



Royal Society of Ulster Architects Submission to DFP Inquiry on Public Procurement

27th February 2009

Introduction

The Royal Society of Ulster Architects (RSUA) is the professional body for architects in Northern Ireland and the regional representative of the Royal Institute of British Architects (RIBA). There are approx 870 chartered members and over 300 student members. The public sector employs a considerable number of architects but the majority are in private practices and companies, spread right round the country but with a concentration in the greater Belfast area. There are 272 practices of which two thirds are of less than 10 employees with only 21 have more than 20. The pattern of practice size and location has evolved locally in this way to reflect traditional procurement practices.

The effect of the recession has been serious. In a recent survey, with returns from 120 practices right round Northern Ireland, 136 architects and 250 other staff have been made redundant, representing over 25% of those practices workforce.

Architecture is a regulated profession, with the independent Architects Registration Board (ARB) established by government to protect the public interest, in addition to the normal professional codes of conduct. This recognizes the fact that architects have unique and considerable responsibilities in the construction industry, certifying both the quality of work and payment for it.

Whilst the common perception of architects is that they simply design buildings, the reality is that the architect's role is central to the public's trust in the whole construction industry. The traditional role of the architect includes duties to arbitrate between client and contractor and to act in the broader public interest.

Experience of tendering for and delivering public contracts

Traditionally, private practices, of all sizes, have carried out works for a broad mix of public and private sector clients. With public sector works, architects were appointed by a client on an individual project basis taking into account their expertise, experience and price. This resulted in a significant spread of work across the profession.

In recent years, however, more and more public works have been packaged up into framework agreements and the nature of these has restricted appointments to a small number of practices. Whilst there was a private sector boom this did not seem to be that serious an issue – there was plenty of work for everyone – but with the rapid slowing of private, especially, residential development, many practices, in particular in rural areas, have found themselves in serious trouble, with no access to public sector work.

We recognize that the Construction Procurement Directorate (CPD) in their recent discussions with the professional bodies and the Construction Industry Group (CIG) have acknowledged this issue and have sought to broaden the scope of practices eligible to tender for their next consultant framework, but the RSUA remains unconvinced that large scale framework agreements are necessarily the most efficient and effective method for the public sector to procure all of their construction and design services

The move both towards framework agreements and the move away from so called 'traditional' contracts (where design team and constructing team are appointed separately, each reporting to the client) to Design and Build contracts came about under the Direct Rule administration following similar practices in England. This was based on research done, as far as we are aware, entirely in Great Britain and does not necessarily reflect the Northern Ireland experience. The UK government's belief is that these moves will result in a greater proportion of projects being delivered on time and within budget. This remains to be proven in the Northern Ireland context.

The RSUA recognizes there may be potential advantages of framework type arrangements to public sector clients in the cost effectiveness of group tendering and design teams being available at relatively short notice.

However, a number of significant concerns have been raised about some of the unintended consequences of what has become public procurement practice.

The recent legal challenges to the Design and Build frameworks (in particular the Dept of Education framework challenged by Henry Bros., determined by Lord Justice Coghlin) demonstrate the risks in scoring tenders on criteria which may not be actually relevant to the particular projects being undertaken through the framework. Whereas single project tenders will typically draw up very specific selection criteria (e.g. experience of listed buildings, courts or prisons etc.) it is not possible to do this for a framework where a very broad range of projects will come out. If too diverse a range of criteria are used then smaller, perhaps specialized, practices will be disadvantaged compared with large, perhaps multi-national, practices, despite the fact that the smaller practice could carry out at least some of the jobs procured through the framework.

For this reason, the RSUA believes that framework agreements should only be used where there is considerable synergy and similarity to all the projects that will be procured through it. Other, more individual, projects should be delivered by single project procurement tendering.

Issues

A particular issue has arisen for projects being developed by community groups, local enterprise bodies and NGO's. These projects are characterized by the client having little or no resources to develop the project through feasibility stages. A considerable amount of work is carried out, at minimal cost, usually by a local architect who shares the community's vision. It now seems to be the case that if these projects subsequently receive more than 50% government grants they come under the remit of CPD. In many cases the architect who has done all the preliminary work, often at a loss, may not even be eligible to tender for the work because they are not on a particular framework. This is highly unsatisfactory and the hard earned knowledge gained during the project development is lost. If this practice continues then it will not be viable for architects to do preliminary work at very little cost and good projects will not get off the ground.

The RSUA has also had recent discussions with DSD regarding the proposed consultants framework for Housing Associations and we have expressed the same concerns. If anything the issues around housing are even more serious. There can be distinct advantages in community understanding for Housing Associations to be able to use a diverse range of practices, picking the most suitable because of their local knowledge and community contacts. A very large proportion of practices, spread right around Northern Ireland, currently work on social housing projects and this local connection is threatened by a move to the Housing Associations having to procure all their services through a small number of practices on large scale frameworks. The undesirable practice of architects being required to carry out a substantial amount of work 'at risk' has crept in to Housing Associations and, in the long term, this is not conducive to the provision of proper professional services.

