Inform Practice Note #24

September 2010
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Managing Construction Procurement Processes

Synopsis:

The construction procurement system put in place by the cidb provides a set of standard procurement procedures and comprehensive rules in the form of Standard Conditions of Tender and Standard Conditions for the Calling for Expressions of Interest. Such a procurement system needs to be managed so that it remains fair, equitable, transparent, competitive and cost effective and does not present unacceptable procurement risks.

This practice note highlights the legislative requirements for managing and controlling procurement processes and suggests how construction procurement processes should be controlled. It also recommends a number of procurement gates within the procurement process.

cidb’s Inform Practice notes provide guidance and clarity in achieving client objectives in construction procurement and delivery. Practice notes inform clients and practitioners on how to embrace best practice and how to deal with issues that may arise. They are aligned with, but do not replace regulation.

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1. Managing construction procurement risks

Procurement commences once a need for goods, services, construction works or disposals has been identified and ends when the goods are received, the services or construction works are completed or the asset is disposed of. Accordingly, a procurement system comprises processes which are underpinned by methods and procedures and which are informed and shaped by societal goals and the policy of an organisation.

Risk is a part of life. Every person and every organisation deals with some element of risk every day. There are different types of risks, different levels of risk, risks that can be minimised and managed, and some risks that cannot be controlled. Risks cannot be completely eliminated and many risks cannot be avoided. A proactive approach to risk management is the best approach. To be successful, risk management must form part of the philosophy of an organisation and be integrated into its business plans and practices.

Risks in the public procurement system invariably relate to the failure to satisfy the constitutional imperatives for the procurement system, namely that the system as designed and implemented remains fair, equitable, transparent, competitive, and cost effective. At the same time, poor procurement practices can undermine the good governance aspects of financial management as embodied in the Public Finance Management Act (PFMA) of 1999 and the Local Government: Municipal Finance Management Act (MFMA) of 2003.

The cidb’s Standard for Uniformity in Construction Procurement and best practice guidelines (see www.cidb.org.za) establishes processes, methods and procedures which enable the constitutional imperatives to be satisfied and provide a means by which risk relating to corrupt and fraudulent practices, fruitless and wasteful expenditure, irregular and unauthorised expenditure, and overspending to be minimised. Procurement processes and activities, however, need to be managed to ensure good governance in the procurement process.

Many of the activities that form part of a public procurement system carry risk. Identifying, assessing and managing these risks needs to be an organisational imperative. The PFMA and MFMA require accounting officers and authorities to have in place effective, efficient and transparent systems of risk management. Understanding the type and/or source of risk, as well as the work of the organ of state that they can affect, is critical to the process of risk identification and analysis.

2. Strategies for managing construction procurement risk

Some of the basic strategies for managing construction procurement risk include:

- **Corrupt practices** – the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the tender process.
- **Fraudulent practice** – misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels.
- **Fruitless and wasteful expenditure** – expenditure which was made in vain and would have been avoided had reasonable care been exercised.
- **Irregular expenditure** – expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation.
- **Overspending** – expenditure in excess of a voted (sanctioned) amount or a main division of a vote.
- **Unauthorised expenditure** – overspending of a vote or a main division within a vote or expenditure not in accordance with the purpose of a vote or a main division within a vote.
- **Under expenditure** – expenditure below a voted amount or a main division of a vote.

Risk is defined in ISO GUIDE 73:2009 as the effect of uncertainty on objectives.
• Putting in place control points within the procurement process (procurement gates).
• Documenting and publicising procurement policy, directives and standard operating procedures.
• Putting in place control budgets for capital works projects and the development and management of such projects through a set of implementation gates.
• Identifying appropriate procurement strategies for a particular procurement.
• Drafting of adequate procurement documents (tender and contract documents) for a particular procurement.
• The putting in place of a documented risk register which includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk.
• The provision of reasonable dispute resolution mechanisms.

3. Managing procurement processes in compliance with legislative requirements

South Africa’s national regulatory framework for all organs of state other than major public entities and national government business enterprises requires that a supply chain management system contains the following six elements:
1) Demand management;
2) Acquisition management;
3) Logistics management;
4) Disposal management;
5) Risk management; and
6) Regular assessment of supply chain performance.

