

**Submission from the Landscape Institute
to the Commission of Enquiry into achieving best value
in the procurement of construction work**

Because the Commission has indicated that it wishes to receive brief submissions the Landscape Institute will focus specifically on the improvement of public procurement insofar as it has an impact on SMEs offering design, management and consultancy services.

Addressing the general problem of the ‘Dumb Client’

Architecture Minister John Penrose MP acknowledged on 12 July that too often the public sector has been a ‘dumb client’ for design. As this suggests, the problem of achieving best value for money in terms of design in the built environment is not simply a matter of selecting the right procurement process. Critically it depends on the client having a reasonable understanding of what they are trying to procure, but this is by no means commonly the case at the moment. The 2010 Report ‘Design and the Public Good’ said:

‘Government is damaging its own reputation as a client in a highly skilled sector, and public services fail to extract maximum value from a world-class industry and leading specialists – partly because the refined tools to do so are lacking. The result is that good design, a chief element in satisfactory procurement, suffers, public sector customers are thwarted in their ability to deliver, and the end-user, the citizen, is not well-served.’

Procurement expertise in client departments is in decline and has been for many years due to devolving procurement of consultancy and construction from the centre out to individual units. We expect these problems to get worse as public bodies continue to reduce their staff capacity and look to more junior staff to make judgements about procurement which in previous years might have been taken by more experienced senior staff.

Poor quality of knowledge and understanding means that sometimes the client awards the contract to a supplier who does not really have the capacity to deliver what the tender requires; the client does not really understand their own brief or the different responses to it well enough to distinguish who can and who cannot realistically deliver it. Current restructuring within public bodies means that many skilled and experienced people who do understand what they are commissioning will be losing their posts, so in general public bodies will be even dumber as clients in the future than they are now, unless remedial steps are taken.

The Landscape Institute believes that there needs to be a sustained programme of activities to improve public sector understanding of the importance of design in the built environment and how to procure it. This programme should include:

- Promoting Design Review and Enabling services from the Design Council.
- A central body such as the Design Council collecting and disseminating client experience and helping build up expertise. As the James Review highlighted, the current system of procurement effectively ensures that the same mistakes are made over and over again across the country.
- A programme of training based on encouraging wider use of the Construction Industry Council’s Design Quality Indicator
- Promoting the Good Client Guide published by the Landscape Institute.

- Design competition services offered by the Landscape Institute to ensure that public clients receive the highest assurance of quality and value for money when commissioning design-related services.

It should also focus on ensuring that whatever procurement method is selected, those commissioning design-related services should:

1. Clearly state minimum requirements so SMEs do not waste time on a submission which gets disregarded because it fails to meet an unstated and often arbitrary hurdle.
2. Not confuse consultancy services with construction services when tendering, so that for example tenders for design and consultancy services do not require CSCS cards or set insurance requirements at levels appropriate to a large construction contract.
3. Understand the kind of information they need to provide in order to enable firms to prepare a proper tender that will meet their needs, and not avoid requests to provide clarification when requested on the grounds that it would be 'unfair'.
4. Not request the submission of a wide range of (largely irrelevant) internal business management/procedural information that has little bearing on the company's ability to do the job.
5. Ensure that there is a coherent brief that identifies the work required, the outputs, constraints, timescales and sensible standards to be applied. This should be prepared by someone who has a proper professional understanding of the works required.
6. Not issue the tenders on the day before the key officer goes on holiday with a submission date for when they return. (In the meantime, nobody else can answer any questions).
7. Properly disclose the criteria on which the bid will be judged
8. Take proper account of maintenance costs in the tendering process. Sometimes schemes with a lower capital cost may have higher maintenance and management costs, but often information relevant to this is not asked for in the procurement process.

Addressing Specific Problems in the Procurement Process

Registration requirements. Many public bodies require tenderers to be registered with firms such as Constructionline before they can bid for work. Because there are a number of such registers many SMEs register with several and end up spending significant sums each year on fees to them, and all of these costs have to be passed on to their clients. If possible these registers should be amalgamated or a single public contracts register established.

Central procurement and contract management of major projects. One of the recommendations of the James Review was that procurement should be centrally managed through a small number of new national procurement contracts. This recommendation was made only for schools but could have a wider application. On the other hand the experience of central public procurement in Northern Ireland has been generally unhappy. It has made procurement slower than ever; in some cases the cost of the procurement process has exceeded the value of the contracts awarded, and the Central Procurement Department has been criticised for paying SMEs very late. If any kind of central procurement process is to be considered it must not replicate these shortcomings.

Publishing Budgets. The James Review criticised Building Schools for the Future because often budgets were published and firms invited to show what they could do for the money. We accept that for large public contracts this is not likely to secure good value for money. However many local authority contracts are for smaller sums, and there is a case for publishing these budgets. At the moment SMEs prepare bids which are

far too expensive or far too cheap against the proposed budget, because the tendering authority does not disclose what its budget is. This wastes a great deal of time and effort on both sides. If the budget is stated then all tenders will qualify on price and the client can make a choice based on value for money.

Reducing excessive insurance requirements. The more frequent use of framework agreements has driven up insurance costs dramatically in recent years. Increasingly public bodies simply set a high threshold for insurance requirements which bears little or no relation to the value of the works or services procured. Landscape works are usually a fairly small component of an overall contract and landscape practices can end up carrying £5m of insurance when the total landscape budget may only be £500,000. These levels of insurance unnecessarily exclude SMEs from bidding. Ways must be found of relating insurance levels more closely to the value of the work undertaken.

Rationalising PQQs. Public bodies operate a bewildering and largely irrelevant morass of PQQ formats as risk aversion and reduced capacity have a tendency push public them to set ever higher barriers for firms bidding or work. The more rapid adoption of PAS91 would be very welcome but even this is regarded as unnecessarily onerous for small works.

Conclusion

The current system of public procurement is based on an erroneous model of risk-sharing. The basic idea is that if public bodies set demanding thresholds and impose significant burdens on firms bidding for work, they thereby pass risk and costs to those firms, and thus obtain best value for money. However this simply does not reflect reality. A procurement process may require two contractor teams to produce complete design bids up to Stage D and by this point the unsuccessful bidder may have run up £0.25-£0.5m in costs. With the cost of failure so high, they cannot simply absorb that cost but must find ways of recouping it from their next successful bid. If practices are only successful in every fourth or fifth bid the successful bid has to bear the hidden costs of all of the unsuccessful ones which preceded it. Thus 'best value' ends up driving a vicious cycle spiral of risk and cost transfer and in the end it is future public sector clients who end up paying for the 'efficiencies' of previous procurement processes.

In 2009 Eric Pickles, then Chairman of the Conservative Party, responded to a letter from a trustee of the Landscape Institute on the question of freeing up public sector procurement. As Mr Pickles noted, 99.7% of all UK businesses are SMEs, but they attract only 16% of all government contracts by value. SMEs generally offer excellent value for money, often coupled with detailed knowledge of local circumstances and needs. Ensuring that public procurement stops squeezing them out will be the cornerstone of our economic recovery.

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