

**New Procurement Regulations, New
Collaborative Opportunities –
How can Design Teams and NHS Clients Work
Together to Find Smarter Ways of Procuring
Consultancy Services?**



A R C H I T E C T S F O R H E A L T H

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Some background.....

- Look back a few years – 1987: pre-competition: Regions/ Districts/ Units
- Evolution of “commissioning” and “contracting”
- “Trusts” = competitive approach
- Rise of Supplies Departments and then.....
-Procurement Departments
- Dissolution of in-house design services
- Migration of skills to the private sector

Some background.....

- Very patchy approach but not overly onerous
- Appointing design teams based on simple requirements
- The Blue Book – appointment of design teams – published 1995
- Contracting led to increased definition of inputs and outputs
- Competitive tendering for design services – simple specs – lowest price
- Then more and more detail in “inputs and outputs”
- Procurement became an industry

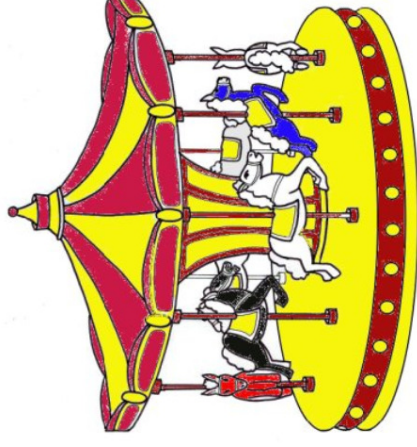


Some background.....

- The rise of the Procurement Hub and the external e-portal
- As well as many Trusts going it alone
- Local and national frameworks arise
- Result – a huge number of different, detailed and often contradictory documents
- But – we do have the NHS Standard Terms and Conditions for Services
- And the NHS Standard Conditions for Frameworks
- Does every e-portal, hub, framework and Trust use these?
- No. Often very bespoke.

Some background.....

- The Professional Indemnity Merry Go Round - an example
- We receive the documents for a proposal
- We send them to our PI company
- They send back pages and pages of comments on things they don't like
- We send the PI comments to the inviting Trust/hub or whoever
- The Trust/hub reply that they can't change the T+C's
- So – we, the private designers, may be partly uninsured and the client Trust exposed to risk for which there is no comeback
- Happens nearly every time



Some background.....

- Many many differing forms of invitation – mostly lengthy
- Often repetitive but not so we can't re-use old answers
- Inappropriate requests for information sometimes (Social Value Act?)
- Extremely time consuming and draining of resources for small businesses
- Larger businesses now have Bid Hubs (professional bid writers)
- Design quality and excellence almost always eclipsed by lowest fee

Some background.....

- Recently.....
- “World Class Procurement in the NHS” July 2012
- Architects for Health responded to the ‘call for evidence and ideas’
- Long list of topics
- What happened next? Silence
- The NHS was reorganised through 2013 and into 2014

Some background.....

- Very recently.....
- June 2014 – Lord Carter of Coles appointed as NHS Procurement Champion
- Little out in the open yet but.....
- Cheap as chips?

NHS Procurement: Trusts Told To Slash Costs

A report finds that some parts of the NHS are wasting money and that cost saving initiatives could save as much as £1.5bn a year.

4:18am UK, Monday 05 August 2013



Ministers believe the cuts could save £1.5bn a year

NHS trusts in England have been told to change the way they buy supplies and manage their estates to reduce procurement costs.



Ministers believe the cuts could save as much as £1.5bn a year.

A report published by the Department of Health found some parts of the NHS are wasting money by buying well-known brands of supplies when cheaper alternatives are available.







A new NHS procurement champion, with private-sector expertise, is to be appointed to push for better practice across the health service.

Hospitals will be required for the first time to publish what they pay for goods and services, and be held accountable for what they spend.

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Some background.....

Partnerships for healthy outcomes

Modernising health sector procurement: making partnerships
work between the public, private and third sectors



“The current procurement
processes are unhelpful,
bordering on obstructive”

Sir William Wells
Panel Chairman

Some background.....

- “Everything in the procurement of NHS buildings conspires against quality.”
- This epigram is a pithy summation of the client experience in procuring NHS buildings. Any quality that emerges in an NHS building project is wrestled out of the system by tenacious and determined individuals working against the process.

A Client’s Perspective
Andrew Simpson

Some background.....

