



# Ten Principles for Procuring Better Outcomes

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Any building can be designed to serve its intended purpose, be efficient to build, maintain and operate, and have a positive impact on the community it serves.

Effective public procurement that prioritises good design outcomes can maximise the social, environmental and economic benefits of development.

But sometimes as a result of poor procurement practice or lack of in-house expertise, public clients don't get what they expected and communities don't get the buildings they deserve.

This document clarifies how client organisations can get the best possible outcomes when they procure architectural services.

This document has been prepared for information purposes only. Appropriate legal advice should be sought in respect of individual project circumstances.

## Introduction

Public procurement can play an important role in an effective construction industry, improving economic, social and environmental well-being, and supporting local growth and employment through fair and transparent processes and improved access to work opportunities for small and medium-sized enterprises (SMEs).

Publicly funded projects need to comply with the good practice required by the relevant UK and European Union procurement legislation and regulations.<sup>1</sup> Transparency requires public contracting bodies to demonstrate value for public money, and projects are subject to external and internal audit, including compliance with organisational procedures or local authority standing orders. The EU Treaty Principles of equal treatment, transparency, proportionality, and free movement and non-discrimination also apply on projects with a contract value above current EU thresholds.<sup>2</sup> The implementation of the 2014/24 EU Procurement Directive in the Public Contracts Regulations 2015 aims to clarify some of the uncertainty regarding the application of the rules, expand economic opportunities and growth and give procurers greater flexibility of procurement routes.

Within a regulatory system developed to support better outcomes for industry and society as a whole, many experienced and well-informed public procuring bodies are leading the way in good public procurement practice. But across the UK, procurement has sometimes proved expensive and inefficient, or focused on low cost resulting in poor quality and unsustainable buildings. Procurement regulations are commonly misinterpreted and misapplied to projects above and below EU thresholds. In some instances, decisions are made to manage cost and risk in the short-term without considering the project context or requirements in the long-term. This approach can inadvertently preclude the economic, social and environmental benefits of high quality outcomes, increase the cost to the public purse and exclude the most competitive, innovative and capable consultants.

<sup>1</sup> EU Directive 2014/24, UK Public Contracts Regulations 2015 and Procurement Policy Notes (PPNs). The UK Public Contracts Regulations 2015 have introduced a requirement for all contracting authorities to have regard to guidance issued by the Cabinet Office and extend the application of PPNs to all public sector bodies.

<sup>2</sup> The Treaty Principles have also been shown to apply to below-threshold contracts so should be considered best practice.

## Your role as public sector client/public contracting authority

Your organisation will make key decisions from the start of a project that will determine its long-term outcome. As a public sector client, you are responsible for embedding quality, sustainability and whole life value in every aspect of the procurement process.<sup>3</sup> This document sets out to help decision-makers within client organisations working under the Public Contracts Regulations 2015<sup>4</sup> to understand what they are setting out to achieve, to ask the right questions and then to make the right decisions at the right stage. It clarifies how you can work both below Official Journal of the European Union (OJEU) thresholds and within the Public Contracts Regulations 2015 to get the best possible outcomes from the procurement process in the simplest, most efficient and appropriate way.

## Understanding what you are setting out to achieve (what before how)

Taking time at the start of the process to define what you are setting out to achieve will help to ensure that you maximise the economic, environmental and social benefits over the whole life of the project. Once you have clearly defined your project outcomes and considered the local design and construction markets, you can plan the appropriate procurement approach to deliver them. How you buy in services to design, construct and manage a building will affect the quality, sustainability and cost of what you deliver in the long term.

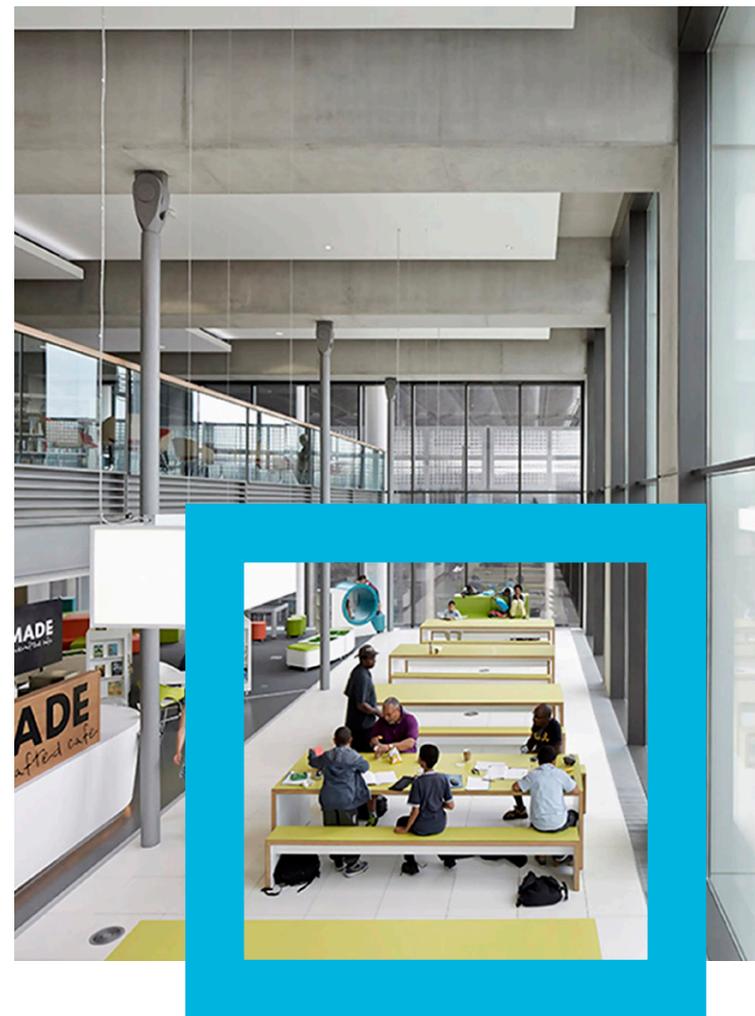
How and when you appoint your design team are critical decisions in achieving a high quality project. Projects have the best chance of success if the design team works with the client from an early stage to help define the brief.

