government should work with the RIBA to promote and improve the use of design competitions.*)

# 13 Appendix: background on UK public procurement

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1. Transposition of EU Directives into UK law
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8. Types of architectural design competitions
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10. Cost to construction professionals
11. Fee undercutting
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## 1. Transposition of EU Directives into UK law

There is a view that much UK 'gold plating' of the EU public procurement Directive arises because:

- Napoleonic law is about the 'interpretation of legal principal' and this overrides detail where it maybe appropriate to do so in response to circumstances. This covers most of our major EU competitors.
- UK law however is perceived to be based more on 'interpretation of the words in law'. So that the detail of all language is of importance. In the pursuit of precision, particularly in complex subject areas, this means UK law has a tendency towards the use of more language rather than less, compounding complexity with unforeseen consequences. Such complexity may then be further compounded by our own case law.

## 2. The Remedies Directive

The Directive 2007/66/EC (Remedies Directive) requires public authorities to wait, before concluding a public contract (known as a 'standstill period'). This gives rejected bidders the opportunity to start an effective review procedure at a time when unfair decisions can still be corrected. If this standstill period has not been respected, the Remedies Directive requires national courts under certain conditions to set aside a signed contract as ineffective.

The growing use of the Remedies Directive is unpopular with many public clients and there is considerable dislike of some aspects. Failed tenderers are increasingly seeking legal redress from public clients due to a perceived misapplication of EU rules, whilst local authority clients are concerned that this trend will continue. Rising costs and tighter markets have helped to drive a cultural change in the public procurement markets.

Whilst many construction consultants and contractors welcome the principals of the Remedies Directive, believe in fairness and transparency, and highly value feedback, its application has consequences that also increase their costs by increasing burdensome selection criteria and increasing risk-averse practice.

## 3. 'Bodies governed by public law'

A problem arises in the UK from our interpretation of the definition of 'body government by public law', as small charities and trusts have been increasingly required to participate in and been netted by OJEU procedures. This incurs cost and has a detrimental effect on the

empowerment of otherwise legally independent arm's length organisations. This may arise for example whenever the level of grant aid on a capital project exceeds a proportion of their annual turnover. This constrains arms length and bottom up organisations from efficient development and achieving empowerment.

Also, Registered Providers (RPs), which are some of the UK's largest not-for-profit organisations, are required to follow OJEU procedures even though they are neither public bodies nor mainly financed by another public contracting organisation.

In the case of RPs the definition gives rise to explicit contradictions. As bodies governed by public law RPs are, on the one hand, required to follow OJEU procedures (unlike for example their counterparts the Dutch Housing Corporations) incurring costs and delays accordingly, on the other hand, many are, like private companies, building up their balance sheet reserves. If they are retained as public bodies they should be guaranteed by the UK Government and their reserves could be leveraged to deliver significant growth in the housing supply. Either way, the current position in respect of RPs appears unjustifiable.

Recommendation 1.1.2 recommends that Government should clarify the definition and interpretation of 'bodies governed by public law' to exclude certain organisation from the EU Directive's scope.

## 4. Forms of practice and consortia

The ease with which professionals and others can cooperate to compete for contracts is constraining and competition is reduced by the legislative burden of regulations precluding 'mutuals', co-operatives and employee-led organisations. Professionals wishing to cooperate to compete for works typically have to establish and legitimise their organisational structures first, rather than proving their competency to do the works. Having to engage in hierarchical arrangements, sub-contracting or sub-consultancy agreements can impede integrated working practices. When consortia are currently proposed, they most frequently become relegated as problematic by public clients (see Case Study 3).

Coalescing professionals and others into integrated consortia provides an innovative method for drawing skills and resources together from across construction.

Restrictions on the forms of practices may discourage the selection of the best team for the job, are unnecessary and freer forms of organisational structures are to be welcomed.

Recommendation 3.2.3 recommends that Government should permit more consortia practice.

## 5. Aggregation

Recommendation 3.1 recommends that Government should provide clear guidance to public clients on when 'aggregation' is appropriate, as well as bundling, and encouraging the use of lots.

There are a number of distinct and different forms of aggregation occurring in public procurement as follows:

### A. Procurement authority service aggregation

Where the managerial, legal, or procedural processes of a procurement may be undertaken centrally rather than locally. Works undertaken this way are most typically in frameworks.