Frameworks are designed to cope with substantial packages of work over a 3-5 year period with high values of construction costs and consequent fees. This leads to an assumption that eligible practices need to have significant resources and financial backing to have the capacity to do the work, and therefore minimum criteria for staff numbers, turnover, etc. This may be reasonable for larger and complex projects but in many cases projects put out through frameworks are of a small and medium size, lumped together in a procurement package to minimize tender costs. In many cases, the selection criteria are set to a much higher level than is necessary or required for a particular job. In a similar vein, a turnover figure is not a reliable indicator of financial strength, nor numbers of staff employed a measure of available resources.

The longer term effect of frameworks will be to concentrate public sector projects into a small pool of consultancies. Even though each framework will be limited to 3 or 4 years duration, the selection criteria for subsequent frameworks will be based on experience of the building type and exclusion from that type of work for a 3 or 4 year period will lead to a vicious circle leading to long term exclusion, the demise of many indigenous practices and the social and economic consequences of that.

We are obviously concerned that the effect of the legal challenges has been to significantly delay public projects coming out to the market but this has not been the only factor. The considerable time taken to put together the tender documents for large scale frameworks does in itself have a significant impact on the programme for delivering public projects.

The consequences of these delays include :

- A reduced amount of work from what was planned by Government and anticipated by contractors
- Projects stalled at tender stage with no programme for construction
- Construction industry shedding jobs
- Programme for Government targets not met

There are of course other factors that have an effect on delivering public projects such as the continued delays in the Planning process, or the introduction of the new NEC suite of contracts, but these are perhaps outside the scope of this Inquiry

Recommendations

The RSUA recommends a detailed Review is carried out on the financial, programme and quality measures of public projects that have been commissioned through both single project appointments and through frameworks, and built through both traditional and D&B contracts. This is to ensure that decisions to move towards frameworks, D&B contracts etc., currently justified by GB experience, are based instead on verifiable, Northern Ireland, conditions. If the case for frameworks is justified, then the RSUA believes that each COPE (Centre of Procurement Expertise) has a number of frameworks with bands of project size and consequent eligibility criteria, with a minimum threshold below which a much simpler procurement strategy is in place, and allowance also made for projects of special public interest. Our suggestion for this suite of arrangements is as follows

Minor Projects

Projects up to a construction value of less than £1m (or OJEU level) or a professional fee value of less than £150k (or OJEU level) should be procured by a simplified procedure. If this is a 'one off' by a COPE then it would be advertised in local press etc. If there is likely to be sufficient similar projects by a COPE than a Minor Works framework should be put in place. We would suggest that eligibility criteria are set to ensure smaller firms are not disadvantaged over larger firms in terms of turnover, staff numbers, etc, once the minimum level required is reached. This is particularly important for the Housing Association frameworks

Normal Projects

Projects which even on their own would require an OJEU notice should be procured through a OJEU notified framework which groups together projects of similar size and type, but not small projects that could be procured in a simpler manner. Eligibility criteria should be set at appropriate levels, with no disadvantage for partnership arrangements between two firms in the same discipline to pool resources and expertise. For the larger COPEs, with a wide range of size of projects, there should be banded frameworks with the aim of matching project size to practice size and projects of a similar type grouped together

Community projects

An increasing number of community initiated projects are now being delivered through CPD resulting in their original community appointed design teams (typically for feasibility studies) not being eligible to tender. We believe that community projects should be delivered by single project tenders to ensure locally relevant criteria for selection are included.

Special Projects

The RSUA believes that projects with a high level of public interest and architectural potential should be procured through open design competitions, run by the RSUA or at the minimum, single project tenders, outside of the frameworks, with specific and relevant criteria used for team selection

Achieving Quality in Public Sector Construction Projects

The challenge of ensuring design quality in public buildings is not new and affects both traditional and D&B procurement. However, we believe it is more likely that design quality will be watered down when there is pressure on budgets if the architect responsible for detailed design under a D&B contract does not have the same 'ownership' of a scheme and the original architects have a very limited role in advising the client. In these circumstances, external Design Reviews should be used

In D&B projects where the client sets a high architectural design standard as a key criteria, we would recommend the practice used in Scotland where the original design team takes the project through to detail design drawings (RIBA Stage D or E) before responsibility is handed over to the Contractor and his team. We also recognize there can be 'buildability' benefits from Early Contractor Involvement (ECI) and this can be accommodated through two stage tender processes in both traditional and D&B contracts

We welcome the use of Quality/Price ratios for scoring of tender submissions but there remains a challenge in measuring a practice's ability to provide design quality and in defining the architectural essence of any proposals as invariably this does not lend itself to a simple measurement which can be scored as part of a tender process. Unlike other elements of criteria, an assessment of design quality can be open to selective scoring. We do believe that serious, peer judged awards such as RIBA, RSUA and Civic Trust Awards represent an objective measure of design quality and should be used where the quality of the design of the building is seen as an important criteria, in particular the 'special projects' as defined above.

Quality scoring is increasingly based on written responses to specific questions. This has led to perceptions that the quality of 'essay writing' becomes more important than the real quality of the service being offered, with reports of companies securing the tender writing by external consultants. As expertise in these responses rises, quality differential becomes marginal and price becomes once again the deciding factor.