- BUT
- Things may be about to change
- More of that later

Malcolm Aiston
Director of Estates and Facilities
Northumberland Tyne and Wear NHS FT

Procuring consultancy services

Procuring consultancy services

- The past 12 years at NTW
- The client, and what do they want?
- Current procurement options
- A procurement process
- Thought's going forward

The past 12 years at NTW

- Egan Report – Rethinking Construction

“A team that does not stay together has no learning capability and no chance of making the incremental improvements that improve efficiency over the long term”

- P21
- Bid team
- Benefits- did it do what it said on the tin?

Benefits (P21)

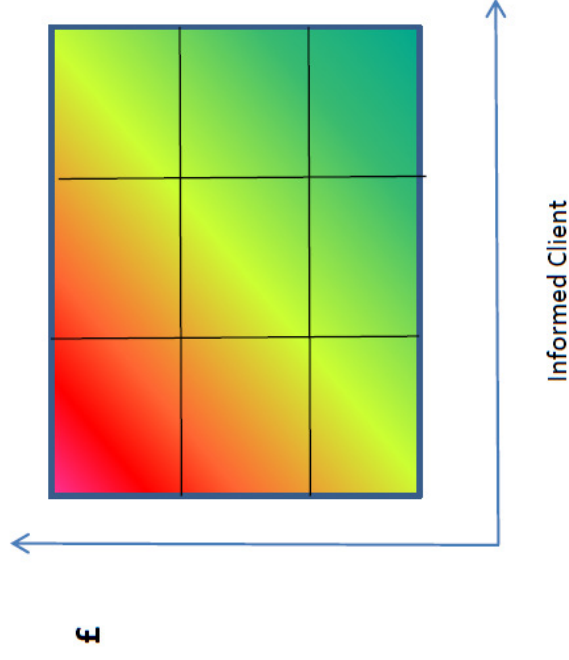
- Guaranteed Maximum Price (GMP)
- Performance on time within budget and high quality
- Sustainable supply chains
- Absence of Litigation
- Open book transparency and long term relationships
- Improved risk management
- Buying gain
- Recovery of VAT

Benefits (Partnering)

- Increased customer satisfaction
- Better value for the client
- Recognition and protection of profit margin for contractors and suppliers
- Staff development and satisfaction
- Creation of an environment that encourages innovation and technical development
- Design integration with specialists in the supply chain
- Improved 'buildability' through early involvement of the contractors
- Stability which provides more confidence for better planning and investment in staff and resources

The Client, and what do they want?

- Value for money?
- Right skills
- Clinical understanding
- Sustainable building
- Flexible design solutions
- Innovation
- Team player – can we work with them
- The list goes on.....



Current procurement options

Trust options:

Frameworks:

NHS Shared Business Services, YORHUB, NEPO etc

Trust Internal framework/tender

New NHS requirements on procurement transparency (April 2014)

There are three elements to the Guidance:

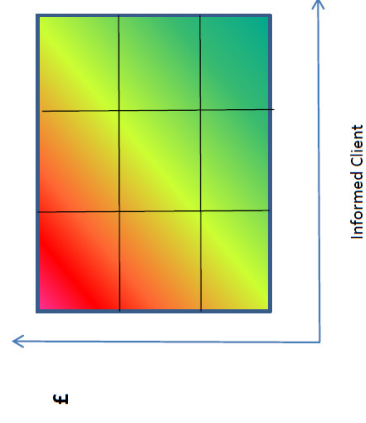
- sharing of expenditure data
- opening up public sector procurement to small enterprises; and
- transparency about how public money is spent.

A procurement process (P21+)

- Framework in place
- Internet
- Information, process, pro forma's and a pulse
- Scheme details
- Initial return - 10 slides
- Open day
- Interview

Thought's going forward

- NHS Local, Regional and National Frameworks
- Specialist advisor, templates and processes
- Open days and Interview standards
- Realistic design mini competitions
- Lead advisor for all consultants
 - Linked practices
- Build in time to do the softer issues



