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ORDRE DES ARCHITECTES
ET DES INGENIEURS-CONSEILS

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OAI Position Paper on the "Public Procurement Act" (PPA)

PROPOSAL FOR A NEW EUROPEAN REGULATION ON PUBLIC PROCUREMENT

A paradigm shift: lasting quality in public investment will become the rule!

OAI position

(Note: This document has been translated into English with the assistance of artificial intelligence; in the event of any discrepancy between the English and French versions, the original French version shall prevail).[1]

Presented by the European Commission on 9 September 2026, the proposal for a Regulation[2] on public contracts and concessions ("Public Procurement Act", PPA) launches a major overhaul of the European framework. It aims to **simplify** both procedures and the legal framework by replacing the three 2014 directives and bringing together provisions currently scattered across numerous sectoral texts. **This consolidation is accompanied by a redesigned procedural framework, wider scope for negotiation and increased digitalisation.**

The main general aspects highlighted by the Commission can be summarised as follows:
- Simpler and clearer rules (a reduction from 900 to 200 pages!);
- A common European digital ecosystem based on interoperable platforms;
- Greater support for environmental, social and innovation objectives;
- Stronger security, resilience and strategic autonomy.

Before examining the proposed new European Regulation on public procurement in detail, the Order wishes to express its full support for the vision put forward by the European legislator.

The Luxembourg "Declaration on Public Procurement" of May 2025 as yielded positive results! [3]

[1] French version: https://www.oai.lu/files/Avis/2026/PPA_Projet_Rglement_UE_sur_les_marchs_publics_-_Position_paper_et_analyse_OAI.pdf
[2] https://eur-lex.europa.eu/resource.html?uri=cellar:93796e70-ac61-11f1-b9e5-01aa75ed71a1.0022.02/DOC_1&format=PDF
[3] **The "Luxembourg Declaration", signed on 15 May 2025, centres on four main priorities:**
1. **Strengthen the internal market by introducing public procurement rules that go beyond the lowest price**
2. **Recognise the specific nature of intellectual services**
3. **Ensure public procurement procedures focused on quality and innovation**
4. **Improve access to public procurement for SMEs and new entrants**.

The OAI and its European partners actively contributed in the run-up to this reform. Adopted on 15 May 2025 together with ACE, EFCA and ECEC, **the Luxembourg Declaration on Public Procurement** advocates public procurement that goes beyond price alone, recognises the specific nature of intellectual services and facilitates SME access. These priorities were notably presented in Brussels on 10 September 2025 to the cabinet of Mr Stéphane Séjourné, Executive Vice-President of the European Commission. This joint effort provides a basis for continuing the efforts of the OAI and its European counterparts, and for developing constructive proposals for submission to European and national bodies to reform the regulatory framework for public procurement.

By asserting the primacy of quality over an approach based solely on the lowest price, strengthening European preference mechanisms, radically simplifying procedures and encouraging greater division into lots, this text paves the way for more effective and sustainable public procurement that creates greater value for our economies.

This approach reflects the OAI's calls for greater recognition of quality. The Regulation sets **a minimum weighting of 50% for quality criteria in contracts where labour costs normally account for at least half of the total value**. Intellectual design services are intended to fall within this category where that condition is met.
The OAI nevertheless requests that their inclusion be expressly clarified.

The principle of "best quality for money" lies at the heart of the text:

> "**Article 98 – Award criteria**
>
> 1. Public buyers shall award the contract to the economic operator that offers the best quality for money.
> To that effect, public buyers shall evaluate the tenders received according to the best price-quality ratio method referred to in paragraph 2, and by applying award criteria with the minimum quality weighting in accordance with paragraph 4, except as provided for in paragraph 5 (…).
> 4. The weight of quality criteria shall represent at least 30 % of total points awarded**. For contracts where the subject-matter is labour-intensive, the weight of quality criteria shall represent at least 50 % of total points awarded".**

This represents a major paradigm shift: award based on price alone becomes the exception where the quality, resilience and sustainability of the project play a key role. This development strengthens the key role of qualified professionals in assisting contracting authorities.

https://www.oai.lu/files/Actualites/2025/LuxembourgDeclarationPublicProcurement_2025_FR.pdf

Thus, according to recital 42 of the Regulation:

> "(…) **greater emphasis should be placed on long-term public benefit rather than focusing only on the lowest upfront cost**.
> Putting quality at the centre of public purchasing will allow public buyers to acquire works, supplies and services that provide better guarantees for meeting their needs in a longer term perspective, at the same time serving overall societal objectives. Therefore, **public contracts should, as a general rule, be awarded on the basis of the best price-quality ratio**, allowing public buyers to compare tenders not only on price, but also on quality criteria linked to the subject-matter of the contract, including environmental, social, innovation, European preference, security and resilience aspects where relevant, as well as life-cycle costing…".

Launched online by the OAI in May 2026, the QBS.lu methodology is a pioneering and effective tool, largely endorsed by this proposed European Regulation.

In this context, particular emphasis should be placed on the role of OAI members assisting public clients**. Architects, consulting engineers and the other OAI professions are called upon to play a key role in programming, design, specification and supervision, particularly in defining needs, preparing procurement documents for works and supplies, formulating quality criteria and participating in evaluation committees**.

Furthermore, the proposal significantly **improves access to public procurement, particularly for SMEs**:

> Recital 14: "Selection criteria should remain limited to what is necessary to ensure that the economic operator has the technical, professional, legal and financial capacity to perform the contract, so as to ensure the widest possible access to public procurement, in particular for SMEs. **Public buyers should not require prior experience in public contracts as such, unless this is strictly justified by the complexity of the contract or the nature of the subject-matter concerned**, and should also avoid excessive financial requirements which can unnecessarily exclude SMEs and newer market entrants from procurement opportunities".

These new provisions benefiting new entrants are reinforced by the encouragement of division into lots:

> Recital 43: "(…) The division of contracts into meaningful lots remains one of the main tools to facilitate participation of SMEs in public procurement and diversify the supplier base. Therefore, **public buyers should actively consider division into lots as part of the procurement design process**. In view of the existence of stricter national regimes in a number of Member States which Member States should be able to maintain, Member States should be allowed to impose stricter rules of division into lots (…)".