Just as every project outcome is designed to meet the specific needs of its users and wider community, there is no 'one size fits all' approach to procuring design and delivery teams. Using centralised purchasing departments and external procurement organisations as required by some local authority standing orders can add complexity, risk generic approaches and result in inappropriate aggregation.

<sup>3</sup> For service contracts above EU thresholds, the Public Services (Social Value) Act 2012 requires a procuring authority to consider at the pre-procurement stage how its proposals and the procurement process might improve the economic, social and environmental well-being of its area, and ensure its approach is proportionate and relevant to the project being procured.

<sup>4</sup> Government, local authorities, public sector departments and agencies, and other public sector organisations defined as Bodies governed by Public Law procuring above the values of the EU thresholds. A separate regime applies to utilities. Much of the general guidance here is also relevant, but the specific regime is not addressed in this guidance note.

Project: **5 Pancras Square**  
 Architect: **Bennetts Associates**  
 Photo © Hufton & Crow



## Achieving the right outcomes

The fundamental starting point for achieving the right outcomes is an effective and informed client organisation with the right culture, the right people, the right resources and the right processes in place.

The RIBA publication *Client Conversations* and CABE's *Creating Excellent Buildings* contain further detailed guidance on how clients can deliver successful project outcomes.

### Right culture

- Understand how good design can improve the users' quality of life, and benefit the wider community and environment
- Understand and define what you are setting out to achieve and how you will know whether you have achieved it
- Ensure the wider client organisation and key external stakeholders share your design vision from the start
- Share learning and best practice within the wider client organisation, neighbouring local authorities and other bodies in the same sector

### Right people

- Appoint a client lead to drive forward a high quality project and ensure decision-making supports your intended outcomes throughout
- Make sure you have the capability and capacity in your client team to tackle the scale and complexity of your project
- Bring in specialist advice to make up for a shortfall of in-house expertise, and consider sharing resources across local authorities or bodies in the same sector
- Appoint qualified client advisers to the core project team to help define the project budget, strategic brief and procurement process and assess tenders
- Select consultants based on the ability and quality of the team and their design approach

### Right resources

- Set a realistic programme for the preparation and briefing stages, allowing sufficient time to define the principal project requirements and develop the outline business case and early design input
- Set a fully tested and realistic budget at outline business case stage
- Include sufficient resources for an appropriate level of design fees to procure the quality of service required, including early design input

### Right process

- Ensure you have a clearly defined set of project objectives, requirements and intended outcomes before you begin the procurement process.
- Involve the different groups of people who will experience the building and other stakeholders to establish and prioritise their needs
- Develop as much knowledge as possible about the design and construction markets before you begin the procurement process to help define your project brief and make it easier to attract talent
- Consider early on how you are going evaluate tenders to achieve your project objectives
- Monitor your performance against your objectives at every stage and review your procurement approach if it is not delivering your required outcomes<sup>5</sup>
- Provide good quality feedback to successful and unsuccessful tenderers, and consultants on a framework, to help improve the quality of bids for future contracts
- Set in place a handover strategy and post-occupancy evaluation process such as Government Soft Landings to ensure your project outcomes are achieved in the occupied building

<sup>5</sup> Regulations 2015 55 (1)  
A contracting authority may reserve the right not to award a contract as a result of a procurement process and should clarify in the procurement documents that it will not be liable for any of the tenderers' costs associated with the procedure.

Project: **Elizabeth II Court**  
 Architect: **Bennetts Associates**  
 Photo © Tim Crocker



### Best practice procurement:

- Results in high quality and sustainable project outcomes that are good value to build, maintain and operate
- Enables your project to take full advantage of available design talent and promotes innovation
- Supports the local economy and promotes growth and employment nationally
- Reduces overall cost, time and waste for the construction industry – for both clients and suppliers
- Promotes collaboration within project teams and reduces risk
- Facilitates direct client and end-user engagement with the design team
- Builds long-term relationships between clients and high performing design teams

