

# **Managing integrity in Construction Procurement The CIDB Perspective**

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## cidb Mandate: Act 38 of 2000

- **Promote sustainable growth** of the construction industry and the sustainable participation of the emerging sector in the industry
- **Promote improved performance** and **best practice** of public and private sector clients, contractors and other participants
- Promote procurement and delivery management, the **uniform application of policy** throughout all spheres of government, **uniform and ethical standards** including a code of conduct
- Establish **Registers** as a tool to systematically **regulate and monitor** the **performance** of the industry and its stakeholders:

## Procurement reform in SA

- **Based on 2 pillars**
  - Good governance
  - Use of procurement as an instrument of social and economic policy
- **Primary objective**
  - Application of a system that is fair, equitable, transparent, competitive and cost effective
- **Secondary objective**
  - Social considerations for growth & development
    - BBBEE
    - Contractor Development
    - Skills development
    - Prevention of HIV Aids in construction
    - Job creation

# Construction procurement

Construction procurement in the public sector is regulated in terms of **general legislation governing public procurement** and through the following **CIDB prescripts issued in terms of the CIDB Act of 2000**:

- **CIDB Code of Conduct** for the Parties engaged in Construction Procurement
- **CIDB Standard for Uniformity (SFU)** in Construction Procurement.

**Currently applicable to public sector (departments, municipalities and state owned enterprises)**

**Applicable to public and private sector**

# Framework for procurement for public sector

**Legislative Framework**  
The Constitution  
PFMA / MFMA  
PPPFA  
BBBEE  
**CIDB Act**  
Other relevant Act's

**Standard for Uniformity**

Client  
Procurement  
Policy

Procurement  
directives

**CIDB Best  
Practice  
Guidelines**

Standard Operating  
Procedures

**CIDB inform  
Practice  
Notes**

**CIDB CODE OF CONDUCT!!!**

# CIDB Generic approach: SFU

**Generic  
approach for  
procurement**

**=**

## **Method for evaluating submissions**

Method 1: Financial offer

Method 2: Financial offer and preferences

Method 3: Financial offer and quality

Method 4: Financial offer, quality and preferences

**+**

## **Procurement procedure**

Competitive selection:

Nominated / Open / Qualified / Quotation /

Proposal procedure using the two-envelope system or two-stage system / Shopping

Negotiated

Competitive negotiations

**+**

**Eligibility** criteria contained in Tender Procedures<sup>6</sup>

# CIDB CODE OF CONDUCT

“Section 5(4) of CIDB Act

- To **promote uniform** and **ethical standards** within the construction industry the Board:
  - (a) Must publish a code of conduct for all construction–related procurement and **all participants** involved in the process... procurement
- Code of Conduct establishes **standards of behaviour** that is consistent with a procurement system that is fair, equitable, transparent, competitive and cost effective: .

**Employers and their agents, contractors, subcontractors, consultants, board members, politicians and tenderers**

## WHAT DOES THE CODE MEAN?

- **Code of conduct for the parties engaged in construction procurement**
  - ✓ Behave equitably, honestly and transparently.
  - ✓ Discharge duties and obligations timeously and with integrity.
  - ✓ Comply with all applicable legislation and associated regulations.
  - ✓ Satisfy all relevant requirements established in procurement documents.
  - ✓ Avoid conflicts of interest.
  - ✓ Not maliciously or recklessly injure or attempt to injure the reputation of another party.

## Corruption in procurement

- Loss of economy and inefficiency in procurement
- Exclusion of qualified tenderers from competing for tenders
- Unfair and inequitable treatment of tenderers
- Lack of integrity in the procurement process
- Subjective and biased scoring of evaluation criteria
- Lack of transparency in the procurement process
- Failure to achieve secondary objectives

**Concerns revolve around how fair, equitable, transparent, competitive and cost effective is the procurement system**



**A GOAL WITHOUT ACTION IS JUST A  
WISH**

# CIDB Monitoring and Compliance

## CIDB (SFU) approach

- Allows for auditing to take place **at any stage** in the procurement process (especially after the award of a contract)
- **Risk** related to corrupt activities is **better managed**
- **Identification of irregular and unauthorised expenditure** early in the process
- **Overspending managed** and controlled

