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Procurement Process for
Consultancy Services (Technical)
Appendix 1 Design Contests

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Table of Contents

1. Design Contests.....	1
2. Purpose of this Guidance Note	2
3. Audience.....	2
4. Why use a design contest?	2
5. Types of design contests	3
6. Key Principles of design contests.....	3
7. Procedure for an open design contest run in two stages	4
7.1 Setting up the team	5
7.2 Preparing the contest information pack.....	6
7.3 Costs and fees.....	7
7.4 Administrative requirements – maintaining anonymity	8
7.5 Participation requirements and criteria for the performance of the contract.....	9
7.6 Contest Rules	11
7.7 Advertising the contract notice	12
7.8 Receiving applications	12
7.9 Issuing the competition brief and information	13
7.10 Managing clarifications	13
7.11 Receiving submissions for Stage 1	13
7.12 Shortlisting.....	13
7.13 Issuing directions for Stage 2.....	14
7.14 Receiving submissions for Stage 2	14
7.15 Conducting the evaluation	15
7.16 Publishing the award	15
7.17 Finalising the fee	15
8. Advice and Support.....	16

1. Design Contests

Design contests are recognised as a means to engage innovative solutions. They also afford opportunities to engage a wider market than might normally respond to a procurement process.

At present, most design services are procured either through the open or the restricted procurement procedures. Both procedures include a pre-qualification assessment to ensure that the capacity and capability of applicants meet the specified standard.

In setting these standards, consultants who might be interested in participating in the procurement process may inadvertently be excluded. This might be because they lack a track record in public works, are relatively newly established, or lack the capacity levels currently sought.

In addition to fostering innovation, design contests provide an opportunity to promote participation by firms who have not engaged with traditional procurement pathways.

Rather than engaging a single design team, a design contest draws responses from multiple design teams and is judged on the best response to the project brief.

Contests may be used to engage a design team for a building or an infrastructure project, as well as urban design strategies. A design contest may also be used to generate ideas and discussion and to inform future projects.

Design contests are catered for within the EU public procurement regime and provide a flexible procedure which can be tailored by contracting authorities within the prescribed principles to suit the project's requirements.

The Accelerating Infrastructure Report and Action Plan calls for changes to the Capital Works Management Framework (CWMF) to provide for Design Contests. This is part of the broader procurement process reform (Action 25).

2. Purpose of this Guidance Note

The objective in issuing this guidance is to provide contracting authorities with the necessary information to enable greater use of design contests.

This guidance sets out key principles and steps involved in planning and conducting a design contest that permits participation from as broad a field of designers as possible and also mitigates the risk of the winning entry lacking the capacity to deliver the project.

The procedure outlined at Section 7.0 is compliant with the EU legislation governing the award of public contracts as set out in Regulations 78 – 82, inclusive of SI 284 of 2016. It is not the only way to run a design contest but is provided to enable public bodies to promote a compliant process that meets the objectives

3. Audience

The guidance is aimed at public bodies which have:

- significant programmes of public works and are experiencing poor levels of interest in their procurements.
- challenging projects that require innovative solutions to enable development.
- a desire to promote wider engagement on elements of their capital programme.

4. Why use a design contest?

Design contests have been used effectively to develop some of our best-known public buildings, spaces and infrastructure.

Previous design contest winners have, in many cases, been SMEs and micro-enterprises who have grown considerably on the strength of the exposure and opportunities that their successful contest entries have brought.

Design contests engage the public, raising awareness of the project and can enhance levels of public acceptance for a particular project.

It is acknowledged that additional resources may be required during the contest and the submissions required of participants are more detailed. However, when run in accordance with the guidance set out in this note they can accelerate the design process, particularly the early stages, to a point where the project can be submitted for planning consent with relatively few adjustments.

5. Types of design contests

Design contests may be ideas-only, where the winning designs are exhibited, with prizes awarded to those judged as the winner or winners. They may also be used to identify a designer that will be awarded a contract to design and oversee the development of a building, a piece of infrastructure, or an urban design strategy.

The winners of an ideas-only contest may also be awarded a commission for a project that is to be realised, but this must be identified as an outcome of the contest in the contract notice published to advertise the design contest.

The EU procurement rules set out basic principles that must be applied to design contests. Once these are met contracting authorities have considerable latitude in designing the contest to meet their needs.

This guidance is focussed on the use of design contests that will lead to the award of a contract based on a realisable project (or projects) in a specific context.