## Ten Principles for Procuring Better Outcomes

- 1 Invest in the right design skills, briefing and design process at the right stage when setting project budgets and fee levels
- 2 Consider whether and how the Public Contracts Regulations 2015 apply when commissioning design or architectural services
- 3 Select and tailor your procurement procedure to suit your project needs, using design quality as a means to shortlist or award contracts where appropriate
- 4 Consider whether a framework will deliver the best outcomes and design quality for the full range of projects you intend to procure. If awarding frameworks, consider dividing them into more numerous and smaller lots
- 5 Consider actively encouraging consortia bids from smaller practices, making it as simple as possible for consortia to compete
- 6 Make the selection phase as simple as possible and proportionate to the scale and complexity of your project
- 7 When assessing consultant capability, consider a track record of undertaking projects of a similar scale and complexity rather than extensive previous experience of an identical project type
- 8 Set out your evaluation criteria for both selection and award stages clearly in advance, and balance quantitative (fees and cost) with qualitative criteria, using a qualified design assessor
- 9 Establish financial thresholds based on the scale, complexity, actual level of risk and value of the design services – turnover and Professional Indemnity Insurance requirements are not mandatory criteria
- 10 Choose a standard form of building contract and consultant appointment that promotes collaboration, integration and direct communication with your design team

Project: **The Forum**  
 Architect: **ADP Architecture**  
 Photo © Andy Spain



# 1 Invest in the right design skills, briefing and design process at the right stage when setting project budgets and fee levels

The cost of good design is a fraction of the total construction cost, and is insignificant in comparison to the maintenance and operating costs of the building over its life time. It is worth investing in the skills of design professionals as early as possible in the process when they can add the most value to the outcome. At Strategic Definition stage (RIBA Plan of Work Stage 0), an architect or client adviser can spend time understanding your needs and helping to shape your objectives. Early design team engagement can help establish whether the Strategic Brief is feasible and viable in relation to the business case and possible sites.<sup>6</sup>

<sup>6</sup> Regulations 2015 40-47

<sup>7</sup> Regulations 2015 40-47

<sup>8</sup> Regulations 2015 69

You can appoint a design team or different design teams in parallel from an early stage<sup>7</sup> to help plan your approach. **Parallel Commissioning** enables you to evaluate opportunities and strategic briefing options before starting legally prescribed procurement procedures. Care needs to be taken to ensure that the appointments are not likely to exceed the EU thresholds. Appointments may not be artificially split to circumvent the EU thresholds.

Consultants appointed solely on the basis of lowest fee may not be able to properly resource the level of service you need. Under the Public Contracts Regulations 2015, as a contracting authority you are now required to request an explanation when a tender appears to be abnormally low.<sup>8</sup>

To avoid selecting on fee bids only, it is a good idea to give appropriate weight to quality in selecting a design team in any project where the quality of the outcome is important. As a guideline, a ratio of 70% quality to 30% cost is an appropriate balance.

## 2 Consider whether and how the Public Contracts Regulations 2015 apply when commissioning design or architectural services

The Public Contracts Regulations 2015 apply to most design or professional services where the value is above a certain threshold and require the contract to be advertised and tendered according to a prescribed set of rules.

Below EU thresholds,<sup>9</sup> contracts must still be publicly advertised on a national web-based portal. Tenders must be one stage only. A pre-qualification stage is not permitted so SMEs who wish to participate are required to submit a full tender. The open tender process can provide greater flexibility to access local and emerging talent, especially if you have fully engaged with the local market during the pre-procurement stage. This opportunity to access talent can be a good reason not to bundle smaller contracts together, although a single procurement must not be sub-divided to circumvent EU law.

In the past there may have been a tendency to 'gold plate' some of the tender rules. Above EU thresholds, the Public Contracts Regulations 2015 make it clear that the rules are only compulsory where the word 'shall' is used; 'may' typically means rules are optional and there is flexibility. For example, at selection stage there is no mandatory requirement for candidates to demonstrate economic and financial capacity through annual turnover<sup>10</sup> which may not be a good test of financial standing.

The Public Contracts Regulations 2015 have introduced new rules, such as prohibiting a turnover requirement greater than twice the contract value and awarding contracts based on lowest cost alone. You will therefore need to review requirements in your existing standing orders to ensure they are compliant.

<sup>9</sup> Below threshold contracts (above £25,000 or central government contracts above £10,000) fall under Part 4 of the Regulations UK Public Contracts Regulations 2015

<sup>10</sup> Regulations 2015 58

## 3 Select and tailor your procurement procedure to suit your project needs, using design quality as a means to select candidates or award contracts where appropriate

A procurement procedure is simply the means to select the best team to design the building that delivers your project requirements and outcomes efficiently and effectively from an open or invited long list of possible practices – in compliance with legislation and existing standing orders. If you are buying services above EU thresholds, there are a number of variations on standard procedures that allow you to procure the design services you need flexibly in a way that suits your project.

### Below EU Thresholds

<sup>11</sup> Regulations 2015 109-112

If you want to procure projects below EU thresholds<sup>11</sup> you can approach possible practices directly provided that your internal standing orders do not prohibit selective approaches above specified thresholds and you have also published the opportunity on Contracts Finder.

You can also have greater flexibility in setting evaluation criteria, and can ask teams to outline their approach to a project and initial design ideas before assessing your working relationship at interview.

Project: Platform  
Architect: Van Heyningen and Haward  
Photo © Nikhilesh Haval



### Open Procedure

If you want **a standardised or commoditised construction outcome** the Open Procedure<sup>12</sup> is a one stage tender process suitable for straightforward competitions. It is therefore not typically appropriate and rarely used for procuring architectural services. It is open to all tenderers who satisfy minimum standards and therefore risks being wasteful. No negotiation or discussion of the contract requirements or terms and conditions are permitted.

