



Practice of the Profession

PP & ADC Work Group

Notes of the meeting, video conference 02 October 2020

Date: 07/10/20 - Ref: 178/20/CO

Notes of ACE PP / ADC work group video-conference held on 2 October 2020.

Present:

- M Fišer, co-chair
- S Bucher, co-chair
- M Craciun, RO
- P Dahl, DK
- H Dahlberg, SE
- M Geertse, NL
- B Gunslay, FR
- P Lesek, CZ
- H Lippe, DE
- V Milkov, BG
- K O'Cofaigh, SE
- G Pendl, AT, ACE President
- I Pritchard, ACE SG
- P Santos, PT
- R Zlatanova, BG
- A Pizzuto, MT
- D Zoppi, IT, ACE EB, Area 2 Coordinator

Apologies:

- B Aitkens, DE
- A Bakker, NO
- M Frackowiak, PL
- P Huotelin, FI
- A Mutert, DE

1. Welcome & introduction

M Fišer welcomed participants and invited a *tour de table* in order to understand the impact of the COVID-19 pandemic on procurement.

CZ: ADCS are still running. Though there has been a slight decrease in the number of competitions, the percentage of successful competitions has increased.

CH: ADCs/PP are now operating smoothly once more following the publication of guidelines for public authorities.

DK: some projects stopped initially, then the situation normalised. Some projects were started earlier than intended, to keep the market going. Architects are busy now but concerned about the situation 3-6 months down the line.

BG: the pandemic created disorder. The Government is more focused on health measures than procurement. Some projects were cancelled or delayed. They hope the



recovery measures taken by the Commission will bring improvements. The Chamber was under threat and could be put under the control of the Deputy Minister of Regional Development because it had taken up a position against the Government with regard to a cancelled tender for a national hospital.

NL: the situation is the same as in DK. Delays are experienced obtaining permits from planning authorities.

DE: the number of COVID cases is relatively low and offices / enterprises are OK. The results of two large opinion polls are being expected shortly (of small/medium offices and large offices). Universities have had to adapt in order to deliver online teaching.

FR: reported an initial reduction in the number of ADCs in the early part of 2020, though the situation is now back to normal.

SE: prices had fallen over the summer along with the number of framework contracts (which is half of the market). ADCs – of all kinds - were a little slower in the Spring but the trend has now turned. The Government has tasked the public authorities with seeing how architectural quality can be increase, so there is an opportunity for the SA to be involved. SA receives many calls from procurers seeking advice and has prepared a handbook to assist. Ko’C offered to make a presentation of this at a future meeting.

RO: during the confinement, RO had organised some online, international juries, with disastrous results.

AT: the pandemic has had no impact on ADC, though larger spaces are needed for jury meetings.

IT: following a significant impact in Spring, increases in public spending were now helping. An electronic platform has been created for competitions and this is made available to public authorities if they use CNAPPC rules. On the one hand, public administrations find these easier to operate than the normal bureaucracy, Moreover, open competitions allow young architects into the market, oblige public administrations to reimburse participants and award a contract to the winner.

PT: since the 2008-2009 crisis, competitions have tended to favour lowest-price projects, though the OA is trying to change the legislation to disallow competitions based on price alone. OA would welcome help from the ACE work group and best-practice examples. The importance of providing advice to Government was underlined in the context of the EU money that is to be made available post-COVID.

2. Notes of the meeting held in Paris on 24 October 2019

The notes of the last meeting were agreed as a true record.

3. Matters arising from the notes

There were none.



4. Results of the PP survey

The SG presented the results of the PP survey

After c. 15 months, we have now received responses from 25 countries (out of 31); responses are still missing from EL, LUX, RO, SK, UK and SRB;

- **General impact** – mixed. Many said the new Directive had made no change or had had no positive impact. However, there were exceptions – e.g. IT welcomed anti-corruption measures, SI reported greater precision in their rules / guidelines for competitions (SI) – and CZ reported more competitions in general;
- **2017 review** – there had been little consultation and few issues were highlighted other than the on-going difficult SMEs experience in accessing PP markets;
- **Procedures** – few MOs had data on the various procedures used – Open, Restricted, Competitive w/ negotiation, Competitive Dialogue – though a number were able to give more detailed information on ADCs;
- **Design & Build** was confirmed as a growing trend, even though some said that there was a fundamental incompatibility between the functions of Architect & Contract – and the combination of these was expressly forbidden in Belgium;
- **Innovation Partnerships and Framework Agreements** – little data reported;
- **SME Access** – views were mixed as to whether lower thresholds would facilitate greater SME access to PP; past experience is still a barrier and support was expressed for the ACE position of 5-10 years, rather than 3 years. The Division of contracts into Lots was generally felt to be helpful to SMEs, but views were mixed on the utility of the 2008 European Code of Best Practice;
- **E-Procurement** was positively evaluated in most cases, but the European Single Procurement Document was mostly found to be difficult to use. The E-Certis repository for certificates and the Procurement Passport were not well known;
- **Awarding criteria** – while MEAT was welcomed, weighting ratios varied, Life-Cycle Costing was not frequently used; many awards were still made on the basis of lowest cost;
- **Remedies** – public complaints boards exist in most countries and offer redress. Professional bodies may act in AT, BG, DK, FR and NO – and the work group has recommended advocating to extend this. The BAIK is lobbying for a system designed to legitimise applications;
- **Public Procurement Package** – few National Procurement Strategies were reported – and consequently there was little coordination of national / regional procurement, little sharing of best practice, few national support centres, and little centralised purchasing or cross-border procurement