Overall, the proposed Regulation contains many provisions moving in the right direction, including:

- **Greater emphasis on quality** in contract awards: the best price-quality ratio as the general rule, with a minimum quality weighting of 30%, rising to 50% for labour-intensive contracts, subject to the derogations provided for.
- **Better access for SMEs and new entrants**: proportionate technical and financial requirements and limits on requirements for prior experience of public contracts.
- **Facilitating professional collaboration:** easier participation by groups of economic operators and encouragement of division into lots, also improving access for specialist practices.
- **Simpler and more flexible procedures**: consolidation of the rules in a single regulation, fewer procedures and wider scope for negotiation.
- **Greater consideration of sustainability and innovation**: recognition of environmental and social dimensions and the long-term benefits of public investment.
- **Reduced administrative burdens**: interoperable digital platforms and reuse of supporting documents to facilitate applications, particularly across borders.

The OAI is convinced that this reform offers an exceptional opportunity for both Europe and Luxembourg, economically and strategically. It will also make it possible to draw more effectively on the expertise of the independent design and consulting professions in the service of public clients, ensuring quality investment for the benefit of society.

Certain improvements are nevertheless considered necessary (see, in particular, section 4.3 below, "Compatibility with QBS.lu").

Furthermore, the OAI considers that the mechanism for setting European public procurement thresholds should be fundamentally reconsidered. While aligning European thresholds with the GPA (Agreement on Government Procurement) fulfils the Union's international commitments, the mechanism for adjusting their monetary value does not take account of the substantial cumulative increase in construction and material costs. Rising construction and material costs erode the real value of these thresholds: a project of comparable scope may now exceed the European thresholds solely because of cost inflation, without any increase in its scale or cross-border interest. This creates a risk of disproportionate administrative burdens for clients and practices, particularly small firms.

The OAI therefore advocates a substantial increase in European thresholds, together with an updating mechanism that takes account of cost trends, to preserve the proportionality of procedures and facilitate SME access to public procurement. The thresholds should reflect realities on the ground! The OAI also notes that recital 6 of the proposed Regulation states: "Apart from those periodic mathematical adjustments, the Commission will explore with GPA partners the question of an increase in the thresholds set in the GPA".

Added to this is an imbalance between the thresholds applicable to works and those for design and construction supervision services: the former currently stand at EUR 5,404,000 excluding VAT, while the latter are EUR 140,000 or EUR 216,000 excluding VAT, depending on the contracting authority.For the same project, architectural and engineering services may therefore fall under European procedures while the works remain below the corresponding thresholds. This discrepancy imposes disproportionate constraints on design commissions, particularly for small firms.

The OAI therefore also calls for a substantial, specific increase in the thresholds applicable to these intellectual services, reflecting their economic reality and ensuring greater consistency with works thresholds, while respecting the Union's international commitments. As stated in point 2 of the "Luxembourg Declaration" supported by the OAI and its European partners: *"We call on the EU to include in the PPD a special chapter for intellectual services. This special regime for intellectual services should: mandate quality-based selection criteria; include a definition of adequate procurement thresholds; specify access and eligibility rules that support SME participation; and simplify the collaboration between professionals during procedures*".[4]

One concrete approach would be to set a specific European threshold for construction-related intellectual service contracts, particularly design and construction supervision services, corresponding to 15% of the threshold applicable to works contracts, i.e. EUR 810,600 excluding VAT on the basis of the current threshold of EUR 5,404,000 excluding VAT. This approach would better align procedural requirements with the economic reality of these commissions and reduce administrative burdens on clients and small firms.[5]

In conclusion, the Order calls on public authorities and representatives of the sectors concerned to make Luxembourg a leading player in supporting and implementing this European ambition, by delivering a consistent, determined and unified message.

Let us lead by example: Luxembourg as the first country in Europe to implement procedures that guarantee sustainable and resilient public investment!

For the Council of the Order.

Michelle FRIEDERICI	Patrick NOSBUSCH	Pierre HURT
President	Vice-President	Director

[4] https://www.oai.lu/files/Actualites/2025/LuxembourgDeclarationPublicProcurement_2025_FR.pdf
[5] This proposal is expressly included (on page 4, point d, "Anhebung der Schwellenwerte") in the opinion of the **BKZT** (Austrian Federal Chamber of Architects and Consulting Engineers): https://bund.zt.at/fileadmin/user_upload/redakteure_bk/Verordnungen/Verordnungen_2026/VergabeVO_Stellungnahme_BKZT.pdf

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I. KEY ELEMENTS OF THE REFORM

1.1. Key points to remember

STATUS OF THE TEXT: Commission proposal of 9 September 2026. The ordinary legislative procedure is ongoing. As currently drafted, Article 149 provides for application two years after the adopted Regulation enters into force.

MARKET ACCESS

Art. 27 (better market access):

- proportionate selection requirements
- **prior experience of public contracts cannot, in principle, be required**;
- **minimum turnover capped at 50%** of the estimated annual contract value.

CONTRACT AWARD

Art. 98 (“**Best quality for money**”)

- **Quality award criteria**:
- **quality ≥ 30% of points,**
- **and ≥ 50%** for labour-intensive contracts
- a fixed price with competition solely on quality is possible.

WORKS / BIM / PERFORMANCE

Art. 65:

- **BIM** required for works ≥ EUR 25m, and new rules (Articles 24, 100, 101 and 105–108) on
- **subcontracting**,
- **division into lots**,
- **abnormally low prices**,
- adjustments, **contract modifications** and **payments**.

1.2. Overview – what the proposal changes for the OAI professions and works contracts

Several structural changes should be noted, including:

- a new framework and **simpler procedures**: the number of procedures is reduced to three main ones: **open**, **dynamic** and **innovation;**
- **negotiations** will be possible in all procedures;
- **improved SME access** through tighter rules on minimum participation and selection requirements;
- **greater emphasis on quality**: in principle, quality criteria must account for **at least 30% of the evaluation, and at least 50%** for labour-intensive contracts;
- stronger rules encouraging **division into lots**;
- new rules on **subcontracting**;
- new rules on **payments for services / works**;
- new rules on **contract modifications during performance**.

