



**NATIONAL TREASURY
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**TO ALL
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**Supply Chain Management Office
Practice Note Number SCM 3 of 2003**

APPOINTMENT OF CONSULTANTS

In accordance with the Framework for Supply Chain Management [Section 76(4)(c) of the PFMA] that was promulgated in Government Gazette Number 25767 on 5 December 2003 as Treasury Regulations, National Treasury is required to issue instructions to accounting officers/authorities in respect of the appointment of consultants.

Consultants should be appointed by means of competitive bidding processes, whenever possible. All bids and contracts should be subject to the General Conditions of Contract (GCC) issued by the National Treasury.

To align the South African public sector procurement system with international best practices, the following procedures should be followed for selecting, contracting and monitoring consultants required for projects:

1. Introduction

- 1.1 In general, the procedures described for the acquisition of goods and services apply. Only the peculiarities of appointing consultants are dealt with herein, as the services to which these procedures apply are of an intellectual and advisory nature. These procedures do not apply to general services such as construction works, manufacture of goods, operation and maintenance of facilities or plants, surveys, exploratory drilling, aerial photography, satellite imagery, catering, cleaning and security in which the physical aspects of the activity predominate.

- 1.2 It must be clearly pointed out that the appointment of Transaction Advisors as defined in Treasury Regulation 16 to the PFMA, who are to be appointed by institutions to render advice in relation to Public-Private Partnerships, should be done in terms of the practice note issued by the National Treasury specifically for that purpose. In other words, their appointment is not subject to this practice note.
- 1.3 For the purpose of this practice note, the term *consultant* includes, among others, consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, other multinational organizations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organizations (NGOs), and individuals.
- 1.4 Accounting officers/authorities may use these organizations as *consultants* to assist in a wide range of activities such as policy advice, accounting officer's/authority's reform management, engineering services, construction supervision, financial services, procurement services, social and environmental studies and identification, preparation, and implementation of projects to complement accounting officers'/authorities' capabilities in these areas.
- 1.5 Consultants should only be engaged when the necessary skills and/or resources to perform a project/duty/study are not available and the accounting officer/authority cannot be reasonably expected either to train or to recruit people in the time available.
- 1.6 The relationship between the accounting officer/authority and the consultant should be one of purchaser/provider and not employer/employee. The work undertaken by a consultant should be regulated by a contract. The accounting officer/authority are, however, responsible for monitoring and evaluating contractor performance and outputs against project specifications and targets and should take remedial action if performance is below standard.

2 Applicability of procedures

The procedures outlined herein apply to all contracts for consulting services. In procuring consulting services, the accounting officer/authority should satisfy himself/herself that:

- the procedures to be used will result in the selection of consultants who have the necessary professional qualifications;
- the selected consultant will carry out the assignment in accordance with the agreed schedule, and
- the scope of the services is consistent with the needs of the project.

3 Appointment in terms of the Public Service Act, 1994 (Act No 103 of 1994)

- 3.1 Accounting officers/authorities sometimes consider appointing persons as consultants whilst it would be more appropriate to appoint the relevant individuals on contract in terms of the Public Service Act, 1994 (PSA).
- 3.2 If accounting officers /authorities wish to appoint a person for a limited period to perform duties to a post on the fixed establishment, the person should as a general rule be appointed on contract in terms of section 8(c)(ii) of the PSA.
- 3.3 Should accounting officers/authorities experience additional work demands which are not permanent and there are no suitable vacancies available, they may consider creating additions to the fixed establishment based on the specific nature of the activities to be undertaken as well as the level at which the activities are to be performed. This may include appointing persons on contract in terms of the Act. Under no circumstances should a person be appointed as a consultant merely to be granted higher remuneration packages than are prescribed by the Act.