6. Key Principles of design contests

- Where the value of any prizes or the fee for any commission(s) that arises out of the conclusion of the contest exceeds the thresholds set out in Regulation 5 of SI 284 of 2016 then the contest must be run in accordance with Regulations 78 – 82 of SI 284 of 2016.
- If contracts are to be awarded to the winner or winners, the total fee for the service associated with the contract may be set at the outset in the form of a percentage of the capital budget, or the negotiated procedure without prior publication (Regulation 32 of SI 284 of 2016) may be applied.
- All entries must be judged anonymously, and anonymity must be preserved until after the final decision or opinion of the jury is reached.
- The jury must be autonomous in its decisions or opinions.
- Where a particular professional qualification is required of participants, at least a third of the members of the jury must have that qualification or an equivalent qualification.
- The jury selected to judge the contest should ideally be involved in preparing the documentation associated with the contest. If this is not possible, they should sign off on the documentation before the design contest is published.

7. Procedure for an open design contest run in two stages

This Two-Stage procedure has been developed to facilitate participation by as broad a cross section of the relevant design discipline whilst ensuring that the contest outcome will produce:

- a project that is realisable.
- meets the objective of the brief.
- is within the stated budget.

It also ensures that should a small firm be successful in the contest, they have the capacity to deliver the project by partnering with a firm that can support them in the delivery stage.

The structure of the contest has been designed to meet the legal requirements set out in SI 284 of 2016 whilst permitting access to all who meet the minimum requirements and reducing the burden on contestants in Stage 1 in preparing a submission.

Participation in Stage 1 is facilitated by setting straightforward entry requirements and limiting the submission requirements to the absolute minimum necessary to communicate the contestant's response to the brief at a conceptual level. Concept submissions are judged anonymously, and a prescribed number of entrants are shortlisted to be admitted to Stage 2, where anonymity is maintained.

Those shortlisted are required to develop their concept designs up to a standard that provides sufficient confidence that the project can be substantially delivered within the proposed time period and budget.

Standards for the performance of the service contract are set out in the notice advertising the contest. However, those who do not meet the minimum standards may still participate, providing they identify an entity or entities whose combined resources meet the minimum standards and who will join with the contest winner to provide the services necessary should that contestant win. In that event, the winner, and the entities upon whom they have relied, will be joint and severally liable for the performance of the service contract.

The following section provides greater detail on each step of the procedure up to the identification of the winner or winners and the award of the service contract to design and oversee the construction of the built asset.

7.1 Setting up the team

There are two elements to the running of a design contest. The **contest administrative team** who will prepare, support and manage the contest and the **jury** who will determine the shortlist at the end of Stage 1, and evaluate the winner or winners upon submission of the final entries in Stage 2.

Where the contest administrative team is concerned, professional representative bodies such as Engineers Ireland and the Royal Institute of Architects of Ireland provide advice to public bodies on design contests.

The public body should also consider engaging construction cost expertise, either from within their own organisation or through external consultancy, to independently review the cost estimates submitted by the shortlisted contestants.

Key points with respect to the jury:

- a) The jury shall be autonomous in its decisions or opinions.
- b) At least a third of the members of the jury must have the qualifications or an equivalent qualification required of the lead design discipline. The professional representative bodies can assist in recommending individuals where necessary.
- c) Those selected should not have any involvement with any individual or entities who are likely to be applicants.
- d) A member shall be appointed to chair the jury, the chair should have the qualifications or an equivalent qualification to that required of the lead design discipline.
- e) The jury should ideally be involved in preparing the documentation associated with the contest. If this is not possible, they should sign off on the documentation before the design contest is published.
- f) It shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.
- g) It shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points which may need clarification.
- h) Anonymity must be observed until the jury has reached its opinion or decision.
- i) Contestants may be invited, if need be, to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects.

- j) In the event that clarifications are required from contestants this should be undertaken by the contest administrative team in the interest of preserving anonymity. Complete minutes shall be drawn up of the dialogue between the administrative team and contestants.

7.2 Preparing the contest information pack

The development of a project or an urban design strategy carries key constraints and risks such as the site, budget, governance and programme. They require very careful planning, research and stakeholder engagement from the outset if the client is not to lose control of the project. The key elements are not significantly different from any project at the conclusion of Stage (i) of the CWMF and these are:

- A defined set of objectives.
- A clear brief.
- A comprehensive risk assessment.
- A robust budget which must be realistic and based on objectives, brief and risk
- Identified and engaged stakeholders.
- Clear project governance and responsibilities identified.
- Approval in principle – Approval Gate 1 of the Infrastructure Guidelines complete
- Identified site with complete due diligence data, for example: ground conditions, boundaries, planning, historical uses, desktop archaeological, condition survey.
- A reasonable time frame for the contest itself.
- A robust project delivery time frame.

