

Building Ladders of Opportunity

How reforming construction
procurement can drive growth
in the UK economy



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Foreword



Angela Brady
RIBA President 2011–2013

The effectiveness of public procurement is vital to our economy, our environment and most importantly, for the users of buildings. We need procurement that delivers buildings of the best value and highest quality.

However, our current public procurement system has not been working for some time and as there continues to be an uncertain economic climate, there are more reasons than ever to make it work. The process is both frustrating and wasteful for those bidding for or unable to gain access to contracts, and too often the resulting buildings are of a poor quality that costs too much money to build and run.

It is important that we don't just analyse the problems of the past. We need to look to the future to see how we can improve and streamline the procurement process and strive for better outcomes. We need construction procurement which is better, leaner and greener; that discourages waste, encourages innovation and promotes a more collaborative and efficient way of working across the whole construction team.

This report forms the first part of a new programme of work by the RIBA on construction procurement. It has been produced through consultation with a cross-professional forum, so that together, we can create a stronger voice for change. We do not claim to have all the answers, but aim to set out some achievable solutions which combined, can help deliver on some of the Government's key areas of ambition.

I have made procurement my number one priority as RIBA President and see this as the start of a wider conversation. We hope that this report makes a positive contribution to the ongoing debate around procurement reform and look forward to working with Government and industry to achieve our shared objectives.

Executive Summary

‘With growth badly needed, the time for wholesale reform of public construction procurement is now. Our current economic climate makes it an imperative.’

The construction industry has an annual turnover of more than £100bn and represents almost 10% of UK GDP, with some 40% of this being in the public sector.

The admission implicit in current reform initiatives is that public construction procurement is expensive and inefficient, delivering buildings that are of sub-standard design quality and sustainability, in a market with significant barriers to fair access and competition.

With growth badly needed, the time for wholesale reform of public construction procurement is now. Our current economic climate makes it an imperative.

The following report sets out the RIBA’s recommendations to Government on the further reforms we believe are needed. We hope that these recommendations will be embraced, to the benefit of the public, the public sector and the wider construction industry.

In summary, these recommendations are to:

Recommendation 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.

Recommendation 2

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

Recommendation 3

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

Recommendation 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.

The OJEU process is widely recognised as overly complex and bureaucratic, and in terms of value, the amount of UK public procurement that goes through the OJEU process is greater than that in any other EU country. Furthermore, evidence clearly shows that the UK public sector's implementation of the procurement process makes it more complex and costly than in other comparable EU countries operating under the same EU Directive (2004/18/EC).

To help resolve these issues, we recommend that Government should do the following:

1.1 Remove any 'gold-plating' and ambiguities, and align UK practice with best practice in other EU member states

1.1.1 Assess which optional EU requirements add unjustified complexity and simplify the whole procurement process

1.1.2 Clarify the definition and interpretation of 'bodies governed by public law' to exclude certain organisations from the EU Directive's scope

1.1.3 Reduce other legal ambiguities and complexities

1.1.4 Consult on, define and create an independent national oversight authority to promote best practice

1.2 Clarify and simplify processes and language, supporting public clients through guidance and training

1.2.1 Establish guidance and minimum requirements for public client training, as well as the recruitment and retention of qualified staff

1.2.2 Establish clear, detailed guidance on 'intelligent commissioning' and scoping work, including common minimum standards

1.2.3 Provide guidance to public clients on how to value and manage design and project delivery at all identifiable stages in the process

1.2.4 Define and embed provisions relating to a new 'intellectual services' category to enable a more proportionate approach to procuring such professionals

1.2.5 Introduce new contracts for the appointment of tier 2 suppliers to simplify paperwork, streamline payment, and acknowledge professionalism

1.2.6 Encourage appropriate standardisation in all public procurement contracts

1.3 Reduce the time and costs of the tendering process, and introduce timescales for bid assessment

1.3.1 Provide a 'single point of contact' for all public construction projects through an EU online portal

1.3.2 Allow self-certification

1.3.3 Shorten, standardise and simplify PQQs

1.3.4 Define expeditious and universal time limits for pre and post qualification, award, and appointment

1.3.5 Limit and tailor tender materials to facilitate more efficient assessment

1.3.6 Benchmark pre and post qualification costs in the public and private sectors (tenders, final project costs and outcomes)

1.3.7 Introduce ways of capping the number of tenderers to make procurement more manageable for public clients

1.4 Change working practices and methods

1.4.1 Ensure flexibility and appropriate adaptation of processes

1.4.2 Increase the use of the negotiated procedure

1.4.3 Government should work with the RIBA to promote and improve the use of design competitions

1.4.4 Limit liability and risk in public procurement contracts and promote the adoption of Independent Project Insurance

1.4.5 Support new methods of working built around integrated teams and Building Information Modelling

Recommendation 2

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

Achieving sustainable buildings is about getting the right balance between economic, social and environmental factors. It is about ensuring needless costs are not incurred; either capital investment in the construction process, or during the whole life of a building by inefficient energy consumption for example. It is about ensuring a building's design is tailored to its users and the public service that will be provided in it, to ensure that service is provided effectively and efficiently.

High design quality should be the standard in the buildings we deliver to the public, not an aspiration that is lost somewhere along the line.

To help achieve this, we recommend that Government should do the following:

2.1 Focus on processes and incentives that drive quality and outcomes

2.1.1 Under 'intelligent commissioning' principles, team and design selection should be based on the Brook's method

2.1.2 Overly restrictive previous experience requirements should not lock out innovative designers

2.1.3 Focus payment on the basis of results

2.1.4 Clarify the importance of research and development

2.2 Embed assumptions in favour of sustainability at all stages of procurement, and ensure it is properly incentivised

2.2.1 Award of a construction contract should always be to the 'most economically advantageous tender'

2.2.2 Incentivise energy reduction by changing VAT rates

2.2.3 Prioritise defining the principles of whole life costing

2.2.4 Encourage the widespread take up of post occupancy evaluation and 'Soft Landings'

Recommendation 3

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

As explicitly recognised by Government, the public sector's failure to create a level playing field for smaller suppliers has excluded some of the most competitive and innovative business from the market. In the architectural profession this is particularly true. As a stark example, turnover requirements typically applied to much public sector work above the OJEU thresholds mean 85% of UK architectural practices are too small to be able to tender.

To enable better access for micro businesses and SMEs, we recommend the following:

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

3.2 Enable access for micro businesses and SMEs, and ensure greater proportionality in their treatment

3.2.1 Set objectives for the proportion of public sector contracts awarded to micro businesses and SMEs

3.2.2 Permit more consortia practice

3.2.3 Introduce 'value banding' so criteria demanded by public clients can be matched proportionately to the value of the project

3.2.4 Ensure financial standing criteria are proportionate to the project and the contract

3.3 Commit to reviewing OJEU threshold values and the effect they create

Conclusion

The UK Government has the opportunity to aid our economic recovery and growth by reforming the construction procurement system. We hope that our recommendations will assist in ensuring that construction procurement reforms produce a more efficient, more sustainable, and more equitable system for all.

The RIBA would welcome engagement with those in Government who are steering reforms in the three interlocking areas our Recommendations are focused on. We hope that we will be able to work together to develop these recommendations and put them into practice.

Together we can build ladders of opportunity.

Recommendation 1

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

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The three following sections of this report expand on these summary recommendations to include our full recommendations to Government, and the reasons why these reforms are needed.

Our website (www.architecture.com) also contains a series of detailed procurement Case Studies. These provide an evidential base for many of the recommendations in this report, highlighting areas where we have recommended that reforms are necessary. Alongside these Case Studies sits further evidence collected by the RIBA in the form of: (i) the RIBA Procurement Survey 2012; and (ii) a legal report by law firm Burges Salmon which looks at procurement regulation and practice in other countries.

Introduction



Walter Menteth
Chair of the RIBA's
Procurement Reform Group

The construction industry has an annual turnover of more than £100bn and represents almost 10% of UK GDP, with some 40% of this being in the public sector.¹ With growth badly needed, the time for wholesale reform of public construction procurement is now. Our current economic climate makes it an imperative.

Significant reforms are already afoot at both EU and national level. In Brussels, a revised EU public procurement Directive to reform the framework of national regulation is being negotiated.² In the UK, significant reforms are being undertaken in line with the Government Construction Strategy, with the central aim of reducing costs by up to 20% by 2015.³ Alongside this the Low Carbon Construction Action Plan sets out ambitions to lower drastically the built environment sector's carbon emissions by 2050.⁴ Meanwhile, there is a drive to improve access to public contracts for SMEs, recognising that they are a cornerstone of the UK economy in driving growth and providing employment.⁵

The admission implicit throughout these initiatives is that public construction procurement is expensive and inefficient, delivering buildings that are of sub-standard design quality and sustainability, in a market with significant barriers to fair access and competition.

Whilst the RIBA and the wider construction industry welcome these reforms, there is much more that can and must be done to tackle these issues. This opportunity must be fully utilised to ensure that the public procurement system functions in the best interests of all those it serves; namely the public, public clients, and those businesses that tender to undertake this important work.

One result of the current public procurement system is that much of the UK's design talent is locked out of the market or discouraged from tendering. To put the structure of the profession fully into context, 97% of UK architecture practices are SMEs or micro businesses and some 79% of practices employ 10 or fewer people.⁶ Reforms must therefore carefully scrutinise how design services are procured on projects of all sizes; to allow public clients to take full advantage of the UK's pool of design talent, and engender a more competitive market for design. The result, we believe, would be a greater level of design innovation that would help deliver buildings that are sustainable and of high design quality; the buildings the public deserves.

This report sets out the RIBA's recommendations to Government on the further reforms we believe are needed. We hope that these recommendations will be embraced, to the benefit of the public, the public sector and the wider construction industry.

Recommendation 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.

The OJEU process is widely recognised as overly complex and bureaucratic, and in terms of value, the amount of UK public procurement that goes through the OJEU process is greater than that in any other EU country (see Figure 1).⁷ Furthermore, evidence clearly shows that the UK public sector’s implementation of the procurement process makes it more complex and costly than in other comparable EU countries operating under the EU Directive (2004/18/EC).

- UK procurement is at least 20% more expensive than comparable EU countries (see Figure 2).⁸
- The UK has the third slowest procurement procedures in the EU and takes almost 50% longer than the EU average (see Figure 3).⁹
- The UK has by far the highest average contract values in the EU (see Figure 5).
- Whilst figures relating to the cost of the procurement system often focus on the costs to public clients, around 75% of the costs of the public procurement system fall on tenderers.¹⁰
- On average, OJEU bidding costs for architectural practices represent 29% of the total earnings derived from this work. For larger practices (with over 30 employees) this rises to 40%. Overall, the annual bidding costs for all architectural practices is estimated to be £40 million.¹¹
- The EU Directive denies access for micro businesses and SMEs; its requirements incur disproportionate costs for both public clients and tenderers.

This inefficiency is a clear waste of public and private sector resources, and there is a need to address this at both EU and UK level.

The UK public sector procures more by value through OJEU procedures than any other EU country, and more than the combined total of 24 other nations:

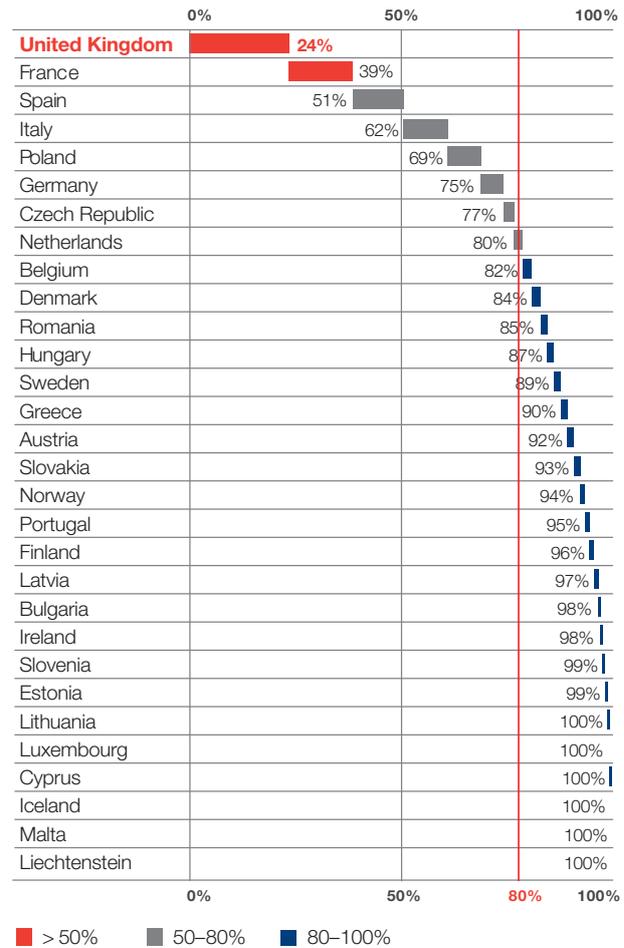


Figure 1 Share of total value of awards for public procurement per country 2006–2010 (all OJEU procurements of which 37% by value is construction). **Source** ‘Public Procurement in Europe: Cost and Effectiveness.’ Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting, March 2011.

