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0 Introduction
1 Background + Context.
2 The new Regulatory environment
3 Understanding a public competition, notice + brief
4 Tips on Competitive Bidding
5 RIBA Ten Principles for Procuring Better Outcomes
6 Issues forward

BUT FIRST.....
What is Public Procurement in the historical context?
Why is it important?
From an elite ...
Construction was often licenced or only acquired by PATRONAGE ...
which changed ...
...in a DEMOCRACY
to deliver new, modern + complex social orders
requiring democratic administration of public patronage ... which ...
was delivered through a mixed economy (private + state), until the 1980’s

when architecture (services) became included under international trade treaties

leading to...
PROCUREMENT
as we now know it

which importantly
is how

Architects
get public work ...
PROCUREMENT BRIDGES...

DEMAND
- societal
- economic
- cultural
- end user
- client
- stakeholders
- sustainable

SUPPLY
- built environment
- infrastructure
- housing
- employment
- growth
- sustainability,
- quality,
- creativity,
- innovation,
- economic adjustment,

construction procurement bridges

public demand + supply

basically procurement = acquisition
1 BACKGROUND + CONTEXT

- Principles - the legal framework
  The Tiers + Policy framing procurement regulations + practice

- Research + Analysis
  Some UK + EU procurement policy impacts

- Other considerations
  Topical considerations
  BREXIT
THE POLICY TIERS
trade agreements, treaties, bloc policy, national regulations + local determination provides the legal framework of procurement regulations.

1. INTERNATIONAL

2. EUROPEAN

3. NATIONAL

4. LOCAL
THE POLICY TIERS
Public procurement is a major trading activity so each TIER endeavours to describe + proscribe rules of engagement in procurement, appropriate to the tier.

1. The WTO GPA (‘World Trade Organisation’ ‘Government Procurement Agreement’) 


   The Public Services (Social Value) Act 2012
   The Small Businesses, Enterprise + Employment Act 2015 (SBEE)

4. Governance Policies + Standing Orders of public bodies
THE WTO (previously solely GATT - General Agreement on Tariffs + Trade)

164 member countries or trading bloc signatories deal by consensus with the agreements for liberalising trade between nations at global level, establishing a set of rules for international policy on commerce. The 1995 (Uruguay) negotiation round extended its agreed remit to cover trade in services, inventions, creations and designs (IP). (It was previously known solely as GATT when its remit was less extensive)

KEY PRINCIPLES: tariff free trade, economic non-discrimination, transparent, more competitive international trade + predictable.

MEASURES INCLUDE: allows taking action to protect the environment, + the health of the public, animals + plants.

STANDARDISES PROCESSES: enabling better international cross border trading.
THE WTO GPA - The specific WTO ‘Government Procurement Agreement’.

ESTABLISHES eg:

Summary principles for ALL public procurement above + below thresholds.

Primary principles regarding the types of procurement, selection, award + transparency

The Threshold values in works, services and supplies which shall be advertised + open to international competition. (eg All OJEU above thresholds value contracts are advertised internationally).

Design Contest procedures for international architectural competitions are set apart at WTO level, (Art. X111 [h]). On the basis of UIA rules (Union of International Architects + originally as framed by Patrick Abercrombie + August Perret et al)
THE LEGAL FRAMEWORK

1

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THRESHOLD VALUES

are the value of a contract above which the contract must be open to international competition.

Thresholds for ‘Services’ in Central Government agencies are below sub-central agencies.

Threshold values for ‘Works’ (c. £4.1m) are higher than for services + supplies (£106k central Gov. + £164k sub-central).

VALUES MAYBE FOUND HERE

NB. Japan has specific dispensation for architectural services.
THE LEGAL FRAMEWORK

1

THE WTO GPA

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Summary principles for all public procurement above and below thresholds.

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PUBLIC SERVICE CONTRACTS - public contracts which have as their object the provision of services, other than those referred to in “public works contracts”.

PUBLIC WORKS CONTRACTS have as their object any of the following:

- the execution, or both the design + execution, of a work;
- the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;

PROCUREMENT DEFINITIONS MAYBE FOUND HERE
THE LEGAL FRAMEWORK

28 European countries forming a trading bloc through a political + economic union, founded on 3 negotiated Treaties; The Treaty on the European Union (TEU), The Treaty on the Functioning of the European Union (TFEU) + the EU Charter of Fundamental Rights. Member States (MS) delegate some sovereignty of joint interest to shared institutions, for democratic decision at EU level.

The European Council (Heads of Sate) defines the general political direction + priorities of the EU but it does not exercise legislative functions. Generally, it is the European Commission that proposes new laws (based on a specific Treaty Article), + it is the European Parliament + the Council (of MS lead Ministers having authority) that adopt them (by a min 55% qualified majority or 65% of the EU population. A decision maybe blocked by at least 4 MS or 35% of the population).
The Member States + the Commission then implement them. Generally the Parliament + the Council share power.

KEY PRINCIPLES incl:
- peace, liberty, democracy,
- fundamental freedoms (incl. free movement + without internal frontiers).
- equality,
- nondiscrimination,
- protection of fundamental human, social + workers rights,
- sustainable development + environmental protection,
- the rule of law,
THE LEGAL FRAMEWORK

2. \textbf{TEU} (Treaty on European Union) + \textbf{TFEU} (Treaty on the Functioning of the EU)

\textbf{ESTABLISHES:}

\textbf{European Court of Justice:} Upholds EU Law

\textbf{Subsidiarity:}
Means that the EU only \textit{acts where action will be more effective at EU level than at national level} (except in the areas where it has exclusive powers).

\textbf{The Directives:}
Are laws that binds MS’s to a particular objective.

Significantly, a directive defines, specifies + proscribes how the result is to be achieved.

\textbf{Transposition:}
When directives are adopted into national law, \textit{to become effective}. 
THE LEGAL FRAMEWORK

The European Public Contracts Directive 2014/24/EU

KEY PRINCIPLES: for the competitive acquisition of public contracts above threshold values: fairness, nondiscrimination, transparency + proportionality, with the free movement of goods, services, people + establishment, so that public contracts are opened up to competition for the delivery of best value, in exclusive furtherance of Treaty principles + objectives.

DEFINES + PROSCRIBES: universal rules, standards, methods, processes + procedures for the co-ordination of national standards + their establishment.

HARMONISATION + STANDARDISATION: to enable better EU internal market + international cross border trading.
THE REMEDIES DIRECTIVE (89/665/EEC+ 2007/66/EC) 2007: ensures common standards for rapid + effective means of redress in the EU when bidders believe that contracts have been awarded unfairly. Provides for standstill periods, written debriefing + legal challenge by bidders in the defined periods etc.

THE UTILITIES DIRECTIVE 2014/25/EU. Is specific to this procurement remit + typically modelled on the Public Contracts Directive. It is specialist + not frequently applicable to architectural services (notable exceptions maybe bridges + rail) + is not addressed further....
THE LEGAL FRAMEWORK

3


EU Directives are transposed into UK national law, to which maybe added nationally specific provisions. Scotland does so independently under its own public procurement governance.

RELEVANT PRINCIPLES: proscription against use of PQQ’s below thresholds, establishes Contracts Finder (England), sets up + defines reporting, feedback, equal treatment + transparency systems (eg Mystery Shopper), + captures the Remedies Directive.

some non mandatory aspects of the EU Directive are not adopted (eg Project Bank Accounts),

COPY OUT: for the first time (2015) the UK Nations DIGITALLY ‘copied out’the EU Public Contracts Directive into PCR 2016, removing many ambiguities between national + EU texts, + significantly helps simplify access, structure + understanding. Its all now far clearer!!