Demand lies at the beginning of the supply chain. The major activities associated with identifying the demand are to establish requirements and to determine needs. The objective of demand management is to ensure that the resources required to support the strategic objectives are delivered at the correct time, at the right price and at the right location, and that the quantity and quality will satisfy needs.

The major activities associated with acquisition are:
• Acquire supplies, services, and engineering and construction works; and
• Take delivery of supplies, project deliverables and engineering and construction works.

Supplies and services which are not available within an institution can be sourced from other institutions.
or procured through a contract put in place by either national or provincial treasury or another institution (i.e. a transversal contract) or directly from the market.

The Supply Chain Management Regulations issued in terms of both the Public Finance Management Act of 1999 and Local Government: Municipal Finance Management Act of 2003 require the establishment of a separate supply chain management unit to implement the institution’s supply chain management system. They also require that a committee system be put in place comprising:

- Bid specification committee;
- Bid evaluation committee; and
- Bid adjudication committee.

### 4. The committee system as applied to construction procurement

#### 4.1 General

The construction procurement system developed by the cidb is a rule based system, based on the proposition that since procurement is a process, it can be standardised. This approach to procurement lends itself to being managed by flexible oversight structures with specifically defined roles and responsibilities.

The bid specification committee and the bid evaluation committee do not need to be a standing committee which deals with all procurement within a region, department or entity. These committees can be formed on an adhoc basis, on a project specific basis (series of related contracts) or to deal with relatively small repetitive contracts. This is preferable as it allows available technical expertise to be matched with the nature of the procurement.

The bid adjudication committee must, however, be a standing committee formed to oversee construction procurement within a unit, a department, region or any combination thereof. It is essential that suitably qualified built environment professionals participate in all of these committees to enable the technical and risk management issues relating to contracts to be adequately addressed.
Where client departments make use of an implementing agent (i.e. an agent of the client who is a government department or state owned enterprise which implements a programme or project on a client’s behalf), it is advisable that suitably qualified representatives of the client department participate in the bid specification and bid evaluation committees. This will not only improve transparency and foster co-operation in the process but will also improve the alignment between procurement outcomes and client department expectations. It is imperative that client departments have a say in managing procurement related risks prior to tenders being called for and when tenders are evaluated.

4.2 Bid specification committee

The bid specification committee in a construction procurement context is essentially a “documentation review team” comprising suitably qualified persons who are best able to advise on the acceptability of procurement documentations in terms of contractual risks and the end outcome of the procurement. The bid specification committee needs to review procurement documents with a view to confirming that:

- The procurement documents have been formatted and compiled in accordance with the requirements of relevant pieces of legislation and the cidb Standard for Uniformity in Construction Procurement and, where relevant, correctly reflect the procurement strategy decided upon (see cidb Inform Practice Note # 23).
- The selected form of contract is appropriate for the procurement that is contemplated.
- Relevant standard templates have been correctly applied.
- Legal approval has been obtained for additional conditions of contract or the modifying of conditions of contract not provided in the organisation’s approved standard templates.

- The selected contract data/tender data options are likely to satisfy procurement objectives and are likely to yield best value outcomes.
- The scope of work adequately establishes what is required and the constraints to the manner in which the contract work is to be provided.
- The risk allocations are appropriate.
- Prompts for judgement or qualitative indicators are communicated to respondents or tenderers in procurement documents where quality forms part of the evaluation criteria.
The bid specification committee should identify sections, if any, which require amendments or improvements, and grant the necessary approval, as relevant.

4.3 Bid evaluation committees

Bid evaluation committees, which are in essence “tender evaluation panels” in a construction procurement context, comprise suitable qualified persons who are conversant with various aspects of the procurement. The bid evaluation committee must:

• Require each of its members to declare their interest or confirm that they have no interest prior to commencing with the evaluation.
• Evaluate each submission strictly in accordance with the provisions of cidb Standard for Uniformity in Construction Procurement read in conjunction with the procurement documents (see cidb Inform Practice Notes 5 and 12).
• Identify and evaluate commercial risks.
• Prepare a tender evaluation report, prequalification, shortlisting or approved listing report, as relevant, complete with recommendations which clearly states the reasons for overlooking a tenderer or respondent.

