

23 October 2012

A+DS response to: Procurement Reform Bill Consultation Paper



Architecture+DesignScotland
Ailtearachd is Dealbhadh na h-Alba

Introduction

Architecture and Design Scotland (A+DS) welcomes the opportunity to comment on the *Procurement Reform Bill Consultation Paper*. A+DS is Scotland's champion for excellence in placemaking, architecture and planning. We are an Executive NDPB of the Scottish Government whose role is to champion the highest standards in architecture and placemaking across all sectors, advocating a better understanding of the importance of quality design in both the public and private sectors.

Our response is limited to a series of observations related to the procurement of buildings and infrastructure together with answers to some of the individual questions listed in the consultation. This response was agreed as our formal response by members of our Planning and Consultations Sub-Committee on behalf of the Board on 30 October 2012. We trust these comments are helpful to the further development of the paper and subsequent draft legislation.

Background

On launching the planned construction procurement review, to be led by Robin Crawford, Nicola Sturgeon the Deputy First Minister and Cabinet Secretary for Infrastructure and Capital Investment, stated that,

"Scotland's public sector spends over £2 billion per annum on construction-related contracts. The review will examine how we can improve the impact of this spending on Scotland's economic growth and on the quality of Scotland's built environment."

This ambition is one we would support unequivocally and is a useful focus for our response to the current consultation.

Separately, in 2008 we responded to the Inquiry into methods of funding capital investment projects, setting out general principles of public procurement, which we feel are still relevant today.

A summary of this response is attached as Annex 1.

Overview

In preparing our response to the Scottish Government's recent Architecture and Place Policy consultation, procurement emerged as a major issue in realising the ambitions of the policy. In our consultations with the sector it was felt that public procurement often failed to give due prominence and consideration to the quality of the end product, and in particular the design skills necessary to achieve that. We have therefore commented below on selected questions in relation to that issue, building upon the principles established above and the consultations we have made with our Board, Staff and the wider development industry.

Response to Selected Questions.

Q1 : Do you agree with the proposed aim of the Bill given above.

The aim described in paragraph 50 could helpfully be broadened to clarify that the end products of procurement, in terms of built infrastructure, have a more significant potential impact in terms of delivering social and environmental improvements, than the process of procurement. Therefore our focus throughout procurement must be on the best impacts from the end product, not solely on the best process.

Q3: Should public sector bodies be required to use a specified standard pre-qualification system?

Our concern with standard pre-qualification systems is that, in trying to cover all the bases in one form, standard PQQs could be inflexible in terms of their requirements; often requiring high levels of Professional Indemnity Insurance (PII), turnover etc. This can limit the bidding market, and therefore access by SMEs and new innovative service providers, and consequentially have the potential to impact the available skills base and the scale of competition for the project. Further, PQQ's rarely distinguish on the basis of the core skills being sought, such as the ability of a designer to design or the ability to work with a complex and diverse stakeholder group. Therefore it is not guaranteed that all, many or even any of the pre-qualified suppliers will have the key skills needed to successfully realise the best outcome for the project. We would therefore recommend that should such a system be adopted:

- that the levels of financial assurance required by each team member are proportionate to the role undertaken (e.g. that design consultants have turnover in proportion to the design fees rather than the construction sum).
- that there be a minimum qualitative standard to be achieved in respect of key disciplines, allowing this to be met either:
 - by reference to similar types of work, perhaps in other sectors.
 - and/or across the team if necessary due to the complexity of the project (so consultants with a track record in a necessary specialism are complimented by those with different design.

Q10 : How, in conducting the procurement process, might public bodies act to facilitate access by newer businesses, SME's and Third Sector organisations?

See answer to question 3. Also, we understand that some current procurement practices, such as hub, can require design consultants (practically all would qualify as SMEs) to fund design development work at risk for a significant time period. The cash flow issues created by this could be prohibitive to many SMEs, and discourage key talent from seeking to work with the public sector. Advance funding such work is also likely to impact the eventual cost incurred by the public sector client. Public procurement must allow for prompt payment for services to ensure the best and most economically advantageous, and sustainable, market exists to service clients needs.

Q28 : Should the Procurement Reform Bill make it a requirement that purchasers must permit the submission of variant bids?

In construction, there are often feasibility studies or reference designs produced to test the concept of development. However as these are unlikely to be built, they are rarely fully developed proposals. However, in the approach to market client bodies do not often clearly describe that improvements are sought on these schemes, or provide a bidding environment where there are the time and resources available to encourage that, and the scoring mechanism to value the improvements. Consequently, bidding consortia are faced with the choice of simply pricing what the client has developed or risking the time and fees in proposing potentially better solutions. Ideally the public sector would not be developing numerous designs for the one development and therefore two options are evident, depending on the nature of the project:

- Appoint design teams, and delivery teams, early based on skills and develop the proposals once in partnership.
- Develop reference schemes only so far as is necessary to test critical areas and key issues then brief and establish a process that will encourage innovation and high quality responses and value those characteristics in the bid evaluation.

Q31: Should those awarding major contracts be required to consider including community benefit clauses? and

Q35: Should public sector bodies be placed under a duty which requires them to demonstrate the extent to which what is being procured will promote or improve the economic, social, health and environmental wellbeing of the relevant area.

Although community benefit clauses are relatively common, impacting local training and employment opportunities, by far the biggest community benefit opportunity from investment in built infrastructure is in where we place the investment and how we design it.

