Building ladders of opportunity
how reforming construction procurement can drive growth

RIBA
Procurement Reform Group

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The construction industry has an annual turnover of more than £110bn and represents almost **10% of UK GDP**, with some **40%** of this being **in the public sector**.

Public construction **procurement is expensive and inefficient**, delivering buildings that are of sub-standard design quality and sustainability, in a market with significant barriers to fair access and competition.

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

This presentation addresses some of the context, problems and the RIBA proposals for further reform of public procurement.

The full suite of RIBA reports are available at:-

www.architecture.com/procurement
**UK PROCUREMENT COST**

Typical costs of a competition (weighted averages across all industries)

![Cost Comparison Chart]

<table>
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<th>Country</th>
<th>Authority € (000)</th>
<th>Firm € (000)*Bids</th>
<th>Total € per competition (000)</th>
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<tr>
<td><strong>Average</strong></td>
<td><strong>5.5</strong></td>
<td><strong>3.8</strong></td>
<td><strong>9.3</strong></td>
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**UK PROCUREMENT**

Is at least **20% more expensive** than comparable EU countries, costs are almost **2x EU average**

Of EU procurement costs:-
- **25%** are borne by **CONTRACTING AUTHORITY**
- **75%** are borne by **BIDDERS** (averages)

Construction costs are remarkably consistent amongst the largest EU countries with Germany, France, Italy and Belgium within a range of 97% - 107% of UK costs. EC Harris - Aug 2010
PROCUREMENT TIME

time for entire procurement process by country (median/mean number of days)

Ref. EU commissioned evaluations of ALL PUBLIC PROCUREMENTS

UK PROCUREMENT processes take almost 50% longer than the EU average.
VALUES OF AWARDS
% by value of all EU contract awards

UK PLC MOST VALUE
ref. EU commissioned evaluations of ALL PUBLIC PROCUREMENTS,
CONSTRUCTION comprises 37% of procurement by value

UK ‘OJEU’ PROCUREMENT
accounts for 24% by value of all EU awards,
+ more by value than the combined total of
24 other nations.

this bears little correlation to national GDPs
(France @15% + Germany @6%)

The EU definition of ‘Public Bodies’ is interpreted by the UK
to catch in the rules otherwise legally independent ‘arms
length’ organisations, ‘Registered Providers (RPs)’, charities
and voluntary organisations. It is considered these, along
with the NHS, add significantly to UK values.

This UK position should be aligned with other EU countries
(eg, Holland) to exclude ‘RPs’ and other arms length
organisations from the scope of OJEU Procurement.
We might rely more on developing intelligent judgement
+ benefit by doing less public procurement
NUMBER OF AWARDS
% by Nos. of all EU contract awards

UK PLC
FEW AWARDS
ref. EU commissioned evaluations of ALL PUBLIC PROCUREMENTS,
CONSTRUCTION comprises 16% of procurement by numbers

UK ‘OJEU’ PROCUREMENT
accounts for only
7.5% by numbers
of contracts awarded of all EU awards.
UK 'OJEU' PROCUREMENT has aberrantly high mean values + 60% higher median values than the EU average.

In the UK there is more 'aggregation' into large, high value frameworks & contracts than elsewhere in the EU.

Aggregation excludes many smaller firms and can have a negative impact on reducing competition.

UK efficiencies are in inverse to the extent of UK aggregation.

Procurement reforms should aim to reduce the number of frameworks covering lower value contracts, improving access onto other frameworks, along with offering individual contracts and those contracts which can be sub-divided into smaller & more multiple value 'lots'.

UK PLC
HEAVILY AGGREGATED
ref. EU commissioned evaluations of ALL PUBLIC PROCUREMENTS, CONSTRUCTION comprises 37% of procurement by value

RIBA
PROCUREMENT
COST is driving aggregation
Total procurement cost (commissioners and bidders) as share of contract values (+HiLo estimates)

The EU estimates that procurement costs escalate to between **18% - 29%** as a % of contract value, for contracts at the thresholds (circled)

Evidence from architects suggests figures for the UK construction industry are far higher. (ref. follows)

Reform should:
- reduce the time + cost of the tendering process
- introduce time scales for bid assessment;
- allow for professionals self certification
- with attestation only at pre-award stage
+ all validated only upon award, shorten, standardise and simplify PQOs

* Items now scheduled to be introduced
ALL CONSULTANTS
a consistent profile
Practice numbers to practice size by numbers employed ONS abstraction

97% of all UK construction consultancies
are micro businesses or SME’s
+ UK Practices are on average larger than elsewhere in the EU

An SME
Is a small or medium sized enterprise, i.e. a company that has fewer than 250 employees, and has either an annual turnover not exceeding €40 million, or an annual Balance Sheet total not exceeding €27 million.