Topic	Nature of the change	Proposed rule	Implications for the OAI professions
Procedures (Articles 31–48)	Procedural overhaul	**Two main procedures (open / dynamic)**, supplemented by an **innovation procedure** (and a **special procedure** in limited cases).	The key issue for OAI services is when an initial tender or other de design deliverables (such as sketches or preliminary architectural drawings) must be submitted (ideal model: selection followed by award).
Selection criteria (Art. 27)	Lower barriers to access	**Turnover capped at 50% of the estimated annual value**; prior experience of public contracts cannot, in principle, be required (but references and resources may still be required if proportionate and justified).	Easier access for new or small practices and SMEs, while retaining competence requirements.
Note: **Design contests!**	No dedicated regime!	No standalone chapter equivalent to the one on design contests under Directive 2014/24/EU; no specific regime for intellectual design services.	The key issue is to safeguard anonymity, jury independence, comparison of designs and remuneration for the services requested.
Award criteria (Art. 98)	A stronger framework for quality	"**Best quality for money**"; **minimum quality weighting of 30%, or 50% for labour-intensive contracts**; a fixed price with competition solely on quality is possible.	Convergence with the Quality-Based Selection (QBS) methodology advocated by the OAI. Note, however, that Art. 98(5) allows a derogation from the minimum quality weightings where quality is ensured by other means (but this exception should not apply to the OAI professions).
Intellectual property (IP) (Articles 62–64)	A new framework	Identification of IP rights; non-exclusive licences necessary to use deliverables; ownership of pre-existing rights retained in principle.	Direct impact on drawings, models, methods, software, digital models and BIM; licences and their value need to be properly defined.
BIM (Art. 65)	Digital requirement for certain works	Mandatory BIM for the performance of public works contracts ≥ EUR 25m, subject to derogations; open and interoperable formats; threshold may be lowered.	The legal obligation concerns the works contract, but affects design, coordination and model delivery services.
Lots – division into lots (Art. 100)	SME access and resilience	Buyers must consider division into lots and justify a decision not to divide; works lots < EUR 1m may fall outside the Regulation within an overall limit of 20%.	For OAI services and works alike, the sizing of lots determines SME access and effective interface management.
Contract modifications (Art. 106)	Flexibility during performance, subject to safeguards	Modification ≤ 15% presumed non-substantial subject to conditions; modifications for additional works or services and unforeseen circumstances remain possible, subject to closer scrutiny.	Useful for additional services and unforeseen site conditions, without creating an automatic entitlement to an amendment or altering the initial economic balance.

Topic	Nature of the change	Proposed rule	Implications for the OAI professions
Subcontracting (Art. 24)	Rules for the subcontracting chain	For works, information on tasks and subcontractors is mandatory before performance; replacement possible or mandatory where exclusion grounds exist; critical tasks may be specified.	Direct impact on general contractors, technical lots and site coordination; procurement documents must clarify information flows and responsibilities.
Abnormally low tenders (Art. 101)	Economic safeguards	Explanations required where the price appears abnormally low in relation to market conditions, labour, materials, logistics, construction methods and contractual obligations.	A sensitive issue for works: avoiding an unrealistic tender that puts contract performance, subcontractors or quality at risk.
Payments (Art. 108)	Cash flow and subcontracting	Timely payment of contractors and, where relevant, subcontractors; advance payments possible; direct payment to a subcontractor at its request where the nature of the contract permits.	Strong practical relevance for SMEs, works subcontractors and continuity of work on site.

1.3. A single directly applicable regulation

The Commission proposes replacing the three 2014 directives on concessions, public procurement in the classical sectors and procurement by entities operating in the water, energy, transport and postal services sectors with a single regulation. Choosing a regulation means direct applicability within the scope of the text and reduces the discretion associated with national transposition.

IMPLICATIONS FOR LUXEMBOURG: If adopted in this form, the future Regulation he future Regulation will not replace all Luxembourg public procurement rules: it applies to contracts reaching the thresholds in Article 2. The domestic regime for contracts below the thresholds will therefore continue to be governed by national law.

The future legislation intended to replace the current Book I of the Public Procurement Law will thus provide an opportunity to simplify the rules and speed up award procedures. **As part of this adaptation of national law, the OAI specifically advocates a substantial increase in the current threshold of EUR 79,000 excluding VAT applicable to small-scale contracts. Despite its upward revision in 2024, this threshold remains insufficiently aligned with economic realities, particularly changes in the cost of materials, equipment and services. The aim would be to allow small contracts to be awarded through simple and swift procedures, preventing formalities, time limits and procedural costs from becoming disproportionate to their value.**

1.4. Scope of application and thresholds of the Regulation

The Regulation retains the **same categories of buyers subject to public procurement legislation.** Article 7 reproduces the main definitions in Article 2 of Directive 2014/24/EU: the State, regional and local authorities, including municipalities, bodies governed by public law — including public establishments meeting the criteria of that definition — and associations formed by those authorities or bodies. For utilities procurement regime, article 8 essentially reproduces the categories of contracting entities defined in Article 4 of Directive 2014/25/EU: contracting authorities, public undertakings and entities enjoying special or exclusive rights, where they carry out the sectoral activities covered, subject to the conditions laid down in the text. Furthermore, application of the Regulation remains subject to thresholds (*):

Category	Proposed threshold (excluding VAT)
Works / concessions	EUR 5,404,000
Services and supplies – central government authorities (State)	EUR 140,000
Services and supplies – sub-central contracting authorities (municipalities, etc.)	EUR 216,000
Services and supplies – utilities	EUR 432,000
Social, health and education services	EUR 750,000

(*) **It is unfortunate that the same types of thresholds as those currently applicable are retained. Harmonising and simplifying the thresholds would be appropriate. Why are "central government authorities" and "sub-central contracting authorities" subject to different European thresholds? Furthermore, European thresholds for design service contracts are too low compared with those applicable to works contracts, as ACE has already pointed out.[6] Finally, as part of the forthcoming reform of the national framework, it is to be hoped that the national legislator will increase the threshold allowing small-scale contracts to be awarded under simplified procedures (the current threshold of EUR 79,000 excluding VAT, provided for in Article 151 of the Grand-Ducal Regulation on public procurement, could be substantially higher)[7].**

1.5. Expected timetable for application of the future Regulation

The proposal was adopted by the Commission on 9 September 2026. The final text may still be amended. Article 149 provides for entry into force 20 days after publication and deferred application two years later.

