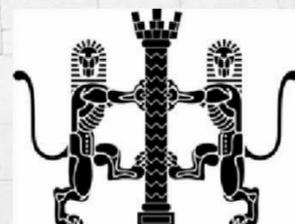


**EU GREEN PAPER**

**on the modernisation of EU public procurement policy  
Towards a more efficient European Procurement Market.**

**RESPONSE PAPER**

**RIBA** Small Practice Public Sector Procurement Working Group



# on the modernisation of EU public procurement policy

## Towards a more efficient European Procurement Market

### RESPONSE PAPER

This response to the EU Green Paper Consultation from Walter Menteth Architects, the RIBA Small Practice Public Sector Procurement Working Group and the RIBA, has been prepared by Walter Menteth on behalf of the group.

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## 1. OUTLINE

The workings of the EU Procurement process<sup>1</sup> including its British implementation<sup>2</sup> with “gold plating”<sup>3</sup> disadvantage micro and SME business<sup>4</sup>. Its implementation is statistically evident to be inequitably market targeted for the factored turnovers most commonly applied to EU thresholds. (FIG 9)

This report sets down a number of apparent issues mainly relating to restricted bids within the EU procurement system along with its interpretation and application at national level that we believe require urgent reform. It provides industry data, evidenced examples and discursive background, and proposes key opportunities for the comprehensive reform we feel are necessary.

For construction consultancies the existing system is an inflexible, discriminatory behemoth developed without recourse to the social and economic context and incurs substantial economic cost, to professionals and contracting authorities alike. It establishes a series of **barriers to the market**, prevents open competition (and therefore price differentiation), innovation, and locks out small, local, long experienced, specialist and niche consultancies, from accessing business. Preference instead is being given to a very small number of large, generalist practices employing only a small fraction of professional consultants. The system incurs project delays, is overly complex, attracts significant additional industry costs and barely addresses sustainability. Supply chains can become convoluted, authority across the sector has become dissipated and quality suffers. The procurement system is tailored to the specific needs of larger construction programmes with the difference between private construction contractors and professional service consultancies inadequately differentiated. With the majority of small professional service consultancies, cumulatively turning over a higher value of construction work and employing the bulk of their industry, being excluded from public works.

There is no evidence to suggest that industry costs in relation to achieving best value for money have improved, nor have economies of scale delivered savings through the EU mechanisms for joint procurement, for all but larger contracts. The increasing threat of legal challenge or the perception of it, has led to further constraint and necessitated ever more risk averse attitudes by procurement professionals.

The directives implementation is neither to the letter nor in the spirit of the guiding legislation EU directive 2004/18.<sup>5</sup>

Current **EU procedures hardly address Sustainable Green procurement**, instead we believe they **incentivises energy depletion and CO2 emissions**. Emissions and energy costs need to be factored in if national legislation and EU CO2 treaty obligations are to be met, energy dependence reduced and economies restructured. Application of **an emissions/energy rating system** (ill 1) to the supply of all goods and services within the internal market should be adopted with **ratings** for consultancy services on all smaller construction tenders **premium rated**. Differential **VAT rates** on new building **incentivise CO2 emissions**, by distorting the construction market by sector (Fig. 14 & 15) and discriminate against smaller consultancies and private contractors by reducing their market share. To address current economic and societal imperatives we recommend the **differentiated VAT rates by age of construction** (new vis old) **be abolished**, with clear and simple new policy making **sustainability the primary determinant of VAT exemption** allowing the EU to accelerate reductions in CO2 emissions. This transition would offer potential employment growth, technological innovation and performance improvements addressing the CO2 imperative. Taken together with proposals outlined below we believe the procurement process provides opportunities through increased efficiencies, reduced timescales,

better market access, with incentives for sustainable and bottom up development that could contribute to industry growth and higher employment through distributive means.

To effectively **address open market access** by all consultancy professionals **we suggest the EU** should have **set aspirations** for the **percentage of works going to small and micro consultancy's** that are **proportional to the existing social and economic context**, that **data be collated** on EU procurement sufficient **to inform future policy** and the public alike, and that **clear and simple guidance on implementation** should be issued by national governments.

The industry is burdened by bureaucracy, costs and timescales that are inefficient for tendering all but the largest of works (ill 2). This has had a directly detrimental bearing on the culture and ability of procuring authorities to engage directly with small & micro businesses. **Simplification, with reductions in time and cost are seen as the priority.** To address this we suggest the 'abstract' **EU thresholds be effectively removed**, a new **fast track low cost 'LIGHT' tender procedure** be adopted along with a **Collegiate Portal (CP)** formed by the Institutes of construction industry professionals for accessing accreditation information and standardised data (and for larger tenders other managerial matrices).

Radically streamlined 'Light' tenders principled to achieve more equitable thinning, along with the CP providing one stop access for automatic dissemination (via self selecting filters) of contract notices, the uploading of competencies and accreditation; simplify, economise and accelerate procedures for all.

Within current EU procurement there is a perception of significant systemic mismatch between project requirements, their type, end users, and value; and the appropriate experience, capabilities and added value of consultancy service providers. In view of this **we have suggested** that in all tenders the notified criteria should include **upper and lower range banding** on project values and fees along with **upper and lower limit bandings** for a consultancy's financial standing. This proposed banding does not constrain market competition as large practices can set up small works divisions.

Encouragement of bottom up development is important so we recommend consultancy involvement in **community enablement** be exempt, along with specialist areas such as **culture and historic buildings** and that more **weight be given** throughout the procurement process **to nongovernmental stakeholders**. Where government authority **funding aid** is awarded **to genuinely independent organisations** they **be exempt** from the requirement for their consultants to be appointed through EU procedures.

In current procedures risk assessment methodologies have the impact of defining value for money **without adequate recourse to experience, output quality, architectural criteria or innovation**. For vigorous economic **advancement based on performance standards, quality and innovation** we propose instead that **'Opportunity' assessments rather than 'Risk'** methodologies predominate. We have suggested procurement evaluations also be transparent and addressed by suitable, adequately trained, supported and **qualified procurement teams**, independently supported by the appropriate design professionals with **increased stakeholder participation**. We call for project based **PI insurance** for **EU harmonisation**, reducing costs, facilitating more flexibility in the forms of construction contracts whilst incentivising both national and transnational consultancy consortia. **EU aspirations** should be set proportionately for **formalising more open competitions** within the system.

**To the detriment of, choice, innovation quality and small & micro consultancies** we see demand for the **aggregation of contracts** led by the procedural cost of the tender process and, in the new build sector by taxation policy (VAT). There is a need for **clarity, rules and restraint** in the application of **frameworks and public-public procurement** if small & micro consultancies are

to have market access. We propose **functional, geographic and electorally defined boundaries** to the remit of contracting authorities and limitations on their monopolistic enlargement,

Aggregated procurement locks out micro & SME consultancies whilst restricting market access to all but a small minority. **'Bundling up'** small works packages into sizes **to raise them to 'Lot' values** for distribution to framework appointed consultants denies market access for micro-SME's and should be restrained. We propose that aggregated contracts should **be limited to a maximum of three years**, be advertised as **specific to pre-defined programmes of works**, with the **terms and conditions of a consultancy's appointment notified prior to selection** procedures and that the apportionment of **works be fairly accessible by all framework consultants** once appointed. Whenever **aggregated contracts** have been **won on** criteria that include **fee bids**, the subsequent use of **further fee bids** in subsequent competitive **mini tenders** or the requirement for consultants to **prepare free design** work should be **curtailed**. The deployment of Consultancies on aggregated contracts should be limited to the banded range values of individual lots advertised in the contract notice.

The employment of consultants as tier 2 contractors extends managerial and supply chain costs, divorcing professional and propriety relationships, and incurs liabilities that are cumulative disincentives to micro - small consultancies. Subsequent to the letting of a contract **we propose** that a new form of direct **contractual relationship** be approved for use (by reverse novation from the contractor) between the contracting authority and the service consultant in respect of architectural standards, quality, and client liaison whilst also addressing issues arising relating to surety of payment.

<sup>1</sup> EU Directive 2004/18/EC

<sup>2</sup> UK Office of Government Commerce (OGC) EU Procurement Guidance Introduction to the EU Procurement Rules 2008 & PAS91:2010 Construction Related Procurement – Prequalification Questionnaires BSI 2010 1<sup>st</sup> Oct 2010;.

<sup>3</sup> "Gold Plating" – The addition by national legislation or directive of supplementary requirements

<sup>4</sup> SME is the recognised abbreviation for Small and Medium Sized Enterprises.

*The EU adopted Recommendation 2003/361/EC on 6th May 2003, effective 1 Jan 2005 (published in OJ L 124 of 20.5.2003, p.36). The Commission has a third category called Micro Enterprises. A micro enterprise has a headcount of less than 10, and a turnover or balance sheet total of not more than 2 million. A small enterprise has a headcount of less than 50, and a turnover or balance sheet total of not more than 10 million. A medium-sized enterprise has a headcount of less than 250 and a turnover of not more than euro 50 m. or a balance sheet total of not more than 43 m.*

*The majority of the UK workforce is employed by SMEs.*

*Statistics published by BIS (previously BERR) Small Business Service (SBS) Statistics Unit show that of 4.8 million UK businesses, 99.9% were SMEs (Small & Medium Sized Enterprise Statistics for the UK & Regions 2008, published 14.10.2009)*

<sup>5</sup> EU Directive 2004/18/EC

Clause (2) ... the principal of proportionality...

*"... seeking to set within specified bounds the action taken by the institutions of the Union. Under this rule, the institutions' involvement must be limited to what is necessary to achieve the objectives of the Treaties. In other words, the extent of the action must be in keeping with the aim pursued.*

*This means that when various forms of intervention are available to the Union, it must, where the effect is the same, opt for the approach which leaves the greatest freedom to the Member States and individuals."*

Clause (5) Under Article 6 of the Treaty,

*environmental protection requirements are to be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of that Treaty, in particular with a view to promoting sustainable development*

Clause (8) ... 'advice does not have the effect of precluding competition'

Clause (29) *The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition.*

Article 23 *Technical specifications<sup>2</sup>. Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions*

Article 44 *Verification of the Suitability and choice ... levels of ability required for a specific contract must be related and proportionate to the subject-matter of the contract.*

## **2. SUMMARY RECOMMENDATIONS:-**

### **ASPIRATIONS**

1. The EU & UK sets aspirations for micro- SME consultancy's access to work in the construction industry that are proportional to the distribution by size of consultancy firms and numbers of architects working in them.

### **CATEGORY CLASSIFICATION OF PROFESSIONALS**

1. Professionals be recognized as a separate category (or sub-category) in classifications of EU public contracts (Annex A).

### **SUSTAINABLE GREEN PROCUREMENT**

1. CO2 emissions should be factored into the procurement of all goods and services.
2. A simple EU Energy Rating System be applied to the Energy & Emissions arising from procurement of professional consultancy services
3. Travel distance be used to define Consultants Procurement Energy Ratings, with 'Light' tenders always required to be 'A' Rated.
4. There should be standard unitary VAT Rates across new and existing construction with sustainability policy the exemptions priority.

### **IMPROVING ACCESS & REMOVING INTERNAL MARKET THRESHOLDS**

1. Access to the internal market by micro-SME professional consultancys' and tendering authorities should be radically simplified and with acceptance of increased risk.
2. That EU/nations take more pro-active responsibility with the representative organisations of construction consultants for opening up the market.
3. That thresholds operating within the Internal Market be abolished.
4. Tendering procedures be economised, simplified and accelerated concentrating on deeper access and penetration of the market.
5. "Collegiate Portals" (CPs) be developed by the institutes of construction consultants along with 'Light' tender procedures.

### **ENHANCING USE OF OPEN COMPETITIONS**

1. There should be an EU aspiration to hold Open Design Competitions with their value and numbers proportionate to works tendered

### **CRITERIA**

1. Financial criteria sought in tenders should be proportionate to the size of a project commission and the consultancy fee derived.

### **RISK, RESPONSIBILITY & OPPORTUNITY**

1. The concept of 'Opportunity' assessment rather than 'Risk' management should be the predominant method of evaluation.
2. Risk criteria should be severely constrained in EU procurement procedures for professional consultants holding recognised independent accreditation.
3. Institutes of Professional construction consultants work with the EU/states to provide better methodologies to evaluate opportunity in construction quality.
4. Exemptions and exclusions should be applied to specialist sectors and were betterment from bottom up economic growth is deliverable.

### **PI INSURANCE**

1. Project based PI insurance be adopted within the UK in harmony with the rest of Europe, rather than practice based insurance.

## **FEES**

1. To provide for consultancy's service appropriately resourced to the size of any project an upper and lower banding limit on fees be applied to all but top value projects.
2. That 'success' based fees be banned under public procurement procedures
3. The proposed full terms of a professional consultants appointment be notified prior to selection stage procedures for 'Standard' contracts.
4. That exploitative fee practices be restrained by regulation and no work be done without payment.

## **TURNOVER AS INDICATORS OF COMPETENCE.**

1. Weightings for turnover in tender evaluations should be constrained giving way to Opportunity assessments
2. Where ever turnover is retained as a required criteria it be derived as a ranged banding from the works value and service requirements ascertained prior to tender, with a project consultancy fee range extrapolated, and a reasonable multiplying factor added.
3. To provide for consultancy's service appropriately scaled to the size of any project an upper and lower banding limit on turnover be applied to all but top value projects.

## **AGGREGATED CONTRACTS**

1. The term of aggregate construction contracts be limited to three years with the exemption of utilities
2. Any fee bids obtained competitively during the bid stage be included as 'a specified criteria' and may not then by 'mini tender' be retendered.
3. Deployments of mini tenders under aggregated contracts were ever this has adverse impact on the likely competitiveness of micro & SME consultancies should be restrained.
4. Exploitive practice such as requiring 'at risk' speculative work for competitive 'mini bids' unless fully remunerated be curtailed.
5. Procedures be defined and guidance issued on giving fair access to work for all consultants and contractors within frameworks
6. Use of aggregated contracts be restrained.

## **AGGREGATING CONTRACTS IN PUBLIC-PUBLIC CO-OPERATION**

1. Clarification be provided on service contracts tendered by and carried out '*for the immediate benefit of the contracting authority*' with their remit constituting their electoral, functional or geographic area.

## **CONSULTANTS AS TIER 2 SUPPLERS**

1. VAT should provide a 'level playing field' for professional construction consultancy services throughout the construction industry. When these are categorised as 'professional' services they should be exempt from consideration as suppliers under the construction industry VAT regime.

## **POLICY MONITORING**

1. That EU data be collated for public dissemination to permit evaluation of the EU Procurement directive for professional construction services.

## **SPECIFIC RECOMMENDATIONS:-**

### **COLLEGIATE PORTAL (CP)**

1. The certified institutes for construction professionals develop an EU approved digital repository within their individual institutes. This repository be in accordance with the recognised competency criteria of their profession, its qualifications and certification, along with filtering criteria provided by individual businesses relating to their own market reach and individual business specific competencies.
2. National 'Collegiate PQ Portal' (CP) administered jointly by the certifying institutes of construction industry professionals be established connecting the institutes individual accreditation repositories under a single portal.
3. The single portal of the national CP provides access for data transfer between construction professionals (as either individual consultancy's or so as to facilitate consortia) and contracting authorities.
4. The CP be used by contracting authorities for distribution of tender notices to business, disseminated according to self selecting filtering criteria.
5. The CP be used by construction consultancies to transfer non tender specific professional competency criteria for specific tenders directly to tender authorities.
6. Accreditation data be standardised and call outs selected relevant only to the specified tender parameters.

### **'LIGHT' Tenders**

1. Pro-active e-distribution of tenders be developed to give wider market access for micro-SME professional consultancies through the Collegiate Portal (CP) (or other e-media).
2. Only tenders required to be open to the External Market should be advertised through OJEU notice procedures as well as the CP (EU Threshold values)
3. For professional consultancy's new 'Light' tenders be for restricted bid procedures for all works up to a value set well above the threshold levels determined by FTA's.

### **'LIGHT' Tenders – Selection Stage**

1. A simple new fast track EU 'Light' tender procedure be introduced for all professional consultants' services.
2. The upper limit of value of 'Light' tenders should be set proportionally to the size & turnover of micro-small consultancy's.
3. There be a minimal 'self selecting' notice procedure comprising only an indicative project Briefing.
4. Notice briefing requirements be incrementally stepped to the minimum required for compliance only when values reach the FTA determined levels. (and proportionate to the work value).
5. Contracting authorities apply both lower and upper limiting range bandings, proportionate to construction values, in all tender notices.
6. A contracting authority's minimal selecting criteria would also be incrementally stepped up to the external market thresholds (and proportionate to the work value).
7. 'Light' tender notices be automatically disseminated by the CP to consultancy's matched by their individual self selecting filters.
8. Having appraised the project brief Consultancies register their digital response on a 'First Come First Served' basis with only a specified maximum number of acceptable applicants. (It is incumbent on practices to respond quickly).

9. Numbers accepted on a 'First Come First Served' basis would be advertised and incrementally increased according to a works value. (Starting from 5)
10. Only these numbers of consultants accepted are permitted to proceed further in the 'Light' tender process.
11. Upon being accepted all required non bid specific information would become available to the tendering authority from the CP for due diligence checking upon making an award.

#### **'LIGHT' Tenders – AWARD STAGE**

1. Award stage selection procedures should be proportionate to works value.
2. Award stage criteria (see below- applied progressively to specific projects) would require only information accessible to tendering authorities via the CP and consultants websites.
3. Selection to include a simple project specific 'letter' proportionately limited by length prior to a selective meeting, interview and/or presentation procedure.
4. Applicants selected for meeting or interview would be required with their attendance to make full submission of their anticipated scope of service, terms and fee.
5. Tendering authorities would be able to re-advertise before awarding a contract if, on the basis of standards or quality, they were justifiably unable to select suitable candidates.
6. The application of a fuller second award stage tender submission should only be applied well above current EU External Market thresholds. (a 'Standard' tender)

#### **'STANDARD' Tenders**

1. The threshold between 'Light' and standard procedures be proportionately adjusted to mitigate any threshold constraint.
2. A transparently accessible notification process be adopted utilising the CP e portal.
3. Where lots are used they be capable of being disseminated in their groupings or as individual lots.
4. There be no 'first come first served' selection but at an early stage in the process random selection also be considered for use, proportionately to the value of works, to thin 'standard' tenders in preference to methodologies which become inequitable and discriminatory, with no such selection applied to top end projects by value.
5. All required non bid specific information would become available to the tendering authority from the CP for due diligence checking upon making an award.
6. Contracting authorities apply both lower and upper limiting financial range bandings, proportionate to construction values, in all notices and selection evaluations of tenders on all 'standard' tenders other than those at the top end of the market.
7. Standard tenders adopt a full second award stage selection procedure.

#### **CRITERIA**

1. There be an agreed matrix of standard formats for management and human resources strategies commensurate with the scale of project works.
2. In 'Light' tenders consultancies be required to indicate their experience in a broad banded range relative to the level of a projects construction value.
3. Previous professional consultancy experience should be provable by measurable means such as nationally recognised awards, certifications, publications, academic credentials and/or through appraisal by independent qualified expert opinion.

4. Previous professional consultancy experience with the authority contracting works should be provable by independent measurable means such as end user approval, nationally recognised awards, certifications, publications and/or through appraisal by independent qualified expert opinion (as set out elsewhere).
5. All 'Light' tenders have quality assessment criteria evaluated by suitably trained professionals.
6. All other tenders have quality assessment criteria evaluated by a suitably trained and qualified independent professional consultant directly related to the service being tendered.
7. The role and qualifications of bid assessors should be transparently available to bid applicants.
8. For civic work commissions local independent stakeholders should be invited onto selection and award processes.
9. That a fully transparent e-posting of scoring system should always be available to applicants as it is often unclear how such criteria are applied to bid assessments.
10. In restricted bids there should be an upper limit of 15% on the weighting given to any single financial criteria, and with no more than 30% weighting for all financial criteria.
11. In restricted bids for 'Light' tenders there should be an upper limit of 20% on the weighting given to all financial criteria.

#### **RISK RESPONSIBILITY & OPPORTUNITY**

1. Risk management criteria in 'Light' tenders should form no more than 5% of any evaluation.
2. The legality of contracting authorities making grant agreements for aid to an independently constituted legal (arms length) organisations that is not *for the immediate benefit of the contracting authority* needs exemptions and clarifications.