The bid evaluation committee should develop a forecasted final cost which includes allowances for the effect on the likely final amount payable to the contractor in terms of the total of prices for scope changes, price adjustment, currency fluctuations, identified risks, and other contingencies and provide a build up of this cost in the evaluation report.

The forecasted final cost, which is the estimate of the likely cost of completing the contract, is in effect the approved amount.

Approval to incur expenditure needs to be obtained should the final total of prices exceed this amount by a percentage, say more than 10%. The organisation’s procurement policy should establish this margin.

4.4 Bid adjudication committee

The bid adjudication committee is a governance structure. This committee considers and approves certain strategic actions relating to procurement and disposal transactions. This committee also needs to monitor the issuing of task or package orders within framework agreements to ensure that where more than one contractor is admitted to a framework agreement, the procurement remains fair, transparent and equitable.

The bid adjudication committee needs to:

• Review the need for disposals and appoint a disposal committee to advise on how best to conduct a disposal.
• Approve or refer back the items submitted for approval to the originator for refinement or additional information.
• Monitor the issuing of task, batch or package order issued in terms of a framework contract (see cidb Inform Practice Note # 15).

cidb Standard for Uniformity in Construction Procurement

4.3 Quality

4.3.5 Where quality is evaluated, at least three persons who are fully conversant with the technical aspects of the procurement shall undertake such evaluation. Quality shall be scored in terms of the prompts for judgement with fixed scores assigned to each prompt, either individually and averaged or collectively, as appropriate.

4.3.6 To ensure consistency in scoring, members of the evaluation panel shall be provided with prompts for judgments or qualitative indicators relating to all quality criteria and any sub-criteria that are linked to a specific score. Such prompts shall be communicated to respondents or tenderers in procurement documents. The rating of submissions shall be based on the information submitted or, where relevant, from interviews, and not on mere speculation or suspicion or the personal knowledge of a panel member.
• Review the reasons submitted for the use of the negotiated procedure in an emergency and either accept them or reject them.

The membership and composition of the bid adjudication committee needs to be determined by the accounting officer or accounting authority.

4.5 Disposal Committee

A disposal committees should decide how best to undertake disposals. The reasons for adopting a disposal strategy should be recorded and forwarded to the bid adjudication committee for acceptance and auditing purposes prior to proceeding with such disposal.

<table>
<thead>
<tr>
<th>Item for approval</th>
<th>Actions</th>
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<tbody>
<tr>
<td>Placing of contractors under restrictions</td>
<td>Make recommendation to the accounting officer or accounting authority to place a person or contractor under restrictions.</td>
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<tr>
<td>Names of pre-qualified or short listed respondents or approved list of respondents</td>
<td>Review evaluation report, verify compliance of the procurement process with the requirements of the cidb Standard for Uniformity in Construction Procurement and the organisation’s policies, confirm the integrity of the process and the reasonableness and correctness of reasons provided for the elimination of respondents. Approve or refer back.</td>
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<tr>
<td>Award of contract</td>
<td>Consider the report and recommendations (tender evaluation report) of the evaluation committee and:</td>
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<td></td>
<td>• Verify compliance of the procurement process with the requirements of this document;</td>
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<td></td>
<td>• Confirm the integrity of the process; and</td>
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<td></td>
<td>• Confirm the reasonableness and correctness of reasons provided for the elimination of tenderers/respondents.</td>
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<td>Consider commercial risks and identify any risks that have been overlooked and warrant investigation prior to taking a final decision.</td>
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<td>Consider the approval amount submitted in the Tender Evaluation Report (i.e, the forecasted final cost) and approve/not approve the award of the contract.</td>
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<tr>
<td>Use of a negotiation procedure</td>
<td>Review motivation to proceed with the negotiation procedure.</td>
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<td>Approve or refer back.</td>
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<td></td>
<td>Provide mandate for the award of the contract or not. Ratify the use of the procedure in an emergency.</td>
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<tr>
<td>Waiving of penalties</td>
<td>Consider the motivation for and the circumstances surrounding the waiver of penalties and low performance damages.</td>
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<td>Approve/not approve waiver.</td>
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<tr>
<td>Approval of increase in the total of prices beyond the sanctioned amounts (if delegated to award a contract)</td>
<td>Consider motivations and reasons for increase.</td>
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<td>Consider consequences of not approving the increase or alternative ways of dealing with the causes of the projected increase.</td>
</tr>
<tr>
<td>Use of a disposal strategy or procedure</td>
<td>Review disposal strategy or procedure put forward by the disposal committee. Approve or refer back.</td>
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<tr>
<td>Approval to award a contract/issue a task order</td>
<td>Where delegated, approve the award of the contract or the issuing of a task order.</td>
</tr>
<tr>
<td>Removal of a name from a pre-approved list</td>
<td>Review motivation for removing a name and approve/not approve the removal of the name from a preapproved list.</td>
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</table>
4.6 Delegated authority to award a contract