## CIDB Code of Conduct

- Conduct investigations
- Sanction offenders
- Suspend offenders from the CIDB RoC
- Issues fines to Employers up to R100 000
- Intergovernmental Relations Framework Act
  - Treasury
  - Public Protector
  - Auditor General

***Awareness campaigns are conducted for Accounting Officers and Authorities to ensure compliance to the CIDB Regulations and Code of Conduct***

# **CIDB CASE STUDIES**



## Case study 1

- Major parastatal reported for non-compliance to CIDB Regs by an aggrieved contractor (email)
- CIDB registers complaint (database)
- CIDB Compliance Unit conducts preliminary field work
- Case referred to CIDB Forensics Project Team (external)
- (SEE PART V OF CIDB REGULATIONS FOR PRESCRIBED PROCEDURE)
- Investigation (interviews, tender adjudication report, audit trail of information)
- Report finding (summarised):
  - **Charge 1: Negligently evaluating and awarding a contract**
  - **Charge 2: Treating Tender A differently to Tenderer B in the evaluation phase**
  - **Charge 3: Not declaring tenders non-responsive under circumstances where you have prescribed to do so**
- Independent Investigation Committee; hearings held: **Adi Alterim Partem** Rule

## Case study 1

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- Case referred to CIDB Forensics Project team (external)
- (SEE PARAGRAPH OF CIDB REGULATIONS FOR PRESCRIBED PROCEDURES)
- Investigation (involving forensic audit trail of invoices)
- Report findings
  - **Charge 1:** [unclear] in the [unclear]
  - **Charge 2:** [unclear] in the [unclear] assessment phase
  - **Charge 3:** Not complying with [unclear] non-comprehensive under circumstances where you have prescribed [unclear] do so
- Independent Investigation Committee; hearings held: **Adi Alterim Partem** Rule

**OUTCOME: FINE ISSUED + CIDB COSTS ASSOCIATED WITH THE INVESTIGATION HOORAY!!!**

SIGNIFICANCE OF THIS CASE FOR YOU!!

**THE  
CONSULTING ENGINEER  
DID IT!!!!!!!!!!!!!!!!!!!!!!!**



**How many other consulting engineers  
have landed their clients in hot  
water?**



## Case study 2

- Public Sector Client taken to Western Cape High Court by an aggrieved (Grade 8) contractor
- Tender advertised for a Grade 8 (= R100 M) for class EE (Electrical Engineering)
- 1 week later, an addendum was issued to accept tender offers from Grade 6 (= R10 M) or higher???
- **Tender was adjudicated by a firm of consulting engineers:**
  - Tenderer A (Grade 6 EE) tendered R64 175 353.71
  - Tenderer B (Grade 8 EE) tendered R64 425 632.92**R250K**
- Tender awarded to Tenderer A; Grade 6EE; Contract Sum was **640% (R54 M) over his tender value range!!!!!!!!!!!!!!!**
- Tender evaluation report claimed this to be “reasonable”
- CIDB Practice Note 3 “reasonable” to be between 10-15% but considers **20% as unreasonable!!!**

## Case study 2 – Court ruling

- Decision by the client *to award to Grade 6 EE by an unreasonable margin of 640% over his designated tender value range* was set aside
- Client was ordered to “consider and have regard for the provisions of the CIDB Regulations in any evaluation of tenders received by it from tenders who are registered but who have tendered outside of their maximum tender value range as contemplated in Regulation 17”
- Cost order for the Clients account (including the costs of two counsel).

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## Actions by the CIDB

- Report to the Auditor – General
- Report the matter to ECSA:  
Transgression of the Professional Code of Conduct!
- Setting up a database of court cases where CIDB Regulations are cited in the judgments - 2010



**IT'S NOT ALL BAD NEWS!!!**

## Case Study 3

- Municipal project – Construction of a pipeline
- Consulting Engineer receives invoice from contractor for a progress payment
- Engineer (diligence) identifies ridiculous rates for material on site
- Engineer checks supplier invoice – looked legitimate
- Engineer calls up supplier and requested a fax of their copy of the same invoice – **DISCREPENCY!**
- Glaring differences in the unit price of “ductile iron pipe” in the 2 invoices
- Contractor inflated the unit price and submitted for payment
- Municipality terminated the contract (as per condition of contract)
- CIDB has commenced with the prosecution of the contractor!