#### **CONSULTANTS AS TIER 2 SUPPLIERS**

1. Upon the award of an EU procured contract which includes tier 2 professional consultants, a form of contractual relationship be approved for use, to allow for re-establishment of a direct contractual relationships covering quality standards, legislative propriety and client design liaison with surety of payment provision between the consultant architect and contracting authority

### 3. ASPIRATIONS & DATA

#### • ASPIRATIONS

The UK Government has announced a commitment to make positive steps in levelling the playing field for SMEs with an aspiration to award 25% of contracts to SMEs while ensuring that value for money to the tax payer is not compromised. The DCLG state that in the last financial year 16% of the Department's spend was with SMEs.<sup>1</sup>

Recommendation:-

**2. The EU & UK sets aspirations for micro- SME consultancy's access to work in the construction industry that are proportional to the distribution by size of consultancy firms and numbers of architects working in them.**

#### • DATA

To put the UK Governments aspirations in perspective:-

- 98.9% of Architectural Firms are micro and small businesses (employ 50 or less).
- 89.5 % of Architectural Firms are micro businesses (with 10 or fewer employed).
- 97.6% of all Professional Consultancy Firms (architects, civil & structural engineers, building services, Quantity Surveyors, and others) within the construction industry are micro and small businesses (employ 50 or less).
- 83% of all Professional Consultancy Firms within the construction industry are micro businesses. (with 10 or fewer employed)<sup>2</sup>
  
- 79% of UK Chartered Architectural Practices employing 10 or fewer staff, and employing 40% of the total number of Chartered UK Architects are within the micro business category.<sup>3</sup>
  
- There are 32,939 Architects on the UK ARB Register<sup>4</sup>
  
- 4.4% of all UK Architects (1,445 architects) work in 6 Chartered Practices having 250 architects or above.
- 9.56% of UK Architects (3,150 architects) work in 38 Practices having 50 staff or above but less than 200. (source:- AJ 100 survey)<sup>5</sup>
  
- 44% of UK Chartered Practices have between 11 and 50 staff and are within the small business category (Fig. 5)
- 86% of UK architects work in practices of 50 architects or less and are Mico & Small Businesses.<sup>6</sup>
  
- A £1m threshold on turnover applied in a tender may exclude half of the available profession's talent, and reduces market access to just 15% of potential practices.<sup>7</sup> (This is a practice turnover value commonly derived from factoring the EU thresholds by 8 or 10)
  
- The EU evaluation of the proportion of SMEs amongst companies which won public contracts above the EU thresholds was between 58% and 61% in the EU-27. In terms of estimated total contract value secured, SMEs accounted for between 31% and 38% of public procurement while their overall share in the economy, as calculated on the basis of their combined turnover is 52%.<sup>8</sup>

- Private contractors employing 1-13 turned over £4,445m (19%) of the UK construction work in 2009 (Table 3.3) (Fig 12)
- Private contractors employing between 1-114 turned over £11,548m (50%) by value. of this total of private contractors however 6,415 firms (14.3%) were involved exclusively in civil engineering (Table 3.6) <sup>9</sup> (Fig 12)
- For the 133 architectural contracts advertised in the UK by the Official Journal of the European Union (OJEU) between July 2004 and July 2005, just 11% were won by practices employing 10 people or fewer. <sup>10</sup>
- 67% of procurement officers respondents stated that procurement costs and administrative burdens had worsened as a result of the directive,
- 54% of procurement officers responded that since 2006 the simplicity of the system had worsened and that there was greater legal uncertainty. <sup>11</sup>  
*And these are views generally held but to a far greater extent by the members of the architectural profession.*

<sup>1</sup> DCLG 30 Dec 2010 to Walter Menteth Architects ref 040615

<sup>2</sup> ONS Construction Industry Annual 2010 (Ch.12 Fig 12.11) & CIC

<sup>3</sup> RIBA Chartered Practice Directorate data for 2009

<sup>4</sup> ARB (Architects Registration Board Annual Report Dec. 2009) NB Not incl. foreign nationals professionally registered abroad

<sup>5</sup> Source:- Architects Journal - AJ 100 Survey- Dec 2010, extrapolated indicatively with ARB data.

<sup>6</sup> Architects Journal - AJ 100 Survey- Dec 2010, extrapolated by Walter Menteth Architects indicatively with ARB, RIBA Practice data & ONS data.

<sup>7</sup> RIBA Chartered Practice Directorate data extrapolated 2011

<sup>8</sup> Evaluation of SMEs' access to public procurement markets in the EU (2009 update), Sept. 2010. By EU Directorate General of Enterprise and Industry. Consultant: GHK. EC study covering period between 2006 & 2008

<sup>9</sup> ONS Construction Industry Annual 2010 (Ch.3 Table 3.3 & 3.6)

<sup>10</sup> Phillip Dawson of Fraser Brown MacKenna Architects Research published in 2005.

<sup>11</sup> Survey on the Impact of EU Procurement Legislation on Councils by The Local Government Association (LGA) Dec 2010

## 4. CATEGORY CLASSIFICATION OF PROFESSIONALS

Recommendation:-

- 1. Professionals be recognized as a separate category (or sub-category) in classifications of EU public contracts. <sup>1</sup>**

All construction professionals, and other professionals such as lawyers are by vocation, specialized education and as accredited by national professional institutes, provide through different economic structures distinctly different service and to that of constructors<sup>2</sup> and other service providers. The defined remit of a professional service extends beyond the scope of legal commercial contract<sup>3</sup>. Such distinctions should be recognized by separate classification within the public contracts classifications **Annex IIA**. This would permit the EU Directive to draw a clear distinction in procurement practice between contracts for the design and construction of works. Policy in respect of professional services could be enhanced by removal of the current restraints.

<sup>1</sup> Services listed in Annex II A of Directive 2004/18/EC or Annex XVII A of Directive 2004/17/EC

<sup>2</sup> PAS 91:2010 Construction related procurement BSI Oct.2010:- this 'one size fits all' guidance was prepared without any steering group representation from any institutes of construction design professionals (RIBA, RICS, ACE etc), with only 1 No. recommended Core Qu module (B1) distinguishing between professional design works and construction processes

leaving the so called 'level playing field' financial guidance criteria required of a consultancy's at a level comparable to that of a constructor.

<sup>3</sup> Example RIBA Code of Professional Conduct 2005:- Three Principals:- Integrity, Competence & Relationships; with Professional Values that support these principles

## 5. SUSTAINABLE GREEN PROCUREMENT

*"climate change is the greatest and widest-ranging market failure ever seen, presenting a unique challenge for economics" Lord Stern<sup>1</sup>*

Recommendations:-

- 1. CO2 emissions should be factored into the procurement of all goods and services.**
- 2. A simple EU Energy Rating System<sup>2</sup> be applied to the Energy & Emissions arising from procurement of professional consultancy services**
- 3. Travel distance be used to define Consultants Procurement Energy Ratings, with 'Light' tenders always required to be 'A' Rated.**
- 4. There should be standard unitary VAT Rates across new and existing construction with sustainability policy the exemptions priority.**

### • RATING CO2 EMISSIONS & TRANSPORTATION ENERGY

Instruments are required in all EU policy areas to reduce CO2 emissions and external market energy dependency, whilst improving energy security and restraining demand.

The low cost of hydro carbon fuels over the past 40yrs has lead to significant global market distortions. The burning of hydro carbons has been the significant contribution to CO2 emissions. The EU market is poorly prepared for the structural economic change that is inevitable with the depletion of supplies.

Transportation and distribution energy costs and the arising CO2 emissions are not factored into the current procurement system. They are only accounted by national regulations within individual works contracts. This constrains sustainable community policy. These also remain discounted on products and services distributed from the external market. We suggest that necessary structural change be addressed within the procurement process by factoring in emissions. This should apply not only to the provision of consultancy services but throughout the procurement process.

In construction services travel to undertake contracts over transcontinental distances is neither economically viable nor is it desirable for CO2 emissions in a sustainable green policy. It incentivizes environmental costs whilst adding procurement costs to open market procedures (above FTA thresholds).

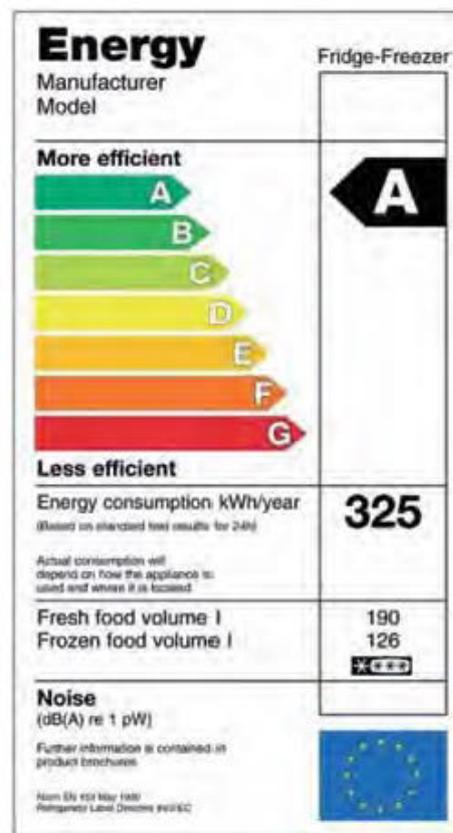
Only 1.6% of public contracts are awarded to operators from other member states.<sup>3</sup> 89% of respondent procurement officers had rarely or never received tenders from suppliers based outside the UK, with only 1% responding that contracts had sometimes been awarded to a supplier from another EU country.<sup>4</sup>

Most consultancy professionals limit their physical market reach according to their economic strength and size. The vast majority, if not all, small and medium scaled tender applications already come from circumscribed geographical areas; whilst logic determines that the EU Policy principal is already circumvented by economics and in a variety of other ways.<sup>5</sup>

We suggest that a policy of restraint be applied on CO2 emissions in the procurement process, and that a simple system be adopted for issuing notices for all goods and services with evaluations weighted accordingly. This might take the following form

The EU energy rating label, for example (ill 1), is a simple 7 tier system with banded scales from A-G that provides simplicity, clarity and easy graphic recognition. This method of calibration might provide a model of sufficient versatility to address the energy and emissions criteria. This principal could be applied to the procurement of consultants services by the simple method of evaluating the distance of travel to the point of service delivery. For example a notice seeking an 'A' rating might reflect a max. travel distance of 150 km. with a B rating 250km and so on. It would be mandatory for all 'Light' contracts (see below) to have 'A' Rated consultant services. There-on the scale could be calibrated to the size by value of a contract or its objectives. This would allow transnational competition with all Border States, and we believe be compliant equally with the FTA's and the EU obligations under its Environmental Treaties.

No business would be precluded from access to work by this proposal as they would be capable of establishing local offices within any EU location. This clarifies the means by which the existing internal market operates, encourages sustainable communities and addresses the need for structural economic adjustment.



ill. 1

- **VAT**

UK VAT on new build construction is zero rated, whereas works to the existing building stock typically is not. A number of exemptions are then applied, such as historic buildings and disability access which increase the systems complexity. In EU states where VAT (typical standard rate 20%) is differentiated in this way it incentivises new build whilst distorting and constrain the existing building market. Application of differential VAT levels within two different branches of one sector constrains policy implementation across the sector and increases systemic costs. These VAT differentials divert investment by incentivising Private Finance towards new construction and in Public Partnerships. (Fig. 14 & 15) This mechanism developed historically to stimulate new construction for specific social and economic needs. This market distortion is a fundamental issue for any sustainable green procurement policy.

Because:-

- *By 2050; probably 87% of the existing dwelling stock (approx. 21.8m) will remain with new dwellings built (since 1996) accounting for 9.4m. To achieve just 60% CO2 reductions<sup>6</sup> there needs to be reductions in the total energy demand of the existing UK homes of a projected 70% through performance improvement to both fabric and energy services along with a step change in energy supply efficiencies<sup>7</sup>.*
- *By 2050; Space heating of new dwellings are projected to average 2,000 kWh pa. whilst an average existing building are currently 14,600 kWh pa, with performance improvements of 5,600 kWh pa anticipated with existing technologies.<sup>8</sup> In other words the savings made in CO2 emissions (122,080m kWh pa) by addressing the existing dwelling stock outweigh, by a factor of*

*approx 6.5, those that may arise from all new dwellings (Total 18,800m kWh pa). (NB Figures used assume that by 2020 all new dwellings are carbon neutral).*

The majority of CO2 emissions emanate from the existing building stock along with the process of new construction. Current VAT differentials incentivise these emissions; distort the market and its ability to respond to necessary climate change policy; constrain available approaches, render initiatives complex and economically costly; directs investment in solutions towards new energy supply sources rather than to its point of consumption; with resources targeted to larger scale projects at the expense of the small. This makes the market unresponsive, inflexible, and stifles innovation. There is recognition that CO2 emissions from the majority of the existing building stock can't be addressed sufficiently without addressing existing VAT differentials.

For example:-

- *Constructing a new airport, hotel or motorway service station will be zero rated for VAT whilst refurbishing dwellings to achieve a step change in their energy performance is not.*
- *The differential VAT rates are a significant margin that renders the future reuse of many otherwise sound buildings redundant, despite their structure and fabric being near to carbon neutral. This is an economic inefficiency that is also environmentally and culturally destructive. Technologies coming to market are raising the environmental performance of the existing building stock yet upgrading works can only be delivered at a relative premium.*
- *The embodied energy and carbon in a new building replacing an existing building is offset after about 13 years, if the construction is to a high standard of energy efficiency and low level of energy consumption.<sup>9</sup> Whether this projection is optimistic given that target performances in new buildings are most frequently not being met, it does quantify the significant time lag in achieving carbon reductions from replacement of the existing stock.*

VAT exemption for the purpose of stimulating all new construction also tends to place economic constraint on micro SME businesses in the industry, by incentivising larger contracts for new works rather than husbandry of the existing. **(Fig. 15)** The precursory that this approach delivers economies of scale is in the context of climate change mitigation remains speculative. To gear economic and commercial activity towards efficiently delivering universal mitigation the existing procurement system needs to prioritise removing market distortions that constrain sustainable development.

We believe that VAT differentials based on the type of construction (ie whether new or old) should be removed to accelerate improvement to the existing stock.

With a level playing field set between new and old buildings and standard unitary VAT, a construction VAT regime directly prioritizing sustainable objectives with an embedded energy policy could be clarified. Exemptions or rebates might then be applied across the construction sector according to policy criteria independent of whether buildings are new or old. Such an exemptions policy might also still encompass cultural artifacts and disabled access, but with its overriding priority being new sustainability programmes, (performance improvements to existing stock, primary energy infrastructure, micro generation, and flood defenses etc.,) along with the specifics of economic, geographical and political context otherwise, according to transnational, national, regional and local imperatives. By being anchored to sustainable objectives and energy policy rather than a buildings age this construction taxation regime is efficiently targeted to CO2 reductions.

If this policy approach were calibrated or stepped in its application and implementation another benefit might be that it could be used for directing / incentivising improvements above minimum performance standards in output and quality measured upon completion - to reward meritorious achievement reaching or exceeding a targeted performance, (with risk accepted by developer

through the production process) rather than such incentives always being receivable from commencement and through construction irrespective of performance on completion. This could incentivize advancement and innovation in technology and performance.

We believe this could increase capacity to address climate change within the existing stock, clarify the existing tax regime, and stimulating innovation and employment within the sector whilst reducing the system cost of the taxation regimes and industry.

<sup>1</sup> Lord Stern Review 'The economics of Climate Change - Exec Summary 2006

<sup>2</sup> EU Energy Rating Label enable comparisons between the energy efficiency and are an incentive for manufacturers to improve the energy performance of their products.

<sup>3</sup> EU Procurement Green Paper COM (2011) 15 27.1.2011 ref p. 4 -ref 9

<sup>4</sup> LGA survey 'The Impact of EU Procurement....' Dec 2010 Table 9 (NB data on the values of contracts was not supplied)

<sup>5</sup> By for example specifying the requirement that practices must be available for meetings or on site at short notice.

<sup>6</sup> The UK is committed to two legally binding EU Directives: the European Climate Change Act 2008 and the 2009 Renewables Obligation. The first commits to reducing carbon emissions from 1990 levels by 80% by 2050 the second that by 2020 25% of UK energy has to come from renewable.

<sup>7</sup> The Challenge of Existing UK Houses. Dr Brenda Boardman Environmental Change Institute, Oxford Henderson Colloquium Cambridge 10-12 July 2006:- Accounting for population growth to approx 66.8m The UK has a legacy of old, inefficient dwellings and by 2050 at least 87% of these are probably still occupied. Whatever the standard of new buildings, this quantity of existing construction represents a major challenge to the objective of sustainable cities. .... The combined effect of more people and smaller households results in a 24% increase in household numbers between 2002 and 2050: from 25.6 to 31.8m. ....The present rate of demolition in the UK is extremely low at around 20,000 dwellings pa, ie less than 0.1%. At this rate, the stock turns over once in nearly 1,300 years. This is unlikely to be a sound housing or energy strategy. .. This is projected on reduction in the space heating requirements of existing dwellings achieved through fabric alterations and a fourfold increase in the rate of demolition (a notably high social and economic cost).

<sup>8</sup> Ibid :- "The embodied energy and carbon in a new building is offset after about 13 years, if the construction is to a high standard of energy efficiency and low level of energy consumption."

<sup>9</sup> Ibid

## 6. IMPROVING ACCESS & REMOVING INTERNAL MARKET THRESHOLDS

"less is more" Mies van der Rohe

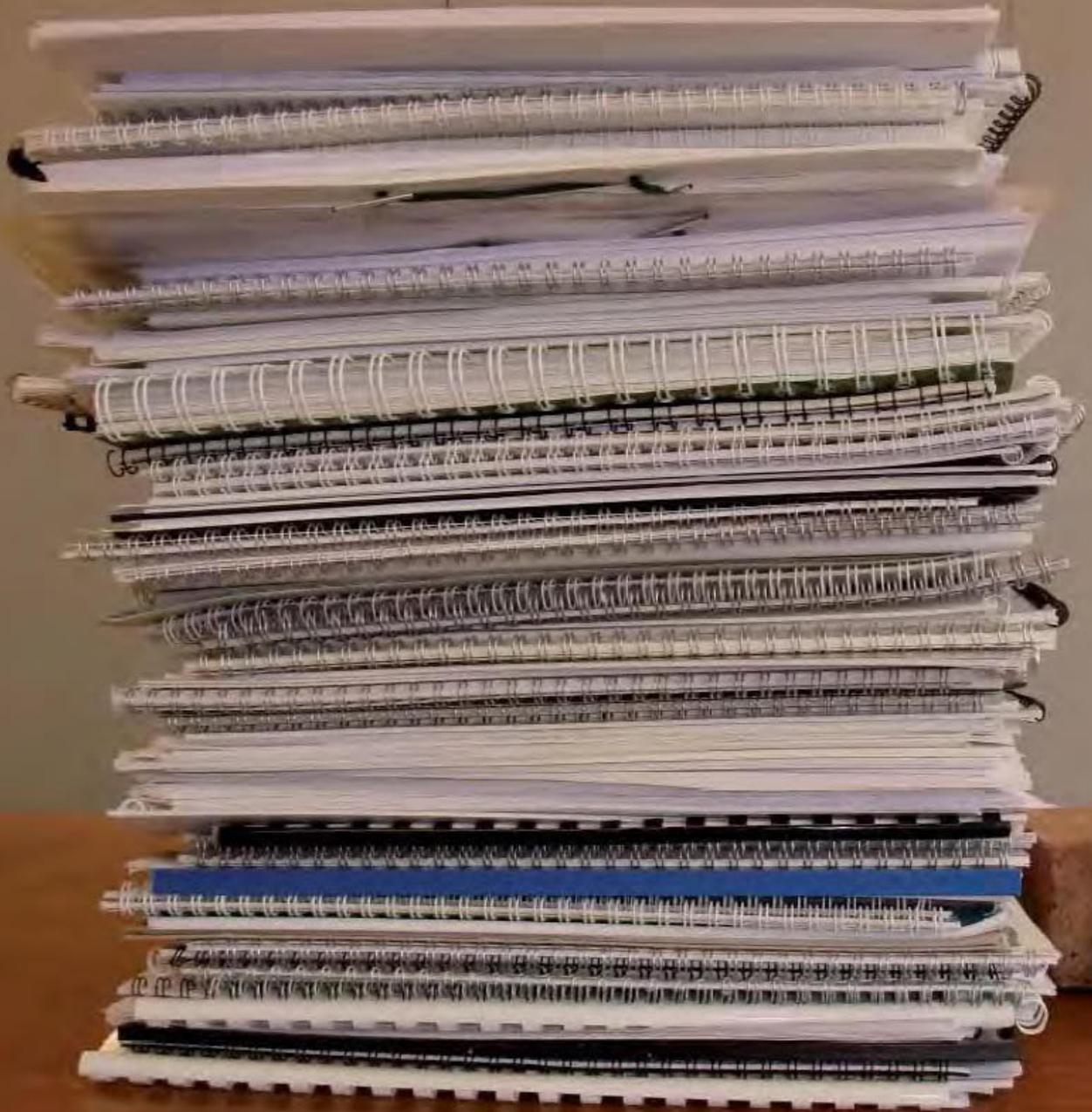
Recommendations:-

- 2. Access to the internal market by micro-SME professional consultancys' and tendering authorities should be radically simplified and with acceptance of increased risk.**
- 3. That EU/nation states take more pro-active responsibility with the representative organisations of construction consultants for opening up the market.**
- 4. That thresholds operating within the Internal Market be abolished.**
- 5. Tendering procedures be economised, simplified and accelerated concentrating on deeper access and penetration of the market.**
- 6. "Collegiate Portals" (CPs) be developed by the institutes of construction consultants along with simple new fast track 'Light' tender procedure.**

Transformation of market access requires radical simplification and acceptance of increased risk. The current EU Thresholds constrain and discriminate whilst appearing to contribute to market distortion. (Fig. 9).

Large numbers of small-micro practices report having difficulty accessing the market through OJEU due to its perceived complexity and obscurity (along with their low expectation of success). The OJEU interface is unwelcoming, guidance is unfriendly, information is not readily accessible, feed criteria are obscure, and netting selections unpredictable. Rather than being welcomed in to answer

simple questions to a website of the highest possible standard (as one might expect from the EU), one first needs to become conversant with the multifarious EU rules on categorisations and descriptions for the provision of data along with the respective commercial industrial sectors before being able to give one's own business data position.