9 Sept. 2026 Commission proposal	**2026 → ...** Parliament + Council: ordinary legislative procedure	**After adoption** Publication in the OJ + entry into force on day 20	**Application** 2 years after entry into force under proposed Art. 149

[6] "We call on the **EU to include in the PPD a special chapter for intellectual services**. This special regime for intellectual services should: mandate quality-based selection criteria; include a definition of **adequate procurement thresholds**; specify access and eligibility rules that support SME participation; and simplify the collaboration between professionals during procedures general services in public procurement".
https://ace-cae.eu/wp-content/uploads/2025/06/Luxembourg-Declaration-on-Public-Procurement-V2705Final-2.pdf?utm_source=chatgpt.com

[7] On this point, see the OAI's proposals for administrative simplification:
https://www.oai.lu/files/Avis/2025/Lettre_MMTP_Mme_Backes_re-_Future_rforme_de_la_lgislation_sur_les_marchs_publics_20250408.pdf.

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II. MARKET ACCESS: SELECTION CRITERIA

2.1. What the Regulation (Article 27) still allows – and what it restricts

The proposed Regulation does not abolish selection criteria. Public buyers may still require technical and professional ability, as well as legal, economic and financial standing. The approach nevertheless changes: requirements must be appropriate and proportionate to the **complexity and risks of the contract** (Art. 27(1) to (3)).

- **Professional qualifications:** where justified by the subject-matter of the contract, registration in a professional register, authorisation or membership of a professional organisation may be required (Art. 27(4)).
- **Experience and resources:** buyers may require the human and technical resources and experience necessary to perform the contract to a high standard of quality (Art. 27(6)).
- **Experience of public contracts:** in principle, this must not be required as a condition of participation, unless justified by the complexity of the contract or the nature of its subject-matter.
- **Turnover:** the minimum required may not, in principle, exceed 50% of the estimated annual contract value; a higher requirement must be specifically justified (Art. 27(7)).

2.2. Practical impact for OAI practices

For architects, consulting engineers and the other OAI professions, the most important point is the renewed focus on proportionality, rather than the removal of requirements for references. Public buyers remain free to assess the team's experience and capabilities, but **the mere absence of prior experience in public procurement should no longer constitute a barrier to access in itself. The cap on the minimum turnover that may be required (50% of the estimated annual contract value) also reduces the scope for excluding small firms through very high financial requirements.**

For works contracts, the same principle of proportionality should lead to better-calibrated requirements concerning references, human and material resources, certifications, authorisations, turnover and experience of public construction projects.

Contracting authorities naturally retain the option of requiring capabilities suited to the complexity of a construction project; however, the absence of prior public procurement experience should no longer be used as a standalone barrier without specific justification.

2.3. Qualifications of members of a design and construction supervision team

The Regulation (Article 98) also allows the organisation, qualifications and experience of the staff assigned to the contract to be taken into account at the award stage where these can significantly affect the level of performance.

At the selection stage, the OAI also recommends recognising the individual experience of the professionals assigned to perform the contract, including experience gained in other firms. The OAI requests that the practice's references should not be the sole means of demonstrating this capability: the verifiable experience of key personnel, their actual role in the projects cited and their participation in the future commission should be taken into account. This clarification would facilitate access for newly established practices and firms without lowering competence requirements.

Articles 28, 29 and 133 should also enable the effective reuse of supporting documents already available in professional registers and from the competent professional bodies. Integrating them into digital tools would avoid repeated requests for documents while retaining the assessment of capabilities specific to the contract concerned.

III. CHOICE OF PROCEDURES: PLANNED SIMPLIFICATION

3.1. Procedures provided for

The Regulation (Article 31) provides for two main procedures that can be used regardless of the nature of the procurement:

- **the open procedure**
- **the dynamic procedure**

- They are supplemented by **the innovation procedure** and **a special procedure.**

3.2. Open procedure: no shortlisting before the first tender

In the open procedure, any interested operator registers its interest and simultaneously submits a "first tender".
If the buyer negotiates, it invites eligible operators to the negotiations, and the procedure then allows the number of participants to be reduced after one or more rounds on the basis of the award criteria (Articles 34 and 33).

IMPLICATIONS FOR DESIGN SERVICES: This mechanism does not reproduce the traditional restricted procedure, in which shortlisting takes place before a detailed tender is submitted. If the documents require a sketch design, concept proposal, highly detailed methodology or other costly deliverables at the first-tender stage, many practices could undertake substantial work before any reduction in the number of competitors. In the OAI's view, such an open procedure should not be used where services and deliverables are requested. In other cases, the open procedure could offer significant benefits for service contracts involving the OAI professions.

To address this difficulty, the OAI requests that a two-stage procedure be expressly provided for individual design contracts, independently of the use of a dynamic arrangement. A first stage would select an appropriate number of candidates on the basis of objective, transparent and proportionate professional criteria; only shortlisted candidates would then be invited to submit a detailed tender.

3.3. Dynamic procedure: greater scope for shortlisting

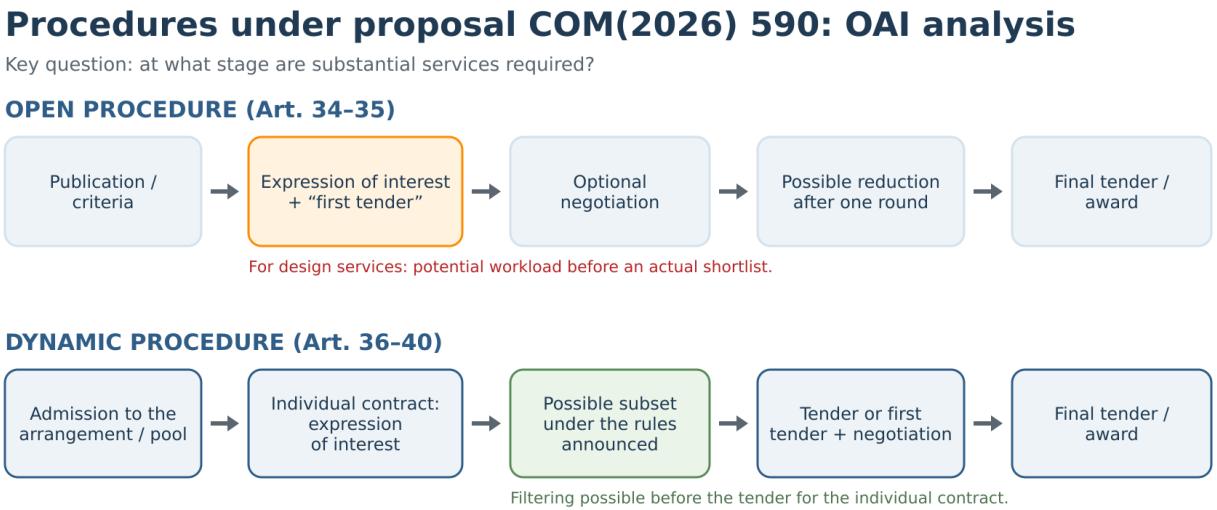
The dynamic procedure operates as an arrangement that operators may join throughout its duration. For each individual contract, interested operators express their interest. In the variant with selection criteria, the buyer may, under certain conditions, invite only a subset of operators on the basis of objective, non-discriminatory rules announced at the outset. This mechanism may come closer to shortlisting, but remains designed as a dynamic arrangement rather than a procedure specifically dedicated to design services.