PROCUREMENT POLICY NOTES (PPN’s): Provide additional Government guidance on best practice for procurement for public sector organisations, together with supporting documentation (in the national remit). In Scotland its sPPN’s
THE LEGAL FRAMEWORK

3

The Public Contract (Scotland) Regulations 2015. + The Procurement (Scotland) Regulations 2016 + Procurement Reform (Scotland) Act 2014

As Scotland has governance of its public procurement + does so independently, it provides further definition + description that seeks to proscribe procurement regulations within its own remit.

Scotlands specific procurement regime is not addressed further, but

THE HYPERLINKS ON THIS PAGE ABOVE: are provided if required for your own research when bidding for Scottish work.
The Public Services (Social Value) Act 2012 (England + Wales):
A short powerful act requiring public authorities plan procurement with regard to economic, social + environmental well-being in connection with public services contracts; + for connected purposes, + whether to consult on these matters.

Very Useful!

The Small Businesses, Enterprise + Employment Act 2015 (SBEE):
Specific provisions in public contracts for terms of sub-contractors payment (eg architects working under design build contracts) but a lengthy act.
WHO IS A PUBLIC CLIENT? - ANY ‘BODY GOVERNED BY PUBLIC LAW’

An important definition that includes:
All Government, Local Authorities, Public service functions - Fire, Police etc. Utilities, public Hospitals + Schools etc., includes PFI;

but it is a wide nets + can also include eg:

Arms length organisations such as registered housing providers, because they are under supervisory control, +
Charities doing projects in receipt of Public Funds, where this amounts to more than 50% of cost, or the public body has a controlling supervisory interest.

This catches out many architects!
4 Governance Policies + Standing Orders

NB. In public procurement that the preceding regulations significantly apply to all:

WHO IS A PUBLIC CLIENT? - ANY ‘BODY GOVERNED BY PUBLIC LAW’

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Includes all Government, Local Authorities, public Hospitals + Schools etc., includes PFI

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eg. Arms length organisations such as registered housing providers, + Charities doing projects where more than 50% of cost, or the public body has a controlling supervisory interest.

A BODY COVERED BY PUBLIC LAW

means bodies that have all of the following characteristics:-

1. they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
2. they have legal personality; and
3. they have any of the following characteristics:-
   • they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law;
   • they are subject to management supervision by those authorities or bodies; or
   • they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;
4 Governance Policies + Standing Orders of public bodies

Public Bodies adopt standing orders + protocols for their own Procurement strategies, procedures + processes from the options available under the regulations (1-3), which they consider maybe most suitable to meet their specific demands.

PROCURING ARCHITECTURAL PROJECTS:
‘Ring fenced’ financial pressures + risk averse practices have led many to increasingly adopt generic ‘one size fits all’ strategies.

Skills are short + many now are out sourced to ‘procurement specialists’ having few, if any, architectural skills for qualitative assessment; with preference for approaches having + delivering a ‘single point’ of administrative contact (Frameworks, Management contracting, D + B etc)

These can adversely impact Micro + SME access (+ hence market competition), stakeholder/ end user choice + engagement, project specific procurement briefs, sustainable, whole life + best value qualitative outputs.
4 Governance Policies + Standing Orders of public bodies

TRENDS IN ARCHITECTURAL SERVICES AWARDS BY PUBLIC BODIES: have been towards market aggregation (*bundling together provisions*), with appointments awarded to contractors + management organisations as lead designers, or to appointing established professional teams; + away from appointments made on the basis of the specific project design solution. Examples of this trend towards aggregation incl:

FRAMEWORKS: where an appointment is selected + awarded without a specific project description onto a framework (typically for 4 years). Consultants maybe ‘called off’ the framework by further (unregulated) competition. Consultancy teams are therefore selected mainly based on their experience, size + financial/risk averse factors.

HUB PROCUREMENTS: Using out sourced HUBS for procurement across a wide geographic area, with individual Public Bodies buying contractors/architects off these + their framework appointments for tranches or individual works.

Many public bodies have inflexibly rigid policy standing orders that have not been reformed and don’t permit award selection by for example many of the other available procurement routes.
BACKGROUND + CONTEXT

• RESEARCH + ANALYSIS

Some UK + EU procurement policy impacts

Slice of reality. Richard Wilson
UK UNDERTAKES MOST by VALUE

UK ‘OJEU’ PROCUREMENT AWARDS (2012) 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

(eg France @15% + Germany @6%)

CONSTRUCTION comprises 37% of procurement by value ref. EU commissioned evaluations of ALL PUBLIC PROCUREMENTS (PWC 2012)
PROCUREMENT TIME

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

UK IS SLOW

UK processes take almost 50% longer than the EU average.

EU commissioned evaluations of ALL PUBLIC PROCUREMENTS
UK PROCUREMENT IS EXPENSIVE

+ 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)

EC Harris. Aug 2010 - with construction costs of Germany, France, Italy and Belgium within a range of 97% - 107% of UK being remarkably consistent

ref. EU commissioned evaluations of ALL PUBLIC PROCUREMENTS
HIGH EU THRESHOLD COSTS

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

Evidence from architects suggests for the UK construction industry figures are far higher.

For Chartered Architectural Practices alone (2011)

**£40m IS SPENT OBTAINING £126m WORK**

THEN ADD TO THIS CLIENT COSTS.....

ref. EU commissioned evaluations for ALL PUBLIC PROCUREMENTS, + RIBA procurement Survey 2011
UK MICRO + SME ACCESS IS POOR

within the UK access to public procurement is 25% below the economy as a whole

THIS RUNS CONTRARY TO CORE EU TREATY PRINCIPLES BECAUSE IT IS UNFAIR + DISCRIMINATORY

ref. EU commissioned evaluations of ALL PUBLIC PROCUREMENTS
UK is the 4th lowest of EU (27)

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

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

NB. With ‘PCR 2015’ a turnover requirement is no longer mandatory + is now capped at x2 a contracts value (previously it was x5)
UK IS HIGHLY AGGREGATED

UK ‘OJEU’ PROCUREMENT MARKET has aberrantly high mean values + 60% higher median values than the EU average.

UK has more ‘aggregation’ into large, high value joint purchasing frameworks + contracts than elsewhere in the EU.

Aggregation excludes many smaller firms + also has a negative impact by reducing competition.

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

DELIVER SOCIAL VALUE REFORM should aim to divide contracts into smaller + more numerous multiple value ‘lots’

ref. EU commissioned evaluations of ALL PUBLIC PROCUREMENTS

CONSTRUCTION comprises 37% of procurement by value

RELATIVE AGGREGATION
mean to median contract values

RESEARCH + ANALYSIS

TARGETED PROCUREMENT (TP) is an integral part of the European policy for sustainable development. It is a key tool for the implementation of the European Union’s strategy for the environment, energy, transport, and research. TP aims to improve transparency, efficiency, and sustainability in public procurement by targeting specific objectives.

TARGETED PROCUREMENT (TP) provides a framework for public authorities to strategically procure goods, works, and services in a way that directly contributes to the achievement of the EU’s environmental, energy, and social policy objectives.

TARGETED PROCUREMENT (TP) encourages the use of renewable energy sources, energy efficiency, and environmental protection measures in public procurement.

