

**Len Duvall**  
**Chair of the Greater London Assembly Oversight Committee.**

Dear Len Duvall,

**Re: Reporting oversight on the Garden Bridge**

Regarding the GLA Oversight Committee meeting of 11 October 2017 on the Garden Bridge we are writing to ask your committee to consider moving to clarify a relevant issue that is raised.

This relates to how design propositions that benefit the public estate can be brought forward by London's design community in future. We believe this will release enormous untapped potential to identify opportunities and deliver growth.

The endeavours of UK design professionals to support a project from inception are often ignored, and the knowledge lost as any scheme adopted for public implementation will then be put out to competitive tender. There is now therefore little motivation for design professionals to initiate and nurture projects from inception as almost inevitably the original designers will be precluded as the established competitive processes are highly restrictive.

This effectively locks out many of those who would be particularly well placed to support 'bottom up' endeavours, whether for example through the engagement of design professionals with their communities or by creating imaginative and valuable design ideas contributing to the city's wider needs, vitality and wellbeing.

The Public Contract Regulations (PCR) 2015 provide seven procurement routes but the 'Restricted Procedure' predominates in the UK, while others are hardly ever used. Improved clarity could open the opportunity for procurement officers to select more appropriate procedures. Because it aims to secure design copyright ([PCR 2015, Reg. 32.2\[b\]](#))<sup>i</sup> use of the 'Negotiated procedure without prior publication' offers significant potential for clients to access the ideas and knowledge of those involved in 'bottom up' initiatives.

[The regulation \(32.2\[b\]\)](#) however is caveated ambiguously, in the following terms:

*"when no **reasonable** alternative or substitute exists and the absence of competition is not the result of an **artificial narrowing down** of the parameters of the procurement"*

An absence of guidance in the UK for procurement lawyers, specialists and public authorities' means they are unable to justify using this procurement route. This is not the case in much of Europe where it is more widely used, as clarity on this regulation often exists.

We believe that this could be resolved and this alternative route opened up if clarification of clause 32.2[b] were provided to enable clients to benefit from the knowledge and initiative of an existing design team. What is needed is a process by which a project can be transparently and clearly evidenced as delivering value, probity, fairness and quality in the best interests of the public.

Subject to upholding all these other procurement principles, and to unlock opportunity through this procedural route we would therefore recommend regulation (32.2[b]) be clarified with the addition of a peer review process, to be used only where relevant, that would allow each case to be tested on its merits.

Our suggested wording for the clarification to regulation 32.2(b) is as follows:

*“In the built environment this may be evidenced by impartial independent peer review, comprising a minimum of three qualified reviewers, with no conflicts of interest and having at least ten years’ experience of holding a specific qualification directly related to the subject being reviewed.”*

We propose that consideration might be given to adopting this or a similar clarification through governance, or by standing order across the TfL GLA family, or by national provision through a Procurement Policy Note (PPN). This would allow us all to benefit from the positive and creative endeavours of those developing built environment ideas for public good.

London has many challenges and it is clear that we need to find a way through this issue that will encourage design professionals to come forward with ideas and to engage with communities in order to meet them, and for client bodies to know they can access those ideas and benefit from the knowledge and work already carried out.

We trust that your committee and the GLA will give due consideration to the matters raised above.

Yours sincerely

Andy McConachie, associate partner Simpson Haugh Architects

Angela Brady OBE. PDSA PPRIBA, director Brady Mallalieu Architects Ltd

Carl Turner RIBA, Carl Turner Architects

David Mikhail, Mikhail Riches architects

Deborah Nagan, Nagan Johnson Architects

Ian Ritchie CBE RA, Ian Ritchie Architects

James McCosh RIBA, van Heyningen & Hayward Architects.

Jonathon McDowell, director Matter Architecture Ltd

Luke Tozer, Pitman Tozer Architects Ltd

Meryl Towney RIBA, van Heyningen & Hayward Architects.

Mike Davis CBE RIBA FRSA FRGS FICPD, founding partner of the Richard Rogers Partnership

Robert Sakula, Ash Sakula Architects

Roland Karthaus, director Matter Architecture Ltd

Russell Curtis, director RCKa Architects

Sarah Wigglesworth RDI MBE RIBA, Sarah Wigglesworth Architects

Simon Astridge, Simon Astridge Architects

Tomas Stokke RIBA, director Haptic Architects

Walter Menteth RIBA, Walter Menteth Architects.

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<sup>i</sup> [The Public Contract Regulations 2015](#)  
[Regulation 32](#)

**Use of the negotiated procedure without prior publication**

*General grounds*

(2) The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:—

(a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests;

(b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:—

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,

(ii) competition is absent for technical reasons,

(iii) the protection of exclusive rights, including intellectual property rights,

but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;