ISSUES FOR THE FUTURE

- Develop a **Glossary** (common language)
- Conduct more detailed **research into the number / type of ADCs**
- Analyse the **cost of taking part in ADCs**
- Advocate for **improved access to PP for SMEs**
- Advocate to allow for **references** covering a longer period
- **Simplify the ESPD**
- Develop **guidance** on Procurement rules
- Develop **Complaints' competence for MOs.**

5. Proposal from TA2 Coordinator, Diego Zoppi

DZ felt that PP would be different, post-COVID and proposed to create a framework for an online Procurement Observatory (rather than issuing more questionnaires) and invite MOs to up-date their entries every six months.

In response to U von der Leyen's call for a new European Bauhaus ("to match style with sustainability"), he recommended that ways be found to increase the demand for high quality design in public procurement projects and resist imperatives to reduce costs.

He noted that the Directives of the past decade or so (Qualifications, Services, Public Procurement) were aimed at developing the internal market, with a particular focus on competitions and consumers – never citizens. However, EU jurisprudence recognises that architecture is in the public interest (along with the health professions). Moreover, the Green Deal will make it necessary to promote sustainability in the field of public procurement.

He described the current tools used for public procurement and the three main ways of awarding architectural service contracts. He felt that PP / ADC rules should be adapted to the post-COVID era to have greater regard for the concept of public interest and introduce the concept of quality.

ADCs – it would be interesting to explore which types of competition work better than others (ideas' competition; competition by invitations (1 or 2 phases) and anonymous design competition (1 or 2 phases)).

PP – it would be useful to have a framework of rules that are derived from European Directives and to try to introduce the principle of project quality.

But we have to find ways to define quality in a less vague manner (NB. the definition of Baukultur comes close).



The ACE Manifesto for the European Parliament elections was a strong document with quality at its core – advocating High quality architecture & Baukultur; affordable housing of high quality; connections between climate change and the built environment. And high quality in these goals will result from a good and efficient procurement system. He suggested that the three goals be up-dated to include references to high quality procurement, high quality ADCs and Green Procurement (cf. FZ document).

As DZ's document had only been received the day before, the SG was asked to circulate a further copy of it with the notes of the meeting and to invite comments. DZ also proposed to email participants with a few questions.

SB underlined the importance of professionalising commissioning authorities (who often do not know which questions to ask). She considered that there was a need to produce an adequate definition of innovation (i.e. it is not PPP).

HL considered it would be useful to conduct workshops with procurers to promulgate best practice. There was also missionary work to be done vis-à-vis the general public – to stimulate demand for quality.

DZ thought it important to explain what can be expected from a ADC (in contrast to other bidding procedures), while MF underlined the importance of having a brief and jury of the best quality. DZ added that quality also depends on the quality of its critics, underlining the importance of educating people to develop their visual awareness and sensitivity.

VM suggested that quality could be increased by requiring builders to be insured, avoiding selection based on lowest price, remuneration of all design phases and avoiding compromising copyright.

6. Proposal from M Fišer for a second ADC publication

Interest was expressed in develop another ADC publication. The SG and President explained that the fourth and final year of the Creative Europe funded CONNECT-ARCH programme was underway (running to the end of April 2021) and all funds had been earmarked for other project proposals. However, it would be possible to include a bid for funding in a successful programme – though this (if successful) was unlikely to start before late 2021 / early 2022. Alternatively, once the proposal has been finalised, it would be submitted to the EB for consideration (while it has little discretionary budget of its own, it might consider a call on reserves).

Meanwhile, proponents of the project should confirm technical data (no doubt based on the last call). ACE was currently taking steps to refresh its visual identity and good practices of ADCs would be more attractively presented on the website in future. RZ noted the difficulty of meeting the various selection criteria while GP confirmed that last time difficulty was experienced getting enough material to ensure a reasonable mix of countries.

MF concluded that ACE should continue to collect examples and invited RZ to submit proposals for simplifying the requirements.



