



ARCHITECTS' COUNCIL OF EUROPE
CONSEIL DES ARCHITECTES D'EUROPE

Date: 30 October 2014

Ref: 261/14/TM/GP

ACE POLITICAL POSITION

Political Position: Quality based procurement (PP/ADC)

Public Procurement & Architectural Design Contest work groups

Final

Note adopted by the General Assembly in November 2014

TARGET(S):

National legislation/legislators (transposition of the Directives), National Procurement Authorities (Application of the Directives), ACE Member Organisations (Lobbying)

BACKGROUND:

- the modernised Public Procurement Directive was adopted in February 2014;
- transposition (within 2 years) offers the chance to create more competition and better results;
- Member States have an opportunity to amend legislation to the maximum benefit of citizens, economic operators and contracting authorities;
- the legislator has recognised that there is a real lack of competition as a result of the misuse of selection criteria e.g. turnover, number of employees and a focus on price instead of quality;
- ACE has developed best practice recommendations for the procurement of architectural services, including design competitions.

ACE POSITION HIGHLIGHTS:

The Procurement Directives provide a framework for procuring services that offers a range of instruments and procedures – not all of which are suitable for architectural services. They allow for transposition and application, at national level, to take account of the specific nature of architectural services.

ACE has produced a set of Recommendations that focus on the most relevant decisions to be taken on the occasion of the transposition of the new Directives and during the procurement procedure.

ACE's overall priorities are:

* to facilitate and strongly promote the access of small architectural firms to public contracts;

* to provide for *procedures* which are clearly focused on quality;

* to provide for quality-based awarding decisions in the field of architectural services.

BETTER ACCESS TO PUBLIC CONTRACTS FOR SMEs

- SMEs: ACE opposes the disproportionate and excessive use of quantitative selection criteria, in particular turnover and number of employees, which should be restricted to the minimum possible, for example, the professional qualification needed in order to offer architectural services. References should be used carefully to avoid the exclusion of young professionals;
- Division of contracts into lots: to promote better SME access to public contracts, the division of contracts into lots is welcomed. Design and execution of works should be procured separately;

QUALITY-BASED PROCUREMENT PROCEDURES

- Choice of procedures: architectural services should be procured by design contest organised as part of a competitive procedure with negotiation. Open procedures, the competitive dialogue and the innovation partnership, along with electronic auctions, framework agreements and dynamic purchasing systems, are not suited to the procurement of architectural services;

QUALITY-BASED AWARDING DECISIONS

- Contract award criteria: award criteria for architectural services must be based on quality. Price, as the sole criterion should be excluded. Award criteria, such as the organisation, qualification and experience of staff assigned to performing the contract, must not be misused to exclude small firms or young professionals.

ACE POSITION – SHORT REPORT:

Following adoption of the modernised Public Procurement Directives in February 2014, Member States have 2 years to amend national legislation. The legislator has recognised the lack of real competition on account of the misuse of selection criteria (turnover, number of employees) and an undue focus on price instead of quality. The Directive provides a range of options and tools to solve these problems. Member States have an opportunity to amend legislation to the maximum benefit of citizens, economic operators and contracting authorities, and to create a basis for more competition and better results.

BETTER ACCESS FOR SMEs

Accessibility of public contracts – Article 58 (selection criteria): contracting authorities may only impose certain requirements on economic operators for participation. They must be limited to those that are appropriate to ensure that a service provider has the legal and financial capacities and technical abilities to perform the contract – and they must be proportionate to the subject matter of the contract. Generally, selection criteria should never be designed with the sole objective of reducing the number of participants.

