

BEDA

The Bureau of European
Design Associations

Positioning paper BEDA: Supporting innovation and opportunity in EU design procurement

Introduction

BEDA aims to create increased awareness of the importance of design as a business tool. We want politicians to understand that design can be an enabler for change and improve competitiveness for European industry, along with improving life for European citizens. As a result of years of successful lobbying in Brussels, today, design is part of Innovation Union 2020, the innovation policy for Europe.

We believe that current EU tendering processes do not maximise opportunities for design to flourish; in this document we share some of the issues, along with our recommendations.

Background

Government procurement represents approximately 18% of the EU GDP. To enhance the single market principle, since the mid-1990s the EU Committee has taken several steps to implement public procurement directives. Most EU member states have drawn up complementary national laws or policies for public procurement, based on EU government law (i.e. the 2004 directives).

Implementation at national levels is, however, far from uniform, and can sometimes be weak, leading to reduced opportunities for organisations to work with governments both within and across nations.

Circumstances as of 2011

Directives are currently processed in the EU Parliament. To improve the common market principle and to enhance non-discrimination, the EU Committee revised its directives for public procurement in 2011. It is expected it will take at least another three years for these new processes to be finalised and implemented.

Lobby in Brussels

On 29th November 2012, IMCO (European Parliament's Internal Market Committee) voted on plans for revision of public procurement legislation. Business views on key elements are brought to IMCO's attention by BUSINESSEUROPE. The main topics are still non-discrimination, transparency, competitive tendering and simplification of procedures. There is a relatively new – but widely supported - focus on enhancing opportunities for SMEs, which has introduced the topic of proportionality to the policy.

EU public procurement – the issues for EU Designers

EU tenders do not currently offer strong opportunities for designers to win business outside their home countries. Architects and exhibition designers fare slightly better than other sectors, but only those with high profile/international reputations. Another problem is that not all member states publish projects as they should. These issues mean that the ideal of a European common market is still some way from being a reality.

This process creates a range of challenges for the design sector at national levels:

- Relationships between designers and government, where the government is a client, have
- changed dramatically as a result of EU public procurement law;
- Governments treat national tenders (whose values are below EU financial thresholds) as if they were EU tenders. The system is disproportional and over-regulated;
- The emphasis is on contracts rather than projects or their content, so the negotiators tend to be lawyers and public procurement managers who have no direct responsibilities for the project or the content at hand;
- Legal and financial risks are run by governments, leading to more importance being placed on legally flawless procedures, rather than achieving outstanding results;
- Fear of failure leads to exaggerated demands in terms of turnover, quantity, age and similarity of reference projects and, increasingly, demand for unpaid design proposals;
- The financial and managerial advantages of scale can stimulate unnatural clustering of projects;
- The non-discrimination principle prevents clients and designers from fine-tuning projects together in the pre-contract phase – this is both inefficient and inadequate;
- The non-discrimination principle also prevents designers from exposing and clarifying added values during acquisition negotiations;
- Intellectual Property Rights are disregarded, because immediate and unconditional transfer is obligatory;
- Framework contracts save governments' time and effort by narrowing the market for a defined period of time, but can exclude the rest of the market for approximately two to four years;
- Framework contracts are gained on MEAT (most economically advantageous tender); the actual work, however, is almost always granted to the lowest bidder;
- Minimum turnover thresholds and over-the-top demands for reference projects prevent the introduction of newcomers to the market;
- Designers who do take part in tendering accept the lottery-like character of the process and resign themselves to long and laborious procedures;
- Many leading design agencies have lost interest in governmental work altogether, which leads to loss of quality in design for the public sector;
- As governments usually lack professional knowledge but are obliged to define envisaged purchases in detail, tendering practice strongly contradicts the European ambition for innovation. As Einstein said, "If you always do what you did, you will always get what you always got".

Supporting innovation and opportunity in EU design procurement

BEDA offer the following proposals with the aim of supporting opportunity, enterprise and innovation in EU design procurement:

- A respectful approach to intellectual property rights (no automatic transfers);
- Granting of contracts under framework contracts according to MEAT (not just to the lowest bidder);
- No unnecessary clustering, to improve opportunities for smaller agencies;
- Elimination of free pitching (no demand for unpaid design proposals);
- Simplification and reduction of administrative workload by use of e-procurement;
- Lowering of demanded turnover thresholds (max. 3 x contract value or less);
- Reduced or waived demand for reference projects (selection based on competences);
- Give agencies the right to subcontract.

About BEDA

BEDA exists to ensure permanent liaison between its members and the authorities of the European Union in order to communicate and promote the value of design and innovation to the European economy. Today, BEDA boasts 42 members from 24 member states in Europe. Members can be design promotion centres and other publicly funded organisations that promote design nationally or regionally as well as professional and trade associations for designers from across Europe. Those professional associations represent some 400,000 designers from across Europe in every discipline of work from industrial design and interiors to digital design and branding. BEDA is a not-for-profit organisation funded in its entirety by its members.