A design for a project that is to be realised must be grounded on the project specific constraints and the foregoing elements are the minimum requirements. Determining these constraints requires a level of technical input, as well as the appointment of a Project Supervisor for the Design Process (PSDP).

If this base level of information is not available to contestants there will be, in a best-case scenario, significant changes imposed on the contest-winning design – the worst-case scenario may result in an unrealisable design. This is not in the interest of the project, or anyone associated with it.

Important Note: Minimum level of information

To ensure project sponsors have confidence in the outcome of a design contest the minimum level of information that should be provided for final judgement is the following:

A sketch design, technical appraisal and elemental cost plan conforming with Stage (ii a) of the CWMF.

7.3 Costs and fees

Consideration must be given to the costs associated with running the design contest at the outset so they may be included in the overall project budget. Decisions related to the determination of the fees for the successful contestant or contestants must also be set out in the contract notice. The value of any honorariums or prize money that may be paid must also be considered so they are communicated in the contract notice.

A registration fee should not be applied as it may discourage participation.

There are costs associated with the contest administrative team which will be marginally higher than the administrative support required for a standard procurement process. These may include additional costs associated with establishing the jury, some members may be external and may charge a fee. If there is involvement from the professional bodies that may incur a fee depending on the resource demands. There will also be additional tasks associated with maintaining anonymity of the contestants.

Honorariums should be paid to those contestants shortlisted for Stage 2 who make a valid submission prior to the deadline. The amount should represent a contribution to the contestant's costs associated with preparing the submission to the standard required by the contest rules.

Prizes may also be awarded to those contestants who are commended and highly commended. Where honorariums are paid to shortlisted contestants, prize money is not necessary since the promotional value of the contest results post award will provide additional compensation.

7.4 Administrative requirements – maintaining anonymity

The jury is required to consider all submissions anonymously and that anonymity must be preserved until the jury reaches its conclusions.

Since the identity of the contestants will be known to those who are administering the contest it is important that this knowledge is confined to the minimum number of people necessary for the efficient administration of the process. Those administering the contest should sign confidentiality agreements. Any breach with respect to the identity of the contestants could have a detrimental impact on the contest and impact the credibility of the administration body.

Once the contest notice is published applicants submit a request to participate, those who meet the participation criteria receive a unique registration number, an entry form, details of Stage 1 of the contest, the project brief and any other project related information. The unique registration number should be structured in a manner that does not indicate how many contestants are participating.

There should be a dedicated and secure email address for clarifications related to the contest. Only the contest administration team should have access to the email address (to preserve anonymity) and any clarifications that are sent forward to the jury for clarification must be anonymised.

Important Note: Anonymity

The contest rules must stipulate that only the registration number must appear on their submissions - there must be no mark, trademark or logo included that could identify a contestant.

7.5 Participation requirements and criteria for the performance of the contract

When running a contest for building, infrastructure or urban planning projects participation should be limited to specified, relevant professions.

It is strongly advised that the applicants should take the form of a multi-disciplinary design team. It should be led by the profession qualified to design the project where each of the core disciplines necessary to input into the design are represented. This allows a certain degree of rigour to be applied to the design during the design contest phase and to assess whether the design proposal can be delivered within the budget.

Important Note: Standards

The standards set for participation in the contest should be limited to the following:

- Relevant professional qualifications.
- Undertakings or natural persons based in Ireland, the EU or in a country that is party to the Agreement on Government Procurement.
- The applicant is not guilty of any of the mandatory exclusion grounds set out in Article 57 of 2014/24/EU.
- Where a person or entity is required to be registered with a statutory body in order to undertake their profession in this country, or the country in which they are based, they must provide evidence of their registration. For example: Architects should be on the RIAI Architects Register or be eligible for registration in Ireland without further assessment.

Evidence that applicants meet these requirements should be submitted with the request to participate.

Minimum standards for performance of the contract (that will be awarded to the winning design) should be set. These would be similar to the selection criteria and the guidance published in GN 1.6.3 will be of assistance in framing criteria that are proportionate to the eventual project.

These should be limited to turnover, insurances, balance sheet, organisation chart, key personnel, projects of a similar scale and complexity, as well as appropriate health and safety criteria.