### **iii. 2**

*Sample of speculative tender documentation submissions undertaken by a micro architectural consultancy over a 3 year period for EU procurement procedures. This does not include specific mini tender submissions nor any architectural designs undertaken and their associated documentation.*

*Current procedures require the evaluation of each submission by a contracting authority. Multiplied by the number of such tenders in the construction industry this constitutes a high economic cost and an inefficient drain on industry resources.*

This OJEU interface is a barrier, its complexity is evidenced by the large numbers of independent commercial web services providers that have arisen to disseminate and filter OJEU information. Whilst large practices have established dedicated procurement teams to access, sort, sift and filter notices published within OJEU this is beyond the means of most micro-SME consultancies. Furthermore such monitoring of notices attracts cost. This is a 'Closed Gate' constraint on the market and contrary to EU principals. To make the markets interface (for both the tendering and contracting authorities) more accessible and cost effective to operate it should be far better designed, simplified and also embody the principals of self selection (as set out elsewhere).

It is understood that the EU Thresholds are set mutually by External Free Trade Agreements (FTAs)<sup>1</sup>. It does not appear they are material otherwise to the structure of 'The Internal Market' except in so far as upon reaching the FTA thresholds tenders are required to meet FTA obligations and be opened to international competition. Internally within the market application of such threshold values determine a base line constraint that can be discriminatory.

We therefore suggest that the structure of the internal market should be transformed independently of benchmarked 'abstract' thresholds established by external FTA's. (Only when restructured to the most beneficially determined internal market structure should consideration be given to overlaying FTA requirements)

To remove this discriminatory market constraint we therefore suggest removal of such thresholds in the internal market, conjunctively with radical simplification of processes, procedures and better market access, along with an adoption of the principal of self selection by contracting authorities and consultant tenders alike, supported by a collegiate organization of professional consultancy institutes. And that there be an acceptance of increased risk by contracting authorities if best value for money is to be delivered through to project completion.

- **COLLEGIATE PORTAL (CP)**

Specific Recommendations (Fig 17- 22)<sup>2</sup> :-

- 7. The certified institutes for construction professionals develop an EU approved digital repository<sup>3</sup> within their individual institutes. This repository be in accordance with the recognised competency criteria of their profession, its qualifications and certification, along with filtering criteria provided by individual businesses relating to their own market reach and individual business specific competencies.<sup>4</sup>**
- 8. National 'Collegiate PQ Portal' (CP) administered jointly by the certifying institutes of construction industry professionals be established connecting the institutes individual accreditation repositories under a single portal.**
- 9. The single portal of the national CP provides access for data transfer between construction professionals (as either individual consultancy's or so as to facilitate consortia) and contracting authorities.**
- 10. The CP be used by contracting authorities for distribution of tender notices to business, disseminated according to self selecting filtering criteria.**
- 11. The CP be used by construction consultancies to transfer non tender specific professional competency criteria for specific tenders directly to tender authorities.**
- 12. Accreditation data be standardised and call outs selected relevant only to the specified tender parameters**

In its role of providing UK professional certification the RIBA already requires chartered practices annually provide full and comprehensive information about their practices for a central electronic register. (Fig. 17). This in large part is already compliant with the 'due diligence' professional competency criteria sought under all EU tenders and where not could be extended to do so (Fig. 18).

Much of the consultancy criteria sought in PQQs is therefore duplicated from available information, but is required to be customized and re-issued for each tender individually. (Fig. 17 & 18) The same is true of all other construction consultants (Fig. 19).

The CP would simply provide a mechanism to link institutes existing certification data provide a filtering portal to the EU and to contracting authorities and access to consultants in reverse (Fig. 20). The system proposed would significantly reduce consultants costs and speed up procedures whilst allowing for all due diligence.

Filtering criteria provided by individual businesses relating to their own market reach and specific competencies allows improved dissemination of tender notifications to appropriate consultants and would be automatically eligible with annual registration (Fig.21). This would be based on criteria input to the individual institutes' registers (as happens currently). This would extend market reach specifically to micro-SME consultants. Consortia bids can be readily accounted and consultancies who maybe compliant otherwise but not wish to register with national certifying agencies would at their own economic cost be eligible to submit individually in the existing manner (Fig. 22).

## • 'LIGHT' TENDERS FOR MICRO & SMALL CONSULTANCY'S

Specific Recommendations:-

- 4. Pro-active e-distribution of tenders be developed to give wider market access for micro-SME professional consultancies through the Collegiate Portal (CP) (or other e-media).**
- 5. Only tenders required to be open to the External Market should be advertised through OJEU notice procedures as well as the CP (EU Threshold values)**
- 6. For professional consultancy's new 'Light' tenders be for restricted bid procedures for all works up to a value set well above the threshold levels determined by FTA's.**

'LIGHT' Tenders – Selection Stage

- 7. A simple new fast track EU 'Light' tender procedure be introduced for all professional consultants' services.**
- 8. The upper limit of value of 'Light' tenders should be set proportionally to the size & turnover of micro-small consultancy's.**
- 9. There be a minimal 'self selecting' notice procedure comprising only an indicative project Briefing.<sup>5</sup>**
- 10. Notice briefing requirements be incrementally stepped to the minimum required for compliance only when values reach the FTA determined levels. (and proportionate to the work value).**
- 11. Contracting authorities apply both lower and upper limiting range bandings, proportionate to construction values, in all tender notices.**
- 12. A contracting authority's minimal selecting criteria would also be incrementally stepped up to the external market thresholds (and proportionate to the work value).**

- 13. 'Light' tender notices be automatically disseminated by the CP to consultancy's matched by their individual self selecting filters.**
- 14. Having appraised the project brief Consultancies register their digital response on a 'First Come First Served' basis with only a specified maximum number of acceptable applicants. (It is incumbent on practices to respond quickly).**
- 15. Numbers accepted on a 'First Come First Served' basis would be advertised and incrementally increased according to a works value. (Starting from 5?)**
- 16. Only these numbers of consultants accepted are permitted to proceed further in the 'Light' tender process.**
- 17. Upon being accepted all required non bid specific information would become available to the tendering authority from the CP for due diligence checking upon making an award.**

#### 'Light' Tenders – Award Stage

- 18. Award stage selection procedures should be proportionate to works value.**
- 19. Award stage criteria (see below- applied progressively to specific projects) would require only information accessible to tendering authorities via the CP and consultants websites. <sup>6</sup>**
- 20. Selection to include a simple project specific 'letter' proportionately limited by length prior to a selective meeting, interview and/or presentation procedure.**
- 21. Applicants selected for meeting or interview would be required with their attendance to make full submission of their anticipated scope of service, terms and fee.**
- 22. Tendering authorities would be able to re-advertise before awarding a contract if, on the basis of standards or quality, they were justifiably unable to select suitable candidates.**
- 23. The application of a fuller second award stage tender submission should only be applied well above current EU External Market thresholds. (a 'Standard' tender)**

We welcome the EU Green Papers suggestion that a lighter procedural framework should be available for local and regional contracting authorities for the award of contracts above the threshold of the directive. However so as to avoid thresholds acting as a constraint on entry to the Internal Market we have proposed thresholds should be abolished for all but the very lowest value work and that structural 'Simplification' should be extended to the bottom of the market.

The high cost of EU procurement is an element contributing to the use of 'thinning' methodologies for consultant's selection that has a predisposition to raising the financially compliant values sought by contracting authorities, and the size of contracts being aggregated. This is very detrimental for micro-SME businesses.

Micro-SMEs consultancies are already disadvantaged by an inequitable distribution of work according to consultancy practices by numbers and size. There is indication of a statistically inequitable mismatch between project needs and market skills whilst it appears unproven that the current procurement process is achieving value for money.

If micro-SME businesses are to be meaningfully re-engaged and matched to project needs the cost of bidding and thinning down methodologies need structural change.

To be manageable and equitable we believe selection should balance competency, appropriateness, suitability, quality and procedural cost with random choice. Separation between selection and award stages in the procurement process has as its primary object the thinning out of tenders.

The current information required by tenders is excessive and frequently beyond EU specified requirements. The system attracts additional costs to each individual applicant and client alike, is slow, incurs considerable delay to a projects inception and is inflexible.

*Typical Example:-*

- *To gain a public sector work of any scale, architects must pass through several complex and costly application stage submissions (even for those under the EU threshold limit). This bidding process involves submission of very large quantities of information (can typically run to several hundred bespoke pages).*

As well as specific method statements, proven examples of various past experiences, information about how best value has been achieved in similar projects, these include extensive documentation on Health and Safety, Equal Opportunities, Environmental Policies and documented proof of their enactment, including minutes of meetings. Whilst these questions are often very similar they always vary, requiring a fresh and detailed approach each time. The cost to micro-SMEs is considerable particularly in relation to the actual value of the work to be gained.

The extent of individual information requirements provided by both tender authorities and consultants needs to be minimized and the interface accelerated to enable savings in time and cost. We therefore recommend that consultancy practice upon undertaking their required annual registration and completion of their accreditation information be given automatic access and live feeds via the Collegiate Portal (CP) to the issue of all procurement notices filtered according to their own consultancy's data input. The CP e-portal is then used to allow dissemination of notices but to a targeted market. (ref also Section: **Risk, Opportunity & Responsibility**)

Self selecting (filtering) criteria applied by both contracting authorities and consultancy's would allow both horizontal market penetration by value and vertical penetration determined by project specifics and consultancy capabilities and experience. Authorities might include 'self selecting' (filter) criteria such as names/address, type of project, size, approx sq.m, service needs, type of service details, outputs sought, purpose. Consultancy's description of their location, skills, competency's and experience etc as entered into their professional institutes repositories provide their self-selecting (filter) criteria.

Financial thresholds when compared to project size tend to get distorted towards favoring large turnover practices. This currently leads contracting authorities to service providers who may be unsuitable, inappropriate, lacking in specialist skills and possibly inefficient for the project scale.

*Recent examples include:-*

- *An annual turnover of £2.5m to undertake construction works up to a value of £5m<sup>7</sup>*
- *Turnover of £1m for undertaking construction works up to £500,000.<sup>8</sup>*
- *The essential requirement of one recent notice targeting young small design firms was an annual turnover of £500k for a newspaper stand circa £25k.<sup>9</sup>*

*These examples evidence inconsistencies and excessive multiples of a consultancies likely derived fee and are inappropriate to the scale of works.*

Range banding of projects indicating proportionately upper and lower limit values should be advertised by contracting authorities with notices. The self selecting mechanisms proposed can then provide a descriptive masking between competency, values and needs.

When market penetration is an imperative procurement managers struggle to find economies for thinning down tender numbers. Questions are then developed by contracting authorities for use within the selection criteria to provide the necessary mechanisms for this thinning. These frequently entail provision of excessive quantities of obscure information supplied at great cost, which are then evaluated (again at great cost) to thin down numbers. This is legitimized unproductively perfidious and inefficient practices. In this context we believe the partial use of randomized selection (lottery) should be adopted as a priority to allow tender simplification. This has the benefit of being transparently equitable whilst curtailing the provision of unnecessary information.

High turnover large practices would not be precluded by turnover from any 'Light' tenders as they have the ability to establish small works divisions.

The competency of consultancy practice is established by the institutes as a nationally certified and regulated benchmark. When combined via the CP with the application of self selecting filtering criteria response rates can be matched to appropriate and suitable market skill and experience. This can be further reviewed by interview and meeting. Quality can be evaluated by cover letter, e accessible information along with meeting and interview procedures. The numbers of applicants can by the partial use of random selection (by deadline of response) be thinned. A number of private UK procurement websites adopt effective simplified procedures with similar random selection.<sup>10</sup> This 'lottery' element is also frequently adopted for ticket sales to large events.

Automatic deposition of 'Light' tender notices on OJEU for works with a threshold value above FTA treaty agreements moves to meeting the obligations of these treaties. This 'Light' tender procedure provides a transparently fair, simple and cost effective selection process with deep penetration of the target market. Both the selection and award stage are radically simplified and accelerated, with market access for the large majority of micro-SMEs guaranteed.

## • 'STANDARD' TENDERS

Specific Recommendations:-

- 8. The threshold between 'Light' and standard procedures be proportionately adjusted to mitigate against any threshold constraint.**
- 9. A transparently accessible notification process be adopted utilising the CP e portal.**
- 10. Where lots are used they be capable of being disseminated in their groupings or as individual lots.**
- 11. There be no 'first come first served' selection but at an early stage in the process random selection also be considered for use, proportionately to the value of works, to thin 'standard' tenders in preference to methodologies which become inequitable and discriminatory, with no such selection applied to top end projects by value.**
- 12. All required non bid specific information would become available to the tendering authority from the CP for due diligence checking upon making an award.**
- 13. Contracting authorities apply both lower and upper limiting financial range bandings, proportionate to construction values, in all notices and selection**

evaluations of tenders on all 'standard' tenders other than those at the top end of the market.

**14. Standard tenders adopt a full second award stage selection procedure.**

The primary objective of this report is to address micro-SME's consultancy's hence the body of specific recommendations for tendering selection and award are outlined within the new 'Light' tender process although the recommendations on criteria apply to 'Standard' tenders equally.

• **ENHANCING USE OF OPEN COMPETITIONS**

Recommendation:-

**1. There should be an EU aspiration to hold Open Design Competitions with their value and numbers proportionate to works tendered.**

Open design competitions diversify the procurement options, are flexible, improve choice, and quality. They are more frequently adopted amongst other European states. Competitions can draw forth construction innovation and emergent practice, whilst delivering improved standards and ensuring suitable appointments. Furthermore open design competitions are often a more cost effective procurement route than restricted bid tenders. There should be stated aspirations for Open Design Competitions as a procurement preference for improving end user choice, increasing innovation, incentivising excellence and reducing cost. We would recommend this be set at 15% of all restricted construction bids.

<sup>1</sup> Free Trade Agreements (FTA's) such as WTO agreement on Government Procurement (GPA) ref

[http://ec.europa.eu/internal\\_market/publicprocurement/international\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/international_en.htm) & bilateral trade agreements  
<http://ec.europa.eu/trade/creating-opportunities/bilateral-relations>

<sup>2</sup> In part this may also be covered by e-procurement issues addressed in a separate EU Green Paper EU SEC(2010) 1214 18.10.2010, although the matter is addressed here due to its relationship to market access for micro-SME's

<sup>3</sup> RIBA paper of 13 Oct 2010 presented at a Meeting called with Melvin Hughes CLG, and Ruth Hollis OGC

<sup>4</sup> e.g. professional qualifications, company data, finance, HR, health & safety documentation, fields of expertise and areas of work etc.

<sup>5</sup> Contracting authorities 'Self Selecting' filter information might for example include only. names/address, type of project, size, approx sq.m., location, CO2 Emissions Rating, service needs, type of service details, outputs sought, purpose)

<sup>6</sup> It being incumbent on consultancies and their institutes to make available the information.

<sup>7</sup> LB Islington 2010 – NB an annual fee income of £1m on a fee basis of say 5.5% equates to approx. construction works cost turnover of £18.2m p.a

<sup>8</sup> LB Islington 2010 – NB an annual fee income of £2.5m on a fee basis of say 5.5%/a eq. equates to approx. construction works cost turnover of £45.5m p.

<sup>9</sup> LB Westminster 2010 – PQQ essential criteria 1 -an annual fee income of £0.5m on a low fee basis of 5.5% equates to approx. construction works cost turnover of £9.1m p.a, where the fee earning could, depending on the service, be anticipated to range between £2-3k

<sup>10</sup> Such selection systems can be explored on a number of private UK procurement websites, one of the best of which is <http://uk.servicestart.com>

## 7. CRITERIA

*“A great building must begin with the unmeasurable, must go through measurable means when it is being designed and in the end must be unmeasurable.” Louis Kahn*

Recommendations:-

**12. Financial criteria sought in tenders should be proportionate to the size of a project commission and the consultancy fee derived.**

Specific Recommendations:-

- 13. There be an agreed matrix of standard formats for management and human resources strategies commensurate with the scale of project works.**
- 14. In ‘Light’ tenders consultancies be required to indicate their experience in a broad banded range relative to the level of a projects construction value.**
- 15. Previous professional consultancy experience should be provable by measurable means such as nationally recognised awards, certifications, publications, academic credentials and/or through appraisal by independent qualified expert opinion<sup>1</sup>.**
- 16. Previous professional consultancy experience with the authority contracting works should be provable by independent measurable means such as end user approval, nationally recognised awards, certifications, publications and/or through appraisal by independent qualified expert opinion (as set out elsewhere).**
- 17. All ‘Light’ tenders have quality assessment criteria evaluated by suitably trained professionals.**
- 18. All other tenders have quality assessment criteria evaluated by a suitably trained and qualified independent professional consultant directly related to the service being tendered.**
- 19. The role and qualifications of bid assessors should be transparently available to bid applicants.**
- 20. For civic work commissions local independent stakeholders should be invited onto selection and award processes.**
- 21. That a fully transparent e-posting of scoring system should always be available to applicants as it is often unclear how such criteria are applied to bid assessments.**
- 22. In restricted bids there should be an upper limit of 15% on the weighting given to any single financial criteria, and with no more than 30% weighting for all financial criteria.**
- 23. In restricted bids for ‘Light’ tenders there should be an upper limit of 20% on the weighting given to all financial criteria.**

Criteria are generally being applied in the public procurement tendering process for the sole purpose of thinning down bid numbers. Whilst fully recognizing the necessity of this as a requirement the current process unduly discriminates against micro-small businesses.

Examples include:-

- ***Specific management and human resource strategies.*** *The frequent requirement for these are a boost for larger firms, which have dedicated procurement teams, the resources and need to put such policies into place. Small practices have neither the resources required nor the practical need to have many of the required policies. This acts as a significant deterrent to small practices.*

- **Requiring multiple direct previous experiences.** *Procurement questionnaires typically ask applicants to prove their capacity with multiple examples of similar or near-identical schemes they have completed in the recent past as a condition of tender. All micro-small practices will inevitably turnover far fewer building projects p.a. than larger practices. This prevents younger firms from developing expertise in the public sector if they cannot first generate it in the private sector. It prevents small practices' with either established historic expertise or lower through puts of projects tendering for work they have the experience to undertake. It also prevents practices from moving between different building sectors, thereby preventing the transfer of expertise and innovation, so critical in improving building design. In the current trying economic circumstances, many practices find themselves pigeonholed in a particular sector and despite huge efforts and a proven track record of design excellence, find it nearly impossible to bid for publicly procured health, housing and education projects.*
- *At a recent Autodesk BIM (**Building Information Management**) conference the government's chief construction adviser Paul Morrell advised the audience that BIM deliverables 'will become a key part of the procurement and delivery of all public buildings....' leaving many architectural practices to up-skill and invest, to stand any chance of inclusion in government projects* <sup>2</sup>

This stifles the development of new talent and throttles experienced smaller practices. Even when a practice has transferrable skills and an impeccable track record in another sector, and has specifically employed staff with relevant skills and experience in the target sector, this is not enough to bypass overly prescriptive requirements. This precludes small and new practices from entering a market, discriminates in favour of larger practices at the expense of all others and artificially constricts the talent pool.

We recommend that by use of an agreed matrix of standard formats for management and human resources strategies commensurate with the scale of project works and available via the CP e-portal, submission requirements would be rationalised, reduced and processes economised. The indication of a consultancy's experience across a broadly banded range of works by value that is not contingent on being equivalent to the proposed works would improve market access, skills transference, encourage innovation and engage small & micro consultants.

There are insufficient appropriate instruments to take account of the successful previous experience contracting authorities might have had with the performance, quality and standards bidders have previously attained. There are equally insufficient instruments to take account of excellence derived elsewhere in other construction fields. Clearly this is a working disincentive as there is no instrument for rewarding excellence. For economic advancement the procurement system should be incentivising high standards of attainment and the production of excellence. We recommend that clear methodologies providing measurable means, established by the respective institutes, be used to provide for evaluation of attainment and that these be weighted proportionately.

Only 82% of procurement officers confirmed that they had made use of access to training opportunities on EU procurement legislation and case law in the past 2 years; with 11% either unaware or not having such access. Of those who had not made use of training 78% considered it to be too expensive or had not enough time.<sup>3</sup>

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

It is frequent European practice to require that architectural quality based criteria are assessed by architects or other suitably qualified professionals. We recommend for due diligence that independent professionals with expertise relevant to the tender requirements be used in evaluations.

We believe our recommendations address the issues identified in criteria evaluations by proposing that for due diligence these be undertaken by adequately qualified independent (arms length) professionals with expertise relevant to the tender requirements. Access to independent professionals might be via the CP e-portal with time limited appointments.

Most frequently the procurement system in construction is inaccessible to stakeholders despite the fact that outcomes have a direct bearing on their environments. We believe this is a democratic deficit that alienates end users and reduces transparency. We therefore recommend that it is addressed and reversed by welcoming stakeholders/ end users into the process in all early stage procurement procedures for all construction having a civic or public impact.

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

*Example :-*

- *As part of their application practices are frequently asked when they were formed. The evidence from the jobs examined in the 2005 research indicate only 6% were won by practices under 10 years old.<sup>4</sup> The figures indicate that the OJEU process has also been favouring more established practices at the expense of newer ones.*

Lack of transparency, inadequate feedback and communication constrains tender applicants from being able to improve performance in subsequent submissions. Lack of feedback also leads to disenchantment with the procurement system and is frequently cited by micro consultancies as a reason for not accessing the market. To increase market access and penetration we recommend procurement be more transparent.