The person authorised to award a contract i.e. the accounting officer/authority, delegated person, or bid adjudication committee, as relevant, should, as necessary, consider the recommendation to award a contract, and award the contract, cancel the tender, or refer the contract back to a committee for further consideration.

Such person should also review any motivation for increase in final contract which exceeds the approved amount by more than 10% (or whatever margin is stated in the organisation’s procurement policy) and consider consequences of not approving the increase or alternative ways of dealing with the causes of the projected increase.

4.7 Awarding of package, batch or task orders within a framework agreement

The process for putting in place a framework agreement is the same as that for any other contract. The process must be in accordance with the organisation’s procurement procedures and delegations. The award of framework contracts must be by the authority to award a contract (typically the bid adjudication committee), because it is committing the employer to a contractual relationship notwithstanding its nil value at the time of award.

Once a contract is in place, package/task orders can be issued in accordance with the provisions of the framework contract.

Each package or task order for the purposes of internal control needs to be formally issued. The delegated authority to award a package or task order (e.g. bid adjudication committee, department or unit head, chief financial officer etc.) makes the award.

A person delegated to award a package/batch/task order may approve the issuing of a package order for works, a batch order for goods or a task order in a service area to any of the contractors who have a framework contract in place with the organisation provided that the required scope of work falls within the broadly defined scope of the framework contract.

This is permitted as a contract already exists between such contractor and the organisation.

The issuing of package and task orders to a particular contractor must nevertheless be fair, equitable, transparent and cost effective. Accordingly, a delegated authority may either:

- Issue the package/batch/task order to the contractor who in their opinion is most suited to provide the required service in the best interest of the organisation in accordance with the provisions of their framework contract, or
- Reopen competition amongst all contractors having a framework contract, and consider the consequences of not approving the increase or alternative ways of dealing with the causes of the projected increase.

Disposal should be proceeded with only after the feasibility and desirability of using one or more of the following alternative disposal strategies has been considered:

- Transfer to another organ of state, business unit or a charitable at market related value or free of charge;
- Recycling or re-use of component materials; or
- Dispose of by means of dumping at an authorised dump site, burning, demolition, etc.
contract for particular works or services by inviting all such contractors to submit quotations in accordance with the provisions of their framework contract.

The reopening of competition needs to be undertaken where there is no justifiable reason for issuing a package/batch/task order to a particular contractor or where the terms of the contract are modified. Where competition is reopened, the delegated authority must appoint an evaluation panel to evaluate quotations and to make a recommendation regarding the issuing of the package/batch/task order.

The delegated authority should within five working days of the end of each month, in the interests of good governance, report to the relevant bid adjudication committee on any approvals given for package/task orders during that month and provide a brief motivation as to why the package/task order was issued to a particular contractor.

4. Construction procurement approval gates

There are typically six principal activities associated with a generic procurement process. These principal activities need to be broken down into a number of sub-activities which incorporate control points (procurement gates) to facilitate the management of the procurement process.
### Generic procurement activities, associated steps and internal controls