According to recital 19 of the Regulation:

> "A new dynamic procedure should be established to provide public buyers with an easy-to use, quick and agile tool to procure **from a pre-constituted supplier base**, through reaching out, ahead of the individual contracts to be awarded, to all interested economic operators available to perform the contract throughout its validity. Negotiations and the use of selection criteria should be optional for public buyers, as in the open procedure".

For works, this procedural simplification should not be taken to mean that the practical difficulties disappear: a first tender may already require extensive costing, site organisation, technical variants or execution methods. The scope for negotiation within procedures may be useful for complex works, but the essential elements of the contract and non-negotiable characteristics must be clearly stated from the outset.

For design services, negotiation should be the rule (subject to the specific rules governing design contests). Any decision not to negotiate should be justified in light of the nature and scope of the services concerned.. Negotiation would allow the scope of services, organisation, interfaces and allocation of risks to be clarified. Procurement documents should specify the matters open to negotiation and how discussions will proceed; the essential elements, selection criteria and award criteria would remain protected, in accordance with Article 33.



3.4. Innovation procedure

According to recital 21 of the Regulation: "This procedure allows public buyers to purchase a yet-to-be developed solution, covering within the same procedure the research and development of that solution as well as all steps leading up to and including the commercial purchase. The innovation procedure covers the full cycle of innovation procurement, possibly from very early stages of research, the subject-matter of the procurement being the purchase of the yet to-be-developed solution. It is therefore markedly different from R&D services procurement, which include pre-commercial procurement, whose subject-matter is not the purchase of the final solution but of research and development services".

3.5. Special procedure

The special procedure allows a solution to be sought directly from one or more economic operators by sending an invitation to negotiate, a request for a tender or a direct request for delivery against an invoice, without competition or prior publication of a notice. It nevertheless requires subsequent publication of a public summary of the results and justification of the decision. It applies only in specific cases involving technical exclusivity or the protection of exclusive rights, additional deliveries, urgency, emergencies, crisis situations or certain services. It must comply with the principles of transparency, equal treatment and non-discrimination.

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IV. AWARD: "BEST QUALITY FOR MONEY", QUALITY CRITERIA AND QBS

4.1. Established principle: "best quality for money"

The Regulation (Article 98) places **"best quality for money**" as the guiding principle for the award of contracts.

In principle, buyers compare price and quality using the best price-quality ratio.

Quality criteria may include technical merit, aesthetic and functional characteristics, design for all users, environmental considerations and the organisation, qualifications and experience of the staff assigned.

Situation	Effect on evaluation	Basis
General rule	Quality: at least 30% of points	Art. 98(4)
Labour-intensive contract	**Quality: at least 50% of points**	Art. 98(4)
Price fixed by the buyer	Competition may be based solely on quality criteria	Art. 98(2)
Derogation	The minimum weightings and evaluation method may be waived where quality is ensured through specifications, performance conditions or a combination of them.	Art. 98(5)

4.2. Exceptions

- **Price-only award is not abolished entirely.** Article 98(5) allows a derogation from the best price-quality ratio principle and minimum weightings where the buyer justifies that quality is sufficiently ensured by other means. The reform therefore significantly restricts award based essentially on price, but does not impose an absolute prohibition without exceptions. This exception should nevertheless not apply to the OAI professions.

- **The 50% threshold is not legally restricted to service contracts.** It covers all contracts whose subject-matter is "labour-intensive"; the proposal defines this by labour costs normally accounting for at least 50% of the total contract value. Contracts solely for intellectual services should often fall within this category, but the assessment depends on the subject-matter and structure of the contract.

Beyond classification as a labour-intensive contract, the OAI requests express recognition of intellectual design services as a category requiring specific safeguards. The primacy of quality should be ensured independently of the economic criterion of labour costs alone. The derogation in Article 98(5) should be strictly regulated for these services.

4.3. Compatibility with QBS.lu

No provision of the Regulation (Article 98(4)) caps the quality weighting: the 30% and 50% rates are minima. A QBS weighting that places greater emphasis on quality therefore remains legally possible. Furthermore, Article 98(2) allows the price to be fixed and candidates to compete solely on quality.

It should also be noted that Article 98(4) allows the weighting of life-cycle costs to count towards the minimum percentages provided for. These minima therefore do not, in themselves, guarantee an equivalent weighting for architectural or technical merit and the team's competence. For design contracts, the OAI requests that these dimensions of quality be given a genuinely decisive role.

Scrutiny of abnormally low tenders under Article 101 should also be strengthened for design services. A warning mechanism should lead public buyers to examine fees that are manifestly inconsistent with the scope of the services, the time required and the human resources assigned. It should trigger a request for explanations allowing the tenderer to respond, without automatic exclusion. Assessment of the tender's viability should therefore focus on the actual conditions for delivering the services and maintaining their quality.

For works, Article 98 may also strengthen the role of quality criteria beyond price alone: technical merit, execution methods, site organisation, quality of assigned staff, time limits, safety, environment, circularity, resilience and energy performance. However, the 50% minimum quality weighting will apply only to contracts whose subject-matter is actually labour-intensive; a works contract therefore does not automatically fall within this category, particularly where materials, equipment or technical systems account for a predominant share.

Furthermore, the OAI supports the following three principles, which should also be incorporated into the Regulation (a position also supported by EFCA):

- Evaluate quality criteria before prices are disclosed, using the "**two-envelope**" method;
- For intellectual services, set a minimum weighting of **70% for quality award** criteria, as recommended by the OAI within the QBS.lu methodology;
- For the **life-cycle cost criterion**, reserve at least half of the minimum weighting for technical merit and the quality of the team assigned to the commission.