The financial information and criteria required of applicants under the OJEU system is inappropriate as the measure of ability to undertake projects whatever their type or size. Whilst acknowledging financial standing is a formal aspect of Government Risk management, evidence would suggest financial criteria are used as the sole factors for thinning down tender bids to the exclusion of all other assessments. Tender evaluations are heavily weighted to financial risk factors disproportionately outweighing all other criteria, whether it is with regards to architectural criteria, design capabilities, quality, appropriateness, competence quality of delivery, suitability, ability, track record, response to brief etc. We recommend restraint on application of and the weighting given to financial criteria.

<sup>1</sup> *(as set out elsewhere)*

<sup>2</sup> *Architects Journal Report 13 Jan 2011 . .... the government is expecting a report in March 2012 to the Construction Clients Board advising mandatory BIM usage in all projects ..... could have significant impact on the design processes and technology used on government infrastructure projects. ....*

<sup>3</sup> *Local Government Officers Association EU procurement Survey Dec 2010 fig. 5*

<sup>4</sup> *Phillip Dawson of Fraser Brown MacKenna Architects Research published in 2005.*

## 8. RISK, RESPONSIBILITY & OPPORTUNITY

*“Servant versus served” Louis Kahn - concepts on spatial planning*

Recommendations:-

5. **The concept of ‘Opportunity’ assessment rather than ‘Risk’ management should be the predominant method of evaluation.**
6. **Risk criteria should be severely constrained in EU procurement procedures for professional consultants holding recognised independent accreditation.**
7. **Institutes of Professional construction consultants work with the EU/states to provide better methodologies to evaluate opportunity in construction quality.**
8. **Exemptions and exclusions should be applied to specialist sectors and were betterment from bottom up economic growth is deliverable.**

Specific Recommendations:-

1. **Risk management criteria in ‘Light’ tenders should form no more than 5% of any evaluation.**
2. **The legality of contracting authorities making grant agreements for aid to an independently constituted legal (arms length) organisations that is not *for the immediate benefit of the contracting authority*<sup>1</sup> needs exemptions and clarifications.**

We recommend that in all procurement policy evaluations the concept of a positive ‘**Opportunity**’ assessment; placing emphasis on progression, quality and innovation; predominate over the regressive market constraints implicit in ‘**Risk**’ Management. This is a more appropriate economic interpretation of procuring functions for achieving betterment and in keeping with the pressing need for vigorous economic advancement in the EU states.

The current procurement policy for professional construction consultants tends to a high risk threshold. This is inappropriate given that there is also a strong legal and regulatory framework in which work is undertaken and strict professional accreditation. Procurement policy should recognise and respect existing national accreditation and validation frameworks and not seek to constrain, duplicate or overlap with them. The EU should accept responsibility for the institutions of the national states, acknowledge the value of their accreditations and if needed regulate probity through the efficient use of established institutions and their mechanisms.

Putting risk thresholds above a minimum required for due diligence checking is an economic inefficiency, burdensome to timescales, and procedures and constrains innovation. Setting high risk thresholds also escalates bid costs, further constraining micro-SME consultancy’s.

Following prolonged education national authorities provide professional accreditation of consultancy services to ensure a required minimum standard of professional service is achieved throughout the design and production stages of construction. Professional codes of practice also require they have the means, experience and capability to undertake the works for which they tender<sup>2</sup>. Building regulations National Planning legislation and standards taken together define a nation’s minimum requirement for the standards of construction outputs. The rest is primarily a question of a projects individual briefing, personnel, time, resources and quality. Public building programmes typically have fixed budgets and defined briefs. Progress of works on site remains in large part a contractor’s responsibility. Between a defined and limited range the cost of consultancy services are predetermined and represent a small proportion of the overall expenditure of a construction programme.

**Quality** therefore is the most significant variable of a construction consultancies project output as can be measured above the level of the minimum standards set by regulations and legislation. This is an attribute that is dependent on the design direction and skill of a project team. Yet EU Procurement has little facility available to account for such skills or quality. **Value for money** isn't achievable where it ignores excellence.

The mathematical distribution of risk related to outputs is reciprocated in the distributive form of achievable quality relative to outputs. The primary difference is that one is calibrated both externally and internally within the EU procurement process, whilst the other is barely considered (if at all!) and has inadequate means of calibration for unrealised task specific works.

Construction works are site defined, task specific with the final quality indeterminate until completion and occupancy. We therefore propose the EU work with the Institutes of professional construction consultants to develop and provide better methodologies to evaluate '**Opportunity**' and quality for undertaking task specific works; and that '**Opportunity**' assessments replace '**Risk**' management allowing procedural processes to engage with entrepreneurial progression, innovation and quality in construction as the predominant methodology for delivering value for money.

Clarification is needed on the status of contracting authorities making a grant agreements for the provision of aid to an independently constituted (arms length) legal organization that is not for the immediate benefit of the contracting authority. The establishment of policy addressing arms length organizations whose sole purpose maybe circumventing the regulatory requirements is different for example to that of churches seeking grants to repair their facilities. However similar regulations are now being used to net them both. In the UK for example this is becoming materially damaging to genuine arms lengths organizations, such as community groups, groups funded through lottery, English Heritage etc., receiving aid; as many voluntary/community groupings can't now use professional consultants through the required 'at risk' feasibility, cost planning and design development stages necessary to access grant aid in the first place. This constrains bottom up development.

*Example:-*

- *Those either owning or leasing properties may have commissioned consultants to develop and evaluate their requirements. Having undertaken appraisals, feasibilities, scheme designs and costings funding is sought from public authorities, eg LA, Gov. Lottery, English Heritage<sup>3</sup>, where upon the projects maybe directed as a condition of funding by the public authority to consultants and contractors acquired by an OJEU tender procedure.*

We are therefore proposing that some authorities and building categories be given exemption from standard EU tendering procedures (eg those specifically involved with cultural artefacts) and with exemptions to permit bottom up development and husbandry of the environmental which necessitates work being undertaken at 'risk'.

Experienced small consultancies are capable of co-ordinating works whose size may appear entirely disproportionate, yet consistently deliver quality that surpasses that of far larger firms. This is normal where professional consultancy service roles are to co-ordinate the design works necessary to output productions. The consultancy size may vary flexibly depending on the type, nature, quantity of works and throughput. Since Christopher Wren and the emergence of the modern professions in the UK this has been accepted and normal historic practice. It is economically flexible, efficient, a bedrock for advancement and innovation, and encourages the emergence of new businesses. Frequently smaller bespoke and specialist practices maintain their size specifically in response to their desire to maintain expertise, local engagement, a directed focus on their works and quality; the consistency of which larger practices rarely achieve. **This expertise is being denied access to the market.**

Examples where experienced practices are denied access to works are:-

- *Historic buildings, restoration were the numbers of projects executed by individual practices maybe extremely small (hence having low turnover) but they have unchallenged expertise unmatched by larger firms.*
- *Small bespoke practices that are locally based and engaged in a geographically defined community focus in their works. From outlying rural areas to inner urban environments these practices have frequently provided the necessary expertise at risk in support of community advancement yet this opportunity for a community to benefit from the necessary professional skills, where these would otherwise be unavailable, is denied them by EU procurement. This enablement, feasibility, appraising, and developmental function is invaluable to delivering bottom up economic growth and sustainable communities. This an economic loss caused by the EU/OGC procurement system that is detrimental to community health.*

Where individual consultancies' with acknowledged community support have stimulated community betterment and proposals have been developed extensively they should be exempt from tenders subsequent works.<sup>4</sup> We therefore recommend that clarifications be issued on arms lengths organisations<sup>5</sup> and exemptions be applied to EU procedures to address the specific imperatives of bottom up economic development along with exemptions for sector specialisms.

<sup>1</sup> Judgements of 25.3.2010 Case C-451/08 Helmut Muller GmbH para 47-54, & 15.7.2010 Commission v Germany, para 75

<sup>2</sup> **RIBA Code of Professional Conduct 2005 Principle 2: Competence:-** *In the performance of their work Members shall act competently, conscientiously and responsibly. Members must be able to provide the knowledge, the ability and the financial and technical resources appropriate for their work.*

<sup>3</sup> Source BZ Architects Feb 2011

<sup>4</sup> *Subject to due diligence checks, reasonable fee proposals and interview by the procuring authorities in conjunction with stakeholders representatives*

<sup>5</sup> Judgements of 25.3.2010 Case C-451/08 Helmut Muller GmbH para 47-54, & 15.7.2010 Commission v Germany, para 75

## 9. PI INSURANCE.

Recommendation:-

- |   |
|---|
| <b>1. Project based PI insurance be adopted within the UK in harmony with the rest of Europe, rather than practice based insurance.</b> |
|---|

Required thresholds of PI Insurance are unrealistic and skewed in favour of larger practices. They put unreasonable financial cost on consultancies and attract unnecessary costs to the industry. Circumstantial evidence suggests contracting authorities procurement officers are also become confused at the difference between an architect and building contractor and attach requirements for levels of cover accordingly.

UK professional consultancies maintain PI insurance that is practice based. This is believed to be unique within Europe where individual project based PI insurance is the norm. The European system provides greater surety at less economic cost to the industry. The UK position is questionably contrary to the principals of the EU Directive (as it deters trans national competition).

Recent examples of unreasonable PI cover include:-

- *A LA's insistence on the requirement for £5m PI cover for the design of a £300k house, from a practice currently holding £2m cover.<sup>1</sup>*
- *An RSL requirement for £10m PI cover for a £3m construction contract<sup>2</sup>*

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

The requirement within tenders for consultancy based PI cover is costly, inflexible; a major deterrent to the coalescence of practices for the purposes of making consortia bids; constrains cross border tendering and particularly disadvantages specialists and emergent firms. It also places considerable constraint on the form of tier 2 contractual agreements.

Changing the UK system to a project based PI insurance regime with its advantages of greater economy, potential for coverage across the entire professional consultancy team and single premium payment options without run offs, simplifies procedures whilst enhancing possibilities for consortium working and contractual flexibility<sup>3</sup>. PI Insurance would in the procurement process no longer be a requisite of project tender evaluations. This can be readily precipitated in the market through the procurement system with consequential cost savings.

<sup>1</sup> RHM Architects Nov 2010 & reporting their insurers had been receiving a significant rise in similar requests from architects involving disproportionate LA requirements

<sup>2</sup> Reference source – to follow

<sup>3</sup> Source Jane Duncan Chair of the RIBA Practice Committee @ RIBA Small Practices meeting 26.01.2011 reporting on the (approx?) 2008 findings of the Practice Committee.-

## 10.FEES

“God is in the details” Mies van der Rohe

Recommendation:-

- 5. To provide for consultancy’s service appropriately resourced to the size of any project an upper and lower banding limit on fees be applied to all but top value projects.**
- 6. That ‘success’ based fees be banned under public procurement procedures**
- 7. The proposed full terms of a professional consultants appointment be notified prior to selection stage procedures for ‘Standard’ contracts.**
- 8. That exploitative fee practices be restrained by regulation and no work be done without payment.**

Under recessionary pressure fee undercutting has become common place. This does not improve value for money or output quality, but increases risk to both contracting authorities and professional consultants. As reduced margins pressure time and resources constraining economic output and quality, the risk is largely absorbed in lower standards and or financial difficulties. Hence undercutting frequently increases contractual disputes and cost through endeavors to claw back finance.

For larger practices this maybe an option, a cash flow imperative, cross subsidy from larger projects taken on a ‘foot in the door’ or ‘last man standing’ approach<sup>1</sup>. In multi disciplinary organizations other strategic imperatives may also apply. But fee undercutting severely discriminates against micro-SME’s as their earnings are lower and their margins are smaller (FIG 8 & 9), they are incapable of supporting significant ‘loss leaders’ or bankrolling the contractor. To micro-small practices specifically this is most economically detrimental.

Example:-

- *In 2011 an in house LA team won a tender for a £500,000 contract (for the same LA) with works including supplemental option appraisals and cost evaluations on a fee of under 5% (25k) for their entire consultancy team comprising Architect, Structural engineers, Building service engineers, Quantity Surveyors, and Project Management), against private sector competition bidding with low fees at 15%<sup>2</sup>*
- *In 2010 on receipt of a 100% score on all weighted criteria save fees a practice consortia lost their bid despite having submitted an extremely low fee and being placed second by a fee differential relative to the winning bid of 9%<sup>3</sup>.*

Many contracting authorities use banded value ranges to evaluate the viability of the proposed fees so as to ensure their contractors and professional consultants are adequately resourced to do the project.<sup>4</sup> The European court recognizes the established European practice of professional fee scales<sup>5</sup>.

To secure contracting authorities commercial interests, maintain construction standards and quality we recommend the UK introduce 'Parameters of viability' for an upper and lower range banding of fees applied in all restricted bids determined by both time and percentiles proportionate to the economic cost of individual projects.

Within Framework and Tier 2 contracting arrangements there are a number of practices exercised by contractors which place undue economic pressure upon consultancies which are particularly discriminatory to small-micro consultancies seeking access to this market under these forms of contract. Some of these are highlighted below.

Example:-

- *A client authority in the position of being unable to recover VAT informing all its framework consultants (when VAT increased from 17.5% to 20%) that it would offer 'speedy' payment terms in exchange for a 2.5% fee discount, with the added implication that work on the framework would not otherwise be forthcoming. Irrespective of the multiple 'mini' fee tenders it otherwise holds under its framework.<sup>6</sup>*

With Tier 2 Suppliers the situation for SME's is frequently untenable and appears designed to drive companies to bankruptcy. Examples abound of tier 2 architectural consultants who have previously won a competitive tender onto a contractor's framework being required to enter the contractors own individual and punitive "success based" standard terms of agreement. They can frequently entail commissioning of legal study of exhaustive clauses designed specifically to favor a contractor's interest unreasonably.

Example:-

- *An agreement entitling consultants to only 20% of the fee up to contractual close for work projected to take nearly a year (contractors' stages 1&2). This is basically RIBA Stage F/G which should be 70% of the total fee due. Upon achieving contractual close a 20% deferred fee payment will be released making 40% overall. The agreement stipulates however that you can only claim after completion of each work stage (a fee-claiming process that is understood to be structured to take around 3 months as the contractor's approval certification process is multiple and accumulative). Hence only 10% of the total fee is actually received in the whole year required to get to RIBA Stage F/G leading up to contractual close. The example cited here being for a project with a construction cost of £2-3m. This is supposedly a success based fee*

structure, but as the contractor already had this BSF programme their risk was minimal.<sup>7</sup>

We recommend that if the terms of a consultant's appointment are to vary from the standards terms used by the consultant's institute, then any such terms should be specified at commencement of the notice procedure and prior to the service consultant becoming engaged in any outlay. Success based fees be banned as they are exploitative practice used to transfer risk to the lowest economic unit in the supply chain, to those with least capacity to accept and bear the risk.

<sup>1</sup> Known as 'The Costa Coffee' approach from locating its outlets adjacent to small successful independent cafes & undercutting prices until the independent is closed – where upon their prices are raised significantly above the base of either.

<sup>2</sup> Source:- Manuel Nogueira ANDArchitects Feb 2011

<sup>3</sup> Source:- vHH & WMA Architects Mar 2010

<sup>4</sup> LB Barking & Dagenham mtg. as verbally reported to A. Dobson RIBA Director of Practice. 18 Feb 2010

<sup>5</sup> EU judgement – ref to follow.!

<sup>6</sup> Consultants on Frameworks to Family Mosaic Dec 2010

<sup>7</sup> Bouygues UK, Standard Terms and agreement for the Consultants Appointment for Architectural Design on BSF schools 2010. With source "We told them we weren't interested" wishing to remain undisclosed.

## 11. TURNOVER AS INDICATORS OF COMPETENCE.

Recommendation:-

- 1. Weightings for turnover in tender evaluations should be constrained giving way to Opportunity assessments<sup>1</sup>**
- 2. Where ever turnover is retained as a required criteria it be derived as a ranged banding from the works value and service requirements ascertained prior to tender, with a project consultancy fee range extrapolated<sup>2</sup>, and a reasonable multiplying number added.<sup>3</sup>**
- 3. To provide for consultancy's service appropriately scaled to the size of any project an upper and lower banding limit on turnover be applied to all but top value projects.**

If fee banding ranges are not deemed an acceptable methodology to determine a service consultants fees, it is an illogicality to presume that turnover is a methodology which provides an indicator of competence. As turnover cannot at any point in time be a reflection of the competence or success of a practice. For example a multi-disciplinary practice may have a larger turnover but a small compliment of appropriate or specialized operators in the sector specialism sought, whilst a practice submitting an excess of low fees may witness an increase in turnover but incapacity to deliver in the long term, or the inability to do so to the standard that should be expected. However small highly competent, experienced, specialized and or innovative practices may excel at a limited number of projects undertaken at any specific time and will hence have lower turnover. Yet the later will always lose out in any weighted evaluations given to turnover. (Fig. 8, 9 & 10)

We recommend therefore that only reasonable and proportionate range bandings of turnover proportionate to the value of works be used, that such turnover weightings should be constrained with precedence given over to opportunity assessments.

<sup>1</sup> Opportunity Assessments – as set out in Section – 'Risk, Opportunity & Responsibility'

<sup>2</sup> This method is reliant on the acceptance of the 'Parameters of viability' and the range banding of fees as set out in the Section on Fees as this forms the basis of the calculation proposed.

<sup>3</sup> The multiplier should be fair and reasonable with guidance issued on the maximum value of the multiplier

## 12. AGGREGATED CONTRACTS

Recommendations:-

- 7. The term of aggregate construction contracts be limited to three years with the exemption of utilities <sup>1</sup>**
- 8. Any fee bids obtained competitively during the bid stage be included as 'a specified criteria' and may not then by 'mini tender' be retendered. <sup>2</sup>**
- 9. Deployment of mini tenders under aggregated contracts were ever this has adverse impact on the likely competitiveness of micro & SME consultancies should be restrained.**
- 10. Exploitive practice such as requiring 'at risk' speculative work for competitive 'mini bids' unless fully remunerated be curtailed.**
- 11. Procedures be defined and guidance issued on giving fair access to work for all consultants and contractors within frameworks**
- 12. Use of aggregated contracts be restrained.**

Engagement of micros & SME into aggregated contracts has been a major concern for architects and public clients. The latest localism and SME agenda in the UK demands Tier 1 suppliers articulate and formulate strategies over how this can be achieved. But is this the best way forward?

Aggregated contracts lasting 4 years, and where a contracting authority competitively selects its consultants onto "an approved list" is seen as a way of reducing the authorities tendering costs for an ongoing programme of works. Their increasing use by public tendering authorities and in consortium almost exclusively favors corporate practices and discriminates against small & micro consultancies. (Fig.9)

Their use is frequently driven by the desire to circumvent the expense of the EU processes described above which are costly and time-consuming for both the contracting authorities and bidders. Whilst aggregated contracts allow a contracting authority to concentrate all their projects into the hands of a few (usually between 1 and 4) consultants for 4 years or more the process 'locks out' small & micro consultancies and has the effect of excluding the majority of architects from working a market for years.

When contracting authorities review small independent projects below the existing procurement thresholds they frequently and for time and simplification 'bundle' such contracts into packages to achieve a value above the thresholds so that they are then suitable for distribution to their framework consultants. This reduces market access for small & micro consultancies. Whilst a reduction in procedural cost would reduce the cost imperatives for this process we believe there should be restraint on the 'bundling' of contracts which might include works values being pre-defined and better banded within tendered 'lots'.

Aggregated contracts and their selection processes inevitably favor larger practices even if the individual projects to be undertaken are small. These larger practices do not always have the skills, experience, capacity or a reputation for delivering small and medium sized projects well.

The process deters micro & SME consultancies in the following ways:-

- *There is not even any guarantee of a work at the end of it. Frequently contractors on aggregated contracts are neither invited forward nor do they receive any works throughout the contract period, despite repeat works being allocated to other framework consultants.<sup>3</sup>*

- *The reported practice of one contracting authorities was to hold its first and second stage framework selections and not confirm any subsequent contractual appoints until a service provision was called upon; at which time a third stage was entered into whereby the consultancy's services was used for extensive 'works at risk' spanning 4 months (and comprehensive design work to RIBA Stage C+) in conjunction with additional fee negotiations, and without the contracting authority ever concluding its contractual exchange.<sup>4</sup>*
- *Consultancies may be required to undergo further selection processes having been appointed to an aggregated contract by way of a 'mini tender' to attempt to win works projects under the contract. It is now the norm for this to require a complete building design (up to RIBA Stage D) for presentation at interview along with particular method statements, renewed evidence of previous experience etc. and yet another fee bid, in competition against the other framework consultants, with all work being required to be undertaken free. In one reported case this mini tender process extended over 6 months.<sup>5</sup> The contracts are typically awarded on the basis of the fee bid as the sole determinant without recourse to any other values be they appropriateness of proposals, design or quality.*
- *When consultancies win tenders onto an aggregated contract, if the contracting authority then merges or forms part of a consortium, before the end of a framework period, the consultants are effectively removed and the contract is retendered. The considerable expenditure outlaid by applicants on tendering is wasted.*
- *There is an unintended requirement for contracting authorities to re-tender projects for architectural services at different stages (for instance between feasibility stage and full design stage, or if the project crosses a EU cost boundary), which can result in the full process described above being re-enacted. This maybe despite the end result sometimes being a foregone conclusion:- the reappointment of the original architect. Where the consultants are not aware of this it incurs them in enormous time and cost.<sup>6</sup>*

This is needless inefficiency, unacceptable and an unhealthy economic drain particularly on small & micro consultancies. Unquestionably these economic factors decisively contribute to discriminate against small & micro consultancies (**Fig.9**). This burdens the industry with excessive cost, is economically inefficient, exploitative and discriminatory against small & micros businesses.