4 General approach

- 4.1 The accounting officer/authority should be responsible for preparing and implementing the project, for selecting the consultant, awarding and subsequently administering the contract. While the specific rules and procedures to be followed for selecting consultants depend on the circumstances of the particular case, at least the following four major considerations should guide the accounting officer's/authority's policy on the selection process:
- the need for high-quality services;
 - the need for economy and efficiency;
 - the need to give qualified consultants an opportunity to compete in providing the services; and
 - the importance of transparency in the selection process.
- 4.2 In the majority of cases, these considerations can best be addressed through competition among firms in which the selection is based both on the quality of the services to be rendered and on the cost of the services to be provided (Quality- and Cost-Based Selection [QCBS]) as described in paragraph 9.3. However, there are cases when QCBS is not the most appropriate method of selection. For complex or highly specialized assignments or those that invite innovations, selection based on the quality of the proposal alone (Quality-Based Selection [QBS]), would be more appropriate. Other methods of selection and the circumstances in which they are appropriate are outlined in paragraph 10.
- 4.3 The particular method to be followed for the selection of consultants for any given project should be selected by the accounting officer/authority in accordance with the criteria outlined in this practice note.

- 4.4 When appropriate, the accounting officer / authority may include under the special conditions of contract, the following or similar condition:

"A service provider may not recruit or shall not attempt to recruit an employee of the principal for purposes of preparation of the bid or for the duration of the execution of this contract or any part thereof".

5 Conflict of interest

Consultants are requested to provide professional, objective and impartial advice and at all times hold the client's interests paramount, without any consideration for future work and strictly avoid conflicts with other assignments or their own corporate interests. Consultants should not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the State. Without limitation on the generality of this rule, consultants should not be hired under the following circumstances:

- A firm, which has been engaged by the accounting officer/authority to provide goods or works for a project and any of its affiliates, should be disqualified from providing consulting services for the same project. Similarly, a firm hired to provide consulting services for the preparation or implementation of a project and any of its affiliates, should be disqualified from subsequently providing goods or works or services related to the initial assignment (other than a continuation of the firm's earlier consulting services as described below) for the same project, unless the various firms (consultants, contractors, or suppliers) are performing the contractor's obligations under a turnkey or design-and-build contract.
- Consultants or any of their affiliates should not be hired for any assignment which, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired to prepare an engineering design for an infrastructure project should not be engaged to prepare an independent environmental assessment for the same project, and consultants assisting a client in the privatization of public assets should not purchase, nor advise purchasers of such assets.

6 Associations between Consultants

Consultants may associate with each other to complement their respective areas of expertise, or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The "association" may take the form of a joint venture or a sub-consultancy. In case of a joint venture, all members of the joint venture should sign the contract and are jointly and severally liable for the entire assignment. Once the bids or Requests for Proposals (RFPs) from service providers are issued, any association in the form of joint venture or sub-consultancy among firms should be permissible only with the approval of the accounting officer/authority or his/her delegate. Accounting officers/authorities should not

compel consultants to form associations with any specific firm or group of firms, but may encourage associations with the aim to enhance transfer of skills.

7 Promoting Government's preferential policies

When consultants are appointed, the prescripts of the Preferential Procurement Regulations, 2001, must be adhered to. These relate to the compulsory involvement of HDIs and the promotion of the RDP goals.

8 Training or transfer of knowledge and skills

If the assignment includes an important component for training or transfer of knowledge and skills, the Terms of Reference (TOR) should indicate the objectives, nature, scope and goals of the training programme, including details of trainers and trainees, skills to be transferred, time frames and monitoring and evaluation arrangements. The cost for the training programme should be included in the consultant's contract and in the budget for the assignment.

9 Steps to follow when selecting consultants

9.1 The four stages of selection

There are essentially four distinct stages in the recommended selection process:

- Identify the approach;
- Invite bids/proposals;
- Receive responses; and
- Evaluate responses.

Other aspects of appointment (such as advertising, opening of proposals) are no different from those that are for the acquisition of goods and services.

Each of the four stages above is described in the sections below.

