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SUBJECT

ZAPS' POSITION ON THE PROPOSED EUROPEAN REGULATION ON PUBLIC PROCUREMENT

The Chamber of Architecture and Spatial Planning of Slovenia (ZAPS) supports the fundamental direction of the proposed new European regulation on public procurement, which places greater emphasis on quality, sustainability, and the creation of long-term public value rather than focusing on the lowest initial price.
The quality of architecture, landscape architecture, and spatial planning is in the public interest. Decisions made in the early stages of planning and design have a decisive impact on the quality of the built environment, living conditions, environmental impacts, and the costs of construction, use, and maintenance of buildings throughout their entire lifecycle.
Therefore, the new regulation must ensure appropriate procedures and criteria for procuring intellectual services, the quality of which cannot be assessed in the same way as that of standardized goods and services.

1. Preserving design competitions as a standalone procedure

ZAPS strongly opposes the removal of the special provisions for design competitions from European public procurement legislation. Such a decision represents a significant step backward and is in direct conflict with the regulation's stated focus on quality, innovation, and long-term public value.
A design competition is a well-established and proven tool for obtaining and comparing various professional solutions and selecting the most appropriate one based on its quality. It enables the contracting authority to evaluate various options before making key investment decisions and to select the solution that best meets its needs and the broader public interest.
ZAPS therefore proposes that a **separate chapter on design contests** be reintroduced into the regulation, either as a specific public procurement procedure or within the framework of special provisions for intellectual services.
The regulation must, at a minimum to the extent of the current directive, provide a

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legal basis for conducting design contests and allow Member States to mandate their use for certain types of investments or above certain value thresholds.

2. Expert and Independent Evaluation and Awarding the Contract to the Winner of the Design Competition

Design competitions must be based on anonymity, transparent rules, and independent expert evaluation. Majority of the members of the evaluation jury must possess the professional education or qualifications required of competition participants.
The regulation must allow for the direct award of the subsequent contract to the author of the winning entry or for negotiations to be conducted in the order determined by the jury's decision. If a contract cannot be concluded with the first-place winner, negotiations shall continue with the next-ranked entrant.
The outcome of the competition must not be undermined by subsequent price competition among the top-ranked contestants, as this would negate the purpose of the competition—the selection of the highest-quality solution.

3. Quality Must Take Precedence Over Price

Design and other creative intellectual services have specific characteristics. As a rule, their outcome is not yet fully determined at the start of the procurement process, and quality depends primarily on the professional expertise, creativity, and capabilities of the service providers.
A low price for design services therefore does not in itself guarantee the cost-effectiveness of the investment. On the contrary, insufficient investment in project preparation and development can lead to significantly higher costs during construction, use, and maintenance, as well as a lower-quality final result.
ZAPS proposes that, when procuring intellectual services, **the price of the service should account for no more than 20% of the total evaluation, while quality criteria should account for at least 80%**. Exceptions that would allow such contracts to be awarded solely based on price must not be permitted.
The regulation must also allow for procurement based on a predetermined reasonable fee, in which bidders compete solely based on quality.

4. Preventing Unpaid Design Work

ZAPS opposes public procurement procedures in which bidders are required, merely to submit a bid and without receiving appropriate compensation, to produce design

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concepts, studies, or other professional solutions that constitute the actual performance of the contract.
When a contracting authority needs to compare specific design solutions for the purpose of selection, it must use a properly organized design competition or other procedure that ensures proportionate compensation for the required creative work. Such a framework is also important for ensuring equal access to public procurement for smaller and young design firms.

5. Protection of Copyright

The regulation must ensure effective protection of copyright and other intellectual property rights in design solutions, plans, and documentation.
As a general rule, copyrights must remain with their holders, while the client acquires the rights of use to the extent necessary for the implementation, use, and maintenance of the project. Requests for the transfer of rights must be exceptional, clearly justified, and proportionate.
The rights of the authors of unselected competition and bid proposals must also be protected.

Conclusion

The creation of long-term public value begins with the selection of a high-quality project solution, not merely with the selection of a construction contractor.
If the European regulation aims to genuinely steer public procurement toward quality, sustainability, and cost-effectiveness throughout the entire life cycle of investments, it must preserve and strengthen procedures that enable a professional comparison of different solutions, an independent assessment of their quality, and an appropriate evaluation of intellectual and creative work.
ZAPS therefore calls for the reintroduction of design competitions and for special consideration of intellectual services in the new European public procurement regulation.

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