This proposal suggests there be a reduction in the period of aggregated contracts to avoid lock outs of micro-SME firms and frequently for undefined construction programmes. With adequate procurement simplification and restraint we suggest that the perceived need for aggregated contracts would diminish.

## • **AGGREGATING CONTRACTS IN PUBLIC-PUBLIC CO-OPERATION**

Recommendation:-

2. **Clarification be provided on service contracts tendered by and carried out 'for the immediate benefit of the contracting authority'<sup>7</sup> with their remit constituting their electoral, functional or geographic area.**

There are urgent and increasing concerns amongst construction professionals with public-public co-operation that entails a single contracting authority tendering works and making awards onto aggregated contracts which other authorities are then invited to use. Despite the EU courts judgments it remains unclear whether this form of public-public co-operation is legal. It appears to provide a restricted number of tenders access to an unlimited market area without due competition, herald an oligopolistic market structure and locks out micro-SMEs from work for years. (all irrespective of their appropriateness or the scale of individual works).

Examples:-

- Frameworks in the UK are also now being extended or “sold” from one Authority to several additionally excluding consultancies from this ‘secondary’ market for 4 years.<sup>8</sup>

<sup>1</sup> EU Directive clause 2004/18/EC Clause (11) current provision is “the term of the framework agreements should not exceed four years except in cases duly justified by the contracting authorities.”

<sup>2</sup> EU Directive clause 2004/18/EC Clause (11)

Under these rules, when a contracting authority enters into a framework agreement in accordance with the provisions of this Directive relating, in particular, to advertising, time limits and conditions for the submission of tenders, it may enter into contracts based on such a framework agreement...

<sup>3</sup> Home Group consultants Framework

<sup>4</sup> Source wishing to remain undisclosed

<sup>5</sup> Source wishing to remain undisclosed

<sup>6</sup> Source wishing to remain undisclosed:- S Site within LB Southwark

<sup>7</sup> EU court judgement 25.3.2010 Case C-451/08

<sup>8</sup> LB Barking & Dagenham Clarification Notice for Professional Construction Related Services ref SH/PCRS/CN1 29/10/2010, OJEU Notice ref 09/S 212-306427/EN

## 13. CONSULTANTS AS TIER 2 SUPPLERS

Recommendations:-

**2. VAT should provide a ‘level playing field’ for professional construction consultancy services throughout the construction industry. When these are categorised as ‘professional’ services they should be exempt from consideration as suppliers under the construction industry VAT regime<sup>1 2</sup>**

Specific Recommendations:-

**3. Upon the award of an EU procured contract which includes tier 2 professional consultants, a form of contractual relationship be approved for use, to allow for re-establishment of a direct contractual relationships covering quality standards, legislative propriety and client design liaison with surety of payment provision between the consultant architect and contracting authority<sup>3</sup>**

We agree with the UK governments’ principal that hospital’s should be run by doctors, as the RIBA believe the same of building design.

In their traditional role architects were seen as the representatives of the client in the building’s design and the contract, holding a duty of care to the end user and wider public. More recently in both design and build contracts and larger value contracts it has become the norm for the services of an architect to be provided as a tier 2 supplier under an umbrella contract. Where the scale of construction programmes warrants or significant repetition arises this may be appropriate.

However there are significant differences in the nature of a professional service to that of either finance or manufacturing. Many construction projects differ in that they are not the output of a repetitive product or service provision but a specific task related production activity. In this situation the expansion of such contracts deploying tier 2 consultancies lacks consideration of many projects that arise.

- **VAT**

When contracting authorities appoint professional consultants directly to undertake supply services for new build construction, VAT is not recoverable from construction cost. When the same consultant services are provided by way of a Tier 2 supply contract, under the Construction Industry tax regime, VAT is recoverable.

In UK this distorts the market for the use of different forms and size of contract where the client can't recover VAT. Because it saves them money it incentivises Tier 2 supply contracts and has significant impact on production. This VAT rule reduces the apparent choice of works contract available to many contracting authorities, impacting on quality standards and innovation. It can unnecessarily lengthen supply chains and their cost; legitimises conflict between professional and commercial interests to the detriment of professional standing, and the independence of professionalism in the management and control of design quality and standards on the outputs of work. This VAT rule also legally constrains the types of contractual arrangement that can be entered into between the professional consultancies, main contractors and tendering authority. Access to the market by micro-SMEs is furthermore reduced when the market in these tier 2 contracts expands as appears to have occurred.

- **Professionalism in Tier 2 Supply Contracts.**

In contracts with tier 2 consultants' it is an assumption that managerial work and costs are transferred from client organisations to the contractor. But were this is accompanied by extending the length of the supply chain this invariably increases managerial costs proportionately. It is often assumed that within a fixed budget this cost is absorbed by increased efficiency. Frequently it is achieved by a reduction in quality arising from downward pressure on prices paid below tier 1 levels in the supply chain.

The arms length nature of the procurement and contractual agreements of a tier 2 consultant commercially constrains their independent professionalism, impartiality, and direct responsibility to the contracting authority. Also, as is evidenced by the need for the growing practice of deploying two architectural consultancies on a single project (ref examples below), has had the effect of diminishing construction quality. Due to the expansion of this procurement across construction works, project management and cost inefficiencies can be seen increasing proportional to the dissipation and severing of professional responsibility. Higher managerial overheads, contractual liability and increased risk to Tier 2 contractors act as a significant deterrent to engagement by micro & SME consultants in this procurement form.

*Examples given of tier 2 consultants typically working for the construction contractor and being legally bound to them include:-*

- *Another additional architect being required to hold responsibility for quality management, verification of design specifications and the delivery of standards employed by the contracting authority. Co-ordination of the separate consultancy services responsibilities and reporting responsibilities incurs additional managerial cost and liability.<sup>4</sup>*
- *Multiple professional servicing has operating in a similar manner within the schools programme were architect consultants have become responsible as client advisors.<sup>5</sup>*
- *The contractual relationship and the withholding of payment being used for the purpose of exerting economic pressure on a consultant's professionalism.<sup>6</sup>*
- *Notices of defective procedures and works, made by incumbent architects being unacknowledged by contractors with months of projects delays arising from subsequent rectification.<sup>7</sup>*

Through allowing contracting authorities and consultants' opportunity for more formal and direct contractual re-engagement this proposal prioritises simplification in respect of works on site, reduced costs and improved quality.

<sup>1</sup> Irrespective of the consultants position in a supply chain.

<sup>2</sup> This stand alone proposal is negated however if the unitary VAT regime proposed with the Sustainable Green Procurement recommendations is adopted

<sup>3</sup> A contractual position that might be described as achieved through a form of 'reverse' novation.

<sup>4</sup> Example:- Ocean Estate phase 1 LB Tower Hamlets, development consortium East Thames Group with Wates Living Space

<sup>5</sup> Example:- RIBA Client Advisory role

<sup>6</sup> live project source wishing to remain confidential

<sup>7</sup> live project source wishing to remain confidential

## 14.POLICY MONITORING

Recommendation:-

**2. That EU data be collated for public dissemination to permit evaluation of the EU Procurement directive for professional construction services.**

The EU Procurement Policy Review 2011 is being undertaken in a partial vacuum. Whilst the directive places enormous requirements upon the provision of data for clients and tender applicants alike, there is commensurately little placed upon reporting and monitoring of the process and outputs. Hence the impact of the directive and its UK implementation on the equitable distribution of work to small and micro suppliers, rising procurement costs for service contracts, value for money, open market competition and access and uptake by to trans-national suppliers, quality etc. can't be adequately appraised.

For example the definitions of public works contracts provided by ONS appear to differ from those used to define contracts undertaken through EU procedures (PPP, PFI, grant aided organisations etc). There is no publicly available data through (either ONS or Eurostat) on tender numbers, their type (whether open or restricted, or for new build or refurb. etc.), contract size, respondent levels, Nos of lots, procurement costs or their geographical distribution by country or region. Rather most information is gathered anecdotally or by selective private survey. Without data provision the economic impact of the EU Policy isn't transparent.

The success or otherwise of policy objectives aimed at giving fair and better access to micro and SME businesses, and any distortions arising in the market can't be evaluated.

# APPENDIX A

## Using a 'Pyramid analogy' for explaining statistical interpretations.



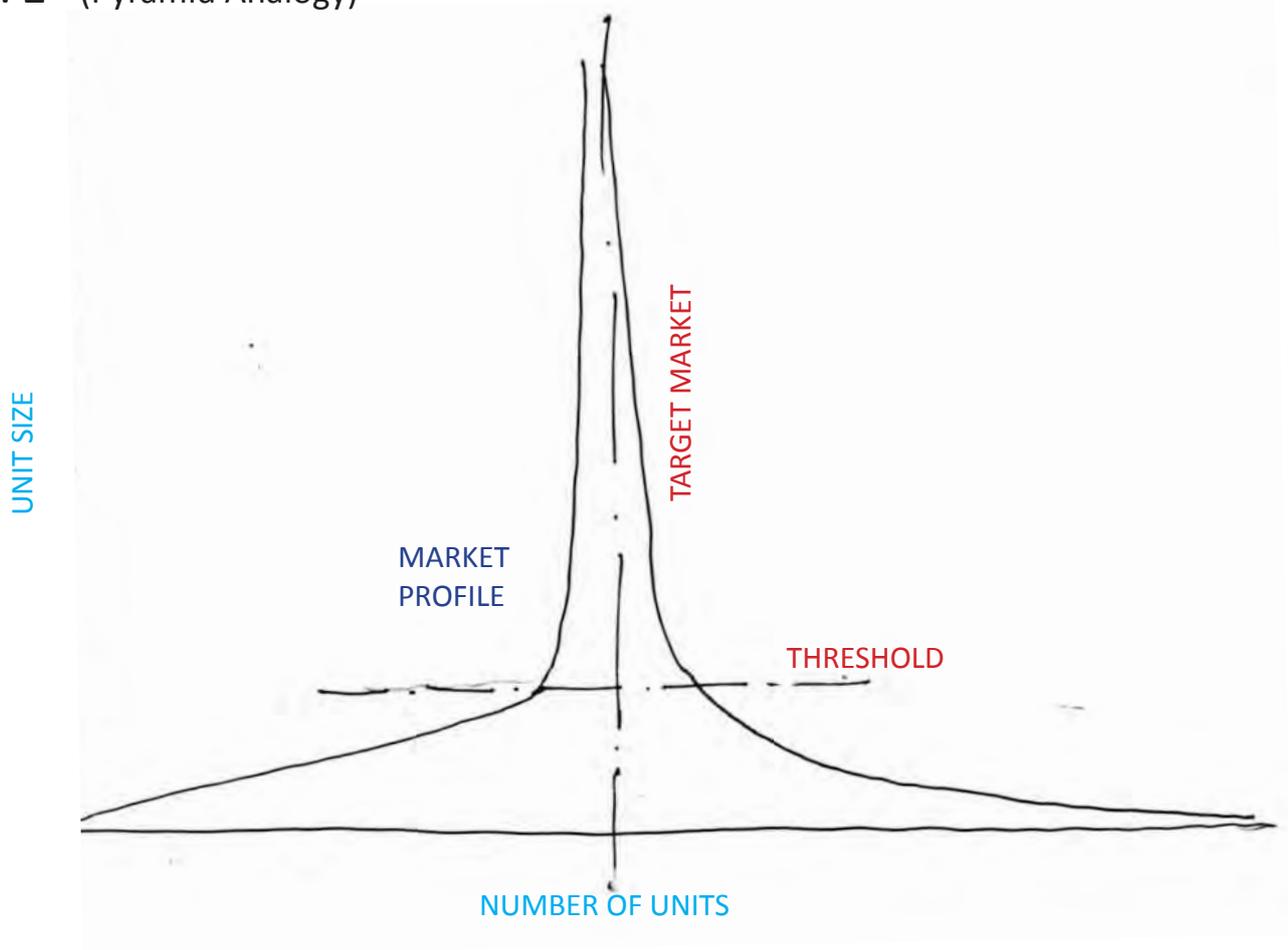
The structure of the Construction industry might be viewed as a **pyramid**, with the top supported on a broad foundation, and each part integral to the whole.

In the following 4 diagrams the 'profile' of the industry is explored through its 'shape' and by reference to this analogy (for the purpose of graphically illustrating the underlying statistical principles for interpretation of the subsequent charts).

This is followed by a sequence of charts abstracting industry statistical data.



FIG. 2 (Pyramid Analogy)



## MARKET DISTORTION -

Occurs whenever the market is constrained by conditions of a THRESHOLD (a GLASS CEILING)

### CONSULTANCY PRACTICES

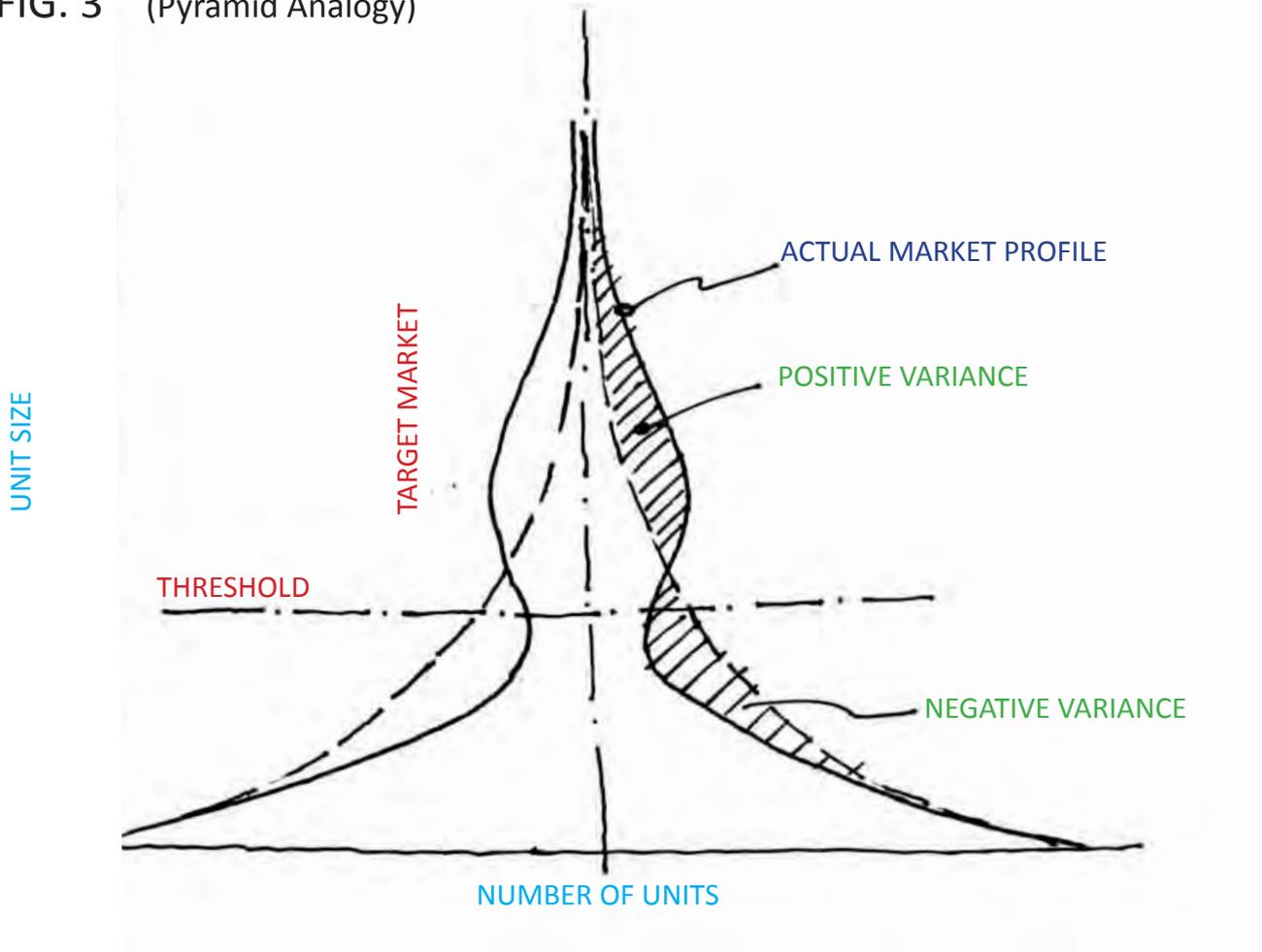
X Axis the NUMBER of CONSULTANCY PRACTICES  
Y Axis the SIZE OF PRACTICE by NUMBERS EMPLOYED

### BUILDING CONSTRUCTION

X Axis the NUMBER of CONSTRUCTION CONTRACTS  
Y Axis the VALUE of CONSTRUCTION CONTRACTS.

*(Stats analysis of data for consultancy professionals profiling professions against EU threshold values & Tender Thresholds)*

FIG. 3 (Pyramid Analogy)



## MARKET DISCRIMINATION -

When significant VARIANCE arises in the MARKET PROFILE as a condition of constraints on the market (by a THRESHOLD) such that the constraint gives rise to POSITIVE VARIANCE to the ACTUAL MARKET PROFILE of the TARGET MARKET above the threshold and NEGATIVE VARIANCE below the threshold.

### CONSULTANCY PRACTICES

X Axis the NUMBER of CONSULTANCY PRACTICES  
 Y Axis the SIZE OF PRACTICE by NUMBERS EMPLOYED

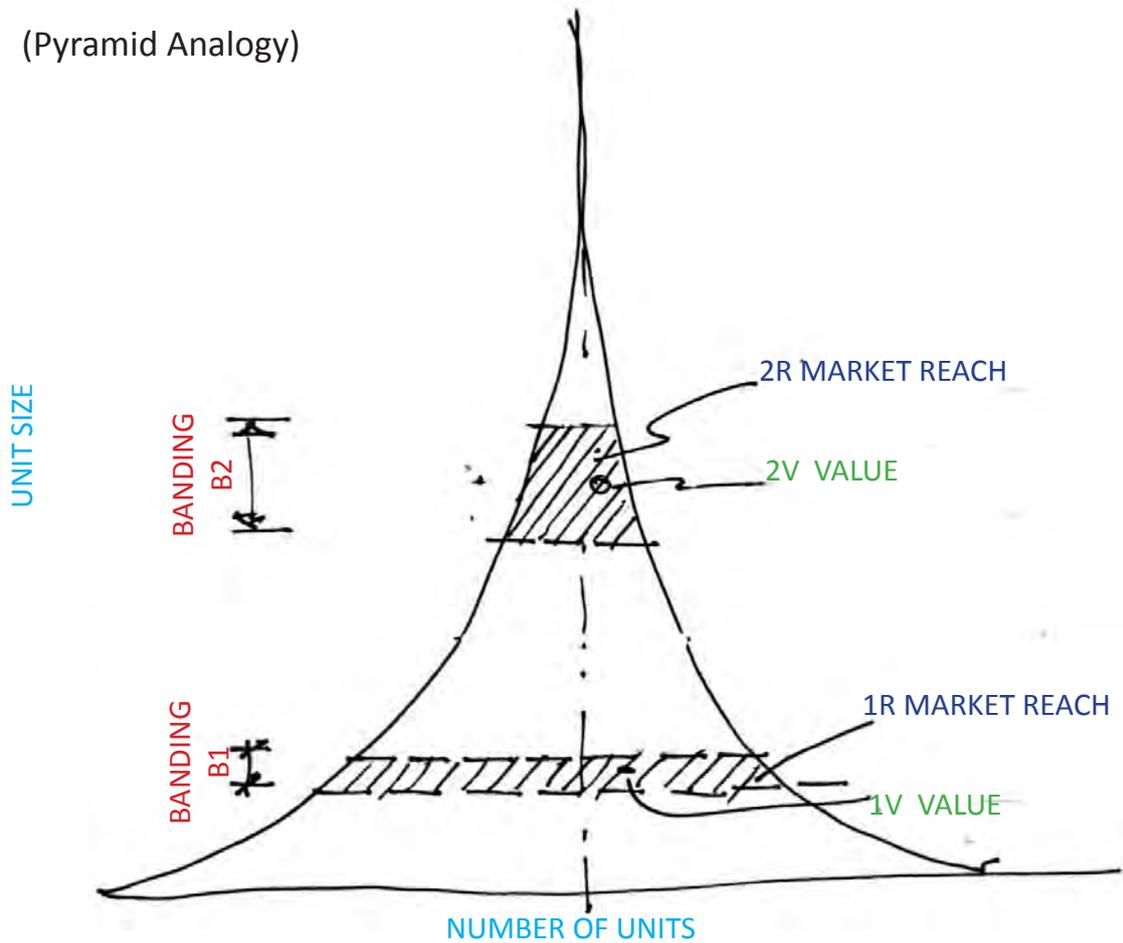
### BUILDING CONSTRUCTION

X Axis the NUMBER of CONSTRUCTION CONTRACTS  
 Y Axis the VALUE of CONSTRUCTION CONTRACTS.

*(Stats analysis of data for consultancy professionals profiling professions against EU threshold values & Tender Thresholds. Other economic conditions will also apply)*

With a sufficiency of data where the variance and its correlation to EU threshold values can be evaluated such variance may prove that discrimination occurs as a condition of these factors

FIG. 4 (Pyramid Analogy)



## MARKET BANDING -

A logarithmically derived **MARKET BANDING (1B & 2B)** determined above and below a **VALUE (1V & 2V)** can be used to ensure **THE MARKETS TARGET REACH (Areas 1R & 2R)** are **EQUAL**.