### Design Contest

If you want **the right design solution in response to a well-defined brief** a Design Contest<sup>13</sup> can offer a simple and cost effective route, provided you follow best practice guidelines. This approach enables you to understand what is possible in design terms to meet your brief; choose from a range of design options; and provide an opportunity for emerging design talent.

While not regularly used in the UK, Design Contests are common best practice in many EU countries. Design Contests are typically used to select a design solution in a single stage, based upon the quality of the design solution alone. This method allows you to select a proposal from a range of design responses to a well-developed and tightly defined brief. An independent jury, one third of whom must hold the same qualification as the professional service being sought, evaluates proposals submitted anonymously by competing design teams.

### Restricted Procedure followed by a Design Contest

If you want **the right design solution and a design team that meets certain requirements** you can ask for evidence of minimum standards in a Restricted Procedure followed by a Design Contest. Only practices that meet your needs – including previous relevant experience – are then selected to submit design proposals. After selection, anonymously submitted designs can be evaluated in a Design Contest. Before making a final decision, you can invite candidates to clarify any outstanding aspects of their proposals, provided that anonymity is not compromised. Minuting this dialogue between the jury and candidates is essential.<sup>14</sup>

<sup>12</sup> Regulations 2015 27

<sup>13</sup> Regulations 2015 78-82

<sup>14</sup> Regulations 2015 82 (5)

<sup>15</sup> Regulations 2015 32 (7)  
EU Directive 2014/24  
Recital 120

### Design Contest followed by a Negotiated Procedure

If you want **the right design solution and an emerging and/or innovative design team** – without taking on the risk of unknown delivery track record – you can include an optional intent in the contest notice to follow the Design Contest followed by a Negotiated Procedure without prior publication of a contract notice.<sup>15</sup> This enables you to enter into a negotiation with the winner to establish a working agreement with a practice of their choice to provide any additional capacity and resource needed to deliver the project.

### Design Contest with a Prize or Payment

If you want **the right design idea** before there is certainty that a project will go ahead, whether to show what is possible for promotional purposes or to attract investment, you can consider running a Design Contest which should include a prize or payment to the winning or placed schemes. Honoraria can also be paid to all short-listed schemes.

