

EU Directive on public procurement – public consultation

Input by the BNA – Royal Institute of Dutch Architects

- **Context of EU procurement procedure in the architectural profession**

The [BNA](#) (*Branchevereniging Nederlandse Architectenbureaus*) is the Royal Institute of Dutch Architects, the professional organisation of architecture firms in the Netherlands, which has been advocating for the role of architects in Dutch society for more than 175 years. Led by a Board, a Members Council, a Secretariat and several specialised working groups, the BNA currently counts with almost 1,000 architectural firms in membership.

The topic of public procurement has always been of high priority for the BNA and for Dutch architects. While there is a broad consensus among the sector that the EU Directive on public procurement (2014/24/EU) is well-intentioned in its aim of ensuring open and fair opportunities for all, reality paints a different picture.

For some context, in the field of architectural services, there are several ways of securing public contracts at various levels and depending on participation or purpose. The most common process is through design competitions, be it through open, restricted or invited procedures. Data gathered by the Architects' Council of Europe ([ACE](#)) — of which the BNA is a member association — shows that in 2022, architecture practices in Europe barely submitted bids for public tenders above the EU-thresholds of €221,000 (previously €215,000) for architectural services and €5,538,000 (previously €5,382,000) for building works, averaging at 0.5 bids per practice¹. Meanwhile, 16% of practices entered an architectural design competition, with the vast majority of them being in their own country. This means a large percentage of firms across Europe didn't submit bids for tenders above European thresholds at national level. The reasons for the low participation were, among others:

- high cost of participation and time-consuming;
- onerous procedure;
- restrictive criteria

From the Dutch perspective, results are similar. Every year, the BNA, in collaboration with research organisation Panteia, conducts a survey to estimate the economic performance and employment developments for Dutch architecture firms. The 2023 survey² estimates that only 11% of surveyed firms³ participated in European tenders, whilst participation at national level is above 20%. The reasons for this low participation align with those highlighted in the ACE sector study.

These figures indicate what the sector has been voicing for years: the current EU public procurement process is not working for the architectural profession, both in the Netherlands and across Europe. We, therefore, strongly support a careful revision of the EU Directive on public procurement — involving active stakeholder consultation and taking sector-specific input into consideration — which ensures quality-orientated procurement procedures, greater participation and a level playing field.

¹ ACE Sector Study 2022, page 44.

² [Rapportage BNA Benchmark jaarcijfers 2023](#)

³ Note: response rate of 10-15%. Results only provide an estimation, not conclusive figures

- **Main public procurement challenges in the Netherlands**

1. The process for submitting a bid for public tenders, particularly at EU level, remains highly burdensome, administratively complicated and unclear, which deters many architectural offices from participating.
2. Participation requirements and criteria are still too restrictive, arbitrary, and often unnecessary for a successful outcome. These often excessively prioritise quantitative or economic criteria (recent references, high turnover and low-price) over quality and innovative criteria, which are essential in our sector. Besides hindering opportunities for younger and less-established firms, excessive quantitative or economic criteria do not necessarily guarantee better outcomes for projects and can lead to an overall detrimental image of the sector.
 - i. E.g.: some tenders aimed at designing and building educational buildings request references to prove that similar projects have been undertaken in the past 3 years. This strict reference requirement is often impossible for many architecture practices to meet. As a result, some only manage to fulfil this criteria and secure references by price diving and making offers below cost price, which others simply cannot afford to do. As explained above, this not only undermines the quality of projects but it is also, more broadly, harmful for the sector.
3. Significant time and financial resources are spent on tender applications (particularly open design competitions), often with little to no remuneration guaranteed, for designs and ideas which end up not being used, thus entirely wasted. This is a hugely unnecessary waste of high-quality ideas, financial resources, knowledge and time.
 - i. The 2023 BNA benchmark figures estimate that on average, Dutch architecture firms spent 53,000 EUR - 76,000 EUR in costs for tenders and competitions that year. For larger firms, this cost easily exceeds 100,000 EUR⁴.
4. There is a growing concern with an apparent lack of technical knowledge, professionalisation and expertise by contracting (public) authorities in drafting tenders, assessing the bids and awarding contracts, particularly for tenders concerning architectural services, which should prioritise criteria beyond low-price, such as quality. There are too many cases where a design tender is judged on the basis of a 60-40 price-quality ratio, and yet, the committee judging the designs is not sufficiently balanced and, therefore, does not have the necessary knowledge or expertise in the subject matter to verify the quality of a design. This does not benefit the ultimate quality of our built environment.

⁴ See footnote 2

- **Recommended steps for a healthier EU procurement process**

- 1) An overall **improved accessibility and simplification for tender application and administration**, to ensure greater and smoother participation, preventing withdrawals at advanced stages and disengagement for new market entrants.
- 2) A **revision of selection and eligibility criteria** in the Directive. A more balanced weighting of criteria is necessary for architectural services, with a stronger emphasis on high-quality and innovation, rather than quantitative criteria such as low-price and recent references. For instance, concerning Annex XII, Part II, (a) i) and ii), the time-frame required for recent references should be significantly increased or removed altogether to enable equal access and fair competition.
- 3) **Clear and unambiguous wording on fair remuneration**, which is **proportional to financial and human resources**, extensive time, knowledge and creativity **invested** in the vision, development and submission of design proposals, as well as in the preparation of relevant portfolio of references. (Art. 80).
 - I. Additionally, for design competitions of multiple stages, expectations on design outputs should be reasonable, in order to ensure a healthier balance between required effort and remuneration. For a first stage, a short vision may be sufficient. Moving forward, a fully-fledged idea and design can be developed in continued and constructive dialogue between contracting authorities and contractors. Otherwise significant resources are spent and ideas ultimately wasted, with no reward or remuneration.
- 4) **Relevant knowledge and sufficient professional capacity** should be a pre-requisite **for tender drafting and evaluation** (Art. 82). Too often, the 'quality' criteria in a design tender is either too understated by contracting authorities in the drafting stage and/or cannot be evaluated adequately due to the insufficient knowledge and professional capacity by the awarding panel or body. The EU Public Procurement Directive should set clearer guidelines requiring relevant and sufficient professional capacity at both stages.
- 5) **Increased threshold amounts** at EU level, whereby inflation and overall high costs are sufficiently reflected and substantiated with calculation models. Higher thresholds would make assignments more accessible to smaller contractors at national level, and would also allow contracting authorities and contractors to arrange smaller assignments without needing to draw up large-scale competitive assignments.

- **Conclusion**

The European tendering process was devised to create a more open market, with increased competition and innovation. However, the current situation shows that the current model does not work for the architectural sector in the Netherlands and in Europe. A revision of the EU procurement directives is, therefore, very timely and necessary. While we acknowledge that some improvements can only be implemented at national level, following transposition of the directives and in dialogue with relevant national political stakeholders and sector partners, we strongly call for those applicable changes at European level to be prioritised under the upcoming legislative revision and in consultation with relevant sectors.