9.2 Identify the approach

Various approaches may be followed in selecting consultants. As stated earlier, in most instances, 'Quality and cost based selection' (QCBS) is recommended. However, other possibilities are:

- Quality based selection;
- Selection under a fixed budget;
- Least cost selection; and
- Single source selection.

In determining the most appropriate approach, it may be useful to ask: What sort of Consultancy do I require? Is it for:-

An assignment that is not complex or specialised	Use 'Quality and Cost Based Selection' (QCBS)
A complex or highly specialized assignment, for which consultants are expected to demonstrate innovation in their proposals (for example, financial sector reforms)	Use 'Quality-Based Selection' (QBS)
An assignment that has a high downstream impact and requires the best available experts (for example, management studies of large government agencies)	Use QBS
An assignment that could be carried out in substantially different ways, hence proposals will not be comparable (for example, sector and policy studies in which the value of the services depends on the quality of the analysis)	Use QBS
A simple assignment, which is precisely defined and the budget fixed	Use 'Selection under a fixed budget', but evaluate technical proposals first as in QCBS
A standard or routine assignment (e.g. an audit, engineering design of noncomplex works)	Use 'Least-cost selection' as detailed in 10.3. Potential suppliers may be obtained from the list of approved service providers.
A very small assignment which does not justify the preparation and evaluation of competitive proposals	Selection based on Consultants' qualifications as detailed in 10.4. Potential suppliers may be obtained from the list of approved service providers.
A task that represents a natural continuation of previous work carried out by the firm	Use 'Single-source selection'
An emergency operation	You MAY use 'Single-source selection'
An assignment where only one firm is qualified or has experience of exceptional worth for the assignment	Use 'Single-source selection'
Any other situation	Use 'Quality and cost based selection', either by requesting a "BID" or a "PROPOSAL"

9.3 Invite bids/proposals, using QCBS

9.3.1 Request for Bids

The following steps would generally be followed in appointing consultants where a clear Terms of Reference (TOR), including a detailed task directive has been compiled and the objectives, goals and scope of the assignment are clearly defined.

Preparation of the "Terms of Reference" (TOR)	The accounting officer/authority should prepare the TOR. The scope of the services described should be compatible with the available budget. The TOR should define clearly the task directive (methodology), objectives, goals and scope of the assignment and provide background information, including a list of existing relevant studies and basic data, to facilitate the consultants' preparation of their bids. Time frames linked to various tasks should be specified, as well as the frequency of monitoring actions. The respective responsibilities of the accounting officer/authority and the consultant should be clearly defined. The evaluation criteria, their respective weights, the minimum qualifying score for functionality and the values that will be applied for evaluation should be clearly indicated. The evaluation criteria should include at least the following: ▪ Consultant's experience relevant to assignment; ▪ The quality of the methodology; ▪ The qualifications of key personnel; and ▪ The transfer of knowledge (where applicable). In more complicated projects, provision may also be made for pre-bid briefing sessions or presentations by bidders as part of the evaluation process. A clear indication should be given of which preference point system in terms of the PPPFA and its associated Regulations will be applicable as well as the goals to be achieved and the points allocated for these goals.
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	Detailed information on the evaluation process should be provided by firstly indicating the ratio of percentage between functionality and price. The percentage for price should be determined taking into account the complexity of the assignment and the relative importance of functionality. The percentage for price should normally be determined and approved by the accounting officer/authority or his/her delegate prior to finalizing the TOR. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, etc., to enable consultants to estimate the required resources. The TOR should list the services and surveys necessary to carry out the assignment and the expected outputs (for example reports, data, maps, surveys, etc), where applicable. Evaluation criteria could be divided into sub-criteria. Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate should be based on the accounting officer's/authority's assessment of the resources needed to carry out the assignment such as staff time, logistical support and physical inputs (i.e. vehicles, laboratory equipment, etc). The cost of staff time should be estimated on a realistic basis for foreign and local personnel. The TOR should specify the validity period (normally 60 – 90 days). The TOR should form part of the standard bid documentation. At this stage the evaluation panel, consisting of least three members who are demographically representative in terms of race, gender and expertise, should also be selected and finalized.
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9.3.2 Request for Proposals

This method should be followed where selection is based both on the quality of a proposal and on the cost of the service through competition among firms. This method will be applicable on more complex projects where consultants are requested and encouraged to propose their own methodology and to comment on the TOR in their proposals.