### CONSULTANCY PRACTICES

**X Axis** The NUMBER of CONSULTANCY PRACTICES  
**Y Axis** The SIZE OF PRACTICE by NUMBERS EMPLOYED

### BUILDING CONSTRUCTION

**X Axis** The NUMBER of CONSTRUCTION CONTRACTS  
**Y Axis** The VALUE of CONSTRUCTION CONTRACTS.

To ensure **EQUALITY OF ACCESS**, **SELECTION** procedures could be **BANDED** according to **VALUE** (horizontal **MARKET REACH**). With band widths appropriately proportioned (logarithm) to achieve the desired percentile penetration of the market. (The positioning of 'LIGHT' Tenders).

*(As large practices can establish small works divisions and any practice can open subsidiary offices within the EU there is no constraint on OPEN MARKET COMPETITION above banding levels - a distortion but probably unlikely to be a significant material variance?)*

The **PROCUREMENT PROCESS COSTS (& criteria)** if **CORRELATED** to **VALUE / MARKET REACH** (with minimal cost at lowest values) - would ensure free and open market access appropriate to the **SPECIFIC PROJECT**.

## SUMMARY

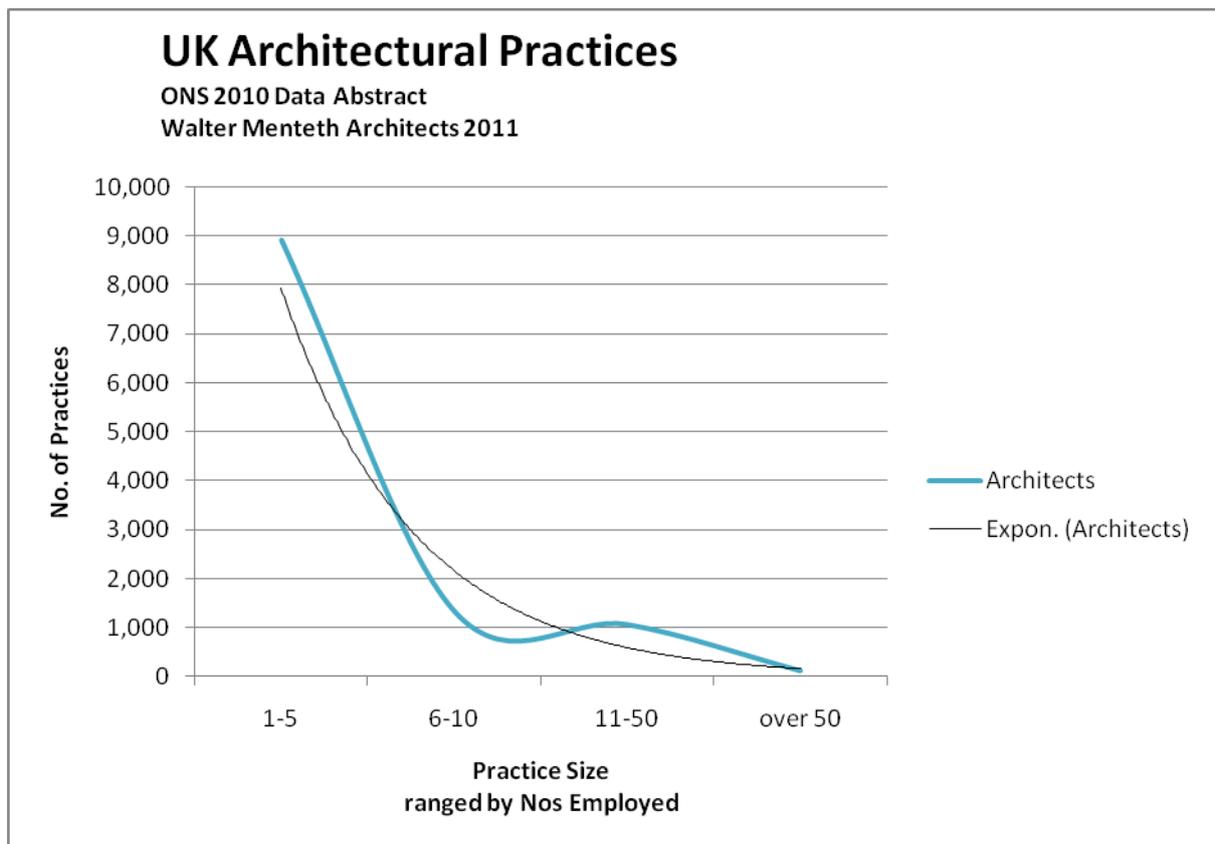
For SMEs therefore **REDUCING COST, SIMPLIFICATION OF SELECTION & REMOVING ALL (constraining) THRESHOLDS** are the **PRIORITY**.

# APPENDIX B

## Statistical analysis of architects, the construction professions and industry.

FIG 5

ONS Construction Data Statistics Annual 2010 Ch. 12 Table 12.11 (Data Abstracted in ranges shown)



Notes:-

Source of data: Construction industry Council - Survey of UK Construction Professionals 2005/2006. This survey is undertaken every five years.

Table 12.11 Estimated number of construction professionals service firms by main type and number of employees

For this chart the ranges of 1 & 2-5 person practices have been combined.

FIG. 6

ONS Construction Data Statistics Annual 2010 Ch. 12 Table 12.11 (Data Abstracted in ranges shown)



Notes:-

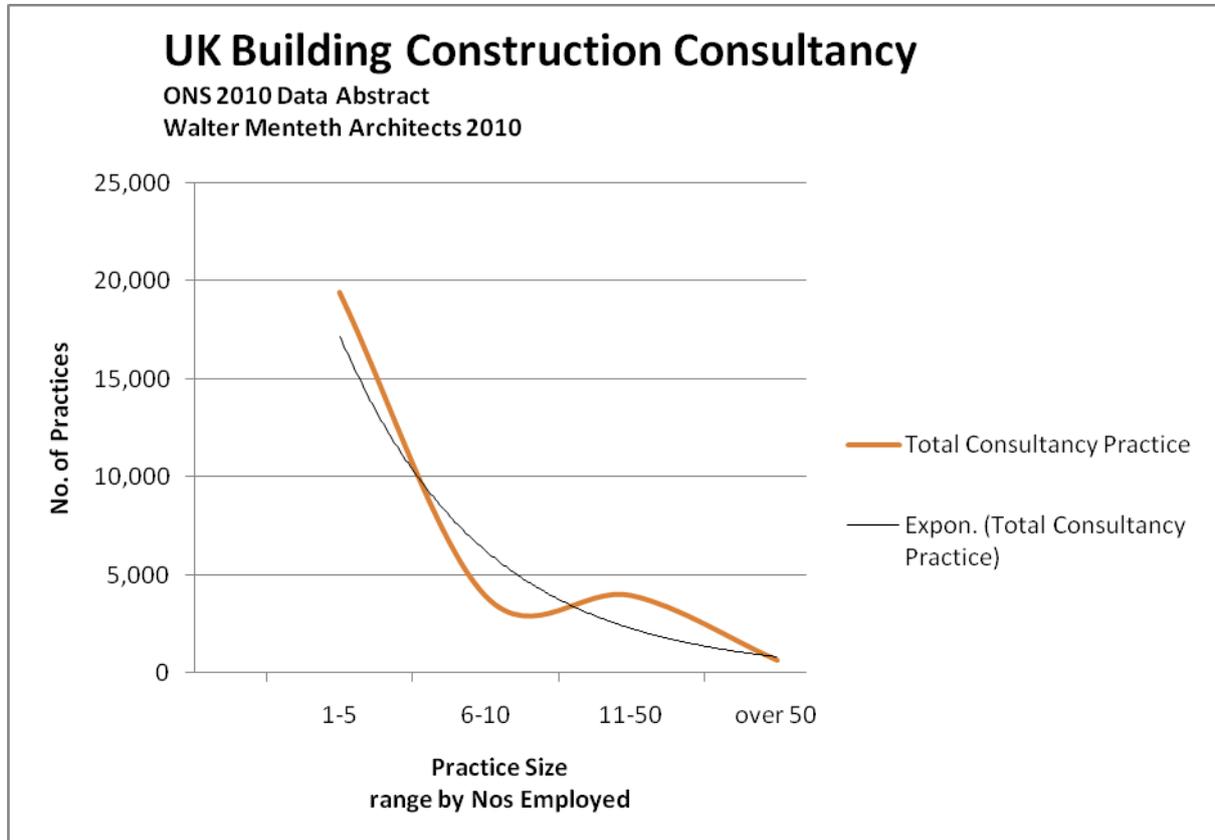
Source of data: Construction industry Council - Survey of UK Construction Professionals 2005/2006. This survey is undertaken every five years.

Table 12.11 Estimated number of construction professionals service firms by main type and number of employees

For this chart the ranges of 1 & 2-5 person practices have been combined.

**FIG. 7**

ONS Construction Data Statistics Annual 2010 Ch. 12 Table 12.11 (Data Abstracted in ranges shown)



Notes:-

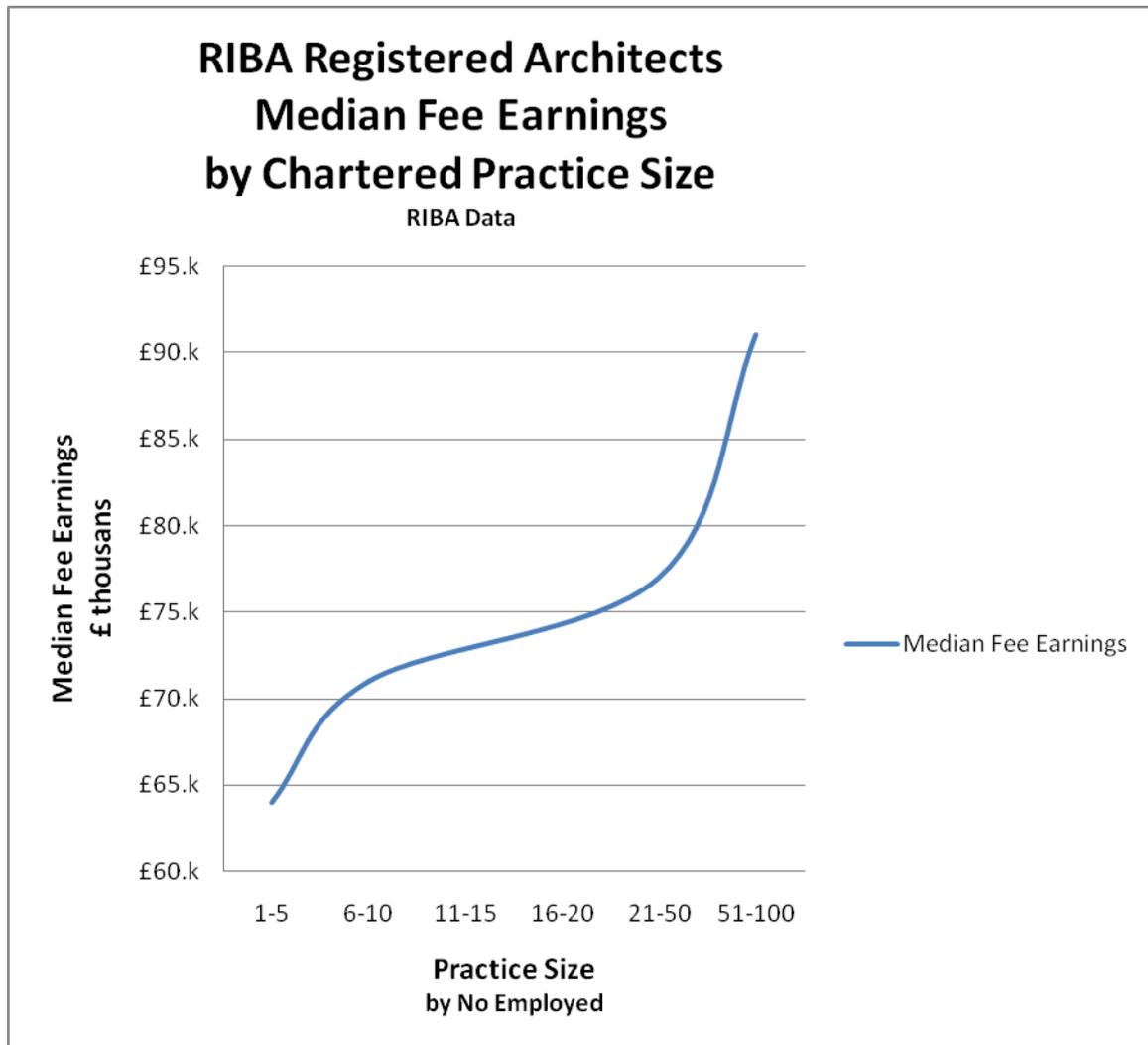
Source of data: Construction industry Council - Survey of UK Construction Professionals 2005/2006. This survey is undertaken every five years.

Table 12.11 Estimated number of construction professionals service firms by main type and number of employees

For this chart the ranges of 1 & 2-5 person practices have been combined.

**FIG. 8**

Data Source RIBA Practice directorate Jan 2011

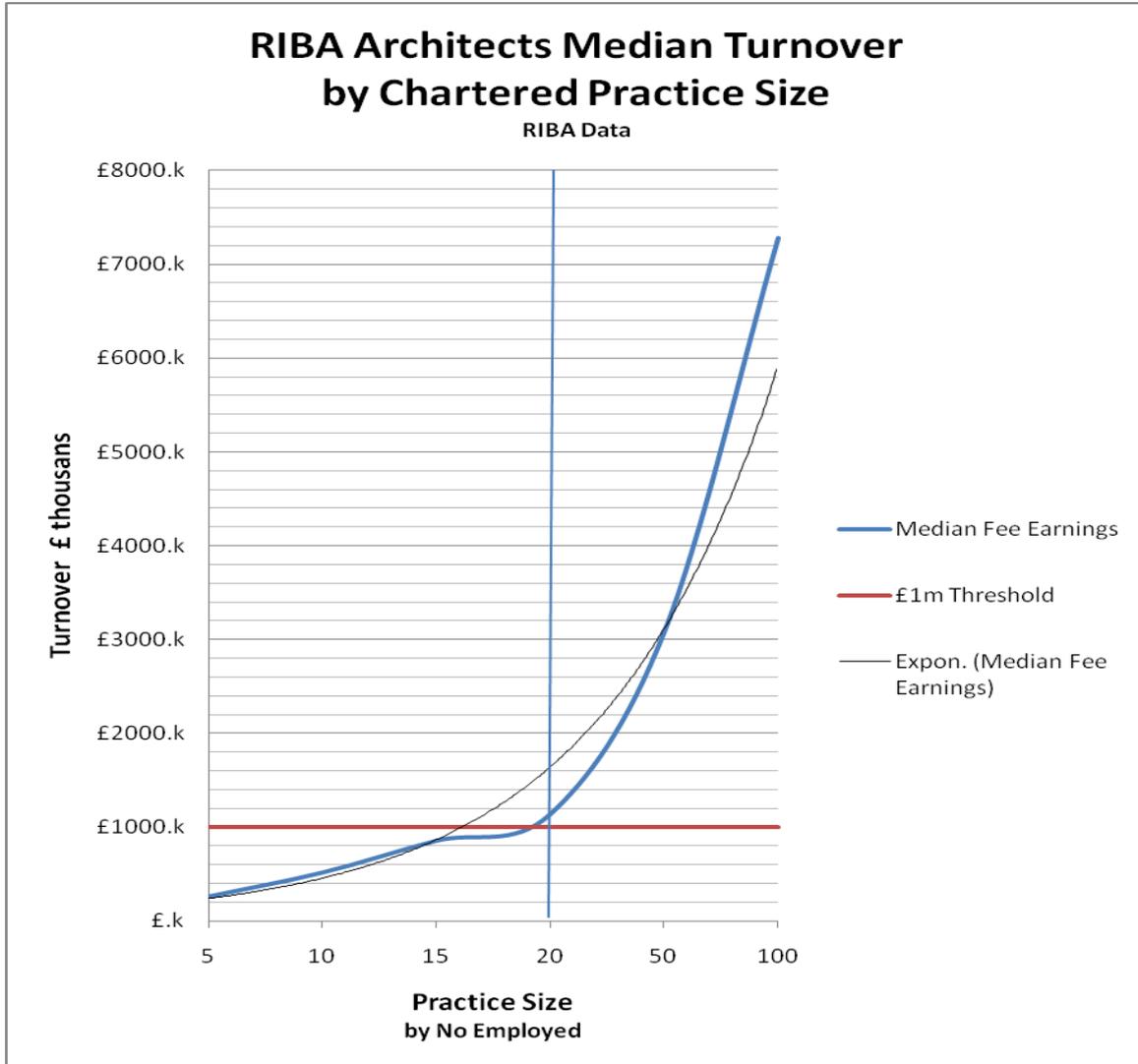


Notes:-

Source of data: RIBA Directorate of Practice – Jan 2011

FIG. 9

Data Source RIBA Practice directorate Jan 2011



Notes:-

Source of data: RIBA Directorate of Practice – Jan 2011

RIBA report 79% of RIBA Chartered Practices have 10 or fewer staff .These practices employ 40% of the architects working for all RIBA Chartered Practices.

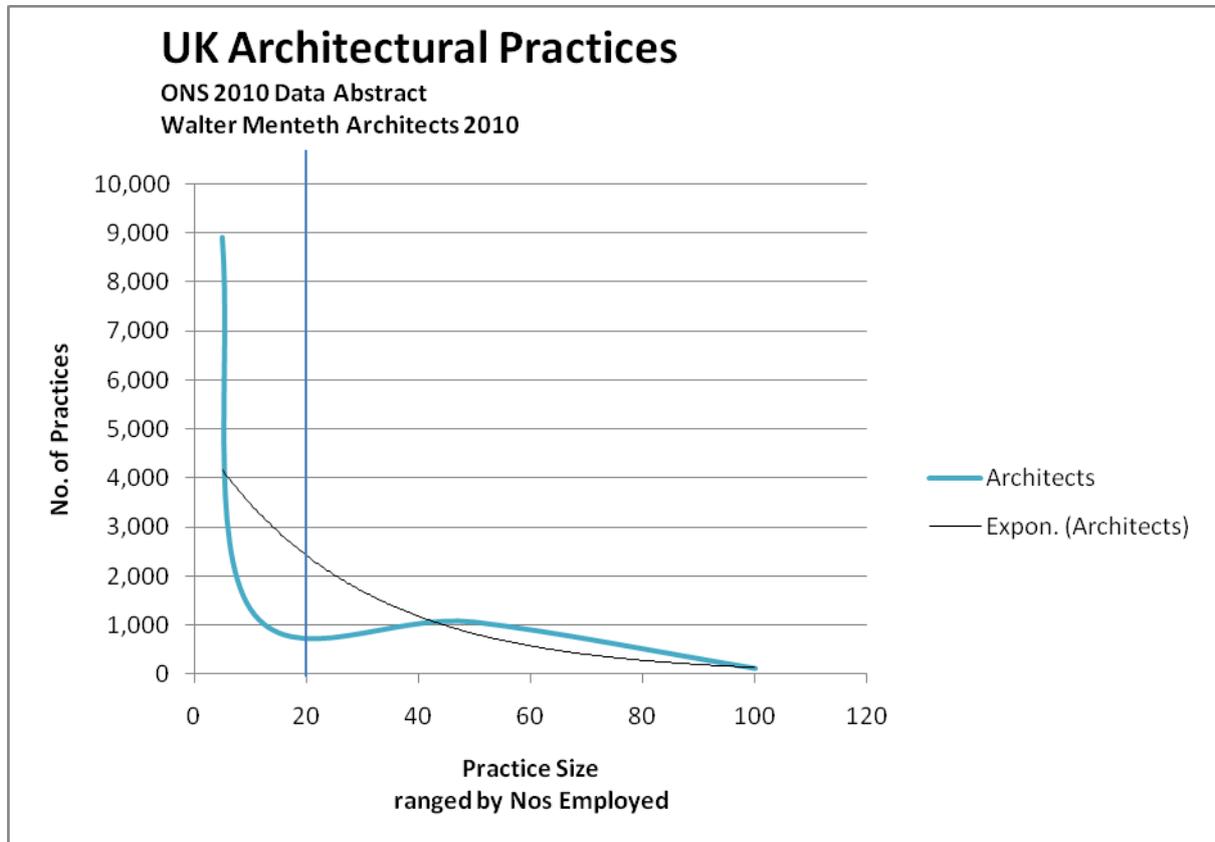
61% of practices have 5 or fewer staff representing 25% of architects

A min. PPQ turnover requirement of £1million immediately rules out all practices of at least 15 or less staff. This is the turnover value most frequently applied by factoring a multiple of 8 or 10 to the current min. EU thresholds.

From RIBA chartered practice data this represents min. 85% of practices employing 49% of architects working in chartered practices.

**FIG. 10**

ONS Construction Data Statistics Annual 2010 Ch. 12 Table 12.11 (Data Abstracted in ranges shown)



Notes:-

Source of data: Construction industry Council - Survey of UK Construction Professionals 2005/2006. This survey is undertaken every five years.

