

BEST PRACTICE: PROCUREMENT OF CONSULTING ENGINEERING SERVICES IN SOUTH AFRICA

DISCUSSION PAPER

1 Background

In general the public-sector procurement of infrastructure in South Africa is highly problematic, ineffective and fails to meet the needs of the country and its citizens through the resultant delays, non-delivery and corruption. Poor procurement systems have a direct and negative impact on service delivery and perpetuate job creation, inequality and poverty

While the procurement legislation as largely captured in the PPPFA, MFMA, PFMA & BBBEE Act (and various Treasury Guidelines & Practice Notes), is considered effective and well-drafted when properly implemented, it is frustrated by a number of unintended problems that require to be urgently addressed if Government is to make good on its promises and successfully implement its far-sighted and laudable National Development Plan (NDP).

The problems experienced are mainly that the current procurement process:

- 1.1. Treats infrastructure as an off-the-shelf commodity (non-construction procurement), whereas infrastructure projects are unique and require individual planning, design and construction (construction procurement).
- 1.2. Places an emphasis on Price and de-emphasises Quality/Functionality, which is inappropriate for sector as it reduces Quality/Functionality to minimum levels.
- 1.3. Encourages discounting through open competitive tendering, which inevitably leads to massive fiscal losses and weak developmental outcomes – the axiom “you get what you pay for” holds true.
- 1.4. Experiences the following Regulatory problems:
 - a. Procurement practices are inappropriate for the construction sector, with their emphasis on price and a de-emphasis on quality/functionality
 - b. Non-recognition of “access to work opportunities” for small/medium and emerging firms
 - c. Services rendered by the Built Environment Professionals are not ‘Designated as Local’ in terms of the PPPFA, which is problematic for skills development and empowerment in South Africa
 - d. The existing requirement for Consolidated / Joint BBBEE scorecards at the tender stage is onerous, costly and discourages the formation of joint ventures for infrastructure projects (effective mechanism for empowering small firms)
 - e. Public sector clients and service providers suffer when their infrastructure projects exceed 3 years, due to onerous regulatory requirements requiring public participation etc resulting in non-payment of service providers and delays in project completion.



1.5. Experiences the following Institutional problems:

- a. The Government frequently lacks technical capacity to plan and manage construction projects including procurement, planning and design
- b. Procurement irregularities abound in the construction sector, which is compounded by lack of enforcement and appropriately trained procurement staff
- c. The delayed Infrastructure Investment by Government, also known as the "blocked infrastructure project pipeline", prevents proper planning and allocation of resources, and may ultimately result in a national exodus of engineering skills
- d. Poor schooling in Maths and Sciences contributes to lack of capacity and understanding with respect to procurement of infrastructure service providers.

2 Proposal

It is proposed that the following measures be adopted to unlock public-sector infrastructure procurement and enable the speedy and effective delivery of the NDP:

- 2.1. The Department of Trade & Industry to include provision for Quality/Functionality in the PPPFA (2000) in its point-scoring system in line with the original PP Regulations prior to amendment and as practiced until 2010, when a KwaZulu Natal Court judgement ruled that the Regulations could not supersede the Act.
- 2.2. The National Treasury to re-issue & make mandatory its PFMA Supply Chain Management Practice Note 3 of 2003 for the Appointment of Consultants (which is the same as Chapter 5 of the MFMA Guidelines and aligns with cidb procedures), with following amendments:
 - a. Removal of Treasury's General Conditions of Contract (GCC) from construction procurement, as it is not suitable for construction procurement.
 - b. Clarification of consultants to distinguish between professional & non-professional consultants
 - c. The inclusion of Quality/Functionality in the PPPFA point-scoring system (see point 1 above)
- 2.3. Public Sector Clients eg municipalities etc that lack in-house technical skills to adequately manage the procurement process for infrastructure projects, should be encouraged/mandated to appoint consulting engineering firms for this purpose eg to compile comprehensive Requests for Proposals (RFPs).
- 2.4. As outlined in Section 11 of the Practice Note 3, for recurring services such as infrastructure planning & design, public sector Clients eg municipalities, should be encouraged/mandated to
 - a. Establish a list of approved consulting engineers on a competitive scoring basis using points awarded for Quality/Functionality and BBBEE Preference
 - b. Award projects by obtaining quotes on a rotational basis or using a bid procedure
- 2.5. When tendering for infrastructure projects
 - a. Bidders should form Joint Ventures with small firms as an empowerment mechanism,
 - b. The BBBEE scorecard for the JV should be calculated according to a standard formula using the BBBEE scores for the separate JV entities.
- 2.6. Infrastructure tenders should be awarded according to the scope of the project and not limited to 3 years as prescribed in the MFMA.

3 Justification

The proposed measures above are justified as follows using the same numbering system for ease of reference:

No	Ref	Summarised Proposal	Justification
3.1	2.1	Reinstate Quality in the PPPFA point-scoring system	Will encourage firms to improve Quality of service to benefit of sector. Current threshold requirement reduces Quality to the minimum acceptable level
3.2	2.2	Re-issue revised mandatory SCM Practice Note 3 (2003)- Appointment of Consultants	The Practice Note outlines a good system for the procurement of consultants and with minor amendments as indicated, should be made mandatory for all public sector clients
3.3	2.2 a	Remove Treasury GCC from construction procurement	Treasury GCC is intended for non-construction procurement and contradicts the principles of the Practice Note
3.4	2.2 b	Distinguish between professional & non-professional consultants	The Practice Note does not sufficiently distinguish between professional & non-professional consultants (huge difference)
3.5	2.2 c	Inclusion of Quality in the PPPFA point-scoring system	Already justified in point 3.1
3.6	2.3	Engineering consultants to manage infrastructure procurement if required	Clients lacking capacity, can easily out-source technical aspects of infrastructure procurement to consulting engineering firms
3.7	2.4	Practical procurement of recurring services	Good method for procurement of infrastructure services eg planning & design, satisfies requirements of PPPFA
3.8	2.4 a	List of approved engineering consultants (Quality & BBEE)	Do not need to re-evaluate Quality & Preference (PPPFA), shortens procurement process, eliminates need for costly tendering for each project
3.9	2.4 b	Award projects by quotes on a rotational basis	Only 3 bidders involved, satisfies competitive tendering requirement, eliminates destructive "discounting" (no fly-by-nights)
3.10	2.5 a	Bidders form Joint Ventures (JV) with small firms	Achieves meaningful/practical transfer of skills, avoids necessity for illegal "set asides"
3.11	2.5 b	JV BBEE scorecard calculated by standard formula using BBEE scores for separate JV entities.	It is counter-productive & costly to force JVs to have accredited BBEE scorecards prior to submitting tenders. Rather calculate the JV scorecard using individual entity scorecards, which is simpler, cheaper & can be verified.
3.12	2.6	Infrastructure tenders awarded according to the scope of the project	It is cost-effective & reasonable to employ consulting engineers to complete the scope of infrastructure projects within suitable time frames not the current fixed 3-year period

Thanks for your contributions!

For more information or to send your comments on the discussion paper, contact Mr Wally Mayne at wally@cesa.co.za