A Micro Business
Is one which has fewer than 10 employees and a turnover or balance sheet total of less than €2 million.
MICRO + SME ACCESS
SME’s relative to OJEU awards

To public procurement within the UK is the 4th lowest of the EU 27.

Typical turnover requirements applied to much public sector work above OJEU thresholds mean 85% of UK architectural practices are too small to be able to tender.

The proposed min. turnover being proposed (x2 min. contract value @ €200,000) will exclude from public work 90% of EU architectural practices.

For professional ‘intellectual services’ there should be NO TURNOVER CRITERIA under the EU Directive.
UK PLC
POOR ACCESS
ref. EU commissioned evaluations of ALL PUBLIC PROCUREMENTS

MICRO + SME ACCESS
to public procurement
within the UK is
25% below the economy as a whole

It is implicit to fair and competitive access that SME and micro business access to public tenders should be roughly in proportion to their weight in the economy.

Fair access is an objective which can be achieved by:
setting clear aspirations for micro + SME access
which is nondiscriminatory + proportionate
to their engagement in the economy
RIBA SURVEY 2012
LOW MARKET ENGAGEMENT
report for UK chartered architectural practices

55% aren’t engaged in the market never review OJEU notices or do so once p.a or less

61% did not bid

39% submitted at least 1 bid

In London 1% of practices submit 50 bids p.a or more

For a competitive market, reform should target enabling access for micro businesses and SMEs, and ensuring greater proportionality in their treatment.
THE UK ARCHITECTURAL PROFESSION SPENDS
£40m bidding for contracts of approx. £138m

BIDS COST 29% (average)
of the fee derived from OJEU procurement

For practices of 30 plus BID COSTS RISE TO 40%
(this far exceeds EU estimates - ref previous fig.)

Of 13,000 bids by architects almost 6,500, the largest number,
were on 2 stage restricted procedures with most of these
requiring practices to enter subsequent mini-competitions

Where used appropriately negotiated procedures offer the
most economic procurement.
Design contests are not the most expensive.
Efficiency can be delivered by increasing use of both

The competitive dialogue procurement route, was popular
eg in the BSF programme.
RIBA SURVEY 2012
FRAMEWORKS + MINI COMPETITIONS
report for UK chartered architectural practices

16% got on 1 or more frameworks
but not necessarily leading to subsequent work

13% did framework mini-competitions
of all practices incl. those not bidding

practices of 30+
derived fees of £217,778
winning via mini-competitions

few micro practices won work
via mini-competitions
where they did they derived fees of £17,893

Different procurement methods are appropriate for different projects, so sufficient flexibility must be encouraged + maintained

RIBA believes that procurement models should be better adapted to be suitable for the value, type of project or context

Mini competitions can amount to well over 1/3rd the total cost of winning works
OJEU SELECTION
Respondents' perceptions of the importance of criteria in winning a bid ranked by respondents where 1 = most important and 5 = least important

FINANCIAL CRITERIA + SIZE OF PRACTICE is ranked equally as the No.1 Criteria for assessments by 33% of practices (by a clear 15%)

DESIGN QUALITY + SKILLS is ranked the Least Important Criteria for assessments by 40% of practices (by a clear 17%)
EU BID NUMBERS
Nos & Frequencies
In the UK bids for architectural design works frequently exceed 100

MOST EU BIDS RECEIVE about 4-6 OFFERS

1% of contracts RECEIVE 15% OF ALL BIDS

"...distribution of bids is highly skewed towards the low end. ...99 percent of the requests receive less than 39 bids. ...1% however receives 15% of all proposals and a few tenders receive nearly 1000 proposals." (PWC report p 93 & fig 2.20)

THE CONSTRUCTION INDUSTRY
+ evidence indicates mainly architects is considered largely responsible for these HIGH NUMBERS

which are an excessive economic drain arising where markets are:-
Large, open, highly competitive, less complex and or lower value

The competition to extend the Asplund Library received over 1,100 submissions - the total of competitors submission costs are estimated to have exceeded the construction cost significantly
PROCESSES ARE RARELY FOCUSED ON DESIGN OUTCOMES that can ensure public buildings are sustainable, getting the right balance between economic, social and environmental factors.