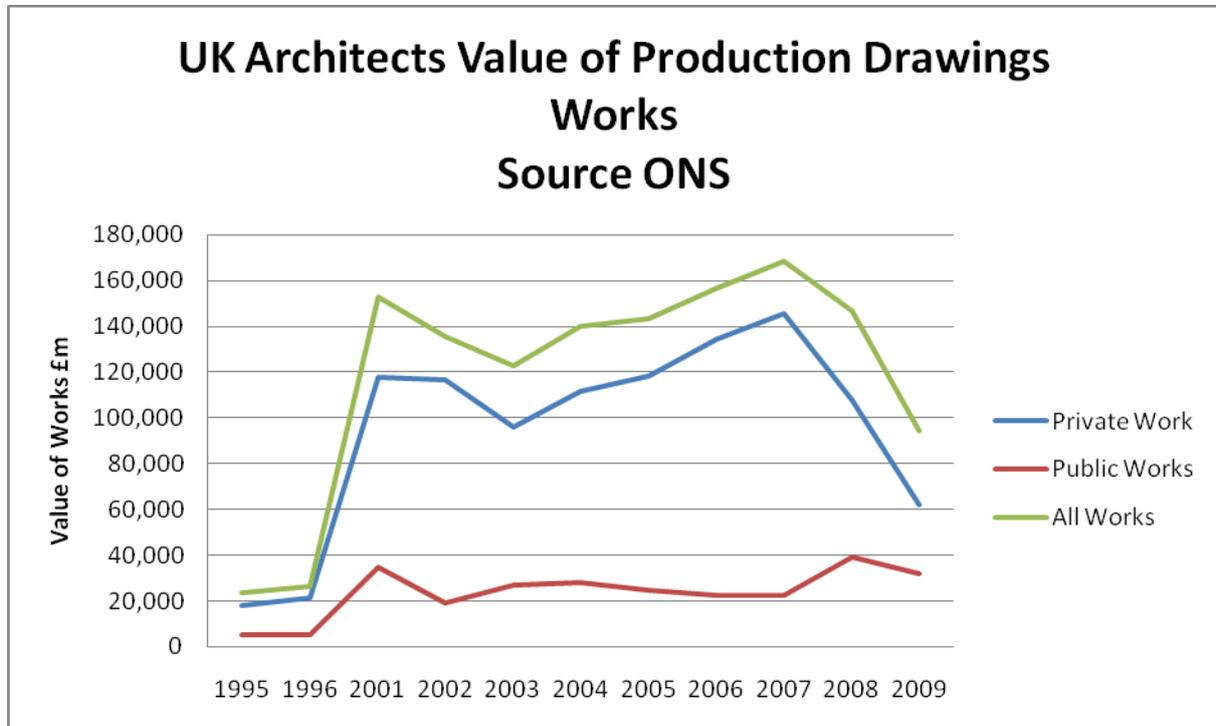
Table 12.11 Estimated number of construction professionals' service firms by main type and number of employees

For this chart the ranges of 1 & 2-5 person practices have been combined.

This chart varies from FIG 5 as practice size is taken as a linear progression rather than in the surveyed ranges. It indicates that the No. of practices relative to their size ranged by the numbers employed only achieves or exceeds anticipated size with practices of 40 or above or below approx. 3.

**FIG. 11**

ONS Construction Data Statistics Annual 2010 Ch. 3



Notes:-

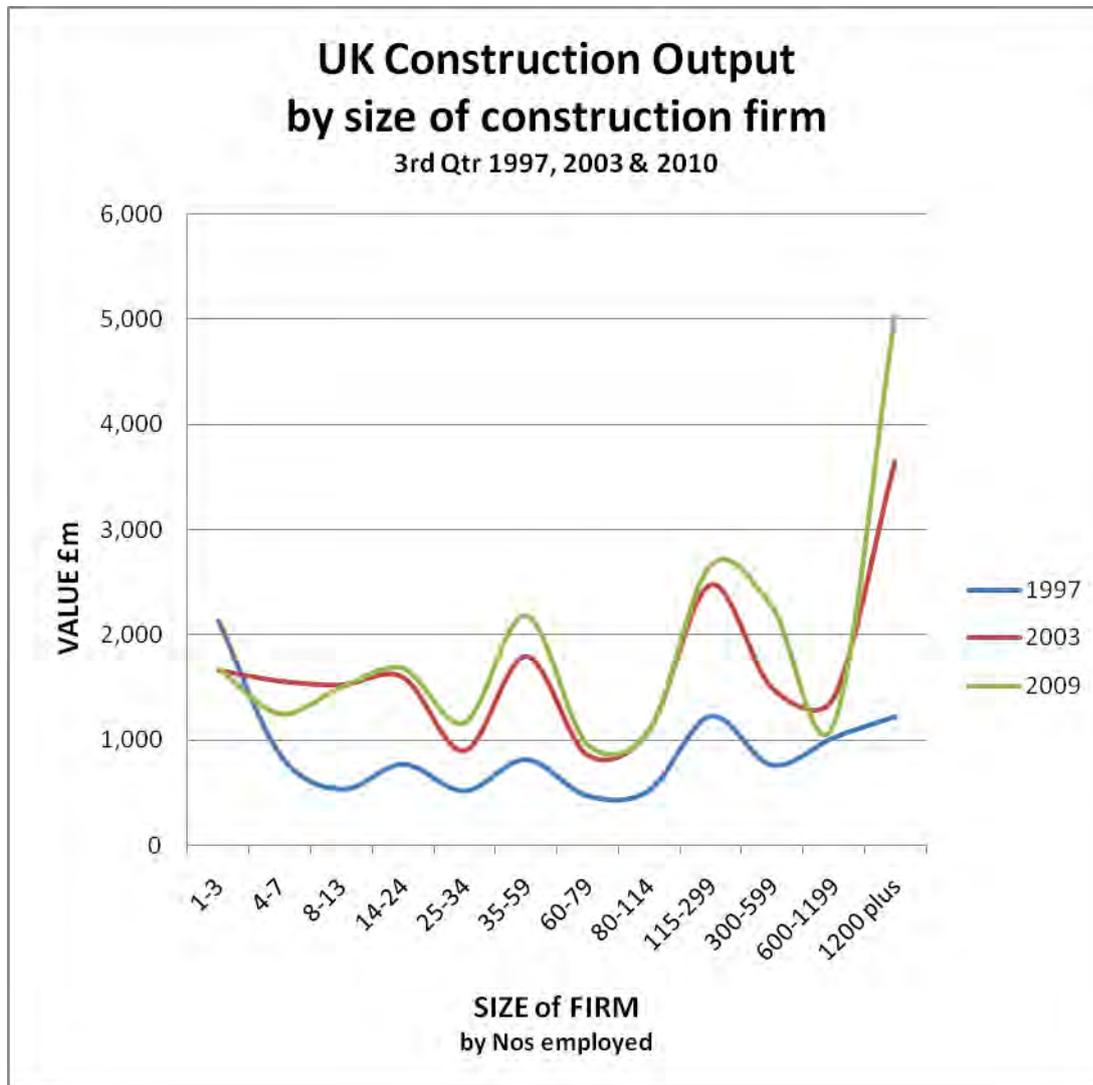
Source of data: Construction industry Council - Survey of UK Construction Professionals 2005/2006.

Chart shows impact of recession on production output.

NB Public works are believed to be different from works commissioned under the EU Procurement Directive as there is a different methodology used by ONS and EU in definition of public works. (eg PPP, PFI, are not necessarily included as public works etc)

**FIG. 12**

ONS Construction Data Statistics Annual 2010 Ch. 3 Table 3.3 (Data Abstracted in ranges shown)



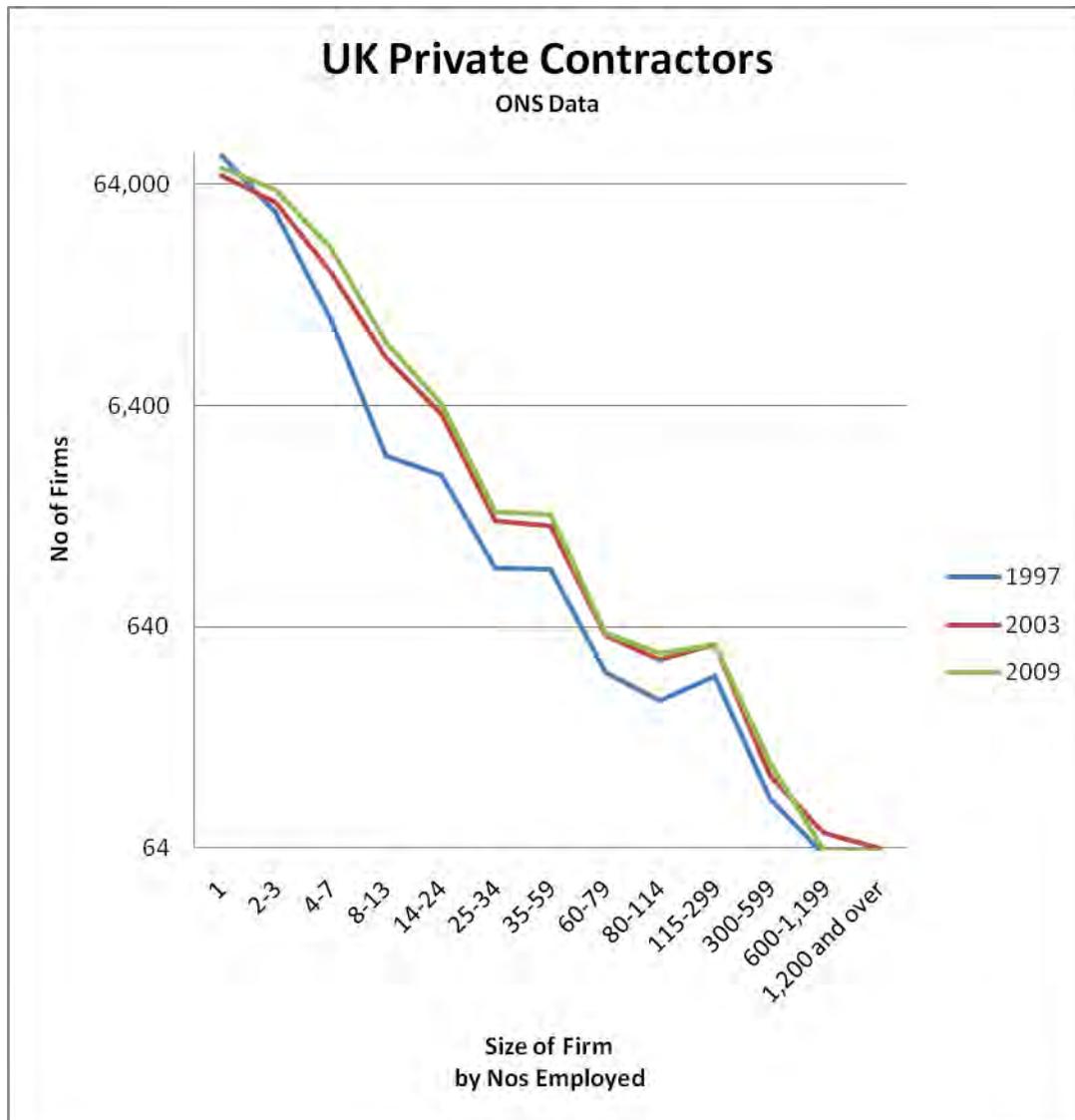
Notes:-

Chart indicates a number of specific constraints and significant amplification of the constraints over the intervals evaluated.

This might suggest that over the timescale shown the industry policy models being used are reinforcing constraint rather than removing them.

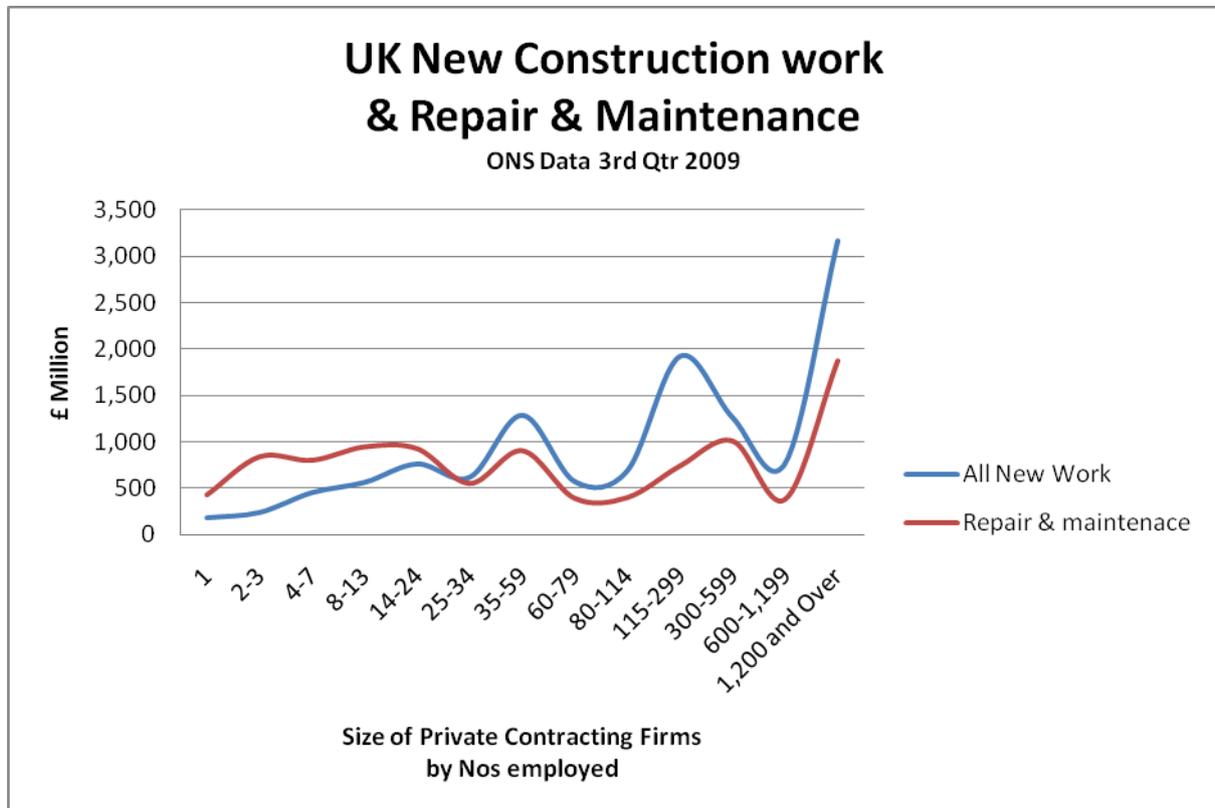
**FIG. 13**

ONS Construction Data Statistics Annual 2010 Ch. 3 Table 3.1 (Data Abstracted in ranges shown)



**FIG. 14**

ONS Construction Data Statistics Annual 2010 Ch. 3 Table 3.8 - Value of works done by size of firm & type (Data Abstracted in ranges shown)



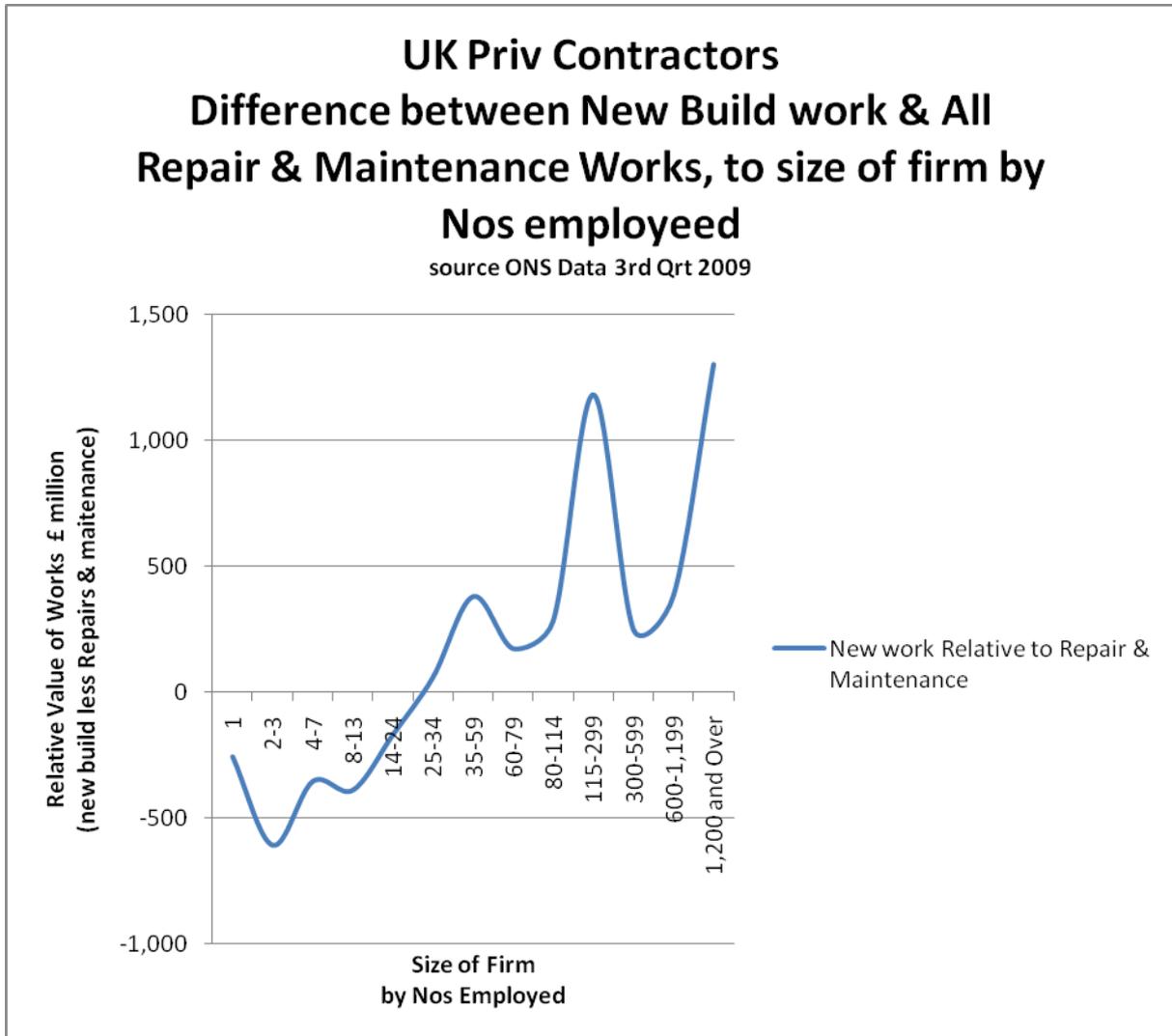
Notes:-

These figures bear relation to the total numbers of existing buildings relative to the numbers of new construction undertaken annually.

This suggests given the numbers involved, that investment is significantly distorted towards new building. The embodied energy of existing buildings is carbon neutral whilst their CO2 emissions tend to be significantly higher.

**FIG. 15**

ONS Construction Data Statistics Annual 2010 Ch. 3 Table 3.8 - Value of works done by size of firm & type (Data Abstracted in ranges shown)



Notes:-

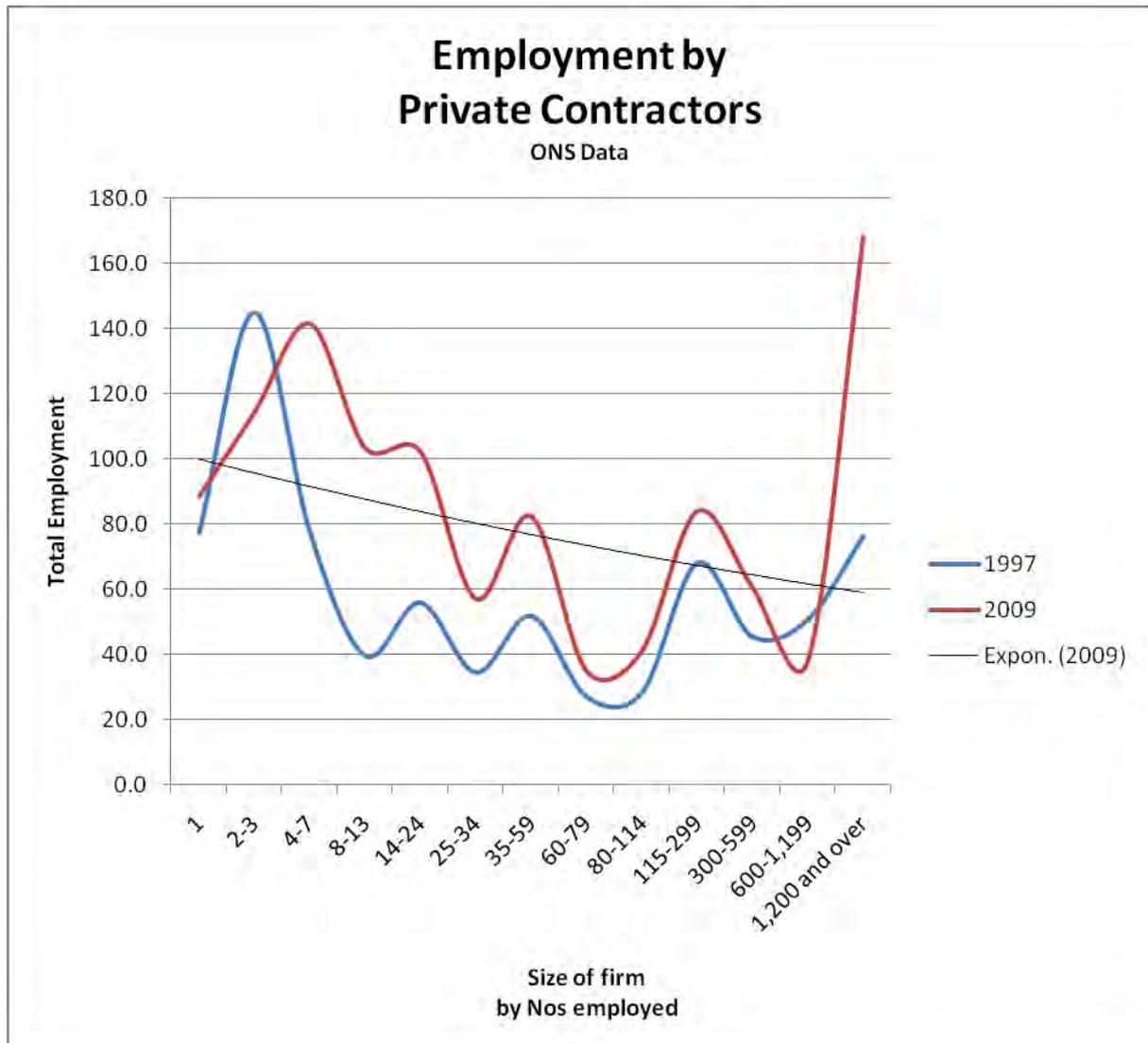
This chart views the difference between repair and refurbishment as a baseline and new build

At firm sizes ranging between 1 & 2-3 it could be considered that the relative decline in repairs relative to new build is due in part to the undeclared 'black' economy.

