

The procurement of professional services

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1. Introduction

Professional service providers within the built environment represent one of the major pools of skilled technical resources in the country that are used to ensure that technical designs and engineering and construction works are of good quality and are cost-effective. Good quality engineering and infrastructure development is essential to the country's growth and development and hence these skilled resources also play an important role in ensuring that the country remains technically competitive from a global perspective. At the same time, The Policy Strategy to Guide Uniformity in Procurement Reform Processes in Government issued by the National Treasury contains four high level objectives, one of which is to *"replace the outdated procurement and provisioning practices in government with a supply chain management function and a systematic competitive procedure for the appointment of consultants."* This policy strategy document also recognizes that *"it is necessary that certain minimum requirements of quality and efficiency be achieved when appointing consultants"*.

Accordingly, the processes of procuring services in the construction industry need to maintain a balance between reasonable compensation that will ensure the continued attractiveness and development of these professions on the one hand, and ensuring competitiveness on the other hand.

Professional service providers may be appointed for a wide variety of tasks ranging from providing advice on issues such as policies and standards, through investigations and surveys, to planning, conceiving and designing construction works. They may also be appointed to manage and monitor construction works as well as operations and maintenance. In most cases the downstream impact of the service, for example the capital cost as well as the operations and maintenance cost over the lifetime of a facility, will depend on how well these professionals carry out their work. These services all have to be provided while ensuring the safety, well being and comfort of the public using the facility. Therefore, these professionals have obligations to both the public and their clients and this requires effective communication and a relationship of mutual respect and trust between the client and the service provider to ensure success.

It is for these reasons that section 3.6.4 of the Treasury policy strategy document states that *"technical quality and independence of advice are key considerations in engaging consultants"* and that the client should *"benefit from (the consultants') superior knowledge, transfer of skills and upgrading of a knowledge base while executing an assignment."* This is followed by statements relating to the independence of advice; *"Obtaining advice that is unbiased, that is, being delivered by a consultant acting independently from any affiliation, economic or otherwise, which may cause conflicts between the consultant's interests and those of government; and "Ensuring the advice proposed, or assignment executed, meets the ethical principles of the consultancy professions"*.

2. Historical practices for procuring professional services in south Africa

Government and professional associations in South Africa have historically published time based fee scales and percentage fee scales relating to commonly encountered scopes of work for professional

services in respect of the various built environment disciplines. This has allowed appointments to be made to consultants on a prescribed fee (tariff) basis without providing a detailed scope of work. For example, a consultant can be appointed to undertake a feasibility study for a project and proceed from one stage of the project to the other as it develops, as the fee is based on a percentage of the construction works.

The manner in which services have been procured from professionals in the built environment over the last decade in South Africa varies considerably. Consultants have been appointed from panels (a data base of pre-qualified consultants) on a tariff basis (i.e. in terms of a scale of fees or standard hourly fees) either in the sequence that they are registered on the database or at the discretion of officials. Alternatively, two or three firms that are on an organization's panel are invited to submit proposals and the appointment is made on a tariff basis. Non-tariff based appointments have also been made using a number of methods including open tendering or inviting tenders from a short list of pre-qualified consultants, or from those registered on a data base. Few organs of state invite open tenders for professional services relating to routine professional services that fall within the scope of guideline tariffs. Tenders are usually only invited where the scope of work is substantial or falls outside of the guideline tariffs, eg major projects, programme management services, policy development and training.

In some instances, consultants apply for funds and execute work on a risk basis and when money is made available, they are granted appointments. Tenders are also sometimes invited and awarded on price alone.

Some departments have developed computer based software for the selection of consultants in respect of both tariff and non-tariff based appointments, subject to the estimated value of such contracts being less than a threshold value. Managers requiring professional services complete request forms, stating the value, location and service categories that they require. Consultants that satisfy the search criteria are awarded contracts or invited to submit tenders / proposals by the electronic processing of such requests, depending upon their position on the database. Consultants, upon appointment or submission of a tender / proposal are moved to a new position on the database.

3. Tariff of fees in respect of the various built environment councils

The Councils for the various built environment professions are empowered through their respective pieces of legislation to publish in the *Gazette* on an annual basis, after consultation with the voluntary associations, representatives of service providers and clients in the public and private sector, guideline professional fees. The Engineering Council of South Africa, for example, publishes the following two documents in this regard:

- Guideline Scope of Services and Tariff of Fees for Persons Registered in terms of the Engineering Profession Act, 2000; and
- Indicative Time Based Fee Rates

Professional bodies such as the South African Association of Consulting Engineers no longer issue tariffs of fees following actions taken against professional associations in other professions by the Competitions Commission.

4. Legislative requirements for the procurement of professional services

Treasury Regulation 16A6.3(g) for departments, trading entities, constitutional institutions and public entities issued in terms of the Public Finance Management Act (Act 1 of 1999) states that:

The accounting officer or accounting authority must ensure that instructions issued by the National Treasury in respect of the appointment of consultants are complied with.

The Supply Chain Management Regulations issued in terms of the Municipal Finance Management Act (Act 56 of 2003) states that:

- 35 (1) *A supply chain management policy may allow the accounting officer to procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurement are made.*
- (2) *A contract for the provision of consultancy services to a municipality or municipal entity must be procured through competitive bids if:*
 (a) *the value of the contract exceeds R200 000 (VAT included); or*
 (b) *the duration period of the contract exceeds one year.*
- (3) *In addition to any requirements prescribed by these regulations for competitive bids, bidders must furnish the municipality or municipal entity with particulars of –*
 (a) *all consultancy services provided to an organ of state over the last five years; and*
 (b) *similar consultancy services provided to an organ of state over the last five years;*
- (4) *The municipality or municipal entity must ensure that copyright in any documents produced and patent rights or ownership in any plant, machinery, thing, system or process designed or devised by a consultant, in the course of the consultancy service is vested in the municipality or entity.*
- 24 (4) *No person, advisor or corporate entity involved with a bid specification committee, or director of such a corporate entity may bid for any resulting contracts.*

Practice Note SCM 3 of 2003, *Appointment of consultants*, establishes requirements for the appointment of consultants i.e. consulting firms, procurement agents, inspection agents, auditors, other multinational organisations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organisation, individuals etc. SCM 3 describes the methods that are generally to be used for the appointment of consultants (see Annexure 1) . It is based on the procurement procedures of the World Bank (see Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, as revised)) and recognises that percentage fee contracts based on construction works costs are commonly encountered in architectural and engineering services. It expressly discourages the use of this method for the determination of fees on the basis that it implicitly lacks incentives for economic design. It recommends this method only where it is based on a fixed target cost and covers precisely defined services.