High cost UK procurement is at least 20% more expensive than comparable EU countries:

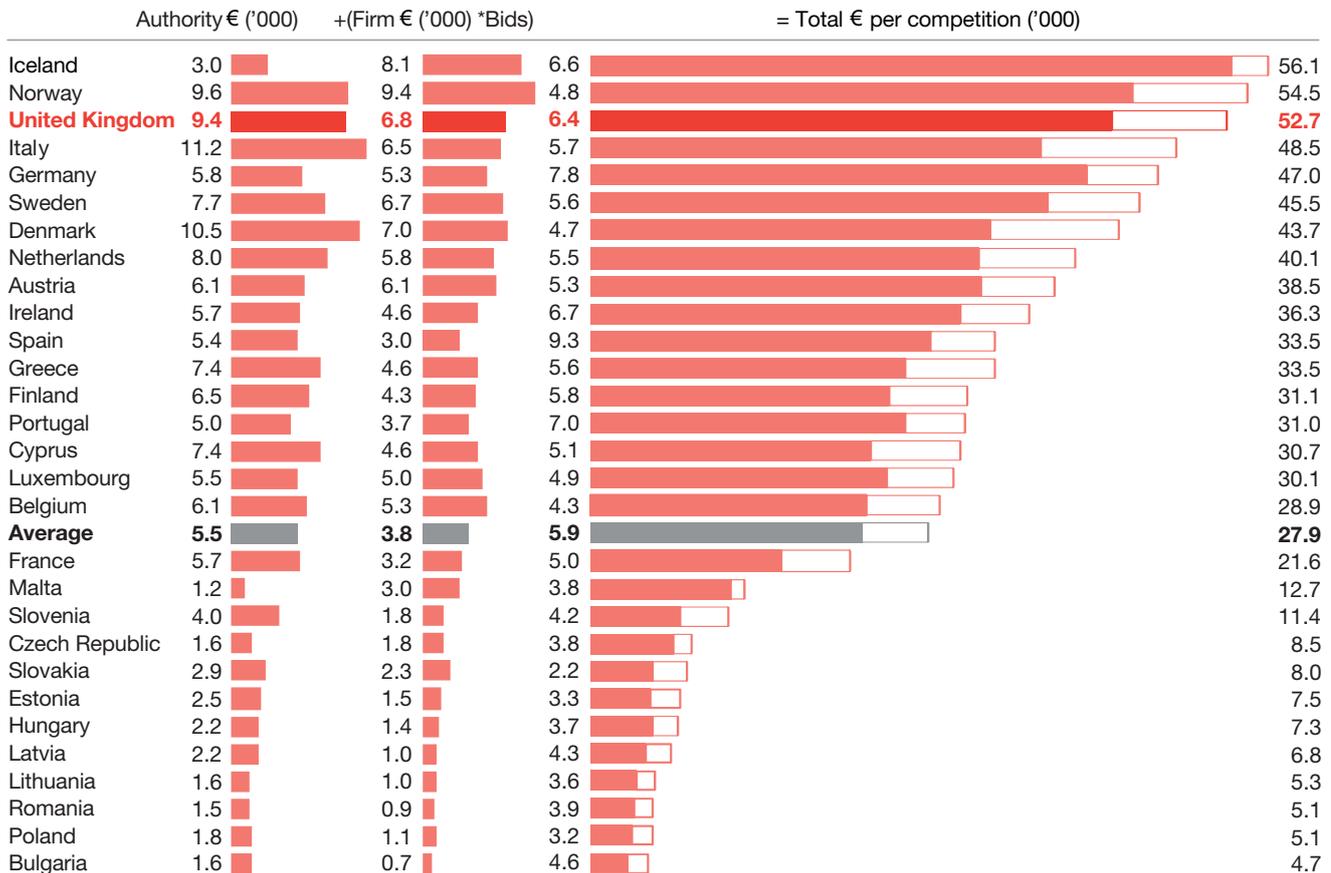


Figure 2 Typical costs of a competition (weighted averages across all industries). **Source** 'Public Procurement in Europe: Cost and Effectiveness.' Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting, March 2011.

Recommendation 1

As the framework for national regulations, the EU Directive must be revised to enable the construction sector to deliver the buildings the public deserves without being a financial burden for all parties. Unfortunately, the Revised EU Directive proposed by the European Commission in December 2011¹² falls short of the deep reform needed to ensure this is the case.

The Government must pursue greater reform in upcoming negotiations on the Revised EU Directive, and we urge that the concerns and amendments put forward by the architectural profession are taken into account.¹³

Under efficiency focused UK reforms, progress has already been made on how the UK can better implement the public procurement framework in practice. Proposals have been put forward on what constitutes an ‘Intelligent Client’, and emerging procurement models are rightly focused on better integrated project teams.¹⁴

However, as work under the Government Construction Strategy progresses, there is a need to examine how further efficiencies and savings can be driven. Reforms must be aimed at benefiting the public, public clients, and those businesses that tender to undertake this important work.

The RIBA proposes that further efficiencies and savings can be delivered as outlined in this section.

Slow The UK has the third slowest procurement procedure in the EU and takes almost 50% longer than the EU average:

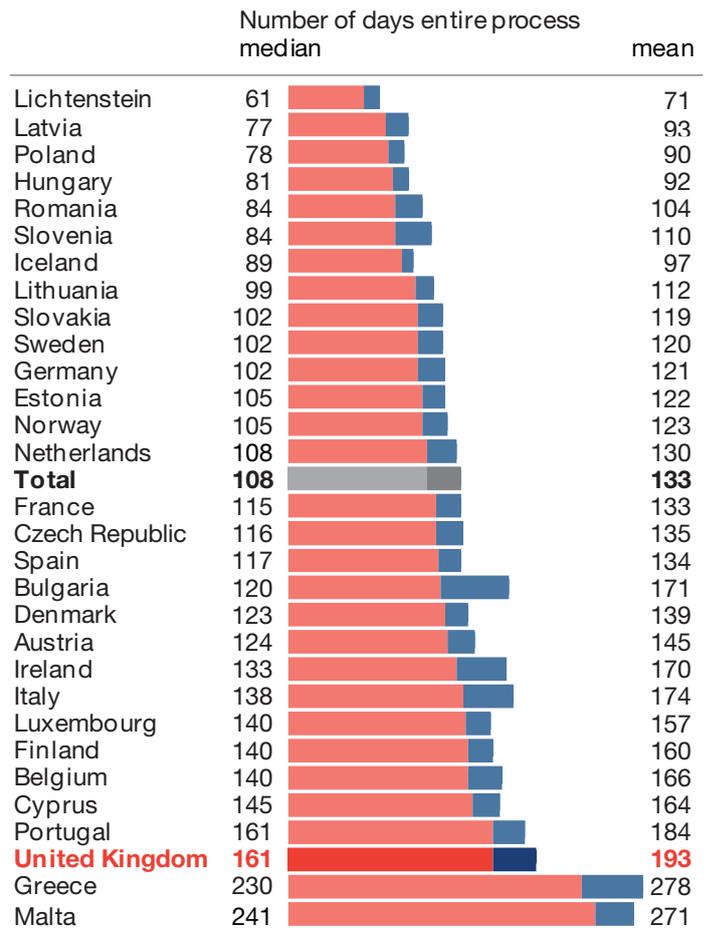


Figure 3 Time for entire procurement process by country (median/mean number of days). **Source** ‘Public Procurement in Europe: Cost and Effectiveness.’ Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting, March 2011.

Given the high value of UK procurement put through OJEU procedures, the number of contracts is low:

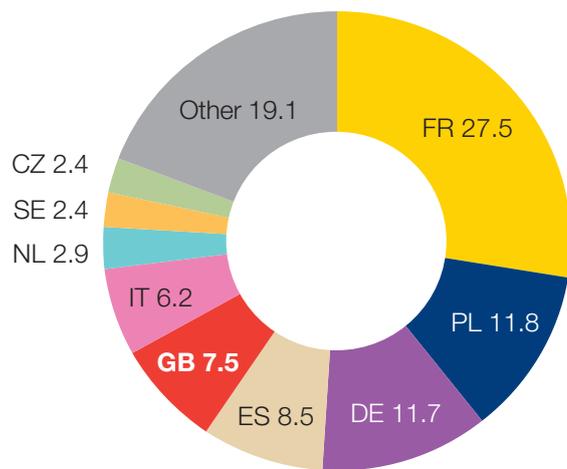


Figure 4 Member States' share of contracts awarded by numbers 2006-08 (all OJEU procurements). **Source** 'Evaluation of SME Access to Public Procurement Markets in the EU', coordinated by the DG Enterprise and Industry, submitted by GHK, September 2010.

The UK has by far the highest average contract values in the EU:

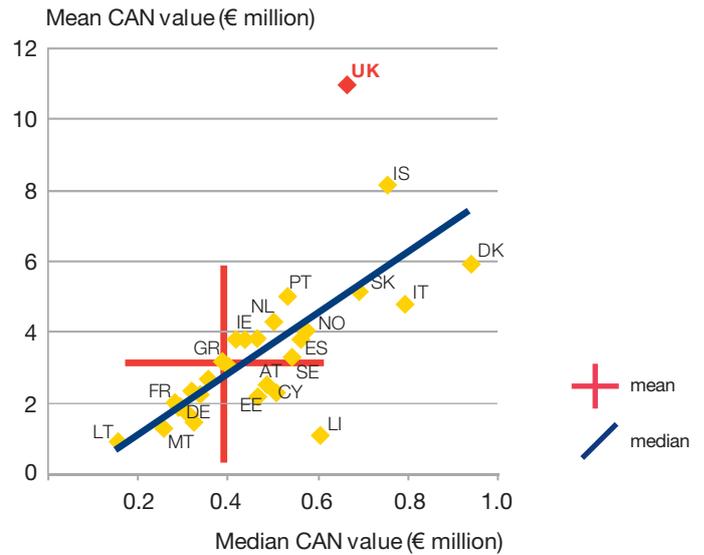


Figure 5 Mean and median values of award notices 2006-09 (all EEA procurements). Red cross denotes the average EEA values. CAN – contract award notice. **Source** 'Public Procurement in Europe: Cost and Effectiveness.' Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting, March 2011.

1.1 Remove any ‘gold-plating’ and ambiguities, and align UK practice with best practice in other EU member states

1.1.1 Establish clear, detailed guidance on ‘intelligent commissioning’ and scoping work, including common minimum standards

The UK stance is that implementing all optional parts of the EU Directive gives public clients maximum permitted freedom on how to procure. Accordingly the UK has tended to adopt more of the optional provisions than many of its competitors.

What is therefore striking in UK public construction procurement is the lack of diversity in procedures used, and that those most frequently used (competitive dialogue and restricted procedures) are so inefficient.

In contrast, the relatively more efficient German system is more prescriptive in its national legislation about use of tested procedures, what they entail and making sure that the concept of quality is clearly defined.¹⁵

Clear precedence should be given to the most efficient tried and tested procedures, accompanied by reform of how these are implemented in practice. New procurement models emerging under the Government Construction Strategy should look to ensure they are streamlined with these preferred procedures.

We therefore welcome the Government’s commitment to review whether it adopts the competitive dialogue procedure in future, and to reduce its use due to its proven inefficiencies. However, we question the need in the UK to adopt so many of the optional elements in the EU Directive (such as prescriptions on turnover).

In addition, the UK is now pushing for new ‘innovation partnerships’. We believe that the same outcomes could be achieved through negotiated procedures without the need for this new option. Adding an ‘innovation partnerships’ procedure to the Revised EU Directive risks creating additional complexity when other UK based reforms and project specific contracts might be better suited to delivering the same result.

1.1.2 Clarify the definition and interpretation of ‘bodies governed by public law’ to exclude certain organisations from the EU Directive’s scope¹⁶

This definition is in the EU Directive and the Revised EU Directive. It should not be interpreted to catch and include within the scope of EU rules otherwise independent legal entities, ‘arms length’ organisations, charities and voluntary organisations when such entities are only in receipt of one-off public grant support.