### B. Framework types

- National and regional frameworks for central government departments and executive agencies;
- National, regional and sub-regional frameworks e.g. within the NIEP community;
- Collaborative frameworks by a group of local authorities or other organisations within a discrete geographic area;
- Unilateral arrangements available to a broad cross-sector of authorities;
- Single organisation frameworks;
- Government Procurement Service frameworks available to the wider public sector; and
- Other specialist frameworks such as Partnerships for Schools, Contractors Framework for Academies.

### C. Bundling of Works

Bundling is another form of aggregation which arises where small value contracts that frequently lie below EU threshold values are bundled into works packages for distribution to the 'approved' contractors on a pre-existing framework. This is frequently undertaken to avoid tendering costs and the related delays irrespective of the framework contract's suitability and the lack of open market competition.

Examples exist of contractors being drawn off frameworks in this way to undertake specialist conservation works despite them having inappropriate skills and no previous experience. This is one example that is not cost effective, diminishes outputs and damages cultural heritage.

## D. Lots

Lots are typically used under framework agreements. Bids are ranged by the service provider, by the number of lots and the lot values. They are described within the advertised notices and have a number of variables.

- The number of lots across a framework irrespective of the values can vary significantly.
- The range of service providers maybe broad or limited (for example they maybe constrained to a multi-disciplinary provider who can offer a range of services rather than to individual consultancy service providers).
- The individual value of a lot can range significantly (for example work values between the threshold value and £35m; or between threshold and £5m, £5m to £10m etc).
- The number of lots to be distributed within any given range value maybe large or small (for example the public client may elect to appoint either 2 or 10 organisations onto the framework in any individual lot).
- Lots maybe allocated across large or small geographic areas.
- Multiple lots can be awarded to the same firms.

There would appear to be no constraint on the numbers to be appointed onto a framework, or the numbers appointed relative to the offers advertised in any notice and there is a marked difference between the number of lots that may be offered within any advertised notice and what is awarded (see Case Study 6).

## E. Project aggregation

A public client may seek to engage a single contractor where for example there procurement might favour a single point of contact, high risk cover, or a generic solution.

There are a number of factors which can drive aggregation:

- The procedural cost
- The lack of skilled professionals qualified to undertake the procedures.
- The lack of management supervision during implementation phases
- Risk
- Bid Numbers
- A Single point of contact
- Economies of scale

There are calls on tier 1 suppliers to articulate and formulate strategies to increase access to aggregated works simply by sub-contracting to micros and SME enterprises (in a capacity as tier 2 suppliers and by division of works into more and smaller lots). Increasing the number of lots is generally regarded as a method of increasing access. However without reducing the systemic cost of procurement this has the potential to pass costs onto the tendering authority.

Aggregated contracts inevitably favour larger enterprises despite the fact they do not always have the skills, experience, capacity or a reputation for delivering smaller projects well; because the requirements sought are larger. Aggregation and centralisation of procurement can strongly impact on the average number of bids received per procurement process and reduces competition.

## 6. Public client ‘scopings’

‘Scoping’ is the initial stage of the procurement process where the required service is defined by the public client. Inefficiencies at this stage are often the result of procurement officers having little or no professional construction skills, or skills relating to only a single construction field. Indeed, the UK Government has identified that there is insufficient capacity of capable senior procurement resources with experience of complex projects and a lack of commercial in-house legal advice and over reliance on external advisors. Furthermore only 81% of local authority procurement officers have had any training over a two year period.

A Housing Association might typically employ a dedicated ‘procurement manager’ who may for instance be a QS by background (experienced in costs but not design or contracts) with a dedicated internal project manager who is also part of the review process. It is frequently necessary to employ external consultants as larger tenders take a long time to scope and evaluate (see Case Study 3).

In addition to the lack of qualified personnel, there is often insufficient time to prepare ‘scoping’ documents properly. Consequently the ‘scoping’ documents can lack an adequate business case for the works; with inadequate definition of the principal requirements of a project’s outcome, its brief, cost modelling, programming, success criteria or appropriate methodologies for assessment. Incomplete ‘scopings’ also contain errors, lack co-ordination and frequently omit to engage with end users.