5. The provisions for professional services in the CIDB Standard for Uniformity in Construction Procurement

The CIDB Standard for Uniformity in Construction Procurement requires that professional services be solicited using a standard method in accordance with the provisions of Table 1, where the procurement procedures and methods of evaluation are in accordance with the provisions of Tables 2 and 3, respectively.

Table 1: Standard methods for procuring professional services

Type of procurement	Standard Procurement Procedure and Evaluation Method (see Tables 2 and 3)
In most cases, except in the case of complex or highly specialised assignments or those that invite innovations on the basis of quality alone.	PP2A Nominated Procedure which identifies a short list of not less than 5 tenderers to submit tenders, PP2B Open, PP2C Qualified or PP2D Quotation Procedure; or PP2E Proposal Procedure using the two envelope system with either: <ul style="list-style-type: none"> • Methods 3 or 4; or • Methods 1 and 2 with eligibility criteria framed around the attainment of a minimum quality score or quality related requirements

Type of procurement	Standard Procurement Procedure and Evaluation Method (see Tables 2 and 3)
A complex or highly specialised assignment, for which it is difficult to define the precise scope of work and tenderers are expected to demonstrate innovation in their proposals or An assignment that has a high downstream impact and requires the best available experts or An assignment could be carried out in substantially different ways, hence proposals will not be comparable.	PP2B Open or PP2E Proposal Procedure using the two envelope system with either Method 3 or 4; PP2F Proposal Procedure using the two stage tendering system with Method 1 or 2 and eligibility criteria framed around the rejection of unacceptable proposals and quality related requirements; or PP2F Proposal Procedure using the two stage tendering system with Method 3 or 4 . PP3A Restricted Competitive Negotiation Procedure PP3B Open Competitive Negotiation Procedure
A standard or routine assignment where well established practices and standards exist and in which the contract amount is small.	PP2E Proposal Procedure using the two envelope system with Method 1 or 2 and eligibility criteria framed around minimum quality related requirements
An assignment that represents a natural continuation of previous work carried out by the firm. A rapid selection is essential (eg in an emergency operation). A very small assignment. An assignment where only one firm is qualified or has the experience of exceptional worth for the assignment.	PP1 Negotiated Procedure with Method 1
Value below a threshold	PP2D Quotation Procedure with Method 1 or Method 2. PP2A Nominated Procedure which identifies a short list of not less than 3 tenderers to submit tenders
A relatively small assignment which does not justify the preparation and evaluation of competitive proposals .	PP2A Nominated Procedure to nominate a sole tenderer.
A simple assignment which is precisely defined and the budget fixed.	PP2F Proposal Procedure using the two stage tendering system with Method 3 or 4 .

Table 2: Standard Procurement Procedures

Procedure		Description	
PP1	Negotiation procedure	A tender offer is solicited from a single tenderer.	
PP2	Competitive selection procedure	Any procurement procedure in which the contract is normally awarded to the contractor who submits the lowest financial offer or obtains the highest number of tender evaluation points.	
	PP2A	Nominated procedure	Tenderers that satisfy prescribed criteria are admitted to an electronic data base. Tenderers are invited to submit tender offers based on search criteria and their position on the data base. Tenderers are repositioned on the data base upon appointment or upon the submission of a tender offer.
	PP2B	Open procedure	Tenderers may submit tender offers in response to an advertisement by the organization to do so.
	PP2C	Qualified procedure	A call for expressions of interest is advertised and thereafter only those tenderers who have expressed interest, satisfy objective criteria and who are selected to submit tender offers, are invited to do so.
	PP2D	Quotation procedure	Tender offers are solicited from not less than three tenders in any manner the organization chooses, subject to the procedures being fair, equitable, transparent, competitive and cost-effective.
	PP2E	Proposal procedure using the two-envelope system	Tenderers submit technical and financial proposals in two envelopes. The financial proposal is only opened should the technical proposal be found to be acceptable.

Procedure			Description
	PP2F	Proposal procedure using the two-stage system	Non-financial proposals are called for. Tender offers are then invited from those tenderers that submit acceptable proposals based on revised procurement documents. Alternatively, a contract is negotiated with the tenderer scoring the highest number of evaluation points.
	PP2G	Shopping procedure	Written or verbal offers are solicited in respect of readily available supplies obtained from three sources. The supplies are purchased from the source providing the lowest price once it is confirmed in writing.
PP3	Competitive negotiation procedure		A procurement procedure which reduces the number of tenderers competing for the contract through a series of negotiations until the remaining tenderers are invited to submit final offers. (See 4.2.4 to 4.2.7)
	PP3A	Restricted competitive negotiations	A call for expressions of interest is advertised and thereafter only those tenderers who have expressed interest, satisfy objective criteria and who are selected to submit tender offers, are invited to do so. The employer evaluates the offers and determines who may enter into competitive negotiations.
	PP3B	Open competitive negotiations	Tenderers may submit tender offers in response to an advertisement by the organization to do so. The employer evaluates the offers and determines who may enter into competitive negotiations.