The UK position on ‘Registered Providers’ should be aligned with other EU countries (for example, Holland) to exclude these organisations from the scope of the EU Directive (and Revised EU Directive).

1.1.3 Reduce other legal ambiguities and complexities

At EU level

In general, negotiations should aim to simplify the structure and language of the Revised EU Directive and make it more transparent. **Specifically we see a need for consolidating distinctions between core legal principles, primary operational guidance and the optional or discretionary requirements.** In many respects the risk and scope for misapplication and interpretation is increased by the text of the Revised EU Directive. Simplification of the Revised EU Directive’s structure and language will reduce administrative and legal costs whilst improving general comprehension and application.

We also advocate the following:

- **Enshrine in law what is constituted as a ‘direct benefit’** for the public client (preferably by an electoral or geographic definition that reduces the onward sale of frameworks and their aggregation).¹⁷
- **Adopt a non-discriminatory approach towards mutuals, joint ventures, social or charitable enterprises, employee lead organisations and consortia in all reasonable forms.**
- Align revisions to the Revised EU Directive with the EU Remedies Directive (2007/66/EC) to **reduce the number of legal challenges**, and any such challenges being transferred to the European Commission’s proposed independent national oversight bodies (see 1.1.4 below).

A final point relates to Services of General Economic Interest (SGEIs). Current public procurement rules do not take into account the national obligations a local commissioning body has to fulfil when procuring work or selling land in order to deliver the SGEI it is responsible for. ‘Registered Providers’ that take over homes on land from a developer, as part of a separate planning agreement between a local authority and the developer, are expected to go through a tender process.

The special characteristics of land and social housing mean that an exception to the procurement rules should be made in situations where only one economic operator can realistically provide needed homes (or other SGEI). In the UK, land, design and build and off-the-shelf deals are some ways of procuring social housing. The rules need to take this into account along with all local ways of securing and procuring SGEIs, housing and community land, so as not to impede its provision.

At UK level

We propose that the UK Government should clarify, simplify and align existing legislation and guidance concerning the criteria used in procurement tendering including:

- CDM Regulations 2007;
- Appendix 4 of the CDM Approved Code of Practice ACoP (which has emerged as a default);
- BS 8534:2011 (British Standard on Procurement);
- BS ISO 10845:2011 (Part 1 and Part 2); and
- PAS 91 (see 1.3.3 below).

When the time comes to transpose the Revised EU Directive into national law, we would urge that the Government should:

- Ensure all core legal requirements are pre-eminent; and
- Ensure all language in regulations is as clear and as minimal as possible.¹⁸

1.1.4 Consult on, define and create an independent national oversight authority to promote best practice

We welcome the UK Government’s launch of ‘Mystery Shopper’, which gives suppliers an anonymous route to challenge poor practice and lack of transparency.¹⁹

We also welcome the European Commission’s proposals in the Revised EU Directive for a single national ‘independent oversight authority’ to be responsible for monitoring, performing and checking public contracts and promoting best practice. This body could take over the Mystery Shopper function in time.

It is our view that the UK should establish such an authority as soon as possible.

However, since this centralisation could separate end users further from commissioners, and could reduce access and competition, we propose that the new authority be carefully monitored during a fixed trial period, and redefined or modified as necessary.

We would hope that establishing an independent oversight authority of this nature would help identify and remove any ‘gold plating’ in UK public procurement. It should also help improve market access issues for micro businesses and SMEs, in particular by monitoring the proportionality of qualification procedures and criteria applied across the upper and lower contract value bands (see 3.2.3 on value band below). This would align with the proposals of the Small Business Act for Europe, which is there to strengthen SMEs’ competitiveness.

The authority should be conferred rights as a ‘Regulator of Procurement Practice and Standards’. In the event of procurement practices contrary to the EU Directive’s requirements, tenderers could have a right of confidential appeal to this body, which could in turn enforce the relevant legal requirements.

1.2 Clarify and simplify processes and language, supporting public clients through guidance and training

1.2.1 Establish guidance and minimum requirements for public client training, as well as the recruitment and retention of qualified staff

Public clients and their procurement teams need more support in the early stages of the construction procurement process. More project management training and better support from Government advisory agencies would be helpful. The RIBA welcomes the Government's announcement of a new 'Commissioning Academy' in this regard.

The European Parliament's resolution of 25 October 2011 on the modernisation of public procurement makes clear the importance of promoting professionalism and guaranteeing objectivity of public clients.²⁰ We fully support the European Parliament's recommendations in the resolution for the development of targeted training programmes, a network of centres of excellence within existing national frameworks to promote information and good practice exchange, and for clear and readily comprehensible guidance for public clients.

1.2.2 Establish clear, detailed guidance on 'intelligent commissioning' and scoping work, including common minimum standards

"Before procurement should come commissioning."²¹

It is essential that public clients have the right expertise for managing construction projects, and a good understanding of the procurement process. Alongside the 'Intelligent Client' proposals of the Government's Procurement & Lean Client task group,²² the RIBA is calling on the UK Government to encourage 'intelligent commissioning', through Government provided standardised inception stage procurement guidance. This should cover interpretation and application of legislation governing procurement for contracts both above and below OJEU thresholds.

Such guidance should be outcome focused and explain simply how to select the best procurement route for different sectors, works, project values and types. It would also illustrate how to be an 'intelligent client', explaining the

fundamental requirements for sound advice, informed decision making, good organisation, strong leadership,²³ clear brief and defined budget (see below).

This would help ensure public clients feel confident in what to ask for at each stage of the project, and are better able to identify needs or opportunities when they arise. The first important stage is brief and budget.

Briefs and budgets

A well researched and developed project brief, and a clear budget prior to tendering are essential. They can avoid reinterpretation, delays and changes to project costs. Briefs must be clear and feasible, and language and descriptions should be standardised. Delivering the right building for the end user, on time and at the right price, depends upon the quality of the brief and budget.

The 'intelligent commissioning' guidance we propose that Government should develop should therefore require all public clients to:

- Develop a well researched comprehensive design brief (allowing flexibility for innovation);
- Fix a budget;
- Carry out detailed site analysis;
- Sign-off on content;
- Sign-off on layout; and
- Agree quality benchmarks.

The guidance should also note that where proportionate, public clients should be encouraged to:

- Develop a concept design;
- Agree an output specification;
- Analyse buildability; and
- Evaluate construction logistics.

Clear budgets are often lacking at the outset of the process. We believe that the most effective means of procurement is the target-cost method, which results in designs to fit a budget rather than a budget to fit the design. We therefore support part of the philosophy of the Procurement & Lean Client task group's proposed 'Cost-led Procurement Model',²⁴ as greater value results from teams competing on quality rather than contractors competing on price (where quality suffers). A cost-capped approach encourages innovation.

Engaging with end-users' needs

A building should be designed for its users, so getting the brief right means ensuring that it is aligned with their needs and the service it is intended to deliver. The RIBA recommends that 'intelligent commissioning' guidance should also encourage the use of structured end-user consultations to inform the brief wherever end-users are identifiable.

1.2.3 Provide guidance to public clients on how to value and manage design and project delivery at all identifiable stages in the process

Client advice from professionally qualified design advisers is recommended to public clients to support the right business plan, brief and delivery quality, and the outcomes they want. This is appropriate for:

- (i) Those who lack in-house expertise or significant experience; and
- (ii) Those public clients who have considerable in-house expertise and who feel they would benefit from independent advice in decision making at key project stages, or for project review.

The 'intelligent commissioning' guidance discussed above should encourage such support to be commissioned as early as possible in the process where this need is identified.

RIBA accredited Client Advisers²⁵ can be utilised by inexperienced public clients to ensure that they are properly guided through the process of commissioning, helping them to maximize the value and quality of their projects. Client Advisers can result in:

- **Briefs and budgets that better reflect the public client's desired outcomes and needs;**
- **Fewer delays and redesigns** further into the procurement process; and
- **Lower overall costs** subsequently.

Client Advisers can be utilised for framework selections, PFI style procedures and individual projects.

1.2.4 Define and embed provisions relating to a new 'intellectual services' category to enable a more proportionate approach to procuring such professionals

A definition should be included in the Revised EU Directive to provide for a new 'intellectual services' category of services. This should help to recognise the structural differences in professional consultancy services that require professional accreditation from other services, and allow for appropriate procurement processes to be subsequently applied.

Construction professionals such as architects, like other professionals such as lawyers, are qualified by lengthy vocational and specialised education. They are also accredited by national professional institutes, and required to conduct themselves in accordance with professional codes. The structure of the service they provide (and consequently the structure of their industries) is thus distinctly different to many other general service providers. Furthermore, the defined remit of a professional service extends beyond the scope of legal commercial contracts (into professional codes etc.).²⁶

The new definition should clearly distinguish between contracts for design and contracts for the construction of works; its principal objectives being to embed professionalism and professional impartiality, allow proportionality in terms of procurement processes, and better share the apportionment of risk and contractual responsibilities (making Independent Project Insurance more feasible where needed).

This new category should recognise different contractual roles and responsibilities, open up contractual choices for clients offering them greater flexibility and uphold professional values. This new category would also redress the disadvantages arising from the current severance between responsibilities in design co-ordination and work stage.

1.2.5 Introduce new contracts for the appointment of tier 2 suppliers to simplify paperwork, streamline payment, and acknowledge professionalism

In contracts with tier 2 suppliers, including sub-contractors and professional services suppliers, administration costs are increased and transferred down the supply chain, impacting on construction quality. In other words, money is being spent on paperwork rather than design and construction. There is also evidence that a requirement to use two architectural consultancies on a single project has had the effect of diminishing construction quality.²⁷

We believe that a new form of contract for the appointment of tier 2 suppliers needs to be developed. **This should allow for the establishment of a direct relationship between the public client and the tier 2 suppliers (within both prevailing arrangements and the context of emerging integrated team practice).** This contract should address standards of quality, propriety and client design liaison (as well as payment terms).

At present, higher overheads, increased liability and potential risk of delayed payments act as a significant deterrent to micro businesses and SME consultants from tendering for tier 2 supplier contracts. We therefore welcome the European Commission's proposals in the Revised EU Directive for the establishment of client accounts, providing surety of payment for sub-contractors discharging duties under a contract. We also welcome the UK Government's move towards project bank accounts.²⁸

1.2.6 Encourage appropriate standardisation in all public procurement contracts

Frequently, service contracts offered to professional consultants are prepared and legally scrutinised on an individual basis. This incurs significant, unnecessary and unproductive expense that would be better spent on improving the quality of the build. We propose that there should be standardisation of all forms of contracts for goods and services (i.e. employment terms *vis a vis* scope of works).

1.3 Reduce the time and costs of the tendering process, and introduce timescales for bid assessment

1.3.1 Provide a 'single point of contact' for all public construction projects through an EU online portal

The RIBA recommends that all public construction contracts should be advertised through a single EU online portal, using RSS feeds to update and feed through data in relation to opportunities in each specific member state.

All tenderer responses should also be submitted and evaluated through this portal, standardising procedures and removing variations. This should improve communications between the public and private sector, and could be used to generate and encourage transparent feedback to improve the quality of tenders. It could also be used to generate other efficiencies using a simple, accessible and universally understood format. A single access point would be needed for each member state's procurement notices and responses.

The new portal should enable public clients to achieve a submission with minimum fuss and cost, through simple standardised questions and answers. The responses could be compiled in a similar way, but should allow for bespoke answers to qualitative questions. The process could be very similar to the existing UK Planning Portal.

We welcome the new UK Government 'Contracts Finder' procurement website but believe it should be enhanced and extended so that the construction sector categories are linked to and embedded within the UK Planning Portal.

We also support further cross-border advertising of contract opportunities. Advertisement through EU wide portals of as much public procurement work as possible below the thresholds would further increase access for SMEs and micro businesses. This would also increase opportunities for cross-border trade which currently represents only 1.5% of public procurement contracts (mainly at higher contract values).

Main functions of the portal should include:

- **Simple functionality** – requiring no prior knowledge or training, be usable by unskilled procurement teams and contain guidance information in order to help 'upskill' them. Government should engage the construction industry and professional bodies to develop best practice examples to use in such guidance.
- **'EU procurement passports'** that are completed on-line and updated annually.
- **Pre-registration and pre-qualification of 'intellectual service' consultants for certain contracts**, banded by value, removing the need for repetitive completion of basic Pre Qualification Questionnaire (PQQ) information.
- Self-selecting filters for public clients and tenderers.
- Tenderers could automatically receive new opportunity alerts based on their preferences.
- It should replace the myriad private-sector portals (e.g. londontenders, mytenders, and procure4london) and thus **be open to private commissioners**.
- **Efforts to standardise criteria nationally (and across the EU)** to save time and money for both public clients and tenderers.