BUILDINGS SHOULD BE SUSTAINABLE, SUIT AND ENHANCE THEIR LOCAL CONTEXTS AND COMMUNITIES, AND THE CONSTRUCTION PROCESS ITSELF SHOULD DEVELOP HUMAN CAPITAL AND NURTURE KNOWLEDGE ECONOMIES.

A shift in mind-set is needed, moving away from focusing solely on the quality of procurement processes, towards focusing on the quality of outcomes and incentives that drive these.

Embed assumptions in favour of sustainability at all stages of procurement, ensure proper incentives, prioritise defining the principles of whole life costing and encourage the take up of post occupancy evaluation and ‘Soft Landings’
EU Directive 2004/18 - has 83 Articles
The commissions consolidated text, Nov 2013 - had 96 Articles proposed
the proposed directive may well compound existing complexity

RATIONALISE LEGAL PRINCIPLES
CLARIFY - definitions + core principles

PROCESSES + LANGUAGE
SIMPLIFY - the procurement processes + language of the proposals

REDUCE - time, costs, administration + legals expense

To improve efficiency, comprehension + democratise law
SIMPLIFY
Cherry pick for different sectors only what is minimally necessary

TRANSPOSE
into UK Law

ONLY THE NECESSARY MINIMUM
UK historically has tended to adopt all options from the EU Directive
Germany has taken a minimalist approach

+ UK TO PROVIDE APPROPRIATE CLEAR GUIDANCE
to clients to promulgate best practice ‘INTELLIGENT COMMISSIONING’

An RIBA report case studying Intelligent Commissioning is due May 2013 with the launch of POW ‘13
THE MARKET
is Walled + Gated,
to open the market demolish the walls and gateways

THE MARKET IS CONstrained.
proscriptive current legislative REDuces ACCESS + INCREASES COST

OPEN THE MARKET
by increasing market ‘permeability’

RAISE + REDEFINE THE THRESHOLDS
IMPROVE ACCESS + PORTALS
DEROGATE + SIMPLIFY
REDUCE COSTS

DIVERSIFY PROCUREMENT PRACTICES

An agenda for growth needs to open up the markets
IN A FREE MARKET
it is commodities that are transacted
NOT the stalls

RAISE THE OJEU THRESHOLD VALUES
to the mean of existing contract values.
(depending on altering other trade agreements).

+ EU PROPOSES
TO DEFINE THRESHOLD VALUES ON:--
the aggregated value of all expenditure by a
public body for any procurement
‘The stalls’ (proposed EU Directive 2011)

THRESHOLDS SHOULD BE REDEFINE
based on the commodity exchanged ‘The
contracts’ and for a consumer market

Define public procurement thresholds from the consumer
perspective so that a single procurement is not the aggregation
of all the contract values relating to a project, but rather a
single contract. This free market principle would incentivise
disaggregation at lower values.

In the proposed EU Directive 2011 - the threshold value is determined
by the combined value of contracts for works and services.
‘MEAT’ SELECTION
a quality threshold with staged ‘Hurdles’

The ‘Double Envelope’ or Brook’s method
Team + design selection should be assessed in cascading stages, with a requirement that stages be passed in sequence. This emphasises competency and quality. It cascades as follows:

1. Competency criteria
2. Quality Assessment
3. Financial Criteria and Price

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

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

RIBA PROPOSALS
APPROPRIATE SELECTION

LOWEST PRICE
should not be the criteria for the award of construction + design contracts

MEAT
‘most economically advantageous tender’ in terms of economic, social + environmental benefits should be the default procurement selection criteria for construction + design contracts

with selection made by the ‘DOUBLE ENVELOPE’ or BROOK’S METHOD

with questioning that is project specific + for professional services relevant to designing qualitative solutions