Table 3: Standard Tender Evaluation Methods

Method	Description
Method 1: Financial offer	1) Rank tender offers from the most favourable to the least favourable comparative offer.
	2) Recommend highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 2: Financial offer and preferences	1) Score tender evaluation points for financial offer.
	2) Confirm that tenderers are eligible for the preferences claimed and if so, score tender evaluation points for preferencing
	3) Calculate total tender evaluation points.
	4) Rank tender offers from the highest number of tender evaluation points to the lowest.
	5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 3: Financial offer and quality	1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data.
	2) Score tender evaluation points for financial offer.
	3) Calculate total tender evaluation points.
	4) Rank tender offers from the highest number of tender evaluation points to the lowest.
	5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 4: Financial offer, quality and preferences	1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data.
	2) Score tender evaluation points for financial offer.
	3) Confirm that tenderers are eligible for the preferences claimed, and if so, score tender evaluation points for preferencing.
	4) Calculate total tender evaluation points.
	5) Rank tender offers from the highest number of tender evaluation points to the lowest.
	6) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

The equivalence between the standard methods for procuring professional services provided for in the CIDB Standard for Uniformity in Construction Procurement and those provided by National Treasury in Practice Note SCM 3 of 2003, *Appointment of consultants*, is outlined in Annexure 1.

6. Implementing public sector requirements for the procurement of professional services

6.1 General principles

The procurement process should result in the entering of contracts with contractors who have both the capability and capacity to perform the contract. SANS 294, *Construction Procurement Processes, Procedures and Methods*, in this regard, states that *a contract shall not be awarded to a tenderer who cannot demonstrate that he possesses the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, and the personnel, to perform the contract.*

The procurement of professional services should result in the award of a professional service contract on the basis of demonstrated competence and qualifications for the type of services required, at fair and reasonable prices. Accordingly, the underlying principle is that professional service contracts are awarded to firms which have both the capacity and capability to provide the quality of the service at a reasonable price and not necessarily to those that are the least costly. It is for this reason that the World Bank recommends that the selection be based primarily on quality¹.

There are two fundamental problems in implementing the World Bank's quality selection procedures in South Africa, namely:

- i) the introduction of preferencing in the evaluation of tenders using the approach recommended by the World Bank can lead to contracts being awarded at unreasonably high prices and may cause quality to be compromised, e.g. where the quality / price weighting is 85 / 15, the effective maximum cost premium can be significant as the combined quality and price / preference weighting is 80 / 20 in contracts having a value of R500 000; and
- ii) the selection of consultants primarily on the basis of quality in the manner proposed by the World Bank requires that the client be a "knowledgeable" one i.e. one that has the in-house capability and capacity to assess the quality that is offered in as short a space of time as is possible.

The Constitution requires that the procurement system be cost effective. This implies that best value procurement outcomes in terms of quality, downstream and life cycle costs, timing and price, using the least amount of resources necessary to effectively manage and control the procurement process, should be strived for. As a result, the quality based selection advocated by the World Bank should be approached with caution and simpler, more cost effective procedures should be explored. Clearly, selection on the basis of quality, should not necessarily mean the best quality available, but quality appropriate for the assignment.

There is also a fundamental philosophical problem with the quality based approach when it is applied to relatively straightforward professional services, in which case, quality is a measure of capability (competence) to perform the service. Is one provider more competent to provide the service than another? If so, how is this measured or assessed? Clearly, in services of this nature, the issue is whether or not a provider is qualified to perform the service on a "yes" or "no basis".

At the other end of the scale, where the scope of work is difficult to document by the employer and the outcomes and costs of the project are largely influenced by the service provider's innovation and expertise, quality needs to be assessed in the selection process, particularly where the financial offer cannot be separated from the technical proposal submitted by the service provider. In such cases, the quality of the offer evaluated in terms of a points scoring system should be based on a combination of some of the following:

- Response to (ability to relate to) the proposed scope of work/project design/approach paper which establishes the manner in which the respondent or tenderer intends to perform the contract.
- Adequacy of proposed work plan and proposed methodology.
- Organization, logistics and support resources.
- Availability of resources and workload.

¹ In terms of the World Bank guidelines, this procedure requires the submission of both technical and financial proposals at the same time, but in separate envelopes. The financial proposals of only those respondents that provide acceptable proposals are opened and evaluated on the basis of a balance between quality and financial offer. The final contract is thereafter negotiated.

- Qualifications and competence of the key staff (assigned personnel) in relation to the scope of work.
- Demonstrated experience in comparable projects.
- Demonstrated experience with respect to specific aspects of the project.
- Experience (familiarity) in the region, or similar regions.
- Performance record in similar projects.
- Communication/facilitation skills.
- Sound knowledge of the employer's policies or work procedures (or both).

In many instances, it may also be necessary to interview tenderers to confirm the quality evaluation and not rely solely on paper submissions.

3.2 Categorization of projects

Professional service projects can be categorized in terms of the complexity of the scope of work associated with a project (see Table 4).

Table 4: Categorizing projects in terms of their demands placed on the capability of service providers

Category	Nature of scope of work	Typical means for service provider to demonstrate capability to perform the contract
Routine projects	Projects where the tasks are of a straightforward nature involving, in the main, standard technologies in terms of which inputs are relatively well known and outputs can be readily defined.	Basic level of professional and technical qualifications and experience.
Specialist projects	Projects in which the bulk of the service involves technically complex work which calls for considerable innovation, creativity, expertise and/or skills.	Considerable skill and expertise to carry out the work with demonstrated experience in comparable projects.
Complex projects	Specialist projects which are characterized by ill-defined inputs and outputs.	As for specialist project plus response to (ability to relate to) the proposed scope of work/project design/approach paper which establishes the manner in which the respondent or tenderer intends to perform the contract and adequacy of proposed work plan and proposed methodology.