1.3.2 Allow self-certification

We welcome the European Commission's proposals in the Revised EU Directive for:

- **Self-certification**, or having professional qualifications validated via online portals (to significantly reduce paperwork and review time);
- **Attestation only at any pre-award stage** and all validation confirmed only upon award; and
- **EU Procurement Passports**.

Alongside the eventual implementation of such proposals, we call for all professional institutes and registration boards such as ARB and RIBA to be recognised as national certifying and accreditation bodies. This would save significant amounts of time for public clients and tenderers, and ensure that well trained public sector staff are not diverting their attention to unnecessary administrative tasks.

1.3.3 Shorten, standardise and simplify PQQs

The RIBA has welcomed the UK Government's intention to provide public clients with a standardised set of common questions covering competency and corporate governance along with new processes intending to improve access, simplify, and accelerate the PQQ process for restricted bids.²⁹

However, the desired alignment, universal use and subsequent reduction in bureaucracy, has seen little change since the original introduction of PAS 91. In general, the document does not adequately consider the principal of proportionality.

PAS 91 currently fails to recognise distinctive differences in size, organisational structures, working methods, capitalisation and turnover between different types of operatives and branches of the construction industry. There are obvious differences between the working processes and products of professional consultants undertaking design work and those physically involved in construction processes. **We have expressed significant reservations with the 'one size fits all' approach promoted by PAS 91.**

We believe that self-certification with attestation (see 1.3.2 above) regarding all competency criteria would accelerate procedures. In particular, the qualifications and accreditation of professional 'intellectual service' providers should be sufficient evidence to answer the questions raised in most respects. This would save public clients a huge amount of time in assessing tenderers.

We recommended that further review of PAS 91 looks in detail at the whole procurement landscape and is clear that the distinction between suppliers and service contracts already embodied within the EU Directive should be upheld and extended. Ultimately, whilst PAS 91 is a step in the right direction, much more remains to be done to ensure that PQQ becomes a more streamlined, informed and proportionate process.

1.3.4 Define expeditious and universal time limits for pre and post qualification, award, and appointment

The RIBA supports reducing the time limits on procurement processes. **We believe that 120 days should be regarded as a maximum for the public procurement process through to the award stage**, unless there are justifiable reasons for deviation. Where public clients are able to undertake the process in a shorter time there should be incentives for them to do so (for example, where it may be appropriate for simple expressions of interest (EOI) and design competitions).

There should be time limits set for the assessment of tenders by public clients. These might be proportionate to those limits placed on tenderers.

1.3.5 Limit and tailor tender materials to facilitate more efficient assessment

We propose that Government should introduce guidance on applying proportionate volume limits for tenderers' response materials, to ensure economy and ease the review process wherever contract values are within the lower range of contract values (the 'lower band' proposed in 3.2.3 below).

Designers have specialist knowledge and specific skills which inform design processes. It should be these skills which are evaluated. We propose there be better opportunities for tenderers to submit bids with responses related to their specific skill sets and professional strengths – in the case of architects, by short drawn or illustrated reply as opposed to purely text based responses.

1.3.6 Benchmark pre and post qualification costs in the public and private sectors (tenders, final project costs and outcomes)

Cost benchmarking is being undertaken as part of ongoing savings efforts under the Government Construction Strategy. We believe that the aim of this work should be to ensure that costs for public clients and tenderers **become comparable with costs in the private sector in the long term.**

However, we agree with and note the concerns and approach on benchmarking in the Government Construction Strategy. **Where cost efficiency is a lead driver, there is a risk that the lowest cost criteria will take precedence over whole life costs.** As the Strategy notes: ‘A vital context of cost benchmarking is therefore a clear understanding of how a project will deliver value in the provision of public services, so that the cost benchmark is not set artificially low by the inclusion of projects that fail to deliver value.’³⁰ On this point, see 2.2.3 below.

1.3.7 Introduce ways of capping the number of tenderers to make procurement more manageable for public clients

The number of tenders received for architectural contracts is significantly higher than the average. This represents a significant private sector resource investment, and requires a daunting amount of time for public clients to fully assess the tenders. A competitive and dynamic market is a good thing, but pragmatically there need to be ways of capping the number of tenderers.

In the EU³¹

- 20% of contracts only receive 1 bid.
- Most contracts receive 4 to 6 bids.
- 99% of contracts receive less than 39 bids.
- Construction sector tenders attract most competition (mean 7.4).
- Housing and recreation sectors attract the most bids (mean 6.1).
- The highest average numbers of bids are submitted for contracts in Spain, Germany, the UK, Ireland and Portugal.
- UK restricted procedures seeking architectural services for lower value works in densely populated areas frequently attract more than 60 bids.
- **EU architectural competitions have attracted up to 1,000 bids.**

The issue is exacerbated where the market is very large and/or the value of works low.

One option for lower value and popular projects might be for procedures to be **preceded by a sortition system** (i.e. an equal chance method of selection by some form of lottery) regarding the professionally qualified candidates for short-listing prior to any submission. This could limit the number of tenderers to, for example, not less than 35.

1% of contracts receive 15% of all bids:

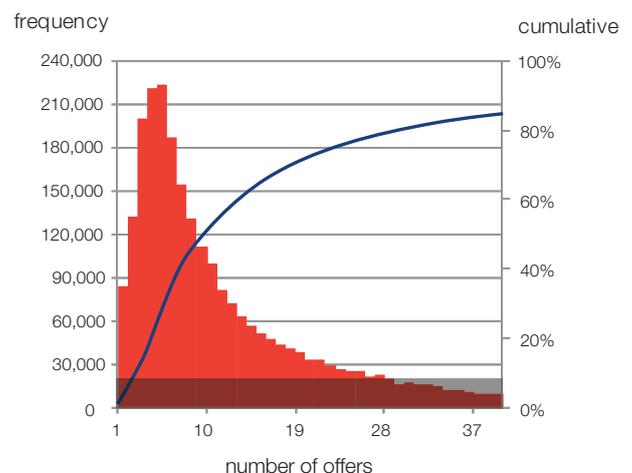


Figure 6 Volume distribution of offers. Distribution of bids is highly skewed towards the low end – 99% of requests receive less than 39 bids, 1% however receives 15% of all bids and a few receive nearly 1,000 bids. **Source** ‘Public Procurement in Europe: Cost and Effectiveness.’ Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting, March 2011.

1.4 Change working practices and methods

1.4.1 Ensure flexibility and appropriate adaptation of processes

Whilst using the most tried and tested procedures, it is clear that different procurement methods are appropriate for different projects, so a sufficient degree of flexibility must be maintained. The RIBA believes that procurement models should be better adapted to be suitable for the contract value, type of project or context.

The Integrated Procurement Team Models for Public Procurement table below demonstrates how that might be achieved.

Procurement processes (and emerging models) should always be properly adapted to the type of project. This will:

- Enable better options for project delivery.

- Encourage innovative procurement.
- Require Government to produce guidance to help public clients select the most appropriate procurement routes for their projects.

We recommend that the Government should trial more integrated team procurement practice nationally, particularly embodying Independent Project Insurance, and level playing fields for all team members, to allow efficiency and innovation to come to the fore.

Output (buildings) delivery teams:	Designer-led customised solutions	Contractor-led customised solutions	Purveyors of standard solutions
Outcome (people using buildings)	Bespoke, specific and targeted	Determined specifiable, repeatable	Generic/standard/best practice
Scenarios	New typologies, exemplars, targeted issues, high impact outcomes, civic, public realm, strategic	Large public building programmes (informed by design-led exemplars)	Generic public infrastructure (based on proven success of a series of customised solutions and where appropriate/efficient)
Settings	Targeted/specific/local	Nationally and locally driven and demanded	National. Pre-determined urban masterplans/sites
Typical construction type	New build/retrofit/remodel/conservation	New build/retrofit/remodel	New build
Standard component scale	Building elements/ construction components	Building elements/ construction components	Whole building

Figure 7 Integrated procurement team models for public procurement. Source RIBA.

1.4.2 Increase the use of the negotiated procedure

The negotiated procedure (‘competitive procedure with negotiation’) is highly economical for both public clients and tenderers. Although rarely used within the UK this is the most common procedure used for the procurement of professional services amongst our EU competitors.

A procurement is defined and followed by a PQQ stage submission, after which written tenders are then submitted as the basis of confidential negotiation. Public clients may limit the numbers of shortlisted candidates and reduce them further through the negotiation stage in order to improve the award criteria, the understanding, quality and value of the offer. Tenders are revised on completion of negotiations to reflect fully the agreed final requirements and outputs for award.

This procedure has many advantages for the delivery of professional services: it is flexible, efficient, enhances communication and directly engages public clients and their suppliers prior to award. It is suitable for both large and small projects executed under different contract forms, and can be used for selection onto frameworks. In construction it can also be used to promote innovative practice and integrated team partnerships, where the terms are specified within the contract notice, consortia bids are allowable, level playing fields established and Independent Project Insurance specified as a contract requirement.

1.4.3 Government should work with the RIBA to promote and improve the use of design competitions

Design competitions diversify procurement, provide flexibility, improve choice and deliver quality. For the client a competition by its very nature, drives up quality, stimulating creativity and innovation and gives a wide range of new ideas improving choice. Competitions can stimulate local public interest, increase public expectation of excellence and allow architects’ practices to work with communities rather than simply for communities. They can also engage planning departments successfully, which can accelerate a project’s implementation.

The EU competition selection route may be design or idea, open, restricted, invited, competitive interview, one or two stage allowing for various short-listing and award selection stages as maybe suitable to any given project.

Design competitions are more frequent in many other EU member states where they are often regarded as a mainstream or first choice procurement tool for the selection of architects. Competitions can draw forth construction innovation and emergent practice, whilst delivering improved standards and ensuring suitable appointments. In fact, **of the competitions run by the RIBA, 57% of the built projects have gone on to win an award.**

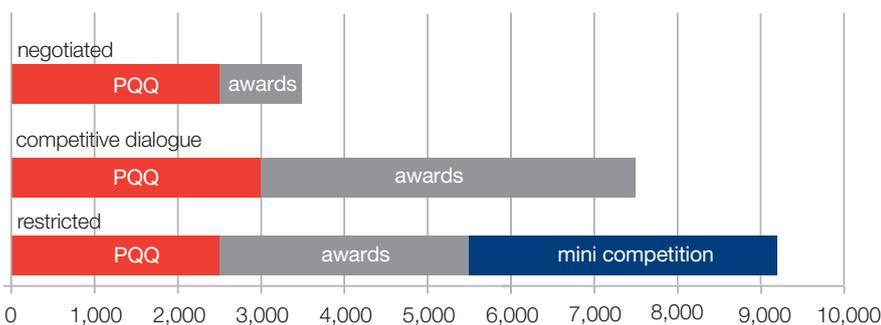


Figure 8 Architects’ average (median) costs (£) of submitting bids by procedure. **Source** RIBA Procurement Survey 2012

Architecture institutes we have spoken to in Austria, Denmark, Germany, Finland, France, Sweden, Switzerland, Norway, Finland and Australia are all in agreement about the value competitions can bring to both the public client and the tenderer. Most are looking to further evolve these type of selection processes. This is not just driven by national or EU procurement legislation but by **the belief they play an integral role in design excellence.**

In the EU countries we have investigated, design competitions are well integrated with procurement procedures. In the case of France and Germany this is largely driven by government supported systems where public projects are automatically put out to competition. Their use equally extends further into the private sector.

The costs of running a competition are not high as a percentage of the total project value. They typically range between 0.5% and 2.0% depending on selection route, type and complexity.³² When considered against the whole life cost of a building the benefits of a well briefed architectural competition, judged by accredited experts, can far outweigh its cost. Design competitions offer good value for money and deliver projects fully aligned to the payments by results principle.

Under current EU procedures, and inefficient UK practices, competitions are more expensive than they need to be, especially for architects. As competitions become more expensive, less are used and the UK market has shrunk. This is of particular concern to micro businesses and SMEs, as it denies access to many, particularly new young and bespoke practices.

RIBA believes that the design competition routes for procurement of architectural services should be incentivised and improved.

We therefore propose that the UK Government, together with the RIBA, work towards providing guidance for improving the use of design competitions.