Claudia Bloom

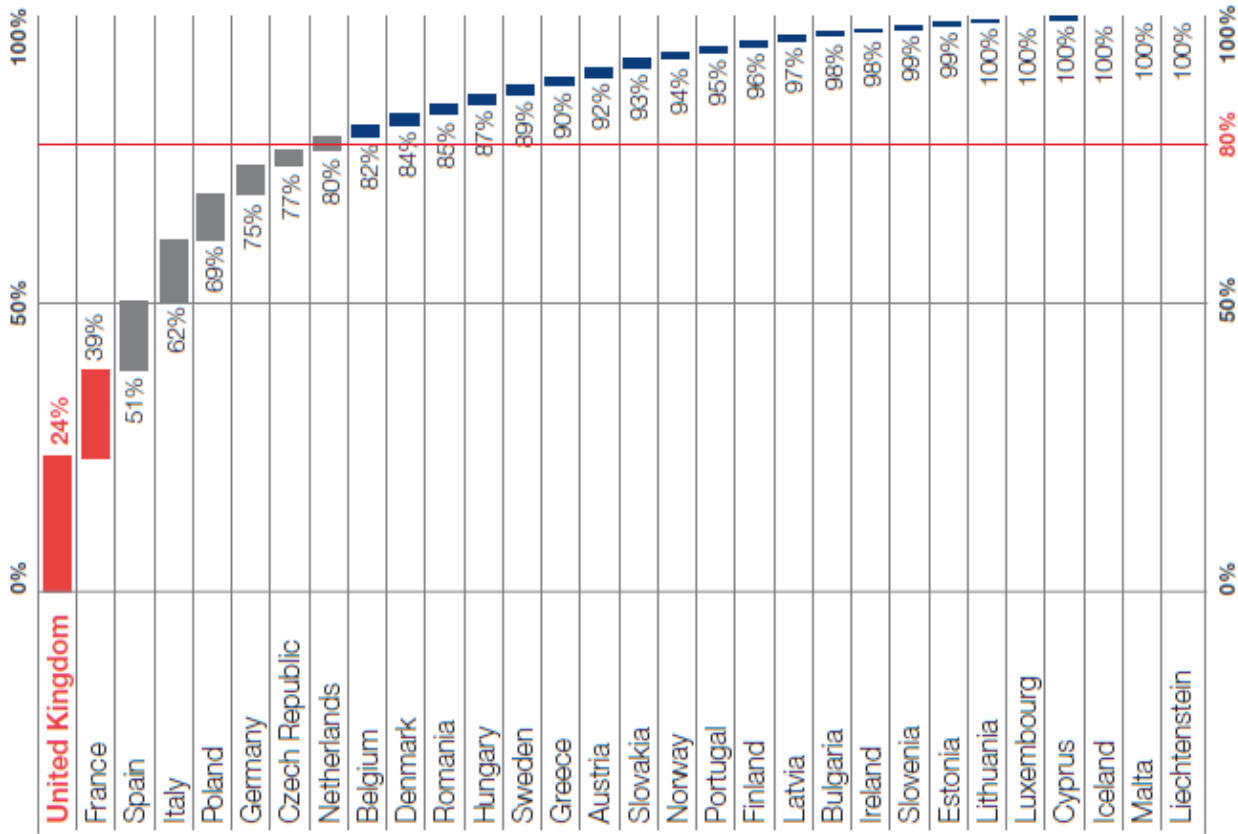
Director

Avanti Architects

Can procuring consultancy services be
the same process as buying latex
gloves?

- The process is both frustrating and wasteful for those bidding
- UK procurement is at least 20% more expensive than comparable EU countries
- The UK has the third slowest procurement procedures in the EU and takes almost 50% longer than the EU average
- The UK has by far the highest average contract values in the EU
- Whilst figures relating to the cost of the procurement system often focus on the costs to public clients, around 75% of the costs of the public procurement system fall on tenderers.
- On average, OJEU bidding costs for architectural practices represent 29% of the total earnings derived from this work. For larger practices (with over 30 employees) this rises to 40%. Overall, the annual bidding costs for all architectural practices is estimated to be **£40 million**.
- The EU Directive denies access for micro businesses and SMEs; its requirements incur disproportionate costs for both public clients and tenderers.

UK public sector procure more by value through OJEU than any other EU country...



.... and more than the combined total of 24 other nations

> 50% 50–80% 80–100%

Figure 1 Share of total value of awards for public procurement per country 2006–2010 (all OJEU procurements of which 37% by value is construction). Source 'Public Procurement in Europe: Cost and Effectiveness.' Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting, March 2011.

UK procurement is at least 20% more expensive than comparable EU countries.....