3.3 Recommended procedures

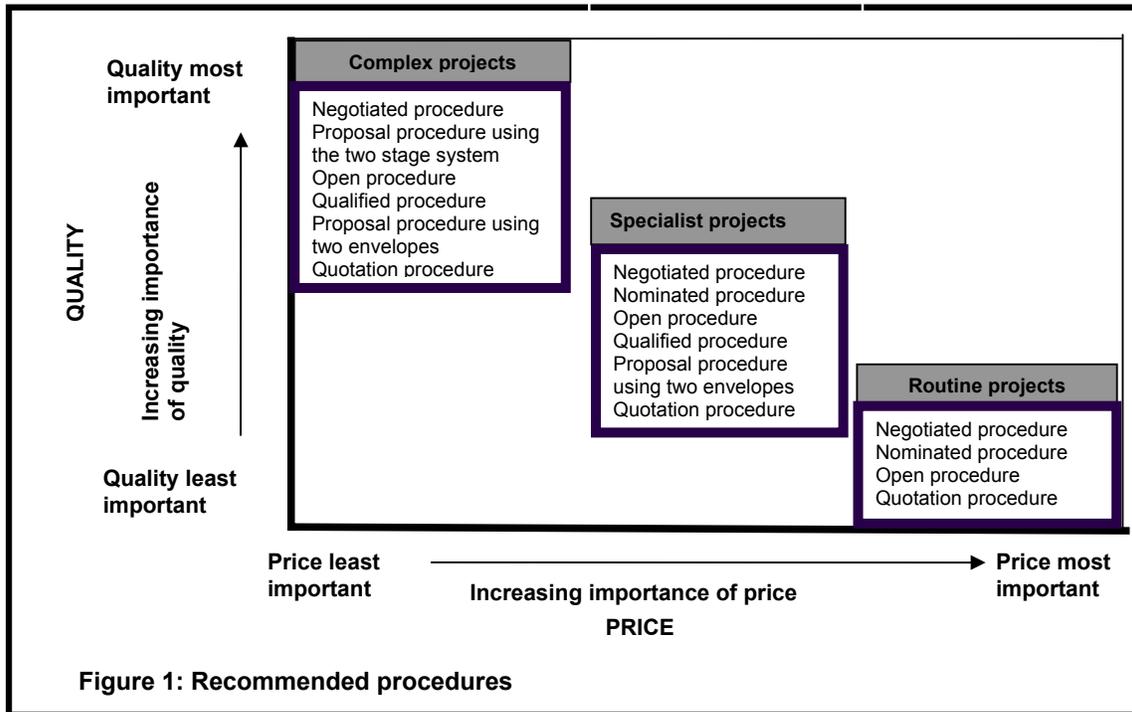
Professional services projects should be categorized in accordance with Table 4. The recommended usage of the standard methods for appointment of service providers in the CIDB Standard for Uniformity in Construction Procurement is set out in Table 5 and illustrated in Figure 1.

3.4 Table 5: Recommended usage of CIDB standard methods for the appointment of consultants

Procurement procedure	Recommended usage	Project type (see Table 4)
Negotiated procedure	This procedure should be used under the following circumstances: a) an emergency has arisen that is so extreme as to warrant the negotiated procedure to be pursued; b) the required services cannot technically or economically be separated from another contract previously executed by a specific consultant; c) only one consultant has been identified as possessing the necessary experience and qualifications to provide the required service; d) the service being procured are largely identical to work previously executed by that contractor and it is neither in the interest of the public nor the organization to solicit other tender offers; and e) the service required has a relatively low ceiling value (say R50 000 inclusive of VAT) which can be based on a time and proven cost basis, in accordance with tariffs issued by statutory councils.	Routine, Specialist or complex

Procurement procedure	Recommended usage	Project type (see Table 4)
Nominated procedure	<p>The procedure should be used where:</p> <ul style="list-style-type: none"> a) services are routine in nature; and b) a large number of appointments are to be made over a period of time and the cost of maintaining the list and administering the system in relation to the cost of advertising tenders and evaluating a possibly larger number of tenders, justifies this approach. <p>Option 1: nominate a sole tenderer Should only be used for services below the prescribed threshold of R 200 000 inclusive of VAT.</p> <p>Option 2: prepare a short-list of not less than five tenderers Should only be used for services above the prescribed threshold of R 200 000 inclusive of VAT.</p>	Routine projects
Open procedure	<p>This procedure is a suitable for the procurement of most services. Its use needs, however, to be questioned where:</p> <ul style="list-style-type: none"> a) the cost of advertising or the evaluation of a large number of tender submissions is disproportionate to the value of the work; and b) only one contractor has been identified as possessing the necessary experience and qualifications for providing the required service. 	Routine, Specialist and Complex projects
Qualified procedure	<p>This procedure should be used in the following circumstances:</p> <ul style="list-style-type: none"> a) a contract requires a high degree of specialized input or requires skills and expertise that are not readily available; b) a contract requires exceptional management skills or quality; c) a contract requires significant tenderer inputs in order to respond appropriately to requirements so that a price may be determined; d) it is desirable in a large programme to link parcels of work to tenderers who have the appropriate capacity and capability to compete against each other; e) the time and cost required to examine and evaluate a large number of tender offers would be disproportionate to the procurement; and f) for practical reasons, it is necessary to limit the number of tender submissions that are evaluated. <p>The strength of the procedure lies in the elimination of unlikely candidates for the award of the contract from the outset and to limit the number of tender submissions that require evaluation. Firms can be pre-qualified to undertake work commensurate with their capacity and capabilities and be invited in relatively small numbers to submit tenders for work that is within the scope of their capacity and capabilities, in a manner that all pre-qualified tenderers have an equal opportunity to access work opportunities.</p> <p>There is, however, an administrative cost to short-listing tenderers, particularly where short-listing is based on a points scoring system as all submissions have to be evaluated. Time gains in pre-qualifying tenderers in the subsequent tender stage may be lost in the pre-qualification process.</p> <p>It should be noted, however, that it is possible to pre-qualify tenderers in an open procedure should eligibility criteria be established in Tender data. Where this is done, only eligible (pre-qualified) tenderers would be permitted to submit tenders and evaluators would confirm eligibility to submit a tender prior to the evaluation of a tender.</p>	Specialist and Complex projects
Quotation procedure	<p>This procedure should only be used for services having a value of R 200 000 including VAT or less.</p>	Routine, Specialist and Complex projects
Proposal procedure using the two-envelope system	<p>This procedure is recommended for use in service contracts where tenderers are required to develop and price proposals to satisfy a broad scope of work established by the organization. The benefits of this approach are that quality (technical submission) may be evaluated in the absence of price i.e. price is only considered should the quality offered satisfy requirements.</p> <p>The danger in this approach is that quality is scored on a comparative basis. Where tenderers are not given an indication of the project budget or the person hours considered appropriate to execute the scope of work, there is a possibility that a proposal that satisfies minimum requirements with a moderate price is unfairly compared against a proposal that provides "all the bells and whistles" with an unacceptably high price and is eliminated from consideration. It is accordingly recommended that where this procedure is used, the project budget or the estimated time inputs are indicated to tenderers so that proposals put forward are more comparable.</p>	Specialist and Complex projects