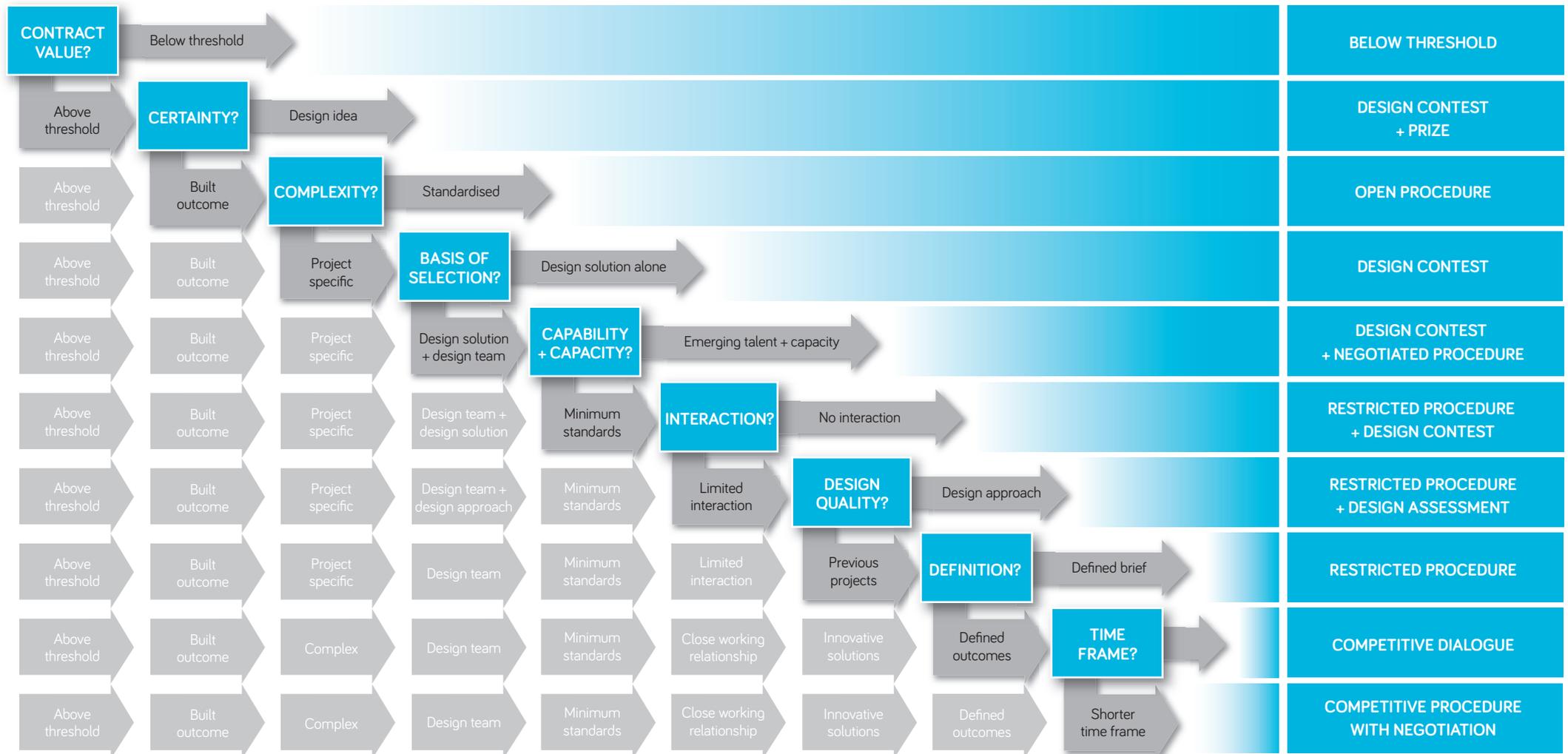
### Restricted Procedure

If you want **the right design team to develop the design for your project** based on their track record of delivering design quality, you can choose the more commonly used Restricted Procedure and ask for evidence of previous relevant experience at selection stage. The Restricted Procedure requires you to have a well-defined brief and a clear idea of what a successful project outcome looks like. It can be a quick, effective and manageable approach to awarding a contract from a viable list of tenderers.

### Restricted Procedure followed by an assessment of design approach

If you want **the right design team and the right design approach to a project** you can include as part of the tender stage an assessment of the tenderers' design approach to a detailed brief as a primary award criterion. This process is commonly known as a 'design competition' as distinct from the legally defined Design Contest procedures.

# What to consider in selecting your procurement procedure



**CONTRACT**

What is the value of the architectural services contract?

**PROJECT**

Is there certainty that your project will go ahead or do you just need a design idea?  
Is your project straightforward or complex? Do you need a project specific or standardised solution?

**SELECTION**

Do you want to select a design team to develop the design or to provide an opportunity for emerging talent by selecting on the basis of a design solution alone?  
Do you want additional capacity and resource to derisk appointing an emerging design team or to shortlist design teams that meet certain minimum standards?

**PROCUREMENT PROCESS**

Do you want to negotiate and / or engage closely with competing design teams during the procurement process?  
Do you want to evaluate a design team's response to a detailed brief, their track record of delivering design quality or their approach to developing innovative solutions for a complex project?

**PROJECT**

Do you have a well-defined project brief or a strategic brief that defines your project outcomes?

**PROCUREMENT PROCESS**

Do you want the option to make an award without negotiation to save time and cost?

This diagram has been prepared for information only. Appropriate legal advice should be sought in respect of individual project circumstances.

### Competitive Procedure with Negotiation

If you want **an innovative design team to help you develop your approach** to achieving your project outcomes the Competitive Procedure with Negotiation may be suitable. This procedure enables a client team who have a clear idea what a successful project outcome looks like but are not sure how to get there to engage directly with the potential design team in an iterative process of discussion and confidential negotiation. This route is only available for 'complex projects'<sup>16</sup>.

Competitive Procedure with Negotiation<sup>17</sup> requires you to define your needs, minimum requirements, the service, the award criteria and the project scope and nature in a Prior Information Notice (PIN) or contract notice. You can then shortlist a minimum of three candidates to submit a tender and enter into a structured negotiation phase. It can be used where design services or innovative solutions are sought which require negotiation.

Candidates can be shortlisted using a simplified PQQ, but you can assess design quality at selection stage by using examples of previous relevant experience as a selection criterion. It is important to put in place safeguards to ensure the process is fair and transparent.<sup>18</sup> This process is suitable for awards of frameworks or individual lots.

When managed efficiently, this structure may result in a shorter time frame than Competitive Dialogue, and does not require detailed design proposals. To save time and cost, under this procedure you can make an award without negotiation after Invitation to Tender (ITT) as soon as there is an award-winning response which meets your stated minimum requirements, provided that this is made clear in the tender documents. The negotiation stage can be used to improve your understanding of how the tenderer proposes to achieve your project outcomes or determine the best solution to meet your needs. The procedure also allows you to continue negotiations and reduce the number of tenderers in stages until you have arrived at an optimal response, provided that this is made clear in the tender documents.

<sup>16</sup> Regulations 2015 26 (4). 'Complex contracts' includes contracts for services that include design or innovative solutions

<sup>17</sup> Regulations 2015 29

<sup>18</sup> Directive 2014/24 Recital 45 and Regulations 2015 29

### Competitive Dialogue

If you want **the right design team to develop a complex design solution in a close working relationship** with you as client Competitive Dialogue allows you to identify the best technical and contractual solutions to meet your requirements through a staged procedure. Following issue of a contract notice and selection of a shortlist of a minimum of three tenderers, you can enter a structured dialogue phase that enables tenderers to understand your requirements and to test their solutions against those requirements. The dialogue can consider design approach or team composition but down selection must be based on published evaluation criteria which reflect your intended project outcomes. By the end of the closed dialogue phase, all issues should be closed down and it should be clear what you will achieve through the project before the formal tender phase.