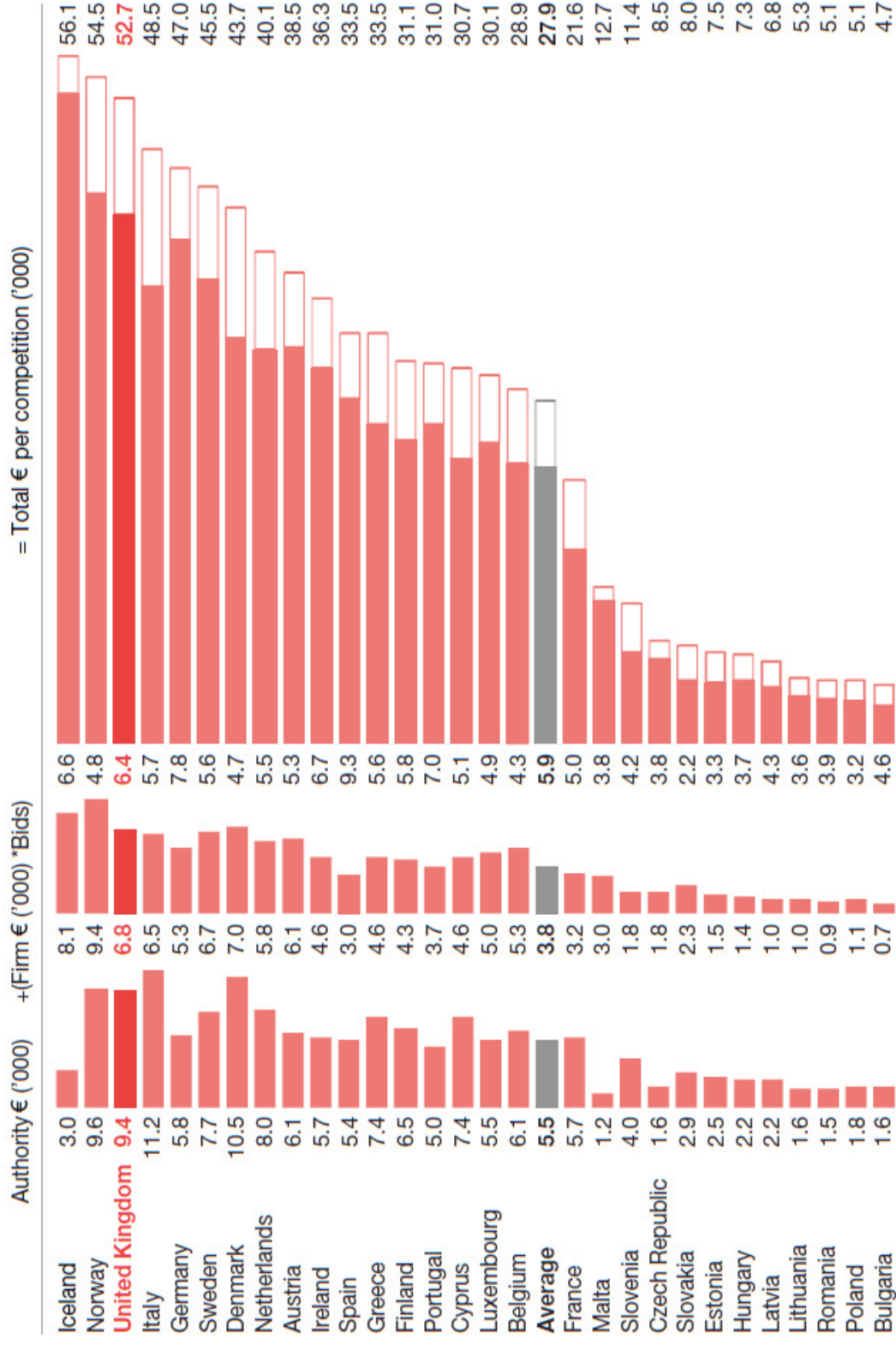
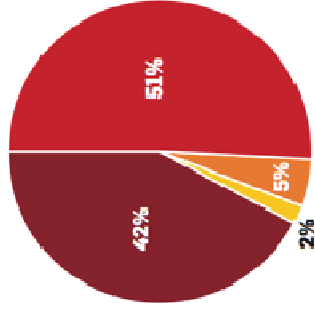


Figure 2 Typical costs of a competition (weighted averages across all industries). Source 'Public Procurement in Europe: Cost and Effectiveness.' Prepared for the European Commission by PWC, London Economics and Ecorys Research and Consulting, March 2011.