Procurement procedure	Recommended usage	Project type (see Table 4)
Proposal procedure using the two-stage system	This procedure is appropriate only where the organization is not really sure as to what it requires or has extreme difficulty in expressing its requirements. The procedure allows the scope of work to be developed together with tenderers. It has strengths and weaknesses and should be used with caution.	Complex projects



Price should form a substantial part of the selection process where projects are of a routine nature, and proposals are judged to lead to comparable outputs. In conceptual, complex and multi-disciplinary assignments, which necessitate original investigations and studies of a specialised or complex nature, the use of price as a selection criterion should be less significant. (See Figure 1). The price / quality ratio should not be less than 15 / 85. In most complex assignments, however, a ratio of 40 / 60 or 50 / 50 should suffice.

Quality should primarily be demonstrated either through staff qualifications or through the submission of a work plan in response to a brief and general experience in the field of assignment.

Quality in professional service appointments can also be achieved through one or more of the following:

- 1) The specifying of the full and unambiguous requirements in the scope of work of a procurement document including the minimum qualifications of persons required to perform specific functions.
- 2) Making use of the qualified procedure (see Table 5).
- 3) Introducing quality into the eligibility criteria for the submission of tender offers or for the attainment of a minimum score in terms of specified quality criteria for tender offers to be evaluated.

Eligibility criteria in the form of attaining a minimum quality score can provide a simple and cost-effective alternative to the scoring of quality in tender submissions. In this procedure, the scoring of quality is merely to establish that the tenderer is capable of providing the service and to reject the tender submissions of those who fail to attain the threshold score. Thereafter the tender offers can be evaluated on the basis of price or price and preference.

Best Practice Guideline A4, Evaluating quality in tender submissions, provides guidelines on the scoring of quality in the evaluation of tender offers (see 6.4)

Table 6 outlines the options available for the remuneration of professional service providers.

Table 6: Options for remuneration of professional service providers

Type of contract	Recommended usage	Advantages / disadvantages
Lump sum (fixed price) contract Payment is linked to outputs (deliverables).	Use in assignments where the content and duration of the services and the required outputs are clearly defined.	Contracts are easy to administer as they are linked to deliverables.
Time-based contract Payment based on agreed hourly, weekly or monthly rates for staff named in the contract and on agreed rates and reimbursable items . Typically, a ceiling amount is provided.	When it is difficult to define the scope and length of services	Time-based payments need to be closely monitored and administered to ensure that the assignment is progressing satisfactorily and payments claimed are appropriate.
Percentage contract Based on the estimated or actual project construction cost or the cost of goods inspected or procured.	For architectural or engineering services relating to the built environment or to services relating to procurement and inspection agents	Implicitly lacks incentives for economic design in architectural and engineering services.
Indefinite Delivery Contract (Price agreement) Unit rates are agreed. Payment based on time actually used.	Where consultants are required on call in respect of specialized services, the extent and timing of which cannot be defined in advance, normally for a period of a year	

3.5 Compiling professional service contracts

3.5.1 General

Professional service contracts must be compiled in accordance with the provisions of the CIDB Standard for Uniformity in Construction Procurement. Accordingly, the form of contract that is to be used should be one of the following:

- CIDB Standard Professional Services Contract; or
- NEC Professional Services Contract.

Comprehensive guidance on the compilation of professional service procurement documents is provided in the CIDB's Standardized Construction Procurement Documents for Professional Services

3.5.2 Tender data

Tender data must be prepared in accordance with the provisions of the CIDB Standard for Uniformity in Construction Procurement. The following examples illustrate how the tender data should be formulated under different circumstances:

Use of eligibility criteria in conjunction with price and preference (example)

F.2.1	<p>Only those tenderers who have in the full time employ a person satisfying the following criteria and who has completed the declaration affidavit for dolomitic stability investigations are eligible to submit a tender:</p> <p>i) are registered as a professional engineer in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000); or have a BSc degree, or higher, in geology or engineering geology and are registered in terms of Section 11 of the Natural Scientific Professions Act 1993 (Act No. 106 of 1993), and</p> <p>ii) have not less than 1200 hours per annum experience over the last 10 years in Geotechnical Site Investigations in Southern Africa with not less than 600 hours per annum experience over</p>
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	<p>the last 4 years in Geotechnical Site Investigations involving areas underlain by dolomites and the investigation of sinkholes and dolines and the rehabilitation of sinkholes and dolines or an accumulative experience of 25 000 hours in Geotechnical Site Investigations in Southern Africa in partially saturated soils with not less than 3 500 hours experience in dolomitic related work.</p>
F.3.11	<p>The procedure for the evaluation of responsive tenders is Method 2</p> <p>The financial offer will be scored using Formula 2 (option 1) where the value of W_1 is:</p> <ol style="list-style-type: none"> 1) 90 where the financial value inclusive of VAT of all responsive tenders received have a value in excess of R 500 000; or 2) 80 where the financial value inclusive of VAT of one or more responsive tender offers equals or is less than R 500 000. <p>Up to 100 minus W_1 tender evaluation points will be awarded to tenderers who complete the preferencing schedule and who are found to be eligible for the preference claimed.</p>

Confirming the responsiveness of tenderers to requirements in conjunction with price and preference (example)

F.3.11	<p>The procedure for the evaluation of responsive tenders is Method 2</p> <p>The financial offer will be scored using Formula 2 (option 1) where the value of W_1 is:</p> <ol style="list-style-type: none"> 1) 90 where the financial value inclusive of VAT of all responsive tenders received have a value in excess of R 500 000; or 2) 80 where the financial value inclusive of VAT of one or more responsive tender offers equals or is less than R 500 000. <p>Up to 100 minus W_1 tender evaluation points will be awarded to tenderers who complete the preferencing schedule and who are found to be eligible for the preference claimed.</p>
F.3.8.2 F.3.8.3	<p>Additional clause</p> <p>The tenderer is required to attend an interview with the Employer's evaluation panel in Pretoria on a date and at a time to be made known by the Employer. Key personnel should attend this interview.</p> <p>The tenderer will be required to present the response paper to the proposed scope of work and personnel schedule to the Employer's evaluation panel and to answer questions raised by panellists regarding the tenderer's capability and capacity to perform the proposed contract.</p> <p>A tender offer will be declared to be non-responsive by the Employer's evaluation panel should the tenderer fail to satisfy the panellists that the proposed personnel and mentoring structure is likely to result in the employer's objectives for the service being achieved.</p>