Preparation and of issuance of 'Request for Proposals' (RFP)	Whenever possible, accounting officers / authorities should include at least the following documents in the RFP: (i) Letter of Invitation; (ii) Information to Consultants; (iii) the TOR; and (iv) the proposed contract.
Letter of invitation (LOI)	The LOI should state the intention to enter into a contract for the provision of consulting services, the details of the client and the date, time and address for submission of proposals.
Information to consultants (ITC)	The ITC should contain all necessary information that would assist consultants to prepare responsive proposals. It should be transparent and provide information on the evaluation process by indicating the evaluation criteria and factors and their respective weights and the minimum qualifying score for functionality. A clear indication should be given of which preference points system will be applicable in terms of the PPPFA and its regulations, as well as the goals to be targeted and the points allocated for each goal. The budget is not specified (since cost is a selection criterion), but should indicate the expected input of key professionals (staff time). Consultants, however, should be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC should specify the proposal validity period (normally 60–90 days). A detailed list of the information that should be included in the ITC is given in paragraph 16.
Terms of Reference	The TOR should be compiled by a specialist in the area of the assignment and the scope of services described should be compatible with the available budget. The TOR should define as clearly as possible the objectives, goals and scope of the assignment including background information to facilitate the consultant in the preparation of its proposal. The TOR should be compiled in such a manner that consultants are able to propose their own methodology and staffing and be encouraged to comment on the TOR in their proposals. Depending on the circumstances, it may be indicated that proposals should be submitted in two separate clearly marked envelopes, one

	containing the technical proposal and the other the cost for the assignment. In cases where pre-qualification/shortlisting is required, the TOR should indicate the basis of pre-qualification/shortlisting, for instance the number of minimum points to be scored to pre-qualify.
Contract	Accounting officers / authorities should use the appropriate Standard Form of Contract issued by the National Treasury. Any changes necessary to address specific project issues should be introduced through Contract Data Sheets or through Special Conditions of Contract and not by introducing changes in the wording of the General Conditions of Contract included in the Standard Form. When these forms are not appropriate (for example, for pre-shipment inspection, training of students in universities,), accounting officers / authorities should use other acceptable contract forms.

9.4 Receipt of proposals

The accounting officer / authority should allow enough time for consultants to prepare their proposals. The time allowed should depend on the assignment, but normally should not be less than four weeks or more than three months (for example, for assignments requiring establishment of a sophisticated methodology, preparation of a multidisciplinary master plan). During this interval, the firms may request clarification about the information provided in the RFP. The accounting officer / authority should provide clarification in writing and copy them to all firms who intend to submit proposals. If necessary, the accounting officer / authority should extend the deadline for submission of proposals. The technical and financial proposals should be submitted at the same time. No amendments to the technical or financial proposal should be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals should be submitted in separate sealed envelopes. The technical envelopes should be opened immediately after the closing time for submission of proposals. The financial proposals should remain sealed until they are opened publicly. Any proposal received after the closing time for submission of proposals should be returned unopened.

9.5 Evaluation of bids/proposals

- 9.5.1 Within the ambit of the Preferential Procurement Regulations, 2001, bids/proposals for the appointment of consultants should be evaluated on the basis of functionality and price as well as the achievement of specified RDP goals. The evaluation should be carried out in two phases – first the functionality and then the price. The combined percentages allocated for functionality and price should total to 100%. The ratio to be used for the division between functionality

and price should be determined and approved by the accounting officer/authority and should be made known up-front in the bid documents. Score sheets should be prepared and provided to panel members to evaluate the bids on functionality. In view of impartiality, members of departmental bid committees should not also act as panel members.