This approach is also only suitable for 'complex projects'. While it provides flexibility on solutions, this process needs to be properly planned and managed to avoid onerous, inefficient and costly tendering processes for both clients and tenderers. Common pitfalls include choosing client representatives without the skills to conduct the dialogue effectively, running too many tendering stages, and requesting additional work from tenderers.

## 4 Consider whether a framework will deliver the best outcomes and design quality for the full range of projects you intend to procure. If awarding frameworks, consider dividing them into more numerous and smaller lots

Many public bodies choose to buy in a wide range of generic design services and construction works across a large number of different projects through joint purchasing arrangements and framework agreements. While these arrangements are often used in an attempt to reduce administration costs and streamline procurement processes, care needs to be taken to avoid duplication and over-complication.

Even when frameworks are well run, the time saved in tendering generic work does not always translate into best value or best outcomes for the individual projects. Specialist talent and innovation can also be locked out by inappropriate use of frameworks that bundle together contracts in different locations or of different types and values. Excluding smaller and more specialised practices that are not able to service the full range of projects on a framework can have a significant negative impact on the local supply chain by reducing competition and raising prices.

Project: **Jesmond Gardens Primary School**  
 Architect: **ADP Architecture**  
 Photo © Andrew Heptinstall



Because minimum standards at selection stage are often proportionately higher, including requirements for Professional Indemnity Insurance (PII) and turnover, frameworks and joint purchasing arrangements can exclude smaller practices that may have the appropriate skills or local knowledge needed to deliver a successful project. In addition, you will now need to explain why you are not dividing contracts into lots.<sup>19</sup>

<sup>19</sup> Regulations 2015 46 (2)

If you are calling off contracts from one of the large commercial providers or government organisations, consider which framework is the most appropriate for your needs and check that you are entitled to call-off under it.

If you are awarding frameworks, consider offering more lots according to the size, value, type or location of a project or the nature of the service provided. Having a clear and well-considered contract strategy that breaks contracts into lots according to what you want to achieve can deliver the best quality and end results. You can do this specifically to encourage smaller practices. Breaking a framework into lots still enables you to access design services quickly and efficiently from a readily available list of consultants. The criteria for awarding call-off contracts under a framework should be appropriate for the specific project; you should determine the terms of operating and calling off the framework in the procurement documents for the framework agreement from the outset.

To ensure that the contract is awarded on design quality and not cost, you can call off the design approach from your framework of suitable consultants in a simple, sketch design mini-competition. A fixed fee call-off can be used, particularly where the framework being used has established fee rates – where the cost is fixed and competition is on quality.

## 5 Consider actively encouraging consortia bids from smaller practices, making it as simple as possible for consortia to compete

Professional consultants who form consortia on the basis of their shared understanding or similar approach can promote more integrated team working. Consortia can allow smaller creative practices to work with larger firms or contractors, provide an innovative way of drawing complementary strengths, skills and resources together, and help talented designed teams to meet previous experience and financial standing criteria collectively.

Giving candidates advance notice of tenders will allow consortia the time and opportunity to form. When assessing consortia bids, you must use criteria that are proportionate and justifiable. There is also no requirement for consortia to have a legal framework in place at bid stage, but it may be a condition of contract award.<sup>20</sup>

Project: Sandal Magna  
Architect: Sarah Wigglesworth Architects  
Photo © Mark Hadden



<sup>20</sup> Regulations 19 (3) and (6) 63

## 6 Make the selection phase as simple as possible and proportionate to the scale and complexity of your project

The selection and award stages of any procurement process consider different criteria. While the award stage considers criteria specific to the project, the selection stage evaluates the suitability of the tendering organisation to carry out the contract; selection criteria cannot be revisited at award stage.

In order to find the right design team, in most cases you need to narrow down potential candidates to a list of tenderers capable of meeting your project needs. The tendering process should allow competing design teams to demonstrate their ability. While not compulsory, issuing a Prior Information Notice (PIN) can enable you to attract a wider pool of tenderers and carry out pre-procurement market testing. It may also reduce the timescales for tenders in some circumstances.

A PQQ is simply a tool to identify candidates that have the necessary financial, technical and economic standing to fulfil the contract. The Public Contracts Regulations 2015 do not require long and complicated PQQ documents with extensive written questions. Asking for unnecessary information creates a vast amount of effort and wastes resources at submission and assessment stage for both bidding practices and client organisations. A standard PQQ has been created to reduce the time and cost for candidates in tendering. Any amendments or additional questions should only be used if they are proportionate and justified.<sup>21</sup>

<sup>21</sup> Public Contracts Regulations 107. Departures from the standard document should be reported to the Cabinet Office, but this should not restrict appropriate changes.

As a baseline, a PQQ must include pass or fail criteria to ensure that tenderers are not in breach of their professional, tax and social security obligations, which might make them unsuitable to bid. Beyond statutory requirements, you can use the PQQ to request other factual information and ask sensible questions relevant to the particular contract. This enables you to assess a tenderer's financial and technical competence to deliver your desired project outcomes, and ensure compliance with your own standing orders.

You can ask design teams to demonstrate their interest and relevant capability to enable you to make an informed decision on which practices meet the requirements of your contract. Your selection process can ask for evidence of previous experience or emphasise that the selection process will encourage innovative practices. The information requested and supporting evidence must be related, proportionate, and appropriate to the contract and selection must follow the published process.<sup>22</sup>

You can defer the point at which you ask for verification of core qualification requirements (economic, financial standing and technical ability) to after pre-qualification and before award to help reduce costs to both you as contracting authority and to tenderers.