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V. DESIGN CONTESTS AND INTELLECTUAL SERVICES: PROCEDURAL SAFEGUARDS TO EXAMINE FOR DESIGN AND CONSTRUCTION SUPERVISION

5.1. Disappearance of design contests as a standalone procedure

Directive 2014/24/EU currently contains a dedicated chapter on design contests (Articles 78 to 82), including specific rules on juries and anonymous evaluation. The proposed Regulation does not reproduce an equivalent standalone procedural chapter.

The OAI therefore requests the reinstatement of an explicit regime for design contests, based on Articles 78 to 82 of Directive 2014/24/EU, preserving in particular jury independence and anonymous evaluation of designs. The value of design contests for design quality and access for small and newly established practices should be emphasised.

5.2. No specific regime for intellectual services

The proposal applies a common procedural framework to works, supplies and services, without a dedicated chapter on intellectual design and construction supervision services in the public interest. This absence does not make a procedure focused on quality impossible, but requires the safeguards particularly important for these services to be derived from the general rules: limiting the number of competitors before substantial studies are undertaken, composition and independence of the evaluation committee, intellectual property and remuneration for services requested during the competitive procedure.

The Regulation should expressly distinguish between the ordinary costs of applying or preparing a tender and design services requested for the purposes of the competition. Sketch designs, calculations, studies of alternatives or proposed solutions going beyond the usual content of a tender should receive appropriate remuneration. Their nature, extent, purpose and the conditions of remuneration should be stated in the procurement documents. The requirement for a first tender under Article 34(2) should not, in itself, be interpreted as requiring detailed design studies.

5.3. Position published by the Architects' Council of Europe (ACE)

In a press release dated 10 September 2026, ACE welcomes the objective of modernisation while calling for intellectual services to receive specific treatment, architectural design contests to be preserved, SME access to be facilitated and substantial design solutions not to be required without fair remuneration.[8] ACE thus expresses reservations and sets out requirements that reflect the OAI's concerns:

[8] https://ace-cae.eu/wp-content/uploads/2026/09/PR-ACE-reaction-Public-Procurement-Act11092026.pdf

- **Specific treatment of intellectual services**: ACE stresses that architectural services cannot be evaluated using simple numerical or standardised criteria and calls for strict application of the “best quality for money” principle.

- **Preservation of architectural design contests**: ACE insists that architectural design contests be explicitly retained as drivers of excellence, sustainability and innovation, rather than diluted into more general procedures.

- **Facilitating SME access**: Although 90% of architectural practices in Europe are micro-enterprises or SMEs, administrative burdens hinder access to public procurement. ACE calls for proportionate criteria.

- **Prohibition of unpaid work**: ACE expressly calls for public buyers to be prohibited from requiring substantial design solutions or detailed preliminary designs at the application stage without fair financial remuneration. The aspects of the Regulation needing improvement therefore include, in particular:

Issues of concern	Gaps in the proposed Regulation	Practical implications to examine
Shortlisting before any substantial deliverable	Not guaranteed by the open procedure: a first tender is required at the outset.	Risk of high application costs if the public buyer requests too much content, or even deliverables or services, at the initial stage.
Design contests	No standalone procedure equivalent to Articles 78–82 of Directive 2014/24/EU	Safeguards for juries, anonymity and comparison of designs are no longer structured in a dedicated chapter.
Remuneration for proposals and deliverables requested during the procedure	No specific general regime identified for design deliverables submitted in competition	Issue to examine in the final text and procurement documents: extent of the services requested and possible compensation.
Specific nature of intellectual services, particularly design services	No dedicated chapter	The same general mechanisms apply to services whose subject-matter is creative and cannot be standardised.

VI. INTELLECTUAL PROPERTY: A NEW REGIME TO INCORPORATE INTO THE ANALYSIS

6.1. Three core principles (Articles 62 to 64) of the Regulation

- **Upfront transparency:** as far as possible, the contracting authority must clearly identify the relevant intellectual property rights and enable operators to assess their scope when submitting a tender. The contract value must take account of the allocation of those rights (Art. 62).
- **Licence to use:** the economic operator must grant appropriate and sufficient non-exclusive licences enabling the public buyer to use and maintain the deliverables necessary for the purpose of the contract. The text covers both pre-existing rights and rights generated under the contract (Art. 63).
- **Ownership of pre-existing rights:** pre-existing rights — including models, methods, platforms or systems — remain, in principle, the economic operator's property. Transfer may be required only under the conditions laid down in Article 64.

6.2. Why this is particularly important for the OAI professions

Architectural and engineering services generate drawings, details, calculations, libraries, methods, digital models, scripts, databases and BIM models. The new regime seeks to distinguish between ownership of intellectual property rights and the licence needed to use the project deliverables for their intended purpose. This distinction may provide greater clarity, but the actual scope of the licence ("adapt", "integrate", "upgrade", etc.) will need to be reconciled with applicable copyright law, professional liability and the contractual limits on use.

Protection must also extend to proposals submitted during the tendering procedure by firms that are not awarded the contract. Articles 62 to 64 (primarily focused on contract performance) and the confidentiality rules in Article 93 do not remove the need to clarify this point. The Regulation should regulate the use and transmission of sketch designs, calculations and concepts from unsuccessful tenders, respecting their authors' rights and the conditions expressly stated. Submission for evaluation should not confer a general right of reuse.

Deliverables / issues	Points to clarify
Drawings and design documents	Specify authorised uses: construction, operation, maintenance, adaptation / extension.
BIM / digital models	Define delivery formats, information levels, access to proprietary libraries / objects and responsibilities in the event of modification.
Internal methods / tools	Clearly identify pre-existing elements excluded from any transfer of ownership.
Contract economics	Reflect the scope of the rights or licences requested in the estimate and the tender (see Art. 62(2) and (3), and Art. 63).
Articles 62 to 64 may shape the intellectual property clauses of design and construction supervision contracts and their interaction with BIM.	

VII. BIM, SUSTAINABILITY AND TECHNICAL REQUIREMENTS, INCLUDING FOR WORKS

7.1. BIM: contracts above EUR 25 million (in principle)

The Regulation (Article 65) does not make BIM mandatory for “contracts above EUR 25 million” generally. It concerns the performance of public works contracts with an estimated value equal to or greater than **EUR 25,000,000,** but derogations are provided for, particularly in cases of disproportionate burden or security risk. The Commission could subsequently lower the threshold by delegated act.