7. COM publication “long-term action plan for better implementation and enforcement of single market rule”

Due to lack of time, this item was not discussed. ¹

8. Up-dating the Public Procurement Directive

8.1 RZ recalled the BG proposals. She initially attempted to highlight some of the more important ones, but ultimately concluded that it was difficult to prioritise. A further copy can be found at the end of these notes.

8.2 Simplification of PP rules – while not specifically discussed, it was noted that calls for simplification of PP rules had emerged from the recent ACE COVID surveys.

9. Other issues

9.1 November 2019 infringement package (CZ, PL, BG, IT) – not discussed

9.2 PP reports for IMCO on economic benefits and citizens’ benefits – no comments received.

9.3 Single Market Performance report – not discussed

9.4 Single Market Scoreboard – not discussed

9.5 Business Journey on the Single Market: practical obstacles + barriers – not discussed

9.6 Letter to Commissioner Breton and response – it was noted that Commissioner Breton’s office had responded about the generality of its activity (Green Deal, Renovation Wave, SME Strategy and New Industrial Strategy – but had said little about the points ACE raised e.g. simplification of PP to make it more SME-friendly; adjustment of Awarding Criteria (turnover, past experience and framework agreements tend to exclude SMEs); Mitigation of Design & Build practices; and promoting greater use of ADCs. These points would be taken up at a future meeting.

9.7 Withdrawal of the UK from the EU – the SG confirmed that the UK was no longer covered by EU PP rules. However, the UK had applied to become a signatory to the international GPA (Government Procurement Agreement) – the turnover threshold of which was aligned with that of the EU, so reciprocal access to procurement markets might be restored in the future (pending approval of the UK application).

9.8 How is the EU PP framework contributing to the achievement of the objectives of the Paris agreement and the Circular Economy strategy? – not discussed.

9.9 COM guidance on Innovation Procurement – not discussed.

¹ This is still important as amendments to MEP Løkkegaard’s report will be debated in the European Parliament on 24 November



Given the quantity of documents published by the Commission, MF suggested that in future these be divided among work group members for analysis.

The SG and President reminded the group of the various initiatives underway which allows ACE to pursue the quality debate

- Commissioning of a study on quality (to be published by April 2021)
- Inclusion of “High Quality Architecture & Built Environment for everyone” in Council work plan and presentations at OMC group
- New Bauhaus proposal in relation to the Green Deal

10. Date & time of next meeting

The next meeting of the PP / ADC work group will take place on 5 February 2021.

Ends

Attachment x 1



BG recommendations for changes to the Public Procurement Directive

- Introduction of special section/chapter on “Architectural Design Services” in the national legislation. ACE should recommend that professional organisations from Member States work on the issue;
- Elimination of possibilities to select a project based on the sole criterion lowest price;
- Elimination of the possibility for the Contracting Authority to introducing additional selection criteria at its discretion. This provides unlimited possibilities for manipulating OP and selecting the “right” operator ;
- Separation of design contracts from (construction) works contracts;
- Restriction of the use of framework agreements for architectural services and the bundling of smaller projects;
- Recognition of the open anonymous architectural design contest as a standard procedure for awarding public procurement contract;
- Obligatory requirement that at least half of the participants in the jury/selection body should have the same or equivalent qualification to that required from the participants in the ADC or the public procurement;
- Contracts for design services provided by architects to be awarded exclusively on the basis of the “Most Economically Advantageous Tender” while sufficient/preponderant weight of qualitative criteria is guaranteed for;
- Limit bidding requirements to concepts only. Excessive requirements concerning investigations, drawings, schemes, etc. should be remunerated;
- Application of fee scales and relevant cost estimation methods for determination of the price by the contracting authorities. ACE should recommend that professional organisations from Member States work to replace minimum prices with a “Methodology for Determination of the Cost of Design Work in Spatial Planning and Investment Design”. The latter should become a part of the Rules on Implementation PP Act and serve to determine the indicative price of PP. Another option is to elaborate a “Unified Methodology for Determination of the Cost of Design Work in Spatial Planning and Investment Design ”;
- Elaboration and implementation of ADC Code based on ACE’s Nine Rules for ADCs which should become a part of the Rules on Implementation of the PP Act;
- In case there is a need to proof professional experience this should refer to the individuals involved in the design team, not to the legal entity applying for the contract;
- Architects’ references should be taken into account for a minimum period of 5 – 10 years depending on the type of the project (some projects have higher repeatability than others);



- The time limits for design services, determined in the procurement documents should comply with the shortest design time limits of the specific project, estimated by the methods of the national professional chambers;
- If required, the minimum of yearly turnover should not exceed the estimated contract value;
- Ban on copyright assignment or remuneration of copyright assignment if inevitable;
- The appeal against the decision for opening the procedure and/or the decision of approval of changes in the conditions in an announced procedure submitted by the professional associations and organizations should be exempt from fees;
- insist on reciprocity of penalties in the PP contracts.