PROCUREMENT
ALL ARE CONTRACTORS
whether suppliers of lavatory rolls or professional services

THE MARKET
PROFESSIONAL SERVICES

PROFESSIONAL SERVICES AREN’T DEFINED
in Directive 2004/18 + its proposed replacement
professionals are all equally ‘contractors’

DIFFERENTIATION IS ABSENT
that can recognise service provision, knowledge
economies, capability, organisational structures,
contract, quality + qualification etc
Without differentiation clients default to the most risk averse,
onerous + one size fits all practices

DEFINE - PROFESSIONAL SERVICES
SO THEY CAN BE ACQUIRED
APPROPRIATELY + PROPORTIONATELY

Definitions should be based on the EU Professional Services
Directive’s definition of Professionals.
Differentiation allows distinctive provisions to be made in
assessment criteria, selection, optimization of risk, turnover
and contract
**THE MARKET AGGREGATION**

- Cost Driven Aggregation
- Disproportionate Accumulative Costs
- Drive all forms of aggregation, reducing access + efficiency

**PROCUREMENT**

- Incentivise Disaggregation
- Accelerate Procedures
- Simplify Processes
- Apply Proportionality
- Optimize Risk
- Reduce Costs

**RIBA**

- Lots & Contract Aggregation
- Bundling Frameworks
- Tender Authority Aggregation

Misperceptions about the economies of scale applied to the ‘Procurement processes’ are sweeping up contracts into ever-increasing aggregations. These are failing to deliver effectively, efficiently, sustainably and fairly.
UK
use of procedures

RIBA PROPOSALS
DIVERSIFY PROCUREMENT PROCEDURES

- competitive dialogue
- public procedure
- restricted procedure
- negotiated procedure
- design competition

RIBA Recommends
DIVERSIFYING PROCUREMENT ROUTES
specifically there should be more
NEGOTIATED PROCEDURES
+ DESIGN COMPETITIONS

Negotiated procedures are efficient and fast, but rarely used

EU country comparisons. The Netherlands is the only nation with a similar profile.
COMPETITIONS
historically have been selected most successfully without OJEU
giving emergent practices opportunities to innovate

RIBA PROPOSALS
DIVERSIFY PROCUREMENT
+ MORE DESIGN COMPETITIONS

UK Gov. should
SET NATIONAL ASPIRATIONS
TO INCREASE DESIGN COMPETITIONS
used for public building
construction services contracts
TO 30% OF CONTRACTS AWARDED
approx

allowing new talent to emerge,
with simple processes
+ enabling research innovation and advancement

Sydney Opera House, Golden Lane, Pompidou Centre, Churchill
Gardens - are some of the many examples were the architects
who were appointed had no such previous experience,
in most cases they had no comparable experience at all!
E-PORTALS
Steunpunt Procurement Portal is sector specific providing multiple construction sector service simply and easily.

RIBA PROPOSALS
 IMPROVE ACCESS
 MARKET TRANSPARENCY
 + PROCESSES

RIBA Recommends: ALL PROCUREMENT above + below thresholds SHOULD BE EASY TO ACCESS

CONTRACTS FINDER
https://online.contractsfinder.businesslink.gov.uk/
now covers central Gov.
+ this SPA could be extended
while the free + easy to use
STEUNPUNT exemplar
http://www.ontwerpwedstrijden.nl/
also provides:- procurement monitoring procurement guidance a digital manual so clients can do there own procurement directly a data base of projects, costs + parties publicly accessible data interrogation
TRANSFER of financial risk

RISK, RISK MANAGEMENT + RISK TRANSFER ARE DETERMINING CRITERIA FOR AWARDING OF CONTRACTS

- PI requirements are too expensive for most professional consultancies, especially micro businesses + SMEs.
- PI cover should not be used as a determinant of competency

The apportionment of RISKS + LIABILITIES NEEDS REVIEW
This should be approached proportionately within public sector procurement by contract + project
TRANSFER
of financial risk

RISKS + LIABILITIES NEEDS REVIEW
furthermore because

- Largest single PI insurance settled claim on the RIBA Insurance Agency main book in the last 6 years is £850,000

- Average claim in this time period £60,647

- Average large practice claim £130,865

- 50% of claim costs are legal costs.