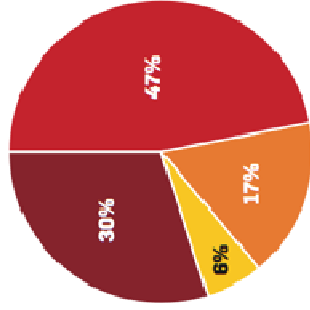
...and double the average

The cost of entering design competitions

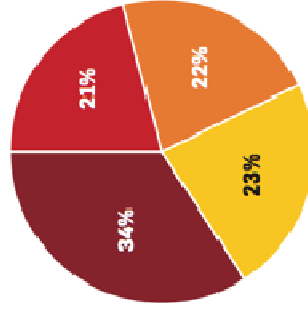
PRACTICE SIZE 1-5



PRACTICE SIZE 5-15



PRACTICE SIZE 15+



£5-15k

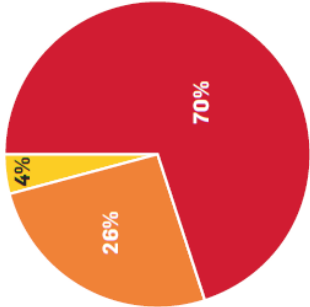
£15-40k

£40k plus

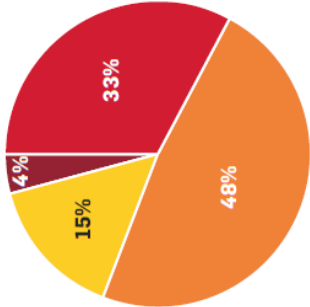
Don't know

How many OJEU's responded to in any average year

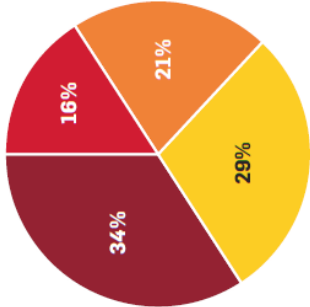
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PRACTICE SIZE 15+



PAS 91

In spring 2013, BSI published the latest revision of PAS 91 - the standard pre-qualification questionnaire (PQQ) for the construction industry - commissioned by Department for Business Innovation & Skills (BIS).

The updated PAS (Publically Available Specification) is designed to streamline and reduce the burden of pre-qualification in construction procurement processes', allowing suppliers to submit their pre-prepared PAS 91 for all buyers who are PAS 91 compliant.

What's changed?

PAS 91:2013 developments in a nutshell:

1 Scope and guidance for buyers to ask suppliers supplementary questions, such as those in respect of technical and professional ability and, where necessary, project specific questions.

2 The question modules have been updated to clearly indicate where suppliers may be exempted from completing a question module by holding a certificate or accreditation such as ISO 9001, OHSAS 18001 or a successful assessment from a registered member of Safety Schemes in Procurement (SSIP), such as Acclaim.

3 A section on Building Information Modelling (BIM) has also been introduced for projects requiring it.

An EU procurement directive calls for
compulsory e-procurement to be rolled out by
June 2016

EU Commission Evaluation Report

The EU Commission Evaluation report into EU public procurement legislation substantiates RIBA's concerns that construction procurement in the UK can be expensive and time consuming, and recognises that the legislation often makes it difficult for SMEs to compete, particularly in comparison with other EU member states.

Burges Salmon writes: "As contracting authorities strictly cannot thin down on the basis of design, the benefit of a two-stage procedure is limited to the situation where the contracting authority wishes to select an architect rather than a design."

Changes in OJEU practice

- **Previously earnings had to be five times the value of the contract** — a reasonable consideration for a supplier of goods, which will probably fulfil their contract within a year, but less so for a supplier of a service like architecture, which will be spread over several years. This figure is to be brought down to three times the value of the contract, enabling many smaller practices to compete.
- The other change that the RIBA is hoping to see is one that takes a lot of projects, particularly social housing, **outside the OJEU system** altogether. In the Netherlands, for instance, no social housing is let through OJEU
- Again, this is a result of the way that the **British government interprets EU law**. At present any project that has any public funds in it at all in the UK has to be advertised through the Ojeu. But the RIBA is pressuring for this to be reduced to only cover projects in which more than half the money comes from public funds.

How is it done elsewhere?