TARGETED PROCUREMENT (TP) can be used in different ways depending on the objectives to be achieved.

TARGETED PROCUREMENT (TP) is complementary to other EU policies and instruments such as the EU Green Deal, the Energy Efficiency Directive, and the Directive on the Energy Performance of Buildings (EPB).
UK LACKS FLEXIBILITY + DIVERSITY

ARCHITECTURAL PROCUREMENT PROCEDURES relative to our EU competitors

UK ARCHITECTURAL MARKET LACKS DIVERSITY
2 stage restricted procedures dominate

PROCUREMENT CAN BE DIVERSIFIED with more
NEGOTIATED PROCEDURES + DESIGN CONTESTS

Ref Project Compass EU country comparisons.
HOW MUCH MIGHT A BID COST YOU? Know the risk

A 2 stage restricted procedure leading to the award of a framework contract, + requiring a ‘call off’ by mini-competition to obtain a commission, can have hidden expenses.

Award of a contract onto a framework provides no guarantee of a commission, but may increase the probability of one.

Many, smaller practices particularly, have reported receiving no commissions by call off from frameworks.

No clear current guide exists for using a negotiated procedure for architectural commissioning, although this procedure has now been incentivised in the current EU Directive + PCR 2015.
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RESEARCH + ANALYSIS

DESIGN CONTESTS CAN BE GOOD + BAD

example:
GUGENHEIM HELSINKI DESIGN CONTEST

This project + site was not previously agreed with the city of Helsinki

1,715 1st. stage submissions
Average UK design contests cost competitors GBP £5,000 (RIBA Procurement survey 2011)

the economic cost to architects of the 1st design contest stage (est. GBP £8.575 m)

c. euro 10.902 m (min)
8.4% of the Euro 130 m construction cost
RESEARCH + ANALYSIS

FOR PUBLIC ARCHITECTURE

where is the UK market?

across all public notices:

13% - **architectural services** as prime contractors in all forms of services contracts

39% - **architecture +**, calling for architectural services as part of multi-disciplinary teams in all forms of both works + services contracts.

48% - **hidden architecture**, where another facilitator is requested to provide architectural design as part of a contract, with architects as sub-contractors.

The trend indicates an unarrested + diminishing market share for architects services as prime contractors

ref: Project Compass Public Construction procurement trends 2009-2014, Q1 2011- Q4 2013
FOR PUBLIC ARCHITECTURE

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39% = ARCHITECTURE +
This can best be accessed through consortia + joint ventures, together with other consultants.
FOR PUBLIC ARCHITECTURE

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Hidden architecture is not transparent + can probably best be engaged in by understanding + researching who is getting work - then networking, with facilitators, contractors + other consultants.
WHO IS PROCURING UK WIDE?

all award notices issued for works + services for architecture and architecture+

UK REGIONS

Procuring authorities (2013 pie) above Numbers of Awards made, award notice (CAN) issues & total of notices including values (Q1 2009-Q4 2013 log scaled)

UK Wide

ref: Project Compass Public Construction procurement trends 2009-2014

key to all figures

- national or central government
- regional or local authority
- utility
- body covered by public law
- others (& not specified)
- numbers of awards made
- numbers of award notices (CAN)
- award notices numbers recording award values
WHO IS PROCURING IN YOUR REGION?
ANALYSE, APPRAISE + TARGET CLIENTS + THE AVAILABLE BID OPTIONS WHICH ARE SUSTAINABLE FOR YOUR BUSINESS

UK REGIONS
Procuring authorities (2013 pie), above Numbers of Awards made, award notice (CAN) issues & total of notices including values (Q1 2009-Q4 2013 log scaled)

ref: Project Compass Public Construction procurement trends 2009-2014
FOR ARCHITECTURAL DESIGN

who is winning awards?

0.24% (10) firms won 8.2% of all awards (av.127)
5.5% of firms won 43% of all awards
94.5% of firms won 57% of all awards (1-10 awards)
55% of all firms only won one award (15% of awards)

UK competition distortion is further compounded when correlated to award values

The top 10 are contractors + facilitators; none are professional design consultancies.

ref: Project Compass Public Construction procurement trends 2009-2014, of 15,524 awards to 4,233 firms, Q1 2009- Q2 2014. For architecture, architecture + and hidden architecture
HOW ARE ARCHITECTS WINNING AWARDS?

0.44% (10) firms won 11% of all awards (av.71.3)
5% of firms won 41% of all awards
95% of firms won 59% of all awards (1-10 awards)
66% of all firms won only one award

Contracts are not being determined proportionality + appropriately,
+ are discriminatory
Contrary to EU treaty principles

BUT procedural costs are contributing to driving these market distortions

ref: Project Compass Public Construction procurement trends 2009-2014, of 6,701 service awards to 2,267 firms, Q1 2009- Q2 2014) For architectural services.
• **SUMMARY**
  
  UK + EU procurement policy impacts

  • WTO, EU + UK procurement implementation evidentially have had many contradictory impacts. Some have been at odds with treaty principles.

  • Specific UK practices have been heavily criticised for being, inefficient, ineffective, disproportionate, unduly onerous, + ‘Gold platted’ (bureaucratic application of unnecessary needless rules + approaches), + denying access to micro businesses + SME; + hence denying competition.

  • The reformed Directive 2014/24/EU sought to address some.

  • But UK Gov sought to limit some EU social market reforms which constrained free marketisation (eg on aggregation + SME access).

  • UK practices remain aberrant relative to our EU competitor nations.
OTHER CONSIDERATIONS

Issues of topical relevance

BREXIT
OTHER CONSIDERATIONS

TENSIONS

... exist at different Tiers between many factors including:

- Free or Regulated/controlled market philosophies + the extent of their balance by degree + applications
- Environmental, sustainable, business, economic, qualitative + social values
- The principles + practice of free movement of goods, services + people
- Risk, opportunity + corporate capture

The EU Treaties however establish a controlled + regulated market, having core shared values extending beyond economics.

BECAUSE IT IS COMPLEX, POORLY UNDERSTOOD, LACKING TRANSPARENCY + SEEN AS HAVING LITTLE ACCOUNTABILITY, THE EXISTING TIERED LEGAL FRAMEWORK IS INCREASINGLY VULNERABLE + BEING QUESTIONED
OTHER CONSIDERATIONS

B REXIT + EMERGING US GOV. POLICY IMPACTS ON THE POLICY TIERS

1 INTERNATIONAL

2 EUROPEAN

3 NATIONAL

4 LOCAL

SECESSION from tier 1 + 2 TO UNILATERALISM ?
REXIT + EMERGING US GOV. POLICY IMPACTS

INTERNATIONAL
1

EUROPEAN
2

NATIONAL
3

LOCAL
4

HISTORICALLY HIGH RISKS OF INSTABILITY WITH UNFORESEEN CONSEQUENCES ARE POSED BY SECESSION, UNILATERALISM + DISENGAGEMENT FROM CO-OPERATION, VIS REFORM.
UK REMAINS A PART OF THE EU - until such time as it formally leaves.

PCR 2015 (England, Wales & N. Ireland):
Has already transposed the EU Public Contract Directives (2014/24/EU + 2014/25/EU) into UK law.
UK regs. are currently aligned with all EU member states + will continue to apply until such time as the UK or EU reform them (post BREXIT). In the UK there appears no appetite for this, in all events for a number of years.
The principles of the current UK procurement regulation for our internal market are therefore unlikely to be imminently impacted.