Often public sector infrastructure is briefed, developed and options assessed solely in relation to the internal function of the service to be provided from that development. This can lead to issues where public sector investment is working against local development strategies and other service initiatives; for example a town where the council and health board are developing strategies to encourage walking, reduced car use, and increased town centre activity by residents, but the primary school is being relocated out of town (lowest risk site for development) meaning that most children will need to be driven to school and parents are discouraged from using town amenities at the same time.

Whilst the broader public good realised by investment should not work against the fundamental business needs for the development (such as requiring a hospice retreat to be located on a high street to be part of local regeneration) all public sector investment must realise increased benefits for the community it serves by understanding and valuing the impact and benefits of the activities in relation to this, such as the economic activity of office workers in supporting local lunch shops or the visual and social impact of a well designed health centre at the heart of a community in need of regeneration. The process of design briefing for Health projects described in Scottish Government Health Directorate's Scottish Capital investment Manual, embeds this principle and this should be extended to other areas of public sector investment.

Another key consideration is how procurement processes influence the type of development undertaken to meet the service need. The shift from capital funding to revenue based funding can make the re-use of existing structures more difficult. This impacts the range of

locations available for the development, influencing the opportunities above. Further, by increasing the likelihood that existing buildings are replaced rather than re-used this can increase both the extent of new materials required and the amount of demolitions going to landfill. Sustainable development must make the best use of existing resources and therefore public procurement should be developed to increase the opportunities for that.

Q 42 : Should the Bill adopt the same approach to defining public contracts as in the EU directive and implementing Scottish Regulations?

The procurement of new development is the procurement of both goods and services, and we recommend that therefore these should be considered differently as:

- Services, such as the design consultants needed to develop the end product, have a potential influence which is disproportionate in relation to the variance in their fees. Considering these appointments more as akin to a temporary staff appointment, where we're looking for the best person within the money we have, suggests competition should be on quality and potential for best end value.
- Goods, such as the materials needed to build the building, once specified should not vary significantly in quality and therefore the competition should be around cost.

Bringing these two elements together into one procurement route requires very careful handling and evaluation so that the potential end benefits are not lost in the consideration of cost and vice versa. Therefore should such contracts be included in the bill there must be careful consideration of how these considerations can be met through the implementation of the legislation.

Conclusion

Through our work with Scottish Government Health Directorate we have developed a model by which design quality can be defined, valued and monitored through projects; a model which would be transferable to other built typologies providing a mechanism for valuing the aspects described above in both the business case and project procurement systems. We would welcome the opportunity to discuss this further either as part of this consultation or in relation to the Crawford Review noted earlier.

Annex 1 – A+DS Response to Inquiry into Methods of Funding Capital Investment

1.0 Policy and delivery should be linked.

Policy makers, and those with an overarching responsibility for the delivery of design quality by the Scottish Government, should be accountable for the delivery, by public bodies, of such quality. Their responsibility should go beyond the production of guidance to include responsibility for the impact that guidance has on investment.

2.0 Public leadership of procurement processes.

Public procurement should value and deliver well designed environments that support our communities and public services and thus realise the full potential of capital investment. From our work and involvement in projects we note the following areas for improvement:

- Client bodies need to recognise and understand that a development is not “**fit for purpose**” unless it supports both the sustainable development of the community in which it sits and the health and wellbeing of its users. These broader qualitative issues should be a key objective of the commissioning body, and one in which the public has a voice.
- The opportunity, through good design, to **increase efficiency** and **reduce the cost** of running a public service needs to be understood and capitalised upon. This will require strategic design skills to be targeted at appropriate points in the procurement process to ensure that the investment realises the broadest and best impact.
- The client body should **control** the execution of the project to ensure that quality is delivered. Transferring responsibility for quality to those less motivated in the wider public interest makes the delivery of these broader objectives more difficult to achieve. Further, reducing the access of the client (and stakeholders) to the designer can be an obstacle to the constructive dialogue that assists designers in responding to the client’s needs and aspirations.
- If the public sector client is to take a leadership role in procurement then project teams must be suitably **resourced and trained**. Client teams need to have the skills to plan and control the stages of the process by which it is delivered. This requires leadership at the highest level to ensure that quality is an objective given to the team, but also that senior people within the client team have a **professional design education** so that they have the confidence and skills to make judgements on such issues.

3.0 Procurement processes should recognise and value design quality.

An understanding of the value and contribution that a well designed environment can make to service delivery and the wellbeing of the wider community is key in effectively targeting investment. We recommend that long-term qualitative objectives are given prominence in the following processes:

- **Project Initiation:** the earliest documents describing the required outcomes of the project - the criteria against which the success of the project, and therefore the client team, will be assessed – should include quality as a required outcome.
- **Financial modelling of business cases:** criteria should be developed to allow the value of a well designed environment to be quantified and recognised in financial assessments, particularly in relation to offsetting any revenue costs that may be seen as a bar to capital investment.
- **Project review systems:** these should include an assessment of the potential of the project to deliver an outcome of quality so that long-term best-value can be more readily realised and more properly planned for - thus reducing the risk of cost and programme over-runs.

- **Competitive selection procedures:** these currently include assessment of both quality and cost aspects of a bid, however the quality of the end product is often only a small proportion of the total score due to the number of other factors that are included in the quality section and the weighting of these elements.
We recommend that design quality be a separate and prominent part in the assessment of bids
i.e. “quality:cost” ratios would be replaced by “design:delivery:cost” ratios.