- 9.5.2 The score sheet should contain all the criteria and the weight for each criterion as indicated in the TOR as well as the values to be applied for evaluation. Each panel member should after thorough evaluation award his/her own value to every criterion without discussing any aspect of any bid with any of the other members. Under no circumstances may additional evaluation criteria be added to those originally indicated in the bid documentation nor may the evaluation criteria be amended or omitted after closing of the bid. Score sheets should be signed by panel members and if required, written motivation could be requested from panel members in the event of vast discrepancies in the values awarded for each criterion.

9.5.3 Calculation of percentage for functionality

The percentage scored for functionality should be calculated as follows:

Each panel member should award values for each individual criterion on a score sheet. The value scored for each criterion should be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for the various criteria. These marks should be added to obtain the total score. The following formula should then be used to convert the total score to a percentage for functionality:

$$Ps = \frac{So}{Ms} \times Ap$$

where

Ps = percentage scored for functionality by bid/proposal under consideration

So = total score of bid/proposal under consideration

Ms = maximum possible score

Ap = percentage allocated for functionality

The percentages of each panel member should be added together and divided by the number of panel members to establish the average percentage obtained by each individual bidder for functionality.

After calculation of the percentage for functionality, the prices of all bids that obtained the minimum score for functionality should be taken into consideration.

Bids/proposals that do not score a certain specified minimum percentage for functionality, should be disqualified and not be considered further.

9.5.4 Calculation of percentage for price

The percentage scored for price should be calculated as follows:

The lowest acceptable bid/proposal will obtain the maximum percentage allocated for price. The other bids/proposals with higher prices will proportionately obtain lower percentages based on the following formula:

$$P_s = \frac{P_{\min}}{P_t} \times A_p$$

where

P_s = percentage scored for price by bid/proposal under consideration

$P_{\min}$ = lowest acceptable bid/proposal

P_t = price of bid/proposal under consideration

A_p = percentage allocated for price

The "Guide on Hourly Fee Rates for Consultants" issued by the Department of Public Service and Administration, accessible from the website www.dpsa.gov.za (click on "Service Delivery Improvement" and then click on "Consultant Frameworks") should be used as a benchmark to evaluate the offered tariffs or to determine the reasonableness thereof.

9.5.5 Calculation of points for functionality and price

The percentages obtained for functionality should be added to the percentage obtained for price to obtain a percentage out of 100 which in turn should be converted to points out of 80 or 90 in terms of regulation 8 of the Preferential Procurement Regulations.

The points scored out of 80 or 90 should be calculated according to the following formula:

- (i) The 80/20 preference point system

$$P_s = 80 \left(1 - \frac{H_s - R_s}{R_s} \right)$$

- (ii) The 90/10 preference point system

$$P_s = 90 \left(1 - \frac{H_s - R_s}{R_s} \right)$$

where

P_s = points scored for functionality and price of the bid/proposal under consideration

H_s = highest percentage scored by any acceptable bidder for functionality and price

Rs = percentage scored for functionality and price by bid/proposal under consideration

Points scored for specified goals as contemplated by the PPPFA and its Regulations are then calculated separately and added to the points scored for price and functionality in order to obtain a final point. The contract should be awarded to the bidder scoring the highest points.

Information relating to evaluation of bids and recommendations concerning awards should not be disclosed to the consultants who submitted bids or to other persons not officially concerned with the process until the successful consultant is notified.