7.2. Indirect effect on architectural and engineering commissions

Although the legal BIM obligation under Article 65 relates to the works contract, it will have upstream effects on design in practice: data exchange requirements, multidisciplinary coordination, open formats, information structuring, model delivery and allocation of responsibilities between designers and contractors. The European definition based on interoperability should be considered alongside the OAI / CRTI-B work on OpenBIM.

BIM requirements should be adapted to the tasks actually assigned to each participant and their usefulness to the project. The value of the works alone does not establish that all specialist studies should be subject to the same modelling obligations. Building on the derogations in Article 65(3), the OAI requests that its application remain proportionate to the different disciplines, coordination needs and operational objectives of the building or infrastructure, while maintaining open and interoperable formats.

7.3. Green public procurement and energy efficiency

Article 50 allows environmental and climate considerations to be taken into account in specifications, award criteria, performance conditions and, where relevant, selection criteria. The proposal also contains provisions on circularity / resource efficiency and, in Article 52, on energy efficiency. For the OAI professions, these rules may increase the role of life-cycle assessment, environmental performance and technical substantiation in professional services and tender evaluation.

Provision	Legal effect	Impact to anticipate
BIM for works ≥ EUR 25m	Requirement imposed on the buyer for performance of the works contract	Define information, format and responsibility requirements in the design contracts from the outset.
Open and interoperable formats	Included in the definition of BIM	Promote interoperability and may limit dependence on a single proprietary software package or format.
Environmental criteria (Art. 50)	May be used in specifications, award criteria, performance conditions and, where relevant, selection criteria	For works: formulate measurable requirements for carbon footprint, materials, nuisance, site management and expected performance.
Life-cycle costing (Art. 99)	May include operating, energy, maintenance and end-of-life costs and verifiable environmental externalities	Useful for comparing construction solutions, but requires a clear method and realistic data requirements for tenderers.
Circularity / resources (Art. 51)	Possible requirements on durability, reuse, recycled content, waste prevention and secondary raw materials	Direct impact on works specifications, site clauses, material choices and evidence to be provided.
Energy efficiency (Art. 52)	Procurement of goods, services or works with high levels of energy efficiency, unless technically unfeasible	To be coordinated with design, renovation, technical equipment and building performance requirements.
Security / resilience (Art. 66)	Measures may be taken from the planning stage for critical infrastructure, supply chains, data and cyber risks	May concern certain infrastructure works, sensitive buildings and contracts involving digital systems or access to data.

Regarding functional specifications, articles 88(3) and 88(4) establish the principle of specifying requirements in terms of expected outcomes, subject to derogations. This approach should preserve design freedom without requiring candidates, at the tender stage, to define the entire solution or assume inadequately identified risks. The OAI requests that the choice between functional, technical or combined specifications remain appropriate to the project. In all cases, the brief, scope of services, constraints and interfaces must be sufficiently defined to allow comparable tenders and a realistic estimate of the resources required.

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VIII. Groups of economic operators, division into lots, modifications and contract performance

8.1. Groups of economic operators: rules directly relevant to OAI teams

The Regulation (Article 22) provides that selection criteria applicable to groups must not differ from those imposed on other operators, subject to the exceptions provided for in that Article. **In principle, a capability requirement may be met by one member of the group or by combining the capabilities of several members**. For critical tasks, however, the buyer may require the task to be performed directly by the member meeting the corresponding criterion, provided that this requirement is justified.

8.2. Division into lots: access for specialist practices

Article 100 requires buyers to consider division into lots and justify their decision where they regard division as inappropriate. Member States may make division mandatory. For the OAI professions, the manner in which architectural, specialist engineering and other services are grouped or separated may directly affect SME access and the balance between design teams and integrated contracts.

Division into lots must also support design that is independent of the contractors carrying out the works. A separately appointed team assists the client in defining needs, controlling costs, assessing solutions and supervising performance. Combining design and works may weaken this advisory and supervisory function. The OAI requests that the Regulation expressly protect the possibility of awarding design commissions separately and encourage division by discipline where appropriate, with clearly organised interfaces. The national option of making division into lots mandatory, provided for in Article 100(7), should be retained.

8.3. Modifications during the contract: 15% threshold and other permitted cases

A modification not exceeding 15% of the initial contract value is considered non-substantial, provided that the initial economic balance is preserved. Successive modifications are assessed on the basis of their cumulative net value. This threshold is therefore not a general ceiling: above 15%, a modification may also be permitted depending on its nature and the other conditions laid down in Article 106 (additional works, services or supplies that have become necessary where a change of contractor is not technically or economically feasible; circumstances that a diligent buyer could not reasonably foresee and that significantly affect the performance or feasibility of the contract; certain replacements of the contractor, particularly following corporate restructuring, subject to the conditions in the text, etc.). Every modification must be justified and documented. A modification exceeding 50% of the initial estimated value is subject to prior publication, except under the urgency exception provided for in the text.

8.4. Other provisions to monitor

- **Art. 105 – adjustment mechanisms:** scope to provide for indexation clauses and other objective adjustment mechanisms from the outset; where properly provided for, these are not treated as modifications under Art. 106.
- **Art. 108 – payments:** obligation to make timely payment, with transparency mechanisms; advance payments may be provided for, particularly for SMEs.
- **Art. 139 – professionalisation:** Member States must support buyers' capabilities and also promote measures enabling economic operators, particularly SMEs, to participate effectively in public procurement. **Implementation of Article 139 should involve professional organisations in preparing tools suited to design contracts, particularly for municipal contracting authorities with limited resources. The OAI can contribute, notably through the QBS.lu methodology and work undertaken with CRTI-B: quality evaluation guides, proportionate standard documents, clarification of the scope of commissions and recommendations on interfaces between design and construction. This cooperation would give practical effect to the professionalisation envisaged by the proposal.**
- **Art. 73 – European preference:** subject to the conditions laid down in the Regulation and the Union's international commitments, the proposal allows certain requirements linked to the origin of operators, subcontractors, goods, services or works. For the OAI professions, the composition of groups or subcontracting chains involving third-country operators may therefore become a factor to consider.

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IX. Works contracts: specific developments

For the OAI, this focus on works contracts also matters because choices made in works procurement affect design, coordination, BIM, interfaces between lots and participants' liability, and many OAI members assist contracting authorities.

9.1. Access for contractors, lots and subcontracting

The selection criteria in Article 27 also apply to works: references, human and material resources, professional or trade registrations, turnover and technical capabilities may still be required, but to an extent proportionate to the complexity and risks of the construction project. The change is the same as for services: **limiting disproportionate barriers to access, particularly for SMEs**, specialist contractors and operators without prior experience of public contracts.