OJEU:
Publication in OJEU of UK procurements may no longer be obligatory.
+ would be less transparent for EU architects wishing to work in the UK.
But access into this OJEU service from within + outside the EU will continue.

CROSS BORDER TRADING:
Access to other international markets is determined by the WTO GPA.
UK membership of the WTO is currently through the EU.
UK will continue membership until BREXIT when direct WTO membership arrangements can be negotiated + agreed.
OTHER CONSIDERATIONS

BREXIT UK REMAINS A PART OF THE EU - until such time as it formally leaves.

EU LABOUR + STAFF: + visa versa. How this is finally addressed post BREXIT remains an unknown, as free movement is now contentious.

EXPECT EU FURTHER REFORMS: As equally it will now be free to do so without many significant UK constraints.

SOFT POLITICS: At the personal level + English remaining the ‘lingua franca’ of the EU - expect unknown impacts?
OTHER CONSIDERATIONS

BREXIT UK REMAINS A PART OF THE EU - until such time as it formally leaves.

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As equally it will now be free to do so without many significant UK constraints.

SOFT POLITICS:
+ English as the ‘lingua franca’ of the EU may have unknown impacts in the EU cross border trading amounts to only c.1.5% (by value), of which most is for larger contacts. The extent in architecture is not thought to be much higher. However much still remains a known unknown, with little certainty.
GOING FORWARD

If you are still on your chair

THEN LETS TAKE A LOOK AT
HOW ....
2 PROCUREMENT REFORMS

The New Regulations

- RIBA ENGAGEMENT
- OBJECTIVES
- WTO + EU
- EU
- UK

- STRUCTURE OF THE DIRECTIVE

+ SIMPLIFICATION
RIBA ON BEHALF OF MEMBERS
+ INDUSTRY
has long been active seeking to influence reform for better public procurement regulations + practice

through:
Consultation, research, policy, publication, dissemination + lobbying

Its primary collated policy output has been:
RIBA ‘Building Ladders of Opportunity’
How reforming construction procurement can drive growth in the UK economy. May 2012

This lead report from a suite of 4 reports... are all available HERE you can get involved too...
PROCUREMENT REFORM: some principle objectives sought
(in Directive 2014/24/EU + PCR 2015)

- NEW SUSTAINABLE + SOCIAL MARKET VALUES
  incl. whole life costing:

- GREATER EFFICIENCY + EFFECTIVENESS

- IMPROVED ACCESS + OPPORTUNITY FOR SME’s

- MORE PROCUREMENT FLEXIBILITY

- SIMPLIFICATION, TRANSPARENCY + BETTER COMPREHENSION

- DIGITAL EUROPE

with some of the most relevant reforms are described in further detail ...
1. Through the next round of (WTO) international trade negotiations, the EU has committed through renegotiation to seek TO SIGNIFICANTLY RAISE THRESHOLD VALUES

• WTO renegotiations were supported by UK + it remains unclear how or whether this will now advance
2. Infrastructure is now in place for **FULL E-PROCUREMENT**.
   • end to end e-procurement, documentation, guidance, submissions, invoicing, data + drawings.
   • e-procurement directive to establish programme + protocols
   • e-transparency + reporting

3. **THE EUROPEAN SINGLE PROCUREMENT DOCUMENT (ESPD)** has now been implemented for a standard EU wide e-based reusable ‘procurement passport’ which **ALLOWS DIGITAL SELF-CERTIFICATION OF DOCUMENTATION SUBMISSIONS FOR COMPLIANCE AT PQQ STAGE** for submissions to participate, or tender.
   • verified prior to award stage. • Self certification documents can now be provided with links to national data registers + be aligned to the standard data held within repositories.
   This could be eg the RIBA chartered practice register - so your annual completion would afford better procurement access
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   - verified prior to award stage. • Self certification documents can now be provided with links to national data registers + be aligned to the standard data held within repositories.
   - This could be eg the RIBA chartered practice register - so your annual completion would afford better procurement access

EU

? ESPD

once you get your head around this it might save you considerable time.

FOR FURTHER GUIDANCE GO HERE

RECOMMENDATION 1.3.1, 1.3.2 + 1.3.3
RIBA ‘Building Ladders of Opportunity’ AVAILABLE HERE
4. WHOLE LIFE COSTS (LIFE CYCLE) ARE EMBEDDED
   as a pivotal principle in the new directive
   • however WL costings pose a risk if they are assessed at contract selection
     (prior to the development of a design + rather than as a contract performance criteria)
     + threaten to increase bid complexity

5. TURNOVER REQUIREMENTS ARE NO LONGER MANDATORY +
   ARE NOW CAPPED TO A MAX. 2x A CONTRACTS VALUE
   • For all but the largest value band of works RIBA has promoted turnover be non mandatory
     Architects might better seek this
     + this is now occurring

RECOMMENDATION 2.2.3 + 3.2.4
RIBA ‘Building Ladders of Opportunity’
AVAILABLE HERE
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**RECOMMENDATION 2.2.3 + 3.2.4**
RIBA ‘Building Ladders of Opportunity’
Available Here
6. **NEGOTIATED PROCEDURES ARE RENAMED**

‘COMPETITIVE PROCEDURE WITH NEGOTIATION’

are simplified, with new attributes

- CAN BE ISSUED via a PIN (Prior Information) notice + have easier recording.
- UK procuring authorities however remain reluctant up takers

7. **A NEW PROCEDURE IS INTRODUCED**

‘THE INNOVATIVE PARTNERSHIP PROCEDURE’

- although its benefits over a negotiation remain unclear
- it was introduced at the UK’s behest like the competitive dialogue procedure, which remains little used outside the UK + is expensive
- (+ one reason cited for Gov. shutting down the BSF programme)
8. **THE OPPORTUNITIES FOR CONSORTIA BIDS ARE ENHANCED**, with bidders not required to be legal entities when bidding
   - only upon award

   ARCHITECTS, WITH ENGINEERS, QS’s, AND M&E CONSULTANTS CAN BID JOINTLY, MORE EASILY
   - Typically however UK procurers are still not consortia bids as easy as they might be

9. **A PRESUMPTION IN FAVOUR OF SPLITTING LARGE CONTRACTS INTO MORE NUMEROUS LOTS**
   - is introduced.
     - through an “APPLY OR EXPLAIN” principle.

   (UK opposed this in the EU negotiations + is doing little in practice or guidance to sustain it)
Recent developments Design competitions in Europe

- Netherlands
- United Kingdom
- Germany
- Belgium
- France

Types of procurement:
- Open procedure
- Restricted procedure
- Negotiated procedure
- Competitive dialogue
- Design contests

10. MORE FLEXIBILITY, GREATER OPTIONS + NEW ROUTES TO PROCUREMENT

• If deployed, these provide greater opportunity for more creative and intelligent procurement.