In a recent framework bid for the acquisition of land, 11 changes to the development scenario of the original brief were requested over a 4 month period subsequent to the 8 week tender period (see Case Study 4).

Poor procurement leads to real inefficiencies where inadequate scoping is being left to those without the support, time or expertise to do so. These inefficiencies have been well chronicled by Egan (and others) but still persist.

## 7. Assessments

EU court rulings have confirmed that OJEU architectural consultancy notices should be judged by architectural criteria. Yet UK procurement professionals are rarely drawn from professions or sectors qualified to assess the quality criteria of architectural bids. Instead selections are frequently process led without due regard to the quality and performance of the built product being sought or potential suitability for context.

By contrast, it is frequent European practice for architects or other suitably qualified professionals to assess architectural tenders.

Public sector construction procurement is also largely inaccessible to stakeholders despite the fact that outcomes have a direct bearing on their environments.

“Where end users were not engaged, respondents considered their projects to be properly scoped only 20% of the time.

This alienates end users, reduces transparency and diminishes quality.

The frequent lack of transparent scoring systems makes it harder for unsuccessful applicants to get useful feedback, and improve upon their application in future.

## 8. Types of architectural design competitions

Under the EU Directive the procurement route for the delivery of architectural design competitions is referred to as ‘Design Contests’. Architectural design competitions typically cover the following types:

- Open Design Competitions – for use on the largest civic public buildings.
- Restricted or Open Competitions – in smaller scale/non public buildings of local importance – with consideration being given to capping numbers the numbers who may partake (in accordance with the bid thinning proposals contained within).
- Invited competitions – with short-listing on qualitative

based expressions of interest (EOIs) by the specified restricted procedure and with a maximum of five submissions.

- The Competitive interview – with short-listing by PQQ on qualitative based EOIs by restricted procedure. Used to select the designer/team at early stages of a project to work on developing the project brief in dialogue with the client – and used for projects of a complex and sensitive nature. This ensures that relationships will be right; enables clients to see the organisation and priorities of the design team and appoint a designer/team rather than specific designs.

There are other forms of design competition which can deliver enhanced value for money over alternative forms of procurement and may not be procured through the ‘Design Contests’ route (under EU regulations). Typically they are:

- Architectural design competitions under frameworks, with separate design and construction stages, This can be a fast track approach delivering high quality fixed cost outcomes without the costs of additional operatives at early stages (see Case Studies 2 and 12). This type of mini-competition can be effectively and efficiently managed with due consideration. Where it is not and access is restricted it can equally be wasteful for all.
- Development competitions where client and architect compete with other teams for the right to a site, using design as part of their submission (see Case Study 4).
- Public client design/build competitions, including those for PFI, where design is a factor.
- The Government Construction Strategy anticipates that many projects will choose integrated design-build teams by design competition. Teams would be shortlisted from frameworks, with capital budgets fixed, so that design would become the strongest expression of the ‘most economically advantageous tender’ value offered. Best practice intelligent commissioning should be adopted in the management of all such competitions.

## 9. Criteria and their weighting

### A. Finance, Turnover and Annuality

Turnover is not at any point in time an accurate reflection of the competence or success of a practice. For example a multi-disciplinary practice may have a larger turnover but a small compliment of appropriate or specialised operators in the sector specialism sought, whilst a practice submitting an excess of low fees may witness an increase in turnover but

incapacity to deliver in the long term, or the inability to do so to the standard that should be expected. However small highly competent, experienced, specialised and or innovative practices may excel at a limited number of projects undertaken at any specific time and will hence have lower turnover. Yet the later will always lose out in any weighted evaluations given to turnover.

Construction contracts typically have a duration of 3 to 5 years. In the Revised EU Directive, financial criteria for contract values are established as a total over 4 years (48 months). Requirements for business turnover are to be on an annual value and it is proposed these shall not exceed a maximum of 3 times the contact value. Thus for construction projects lasting 4 or more years the turnover requirement is effectively 12 times the contract's potential annual fee earning value.

This places a constraint upon market access in a time of recession, affects businesses specialising in a small number of projects and if the turnover and the economic cost of production are lower in one member state than another, is considered likely to reduce cross border bidding. Amendments to redress these imbalances are welcome.