## Case Study 3

- Municipal project – Construction of a pipeline
- Consulting Engineer receives invoice from contractor for a progress payment
- Engineer (diligence) identifies ridiculous rates for material on site
- **The consulting engineer reported the case to CIDB**
- **WELL DONE MATE!**
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# THE CONSULTING ENGINEER



# Role of Professionals

- Prepare procurement documents
- Prepare draft tender evaluation reports / provide inputs into reports?

## Questions:

- What systems are in place to confirm that documents and evaluations are in accordance with cidb prescripts?
- Is staff familiar with the requirements of the cidb prescripts and are capable of applying them? What makes you think so?
- What quality checks are in place to ensure compliance with cidb procedures?

**The consulting engineer cannot be a weak link in the integrity chain!**

## CESA – BUSINESS INTEGRITY MANAGEMENT SYSTEM

- Professional declared by a court of law as **above a reasonable man** - the duty of care!
- Law of Agency / Contract – **Protect your client**
- **Study the CIDB Regs** – get yourself (staff) accredited (CESA courses linked to CDP)
- Act in good faith – Clients have major challenges; use of your **Professional Code of Conduct** to assist and guide them
- Don't procrastinate; if you identify non-compliance to CIDB Regs and other applicable laws and stay silent, you are **GUILTY** already!
- CIDB Forensics Team: **K-I-C-H-I-N-G!!!!**



“Corruption, definable as “the misuse of public power for private profit”, is morally and economically damaging. Firstly it jeopardizes the procurement process, is always unfair, and often criminal. It saps money from required development projects and adversely affects their quality. Secondly, and worse than being pragmatically wrong in allowing wasteful procurement, corruption is basically wrong because it undermines values of society, breeds cynicism, and demeans the individuals involved. **It is more than stealing funds, it is stealing trust.**”



**SIMPLE RULES TO MEASURE  
INTEGRITY IN THE CONSTRUCTION  
PROCUREMENT PROCESS**

**HOW TO GUIDE YOUR CLIENT**

# Performance based Procurement Framework

<b>Goal (end objectives)</b> <b>Level 1</b>	System to be <b>fair, equitable, transparent, competitive and cost effective</b> and can promote additional objectives to the procurement itself
<b>Qualitative requirements</b> <b>Level 2</b>	Define in qualitative terms what is fair, equitable, equitable, transparent, competitive and cost effective and promote additional objectives to the procurement itself
<b>Quantitative requirements</b> <b>Level 3</b>	Rule based system established in <b>cidb Standard for Uniformity in Construction Procurement</b> which incorporates standard conditions of tender and conditions for calls for expressions of interest
<b>Evaluation</b> <b>Level 4</b>	Confirmation at control points in the process that the rules have been applied

# Performance based Procurement Framework

<p><b>Goal (end objectives)</b></p> <p><b>Level 1</b></p>	<p>System to be <b>fair, equitable, transparent, competitive and cost effective</b> promote additional objectives to the procurement itself</p>	<p><b>Broad statement of intent</b></p>
<p><b>Qualitative requirements</b></p> <p><b>Level 2</b></p>	<p>Define in qualitative terms what is <b>fair, equitable, transparent, competitive and cost effective</b> additional objectives to the procurement itself</p>	<p><b>Requirements to reach the end objective</b></p>
<p><b>Quantitative requirements</b></p> <p><b>Level 3</b></p>	<p>Rule based system established under <b>Standard for Uniformity in Procurement</b> which incorporates conditions of tender and calls for expressions of interest</p>	<p><b>Those requirements that enable the QUALITATIVE requirements to be satisfied with integrity</b></p>
<p><b>Evaluation</b></p> <p><b>Level 4</b></p>	<p>Confirmation at control point in the procurement process that the rules have been met</p>	<p><b>Confirmation that goals and objectives have been met</b></p>

## National Treasury: PFMA and MFMA requirements

The **Public Finance Management Act** and the **Municipal Finance Management Act** requires that:

- a separate Supply Chain Management Unit be established within the office of the Chief Financial Officer to implement the institution's Supply Chain Management system
- a competitive tender process be implemented using the following committees:
  - ◇ Specification committee
  - ◇ Evaluation committee
  - ◇ Adjudication committee

**Control  
points**

# Committee functions:

## Specification committee

**Consulting Engineer**

- **Qualitative:** Confirm compliance with cidb Standard for Uniformity in Construction procurement

## Evaluation committee

**Consulting Engineer**

- **Quantitative:** Evaluate in accordance with the procurement documents which reference cidb Standard Conditions of Tender and Conditions for Calling for Expressions of Interest

## Adjudication committee

**Client**

- Verify compliance with the cidb prescripts and other procurement legislation
- Confirm integrity of the process and the reasons for overlooking tenderers / respondents

# A four level performance-based framework

**Integrity  
Management**

**Managing  
the risk  
that  
objectives  
are breached**



<b>Level 1</b>	<b>Goal (end objectives)</b>
<b>Level 2</b>	<b>Qualitative requirements</b>
<b>Level 3</b>	<b>Quantitative requirements</b>
<b>Level 4</b>	<b>Evaluation</b>

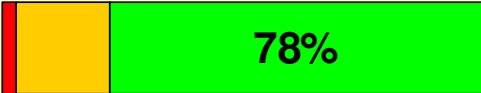




## Transparency in procurement

- A **transparent** procurement system is characterised by
  - the documentation of clear rules
  - the means to verify that those rules are adhered to
- Increased **transparency** in government procurement systems will
  - reduce corrupt and irregular practices
  - improve the predictability of the procurement objectives / goals

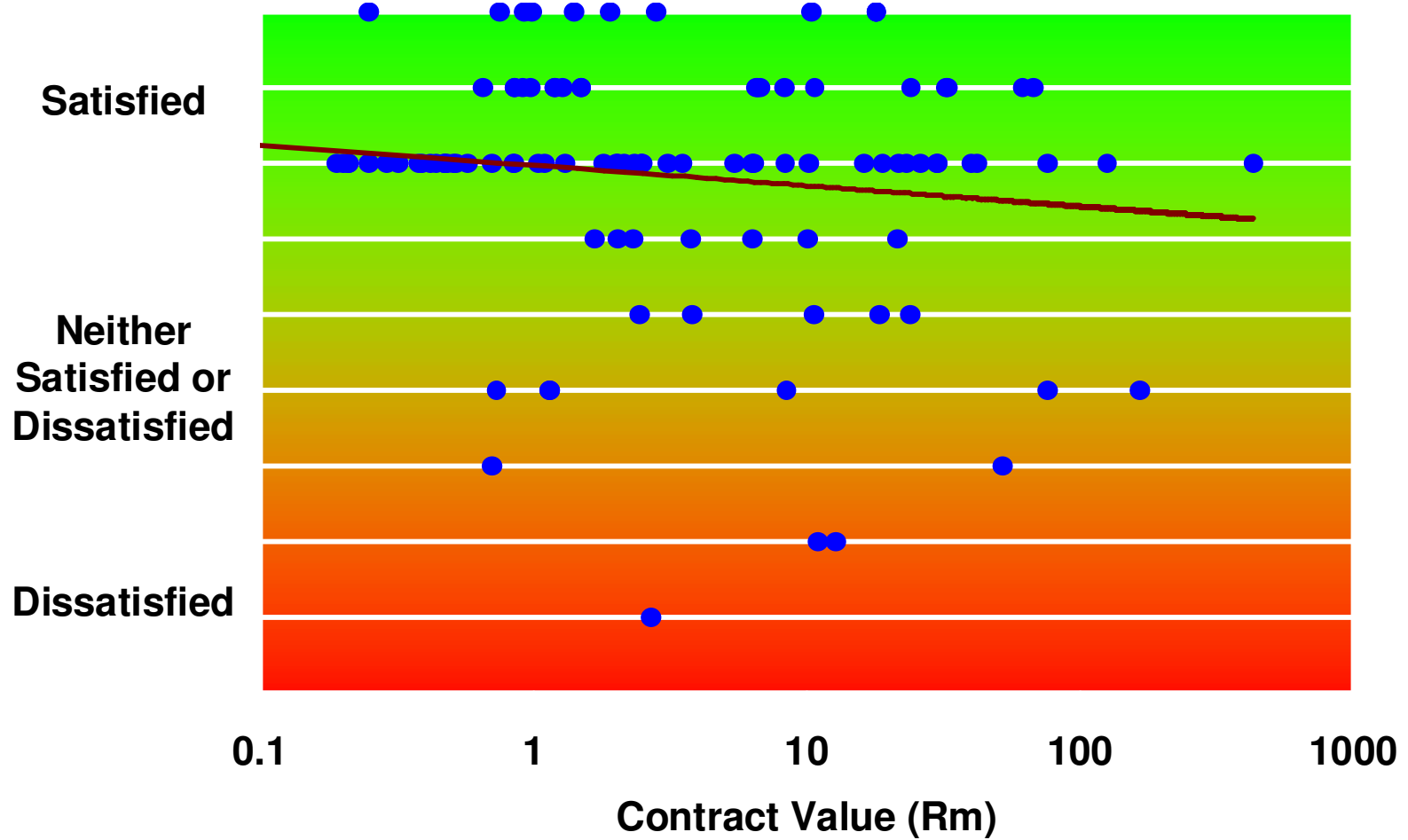
## Principles for RoPSP:

- Support constitutional requirements for public procurement
- Centralised database of information (negate against the proliferation of database's by every client, for professional appointments)
- Transparency of information (web-based; public access to a certain level of information)
- Reflect BBEE Construction Scorecard (huge value add / central repository of information)
- Provide an enabling framework for the different procurement / delivery models
- **Assist the CIDB in fulfilling its mandate of development and risk management for clients**

# CII 2006 – Client Satisfaction

<p><b>Overall performance of the Agent / Consultants' team?</b></p>	 <p>78%</p>
<p>Overall performance of the contractor employed?</p>	 <p>76%</p>
<p>Ability of the main contractor to keep to the tendered construction schedule excluding the time impact of variation orders?</p>	 <p>67%</p>
<p>Quality of the completed work delivered?</p>	 <p>76%</p>
<p>Condition of the facility at the time of handover / practical completion with respect to defects?</p>	 <p>76%</p>

# Client Satisfaction: Agent Overall



## CII Summary: Key Focus areas – the “bottom 30%”

- **Contractors:**
  - overall performance (24%)
  - quality of work (33%)
  - defects (25%)
- **Clients & Professionals**
  - quality of tender documents and specifications (30%)

## CIDB Forensics Contract

- CIDB Anti fraud and corruption initiative:
  - Hotline Number: 0800 112 452
  - Website: [www.tipoffsatwork.co.za](http://www.tipoffsatwork.co.za)
  - Email: [cidb@tipoffsatwork.co.za](mailto:cidb@tipoffsatwork.co.za)
  - Toll free fax line: 0880126448084
- CIDB's **zero tolerance attitude** towards fraud, corruption and any unethical behavior.
- **Immediate dismissal of CIDB officials** found to be participating in unethical behaviour – charge of criminal behaviour
- Project in operation since 2007.
- Major success – see list of offenders on cidb website [www.cidb.org.za](http://www.cidb.org.za)

## Some funnies via our hotline!!

- **SOUTH AFRICA WORKS ~~BECAUSE OF~~ IN SPITE OF PUBLIC WORKS!!**
- **.....THE TENDER COMMITTEE, MADE UP OF 6 PEOPLE, ANONYMOUSLY (UNANIMOUSLY) TOOK THE DECISION TO AWARD TO.....**
- **I CALLED PUBLIC WORKS 'COS I'M THE PUBLIC AND I NEED WORK!!!!!!!!!!**

## MY MESSAGE SUMMARISED.....

**IF CORRUPTION IS CONSIDERED TO BE THE COST OF DOING BUSINESS, ELIMINATING IT WILL REDUCE COSTS AND INCREASE THE VOLUME OF WORK. IT MAKES ECONOMIC SENSE TO CURB CORRUPTION, SINCE IT IS A ZERO-SUM-GAME, WITH THE COST PAID FOR BY SOCIETY (FIDIC, 2001)**

# Acknowledgement of CESA



**THANK YOU...**

**All on Board!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!**