This work should include enhancing and updating 'Architectural Competitions: a Handbook for Promoters' by DOE/HMSO (1996), and standardising competition procedures insofar as possible, so that contracting authorities have transparency, clarity and price certainty.

We also recommend that:

- **UK Government should set national aspirations for a significant rise in the number of open and invited design competitions** used for public construction services contracts (to around 30% of all contracts awarded);

- Design competition processes should be standardised (whilst maintaining flexibility), and competitive interviews should also be promoted;
- In all design competitions fair remuneration for shortlisted participants should be provided, considering capping the number of tenders (see 1.3.7 above) to ensure the competitions market can expand; and
- **Government and the RIBA should together explore ways to make this route to design excellence more cost competitive.**

1.4.4 Limit liability and risk in public procurement contracts and promote the adoption of Independent Project Insurance

Professional indemnity cover should not be used as a measure or determinant of competency. The apportionment of risks and liabilities for SMEs and micro businesses needs to be reviewed in the context of tendering. Current professional indemnity requirements are too expensive for most professional consultancies especially SMEs and micro businesses.

Risk, risk management and risk transfer are increasingly becoming determining criteria within the awarding of procurement contracts. Evidence has shown that these issues are not approached proportionately within the public sector procurement-briefing model by contract and by project. Risk and insurance cover requirements need to be directly proportionate to the type, scale and complexity of the project.

An approach of unilateral thresholds irrespective of contract size or type has been adopted as a default position. The approach of 'value for money', interpreted as best price historically has overshadowed the real cost and valuation of risk.

Architects, as with other professionals owe a duty of care under the contract, which implies that they must evaluate and provide for risks arising from or with their professional services. Such risks include co-ordination, the timely delivery of information, adequate expertise and resourcing of projects etc.

The current climate of fee bidding which drives fees down places the architect's responsibilities and their professional indemnity insurance at risk, for example, the inadequate resourcing or co-ordination of a project because it is economically unviable can potentially void Professional Indemnity cover. The greater the pricing risk (competition) the greater the potential for claims.

Professional indemnity insurance (**PII**) provides cover for professionals against the financial aspects of legal liability to the client for professional negligence and is required for all professional appointments. However, it is costly and may need to be maintained by the consultant for many years after completion of the contract. The specified levels of cover should be appropriate to the particular project, and based on a thorough assessment of the particular risks considered relevant to the project. The full costs of requiring an unusually high level of cover should be evaluated before such a requirement is made. For architects, the 'claims made' basis places financial responsibilities and burdens into the future, particularly where PII requirements are disproportionate to the project.

Within an economic or industry climate that seeks an ever increasing reduction in cost the combined need to deliver projects and services for less cost, within a fixed financial budget and timeframe is invariably leading to an escalation of potential risk. Clients, and in particular public sector clients through their procurement process have a pattern of awarding projects primarily on the lowest cost competition and not on a value for money or 'most economically advantageous tender' basis.

This contracting approach often stores up issues and problems within the project procurement process or subsequently. Public sector procurement is further pressurised by the integration of projects within larger delivery programmes (such as schools and hospitals), whereby other and sometimes larger financial or political objectives pose greater drivers of procurement than the simple delivery of construction projects.

Risk issues during construction and post construction can arise from within and between the design team, the construction team and the client team. The apportionment of individual responsibility within the design and construction team can lead to adversarial relations, which can work against the best interests of the client and project. This arises primarily from the understanding of risk as a 'contract risk' rather than a contract and technical risk. The architect carries specific and onerous responsibilities, which should be reflected in both adequate remuneration for expertise and service and a reasonable recognition of the professional risk. The reasonable apportionment of contractual and technical risk needs to be made when ascertaining the levels of professional indemnity sought under a contract, and for what extent of the contract works. Architects often become enjoined in claims initially targeted at other parts or members of the procurement contract.

The adversarial approach to risk manifested in excessive requirements for insurance cover coupled to minimised fees leads to an adversarial, blame based culture, whereby participants seek to minimize innovation and participation.

Increasingly we are seeing the unreasonable application of risk and PII requirements to professional services, which can be disproportionate to the project size and value and are used as a method to limit the ability to tender on an equal basis.

Proportionality and Apportionment

Risk and PII cover requirements needs to be directly scaled to the type, scale, complexity and value of the project. A new methodology based around project types and values needs to be developed which can act to inform and guide procurement agencies when they prepare and award procurement contracts.

Public sector procurement agencies and managers need to be trained in project risk evaluation and assessment.

Project Insurance

Independent Project Insurance (**IPI**) or single project insurance (**SPI**) is an approach which insures the claim rather than the cause basis of project risks. Current PII provides insurance for the cause (and targets the professional allegedly responsible). One of the key aims of IPI/SPI is to underpin collaborative and integrated team working, which promotes 'gains' and shares 'pains', in contrast with traditional contract risk based non-integrated team working.

In the absence of fraud, subrogation rights are waived against all members of the integrated project delivery team. This form of insurance is used in other parts of the EU and has delivered better projects for better costs and better delivery programmes.

IPI will require new forms of contract, which acknowledge a client brief as a fundamental part of the contract, an integrated project team, retention of lower levels of PII, an 'open book' financial approach, a project bank account etc. IPI/SPI has the potential to restructure how projects are procured and produced by the design, construction team and client.

Current procurement practices seek to transfer public sector risk to the private sector via the appointment of a major contractor and the security of balance sheet and extensive PII cover. Claims made under this basis seek redress via each insured body, which leads to large excesses, complicated and expensive negotiation and apportionment, delays in resolution, and an overall level of costs which can sometimes and in some circumstances outweigh

the benefits. IPI/SPI, conversely, can change this, focusing claims on the loss or damage arising and its remedy rather than seeking to apportion blame firstly and then ascertain remedy.

IPI/SPI offers the prospect that professionals previously excluded for failing to meet excessive PII levels in bidding could compete without this barrier across a far wider range of procurement opportunities.

In general insurance levels and the statutes that govern them need to be harmonized across the EU to enable open cross-border access to professionals. The UK approach to the gold-plating of risk and PII prevents this happening for non-UK based firms and organizations.

We propose that:

- **Government should limit liability by agreement proportionally within all new public procurement contracts to open the market for IPI/SPI.** This will bring UK practice in line with EU best practice on contract and liability limits.
- The requirements for all tenderers to demonstrate at the point of application that they possess the required insurance levels puts businesses off tendering and should be replaced by systems that enable tenderers to provide proof of ability to provide required insurance levels only if shortlisted.

Contract risk should be project related and project provided. Government should now start to introduce modified contracts which can pilot more use of IPI or SPI, or the use of Owners' Protective Professional Insurance (**OPPI**), where the size of contract and complexity of design can be understood and constrained, and where contract values for construction are below £10 million.

PI Insurance should no longer be a pre-requisite in bid evaluations, risk should be apportioned optimally and use of IPI/SPI should be precipitated across the market by the UK Government phasing in its adoption in all public procurement.

1.4.5 Support new methods of working built around integrated teams and Building Information Modelling

The reform of public procurement is an opportunity to empower all stakeholders through new methods of working. Such new methods should give public clients confidence and autonomy to lead development, improve local standards and open up local markets to greater competition.

Integrated construction teams

As explicitly recognised by current reforms, there is a need for properly integrated, cross-professional teams in public procurement projects.

The UK Government should expedite the procurement of properly integrated teams to encourage joined up thinking both in definition and execution of a project. Designers and building contractors need positive engagement throughout the duration of projects to ensure shared goals lead to outcomes that uphold value.

The RIBA believes that to support professional and mutual understanding of the requirements and aspirations of a public client, direct relationships between designers and clients (or end-users) are needed.

Building Information Modelling (BIM)

The Government's Construction Strategy is centred around three goals, which the RIBA fully endorses:

- **To become a value-based, customer-centred industry;**
- **To become a sustainable industry;** and
- **Using ICT and automation to achieve these goals.**

The Innovation and Growth Team report of 2010³³ saw the achievement of low carbon building to be dependent on the adoption of 'collaborative BIM', to make it affordable, mandating BIM use by 2016 for Government work. In the private sector BIM-using contractors are becoming very price-competitive.

The adversarial culture of the construction industry has been fed by the general lack of reliable information passed between team members. Even where intentions are good, participants are exposed to potential liability based on the information each shares, and team members often work in a defensive rather than collaborative manner.

It is anticipated that the impact of BIM on the construction industry will be to perfect the information that is shared. The groundwork for the next five years is being laid, but after that we predict that rapid change will occur, and as a consequence of BIM information will become trustworthy, easily shared and computable.

'The EU Directive denies access for micro businesses and SMEs; its requirements incur disproportionate costs to both public clients and tenderers.'

Recommendation 2

Embed processes that ensure public buildings are sustainable by focusing on design outcomes

Achieving sustainable buildings is about getting the right balance between economic, social and environmental factors. It is about ensuring needless costs are not incurred; either capital investment in the construction process, or during the whole life of a building by inefficient energy consumption for example. It is about ensuring a building's design is tailored to its users and the public service that will be provided in it, to ensure that service is provided effectively and efficiently.

Buildings should suit and enhance their local contexts and communities, and the construction process itself should develop human capital and nurture knowledge economies. High design quality should be the standard in the buildings we deliver to the public, not an aspiration that is lost somewhere along the line.

The UK's built environment currently accounts for about 40% of the UK's carbon emissions. In line with our legally binding carbon targets, Government has set an objective of reducing the sector's emissions by 80% by 2050. Our carbon reduction challenge is all the more significant at a time when achieving cuts in costs is an imperative. However, even the buildings we build today often do not perform as it is hoped they will.

Initial capital costs have always been the driving focus in the construction industry rather than looking at the whole life value and quality of the resulting buildings. A reappraisal of the way we look at value for money is starting to happen, but needs to be more firmly embedded within the thinking behind current reforms. **There is little point delivering buildings of low design quality for lower cost, if these result in higher costs through their whole life. This clearly does not represent value for the public's money.**

We must, therefore, embed processes in the public construction procurement system that deliver sustainable, well designed buildings. Doing this in public construction procurement will drive improvements throughout the rest of the industry.

A shift in mindset is needed, moving away from focusing solely on the quality of procurement processes, towards focusing on the quality of outcomes. We recommend the following to ensure that we achieve this.

Bidders perceive design quality (probably the most important criteria for actual construction) to be the least important assessment criteria for winning a bid. Financial criteria are perceived to be the most important:

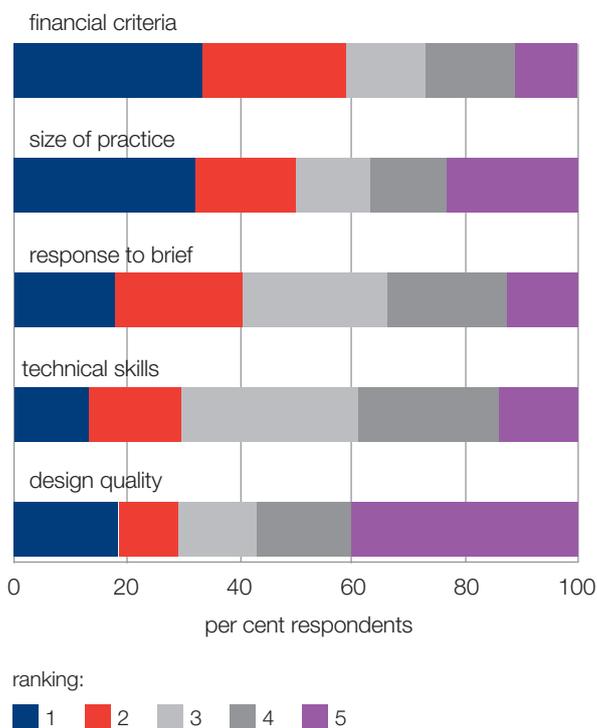


Figure 9 Respondents' perceptions of the importance of various criteria in winning a bid ranked where 1 is most important and 5 is least important. **Source** RIBA Procurement Survey 2012.

2.1 Focus on processes and incentives that drive quality and outcomes

2.1.1 Under 'intelligent commissioning' principles, team and design selection should be based on the Brook's method

For clarity and transparency in scoring bids, procurement should be assessed in cascading stages, with a requirement that stages be passed in sequence. This is also known as the 'double envelope' or Brook's method, and emphasises competency and quality. It cascades as follows:

1. Competency criteria
2. Quality Assessment
3. Financial Criteria and Price (see 3.2.4 below)

If you have the highest score and are within 10% of the average fee you are appointed. If you are more than 10% from the average fee there is a negotiation.