The sector is dominated by refurb & repairs for all private contracting firms up to approx. 25 employees

**FIG. 16**

ONS Construction Data Statistics Annual 2010 Ch. 3 Table 3.4 – Private Contractors: Total Employment (Data Abstracted in ranges shown)

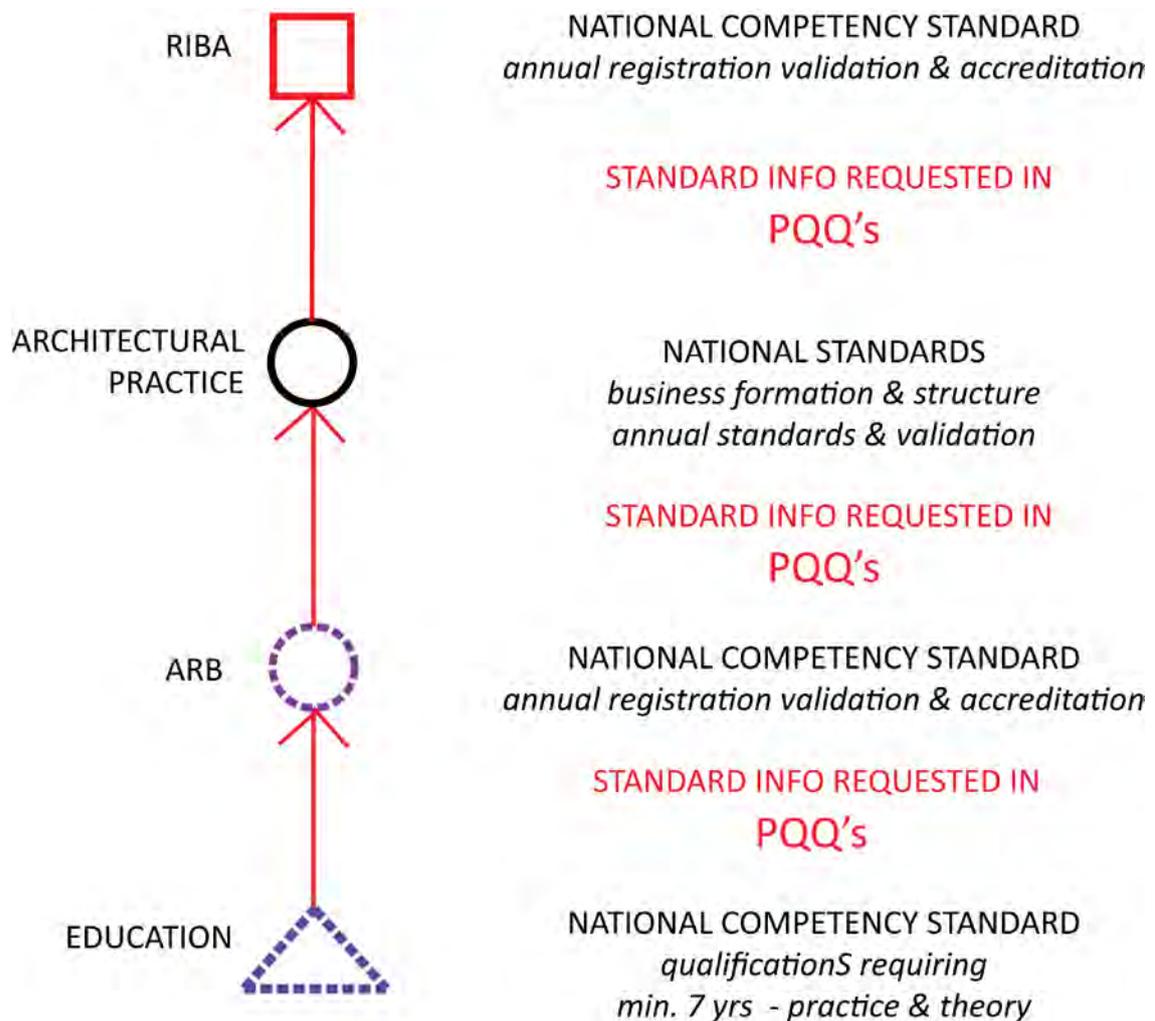


# APPENDIX C

## 'Collegiate Portal' proposed for tendering procedures and dissemination of notices

FIG. 17

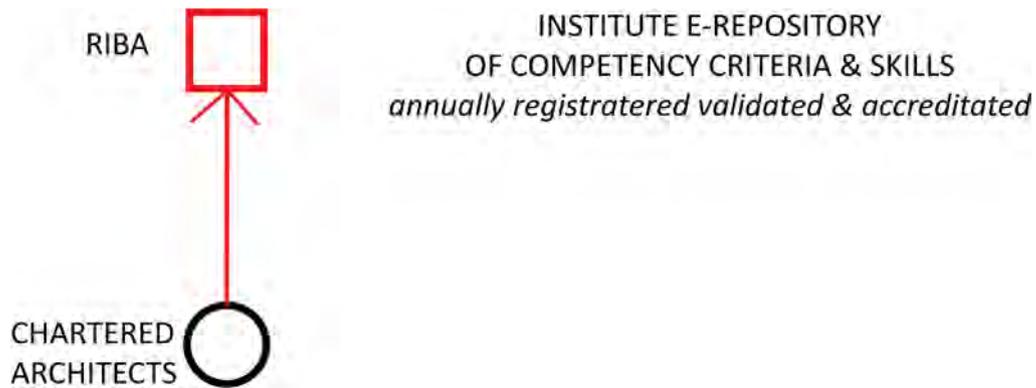
NATIONALLY RECOGNISED VALIDATIONS, ACCREDITATION & COMPETENCIES



At all qualifying stages legally recognised national professional competency is validated and accredited. Standards along with codes of professional conduct are upheld annually via a consultancy's document submission and registration with its professional institute.

This information is required to be re-submitted for each EU tender submission. (in different formats)

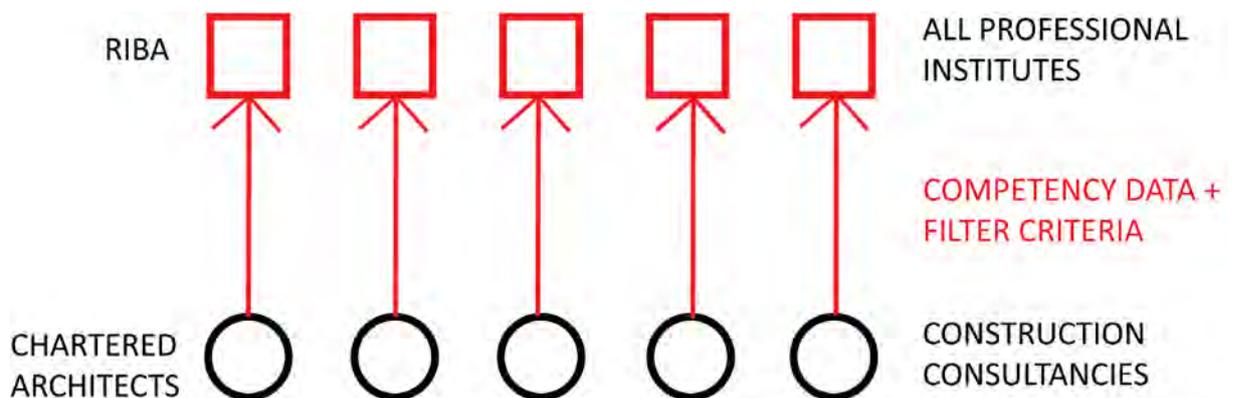
FIG. 18 - RIBA E-REPOSITORY



To register as a 'Chartered Practice' supplementary competency criteria and information is submitted to the institutes E-Repository validating the consultancy's skills and experience. This also provides filtering information for the Client Services (CS).

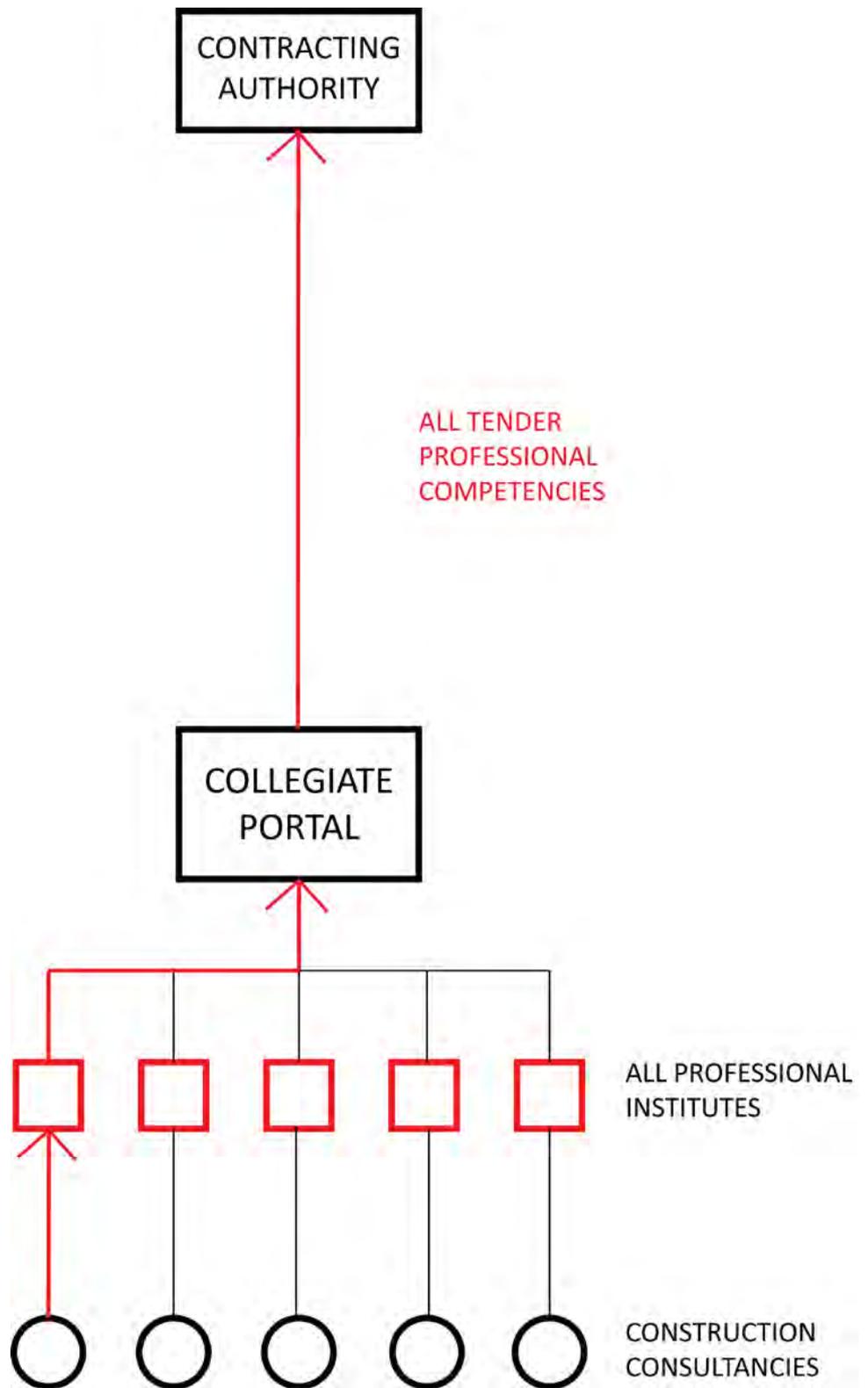
This information is also required to be re-submitted for each EU tender submission. (in different formats)

FIG. 19 – ALL CONSTRUCTION PROFESSIONAL INSTITUTES



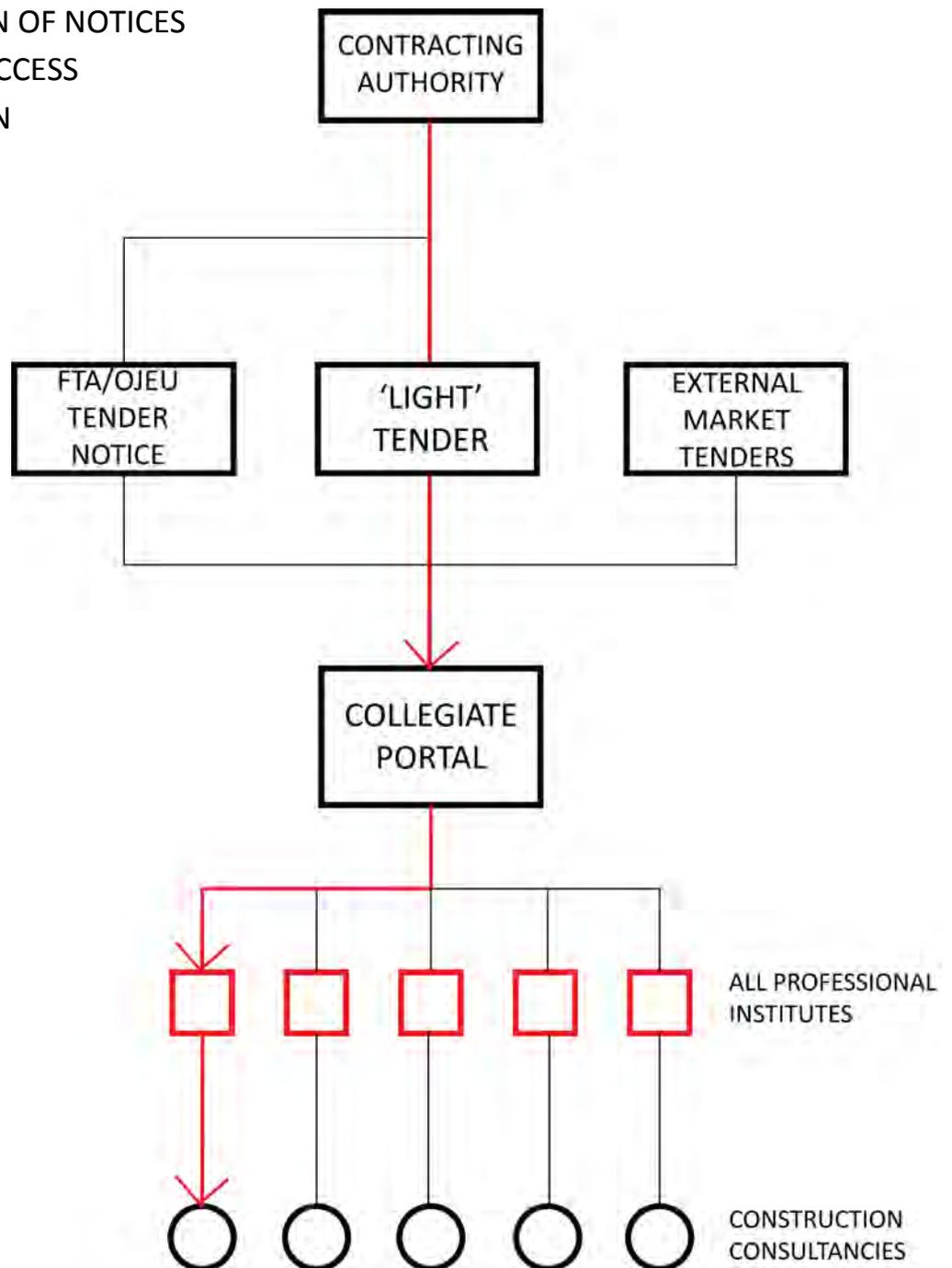
All professional construction consultants (Architects, Engineers, Quantity Surveyors, Building Services Consultants, Planners, Landscape Architects & others etc) have similar relationships with their professional institutes.

FIG. 20  
TENDER COMPETENCY  
SUBMISSIONS VIA  
A 'COLLEGIATE PORTAL'



A 'Collegiate Portal' (CP) is proposed for relating consultancy's, their professional institutes and tendering authorities to each other for the efficient downloading of competencies from the institutes through the Collegiate Portal (CP) for both EU (public) and private tenders.

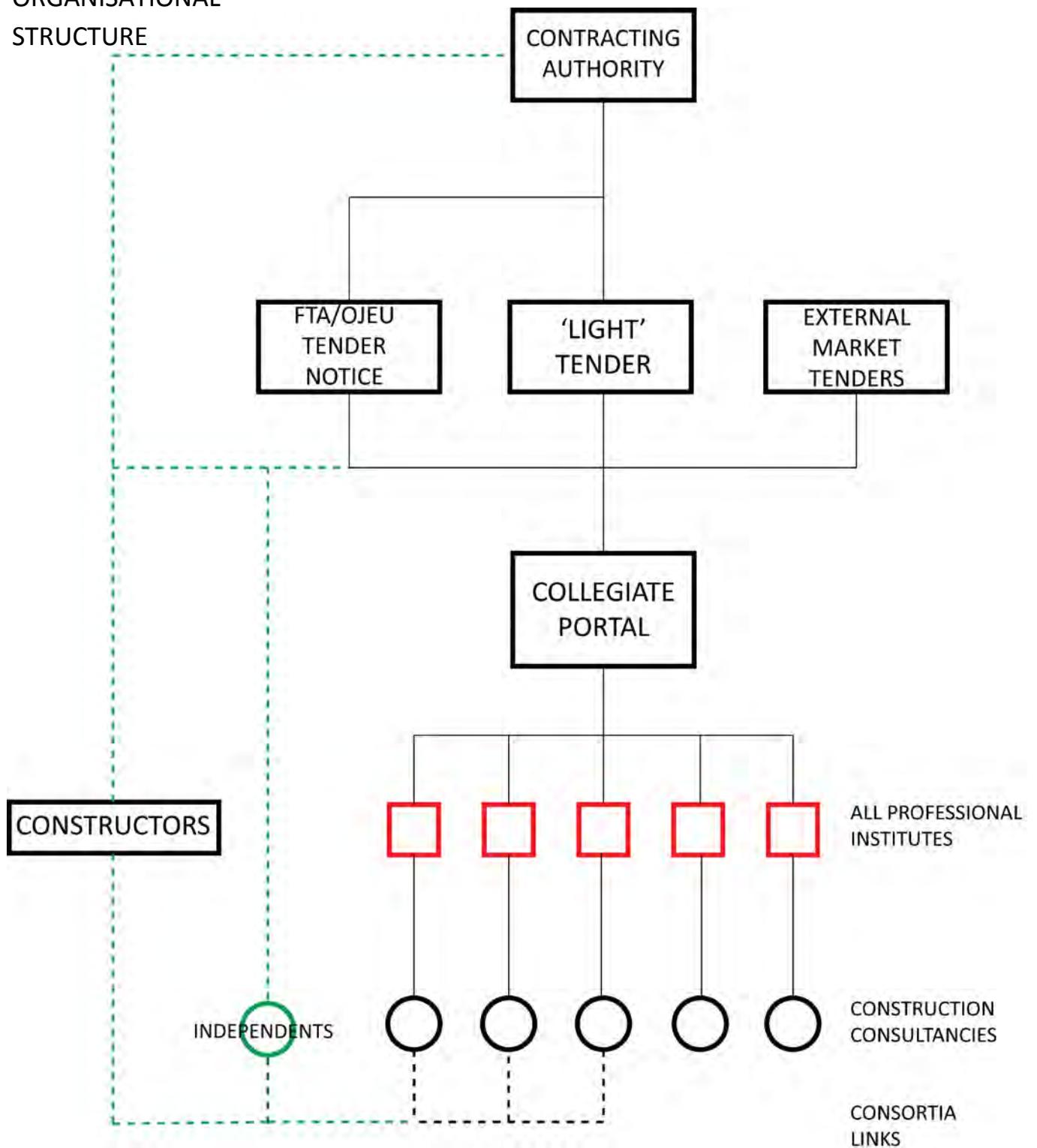
**FIG. 21**  
**DISSEMINATION OF NOTICES**  
**FOR MARKET ACCESS**  
**& PENETRATION**



With registration an institutes consultants would automatically receive tender notices annually according to their filter criteria.

'Light' tenders below FTA determined thresholds could all be disseminated this way, along with 'standard' notices (required by FTA's) to be also published through OJEU, private works and external market notices. This would improve market access and penetration.

FIG. 22  
ORGANISATIONAL  
STRUCTURE



The proposed organisational structure allows for professional consultancy consortia from different institutes; and constructor/ consultant consortia and unregistered 'independent' consultancies in the manner illustrated.