To make the selection process as simple and efficient as possible, you can use the following evidence of meeting the relevant standards:

- PAS91 to establish the standard baseline requirements
- ‘Registered Architect’ or equivalent in other Member States as evidence of quality assurance standards<sup>23</sup> and tenderers’ capability to perform their professional activity<sup>24</sup> when you are procuring ‘architectural design services’
- Professional accreditation systems such as the RIBA Chartered Practice scheme as evidence of quality assurance standards<sup>25</sup>
- A ‘European Single Procurement Document’<sup>26</sup> that provides a standard self-declaration as preliminary evidence that a practice meets the core conditions for tendering for a contract

<sup>22</sup> Regulations 2015 58 (3)-(4)

<sup>23</sup> Common Procurement Vocabulary CPV 71000000-6

<sup>24</sup> Regulations 2015 62

<sup>25</sup> Regulations 2015 56 (3)-(4), 59 (1) and 59 (11)

<sup>26</sup> At the time of publication, the EU Commission has adopted the new European Single Procurement Document but it is not yet in force.

## 7 When assessing consultant capability, consider a track record of undertaking projects of a similar scale and complexity rather than extensive previous experience of an identical project type

Your selection criteria should enable you to assess the capability of the design teams to help you achieve your project objectives, and provide scope for candidates to demonstrate their skills and creativity. Extensive recent experience of an identical building type is commonly used as a selection criterion. However, this approach risks excluding the specialist skills you need for a project, in conservation for example, or limiting the possibility for innovation and transfer of expertise between sectors.

A track record of undertaking a project of similar complexity is a better indicator of capability; skilled and high performing design professionals are able to tackle a broad range of projects. You can also visit previously completed projects and engage the stakeholders as reliable evidence of track record.<sup>27</sup> If you chose to consider previous experience, the recommended time frame is five years.<sup>28</sup> At selection stages or when calling off a framework, you can now take into account a failure to deliver or perform of a design team you have used on previous projects.<sup>29</sup>

<sup>27</sup> Regulations 2015 58 (19)

<sup>28</sup> The time period for previous experience depends on the sector and can be extended to increase competition in exceptional circumstances. 60 (9) (a)(i)

<sup>29</sup> Regulations 2015 Article 57 (9)(g)

## 8 Set out your evaluation criteria for both selection and award stages clearly in advance, and balance quantitative (fees and cost) with qualitative criteria, using a qualified design assessor

Design quality is difficult to quantify so it can seem simpler and less risky to focus on criteria more measurable in the short term such as capital cost and delivery time. But good design will only be achieved if quality objectives are important criteria in selection and in awarding contracts. As a guideline, an appropriate balance is 70% quality: 30% cost.

Decisions on procurement should be made on the basis of a long-term view of value for money, rather than selecting on the basis of lowest price. The new Public Contracts Regulations 2015 introduce cost-effectiveness as an award criterion with lifecycle costing as one possible approach.<sup>30</sup> There are a number of tools you can use to assess and score qualitative aspects to ensure your objectives are fully reflected in your decisions on procurement. Project specific design proposals can form part of the award process. If you chose an approach that balances quantitative with qualitative criteria, you will need specialist skills and dedicated resources to assess tender submissions. The quality of tender appraisal has a direct bearing on the success of project outcomes, so consider involving an appropriately qualified design assessor – such as an RIBA Client Design Adviser, RIBA Competitions or RIBA Architect Adviser – throughout your procurement process, particularly where specialist in-house experience is unavailable.

A **balanced score-card** can be used as a framework to balance quantitative criteria, such as fees and cost, against qualitative criteria such as design quality at award stages.<sup>31</sup> You can determine target costs at the outset of a procurement stage and allow tenderers to compete on the basis of quality criteria by using a fixed price or cost approach.

The mandatory criterion for assessing contract awards is the **Most Economically Advantageous Tender (MEAT)**.<sup>32</sup> This approach may include the best price-quality ratio which enables you to take account of qualitative, technical and sustainable aspects of tender submissions as well as price or cost, using a cost-effectiveness approach, such as life-cycle costing.<sup>33</sup> You can consider a range of criteria that must either be weighted according to your objectives, priorities and brief, or listed in order of importance. Quality criteria can include technical merit, aesthetic and functional characteristics, inclusive design, social and environmental characteristics and innovation.

You can evaluate the cost-effectiveness of a specific project over its life-cycle taking into account the costs of acquisition, resource and energy consumption in use, maintenance and end of life costs such as recycling, as well as wider environmental impacts where these are relevant to the award.<sup>34</sup>

<sup>34</sup> Regulations 2015 68 (1)-(2)

Keeping the evaluation requirements of the tender process simple will improve the process. Consider:

- Page limits for bid submissions
- Illustrated submissions; this approach works best with the support of a qualified design assessor
- Readily available open document formats such as .jpg, .tiff, .pdf, .dxf, .xls in standard sizes (A4-A1) and mpeg with specified maximum file sizes

Project: **Tottenham Public Room**  
Architect: **Gort Scott Architects**  
Photo © Tottenham Public Room



<sup>30</sup> Regulations 2015 68 (1)

<sup>31</sup> This approach was used effectively by the Olympic Delivery Authority on all its procurements.

