

Talk Back

We put questions to Walter Menteth, Architect, past RIBA Competition Assessor, and Chair of RIBA Procurement Reform Group.

1. How did you find yourself involved in this extensive review of Procurement?

Having done a series of small public works (successfully winning a series of national awards) for commissions instigated before implementation of EU directive 2004/14 (the Procurement Directive), the practice felt well positioned to win OJEU bids. After submitting innumerable lengthy, excessively complex and risk averse PQQs and bids with little emphasis on quality outputs; and despite being placed on a number of frameworks - we won little similar paid work subsequently.

We estimated that this process wasted us easily in excess of £1/4m over 6 yrs. Other colleagues reported the same lack of access, so we felt it would be valuable to analyse the issue (as no-other architects had done so).

2. Does something of this magnitude demand a discussion at Ministerial Level to ensure anything gets implemented?

Conjunctively many others have been looking at procurement reform but through different lenses; eg as commissioners/purchasers and across different sectors. As Government is one of the largest public purchasers a focus of their construction strategy has been on achieving systemic efficiencies as a purchaser for larger infrastructure projects largely by increasing aggregation, risk protection and new working methods.

RIBA findings have been focused on wider economic, qualitative and sustainable implications that can contribute towards growth in a context where the most numerous professional and other suppliers in public construction procurement are SMEs, and where most work exists below the larger (infrastructure) contract values.

RIBA has been represented on Gov. Committees and RIBA President Angela Brady has communicated RIBA findings at ministerial levels. UK Government and Europe all recognise that economic prosperity lies with a strong, emergent and innovative SME sector. But whilst UK Government has been receptive, the industry is highly competitive, many vested interests have powerful lobbies and the pace and direction of change will be dependent upon the outcome of pan European negotiations to revise the EU Procurement Directive. (due Sept. '13).

3. Are you happy with the audiences you have had at your Procurement Roadshows or do you think there are more effective ways of communicating your message?

RIBA Roadshows are one strand in a campaign to change the procurement culture for UK architectural services. They have successfully engaged specialist audiences typically between 100-300. However critical this issue maybe - the subjects very complexity makes it obscure so an objective is also to raise the profile, throw light on crucial issues and highlight the available alternatives for more effective, creative and empowering procurement that can deliver better more sustainable buildings efficiently.

Other strands include engaging directly with procurers, improving advice on how to simplify, diversify and establish model practice that can allow commissioners opportunity to appropriately undertake specific procurements.

4. Do you think those responsible for commissioning buildings in the UK are sufficiently design conscious to want to promote excellence and innovation in design or are they happy to put their names to mediocre offerings?

Unfortunately there are too many jobs worthies who simply wish to see decisions on the commissioning of buildings implemented without consideration to innovation, sustainability or quality. Cut, copy and paste practice is frequently adopted with laborious tick box exercises largely aimed at enumerating risk, in conjunction with a growing disconnect between end users, commissioners and the selected construction teams.

The qualitative assessment of design is not understood, whilst intelligent judgement and empathetic selection focused on shared objectives is often lacking. English graduates may specialise in the written word, but architects are 3D designers who draw and build iteratively, yet they are rarely questioned in the language of their primary skills. Selection assessments are frequently a case of being unable to see the wood for the trees.

5. In your view have you any evidence that Local Authority clients have an appetite for change and embracing new more flexible and creative ways of procurement?

Many clients (LGA Report:- The Impact of EU Procurement legislation on councils, Feb '11 and NHF response to the EU Green paper March '11) recognise that there is much which is fundamentally wrong and have an appetite for change. They feel unduly constrained by advice on procedural legality, are buried in 'gold plated' procedures and equally are increasingly pressured to deliver more for less. However the UK has largely been commissioning construction works using only a small proportion of the available EU procurement procedures, and mostly the most expensive, lengthy and complex. (2 Stage restricted procedures followed by selection through mini-competitions and competitive dialogue). Design contests and negotiated procedures are rarely used alternatives. Some enlightened clients would appear to be increasingly willing to embrace more flexibility and diverse procedures.

6. Do you believe an overhaul of the UK Competitions System will have a positive impact on the way we procure buildings in the UK?

An overhaul of the UK Competitions system could have a significant impact improving efficiency, sustainability and quality whilst increasing SME access, and ensuring processes operate in the best interests of all those served. But any legal change will need to be matched by cultural change in practice.

7. How does the Profession tackle the current situation whereby L.A. Procurement Teams not only order loo rolls but prepare (and often) assess tenders for design work?

As all who win contracts legally become contractors (whether they be those selling loo roll or construction Professionals) there is little capacity for legal differentiation. Instead there is reliance on the procurement professionals who have become increasingly professionalised. In addition to L.A. in house or aggregated teams (groups of L.As.), specialist procurers are

frequently sub-contracted to manage selection processes in which they have little or no specific training or no fundamental understanding.

Digital technologies provide one way which could allow those commissioning construction to be more readily empowered to procure more simply, directly and with a clear focus on outputs; and by passing procurement professionals.

8. How can d2w be ambassadors for the Smaller Practice, convincing clients to abandon onerous PQQs? What's your advice?

One might consider this discussion is similar to those surrounding banking or retail supermarkets vis a vis more mixed diversified environments.