Evaluation of quality price and preference in the evaluation of tenders (example)

F.3.11	<p>The procedure for the evaluation of responsive tenders is Method 4</p> <p>The score for quality is to be calculated using the following formula:</p> $W_Q = W_2 \times S_O / M_S$ <p>where W_2 is the percentage score given to quality and equals 60 S_O is the score for quality allocated to the submission under consideration M_S is the maximum possible score for quality in respect of a submission</p> <p>The score for financial offer is calculated using Formula 1 (option 2) where W_1 is the percentage score given to financial offer and equals 100 minus W_2.</p> <p>The score for quality and financial offer is to be combined, before the addition of the score for preference, as follows:</p> $W_C = W_3 \times \left(1 + \frac{S - S_m}{S_m}\right)$ <p>Where W_3 is the number of tender evaluation points for quality and financial offer and equals:</p> <ol style="list-style-type: none"> 1) 90 where the financial value inclusive of VAT of all responsive tenders received have a value in excess of R 500 000; or
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	<p>2) 80 where the financial value inclusive of VAT of one or more responsive tender offers equals or is less than R 500 000.</p> <p>S is the sum of score for quality and financial offer of the submission under consideration</p> <p>S_m is sum of the score for quality and financial offer of the submission scoring the highest number of points</p> <p>Up to 100 minus W_3 tender evaluation points will be awarded to tenderers who complete the preferencing schedule and who are found to be eligible for the preference claimed.</p>										
F.3.11.3	<p>The quality criteria and maximum score in respect of each of the criteria are as follows:</p> <table border="1"> <thead> <tr> <th>Description of quality criteria and subcriteria</th> <th>Maximum number of tender evaluation points</th> </tr> </thead> <tbody> <tr> <td>Approach paper setting out the manner in which the tenderer intends to satisfy the requirements established in the scope of work</td> <td>25</td> </tr> <tr> <td>Qualifications and competence of the key staff (assigned personnel) in relation to the scope of work</td> <td>10</td> </tr> <tr> <td>Demonstrated experience in comparable projects</td> <td>5</td> </tr> <tr> <td>Total evaluation points for quality (W_Q)</td> <td>40</td> </tr> </tbody> </table>	Description of quality criteria and subcriteria	Maximum number of tender evaluation points	Approach paper setting out the manner in which the tenderer intends to satisfy the requirements established in the scope of work	25	Qualifications and competence of the key staff (assigned personnel) in relation to the scope of work	10	Demonstrated experience in comparable projects	5	Total evaluation points for quality (W_Q)	40
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Demonstrated experience in comparable projects	5										
Total evaluation points for quality (W_Q)	40										

3.5.3 Scope of work

The scope of work should be prepared in accordance with the provisions of SANS 10403, *Formatting and compilation of construction procurement documents*. (See Annex D for checklist of items that which should be addressed in the scope of work). Standard scopes of services can be referenced in the scope of work as indicated in the example below.

General

The services shall be provided in accordance with the provisions of the Guideline Scope of Service and Tariff of Fees for Persons Registered in terms of the Engineering Professions Act published by the Engineering Council of South Africa in terms of Board Notice No 18 of 2003 in Government Gazette No 24938, 28 February 2003)

3.5.4 Pricing data

3.5.4.1 NEC3 Professional Services Contract

There are three basic pricing strategies NEC Professional Services Contract (PSC2), **viz:**

- Options A and C require the *Consultant* to prepare and price an 'Activity Schedule'.
- Option G requires the *Consultant* to prepare and price a 'Task Schedule'.

Compilers are referred to the NEC3 Professional Services Contract (PSC) Guidance Notes and Flow Charts for full details of how the PSC works, including the Cost Reimbursable Option E contract not covered in these guidelines.

The provisions of the PSC require that the *Consultant* Provides the Services in accordance with the Scope (core clause 21.1). 'Provide the Services' is a defined term (core clause 11.2(9)) and embraces all things necessary and incidental to completing the *services*.

There is no provision in the PSC for the *Consultant* to be paid on the basis of a percentage of the cost to the *Employer* of the construction works carried out by others.

Options A and C require a priced Activity Schedule

Notes:

- 1 Generally it is the *Consultant* who prepares the Activity Schedule as part of his tender by breaking down the work described within the Scope into suitable activities which can be well defined, priced as a lump sum and shown on the

programme. The Employer, in his Conditions of Tender or in a Tender Schedule, may have listed some items that he requires the Consultant to include in his Activity Schedule and be priced accordingly. If the services are not well defined or typical based on other applications, then Option A should not be used. Instead option C (or E, which is a time-based contract), should be specified.

- 2 The Prices are defined in clause 11.2(18) as the lump sum for each activity in the Activity Schedule and the Price for Services Provided to Date (PSPD) (the amount due to the consultant) is defined in clause 11.2(15) in Option A as the total of the Prices for each activity that has been completed. Hence activities in the Activity Schedule for an option A contract should be structured so as to provide an acceptable monthly cash flow as they are only assessed for payment on the assessment date if they have been completed.
- 3 The Price for Services Provided to Date in Option C (11.2(16)) is different as the consultant is paid on the basis of tendered staff rates multiplied by time applied for each staff member. At the end of the contract the total of the Prices in the tendered Activity Schedule is compared with the total amount paid, and the difference is shared in accordance with a formula stated in the Contract Data.
- 4 In the case of Option A, if the Consultant has decided not to identify a particular activity, the cost to the Consultant of doing the work must be included in, or spread across, the other Prices in order to fulfill the obligation to complete the services for the tendered total of the Prices.
- 5 There is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the consultant estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.
- 6 However, the Consultant does not have to allow in his Prices for matters that may arise as a result of a compensation event. Adjustment of the Prices for inflation would only apply if secondary option X1 is included in the contract.
- 7 In the payment clauses, the amount due to the *Consultant* is stated as
 1. the Price for Services Provided to Date plus
 2. payment for *expenses* in Providing the Services as stated in the Contract Data and
 3. other amounts to be paid to the *Consultant* less amounts to be retained from the *Consultant*.
- 8 Hence, unless the *Employer* states in Conditions of Tender that he requires expenses to be included within the Activity Schedule Prices (and has provided an additional condition of contract in Option Z to change the above wording), the *expenses* listed and rate priced in the Contract Data are paid at the rates stated in the Data as and when incurred.