- Belgium, three architects in rotation from the framework are selected to enter each mini-competition. And the successful practice is then precluded from going forward to the next competition. In this way, all should have a chance of some work.
- In France, explains Richard Haut, who runs a bespoke service, recently rebranded as Archintel, whose sole purpose is to give architectural practices information on international competitions, the routine payment for producing a model will be €20,000 to €30,000, ensuring competing practices will not be out of pocket.

Buildings which almost didn't happen

Renzo Piano and Richard Rogers won the competition for the Pompidou Centre they were in their thirties and had never built anything more than single-storey buildings. There were 681 entries and say if they had known that so many people were going to enter they never would have taken part.



Words you don't want to hear

"in 1000 characters or less" ...

"in less than 200 words describe your approach to design"

"there will be a 15 minute presentation for your multi-disciplinary team to describe their approach to designing a whole health economy"

Pricing discrepancies

Ernst and Young 2012 Report into NHS Procurement Discrepancies

For this investigation, Ernst and Young looked at 10 NHS hospital trusts out of 166 - and found the prices paid for the same box of medical forceps ranged from £13 to £23.

For an identical box of blankets the lowest price was £47, the highest more than £120.



Barcodes for buildings?



Barcodes for professional services?!

"We are working on introducing a new barcoding system that will increase transparency, save money and make care safer.

"The new system will take time, but ultimately it will result in the kind of price comparison website that already exists in other sectors, like supermarkets, and will revolutionise the tracking, safety and use of clinical products bought by the NHS."

Barcodes



A recent procurement exercise for an NHS Trust

- 30 page PQQ one for Building Services and another for Advisory Services both based on: PAS 91: 2013 (the Government sponsored sets of questions for use in pre-qualification for construction tendering.)
 - Questions included DOB and private postcode for all company directors
 - 14 questions on 'equal opportunities' policy 'for information only'
- Followed by a 28 page ITT (again one for Building Services and one for Advisory Services) which included
 - 25 – 1,000 word essays
 - + 6 – 500 word essays
- Questions included:
 - **Identify the policies and procedures that you would expect the client to provide you before starting any contract.**
 - **Outline three competencies that your role should demonstrate to bring added value to the wider team (1000 words) and then Describe how you would ensure value for money and added value was brought to the contract without affecting the quality of the service (another 1000 words!)**

Bug bears

- exorbitant man hours trying to understand the Portal, Tender information including difficult questions, all this just to enable us to get through the *first* stage of PQQ.
- repetitive nature of each individual Contract requesting their own Letter Head References. Repetitive requests for references requested from your most valuable client each time you tender isn't going down very well..

“We will bring this project in under budget and on schedule no matter how much it costs or how long it takes.”



ARCHITECTS FOR HEALTH

Paul Mercer
Director
Tangram Architects

Procuring consultancy services – the future...?

The future.....?

- A reminder of what this session is all about.....
- “New Procurement Regulations, New Collaborative Opportunities – How can Design Teams and NHS Clients Work Together to Find Smarter Ways of Procuring Consultancy Services?”

The future.....?