Clients need to be familiarised with the context in which they operate, aware of the underlying reasons and wider implications of their decisions, the quality of their briefing and be encouraged to change their culture to be open to alternatives; considering not just the quantity of what is delivered but also the wider issues of quality, robustness, and sustainability that they are entrusted to deliver for end users. Taking responsibility for intelligent judgement in the commissioning processes should be encouraged. Commissioning and risk should be considered proportionally to a contracts value.

At great cost to all, frameworks are often commissioned aspirationally and without any certainty of funding, this should be avoided with more contracts let individually only upon there being certainty of funding.

Clients need to be more aware that smaller professional organisations have lower overheads, are highly competitive, frequently deliver excellent quality, are more likely to innovate, take greater personal responsibility with better empathies, more directly at a local level and will contribute more proportionately to the employment and tax base, locally and nationally. But that the perceived inefficiencies in their deployment are systematic of the procedural processes of their selection not of the service provision.

In PQQs only standard competency criteria should be used (PAS 91 2013) with practices either passing or failing the pre determined minimum criteria.

Questions regarding practice turnover should not be mandatory for lower value contracts and should never be more than twice a contracts value. Insurance requirements should be an early consideration ie whether PI is required (and this should be only proportionate to the professional responsibility and only upon award of a contract not for the purpose of bidding) or whether projects are insured through single project insurance (SPI) or integrated project insurance (IPI). Where teams are to be selected practice consortia should be encouraged and regarded equally vis a vis integrated multi-disciplinary practices.

Quality assessments however should always be the dominant criteria and marked not as a pass or fail but by weightings assessed by a suitably qualified panel with a min. 1/3 holding the requisite qualifications of those being assessed. Wherever there are fee tenders these should only be assessed for those practices which pass the quality thresholds, and were ever the bid winning on the basis of the quality assessment falls within +/- 10% of others passing this quality threshold it should be acceptable.

9. What's your advice to smaller Practices faced with a complex tender process?

Avoid it. If the process is deliberately skewed to dissuade fair competition by micro practices and SMEs or lacks transparency then complain to the Governments Mystery Shopper website MysteryShopper@cabinet-office.gsi.gov.uk

Evidence suggests micro practices have a very thin chance of winning work through frameworks were mini-competitions are used as a method of call off. Overly complex tender processes also indicate a lack of forethought, inadequate preparation and briefing by clients. Unless questioning is specifically SME friendly then only bid if in your evaluation you still stand a chance for other reasons of winning the contract.

10. Are we too fearful in the UK of the EU directive and its regulations compared to other EU Countries?

The evidence would suggest so. The UK adds 'Gold-plating' to the directive and adopts unduly complex and expensive procedural routes to procurement. Furthermore the word of the law rather than its principles appears to prevail, even when the former overrides the later.

The directive itself has many possibilities for creative procurement, but these are rarely used in the UK. This is not to say however that other EU countries don't have problems – but these are generally ameliorated by more appropriate diverse practices, better and more transparent guidance with more of the architectural communities' expertise deployed within selection procedures.

11. What do you realistically hope will come out of this review and campaign?

For the health of the built environment the architectural profession must maintain strategic focus on how public construction work is acquired and continue its endeavours to change processes and practices over the long term. The new EU Directive is likely to be transposed into UK legislation by latest end June 2014 so by then we can realistically expect:-

- 1. More efficient, simplified, diverse and proportionately considered procurement practices across all public property portfolios. Specifically more negotiated procedures and design contests (if for the later adequate advice, efficiencies and procedures are made available).*
- 2. Micro and SME friendly procurement that will improve access and open up the market to a fuller range of UK talent, so that the opportunities which exist in the public sector become more equivalent to those found within the private sector.*
- 3. A maximum limitation on the turnover requirements as a proof of the financial capacity of those bidding, (whether twice or three times the estimated contract value - yet to be confirmed)*
- 4. Competency criteria will only be evidenced at award stage and not with each and every bid.*
- 5. The division of contracts into lots will be encouraged through the "apply or explain" principle so it won't be so easy for clients to default to contract aggregation and the bundling of works. So more opportunities should be available in the market for SMEs across a wider range of values. Clients however will seek to argue against this on the basis of the economies of scale and the profession needs to be ready to challenge and evidence such presumptions.*

6. *More opportunities for small architectural practices to bid in consortia practices of like minded professionals without need to pre construct there legal framework for tendering.*
7. *Consideration of life cycle costing will now become a factor in the award of contracts, although this may create additional burden in bid processes.*
8. *Mandatory 'end to end' e-procurement, e-notification, e-submissions, electronic signatures and e-invoicing systems will all progressively follow by June 2016.*

UK Specific:-

1. *Better plain English interactive procurement guidance and training allowing clients and end users easy access to tools for more efficient and direct construction procurement.*
2. *More creative procurement that allows commissioners and end users opportunity to make intelligent judgement*
3. *Greater emphasis placed on assessing and selecting a designers potential and skills based on their specific design and drawing expertise.*
4. *Simplification of PQQ processes by adoption of the PAS 91 standardised competency criteria, and alignment of this with RIBA Chartered practice data so that such information is only required to be entered by practices once a year.*
5. *All public procurement opportunities above £10,000 and above EU thresholds placed on Contracts Finder providing a single UK free and easy to access procurement portal.*
6. *Better payment terms for tier 2 suppliers introduced through more widespread use of project bank accounts,*

12. Is the future looking brighter for small Practices?

To our detriment the UK has become an extremely bureaucratic country, we are experiencing a deep construction recession and we have a long way to travel. So I remain optimistic, a lot has been achieved but let's wait and see.