Risk + insurance cover requirements need to be directly proportionate to the type, scale + complexity of the project, by contract + by project. Liability + risk in public procurement contracts be limited

**Integrated + Single Project Insurance** be promoted

GCS is trialing Integrated Project Insurance on only a single project, but to test outcomes more trials are urgently needed.
THE MARKET
DEFINE PROPORTIONALITY

PROPORTIONALITY IS A PRINCIPLE EMBEDDED IN THE EU PROCUREMENT DIRECTIVE

HOWEVER PROPORTIONALITY IS A RELATIVE MEASURE WHICH, WITHOUT SCALE, REMAINS UNDEFINED

THERE IS NO MEASURE OF PROPORTION IN THE PROPOSED DIRECTIVE

hence clients apply many criteria without clear understanding or reference to a project's relative scale.
A 'value band' can be defined by providing a 'value band' to give a scale.

A 'lower band' and 'upper band' are created around the mean contract value above OJEU thresholds allowing a measured reduction in criteria.

This allows for reducing the bid documentation submission by tenderers proportionately and the consequential evaluation costs.

Tendering requirements in the upper band may be expected to be proportionately more onerous, and for contracts in the lower band, less so. With only a minimum of selection criteria etc. required from tenderers for contracts in this lower band.
SME FRIENDLY CRITERIA

a star rated generic matrix of criteria

The overall purpose of this tool is to change how Government procures, forever, so that SMEs make up a bigger proportion of the businesses helping government to achieve sustainable outcomes. Specifically, this tool has been designed to:

- Describe what SME friendly procurement looks like
- Help measure progress towards the aspirational goals of the Government to boost SME provision (especially opening up to new SME providers)
- Incentivise and support improvement by allowing Departments to benchmark against and learn from each other.

1. Results
   Departments can demonstrate that they are getting optimal value for the contracts they are awarding by harnessing a fully diverse supply base, including SMEs, individually and in consortia and VCS.

2. Engagement & communication
   Department can demonstrate significant growth of SME business and have evaluated no bids and listened to their feedback.

3. Transparency
   Department publishes evidence of improvement, including its own SME friendly star rating.

Procurement development strategy

Fail

whilst a significantly welcome advance it is not targeted particularly to construction + might it then embed procedural complexity?
For CLIENTS, BIDDERS + SOCIETY

a better system is needed now that is:-
A FREE + OPEN MARKET
TRANSPARENT + PROPORTIONATE
COST EFFECTIVE + JUSTIFIABLE

that delivers:-
SUSTAINABILITY + QUALITY
(sustainable buildings and communities)
+ EMPLOYMENT GROWTH

and makes:-
UK + EU ECONOMIES MORE COMPETITIVE
RIBA PROPOSALS

Building ladders of opportunity
how reforming construction procurement can drive growth

SUMMARY RECOMMENDATIONS:-

1. FURTHER EXAMINE THE BEST WAYS TO DRIVE EFFICIENCIES AND SAVINGS TO ENSURE THE PUBLIC PROCUREMENT SYSTEM FUNCTIONS IN THE BEST INTERESTS OF ALL THOSE IT SERVES.

2. EMBED PROCESSES THAT ENSURE BUILDINGS ARE SUSTAINABLE BY FOCUSING ON DESIGN OUTCOMES.

3. CREATE A COMPETITIVE MARKET BY INCREASING ACCESS AND ALLOWING THE PUBLIC SECTOR TO TAKE FULL ADVANTAGE OF UK DESIGN TALENT.

The full recommendations along with the accompanying RIBA 2012 procurement survey and related reports are available on:- www.architecture.com/procurement
The Gov. is aiming to **save 20% in UK construction**. It is open to consideration of many RIBA proposals and some have been adopted, but to achieve construction reform and efficiencies, the GCS has been largely evaluated through focus on the higher value models of construction infrastructure (eg Olympics, MOD, MoJ. etc). ref. www.cabinetoffice.gov.uk/search/apachesolr_search/Construction