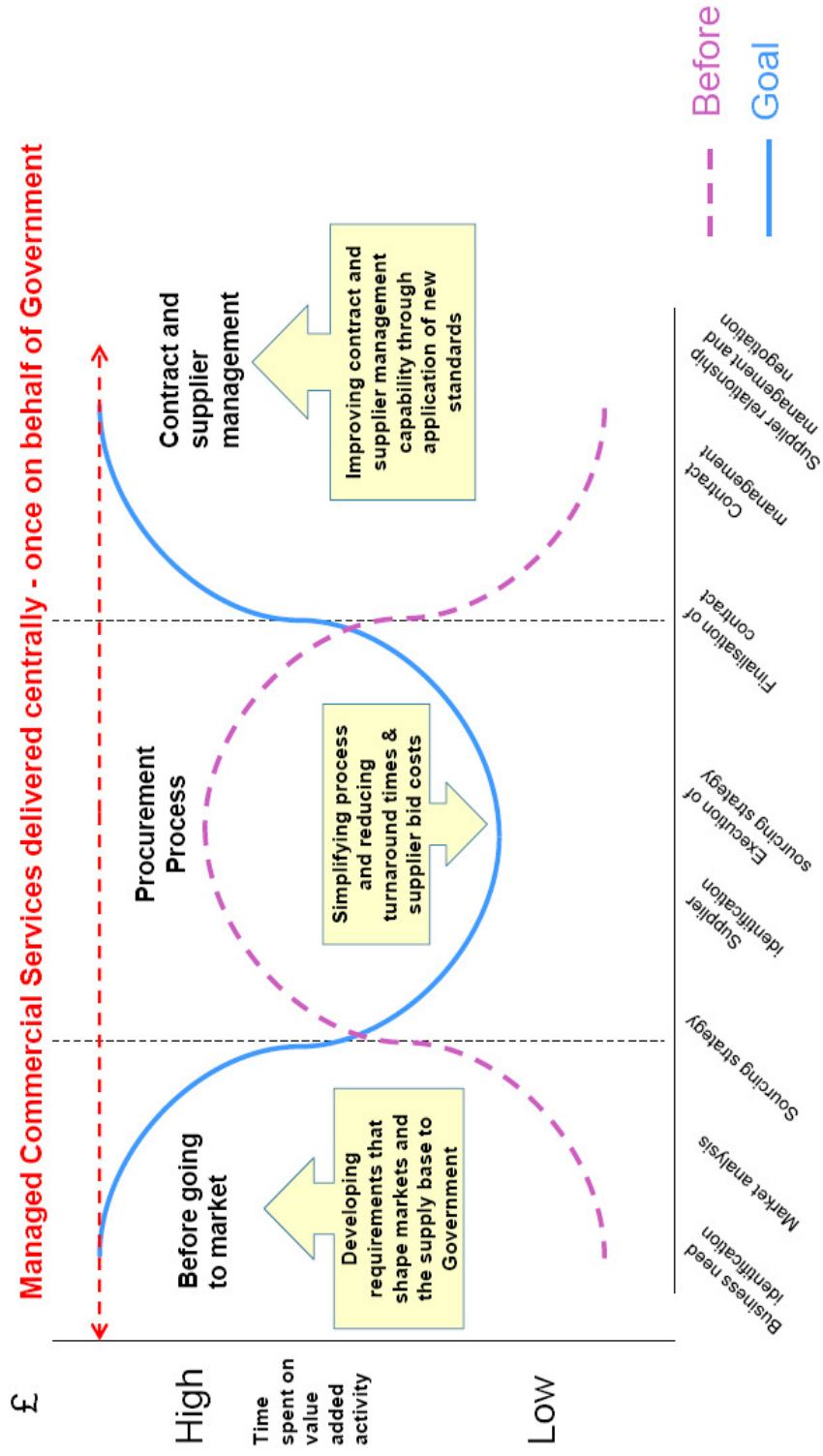
- New Procurement Regulations
- EU Parliament has passed new Europe-wide regs came into force on 17 April 2014
- EU member states have 2 years to implement them in national legislation
- UK Government new draft Public Contracts Regulations 2015
- Public consultation now out – deadline 17th October 2014
- For contracting authorities, this means being able to run procurement exercises faster, with less red tape, and more focus on getting the right supplier and the best tender. And for suppliers, the process of bidding for public contracts should be quicker, less costly, and less bureaucratic, enabling suppliers to compete more effectively.



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Annex A – Summary of key changes in the new Public Sector Directive

- i) A much simpler process of assessing bidders' credentials, involving greater use of supplier self-declarations, and where only the winning bidder should have to submit various certificates and documents to prove their status
- ii) More freedom to negotiate – constraints on using the negotiated procedure have been relaxed, so that procedure is available for any requirements that go beyond "off the shelf" purchasing.
- iii) Poor performance under previous contracts is explicitly permitted as grounds for exclusion
- iv) The distinction between Part A and Part B Services has been removed, and a new light-touch regime introduced for social and health and some other services. There will be OJEU advertising and other specific obligations for this new light-touch regime, but a much higher threshold has been agreed (EUR 750,000)
- v) The rules on "Dynamic Purchasing Systems" have been greatly simplified, with the removal of the onerous obligation to OJEU-advertise call-off contracts made under the DPS
- vi) The ability to reserve the award of certain services contracts to mutuals/social enterprises for a time limited period
- vii) Electronic marketplaces for public procurement are expressly permitted, removing any doubt as to their legality
- viii) Reduced red-tape on suppliers' response times The statutory minimum time limits by which suppliers have to respond to advertised procurements and submit tender documents have been reduced by about a third. This flexibility could be helpful for speeding up simpler or off-the-shelf procurements, but still permits longer timescales for requirements where bidders will need more time to respond.
- ix) Review of thresholds. The directive includes a binding commitment on the Commission, to review the economic effects on the internal market as a result of the application of thresholds, which could lead to an increase in the thresholds, which have been broadly static for 20 years. The review must happen within 3 years of the directive's transposition.
- x) Legal clarity that buyers can take into account the relevant skills and experience of individuals at the award stage where relevant (eg for consultants, lawyers, architects, etc)