## B. Criteria

Criteria are frequently being applied in public procurement tendering for the sole purpose of thinning down bid numbers rather than selecting the 'most economically advantageous tender' and without being proportionate or appropriate to the specifics of a project.

Examples of disproportionate and inappropriate criteria are:

- Specific management and human resource strategies. The frequent requirement for these boost larger firms, which have dedicated procurement teams, the resources and need to put such policies into place. This acts as a significant deterrent as small practices who have neither the resources required nor the practical need to maintain many of the required policies.
- Requiring multiple direct previous and similar experiences. Bid questions typically ask for proof of experience with multiple examples of similar or near-identical work completed within the past 3 years. All micro-SMEs will inevitably turnover far fewer building projects per annum than larger practices. This prevents younger firms from developing expertise in the public sector if they cannot first generate it in the private sector. It prevents small practices with either established historic expertise or lower projects turnovers tendering for work they may have the experience

to undertake. It also prevents practices from moving between different building sectors, thereby preventing the transfer of expertise and innovation, so critical in improving building design. Increasingly practices also find themselves pigeonholed in a particular sector and despite a proven track record of design excellence, find it nearly impossible to bid in other sectors. The requirement for evidencing skills over a limited 3 year period is inappropriate and disproportionate when considered relative to the timescale and type of construction projects.

Recommendation 2.1.2 recommends that Government should ensure overly restrictive previous experience requirements should not lock out innovative designers.

## C. Accreditation

All construction professionals and other professionals such as lawyers are by vocation, specialised education and accreditation by national professional institutes –'Intellectual Service' providers who provide through different economic structures distinctly different service to that of constructors and other service providers. The defined remit of a professional service extends beyond the scope of legal commercial contract. Training to achieve professional competency is both a long term national and individual investment.

The procurement system should acknowledge this investment and the established knowledge economies by recognising 'Intellectual Services' provided by professionals, with the provision of evidencing of competencies in each and every public procurement tender curtailed.

Recommendation 1.2.4 recommends that the Government should define and embed provisions relating to a new 'intellectual services' category to enable a more proportionate approach to procuring such professionals.

## D. Professional attainment

In public procurement contracting where there has been previous exemplary experience working with a professional or constructor (delivering high quality and performance) this can not be accounted in any new bid, nor can excellence derived elsewhere in other construction fields be considered material.

This is a disincentive on work as there is no means to reward excellence. For cost, quality and economic advancement public procurement should be incentivising high standards of attainment and the production of excellence.

## E. Competencies

The current competency information required by tenders in the UK is excessive and frequently beyond EU specified requirements. It attracts additional costs to each individual applicant and client alike, is slow, incurs delay and is inflexible.

As well as specific method statements, certified registrations and certifications, proven examples of various past experiences, information about how best value has been achieved in similar projects, these include organisational structures, extensive documentation on Health and Safety, and documented proof of their enactment, including minutes of meetings etc. Whilst questions e.g. relating to health and safety are often very similar they always vary, requiring a fresh and detailed approach each time. Whilst such matters are clearly important, what is required should be proportionate and not needlessly bureaucratic.

This considerable business cost borne by all sectors of the construction industry is disproportionate to the actual value of the work to be gained.

## 10. Cost to construction professionals

Examples of the disproportionate cost of tendering professional services using OJEU procedures:

- For a modest architectural commission of £105,000 the overall bid cost to (private sector) tenderers is estimated to be at least £250,000. The public client will also spend £70,000 to scope, assess the bids and award the contract.
- Others estimate the overall figure for an appointment is approximately £420,000.

In some cases the costs are still higher since they vary depending on the procedure used, the work being done, the form of contract, the number of submissions made and the scoring process.

We found numerous individual examples of inflated procurement processes including a Higher Education Institute which recently invited tenders for a four year framework with 12 lots, seeking 37 operators; the PQQ stage alone is estimated to cost tenderers £1.5M (see Case Study 5).

Most architectural practices are spending over a fifth of the turnover they derived from such work on tendering, with larger practices expending up to 40% (RIBA Procurement Survey 2012). Procurement costs are also proportionately greater for lower value works; and consultants such as

architects spend a larger proportion of their turnover trying to win work than constructors.