Some recommendations include:-

- **More early pre-market contractor engagement**
- **Developing ‘Intelligent Client’ training of commissioners’, through Gov. procurement academies, but may lead to further industry specialisation & stakeholder disengagement.**
- **Professional consultants being increasingly tier 2 suppliers (sub-contractors in D&B construction)**
- **Adopting mandatory BIM** for public sector construction from 2016
- **Increasing use of frameworks** with supply chain consolidation with potential aggregation.
- **Collating data on SMEs who work as tier 2 suppliers** *(ie as sub-contractors vis a vis prime contractors or consultants, whilst access for SMEs to UK OJEU construction will be given the ‘appearance’ of having improved, relative to the EU)*

There is a danger that a ‘one size fits all’ approach will not be universally appropriate, sustainable or efficient and address only a proportion of the construction industry.
The UK Gov. has committed to raising the thresholds values by renegotiation of the WTO Treaty agreements commencing 2013. So lobby for all party support.

The EU has redefined Public Bodies to ensure only those in receipt of more than 50% Gov. funding are included within the requirements of the directive (Registered providers and other Orgs.). RP’s & Bottom up orgs remain to be clarified - so lobby.

Self certification with attestation of competency at PQQ stage has been accepted. To be evidenced upon award.

Consortia working restrictions are being relaxed.

The Cabinet Offices has launched the Contracts Finder website to include all OJEU and below threshold Gov. works and the Mystery Shopper to report bad procurement practice. Of benefit to Micros & SMEs.

Value Banding is under consideration - so lobby

The UK Gov is trialling new Insurance models including IPI, but more trials and progress is needed.

EU Procedures will be accelerated but only for bidders - so lobby for evaluations to be accelerated to a reasonable time frame.

BUT

The UK Gov has opposed EU moves to mandate the breaking up of contracts into more numerous lots without there being due reason.
There will be significant change in architectural practice over forthcoming years. To adapt to the public procurement environment practices will need to stay abreast of all developments.

- **Lobby your MP & MEP** and petition in all ways to ensure emerging legislation and practice can be appropriate, proportionate, sustainable, effective and access is fair.

- In considering OJEU opportunities visit both the OJEU TED website and ‘Contracts Finder’ which also includes UK Gov contracts below the thresholds. But target your practice expenditure, OJEU opportunities, the documentation and procedures very carefully and be realistic about what is appropriate for your practice. Avoid wasting time and money.

- Along with other construction professionals and/or contractors consider **developing bid ready consortia** for the purposes of making future OJEU bids.

- Report directly all bad OJEU Procurement Practices, contracts and terms whether at bid stage, in contract or sub-contract appointments as they arise and to the confidential Cabinet Office ‘Mystery Shopper’ [www.cabinetoffice.gov.uk/content/cabinet-office-mystery-shopper-scheme](http://www.cabinetoffice.gov.uk/content/cabinet-office-mystery-shopper-scheme).
WE ARE STRANGLING EFFICIENCY
+ CREATIVITY

REFORM PROCUREMENT

cost, quality + access
RIBA PROPOSALS

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RECOMMENDATION 1

FURTHER EXAMINE THE BEST WAYS TO DRIVE EFFICIENCIES AND SAVINGS TO ENSURE THE PUBLIC PROCUREMENT SYSTEM FUNCTIONS IN THE BEST INTERESTS OF ALL THOSE IT SERVES.

- Adopt best practice from across the EU
- Address the culture of UK ‘gold plating’
- Streamline PQQs
- Improve commissioning and develop the client skills/knowledge base
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RECOMMENDATION 2

EMBED PROCESSES THAT ENSURE BUILDINGS ARE SUSTAINABLE BY FOCUSING ON DESIGN OUTCOMES

- Award contracts on basis of MEAT ‘most economically advantageous tender’
- Greater focus on design outcomes: best value not lowest cost
- Lifetime costs not just capital costs
- Balanced scorecard assessment of bids
- Diversify procurement including more design competitions
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RECOMMENDATION 3

CREATE A COMPETITIVE MARKET BY INCREASING ACCESS AND ALLOWING THE PUBLIC SECTOR TO TAKE FULL ADVANTAGE OF UK DESIGN TALENT

- PQQ and award stage requirements should be proportionate and appropriate.
- Introduce the concepts of ‘proportionality’ and ‘value banding’
- Improve access portals
- Increase OJEU threshold values