- xi) Improved rules on social and environmental aspects, making it clear that:
 - social aspects can now also be taken into account in certain circumstances (in addition to environmental aspects which had previously been allowed).
 - buyers can require certification/labels or other equivalent evidence of social/environmental characteristics, further facilitating procurement of contracts with social/environmental objectives.
 - and refer to factors directly linked to the production process
- xii) Electronic communication / e-procurement will become mandatory following 4.5 years after the directive's adoption.
- xiii) Various improved safeguards from corruption:
 - specific safeguards against conflicts of interest, similar to common existing UK practice where declarations are signed by procurement staff to confirm they have no outside interests with bidders etc
 - similar provision against illicit behaviour by candidates and tenderers, such as attempts to improperly influence the decision-making process or collusion.
 - safeguards against undue preference in favour of participants who have advised the contracting authority or been involved in the preparation of the procedure.
 - self-cleaning measures, for suppliers who have cleaned up their bad practices
- xiv) Buyers will be encouraged to break contracts into lots to facilitate SME participation, but there is discretion not to do so where appropriate.
- xv) The new rules encourage and allow preliminary market consultation between buyers and suppliers, which should facilitate better specifications, better outcomes and shorter procurement times.
- xvi) A turnover cap has been introduced to facilitate SME participation. Buyers will not be able to set company turnover requirements at more than two times contract value.
- xvii) A new procedure has been introduced: the "Innovation Partnership" procedure. This is intended to allow scope for more innovative ideas. The supplier essentially bids to enter into a partnership with the authority, to develop a new product or service.
- xviii) The full life-cycle of costings can be taken into account when awarding contracts; this could encourage more sustainable and/or better value procurements which may save money over the long term but appear more costly on the initial purchase price
- xix) Public authorities will no longer have to submit detailed annual statistics on their procurement activities. The Commission will collect this information directly from the online system, thereby freeing up valuable time and resources for public authorities.

The future.....?

- Prequalifications should be simplified
- Electronic processes will be mandatory
- And so on
-
- BUT
-
- Only applies to invitations above the OJEU thresholds – smaller commission not covered
- Will there still be expectations for endless essays
- Recent LPP Framework with total word count of 37,00 words.....
- How can we all work together to simplify systems across the board, whether above or below the OJEU threshold?

The future.....?

- A Proposition
- Those procuring NHS Design Services and those who provide those services have drifted apart
- There are undoubtedly good and excellent centres of procurement
- But there are also many which are not.
- A collaborative and multi-disciplinary/ NHS + private sector initiative?

The future.....?

- RIBA Procurement Reform Group (Building Ladders...) was multi-disciplinary
- But now disbanded – may re-emerge under Jane Duncan after Autumn 2015
-
- RIBA Competitions Group are planning to devise ideas for the NHS
- Initial ideas moving towards a “round table” in February convened by Stephen Hodder
- Architects for Health planning a wider debate in a longer session in 2015
- IHEEM ADBETP supportive of a cross-profession debate
- How about a national forum?

The future.....?

- National Forum to include:
- NHS Clients and crucially DH
- Cabinet Office/ Crown Commercial Service**
- Design Team professional representatives
- Professional bodies (RIBA, Engineering Council, RICS, APM, IStructE, IEE, ICE etc.)
- Professional groups IHEEM, Architects for Health
- Professional Indemnity Insurers
- E-Procurement Hubs
- Chartered Institute of Purchasing and Supply
- (**CCS is running FREE training for public bodies starting in May 2015)

The future.....?

- In conclusion:
- The current situation is patchy with some very good bits but some awful bits
- The awful bits are wasteful and draining
- The good bits should be shared around
- The whole system is about to be shaken up by the new EU rules and
- To avoid further divergent ways of doing things, maybe we all ought to get together and work out a best possible plan.

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Please contact us with your thoughts.....