RECOMMENDATION 3.2.2, 3.1 + 1.4.1
RIBA ‘Building Ladders of Opportunity’ AVAILABLE HERE
11. PROJECT BANK ACCOUNTS are allowed better securing payment for sub-contractors (eg architects on D+B)
   • UK has not adopted this as a mandatory requirement although it has been using it in some Government contracts opening opportunity for further embedding
   along with
   BETTER PAYMENT TERMS FOR TIER 2 SUPPLIERS
   • but for MEMBER STATES determination
   • UK has done this through the Small business, Enterprise + Employment Act 2015

12. OPPORTUNITIES FOR DESIGN R&D ARE IMPROVED.
    • + might have impacts for construction research

13. PROCUREMENT DOCUMENTS FOR THE PURPOSE OF BIDDING ARE NOW REQUIRED TO BE FREELY AVAILABLE DIGITALLY
    • Pay walls are no longer permitted, improving transparency
    + allowing all bidders opportunity to peruse documents for evaluation prior to bidding
14. **MEAT**
(Most economically advantageous tender - meaning a balance of quality and price)

is now the default

SELECTION PROCEDURE FOR CONTRACTS IN CONSTRUCTION

- RIBA has recommended quality based assessment weightings should be no less than 70% in MEAT selection, with financial criteria no more than 30% for design services
- this allows for marking spreads between mathematical + subjective assessments to have balanced weightings

15. Some procedures will allow that cost in award selection maybe a fixed price,

ALLOWING COMPETITION ON QUALITY CRITERIA ONLY

16. **ABNORMALLY LOW BIDS MAY NOW BE REJECTED**

- ‘buying’ contracts for churn or access, with low un commercial bids can now be addressed

17. **CONTRACTS MAY NOW BE RENEWED**

without retendering

- *in restricted circumstances*
18. **ACCESSIBILITY, DESIGN FOR ALL, ECONOMIC, ENVIRONMENTAL, INNOVATIVE REQUIREMENTS, SOCIAL + EMPLOYMENT RELATED REQUIREMENTS** may be contract performance conditions

- it's up to authorities
- Public Contracts (Social Value) Act provides an additional framework

19. **PROCEDURES CAN BE ACCELERATED**

in certain circumstances the min. bid will now be 15 days.

- *but commensurately + unfortunately there is no incentive on authorities to determine bids within any ‘reasonable timescale’!*

20. **PRE-MARKET ENGAGEMENT IS EMPHASISED,**

to improve briefing, feedback + market contact, prior to tendering.
21. **THE DIRECTIVES STRUCTURE + LANGUAGE ARE SIMPLIFIED OFFERING GREATER CLARITY + UNDERSTANDING.**
   - This improves transparency by allowing wider comprehension

22. **FRAMEWORKS BECOME BETTER REGULATED, WITH ENHANCED REQUIREMENTS TO PUBLISH PRE-COMMISSION TERMS + CONDITIONS**
   - So there is less opportunity to change conditions through eg mini-competitions call offs.

**RECOMMENDATION 1.1.1, 1.1.3 + 1.2**
RIBA ‘Building Ladders of Opportunity’
AVAILABLE HERE
23. NO PQQ’s BELOW THRESHOLD VALUES
   • In PCR 2015

24. CONTRACTS FINDER IS FORMALLY ESTABLISHED
   To provide a national procurement portal for all contract notices ABOVE + BELOW the thresholds providing easier + simpler access to all call Notices

RECOMMENDATION 3.2.3 + 1.3.1
RIBA ‘Building Ladders of Opportunity’ AVAILABLE HERE
UK

23. **NO PQQ’s BELOW THRESHOLD**
   - In PCR 2015

24. **CONTRACTS FINDERS**
    To provide a national procurement portal for all contracts above and below the thresholds providing easier + simpler access to all call Notices

? **PI**
Insurance is no longer required for bidding, but only upon the award of a contract!

Where the PI being sought in a contract award is disproportionately high relative to the value of a commission - complain to Mystery Shopper + lobby for change.

RECOMMENDATION 23.2 + 24.1
RIBA ‘Building Ladders of Opportunity’ AVAILABLE HERE
**THE STRUCTURE OF THE REGULATIONS**

**DIRECTIVE 2014/24/EU + PCR 2015**

Provides a rational + sequential MAPPING + DEFINITION

proscribing procedures + practices for all PUBLIC COMPETITIVE PROCUREMENTS (above threshold values)

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### DIRECTIVE 2014/24/EU

**Scope and Definitions**

**Chapter I: Scope and definitions**

- Article 1: Subject matter and scope
- Article 2: Definitions
- Article 3: Mixed procurement

**Chapter II: General rules**

- Article 4: Principles of procurement
- Article 19: Economic operators
- Article 24: Responsive contracts
- Article 21: Confidentiality
- Article 22: Rules applicable to communications
- Article 23: Non-negotiations
- Article 24: Conditions of tenders

**Chapter III: Procedures**

- Article 25: Conditions relating to the GPA and other international agreements
- Article 26: Choice of procedures
- Article 27: Open procedure
- Article 28: Restricted procedure
- Article 29: Competitive procedures with negotiation
- Article 30: Competitive Dialogue
- Article 31: Innovated Partnership
- Article 32: Use of the negotiated procedure without prior publication

**Chapter IV: Techniques and instruments for electronic and aggregated procurement**

- Article 33: Electronic catalogues
- Article 34: Electronic catalogues
- Article 35: Centralized purchasing activities and central purchasing bodies
- Article 36: Vouchers
- Article 37: Electronic coordination and contracting authorities from different Member States

**Chapter V: Conduct of the procedure**

- Article 40: Preparatory market consultations
- Article 41: Prior involvement of candidates or tenderers
- Article 42: Technical specifications
- Article 43: Labels
- Article 44: Test reports, certification and other means of proof
- Article 45: Evaluation criteria
- Article 46: Division of contracts into lots
- Article 47: Setting-out notices

**Chapter VI: Publication and transparency**

- Article 48: Prior information notices
- Article 49: Contract notices
- Article 50: Contract amendments
- Article 51: Form and manner of publication of notices
- Article 52: Publication at national level
- Article 53: Publication of procurement documents
- Article 54: Priorities to candidates
- Article 55: Listing, evaluation, and selection

**Chapter VII: Choice of participants and award of contracts**

- Article 56: General principles
- Subsection 1: Criteria for qualitative selection
- Article 57: Selection criteria
- Article 58: European Single Procurement Document
- Article 59: Means of proof
- Article 60: Award of contracts by way of competitive tenders
- Article 61: Quality assurance standards and environmental management standards
- Article 62: Influence on the execution of other contracts
- Article 63: Official lists of approved economic operators and certification by bodies established under public or private law

- Subsection 2: Reduction of numbers of candidates, tenders and solutions
- Article 64: Evaluation of the number of other non-qualified candidates to be invited to participate
- Article 65: Evaluation of the number of tenders and solutions

**Chapter VIII: Award of the contract**

- Article 66: Contract award criteria
- Article 67: Life cycle costing
- Article 68: Unrenumbered lots

**Chapter IX: Use of electronic communication**

**Chapter X: Transparency**

**Chapter XI: Translations**

**Chapter XII: Additional provisions, implementation and transitional provisions**

**Chapter XIII: Final provisions**

**Annex I: Central government authorities**

**Annex II: Requirements relating to tools and devices for the electronic receipt of tenders**

**Annex III: List of products referred to in Article 4(b) with regard to contracts awarded by central government authorities**

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**NB - THIS ABSTRACTS THE ALL TITLES OF THE DIRECTIVE BUT OMITS THE RECITALS & SOME ANNEXIES**