The entry form for the competition should set out the contest rules and include a declaration that:

- contestants meet the minimum standards for performance stated in the contest rules*
- the submission contents are entirely the contestants own work and intellectual property
- the contestants submit to the contest rules
- the contestant does not expect any payment for their participation and their sole entitlement is/are the prize(s) stated for award to the winning contestant(s)

*Contestants are not required to meet the minimum standards for performance to participate in the contest but if they do not, they must identify an entity with whom they can collaborate (whose combined resources can meet the minimum standards for performance) should they win the contest. That entity must provide an undertaking to that effect which is attached to the declaration submitted with the registration.

The entry form is submitted with the contest entry prior to the contest deadline.

In the event that the winner of the contest is reliant on another entity in order to perform the contract, the entity or entities upon whom they have relied will be joint and severally liable for the performance of the service contract.

Reliance may not be placed on other disciplines within the multi-disciplinary design team. For example, if the civil and structural engineering consultancy has a turnover level that exceeds that required for the architect, and the architect does not have a turnover level sufficient to meet the minimum requirements on that discipline they may not rely on the turnover of the civil and structural engineer.

7.6 Contest Rules

The key elements to consider in setting the rules are as follows:

- a) Eligibility to participate.
- b) The minimum standards for the performance of the contract by the winning entry or entries.
- c) Details for correspondence during the course of the contest.
- d) The deadline for submission of entries for design concepts in Stage 1.
- e) The format of submissions for Stage 1.
- f) The numbers to be shortlisted.
- g) The requirements for Stage 2 should also be set out in the contest rules but the deadline for submissions for Stage 2 may be specified in the requirements issued to Stage 2 contestants.
- h) Contestants should not disclose their participation in Stage 2.
- i) The terms of an IP waiver which should state that the public body may use the contestants IP solely for the purposes set out in the contest and for publicity material associated with the competition.
- j) The intention of the public body with respect to publicity upon completion of the contest should be set out. This should include the intention to display entries and the extent and duration of any exhibition.
- k) Details of any prizes or honorariums and conditions attached thereto.
- l) Any contract for the design and oversight of any development subsequent to the contest will be executed using the Standard Conditions of Engagement.
- m) Should the winning entrant not meet the minimum standards for the performance of the contract that they will be required to partner with the entity that they have nominated in their contest entry form. Those partners being joint and severally liable for any contract that may be awarded to design and oversee the winning entry.

7.7 Advertising the contract notice

The administration body publishes a design contest notice in accordance with SI 284 of 2016, Schedule 3, Part 5 (Annex 5, Part E of 2014/24/EU) in the Official Journal of the EU via eTenders.

The notice must stipulate that the contracting authority intends to award a contract upon conclusion of the contest to the winner or winners.

The notice should include:

- The deadline for receipt of applications.
- The requirements that applicants need to meet to be admitted to the contest.
- The requirements they must meet to perform the contract.
- The two-stage nature of the contest.
- The number of contestants who will be shortlisted at the end of Stage 1 to participate in Stage 2.
- Clarifications – deadlines for Stage 1 and the dedicated email address to which they should be sent.
- That responses to clarifications will be shared with all registered contestants.
- The time periods for Stage 1 and Stage 2.
- The time, date and location to which Stage 1 submissions must be sent.
- The prize money (if applicable), the honorariums to be paid.
- How the fee for the winning contestant or contestants will be determined.

7.8 Receiving applications

Applicants submit a request to participate, which includes evidence that they meet the standards set to participate with:

- evidence of their qualifications, where they are based.
- a declaration that the exclusion grounds do not apply.
- details of their registration (where applicable).

7.9 Issuing the competition brief and information

Those applicants that meet the requirements to participate receive a unique registration number, an entry form, details of Stage 1 of the contest, the project brief and any other project related information.

7.10 Managing clarifications

A period of time should be provided for receipt of clarifications.

The dedicated email address referred to in section 4 is the sole means for submitting clarifications related to the project from contestants. To preserve anonymity, only the contest administration team should have access to the email address, and any clarifications that are sent forward to the jury for clarification must be anonymised.

Responses to clarifications must be shared with all contestants and not confined to those who raised the clarifications. Care must be taken to ensure that any responses that are broadcast do not disclose the identities of the other contestants.

7.11 Receiving submissions for Stage 1

Stage 1 is an ideas-only submission with documentation that is sufficient to demonstrate the concept and how it meets the objectives, the brief and the budget.

Along with their submission the applicant must submit their entry form and undertakings from entities that they are reliant upon should they be successful in Stage 2 (where necessary).