4. Interview of the final 2 firms, or 3 if they are in striking distance.

Assignment follows the award stage. Weightings given at the second stage determine a limited shortlist before the financial criteria are evaluated, thus ensuring tenderers must meet the highest quality standards before they can be financially assessed and the 'most economically advantageous tender' criteria (see 2.2.1 below) is embedded within the assessment.

See Recommendation 1.2.2 above on intelligent commissioning principles.

2.1.2 Overly restrictive previous experience requirements should not lock out innovative designers

Requirements regarding directly applicable previous experience are frequently used as a blunt tool to thin down bid numbers, for example, by requiring multiple examples of near identical works undertaken in the past 3 years. This can discriminate in favour of larger consultancies with higher turnover irrespective of the quality of other tenders' likely outcomes. Many innovative designers are therefore locked out. There should be restraint on experience requirements that are skewed towards quantity and turnover of projects.

We believe that proposals regarding previous experience criteria in the Revised EU Directive should not be limited to 3 years. This should be consistently 5 years, or more wherever it might be proportionate or appropriate otherwise so as to cover works that are bespoke, specialist or particular in nature. Whilst clearly we agree that directly relevant experience is valuable on a project, bringing in experience from other sectors and constantly challenging long held assumptions about the best solutions can be equally valuable.

2.1.3 Focus payment on the basis of results

'Payment By Results' is a quality based approach which focuses on the delivery of positive outcomes while also enhancing partnerships and delivery.³⁴ Payment by Results aligns the objectives of the more profit motivated supply side with less profit motivated service side professionals.

'... creating a clear incentive structure focused on outcomes is vital to achieving the results desired by citizens and the Government, and also for setting clear parameters of success and failure for providers. The payment-by-results regime, whereby a provider only receives payment once prescribed outcomes have been satisfactorily achieved, is an important tool commissioners can use to mitigate against poor performance'³⁵

This approach can also help incentivise sustainable outcomes. As a matter of public policy, linking outputs with sustainability targets should therefore be a key part in Payment By Results.

2.1.4 Clarify the importance of research and development

Research and development (R&D) in the construction industry contributes to advances in technology that improve efficiencies, costs and the quality of outcomes. R&D is needed in all areas of construction, including sustainability, process, practice, construction design, innovation, evaluations and post occupancy evaluation.

We believe that the R&D provisions within the European Commission's proposed Revised EU Directive need clarification. They must reflect the fact that a small elemental or component cost of a construction project overall may be capable of delivering step change.

Both contracting and professional services for such R&D should be considered holistically by the Revised EU Directive's R&D definition, because a unique coordination of design and construction may be required to deliver a step change (i.e. that research and development derives by combining the procurement of services and goods, as defined under the Revised EU Directive).

2.2 Embed assumptions in favour of sustainability at all stages of procurement, and ensure it is properly incentivised

2.2.1 Award of a construction contract should always be to the ‘most economically advantageous tender’

The criterion of lowest price should no longer be the determining one for the award of contracts. Construction contracts should be selected against the default selection criterion of ‘most economically advantageous tender’, in terms of economic, social and environmental benefits⁷. This should take into account whole life costs (such as energy).

Whilst this is the direction in which EU reforms appear to be heading, and whole life costing is being developed in the UK, we recommend this approach should be made the default as soon as practicable whilst ensuring that it is proportionate and not disproportionately burdensome for tenderers, or a mere tick box exercise.

2.2.2 Incentivise energy reduction by changing VAT rates

VAT is a powerful tool and changing the rates can incentivise the sustainability agenda. The majority of CO₂ emissions in the built environment emanate from the existing building stock along with a smaller quantity from the process of new construction. The focus should therefore be on improving existing buildings wherever possible. The current system is skewed in favour of more carbon heavy construction, which runs counter to government policy.

Current VAT rates incentivise CO₂ emissions by distorting the construction market in favour of new build. In the residential sector, the current VAT rate encourages new build construction rather than improving existing buildings, even when saving energy. For private and public (public/private) finance the different VAT rates divert resources towards new construction.

Not only do current VAT rates incentivise emissions, they distort the market and its ability to respond to other policy objectives. This distortion is a major constraint for sustainable green procurement policy.

We believe that there is a need to reappraise ways in which the VAT system can be used to help progress the Government’s low carbon agenda, in a balanced, fiscally neutral way.

2.2.3 Prioritise defining the principles of whole life costing

Work on whole life costing is progressing, but should be seen as an urgent priority as data in this area is currently very poor.³⁶ Understanding how to apply whole life costing principles is an important industry task, which must be matched by skilling up on how to evaluate whole life costing in the public sector. This should not become a mere tick box exercise, one which increases requirements for restrictive pre-award criteria or one where industry is marking its own homework.

Any definition should allow sufficient flexibility to be applicable throughout the EU without constraint on national practices; whilst providing nationally for future flexibility in both application and assessment.

2.2.4 Encourage the widespread take up of post occupancy evaluation and ‘Soft Landings’

A far greater level of post occupancy evaluation (on how public buildings perform when in use) should be undertaken. This will provide the data needed to improve our ability to assess the success of whole life costing. Such evaluation is an essential part of the construction procurement cycle and the only way to provide independent feedback to the construction industry and allow buildings to be continuously improved.

Post occupancy evaluation is now mandatory for most public building works in Scotland. The improvement in recent building procurement is palpable, real and ongoing, with consequent increases in productivity, efficiency and occupant well-being in buildings of all types.

The RIBA are also involved in progressing and fully support the Government’s work on embedding the ‘Soft Landings’ approach.

Recommendation 3

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

- UK SMEs' share in the total value of public procurement contracts (across all sectors) is fourth lowest in the EU (Figure 10).³⁷
- 97% of UK architecture practices are SMEs' or micro businesses and some 79% of practices employ 10 or fewer people.
- The estimated success rate for architects bidding for OJEU work is only 15%.³⁸

As explicitly recognised by Government, the public sector's failure to create a level playing field for smaller suppliers has excluded some of the most competitive and innovative business from the market. In the architectural profession this is particularly true. As a stark example, **turnover requirements typically applied to much public sector work above the OJEU thresholds mean 85% of UK architectural practices are too small to be able to tender.**³⁹

The European Commission's 2011 Green Paper on the modernisation of EU public procurement policy acknowledged that the high cost and inefficiency of current EU procedures act as a market barrier for SMEs. Just above the OJEU threshold values, the requirements incur disproportionate economic costs to both public clients and tenderers.

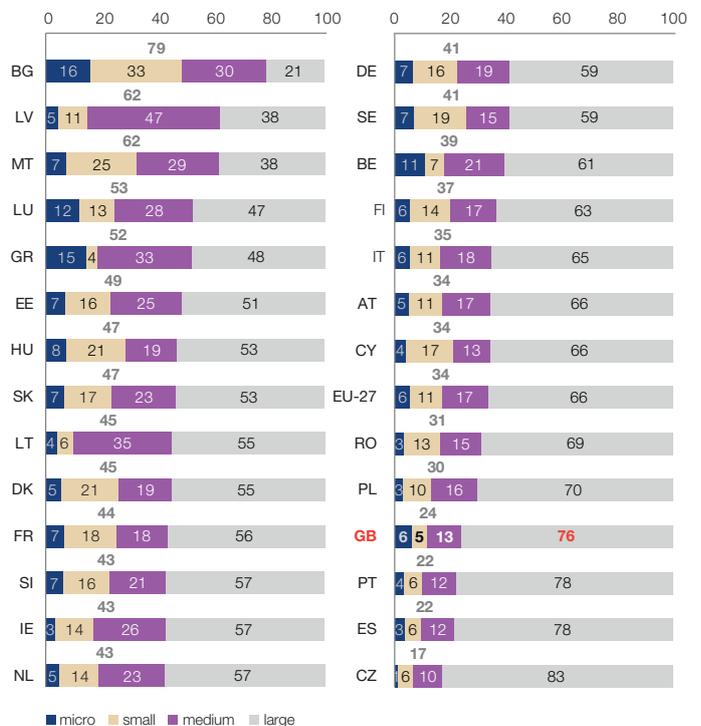


Figure 10 UK SMEs' share in the total value of public procurement contracts (across all sectors) is fourth lowest in the EU. **Source** 'Evaluation of SME Access to Public Procurement Markets in the EU', coordinated by the DG Enterprise and Industry, submitted by GHK, September 2010.

Access issues are not confined to architecture, they are an industry wide problem. The UK’s construction industry employs some two million people in more than 250,000 different companies, the vast majority of which are micro businesses and SMEs.⁴⁰ We hope, therefore, that our recommendations create not just a better market for architects, but a better market for everybody.

A competitive, dynamic market is needed if we are to provide the best value solutions for the public and enable a return to growth. All small businesses contribute to important values in our society,⁴¹ and help drive both growth and employment.

Francis Maude’s candid admission that ‘Government was stuck on the mindset that big was beautiful’,⁴² and the reforms that are being driven by the Cabinet Office are very welcome.

We believe that the following recommendations will help continue the good work that has recently begun.

The concentration of contracts appearing just above the thresholds indicates the thresholds are creating a market distortion:

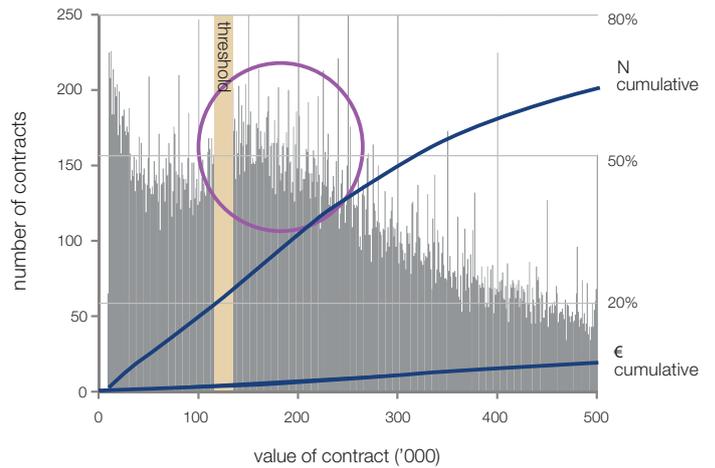


Figure 11 Central government public procurement contracts around the threshold (all EU procurement). **Source** ‘Public Procurement in Europe: Cost and Effectiveness.’ Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting, March 2011.

Recommendation 3

Tender requirements rapidly incur disproportionate economic costs to both contracting authorities and tenderers, below the median contract values:

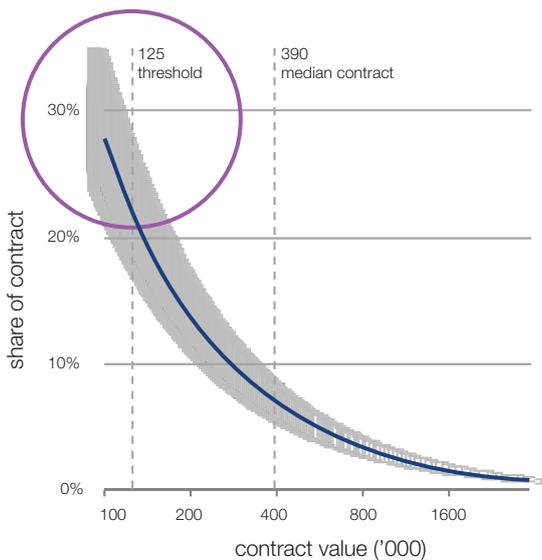


Figure 12 Total procurement cost (firms and government) as a share of contract values (HiLo estimates across all EU procurement). **Source** 'Public Procurement in Europe: Cost and Effectiveness.' Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting, March 2011.

SME's share in public contracts is below their share in the overall economy. In the UK it is 25 per cent below:

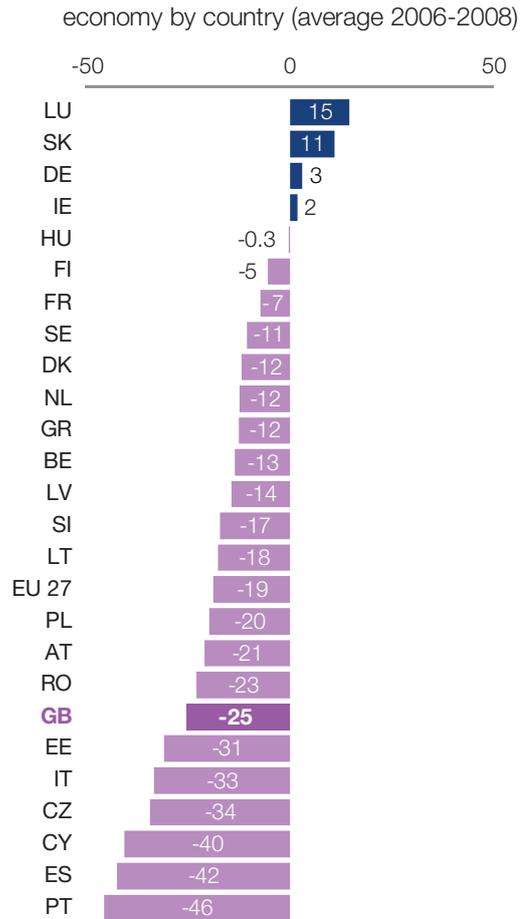


Figure 13 UK SME's share in the total value of public procurement contracts (across all sectors). **Source** 'Evaluation of SME Access to Public Procurement Markets in the EU', coordinated by the DG Enterprise and Industry, submitted by GHK, September 2010.

