



alliance française des designers

## Fair requirements for invitations to tender bids for artistic and design contracts

By the Alliance française des designers (the French Designers Alliance) a professional organization recognized by the French government, the European Commission, the Parliament and the Council of European Ministers

### **LEGALITY > Identify the legal framework and conditions**

All Government Departments, Local and Regional Authorities, non-commercial State Bodies, Public Sector Contracting authorities and organisations work within the framework of regulations set out in the public procurement directives, in compliance with the both French and European general principles of public contracting: open invitations to tender, equal treatment of all suppliers, recognized procedures for advertising and awarding of contracts.

- These directives apply to contracts worth between €25,000 and €207,000 excluding Value Added Tax (VAT).
- Contracts worth less than €25,000 excluding vat (article 28 of the public procurement directives) may be awarded without advertising or open tendering.
- When the amount exceeds €207,000 excluding VAT, an award notice must be published when the contracts have been signed in the Bulletin officiel des annonces des marches publics and the Official Journal of the European Union.

### **PROCEDURES > Publishing an invitation to tender**

For artistic contracts, article 30 of the public procurement directives sets out a procedure adapted from French and European principles, explained above, to be followed by the Public Sector contracting authority:

- advertising of tenders through public displays, Internet sites of the government bodies or purchasing platforms all provide effective ways to announce a call to bid for artistic contracts;
- in practice this usually involves a request for a bid from three or four designers or groups of designers. After studying the proposal, the most economically advantageous bid is awarded the contract. This does not mean that it is the least expensive. The choice can be justified entirely on qualitative criteria.

### **PRACTICE > The three steps of a bid tender**

1. Draw up a precise set of specifications.
  2. Preselect three or four candidates, have a close look at their creative work, assess their level of training, appraise their design skills, and study their professional references. All these criteria contribute to the quality of the design services.
  3. Request a cost estimate from the designers. Plan on two possibilities:
    - in the first case, the contract is awarded on the basis of the selection and after studying the estimate;
    - alternatively, after studying the estimate and the first selection, the contracting authority envisages a final selection phase for the projects developed by three candidates. In order to develop a worthwhile proposal the designer must devote a significant amount of time and means. The code of intellectual property guarantees the author's copyrights. The European directive of May 2001 introduced into French legislation the right for fair compensation for exceptions to copyrights. A fully developed project is a creation and should therefore be remunerated.
- The French Designers Alliance recommends following the practice used in several European countries of allocating 20 % of the overall invitation to tender budget towards remuneration of the unsuccessful bids, to be shared equally between the two non-winning candidates.
  - In the case of a contract worth less than € 25,000 (excluding VAT), with only two candidates bidding, €680 (excluding VAT) per day of design work should be granted to the unsuccessful candidate.

### **ETHICS > Why should a project bid be remunerated ?**

- The bid takes place in a context of open competition. This is done to allow all professionals whose skills and know-how provide an assurance of high quality to tender a bid. The competitive spirit can help boost quality if there is an equal opportunity for everyone – both freelance designers and agencies – in other words if compensation is offered for the projects presented. If this is not the case, only large companies can afford the investment of time, money, and staff, especially since they often use trainees as free labour. One can only question the quality of this type of project.
- When a designer is remunerated for a project, he can concentrate on providing the best answer to the call to tender. This requires a process of reflection and creativity which therefore involve committing time and means. This commitment has a cost.
- When the project is not remunerated, the designer aims at being awarded the contract at any cost. This leads to proposing a multitude of solutions to win over the buying authority. Complying with the specifications of the invitation to tender becomes secondary. Moreover, when there are more than three different projects, how can a designer justify his expertise and how can a buying authority choose a truly worthwhile proposal when faced with a plethora of creations? The end result is usually a proposal lacking thought and mature development.
- Requiring designers to propose non-remunerated projects and to work free of charge ends up putting professionals in a precarious position and generates a form of social regression. Abiding by a fair professional code of ethics means greater creative freedom and commitment for the designer and respect for the recognized procedure for regulating public expenditures. As a result, both the quality of the projects and the contracting authority's public image end up being enhanced.