7.12 Shortlisting

At the end of Stage 1 contestants are shortlisted by the jury in accordance with the rules of the contest – the number to be shortlisted must be stated in the contest notice.

At this point the jury or the public are not notified of the identities of those shortlisted.

Once these steps have been concluded those who were not shortlisted should be advised of the outcome, and if it is intended to include those commended entries who did not reach Stage 2 in any exhibition, or publicity, associated with the conclusion of the contest once the Stage 2 submissions have been evaluated.

7.13 Issuing directions for Stage 2

The contest administration team contacts those shortlisted to advise them of their success in Stage 1 and provides details of the Stage 2 submission requirements.

Those that have been shortlisted are advised that they must not disclose their participation in the second stage.

For those contestants who have relied upon other entities to meet the minimum standards for the performance of the contract they must not disclose their shortlisting status to those entities that they have chosen to rely upon. This is to ensure that anonymity is preserved.

It is only when the successful contestant or contestants are announced at the end of the process that those entities who have relied on others to meet the minimum performance requirements may contact those entities.

The level of detail required for the submission should be a sketch design, technical appraisal and elemental cost plan conforming with Stage (ii a) of the CWMF.

Where an honorarium is to be paid to shortlisted contestants it must be conditional on making a valid submission that meets the required standard.

The date and time and location for the submission of completed submissions should be advised to all shortlisted contestants.

It is strongly advised that submissions should be in a hard copy format so as to avoid the risk of digital files becoming corrupted such that it may impact on the quality of the submission.

7.14 Receiving submissions for Stage 2

Members of the jury should be contacted to make arrangements to convene to judge the entries as soon as possible after the submission deadline.

All submissions that are received prior to the deadline should be checked by the contest administration team to ensure compliance with the contest rules.

Once confirmed this should be formally acknowledged to contestants.

The jury should be advised of the number of submissions and arrangements finalised for the evaluation to take place.

7.15 Conducting the evaluation

The jury shall be autonomous in its final decision or opinions.

The jury examines the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

The jury should attempt to reach its decision by consensus, failing that it may put the decision to a vote with the chair having a casting vote in the event of a tie.

The jury records its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.

Anonymity shall be observed until the jury has reached its opinion or decision.

Contestants may be invited to answer questions that the jury has recorded in the report, to clarify any aspect of the projects. The contest administration team may forward those clarifications to the contestant and provide written responses to the jury, without disclosing the identity of the contestant.

The cost experts referred to in 7.1 above should undertake an evaluation of the cost estimate provided by each contestant and seek clarifications as necessary through the Contest Administrative Team.

7.16 Publishing the award

A notice of the result of the contest in accordance with SI 284 of 2016, Schedule 3, Part 6 (Annex 5, Part F of 2014/24/EU) must be published in the Official Journal of the EU via eTenders.

7.17 Finalising the fee

Both the scope of services and the procurement strategy for the construction phase are not included in the list of key elements required to be included in the information issued to contestants. It is very difficult to provide a scope of services if the procurement strategy for the construction stage of the project is not clearly defined. Depending on the project type it may be prudent to await the conclusion of the contest to determine the construction stage procurement strategy i.e. Employer-design, design and build, early contractor involvement, etc.

It should be noted that the procurement strategy chosen may have an impact on the level of interest in the contest. If it is considered appropriate to use a design and build procurement prior to advertising the contest this should be identified in the contest notice.

The simplest approach is to set the fee in the contest documents which should be expressed as a percentage of the overall capital cost of the project. The percentage is to be converted to a lump sum fee on the basis of an approved construction estimate prepared on the basis of the detailed design prior to commencing the tender drawings in the case of an Employer Design approach.

The following should be taken into account when determining the percentage fee:

- Potential complexity of the technical solutions.
- Analysis of fees for similar project types.
- The range of disciplines and inputs required of the core design team.

Where the procurement strategy for the construction stage is yet to be determined it is best to address the scope of service and the fee using the negotiated procedure without prior publication (see Regulation 32 of SI 284 of 2016). The intention to use the negotiated procedure must be set out in the contest notice.

There may be a range of inputs outside of the core design team services that will arise during the design development. If they cannot be established at the outset there will have to be supplementary procurements following the appointment of the design team, or, where the inputs are of low value they can be addressed as special disbursements via the design team.

8. Advice and Support

The professional representative bodies, Engineers Ireland and the Royal Institute of Architects of Ireland are available to advise and support public bodies in the administration of design contests.

The Construction Sector Capacity and Procurement team are also available at construction@per.gov.ie