Generally, intellectual services such as architects' services should be chosen on the basis of the best idea/concept. ACE believes that the criteria for choosing an architect should be based on performance and not quantitative selection criteria like turnover or number of employees. While it might be helpful for securing competition in the construction sector that the minimum yearly turnover economic operators are required to have shall, under the new Directives, not be more than twice the estimated contract value, this is totally different in the sector of architects' and engineering services. Turnover requirements for architects must be substantially lower. Even when turnover requirements are set at the threshold value for application of the EU Public Procurement Directive (€207,000), this excludes 90% of practices from competition, thereby losing a valuable source of innovation. The situation becomes even worse when the contracting authority avails of the option to double this value, which would lead to an exclusion of around 95% of architects' offices in the EU. This is why selection criteria should be restricted to professional qualifications and the absolute minimum of additional criteria to

guarantee genuine competition;

Definition of the Project – article 46 (Division of contracts into lots): the Directive requires contracting authorities to provide reasons for not sub-dividing contracts into lots (e.g. architects' services, engineering services and construction services). Member States could implement this article by rendering it obligatory to award contracts in the form of separate lots, which would be better adapted to the needs of SMEs, in compliance with the "European Code of Best Practice Facilitating Access by SMEs to Public Procurement Contracts".

Although the Directive leaves the decision to award joint or separate contracts for design and execution of works to the contracting authority, the design and execution of works should be procured separately, not only to promote SME's but also to allow the architect to act as an independent trustee and produce better economic results.

QUALITY-BASED PROCUREMENT PROCEDURES

Choice of procedures: the Directives provides for a range of procedures (open, restricted, negotiated, innovation partnerships) not all of which are well suited to procurement of architectural services.

ACE has concluded that the most advantageous way of procuring architectural services is the two-stage design contest, followed by the competitive procedure with negotiation without prior publication.

This provides for best quality because as it engages the market, uses qualified expertise (juries) and optimises the tender in subsequent negotiation. Anonymity avoids corruption or nepotism – and the legislator has sought to optimise the result of procurement in architectural services by opening the negotiated procedure without prior publication for public service contracts, where the contract concerned follows a design contest (cf. article 32, para. 4). Even in the case of Public Private Partnerships, the design contest can provide optimum results in terms of quality and economic advantages. Alternatively, a competitive procedure with negotiation may be used. Procedures requiring participants to submit a tender (especially open procedures, competitive dialogue and innovation partnership) are not suited to architectural services.

Procurement instruments and tools: electronic auctions are only suitable where contract specifications can be established with precision. Indeed, the Directive states that certain service contracts having intellectual performance as their subject matter (e.g. the design of works) may not be the object of electronic auctions. Framework agreements are generally not suitable for architectural services because they determine the terms governing contracts to be awarded for a given period with regard to price; they restrict access to single contracts and prevent competition of each and every building. Dynamic purchasing systems are designed for commonly used purchases the characteristics of which are commonly available on the market. Consequently, the application of these instruments would not be a useful or appropriate use of instruments for the procurement of architectural services.

QUALITY-BASED AWARDING DECISIONS

Contract award criteria – Article 67: the Directives provide that contracting authorities shall base the award of public contracts on the Most Economically Advantageous Tender, which is identified on the basis of the price or cost, using a cost-effectiveness approach such as Life-Cycle Costing and may include the best price-quality ratio assessed on the basis of qualitative, environmental and/or social aspects linked to the subject matter of the contract.

Member States may provide that contracting authorities may not use price/cost only as the sole award criterion or restrict their use.

Award criteria for architectural services must be based on quality (including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics). Price as the sole criterion should be excluded.

New awarding criteria under the Directive, e.g. the organisation, qualification and experience of staff

involved, must not be misused to exclude small firms or young professionals from the market. Groups of economic operators (including temporary associations) must be encouraged to participate in order to comply with exceptionally strict requirements.

As the awarding of contracts for architectural services must focus on the quality of the service and the technical offer, not the price, the architectural design competition is one of the best means to provide for solutions which are beneficial for the client; it demonstrates the skills of the profession and emphasises quality based awarding criteria.

ACE has developed a set of 10 essential rules that comply with European procurement law, and a set of Recommendations on how to organise and manage the procedure (see appendix).

ACE CONTACT PERSONS:

Author of the note: Ian Pritchard

Chairmen of the Work Group: Thomas Maibaum & Georg Pendl

Secretary General: Ian Pritchard

ACE Secretariat: info@ace-cae.eu

ANNEXES:

Link to ACE complete position:

Other useful links:

Link to ACE website: www.ace-cae.eu

Link to this particular issue on the EU Institutions Website: