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## Design fees
## Current situation and future developments

# Preventing fee undercutting

Legal framework, professional conduct and bidding strategy for architects and consulting engineers

**Common action of the signatories of the Luxembourg Declaration on Public Procurement**

OAI – Test version dated 6 November 2026
Presented by Pierre Hurt, CEO OAI



# The issue in three figures

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**> 50 %**

of EU public procurement procedures are still awarded on lowest price alone

*Luxembourg Declaration, 2025*

**80 %**

quality weighting recommended for complex design commissions, leaving 20 % for price

*KBOB (CH), 2025 guidance*

**≈ 30 %**

below the next-lowest or average bid: a trigger for scrutiny of an abnormally low tender, never an automatic exclusion threshold

*KBOB §8.3; Swiss Federal Supreme Court, ATF 130 I 241; Vaud Cantonal Court*



**Why it matters:** design fees account for only a very small share of total project cost, yet the design stages have the greatest influence on outturn cost. Cutting design hours means fewer options appraised, more variations and higher whole-life costs.

*Sources: Luxembourg Declaration on Public Procurement (ACE, EFCA, ECEC, OAI), 15.05.2025 · Koordinationskonferenz der Bau- und Liegenschaftsorgane der öffentlichen Bauherren KBOB, Leitfaden Beschaffung von Planungsleistungen V2.0 (11/2025), §5.3.4, §8.3, fig. 1 · ATF 130 I 241 · Vaud Cantonal Court · FIDIC, QBS Guidelines*

# The lowest bid often ends up costing the most

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**Fee cut**

Margin and contingency eroded

**Resources**

Less design development and checking

**Coordination**

Weaker interface management and option appraisal

**Risk**

Variations, delays, claims

**Whole-life cost**

The client pays later

**Guiding principle: don't sell a discount. Sell a clearly defined scope of services, verifiable deliverables and properly remunerated professional responsibility.**

**The fee reflects the scope – it is no substitute for it.**

*Sources: KBOB, Leitfaden Beschaffung von Planungsleistungen V2.0 (2025), §5.3.4 and fig. 1 (influence of early project stages on cost) · FIDIC, QBS Guidelines*

# Legal framework: abnormally low tenders

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### Luxembourg Public Procurement Law of 8 April 2018

- Art. 35: award to the most economically advantageous tender (MEAT), quality criteria permitted
- Art. 38: abnormally low tender → written explanation required; rejection if not justified
  Implementation ?
- Mandatory rejection for non-compliance with social, labour or environmental law
- Grounds for rejection must be notified (implementing Grand-Ducal Regulation of 8.4.2018)

### Directive 2014/24/EU

- Art. 67: best price-quality ratio; Member States may restrict or prohibit lowest-price award
- Art. 69: verification procedure for abnormally low tenders
- Proposed Regulation of 9.9.2026 (“Public Procurement Act”) would replace the Directive → see outlook

### Competition law

- Luxembourg Competition Authority, decision 2024-E-01 (25.3.2024): OAI no longer issues fee scales or hourly rates
- Fee provisions removed from public-sector standard appointments; fees freely negotiated
- However, recommendation to use qualitative criteria : the best tender is not necessarily the cheapest
- CJEU C-377/17 (2019): mandatory HOAI fee ranges struck down
  But risk of substandard services, or even elimination of operators offering high-quality services **see slide 13**

**Key takeaway:** the law sets no minimum fee, but it requires the contracting authority to verify that a low tender is deliverable.
→ **This is the lever to use: our aim => each tender lower than 30% from the average should be eliminated without consultation!**
→ **< 15% permitted / 15-30% : explanations asked**

*Sources: Act of 8 April 2018 (Mém. A No 243), Art. 35-36 · Grand-Ducal Regulation of 8 April 2018 · Directive 2014/24/EU, Art. 67 and 69 · Competition Authority, decision 2024-E-01 · CJEU, 4.7.2019, C-377/17 · COM(2026) 590*

# Ethics: what has changed, what remains

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## What has changed

- Art. 19 of the Grand-Ducal Regulation of 17 June 1992 (no participation in fee-based competitions): OAI has undertaken not to bring disciplinary proceedings on this basis
- Declining fee competition on ethical grounds is therefore no longer a valid argument
- Law project No 7932 (pending): repeals the 1992 Regulation, empowers the OAI to adopt its own code of conduct, strengthens independence (ownership, incompatibilities, PI insurance); no provisions on fees
- Art. 3 of the 1992 Regulation to du RGD de 1992 to be included in the code of conduct : *« La rémunération des architectes et des ingénieurs-conseils doit correspondre à une **rétribution équitable**, correspondant à l'importance de la mission accomplie et leur permettant **d'exercer dignement leur profession.** »*

## What remains

- Professional independence in the client's interests and absence of conflicts of interest / impartiality towards contractors that supply and carry out the works
- Competence: accept only commissions that can be properly delivered with the resources available
  Art. 2. of the 1992 Regulation to du RGD de 1992 to be included in the code of conduct
  Compétence, diligence, étendue et nombre des missions qu'ils acceptent adaptés à leurs possibilités d'intervention personnelle, aux moyens qu'ils peuvent mettre en œuvre …
- Fair dealing with fellow professionals: do not harm their reputation or business
- FIDIC Code of Ethics: promote Quality-Based Selection (QBS)

**In practice:** a low bid is not a breach in itself. It is the under-resourced commission that follows – inadequate design, insufficient site supervision – that leads to professional liability.

*Sources: Grand-Ducal Regulation of 17 June 1992 on the professional conduct of architects and consulting engineers, Art. 19 · OAI commitments of 11.10.2023 (No 8), made binding by decision 2024-E-01 · Bill No 7932 (OAI opinions 2022 and 2024) · FIDIC Code of Ethics*

# Four questions before submitting a bid

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### Competence

Do we have the hours and expertise to stand behind what we sign?

### Independence

Does the fee push us towards a technically questionable solution or programme?

### Transparency

Does the client know exactly what is included, excluded or conditional?

### Integrity / Fair dealing

Is the reduction backed by a genuine change in scope, or by hidden risk transfer?

**Walk-away point: if the fee does not allow the services to be properly delivered, redefine the scope or decline**

*Sources: Grand-Ducal Regulation of 17 June 1992 (professional conduct) · Bill No 7932 · FIDIC Code of Ethics (competence, integrity, fairness to others)*

# International practice: guidance, not tariffs

## *Define the services to be provided and then negotiate the remuneration*

| Benchmark | Key provisions | Relevance for Luxembourg |
|---|---|---|
| **HOAI 2021 (DE)** | Fee tables are guide values only; absent a written agreement, the base rate ("Basishonorarsatz") applies (§ 2a, § 7) | A public reference anchors fee negotiations without being binding |
| **BKI (DE)** | Cost information centre of the German Chambers of Architects: outturn cost data (DIN 276) and HOAI fee calculator | Use project cost data to substantiate design effort |
| **SIA / KBOB (CH)** | Scope of services defined by SIA 102-110; 20 % price weighting for complex commissions; two-envelope evaluation; mandatory inquiry into abnormally low tenders | Evaluate quality separately from price |
| **FIDIC (international)** | QBS as recommended method: selection on qualifications, followed by fee negotiation | Negotiate the fee with the highest-ranked firm (OAI QBS Guide: 80/20 weighting) |
| **France (CCP, MIQCP)** | Art. L2152-5/6: definition of abnormally low tenders; MIQCP fee negotiation guide and fee estimator | Fee estimating tools for contracting authorities |

**Debate :** **What methodology should be used to calculate remuneration: percentage of investment, hourly rate, hybrid system, another method that takes into account objectives relating to sustainability, circularity, resilience…**

*Sources: HOAI 2021, § 2a, § 7 (BIngK, FAQ HOAI 2021) · BKI, Baukosten 2025 / Honorarermittler · KBOB, Leitfaden Planungsleistungen V2.0 (2025) · FIDIC, Guidelines for the Selection of Consultants, 3rd ed. 2019 · OAI, QBS Guide (qbs.lu, 2026) · French Public Procurement Code, Art. L2152-5 and L2152-6*

# Five levers against undercutting

**1 MOAI.lu**

Importance of programmation (phase 0), definition of work stages, deliverables, interfaces and prerequisites of coordinated design services.

**2 QBS.lu**

OAI QBS Guide (qbs.lu): competitive procedure with negotiation.

1. Broad access to participation
2. Qualitative selection of candidates eligible to submit a tender
3. 2-stage contract award process
    1. quality ≥ 80 %
    2. fee ≤ 20 %,

**3 Contract**

Define scope, responsibilities, change control, programme and fees. Standardisation through CRTI-B in progress.

**4 Value App**

Under development: estimates the required resources (hours, roles, stages) – an indicative tool, not a reference fee.

**5 Tools**

Help with calculating cost price, training courses, leaflet “Understanding the difference between salary and fees”



*Sources: OAI, QBS Guide (qbs.lu, 31.7.2026), FP.01, FP.04, FP.05 · moai.lu · SYVICOL, circular 15/2016 (CRTI-B) · Competition Authority, decision 2024-E-01*

# Bidding tactics: protect the scope

| | | |
|---|---|---|
| 1 | **Qualify** | Budget, decision-makers, selection criteria, competitors, programme, available information. |
| 2 | **Estimate** | Hours × roles × phases + coordination + risk + change allowance. |
| 3 | **Propose** | Full base proposal + clearly separated options + alternative approaches. |
| 4 | **Negotiate** | Every fee reduction is matched by an explicit reduction in scope, programme or level of service. |
| 5 | **Document** | Minutes, assumptions, exclusions, deliverables, milestones and change-control procedure. |

KEY MESSAGE

**“We can adjust the fee if we agree to adjust the scope, the assumptions or the level of risk.”**

**No discount without a scope change.**
**Every concession documented.**

**Bid/no-bid decision: margin, capacity, risk, strategic value, win probability.**

**Fee rates:** set your own, based on your cost structure – never agree fees with competitors or apply a collective scale (decision 2024-E-01).

# Perspectives : EU procurement shifts towards quality - first and foremost

**2014**
Directives: lowest-price award still permitted

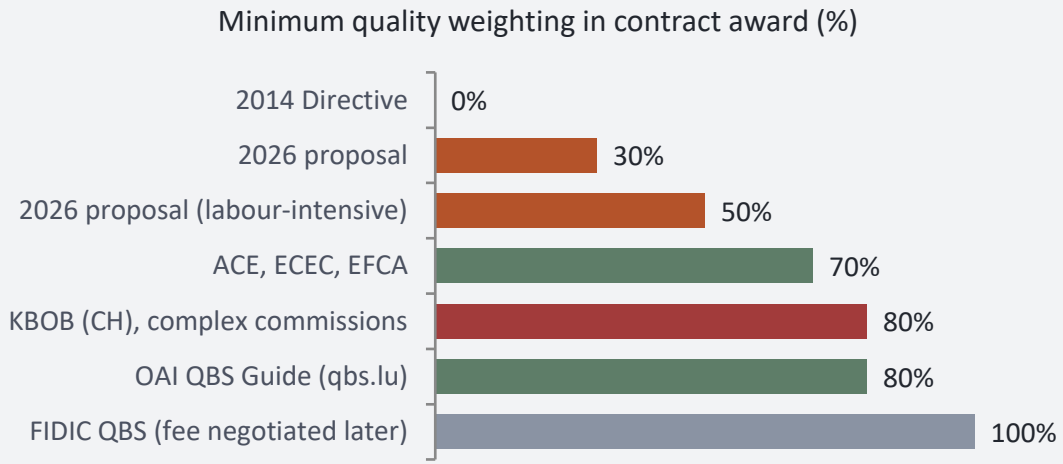
**05/2025**
Luxembourg Declaration (ACE, EFCA, ECEC, OAI, ECCE, ISHCCO, IFLA Europe, ECIA)

**09/2025**
Meeting between the signatories of the Luxembourg Declaration and Stéphane SÉJOURNÉ's office

**9.9.2026**
"Public Procurement Act" proposal

**2027**
Parliament / Council negotiations (expected)

**≈ 2029**
Applicable 2 years after entry into force



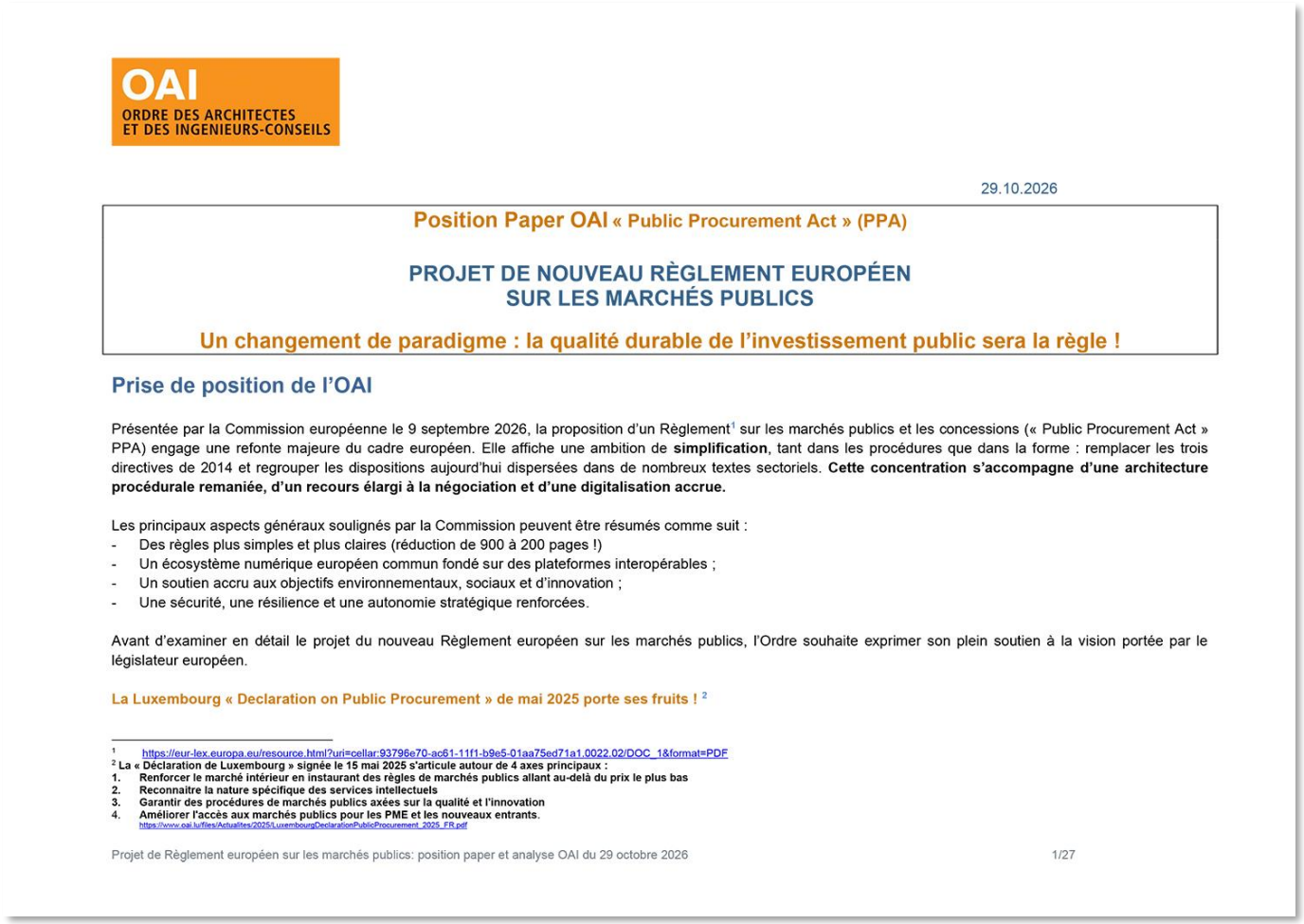

## The Commission's proposal

- A directly applicable Regulation replaces the 2014 Directives
- Best price-quality ratio as the default; quality ≥ 30 % of total score
- Exemption only where quality is secured by other means
- Separate evaluation of price and quality; four-eyes principle
- Abnormally low tenders: rejection if the price cannot be justified

**Our position:** 30 % is a minimum, not a target. For our services, we advocate the 80 % set out in OAI's QBS Guide – in line with Swiss practice – and specific rules for intellectual services.

*Sources: European Commission, COM(2026) 590 of 9.9.2026, explanatory memorandum and recitals 42-44 · Noerr; Keystone Procurement (analyses, 09/2026) · ACE, press release of 10.9.2025 · KBOB 2025 · OAI, QBS Guide (qbs.lu, 31.7.2026) · FIDIC*

# Position Paper OAI on the Public Procurement Act 29 October 2026 see slides 14-16



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29.10.2026

**Position Paper OAI « Public Procurement Act » (PPA)**

**PROJET DE NOUVEAU RÈGLEMENT EUROPÉEN SUR LES MARCHÉS PUBLICS**

**Un changement de paradigme : la qualité durable de l'investissement public sera la règle !**

## Prise de position de l'OAI

Présentée par la Commission européenne le 9 septembre 2026, la proposition d'un Règlement[1] sur les marchés publics et les concessions (« Public Procurement Act » PPA) engage une refonte majeure du cadre européen. Elle affiche une ambition de **simplification**, tant dans les procédures que dans la forme : remplacer les trois directives de 2014 et regrouper les dispositions aujourd'hui dispersées dans de nombreux textes sectoriels. **Cette concentration s'accompagne d'une architecture procédurale remaniée, d'un recours élargi à la négociation et d'une digitalisation accrue.**

Les principaux aspects généraux soulignés par la Commission peuvent être résumés comme suit :
- Des règles plus simples et plus claires (réduction de 900 à 200 pages !)
- Un écosystème numérique européen commun fondé sur des plateformes interopérables ;
- Un soutien accru aux objectifs environnementaux, sociaux et d'innovation ;
- Une sécurité, une résilience et une autonomie stratégique renforcées.

Avant d'examiner en détail le projet du nouveau Règlement européen sur les marchés publics, l'Ordre souhaite exprimer son plein soutien à la vision portée par le législateur européen.

**La Luxembourg « Declaration on Public Procurement » de mai 2025 porte ses fruits ! [2]**

[1] https://eur-lex.europa.eu/resource.html?uri=cellar:93796e70-ac61-11f1-b9e5-01aa75ed71a1.0022.02/DOC_1&format=PDF
[2] **La « Déclaration de Luxembourg » signée le 15 mai 2025 s'articule autour de 4 axes principaux :**
1. **Renforcer le marché intérieur en instaurant des règles de marchés publics allant au-delà du prix le plus bas**
2. **Reconnaitre la nature spécifique des services intellectuels**
3. **Garantir des procédures de marchés publics axées sur la qualité et l'innovation**
4. **Améliorer l'accès aux marchés publics pour les PME et les nouveaux entrants.**
https://www.oai.lu/files/Actualites/2025/LuxembourgDeclarationPublicProcurement_2025_FR.pdf

Projet de Règlement européen sur les marchés publics: position paper et analyse OAI du 29 octobre 2026 1/27

# A common position for the independent design professions

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## Luxembourg

QBS Guide (80/20) + MOAI + **MOAI contracts** + Value App (indicative resource estimate, not a reference fee).

**Freedom to negotiate, with, where applicable, a minimum reference scale set by the public authorities on the basis of a fair and realistic economic study**
To be discussed: a mandatory minimum scale (only if the law is passed), but there is a risk of falling back to the minimum scale each time.

## Germany | HOAI / AHO / BKI

Fees freely agreed; fee tables as guide values and a defined scope-of-services structure.

Comparable outturn cost data to support cost planning and bid plausibility checks.

## Switzerland | SIA 103

Services by work stage, rights and obligations, remuneration models and change management.

## Austria, other countries…

Protection of professional titles, regulation of the practice of the professions, and framework for practice established by the public authorities in conjunction with the statutory professional bodies

**OUR 6 COMMITMENTS** **Programmation • Quality first • Defined scope • Transparent fees • Fair risk sharing • No cut without a scope change**

*Sources: OAI, QBS Guide (qbs.lu, 2026) and moai.lu · HOAI 2021, § 2a and § 7 · SIA 103 (services and fees of civil engineers) · BKI, Baukosten 2025*

# Jurisprudences

## Jurisprudence of the CJEU

The Jurisprudence of the CJEU has recognised that **our professions are in the public interest** (quality of works, consumer protection, architectural culture, sustainable construction, preservation of cultural heritage… overriding reasons in the general interest).

**There may be "a risk that planning service providers in the construction sector (…) might engage in competition which could result in the provision of services at below-market rates, or even in the elimination of operators offering high-quality services through adverse selection"**

(Judgment of the Court of Justice of the European Union (Case C-377/17) of 4 July 2019 (concerning the HOAI)).