An Activity Schedule could have the following format:

Item No.	Programme Reference	Activity description	Price

Option G requires the Consultant to prepare and price a Task Schedule.

Notes:

- 1 Option G will be used when an *Employer* requires to have a contract with a *Consultant* for a specified term for work probably not yet specified, or specified but only needed on an intermittent basis, such as a geotechnical investigation service for various projects that may arise during the term of the contract, or advisory services of a specified nature on an ad hoc basis.
- 2 Hence the Task Schedule is a schedule of rates (a shopping list) of people and other resources likely to be used by the *Consultant* when work is carried out. Clearly such a schedule could include the use of special equipment (plotters, etc) or subconsultants or subcontractors.
- 3 The Price for Services Provided to Date is, for each Task, the total of
 - a) The Time Charge for work which has been completed on time based items on the *Task Schedule* and
 - b) A proportion of the lump sum price for each item on the *Task Schedule* that is a proportion of the work completed on that item.
- 4 Hence the *Consultant* is paid on a cost reimbursable basis at the rates stated in the Task Schedule for the period (term) of the contract. Changes to the rates in the schedule can arise from compensation events, and adjustments for inflation would apply if secondary option X1 is included.

3.5.4.2 CIDB Standard Professional Services Contract

Pricing Data is defined in the CIDB Standard Professional Services Contract as *data that establishes the criteria and assumptions that were taken into account when developing the Contract Price and the record of the components that make up of the Contract Price*. Clause 14 states that *the Employer shall remunerate and reimburse the Service Provider for the performance of the Services as set out in the Pricing Data*.

Clause 14 also provides some default provisions.

This form of contract accordingly allows the employer to specify remuneration in the pricing data in a number of ways including:

- a) Lump sum for each activity to be provided,
- b) Percentage fee based on the value of works to be constructed by others,
- c) Hourly rates, or
- d) Reference to published remuneration guidelines.

Note: Tenderers may be required to tender a percentage up or down of a guideline tariff of fees.

Example

Pricing Instructions

- 1 The Consultant is to allocate an approximate budget to each activity in the activity schedule.
- 2 All activities must be invoiced on a monthly basis, based on the actual hours spent on the activity.
- 3 Payment will be based on the actual hours spent on such activities provided that reasonable progress towards the completion of the activity within the estimated budget is demonstrated.
- 4 The budget allocated to each activity and the total of prices for the activities shall not exceed 15% without the written agreement of the Employer.

Annexure 1: Equivalence in standard methods provided by CIDB and National Treasury for the procurement of professional services

The standard methods provided by the CIDB in the Standard for Uniformity in Construction Procurement to procure professional services are in the main the same as those contained in SANS 294, *Construction procurement processes, procedures and methods*.

The CIDB procedures are generic in nature and can be readily mapped to the World Bank procedures for the selection and employment of consultants or for that matter any other set of standard procedures. The CIDB achieves this by breaking down the procurement process into the following components:

- i) standard procurement procedures (see Table 2);
- ii) standard tender evaluation methods (see Table 3); and
- iii) eligibility criteria which forms part of the conditions of tender².

Accordingly, a procedure for the procurement of professional services comprises a combination of i) and ii) with or without eligibility criteria as illustrated in Figure 1.1

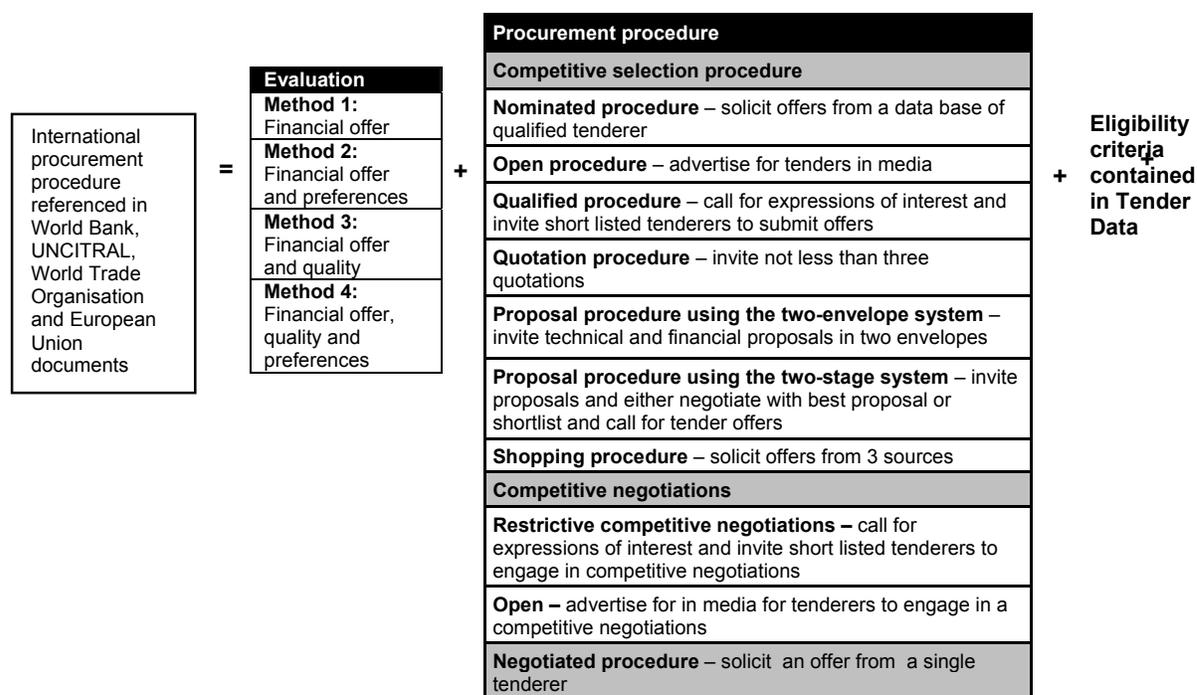


Figure E.1: Relationship between the generic CIDB procurement procedures and other international procedures

Table 1.1 sets out the SCM 3 approaches to the appointment of consultants and the CIDB Standard for Uniformity in Construction Procurement equivalent methods.