The most common tendering procedure used for the appointment of architects within the UK is the restricted procedure, with the large majority of awards made under 2 stage restricted procedures being onto frameworks. Negotiated procedures, the most efficient procurement routes to achieving 'most economically advantageous tender' selection for design, and design competitions are more rarely used in the UK, unlike our EU competitors (RIBA Procurement Survey 2012).

Many consultants of all sizes report that despite getting onto numerous frameworks they receive no work, whilst those practices of less than 3 never obtain work through frameworks (see Case Study 8).

Other costs and inefficiencies relate to framework 'mini-competitions'. Where there are call offs from frameworks the large majority incur 'mini-competitions' held between the framework contractors. These can require design works to RIBA Stage D+. Restricted procedures when used for appointment onto frameworks have effectively become a three stage procurement process. When invited forward in this three stage process there is no requirement for fairness or transparency, constraint on terms, conditions, methods of assessment or numbers that may compete. Consultants are not for example picked 'out of a hat' equally by rotation to undertake works on frameworks, but are typically invited forward arbitrarily.

Time and money incurred on such additional speculative work on behalf of the public client, as well as free feasibilities or those undertaken at cost, is most often entirely wasted (see Case Study 3). Of all those micro practices who do win work from framework 'mini-competitions' they only derive fees which average £17,893 (RIBA Procurement Survey 2012).

The cumulative cost of such speculation is onerous. These transactional costs are a significant constraint on efficiency; make the UK construction economy less competitive and more effective procurement commissioning a priority.

## 11. Fee undercutting

Under recessionary pressure fee undercutting has become common practice. This does not improve value for money or output, but increases risk to both public clients and professional consultants. As reduced margins pressure time and resources constraining economic output and quality, the risk is largely absorbed in lower standards and/or financial

difficulties. Hence undercutting frequently increases contractual disputes and cost via endeavours to claw back finance.

For larger consultancies this maybe an option, a cash flow imperative, cross subsidy from larger projects taken on a 'foot in the door' or 'last man standing' approach. In multi disciplinary organisations other strategic imperatives may also apply. But fee undercutting severely damages the professions and discriminates against micro businesses and SMEs with lower turnover as they are incapable of supporting significant 'loss leaders'.

## 12. Other procurement transaction costs

A common characteristic of procurement from the commencement of a project through to its occupation is the sheer numbers of compounding and frequently hidden transaction costs that have adverse economic implications, deplete productive resources and diminish performance.

### A. Application and establishment costs

Frequently tenders require that consultants already have in place all the organisational structures, means, capacity, equipment (such as software), certifications and compliances to do the specific task described from the earliest stage and to even make a bid. For example they may be required to have a specific level of PI cover; be registered with organisations such as 'Constructionline'; to identify the team who will undertake the works; or gear up in other ways. To make even a first stage PQQ compliant supplementary additional investment may be required; personnel pre-allocated and retained, certifications processed and acquired – without a promise of work or whether the bid is successful or not. Whilst commercial risk taking is an accepted norm, in public procurement it is frequently disproportionate. This depletes resources and reduces efficiencies.

### B. Non standard contracts

The use of non-standard employment and construction contracts is common place and an example of inefficiency. For example, Housing Associations are reputed to spend up to £80,000 on their legal costs per framework for having new contracts modestly customised, employment and works contracts drawn up. Each consultant or constructor upon entering any such framework obtains at considerable additional legal cost individual scrutiny.

The cumulative legal costs are of no perceivable benefit to the cost or quality of outputs. They are repetitive, time consuming and often redundant.

### C. Work stage fragmentation

It is increasingly common practice for professional consultants to be employed for a limited stage of the works with design and construction tendered separately in the belief that costs might be saved.

A lack of continuity over a single project increases complexity, reduces commitment, diminishes a stakeholders investment in the outcomes being sought (leading to a 'pass the buck culture') whilst also de-professionalising design teams over the longer term.

Whenever work and liabilities are transferred, additional time and resources are expended on re tendering, re-briefing, research, co-ordination and auditing that incurs significant costs by those both tendering and accepting the new work, the responsibility and the liability. Not only does this diminish efficiencies but it also significantly reduces quality.