<sup>32</sup> Regulations 2015 67 (2)

<sup>33</sup> Sustainability is a core principle of the National Planning Policy Framework (NPPF) and Public Services (Social Value) Act 2012

## 9 Establish financial thresholds based on the scale, complexity, actual level of risk and value of the design services – turnover and Professional Indemnity Insurance requirements are not mandatory criteria

The use of minimum turnover and Professional Indemnity Insurance (PII) cover as a percentage of contract value is often used as a guide to establish capability to take on work of a particular scale. Current turnover or staff numbers are not always an accurate reflection of experience, capacity or suitability. Prohibitively high thresholds can exclude many highly competent, specialised and innovative practices.

Minimum turnover is not a mandatory requirement to establish the financial standing of design teams.<sup>35</sup> Financial requirements should be scaled to the value of the architectural services contract, not the overall contract value; annual turnover thresholds should not exceed twice the overall value of the architectural services.<sup>36</sup> Contract Notices should, therefore, give the value of the services contract, not the value of the construction works. Bank statements can be an appropriate acceptable alternative to establish financial standing.<sup>37</sup>

PII is not required to tender for a project; you can defer the requirement to meet a PII threshold until a contract is awarded. Project-based insurance models (Single Project Insurance or Integrated Project Insurance currently being trialled by Government), which reinforce integrated project teams and facilitate BIM, can be considered as an alternative to PII cover.

<sup>35</sup> Regulations 2015 58 (7)-(9) and 60 (6)

<sup>36</sup> Directive 2014/24 Recital 83, Regulations 2015 58 (9)

<sup>37</sup> Regulations 2015 60 (6) (a-b)

## 10 Choose a standard type of building contract and consultant appointment that promotes collaboration, integration and direct communication with your design team

The procurement procedures used to select your design team are closely related to the type of contract used to deliver the project. Your choice of building contract can depend on the balance of many factors including the project type and quality, project value and delivery timescale, flexibility and certainty, responsibility and risk. You will also need to consider the implications on programme and cost of when and how different project team members are engaged.

Choosing an integrated process (Two-stage Design and Build or Management Contracting) that enables design teams to develop proposals with an experienced contractor from an early stage is one way of promoting construction innovation without increasing risk.

Traditional forms of contract allow you to appoint your design team directly. Experience shows that project outcomes are better when the client has a direct relationship with the design team throughout – preferably contractual.<sup>38</sup>

If you chose contractor-led contracts (Design and Build or Management Contracting) and you are procuring your design team via a contractor, you can require that they identify and use design talent or call off their design team using a qualitative selection procedure. Alternatively, you can directly appoint the design team and then novate that team to the selected contractor – but only at the point when the design is sufficiently mature and detailed.

Appointing a multi-disciplinary design team through a lead consultant in a single-point design contract is becoming increasingly common practice. This form of contract reduces the number of interfaces you need to manage but may limit direct communication with members of your wider design team. It also affects the overall value of services, increasing PII and turnover thresholds as a consequence, if they are a requirement.

<sup>38</sup> The ADS publication CASE NOTES: Client Leadership provides examples

You can use standard forms of contract and the RIBA Standard Agreement for all but the largest and most specialist projects. Bespoke agreements and contracts are an unnecessary cost.

It is in your interests as client to ensure that your sub-contractors (tier 2 suppliers) can perform effectively and efficiently by offering fair and transparent payment terms, avoiding deferred or draft invoicing or equivalent terms. You can pay through Project Bank Accounts, and in all cases within 30 days.

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Edited by  
Lucy Carmichael

With thanks to RIBA members

Fin Garvey  
Dale Sinclair  
Hilary Satchwell  
Russell Curtis  
John Cole  
Warren Whyte

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Designed by  
darkhorsesdesign.co.uk

# Ten Principles for Procuring Better Outcomes

- 1** Invest in the right design skills, briefing and design process at the right stage when setting project budgets and fee levels
- 2** Consider whether and how the Public Contracts Regulations 2015 apply when commissioning design or architectural services
- 3** Select and tailor your procurement procedure to suit your project needs, using design quality as a means to shortlist or award contracts where appropriate
- 4** Consider whether a framework will deliver the best outcomes and design quality for the full range of projects you intend to procure. If awarding frameworks, consider dividing them into more numerous and smaller lots
- 5** Consider actively encouraging consortia bids from smaller practices, making it as simple as possible for consortia to compete
- 6** Make the selection phase as simple as possible and proportionate to the scale and complexity of your project
- 7** When assessing consultant capability, consider a track record of undertaking projects of a similar scale and complexity rather than extensive previous experience of an identical project type
- 8** Set out your evaluation criteria for both selection and award stages clearly in advance, and balance quantitative (fees and cost) with qualitative criteria, using a qualified design assessor
- 9** Establish financial thresholds based on the scale, complexity, actual level of risk and value of the design services – turnover and Professional Indemnity Insurance requirements are not mandatory criteria
- 10** Choose a standard form of building contract and consultant appointment that promotes collaboration, integration and direct communication with your design team