² One of the obligations imposed on the tenderer by the Standard Conditions of Tender (see Annex F the CIDB Standard for Uniformity in Construction Procurement) is (see F.2.1):
Submit a tender offer only if the tenderer satisfies the criteria stated in the tender data and if the tenderer, or any of its principals, is not under any restrictions to do business with the employer.

Table 1.1: SCM 3 approaches to the appointment of consultants and the CIDB Standard for Uniformity in Construction Procurement

SCM 3, <i>Appointment of consultants</i>		CIDB Standard for Uniformity in Construction Procurement		
Approach to appointment of consultants	Recommended usage of approach	Procurement procedure (see Table 1 of CIDB Standard)	Standard tender evaluation method (see Table 2 of CIDB Standard)	Tender Data (refer to Annex E of CIDB Standard)
<p>Quality-based selection (QCBS) Tenderers are invited to submit tenders based on a well defined scope of work. Tenders are evaluated on the basis of both the quality of the services to be rendered and the cost of the services to be provided. Where a two envelope system is used, the evaluators of the technical proposals should not have access to the financial proposals. The final contract is negotiated with the tenderer scoring the highest number of points.</p>	<p>In most cases, except in the case of complex or highly specialised assignments or those that invite innovations on the basis of quality alone (i.e. QBS)</p>	<p>Nominated procedure or Open procedure or Qualified procedure or Quotation procedure or Proposal procedure using the two envelope system</p>	<p>Method 4 (Financial offer, quality and preferences) or Method 2 (Financial offer and preferences) if eligibility criteria in the form of the attainment of a minimum score is provided in the tender data</p>	<p>Tender Data must state which method is to be used. Eligibility criteria need to be included where Method 2 is used.</p>
<p>Quality based selection (QBS) Tenderers are requested to submit technical proposals only or to submit technical proposals and financial proposals in two envelopes. Where only technical proposals are called for, the tenderer with the highest ranked proposal is requested to submit a detailed financial proposal so that the contract can be negotiated. The final contract is thereafter negotiated. Tenderers may be provided with an indication of the expected input of key professionals (staff time).</p>	<p>A complex or highly specialised assignment, for which it is difficult to define the precise scope of work and consultants are expected to demonstrate innovation in their proposals. An assignment that has a high downstream impact and requires the best available experts. An assignment could be carried out in substantially different ways, hence proposals will not be comparable.</p>	<p>Proposal system using the two envelope system</p>	<p>Method 4 (Financial offer, quality and preferences)</p>	<p>Tender Data must state that method 4 is to be used.</p>
		<p>Proposal procedure using the two stage tendering system</p>	<p>Method 2 (Financial offer and preferences) if eligibility criteria is framed around the rejection of unacceptable proposals</p>	<p>Tender Data must state that method 2 is to be used and unacceptable proposals will be rejected.</p>
		<p>Proposal procedure using the two stage tendering system</p>	<p>Method 4 (Financial offer, quality and preferences) with weighting for price equal to zero.</p>	<p>Tender data must stipulate that contract price will be negotiated.</p>
<p>Least cost selection Tenderers are requested to submit technical proposals and financial proposals in two envelopes. The financial proposals of only those tenderers who obtain a quality score above a threshold are opened. The tenderer with the highest score based only on price and preference is selected.</p>	<p>A standard or routine assignment where well established practices and standards exist and in which the contract amount is small.</p>	<p>Proposal system using the two envelope system</p>	<p>Method 2 (Financial offer and preferences) where eligibility criteria in the form of the attainment of a minimum score is provided in the tender data</p>	<p>Tender Data must state that method 2 is to be used. Eligibility criteria need to be included.</p>

SCM 3, <i>Appointment of consultants</i>		CIDB Standard for Uniformity in Construction Procurement		
Approach to appointment of consultants	Recommended usage of approach	Procurement procedure (see Table 1 of CIDB Standard)	Standard tender evaluation method (see Table 2 of CIDB Standard)	Tender Data (refer to Annex E of CIDB Standard)
Single source selection In this procedure, a suitable tenderer is identified and a contract is negotiated	A task that represents a natural continuation of previous work carried out by the firm. A rapid selection is essential (eg in an emergency operation). A very small assignment. An assignment where only one firm is qualified or has the experience of exceptional worth for the assignment.	Negotiated procedure	None	None
Appointment from list of approved service providers	A very small assignment which does not justify the preparation and evaluation of competitive proposals	Nominated procedure	Method 2 (Financial offer and preferences)	Tender Data must state that method 2 is to be used.
Selection based on consultant's qualifications The respondent, who has submitted an expressions of interest and possesses the most appropriate qualifications and references, is invited to submit a proposal so that the contract can be negotiated.	A very small assignment which does not justify the preparation and evaluation of competitive proposals	Select tenderer from electronic data base or form calls for expressions of interest. Negotiated procedure	None	None
Selection under a fixed budget Tenderers are provided with the available budget and are requested to provide their best technical and financial proposals in separate envelopes. Proposals that exceed the budget are excluded from consideration. A contract is negotiated with the tenderer submitting the highest ranked technical offer.	A simple assignment which is precisely defined and the budget fixed.	Proposal procedure using the two envelope system	Method 4 (Financial offer, quality and preferences) or Method 2 (Financial offer and preferences) if eligibility criteria in the form of the attainment of a minimum score is provided in the tender data	Tender Data must state which method is to be used. Eligibility criteria need to be included where Method 2 is used.