## Luxembourg Competition Authority

**Recommendation to establish a method for scoring qualitative criteria** (drawing on the method developed by the Conférence romande (CH) on public procurement)

Recommendation that 'companies should compete against one another, whether on the basis of financial or non-financial award criteria (…) **so that the contracting authority, and therefore ultimately the taxpayer, obtains the best tender… (which) is not necessarily the cheapest'.**

Sectoral survey in the construction and public procurement sector (2021)

*Sources : CJUE, 4.7.2019, C-377/17 - Autorité de la Concurrence : Enquête sectorielle dans le secteur de la construction et des marchés publics (2021)*

# Public Procurement Act (PPA) project

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**Proposal from the European Commission published on 9 September 2026**

Will replace the three directives (traditional public procurement, special sectors and concessions) **=> The volume will be reduced from 900 pages to 200!**

**Good news at this stage:** it takes into account the four demands of the Luxembourg Declaration on public procurement:

1. Strengthen the internal market with overarching public procurement rules beyond lowest price
2. Better recognition of the specific nature of intellectual services
3. Ensure quality- and innovation oriented procurement procedures
4. Improve access to procurement for SMEs and new entrants

**Key points:**

- Transition from a directive to a **directly applicable act: but importance to enact a national law**
- Simplification of procurement procedures => 2 main procedures (open / dynamic), supplemented by an innovation procedure and a special procedure in limited cases.
- **Paradigm shift: best value for money mandatory**
- **Expected to come into force in 2029–2030**

# Public Procurement Act (PPA) project

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**Proposal from the European Commission published on 9 September 2026**

**Impact on the construction sector as a whole**

- To be addressed in Luxembourg by the CRTI-B (definition of relevant non-financial criteria, etc.)
- **The essential role of OAI members in implementation: Works, etc.**
- **Designers' expertise in sustainability, circularity and resilience!**

**How the proposal affects OAI professions**

- **Minimum turnover capped at 50 per cent of the estimated annual value**
  => Easier access for start-ups or small firms, without removing competence criteria
- **Best value for money**; a minimum threshold of 30 % for quality criteria, or **even at least 50 %** for labour-intensive contracts; fixed-price contracts / competition based solely on quality is possible
- **Modifications of ≤ 15 %** of the initial value, deemed non-substantial subject to conditions
  => reducing difficulties associated with contract extensions
- Contracting authorities must consider **lot division** and justify any decision not to divide the contract; a Member State may require division
  => this may preserve access for specialist firms and prevent excessive consolidation of contracts
- **BIM** mandatory for the execution of public works contracts ≥ €25 million, subject to exemptions; open and interoperable formats; threshold subject to reduction

# Public Procurement Act (PPA) project

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## Improvements requested by the OAI

### Thresholds for application

- **Harmonise EU thresholds** between the State and local authorities.
- **Raise the EU threshold** for design. Suggested figure: €810,600 excluding VAT (15 per cent of the works threshold).
- Raise the national threshold from €79,000 excluding VAT.

### Specific features of design contracts

- Create a **dedicated chapter** on design and project management.
- Reinstate **competitions** with an independent jury and anonymous submissions.
- Explicitly include OAI services in **labour-intensive contracts** (labour content ≥ 50 per cent).

### Participation ans tender structuration

- Maintain independent advice and supervision: the '**Design First**' approach (separate design from construction) should be prioritised (as opposed to D&B).
- Encourage the **division** of contracts by discipline and retain the national authority's power to impose this.
- Facilitate access for **young practices**: alternative evidence to references and recognised personal experience.

### Selection and services at the tender stage

- **Pay for substantial design work**, beyond the standard application or tender costs.

### Award criteria

- Set a minimum **quality threshold of 70 per cent** for intellectual design services.
- Assess quality before price ('**double envelope**' procedure).
- **Life-cycle cost**: allocate at least half of the minimum weighting to technical merit and the team. Architectural and technical quality are decisive factors.
- Abnormally low fees: raise a flag depending on the scope of the project, the time required and the human resources involved.

### BIM and intellectual property

- **BIM tailored** to the design phase (rather than applied systematically), for projects exceeding the €25 million works threshold. Open and interoperable formats, with clearly defined models and responsibilities.
- **Copyright**: clarify the uses and licences for drawings, calculations and BIM models. Regulate the reuse of deliverables from unsuccessful tenderers.