Article 100 then gives particular practical significance to **division of works into lots**. **Public buyers must examine division into lots, justify a decision not to divide** and set the number, size and nature of lots proportionately. The proposal also provides that a works lot below EUR 1 million may be awarded without applying the Regulation's procedures, provided that the cumulative value of such lots does not exceed 20% of the total value of all lots. This mechanism may facilitate access for specialist trades, but increases the importance of coordination and interface management.

Article 24 is also of greater practical significance for works than for services: the contracting authority must request information from the main contractor on subcontracted tasks and the identity of subcontractors before performance begins. It may also require certain critical tasks to be performed directly by the main contractor. These matters will need to be anticipated in the procurement documents, particularly where responsibility for site coordination or interface supervision also concerns the design team.

9.2. Award of works contracts: quality, price and abnormally low tenders

Article 98 requires the principle of **"best quality for money"** to apply to works and services alike. For a works contract, quality criteria may concern technical merit, functional characteristics, production and execution methods, environmental performance, safety, resilience, quality of the assigned team and time limits. Price remains an element of comparison, but **quality must represent at least 30% of points, unless a derogation is justified. The 50% minimum applies only where the contract's subject-matter is labour-intensive within the meaning of the proposal, which must be assessed in each case.**

Article 101 also deserves attention for works. Public buyers must request explanations where the price or certain price elements appear abnormally low, particularly compared with the estimate, market prices, labour costs, materials, logistics, contractual requirements, life-cycle costing or construction methods. This mechanism may become an important tool for preventing an unrealistic price from subsequently leading to impaired performance, successive claims, excessive pressure on subcontractors or insufficient quality.

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9.3. Performance: BIM, adjustments, modifications and payments

Article 65 expressly links BIM to the performance of **public works contracts of at least EUR 25 million.** The definition emphasises collaborative, open and interoperable digital processes used to create, manage and share structured information relating to the works contract throughout its life cycle. Although the legal obligation concerns the works contract, preparations will need to begin at the design stage: information levels, formats, responsibility for updates, coordination between designers and contractors, management of changes and conditions for reusing models.

Articles 105 and 106 are particularly important for construction projects. Article 105 allows clear, precise and objectively justified adjustment mechanisms to be incorporated from the outset, including those linked to indices, inflation or price volatility in key materials. **Article 106 then regulates modifications: 15% threshold, additional works that have become necessary, reasonably unforeseeable circumstances.** For works, the issue will therefore concern the technical, economic and documentary justification for each adaptation, as well as the threshold.

Finally, **Article 108** introduces a highly practical approach to the payment chain: timely payment of contractors and, where relevant, subcontractors, the possibility of advance payments to encourage SME participation, and direct payment to subcontractors at their request where the nature of the contract permits. For works contracts, this may be important for continuity of work on site, protection of specialist contractors and prevention of performance difficulties caused by cash-flow problems.

Works issue	Provision in the proposal	Practical implications
Works threshold	Art. 2: Regulation applicable to works contracts and concessions from EUR 5,404,000 excluding VAT.	European rules do not cover below-threshold works; coordination with Luxembourg law must be provided for.
Lots and SMEs	Art. 100: consideration of division into lots; works lots < EUR 1m may fall outside the Regulation within the 20% limit.	A tool for SME access and specialisation, but requiring strong coordination and interface management.
Subcontracting	Art. 24: mandatory disclosure of subcontracted tasks and subcontractors for works; critical tasks may be specified.	Clarify subcontracting chains, responsibilities, replacements and compliance with social and European preference requirements.
Award / price	Articles 98 and 101: **quality ≥ 30%, or 50%** if the contract is labour-intensive; closer scrutiny of abnormally low prices.	Emphasise execution methods, site organisation, safety, environment, assigned staff and economic viability.
BIM / sustainability	Articles 50–52, 65 and 99: BIM ≥ EUR 25m, open formats, circularity, energy efficiency and life-cycle costing.	Direct effect on studies, specifications, technical evidence, digital models and future operation.
Performance	Articles 105–108: adjustments, modifications, additional works, unforeseen circumstances, payments and advances.	Provide robust clauses on materials, unforeseen conditions, documentation of amendments and payments along the construction chain.

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X. Issues to monitor for the OAI professions and works contracts

Without prejudging the choices to be made by the co-legislators, the following provisions merit particular attention in view of the characteristics of architectural, engineering and design services, as well as public works contracts:

Topic	Legal / operational issue to monitor
Design contests	Check whether an explicit design contest regime is reintroduced or equivalent safeguards are provided for (anonymity, independent jury, etc.).
Shortlisting before substantial services are provided	Examine whether the procedures effectively limit the number of candidates before sketch designs, concepts or detailed studies are produced, particularly in the open procedure.
Remuneration for application deliverables	Identify whether the final text regulates substantial intellectual services requested before award or provides for their remuneration; ACE has expressly raised this issue.
Art. 98(5)	Analyse the scope of the derogation from minimum quality weightings and its practical effects on intellectual services where quality is deemed to be ensured by other instruments.
Definition of "labour-intensive"	Clarify application to contracts solely for architectural and engineering services, mixed contracts and integrated contracts.
IP / BIM	Coordinate the licensing clauses in Articles 62–64 with BIM deliverables, copyright, subsequent modifications, etc.
Interoperability	Monitor delegated acts / standards relating to BIM and their interaction with the requirement for open and interoperable formats.
Lots / groups of operators	Observe the combined application of Articles 22 and 100: combining capabilities, critical tasks, sizing of lots, etc.
Luxembourg law below the thresholds	Anticipate the interaction between the directly applicable Regulation above the thresholds and the future national regime for below-threshold contracts.
Works contracts	Identify, in the final text, the rules applying directly to works: BIM, lots, subcontracting, abnormally low tenders, payments, adjustments and modifications.
Works lots / SMEs	Monitor application of the EUR 1m threshold per lot and the overall 20% limit, as well as their interaction with future Luxembourg national law for below-threshold contracts.
Subcontracting / payments	Check the scope of mandatory information on subcontractors in works, critical tasks, direct payment and practical effects on the construction chain.
Works modifications	Coordinate the 15% threshold, additional works, unforeseeable circumstances, adjustment clauses and the current Luxembourg regime for contract modifications.