**PROCUREMENT REFORMS**

**RULES ON PUBLIC CONTRACTS**

**PROCUREMENT REFORMS**

**DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**III:** Definitions

**II:** Scope, definitions and general principles

**I:** Scope and definitions

**PROCUREMENT REFORMS**

**TECHNIQUES FOR PROCEDURES**

**PREPARATION**

**TRANSPARENCY**

**CHOICE + AWARD OF PARTICIPANTS**

**DESIGN CONTESTS**

**GUIDE TO PUBLIC PROCUREMENT** by WALTER MENTETH ARCHITECTS

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# THE STRUCTURE OF THE REGULATIONS

## DIRECTIVE 2014/24/EU + PCR 2015

### FOR STARTERS ...

**THE MOST RELEVANT PARTS ARE:**

- **Chapter I: Procedures**
  - Article 25: Conditions relating to the GPA and other international agreements
  - Article 26: Choice of procedures
  - Article 27: Open procedure
  - Article 28: Restricted procedure
  - Article 29: Competitive procedure with negotiation
  - Article 30: Competitive dialogue
  - Article 31: Innovation Partnership
  - Article 32: Use of the negotiated procedure without prior publication

- **Chapter II: Techniques and instruments for electronic and aggregated procurement**
  - Article 33: Framework agreements
  - Article 34: Dynamic purchasing systems
  - Article 35: Electronic auctions
  - Article 36: Electronic catalogues
  - Article 37: Centralised purchasing activities and central purchasing bodies
  - Article 38: Occasional joint procurement
  - Article 39: Procurement involving contracting authorities from different Member States

- **Chapter III: Conduct of the procedure**
  - **Section 1: Preparation**
    - Article 40: Preliminary market consultations
    - Article 41: Prior involvement of candidates or tenderers
    - Article 42: Technical specifications
    - Article 43: Labels
    - Article 44: Test reports, certification and other means of proof
    - Article 45: Variants
    - Article 46: Division of contracts into lots
    - Article 47: Setting time limits

- **Title III: Particular procurement regimes**
  - **Chapter II: Rules governing design contests**
    - Article 78: Scope
    - Article 79: Notices
    - Article 80: Rules on the organisation of design contests and the selection of participants
    - Article 81: Composition of the jury
    - Article 82: Decisions of the jury

**N.B.**

‘DESIGN CONTESTS’

**ARE AN ENTIRELY DISTINCT COMPETITIVE PROCEDURE WITH ITS OWN PROCESS**

+ provided specifically for commissioning architecture + planning services
THE STRUCTURE OF THE REGULATIONS

WHAT ARE COMPETITIONS?
There are 7 types of competition

The Articles provide the detailed descriptions

Architects:-
• understand the definitions.
• + the differences eg between ‘Competitions’ + ‘Design Contests’

have been
• slow to respond to EU law + engage with it
• disadvantaged in how + what they can best offer clients, lobby for change, share knowledge + network.

The ‘Competitive Dialogue’ is rarely used in most EU common practice
‘Innovation Partnership’ a new procedure introduced in 2014 (not previously used)
THE STRUCTURE OF THE REGULATIONS

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MAY vis SHALL throughout the EU Directive + PCR 2015 there is now clear distinction apparent between - MAY which is optional + SHALL which is mandatory.
UK Procurers have a tendency not to distinguish this + instead include everything in ‘gold patted’ risk averse practices
3 A COMPETITION NOTICE + CALL

HOW DO YOU PREPARE TO BID?

- Notice Access
- Reading an OJEU Notice
- Getting the full documentation + bidding
- Evaluating detailed brief requirements
BREAK POINT
4 23 TIPS ON COMPETITIVE BIDDING
+ getting help
COMPETITIVE BIDDING

IN YOUR OWN OJEU CONTRACT BIDS!
GO FOR IT BUT:

1 View the whole picture

2 Target practice opportunities realistically,
   scrutinise + understand the documentation
   + procedures carefully,
   + be realistic about what is appropriate
   for your practice.

3 Avoid wasting time + money
   + be conscious of the investment necessary,
   of labour, time + money

4 Understand your practice strengths + weaknesses.
   Engage only where you deem it viable to do so
   + you have some confidence in the possibility of winning
5 The professional skills + expertise of the assessor(s) should be reflected upon.
If by your measure they appear greatly lacking in the requisite professional skills avoid engagement.

6 Understand OJEU layouts, notice access, the CPV + NUTS codes,
+ note that contracts aren’t always were they should be or are expected.

7 Don’t expect to win a bid on your first try.
Be persistent, + hone your skills
+ the efficiency of your bid submissions

8 Check the contractual terms + conditions to ensure you are satisfied by them
Against the building project requirements + work stages being sought.

ARCHITECTURAL PORTAL
For OJEU contract notices incl. analysis + intelligence on client + architects procurement histories, values + types etc. with range of additional procurement functions

PROJECT COMPASS

GOV. SINGLE NATIONAL SIMPLE + ONLINE PROCUREMENT PORTAL
All public contracts above £10,000 CONTRACTS FINDER
There is no perfect or exemplary response to a specific tender invite. But you should always be mindful of what, from your analysis, the clients are seeking. + determine if there are any questions that are pass/fail, which your org. can’t pass. If so don’t compete, even if you might think you can pass well in all other areas.

Communicate your values
Your organisations approachability, access + attentiveness. Evidence your values, where you can or otherwise adequately communicate your knowledge eg. Sustainability criteria, whole life, social value, delivery, performance, stakeholder, satisfaction, VfM, peer recognition.
For new practices it is acceptable to draw on experience gained in other previous practice, the evidence from them, but seek that practices permission to do so.
Priorities change the fields of enquiry in bids, their emphasis + balances for assessments.
Keep up to date.

Reflect carefully about whether you wish to directly challenge assumptions made in the brief, unless asked to,
If you feel this way perhaps don’t compete. It is better instead to offer professional insights about your observations, the perspective being offered + consider options.

Don’t bother trying to win a job on the excellence of your H+S or management practice.
These criteria are typically assessed or weighted as pass or fail or in equivalently tight range markings.

Identify your practices distinctions + unique qualities + articulate them convincingly
14 Always respond in clear, succinct + simple language, honestly, professionally + relevantly to the specifics of the questions + in the format requested.
Avoid florid language, hyperbole, jargon, repetition or needless decorative embellishment.
However you may still wish to relate a narrative/tell a story.

15 When writing text, avoid excessive listings of matters
but seek to express your response in a clear, structured + progressive narrative.
You are an impartial professional so avoid being obsequious.
Remember the person who has to read + digest your submission.

16 Where ever possible allow sufficient time to get oversight on your bid.
Internally from your practice, or from eg an external architectural mentor, to ensure your salient understanding + responses align as fully as possible to the clients question.
Draft out a preparatory response so that it maybe reviewed prior to completion + submission.
Don’t leave everything to the last minute.
If you consider your bids are too frequently unsuccessful, obtain external feedback.

17 Provide a diagram of your organisations management structure if a description of this is required.
18 Always consider inviting clients to visit projects which your org. or nominated personnel have been engaged in. Offer + facilitate they met clients, users + stakeholders. This may need to be done anonymously + without your practices attendance. This is the best evidence you can offer, sustains real world benchmarking and evidences substance over spin.

19 Consider the implications of varied scenarios as Projects are littered with unforeseens. Caveat any fee bids adequately to cover expenses + undescribed circumstances which you may not be aware of at bid stage. eg Projects which stop + start repeatedly can end being particularly resource heavy, through impacts on deployment of personnel + programming. It is common practice with many successful practices, for such periods of hiatus to attract additional charges.