Although we are told that the use of the Quality/Price criteria has resulted in a number of tenders being awarded to other than the lowest price submission, we are nevertheless worried that, especially in times of recession, practices may feel under pressure to submit a tender for a price below which it is feasible to deliver a professional service. We would thus suggest that a minimum level of fees is set, or as with most Health Estates procurement, the fees are set at the level that long experience has shown to be required to fulfill the tasks properly, and the tender is based on quality alone. This approach would work best with frameworks where there is a high degree of similarity in projects. For general projects we suggest that a 80% quality, 20% price ratio is appropriate.

It should be recognized that design team fees represent only a small part of the overall capital cost and a tiny part of the life cycle costs of the building. Failure to meet properly set Design Quality Indicators can have a dramatic effect on whole life costs. As we move towards low carbon design and the primacy of whole life costs as a decision making tool for the public estate, there needs to be an accompanying recognition to invest the proper level of resources into the design process.

Finally, we are aware of the recent report by the Equality Commission and CPD on Equality of Opportunity and Sustainable Development in Public Sector Procurement and support the general aspiration of its contents. We are, however, concerned, that this level of radical reform is having an effect on the rate that public projects are coming out to the market.

Given the urgent need across the whole of the construction industry for public projects we would urge government to ensure that over bureaucratic procurement practices do not get in the way of delivery.

In summary we would suggest that the simplest form of single project procurement is used by all COPEs in the short term in order to release the maximum number of projects to the market and to relieve the current crisis in the construction industry.

In parallel to this, Government should commission a Review of the experience of design and construction procurement in Northern Ireland to establish, based on real projects and figures, the most efficient and effective procurement methodologies for local conditions, taking into account all economic, programming, sustainability and social equality factors.

Executive Summary

Experience of tendering for and delivering public contracts

The use of frameworks has restricted appointments to a small number of practices and many practices, in particular those outside the Greater Belfast area, have found themselves in serious trouble, with no access to public sector work. The RSUA remains unconvinced that large scale framework agreements are necessarily the most efficient and effective method for the public sector to procure all construction and design services. There may be potential advantages of framework arrangements to public sector clients in the cost effectiveness in group tendering and design teams being available at relatively short notice. However, a number of significant concerns have been raised about some of the unintended consequences of what has become public procurement practice.

For this reason, the RSUA believes that framework agreements should only be used where there is considerable synergy and similarity to all the projects that will be procured through it. Other, more individual, projects should be delivered by single project procurement tendering.

Issues

The undesirable practice of architects being required to carry out a substantial amount of work 'at risk' has crept in to Housing Associations and some Community organisations and, in the long term, this is not conducive to the provision of proper professional services.

Frameworks are for substantial packages of work over a 3-5 year period with high values of construction costs and consequent fees. Projects put out through frameworks are often of a small and medium size, lumped together in a procurement package to minimize tender costs. In many cases, the selection criteria are set to a much higher level than is necessary or required for a particular job.

The longer term effect of frameworks will be to concentrate public sector projects into a small pool of consultancies. Even though each framework will be limited to 3 or 4 years duration, the selection criteria for subsequent frameworks will be based on experience of the building type and exclusion from that type of work for a 3 or 4 year period will create a vicious circle leading to long term exclusion.

The length of time it takes to bring large scale procurement framework projects to the market is of considerable interest and there is a greater chance that selection decisions in a large scale framework will be more liable to challenge, as the stakes will be so high.

Recommendations

The RSUA recommends a detailed Review is carried out on the financial, programme and quality measures of public projects designed through both single project appointments and through frameworks, and built through both traditional and D&B contracts. This is to ensure that decisions to move towards frameworks, D&B contracts etc., currently based on GB experience, are based instead on verifiable, Northern Ireland, conditions.

If the case for frameworks is justified, then the RSUA believes that each COPE (Centre of Procurement Expertise) has a number of frameworks with bands of project size and consequent eligibility criteria, with a minimum threshold below which a much simpler procurement strategy is in place, and allowance also made for open design or other competitions for projects of special public interest.

Achieving Quality in Public Sector Construction Projects

The challenge of ensuring design quality in public buildings is not new and affects both traditional and D&B procurement. External Design Reviews should be used. In D&B projects where the client sets a high architectural design standard as a key criteria, we would recommend that the original design team takes the project through to detail design stage drawings before responsibility is handed over to the Contractor and his team.

We welcome the use of Quality/Price ratios for scoring of tenders. We believe that serious, peer judged awards such as RIBA, RSUA and Civic Trust Awards represent an objective measure of design quality and should be used where the quality of the design of the building is seen as an important criteria, in particular the 'special projects' as defined above. Quality scoring is increasingly based on written responses to specific questions. This has led to perceptions that the quality of 'essay writing' becomes more important than the real quality of the service being offered, with reports of companies securing the tender writing by external consultants. For general projects we suggest that a 80% quality, 20% price ratio is appropriate.

Given the urgent need across the whole of the construction industry for public projects we would urge government to ensure that over bureaucratic procurement practices do not get in the way of delivery.