3.1 Government should provide clear guidance to public clients on when ‘aggregation’ is appropriate, as well as bundling, and encouraging the use of lots⁴³

Taking contracts in aggregate through a single procurement process can create economies of scale and reduce administration for public clients. However, aggregation can also have a negative impact on competition by excluding many smaller firms unless properly managed. The RIBA welcomes the Government’s commitment to ‘break up large contracts into smaller elements, so that SMEs can make a bid and get involved’.⁴⁴

The RIBA believes that public construction procurement methods should be determined by what is best for the public client, as well as proportionate and appropriate in all contexts. One size fits all should never be the default mindset, nor should aggregation be assumed to be the right choice. We would note that:

- Aggregation at lower values appears to be largely driven by long, complex, and costly procedures that are frequently inappropriate for the outputs being sought.
- Aggregation typically creates barriers to access for micro businesses and SMEs who cannot access highly geared contracts.

We propose that Government should produce guidance for public clients outlining when it is both appropriate and inappropriate to aggregate, as well as noting the effects

this can have on, for example, local competition or supply chain costs. This guidance should be firmly linked with the outcomes that the public client wishes to ensure, balancing the options; for example the potential gains of local competition when offering smaller contracts with any potential gains in terms of contract administration when aggregating.

We also recommend that ‘value banding’ (see 3.2.3 below) should be considered to help determine the appropriate and proportional use of frameworks.

The RIBA believes that procurement reforms should be principally aiming at simplification, acceleration, reducing costs, reducing the number of frameworks covering lower value contracts, improving access onto other frameworks, along with offering contracts which can be sub-divided into smaller and more multiple value ‘lots’. In particular, simplifying and reducing the costs of procurement will give public clients flexibility in whether they choose aggregation as the right method to achieve their desired outcomes, rather than being driven to it by financial and time constraints.

Disaggregation is likely to be most pertinent for small value projects. It is often cheaper and simpler for public clients to ‘bundle’ such projects into larger packages which they can offer to those who have been previously appointed to their frameworks. These are the projects best suited to SMEs and micro businesses.

Bundling should be subject to scrutiny and for all works within the lower ‘value band’ (see 3.2.3 below).

We believe that public clients would be encouraged to offer more lower value contracts if they could simplify the procedures and cap the number of tenders.

3.2 Enable access for micro businesses and SMEs, and ensure greater proportionality in their treatment

3.2.1 Set objectives for the proportion of public sector contracts awarded to micro businesses and SMEs

In the EU, 'SME's share in above-threshold public procurement (in terms of contract value secured) is -18% points lower than their overall weight in the economy, measured by the combined turnover or gross premium written in the business sector. Medium-sized enterprises do not seem to be unduly under-represented, but micro and small enterprises lag considerably behind their actual role in the real economy'.⁴⁵

In the UK the difference between the share of SMEs in public procurement and their role in the economy is -25% points lower.⁴⁶

SME and micro business access to public tenders should be roughly in proportion to their weight in the economy. This objective can be achieved by setting clear aspirations for micro business and SME access which are non-discriminatory and proportionate to their engagement in the economy.

Central Government should be applauded for the work it is doing to improve competition and market access in its supply chain. We would however, like to see more done to align UK policy with the EU principle of 'Think Small First' within the Small Business Act for Europe (COM(2008)394), and 'friendly' procurement.

3.2.2 Permit more consortia practice

We welcome the Revised EU Directive's aim to facilitate more consortia submissions. However, we suggest that there should be no need for evidencing of the form of legal entity at bid stage, but only prior to contract assignment.

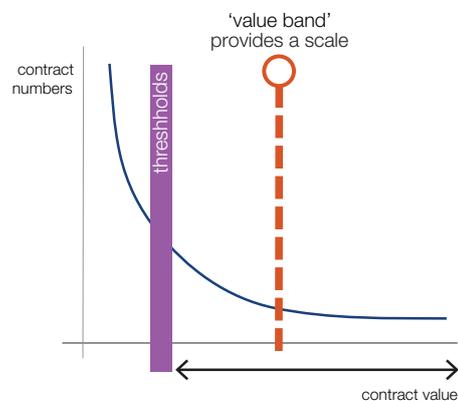
3.2.3 Introduce 'value banding' so criteria demanded by public clients can be matched proportionately to the value of the project

The EU principle of proportionality is very important for SME and micro business access, and we welcome moves that have been made to further this. However, proportionality is a relative measure which remains undefined.

We suggest that in the UK context, the Government takes the mean contract value above OJEU thresholds, and below and above this creates a 'lower band' and 'upper band'. For contracts in the upper band, tendering requirements may be expected to be proportionately more onerous, and for contracts in the lower band, less so.

We would suggest that other than for highly complex or specialist projects, only a minimum number of selection criteria etc. should be required from tenderers for contracts in the lower band.⁴⁷ A 'traffic light' system might also be used if there is a need for finer definition of proportional requirements, with more requirements proportionally being allowed the further up the value chain a project is.

The objective here is to proportionately reduce the amount of documentation submitted by tenderers before award, and subsequently reduce the cost of evaluating where the value of the project makes this the right proportional approach.



Above thresholds there is currently **no scale** for defining proportionality

Figure 14 A Value Band provides scale to the principle of proportionality. **Source** Walter Menteth.

3.2.4 Ensure financial standing criteria are proportionate to the project and the contract

A tender condition requiring a minimum annual turnover of £1,000,000 excludes over 85% of architects' practices.

For 'intellectual services' UK Government should therefore seek removal of any such turnover criteria as a mandatory requirement under the EU Directive.

Otherwise turnover requirements should be capped so that the maximum level is ascertained from a fair comparison between the annual fee turnover and what might be earned annually from a project over its duration.

We welcome the advice seeking to curtail the application of arbitrary turnover requirements on SME contractors issued under Procurement Policy Note 01/12 of 10 Feb 2012, to those covered under its scope, although we believe reliance on OGC Supplier Financial Appraisal Guidance remains an issue.

The turnover of professional consultancies should be considered more proportionately to the type and nature of business activity.

A glass ceiling:

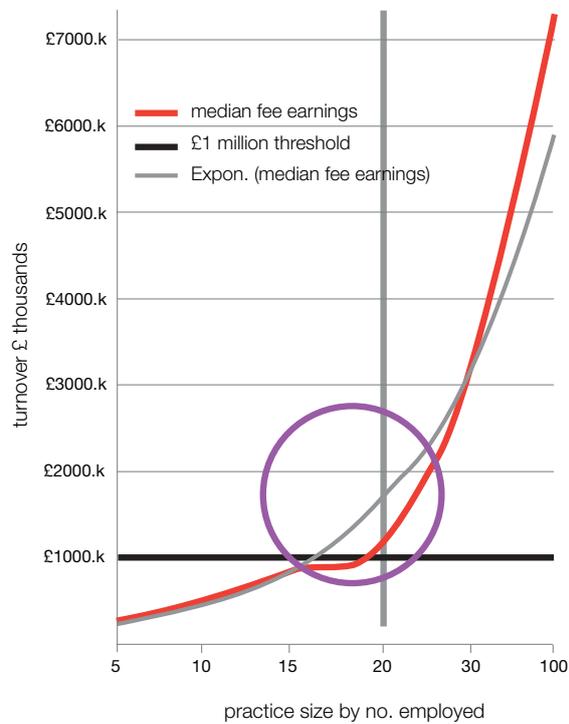


Figure 15 An unfair market – turnover thresholds of £1m are a glass ceiling (RIBA practice data). **Source** Walter Menteth.

3.3 Commit to reviewing OJEU threshold values and the effect they create

The set threshold values above which contracts are required to go through the OJEU process constitute a major hurdle for micro businesses and SMEs. We therefore propose a thorough review of the way procurement is assessed against the thresholds, the levels at which they are set, and their effect on micro business and SME access to public contracts.

There is a notable concentration of contracts just above the OJEU thresholds (Figure 11)⁴⁸, representing a significant market distortion. Just above the thresholds, the EU Directive's requirements incur disproportionate economic costs to both public clients and tenderers.

In the Revised EU Directive, the European Commission has sought to clarify what a single procurement means as viewed against the context of the threshold values. However, contrary to the Commission proposals, we believe that a single procurement should be defined by looking at the contract values from the tenderer's (or consumer's) perspective. For example, **where construction projects need a team of specialised professional consultants, the procurement threshold for an individual professional consultant should be assessed against the value of their consultancy contract, and not the total aggregated procurement value for the whole project.**

This consumer orientated definition of procurement thresholds aligns with the principles of the EU Small Business Act⁴⁹ and should replace the principle in the Commission's proposals. In particular Recital 4 and Articles 1, 2, 5 and 15 should be amended to embody this consumer principle and allow for greater economic efficiency and improved market access.

We also support the European Parliament's view⁵⁰ that the level of thresholds should be reassessed and raised to the extent the EU's external trade agreements allow. Raising thresholds to the mean of current contract values would significantly reduce the regulatory burden of the OJEU process without needing to compromise value for money, transparency or proportionality. The majority of those who responded to the Commission's 2011 Green Paper on the modernisation of EU public procurement policy supported raising the thresholds.⁵¹

We recommend:

- **Raising the OJEU threshold values to the mean of existing contract values** (noting that doing so is dependent on whether alterations to other trade agreements are possible).
- **Defining public procurement thresholds from the consumer perspective so that a single procurement is not the aggregation of all the contract values relating to a project, but rather a single contract.**
- Specifying that works and costs associated with any consultations related to the pre-tendering assessment such as preliminary appraisals, feasibility of a project and the drawing up of tenders be excluded from the EU assessment of a contract value. Before an appraisal and feasibility study is done the cost of a project is unknown. The Revised EU Directive includes all preliminary works within its remit so that OJEU tender notices will be required were the value of a project may be unknown. This could be significantly detrimental to public clients and tenderers.

Revising and redefining the thresholds is important but there is also an issue about increasing access for SMEs to public projects below threshold levels, whatever they may be.