20 Where ever a fee bid/matrix is required Ensure this is well prepared + researched, against the anticipated or allocated programme of services, typology + brief etc. + your own practice costs + time charges. Ensure that bids have a suitable balance between staff seniorities for the scale of your organisation, to create outputs that are at least market comparable. Remember SME’s frequently have lower overheads which can confer competitive advantage, But do not undersell yourselves as this will render adequate execution of the required work untenable. If you endeavour to buy in the project by bidding below market rates the client may, in the absence of adequate explanation, dismiss the tender.
21 Network + establish with other colleagues/construction design professionals, bid ready consortia.
Identify and describe your team’s unique strengths. Consortia should consider having available pre bid preparations incl. core information, data requirements. Members might consider auditing jointly their core compliances requirements, + stress test team compositions + scenarios, incl. financial disparities, leads, points of contact, projected managerial structures + the symbiotic strengths, weaknesses + opportunities. Describe + develop joint working experience, or your capacities to do so + how the composition offers strengths + distinction.

22 Develop arrangements in consortia for: Regularly screening bids, + doing the initial evaluations, consideration + reporting.
Ensure the consortia develop methodologies for regular screening of tender opportunities across the widest possible CPV range applicable to all.
Target markets for your proposed consortia together.

23 Share consortia: bid costs, feedback (if unsuccessful + feedback is not provided by the client always request this), fine tune + bid again.
COMPETITIVE BIDDING

HAVING PROBLEMS?

Many procurements are extremely well considered, but some are not.

IF YOU COME ACROSS POOR PROCUREMENT PRACTICES SEEK HELP

This is one way architects can help change UK procurement practices.

HELP IS AT HAND!

REPORT BAD PROCUREMENT PRACTICES, contract notices, bid stage terms, + selection in contract or sub-contract appointments, as you become aware + directly TO:

Cabinet Office ‘MYSTERY SHOPPER’ service, or the national equivalents for Scotland, Wales + N. Ireland. where you can make an anonymous written complaint explaining your concerns. This confidential service has materially contributed to change in procurement culture yet architects as a profession have been poor at using it.

RIBA Project Compass: who can advise on proceedings.
The Press Engage with procurement campaigns

+ Engage at RIBA Stage 0, By providing strategic guidance + disseminating knowledge

+ Lobby your representatives To ensure the application of regulations + practice is appropriate, proportionate, sustainable, effective + access is fair.
5 BEST PRACTICE ADVICE TO CLIENTS
to achieve change

Politicians debating climate change. Isaac Cordal. Berlin
FOR CLIENTS - WHAT BEFORE HOW

RIBA 10 PRINCIPLES OF PROCURING BETTER OUTCOMES

UNDERSTANDING WHAT YOU ARE SETTING OUT TO ACHIEVE (WHAT BEFORE HOW)

Taking time at the start of the process to define what you are setting out to achieve will help to ensure that you maximise the economic, environmental + social benefits over the whole life of the project.
ACHIEVING THE RIGHT OUTCOMES

REQUIRES THE:

- Right culture
- Right people
- Right resources
- Right process
FOR CLIENTS

1. Invest in the right design skills, briefing + design process at the right stage when setting project budgets + fee levels

   “You can appoint a design team early, or to plan your approach, or use ‘Parallel Commissioning’ ”

2. Consider whether + how the Public Contracts Regulations 2015 apply when commissioning design or architectural services

   “the cost of good design is a fraction of the outlay”

   “architects can help understand your needs + help shape your objectives”

   Tenders below thresholds must be advertised + be single stage.

   Be aware of the distinction between MAY + SHALL + avoid ‘gold-plating’.

   It is not mandatory to demonstrate economic + financial standing by annual turnover.
Select + tailor your procurement procedure to suit your project needs, using design quality as a means to shortlist or award contracts where appropriate.

“If you want to procure projects below EU thresholds you can approach possible practices directly provided that .... you have also published the opportunity on Contracts Finder.”

“If you want the right design solution in response to a well-defined brief a Design Contest can offer a simple + cost effective route, provided you follow best practice guidelines”

“If you want the right design team to develop the design for your project based on their track record of delivering design quality, you can choose the Restricted Procedure + ask for evidence of previous relevant experience at selection stage”

“If you are buying services above EU thresholds, there are a number of variations on standard procedures that allow you to procure the design services you need flexibly in a way that suits your project”
FOR CLIENTS - WHAT TO CONSIDER WHEN SELECTING A PROCUREMENT PROCEDURE

**CONTRACT VALUE?**
- Below threshold
- Above threshold

**CERTAINTY?**
- Design idea
- Standardised

**COMPLEXITY?**
- Design solution alone
- Emerging talent + capacity

**BASIS OF SELECTION?**
- Design solution + design team
- Design team + design solution

**CAPABILITY + CAPACITY?**
- Minimum standards
- Limited interaction
- Defined brief

**INTERACTION?**
- No interaction
- Close working relationship
- Shorter time frame

**DESIGN QUALITY?**
- Design approach
- Innovative solutions
- Defined outcomes

**DEFINITION?**
- Defined brief
- Innovative solutions
- Defined outcomes

**TIME FRAME?**
- Shorter time frame
- Defined outcomes
- Innovative solutions

**PROJECT**
- Is there certainty that your project will go ahead or do you just need a design idea?
- Is your project straightforward or complex? Do you need a project specific or standardised solution?

**SELECTION**
- Do you want to select a design team to develop the design or to provide an opportunity for emerging talent by selecting on the basis of a design solution alone?
- Do you want additional capacity and resource to derisk appointing an emerging design team or to shortlist design teams that meet certain minimum standards?

**PROCUREMENT PROCESS**
- Do you want to negotiate and/or engage closely with competing design teams during the procurement process?
- Do you want to evaluate a design team's response to a detailed brief, their track record of delivering design quality or their approach to developing innovative solutions for a complex project?

**PROJECT**
- Do you have a well-defined project brief or a strategic brief that defines your project outcomes?

**PROCUREMENT PROCESS**
- Do you want the option to make an award without negotiation to save time and cost?

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This diagram has been prepared for information only. Appropriate legal advice should be sought in respect of individual project circumstances.
FOR CLIENTS

4 Consider whether a framework will deliver the best outcomes + design quality for the full range of projects you intend to procure. If awarding frameworks, consider dividing them into more numerous + smaller lots

“... joint purchasing arrangements + framework agreements. While these arrangements are often used in an attempt to reduce administration costs + streamline procurement processes... the time saved in tendering generic work does not always translate into best value or best outcomes for the individual projects. Specialist talent + innovation can also be locked out”

“If you are awarding frameworks, consider offering more lots according to the size, value, type or location of a project or the nature of the service provided”
FOR CLIENTS

5 Consider actively encouraging consortia bids from smaller practices, making it as simple as possible for consortia to compete.

6 Make the selection phase as simple as possible + proportionate to the scale + complexity of your project.

“The tendering process should allow competing design teams to demonstrate their ability.”

“....consultants who form consortia on the basis of their shared understanding or similar approach can promote more integrated team working... drawing complementary strengths, skills + resources together, + help talented designed teams to meet previous experience + financial standing criteria collectively.”

“A PQQ is simply a tool to identify candidates.... Beyond statutory requirements, you can use the PQQ to request other factual information + ask sensible questions relevant to the particular contract.”
FOR CLIENTS

When assessing consultant capability, consider a track record of undertaking projects of a similar scale + complexity rather than extensive previous experience of an identical project type.