<table>
<thead>
<tr>
<th>Establish what is to be procured</th>
<th>Obtain permission to start with the procurement process</th>
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<tbody>
<tr>
<td>Prepare broad scope of work for procurement</td>
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<tr>
<td>Estimate financial value of proposed procurement</td>
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<tr>
<td>Decide on procurement strategies</td>
<td>Obtain approval for procurement strategies that are to be adopted</td>
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<td>Establish applicable preferential procurement policy</td>
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<tr>
<td>Establish contract and pricing strategy</td>
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<td>Establish targeting strategy</td>
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<td>Establish procurement procedure</td>
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<tr>
<td>Solicit tender offers</td>
<td>Obtain approval for procurement documents</td>
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<td>Prepare procurement documents</td>
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<tr>
<td>Invite contractors to submit tender offers or expressions of interest</td>
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<td>Receive tender offers or expressions of interest</td>
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<tr>
<td>Evaluate expressions of interests</td>
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<tr>
<td>Prepare evaluation report on short listing process</td>
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<tr>
<td>Invite tender offers from short list</td>
<td>Confirm short-list</td>
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<tr>
<td>Evaluate tender offers</td>
<td>Confirm recommendation contained in the tender evaluation report</td>
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<td>Open and record tender offers received</td>
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<tr>
<td>Determine whether or not tenders offers are complete</td>
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<tr>
<td>Determine whether or not tender offers are responsive</td>
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<tr>
<td>Evaluate tender submissions</td>
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<td>Perform a risk analysis</td>
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<tr>
<td>Prepare a tender evaluation report</td>
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<tr>
<td>Award contract</td>
<td>Formally accept tender offer</td>
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<tr>
<td>Notify successful tenderer and unsuccessful tenderers of outcome</td>
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<tr>
<td>Compile contract document</td>
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<tr>
<td>Capture contract award data</td>
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<tr>
<td>Administrator contracts and confirm compliance with requirements</td>
<td>Capture contract completion/termination data</td>
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<tr>
<td>Administer contract in accordance with the terms and provisions of the contract</td>
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<tr>
<td>Ensure compliance with requirements</td>
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</table>
During the administration of the contract, control needs to be exercised in respect of the following, as relevant:

- The waiving of penalties or low performance damages;
- The notifying and referring of a dispute for dispute resolution;
- The approval of compensation events/variation orders arising from scope changes which increase the total of prices or the time for completion; and
- Exceeding the amount of the forecasted final cost by more than a specified margin.

Accordingly, construction procurement gates need to be linked to the following activities:

- Obtain approval for procurement strategy;
- Obtain approval for procurement documents (e.g. bid specification committee);
- Confirm that budgets are in place (e.g. SCM unit);
- Confirm shortlist to invite tenders in a qualified procedure following a call for expressions of interest (e.g. bid adjudication committee);
- Obtain approval to award contract (e.g. bid adjudication committee and authority to award a contract);
- Obtain approval to take certain decisions during the administration of a contract (e.g. bid adjudication committee); and
- Obtain approval to issue a package/batch/task order in terms of a framework contract (e.g. head of unit or department).

An organisation’s procurement policy need to stipulate who is responsible for taking decisions at each of these gates.

In the case of engineering and construction works contracts, the approval for the construction procurement strategy is made at the end of the planning activities at a portfolio level (see cidb Inform Practice Note #22). Where adjustments are made to the strategy during the package planning activities, the person(s) who approved the procurement strategy needs to approve such amendments.

The soliciting of tender offers can only take place after what is to be procured and the procurement strategy has been decided upon.
Recommended procurement gates (PG) within the cidb Infrastructure Gateway System

- **Obtain approval for compensation events/variations which increase the total of prices or the time for completion**
- **Obtain approval to exceed amount in Forecasted Final Cost by more than 10%**
- **Obtain approval to waive penalties or low performance damages**
- **Obtain approval to notify and refer a dispute to an adjudicator**

**Portfolio planning activities**

**Infrastructure planning stage (1)**
- Package for works involving construction, refurbishment, rehabilitation, maintenance, extension or alteration

**Procurement planning stage (1)**
- Management contractor
- Maintenance or design and construct contractor
- Develop and construct contractor
- Traditional contractor (design by employer)

**Package preparation stage (3)**
- Confirm that budgets are in place (SCM)

**Package definition stage (4)**
- Obtain approval to award contract (Bid adjunction committee)

**Design development stage (5)**
- Obtain approval for documents (Bid specification committee)

**Design documentation stage (6)**
- Confirm budgets are in place (SCM)

**Goods, services and in-sourced professional services**

- Call for an expression of interest

- Compete negotiation/competitive selection/negotiation procedure

**Establish what is to be procured**

**Contract for professional services**

- Decide on procurement strategy

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