References

- 1 Strategic Forum for Construction, 'Targets to 2012' and the Government Construction Strategy, Cabinet Office, May 2011.
- 2 Proposal for a Directive of the European Parliament and of the Council on Public Procurement. COM(2011) 896 final.
- 3 See <http://www.cabinetoffice.gov.uk/resource-library/government-construction-strategy>
- 4 See <http://www.bis.gov.uk/policies/business-sectors/construction/low-carbon-construction-igt/low-carbon-construction-action-plan>
- 5 See <http://www.cabinetoffice.gov.uk/resource-library/making-government-business-more-accessible-smes-one-year>
- 6 Database of RIBA Chartered Practices 2010.
- 7 'Public Procurement in Europe: Cost and Effectiveness.' Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting March 2011 p.29 (Fig. 1.23).
- 8 "In France the average cost of public sector procurement is £19,000 – while in the UK it is £46,000" Francis Maude speech, "The Crown and Suppliers", November 21 2011; 'Public procurement in Europe: Cost and Effectiveness.' Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting March 2011 p.88 (Fig 2.12).
- 9 'Public Procurement in Europe: Cost and Effectiveness.' Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting March 2011 p.105 (Fig. 2.46).
- 10 'Public Procurement in Europe: Cost and Effectiveness.' Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting March 2011 p.88 (Fig 2.12).
- 11 RIBA Procurement Survey 2012.
- 12 Proposal for a Directive of the European Parliament and of the Council on Public Procurement. COM(2011) 896 final.
- 13 RIBA Response to PPN 11/11, January 2012.
- 14 Interim Report of the Procurement/Lean Client Task Group, January 2012.
- 15 This was one of the findings of a report by law firm Burges Salmon, on comparative approaches to public procurement of construction projects in the UK, Germany and Sweden, commissioned by the RIBA in early 2012.
- 16 European Parliament resolution of 25 October 2011 on modernisation of public procurement (2011/2048(INI)). Clause 5.
- 17 European Parliament resolution of 25 October 2011 on modernisation of public procurement (2011/2048(INI)), Clause 4.
- 18 Unlike the Napoleonic legal system in various other EU member states, which is based upon the interpretation of legal principles, English law is very much centered upon the interpretation of words. Our regulation consequently has a tendency to be relatively long and complex.
- 19 See <http://www.cabinetoffice.gov.uk/content/cabinet-office-mystery-shopper-scheme>
- 20 European Parliament resolution of 25 October 2011 on modernisation of public procurement (2011/2048(INI)), Clause 35.
- 21 Francis Maude speech, "The Crown and Suppliers", November 21 2011.
- 22 Interim Report of the Procurement/Lean Client Task Group, January 2012.
- 23 Creating Excellent Buildings – A Guide for Clients CABE 2010.
- 24 Interim Report of the Procurement/Lean Client Task Group, January 2012.
- 25 RIBA Client Advisers are selected from a range of built environment professionals with considerable industry and sector experience and include surveyors, project managers, architects and facility experts.
- 26 For example, the RIBA Code of Professional Conduct 2005 includes Three Principles: Integrity, Competence & Relationships; with Professional Values that support these principles.
- 27 See the RIBA procurement Case Studies (available on www.architecture.com).
- 28 See <https://update.cabinetoffice.gov.uk/sites/default/files/resources/Project%20Bank%20Accounts%20briefing.pdf>
- 29 RIBA response to PAS 91 consultation, October 2011.
- 30 Government Construction Strategy, Cabinet Office, May 2011, p11.
- 31 Figures extracted from 'Public Procurement in Europe: Cost and Effectiveness.' Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting March 2011.
- 32 RIBA Competitions.
- 33 <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/110-1266-low-carbon-construction-igt-final-report>
- 34 Out in the Open, PWC, 2011, p18.
- 35 Out in the Open, PWC, 2011, p18.
- 36 Net Present Value is a very useful tool in this context.
- 37 'Evaluation of SME Access to Public Procurement Markets in the EU', coordinated by the DG Enterprise and Industry, submitted by GHK, September 2010, p23 (Fig 3.1).
- 38 RIBA Procurement Survey 2012.
- 39 RIBA/Colander Business Benchmarking Survey 2010.
- 40 Strategic Forum for Construction, 'Targets to 2012'.
- 41 For discussion on this point see 'Fulfilling the Promise of British Enterprise', Nigel Doughty, December 2011.
- 42 Francis Maude speech, "The Crown and Suppliers", November 21 2011.
- 43 European Parliament resolution of 25 October 2011 on modernisation of public procurement (2011/2048(INI)), Clauses 39 and 40.
- 44 David Cameron speech on Government Procurement, 11 February 2011.
- 45 'Evaluation of SME Access to Public Procurement Markets in the EU', coordinated by the DG Enterprise and Industry, submitted by GHK, September 2010, p42.
- 46 Ibid. p27.
- 47 'Evaluation of SME Access to Public Procurement Markets in the EU', coordinated by the DG Enterprise and Industry, submitted by GHK, September 2010, (Fig 4.11), p50, (Fig 4.2.5), p52 and (Fig 4.13) p53.
- 48 'Public Procurement in Europe: Cost and Effectiveness.' Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting March 2011 p69 (Fig 1.75).
- 49 Think Small First' – A 'Small Business Act' for Europe, COM(2008)394.
- 50 European Parliament resolution of 25 October 2011 on modernisation of public procurement (2011/2048(INI)).
- 51 Synthesis of replies to Green Paper on the modernisation of EU public procurement policy.

Glossary

aggregation

Means the grouping together of multiple smaller individual works, services, procurements or frameworks into larger single contracts, lots, procurements or frameworks.

BIM

Means building information modelling, which is commonly defined using the Construction Project Information Committee (CPIC) definition as: 'digital representation of physical and functional characteristics of a facility creating shared knowledge resource for information about it forming a reliable basis for decisions during its life cycle, from earliest conception to demolition.'

'Body governed by public law'

Means any body: (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; (b) having legal personality; and (c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

BS

Means British Standard.

CDM

Means the Construction (Design and Management) Regulations 2007 (CDM), which are intended to improve health and safety and to manage the risks on site.

competitive dialogue

Means a procedure where the public client conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender. This procedure is for use where the contract works are considered to be 'particularly complex' and where the public clients:

- are not objectively able to define the precise defined technical means or be capable of satisfying their own needs or objectives, and/or
- are not objectively able to specify the legal and/or financial make-up of a project.

The UK Government previously promoted this procedure but has now decided to curtail its use due to the disproportionate costs attached.

design quality

There is no set definition for what constitutes good, quality design. However, for a discussion of the topic please see RIBA's 'Good Design – it all adds up' (available on www.architecture.com)

Expression of Interest (EOI)

Means calls for tenders when the public client does not have a fixed idea of the nature of the service they require, but instead has a high level understanding.

EU

Means the European Union.

EU Directive

Means Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. This will come to be replaced by the Revised EU Directive (see below), so comments made with regard to the EU Directive in this report apply equally to its eventual successor.

framework

Means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded over a given period (typically 4 years).

GDP

Means Gross Domestic Product, the market value of all officially recognized final goods and services produced within a country in a given period.

gold-plating

Gold-plating refers to the practice of national bodies exceeding the terms of EU Directives when implementing them into national law or practice.

ICT

Means information and communications technology.

Independent Project Insurance

This is a project-specific insurance policy taken out by the professional consultant either on a stand-alone basis or as a supplement to their annual professional indemnity insurance policy. The insurance can potentially also include the professional liabilities of the contractor. The policy needs to remain in place for the whole of the contractual liability period.

intellectual services

Means the services of accredited professionals, such as architects, engineers, and lawyers, and which cannot be quantified like construction and non-professional services, typically having different organisational structures. This definition is something that the Architects Council of Europe have been pressing for some time.

innovation partnership

Means a new special procedure for the development and subsequent purchase of new, innovative products, works and services, provided they can be delivered to agreed performance levels and costs. This appears in the current Revised EU Directive.

lots

Mean the division of a contract notice into parcels of works which may have varied requirements such as size of works to be undertaken, or the professional skills being sought. For example, commonly used in framework or aggregated contracts for separately defining architectural services, project management, construction services etc. or for where works might range between different construction values.

micro business

Means one which has fewer than ten employees and a turnover or balance sheet total of less than €2 million.

negotiated procedures

Means those procedures whereby the contracting authorities consult the economic operators of their choice and negotiate the terms of contract with one or more of these.

open procedures

Means those procedures whereby any interested economic operator may submit a tender to be considered for an award.

OJEU

Means the Official Journal of the European Union, which is the gazette of record for the European Union. Around 2500 new notices are advertised every week – these include invitations to tender, prior information notices, qualification systems and contract award notices. Public clients can use the eProcurement portal, myTenders to publish OJEU and lower value tenders. Where contracts fall within the ambit of the EU Directive, they must be advertised by OJEU.

OJEU procedures (or 'OJEU process')

Means the process of putting a contract through the OJEU, in accordance with procedures required under the EU Directive.

OJEU thresholds (or 'thresholds' or 'threshold values')

Means the financial thresholds within the EU Directive (and their national equivalents), above which a contract is caught by the EU Directive and national implementing legislation. As of January 2012 EU thresholds are £173,934 for supplies or services and £4,348,350 for works (excluding VAT).

Owners' Protective Professional Insurance ('OPPI')

Means insurance that indemnifies the project owner / client for direct claims arising out of the professional negligence of their design team of professional consultants, such as architects and engineers. The cover sits excess over all of the design team's individual annual professional indemnity insurances and is triggered when these policy limits are exceeded. OPPI effectively bridges any gaps resulting from lower liability insurance limits. OPPI insurance specifically covers the named project owner / client, independently of any other insurance which may apply.

PAS 91

Means 'Publicly Available Specification 91' a new specification for pre-qualification criteria in the construction industry developed by the British Standards Institution with the support of the Department for Business, Innovation and Skills.

PII

Means Professional Indemnity Insurance.

procurement

Means the acquisition by purchase, lease, rent, hire, transfer, loan or other legal means of the goods, services and works required and/or used by an organisation. The EU Directive refers to procurement of goods and services in all industries and across the whole public sector. Note that within the construction industry 'procurement' is sometimes referred to as the form of construction contract for the building. In this report we have sought to identify where we are concerned with the procurement of professional services such as architecture.

proportionality

The EU Directive, Article 44 states ... "levels of ability required for a specific contract must be related and proportionate to the subject matter of the contract."

PQQ

Means Pre Qualification Questionnaire (also known as Supplier Questionnaire). Usually issued to people and organisations wishing to express an interest in tendering for works, goods or services or to join a "Framework" approved list. It is preliminary pre tendering information submitted in response to an OJEU Notice prior to a tendering stage submission.

public client

Means, in the context of this report, the 'Contracting Authority'. Under the EU Directive, the 'Contracting authority' means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law.

QS

Means Quantity Surveyor or cost consultant.

restricted procedures

Means those procedures in which any economic operator may request to participate and whereby only those invited forward by the contracting authority on the basis of compliance and assessment of a PQQ response, may submit a tender. This is the main procedure used for the appointment of construction consultants in the UK.

Revised EU Directive

Means the European Commission's proposal for a Directive on public procurement (COM(2011) 896 final). This will come to replace the EU Directive when the text has been negotiated, agreed and is transposed into national law.

RIBA

Means the Royal Institute of British Architects.

Registered Provider (previously Registered Social Landlord)

'Registered Social Landlord' was the technical name for social landlords that in England were formerly registered with the Housing Corporation, or in Wales with the Welsh Government – most are housing associations, but there are also trusts, co-operatives and companies. The term 'Registered Provider' now replaces this.

RSS feeds

Means internet based formats used to publish frequently updated works such as blogs, notices or advertisements and enables web content to be syndicated automatically.

selection criteria (or 'criteria')

Means the criteria laid down by the public client through their application stages against which submissions are evaluated and weighted. Generally applied to the PQQ stage of a selection process.

service contracts

Means public contracts other than public works or supply contracts having as their object the provision of services (as referred to in the EU Directive, Annex II).

Services of General Economic Interest ('SGEI')

Mean activities that public authorities identify as being of particular importance to citizens and that would not be supplied (or would be supplied under different conditions) if there were no public intervention.

Single Project Insurance

This is project-specific insurance in the name of project owner/client, which normally operates on an aggregate basis and lasts for a specific time period (often 5 or 10 years), and covers the work of all the professionals engaged on the project.

SME

Means a small or medium sized enterprise, i.e. a company that has fewer than 250 employees, and has either an annual turnover not exceeding €40 million, or an annual Balance Sheet total not exceeding €27 million, so long as it satisfies the 'independence test'.

Soft Landings

Means an approach designed to smooth the transition into a building's use and to address problems that post-occupancy evaluations show to be widespread. More information on this approach can be found here: www.usablebuildings.co.uk/Pages/UBPublications/UBPubsSoftLandings.html

Tenderer

The terms 'contractor', 'supplier' and 'service provider' means any legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of works and/or a work, products or services; and which having submitted a tender is designated a 'tenderer'. The term 'economic operator' equally covers the concepts of contractor, supplier and service provider. One which has sought an invitation to take part in a restricted, negotiated procedure or a competitive dialogue shall be designated a 'candidate'.

tier 2 supplier

A tier 1 supplier is a main contractor, the tier 2 suppliers are their sub-contractors and tier 3 suppliers are suppliers to the sub-contractors. For example, in Design and Build Contracts, the architect is employed by the main contractor and becomes a 'tier 2 supplier' to the public client.

VAT

Means Value Added Tax.

works contracts

Means a building or civil engineering works contract.

Credits

We would extend our thanks to all who have assisted with the preparation of this report, in however small a way, and underpinning this the contributions from various RIBA committees and their officers; and specifically the following individuals, elected RIBA representatives, those from other organisations, and the various established working parties who have contributed their time and thoughts:

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In compiling this report, the RIBA also consulted the following organisations for their expert comments, who provided much valued feedback, so we would like to thank all for their participation:

Architects Council of Europe

Association of Consultant Engineers

British Institute of Interior Design

**Chartered Institute of Architectural
Technologists**

**Chartered Institute of Building Services
Engineers**

Construction Industry Council

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geometric stair, St Paul's
Cathedral, with artwork
'Flare 11' by Antony Gormley.
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