"visit previously completed projects + engage the stakeholders as reliable evidence of track record"

"....selection criteria should enable you to assess the capability of the design teams to help you achieve your project objectives, + provide scope for candidates to demonstrate their skills + creativity"

"Extensive recent experience of an identical building type is commonly used as a selection criterion. However, this approach risks excluding the specialist skills you need for a project, in conservation for example, or limiting the possibility for innovation + transfer of expertise between sectors."
8 Set out your evaluation criteria for both selection + award stages clearly in advance, + balance quantitative (fees + cost) with qualitative criteria, using a qualified design assessor

“Design quality is difficult to quantify so it can seem simpler + less risky to focus on criteria more measurable good design will only be achieved in the short term. But if quality objectives are important criteria in selection + in awarding contracts. As a guideline, an appropriate balance is 70% quality: 30% cost.”

“You can determine target costs at the outset of a procurement stage + allow tenderers to compete on the basis of quality criteria by using a fixed price or cost approach.”

“Consider:
• Page limits for bid submissions
• Illustrated submissions; this approach works best with the support of a qualified design assessor”
FOR CLIENTS

9 Establish financial thresholds based on the scale, complexity, actual level of risk + value of the design services – turnover + Professional Indemnity Insurance requirements are not mandatory criteria

“Financial requirements should be scaled to the value of the architectural services contract, not the overall contract value. Contract Notices should, therefore, give the value of the services contract, not the value of the construction works.”

“Project-based insurance models (Single Project Insurance or Integrated Project Insurance...), which reinforce integrated project teams + facilitate BIM, can be considered as an alternative to PII cover.”
10 Choose a standard type of building contract + consultant appointment that promotes collaboration, integration + direct communication with your design team

"Experience shows that project outcomes are better when the client has a direct relationship with the design team throughout – preferably contractual."

"You can use standard forms of contract + the RIBA Standard Agreement for all but the largest + most specialist projects. Bespoke agreements + contracts are an unnecessary cost."

"It is in your interests as client to ensure that your sub-contractors (tier 2 suppliers) can perform effectively + efficiently by offering fair + transparent payment terms, avoiding deferred or draft invoicing or equivalent terms. You can pay through Project Bank Accounts, + in all cases within 30 days."
FOR CLIENTS

10 PRINCIPLES FOR BETTER OUTCOMES

"You can use standard forms of contract + the RIBA Standard Agreement for all but the largest + most specialist projects. Bespoke agreements + contracts are an unnecessary cost."

“Choose a standard type of building contract + consultant appointment that promotes collaboration, integration + direct communication with your design team."

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RIBA’S 10 PRINCIPLES available online HERE
6 Questions forward

- The G Cloud model
- Digital Procurement
- VAT
- Framework Levies
FURTHER OPPORTUNITIES TO PURSUE VAT REFORM COULD BE ADVANCED, by:

Removing the 20% VAT incentive on D + B contracts, + the anomalies on conservation works which do so much to impact the market.

This opportunity to LEVEL THE PLAYING FIELD + drive UK could be addressed (BREXIT or otherwise)
FRAMEWORK LEVIES ARE EMERGING.
These charge suppliers an annual fee for being on a framework (NEPRO 2016), reducing clients cost + turning HUB procurements into profit centres.

It derives from the need to model a payment structure for the G Cloud approach, but has been extended to cover all procurement frameworks routes whether or not they are on to an electronic catalogue.

This risk transfer is damaging + reduces SME access.

This threatens to impose significant additional overheads on SME’s
THE G CLOUD MODEL

G CLOUD - AN ELECTRONIC CATALOGUE

Think of it as an ‘Amazon’ for architectural services when you buy a book, is the subject more relevant than the price?

Its a national framework with easy access

It can deliver procurement with a digital experience we all now expect, + providing a competitive option to use of the standard 2 stage restricted procedures
Various sector specific issues would need to be addressed for success in construction eg:

- free to use
- ‘the offer’ + how qualitative value criteria are called
- compliant with the regulatory criteria minimally, for access
- a single national portal, rather than multiple portals
- that a construction sector version was simply constructed, attractive + user friendly for industry + clients
- governance that was representative, fully independent + impartial
- that it was open to all public + private sectors
- sustained with Government digital first policy support

HOW IT WORKS.....
UK IT SECTOR HAS EXPERIENCED EXCEPTIONAL RECENT GROWTH

This growth was partly precipitated by Gov. market intervention

Construction needs the same growth to address current requirements

THE G CLOUD MODEL

TURNOVER GROWTH
UK’s Digital Tech Industries grew 32% faster than the rest of the economy 2010-2014

11.2%

Jobs in UK Digital Tech Economy grew 11.2% (2010-2014), almost 3x faster than rest of the UK’s economy
THE G CLOUD MODEL

ONLINE
accessible to all public ++

NATIONAL FRAMEWORK
easy access

WIDE CHOICE
intelligent commissioning

SIMPLE
efficient + effective

WORKS + SERVICES
call off short listing by filter

DIGITAL FIRST
market intervention

FINAL SELECTION
by choice
THE G CLOUD MODEL

SME’S:-
gained market,
increased efficiency
expanded capacity
delivered growth +
innovation

ON A LEVEL PLAYING
FIELD

with a digital 1st policy
(like BIM!)

Frameworks:
G-Cloud, Digital Services, Crown Hosting + beyond

Supplier submission

Supplier register

Buyer self-service

Buyer register

Contracts register

increasing UK competitiveness...

QUESTIONS FORWARD
DIGITAL PROCUREMENT

SIGNIFICANT OPPORTUNITIES NOW EXIST FOR DIGITISING PROCUREMENT.
Once procurement processes procedures + best practice is mapped a work implementation platform possible.

By reducing time + cost by up to 75% access, opportunity + stakeholder engagement can be enhanced.
DIGITAL PROCUREMENT

DESIGN CONTEST WIP

A UK COMPETITION SERVICE UNDER DEVELOPMENT

Providing clients:
more efficient + better procurement, + without early need for specialist external legal consultancy

Unlocking opportunity:
to return decisions on qualitative questions nearer to end users + increase transparency

Supported by:
best practice guidance, reducing costs, increasing access + improving opportunity

Providing:
guidance for proportional use of recommended best qualitative + whole life criteria

a Work Implementation Platform for architectural competitions (WIP)
DIGITAL PROCUREMENT

MAPPING THE PROCEDURE

Project Compass Design Contest Guidance
procedural + practice innovations + efficiencies

procedures under:
RIBA Policy 2012
ACE (Architects Council of Europe) Policy 2014
• Directive 2014/24/EU
• UK Public Contract Regulations 2015
• Public Services (Social Value) Act 2013
(England, Wales + N. Ireland)
• National Planning Policy Framework
(England, Wales + N. Ireland)
GUIDANCE IS AVAILABLE TO SUPPORT YOU

An Architects Guide to Public Procurement
by Fin Garvey 2015. RIBA
ISBN 978 1 85946 541 7
Comprehensive manual + detail

Project Compass Website
fulcrum - for contract notices
sesame - for data + analysis
compass - guidance + resources
incl. publications
Project Compass CIC

RIBA 10 Principles for Procuring Better Outcomes
RIBA 2016
Guide for Clients

Project Compass Design Contest Guide
Project Compass 2015
ISBN 978 0 993148118
Guide to innovative design contest procedures