

Garden Bridge – Procurement Issues and Powers

Mayoral Direction

TfL's has a range of statutory functions and powers, as set out in the Greater London Authority Act 1999 (relating to "transport facilities and services") and as a highway authority.

It is, however, not completely clear that a footbridge is within those powers and it would be prudent to seek a delegation of the Mayors "wellbeing" powers under section 30 of the GLA Act and a direction that they be implemented, thereby incorporating the requirement into TfL's Statutory functions.

This is the approach that has been taken with cycling initiatives across TfL.

Procurement of Design Team

The procurement of the design team for the bridge will need to be subject to competition through OJEU. It will be for the appropriate procurement team to write the procurement strategy but this note addresses the options available and concludes that a design contest is likely to be the most suitable process.

While "specialty design services" do not, as a matter of regulation, have to be advertised in OJEU, they relate to interior and furniture design and the better analysis is that the services required of the design team relate to architectural and engineering design would have to be advertised in OJEU.

The nature of a bridge being procured by TfL means that all procurements in relation to it (construction and maintenance etc, as well as the design team) will be governed by the Public Contracts Regulations 2006 (as opposed to the Utilities Contracts Regulations 2006).

There are several options for the procurement process that might be used for the selection of the design team and related issues:

1. Use TfL's consultancy frameworks

While this has the advantage of speed as it requires only a mini competition between capable members of the framework, it is constraint to those members of the framework. Given the aspirations for innovative design, as well as functionality, it may be that a bespoke approach to the market through OJEU is preferable.

2. Use the restrictive (or competitive dialogue or negotiated) procedure and place an OJEU notice

This approach has the benefit of addressing the market as a whole on a bespoke basis. It is, however, ordinarily expected that a restricted procedure (without negotiation) is used and this may not lend itself to the assessment of high quality design concepts. Even if the use of the competitive dialogue or negotiated procedure can be justified on the basis that the nature of the requirement means it can't be precisely specified (other bases are unlikely to

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apply here), it may still be difficult to accommodate the assessment of high quality design concepts within the process.

3. Use a design contest

This is a specialist procedure that can be used following an OJEU process. While, administratively, the process is similar to any other OJEU based process and clear evaluation criteria etc will still be needed, it enables consideration of design concepts by a “jury”.

There are certain rules about the qualifications and composition of the jury and care will be needed if GLA representatives are involved to ensure that they do not compromise any planning decisions that may be required of the Mayor in due course.

The “prize” of the contest is generally the contract for the full design of the structure concerned. It is possible to give a monetary prize without the long term design contract, although intellectual property and collateral warranties would need thorough control to ensure any subsequent advisors (who would also have to be procured competitively) can rely on the winning design.

The nature of design proposals means that it is often the case that the ideal solution is the one prepared by the winner of the design contest, with elements of other proposals. It may be appropriate, therefore, to secure certain intellectual property of all the final stage contestants and to pay for that. In a similar vein, there is nothing to prevent the award of honoraria to final stage contestants if that is thought appropriate to secure sufficiently detailed submissions.

It should be noted that the rules on design contests remain largely unchanged in the proposed new procurement Directives due to come into force in the UK around 2014.

Given the design contest process is tailored to the sort of circumstances presented by the garden bridge, it seems the most suitable process to follow.

4. Relationship between design team members

It is anticipated that the bridge design team is unlikely to comprise a single organisation and at least disciplines relating to concept, engineering and architectural design will be required. These can be undertaken as separate appointments (with an appropriate structure of collateral warranties in place). It would, however, be simpler to appoint a single organisation to take liability and sub-contract the others; this may be less preferable to bidders than the multiple appointment approach but the procurement process could be designed to ensure that it is delivered.

5. Combination with other projects

TfL is considering building another footbridge across the Thames to connect the Vauxhall/Nine Elms/Battersea area with the northern side of the river.

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An analysis in relation to procurement of the design team for that project will be broadly similar to that for the garden bridge and there is merit in considering having a single design contest process with two “prizes” available.

The approach would be similar to that taken with lots under other procurement processes, whereby there could be a separate winner for the design work for each project or a single winner for both.

Consideration will need to be given to possible timing of the projects as it will be important to ensure that design concept work is not undertaken so early that it is out of date by the time at which consents are sought and construction undertaken.

6. Level playing field

We are aware that Thomas Heatherwick has already raised with the GLA and TfL the possibility of a garden bridge across the river between Temple and South Bank and care will be needed to ensure that, particularly in relation to timing of the competition and its specification, other bidders have an equal opportunity to pull together all the relevant disciplines and to put their ideas forward.

7. Consents

Consents for both bridge projects will need to be considered in due course. Whatever the approach for seeking consents, undoubtedly, consultation will be required and it will be important to ensure that it is not, and does not appear to be, the case that decisions have already been made about the proposed structures.

8. Announcements

Any announcements about proposals for either bridge that take place before consultation is underway should be limited to the design contest and be speculative as to the final outcome, noting that consultation is required.

No specific details of the design contest itself that could be construed as giving anyone an unfair advantage should be made public before the contest is started.

9. Timing

The design contest process is not likely to be quicker than other OJEU based procurement processes and it should be noted that it is prudent to allow additional time for the logistics of administering the “jury” process, particularly if there are representatives from multiple organisations. It would be prudent to allow around nine months for the process.

TfL Legal
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