Evaluation of technical proposals (Functionality)	The evaluation of the proposals should be carried out in two stages: first the functionality (quality) and then the price. The evaluation should be carried out in full conformity with the provisions of the RFP. When the two-envelope system is used: Evaluators of technical proposals should not have access to the financial proposals until the technical evaluation is concluded. Financial proposals should be opened only after the technical evaluation and only in respect of those proposals that achieved the minimum qualifying score for functionality. In respect of functionality, the accounting officer/authority should evaluate each technical proposal (using an evaluation panel of three or more specialists in that field of expertise) in terms of the specified evaluation criteria that may include the following: (i) The consultant's relevant experience for the assignment; (ii) The quality of the methodology proposed; (iii) The qualifications of the key staff proposed; and (iv) Transfer of knowledge. The accounting officer/authority should normally divide these criteria into sub-criteria, for example, the sub-criteria under methodology might be innovation and level of detail. More weight should be given to the methodology in the case of more complex assignments for example multidisciplinary feasibility or management studies. Evaluation of only "key" personnel is recommended as they ultimately determine the quality of
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	performance. More weight should be assigned to this criterion if the proposed assignment is complex. The accounting officer/authority should review the qualifications and experience of proposed key personnel in their curricula vitae which should be accurate, complete and signed by an authorised official of the consultant and the individual proposed. When the assignment depends critically on the performance of key staff, such as a Project Manager in a large team of specified individuals, it may be desirable to conduct interviews. The individuals can be rated, among others, in the following sub-criteria as relevant to the assignment: ▪ General qualifications: general education and training, length of experience, positions held, time with the consulting firm staff, and experience in developing countries; ▪ Adequacy for the assignment: education, training and experience in that specific sector, field or subject relevant to the particular assignment; and ▪ Experience in the region: knowledge of the local language, culture, administrative system, government organization, etc. Accounting officers/authorities should evaluate each proposal on the basis of its response to the TOR. A proposal should be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve the minimum qualifying score for functionality as specified in the RFP. At the end of the process, the accounting officer/authority should prepare an evaluation report on the quality of the proposals. The report should substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation such as individual score sheets, should be retained until completion of the project and its audit.
Evaluation of financial proposal	For the purpose of evaluation, the price shall include all local taxes and other reimbursable expenses such as travel, translation, report printing or secretarial expenses. The proposal with the lowest price will obtain the maximum percentage for price as prescribed in the RFP. Proposals with higher prices will proportionately obtain lower

	percentages according to the method as prescribed in the RFP.
Negotiations and award of contract	The Accounting Officer/Authority may negotiate the contract only with the preferred bidder identified by means of the competitive bidding process. Negotiations should include discussions of the TOR, the methodology, staffing, accounting officer's / authority's inputs, and special conditions of the contract. These discussions should not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology should be incorporated in "Description of Services," which should form part of the contract. The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution should have qualifications equal to or better than the key staff initially proposed. Financial negotiations should include clarification of the consultants' tax liability. Before the appointment is finalized, the consultant should submit an original tax clearance certificate to the accounting officer / authority. Proposed unit rates for staff-months and re-imbursables should not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons. Proposed unit rates for staff-months and re-imbursables should not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons. If the negotiations fail to result in an acceptable contract, the accounting officer / authority should terminate the negotiations and invite the next

	ranked firm for negotiations. The original preferred consultant should be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the accounting officer / authority should not reopen the earlier negotiations. After negotiations are successfully completed, the accounting officer / authority should promptly notify other firms that they were unsuccessful.
Contract award	According to the prescripts of the PPPFA and its Regulations, a contract may only be awarded to the bidder who scored the highest number of points, unless objective criteria justify the award to another bidder. Should this be the case, the accounting officer / authority should be able to defend the decision not to award the bid to the bidder who scored the highest number of points in any court of law. It should be emphasized that not offering any contributions to prescribed goals as contemplated in the Preferential Procurement Regulations, 2001, does not disqualify a bidder. Under these circumstances a bidder will score no points for the specified goals. The accounting officer / authority should award the contract, within the period of the validity of bids, to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined: (i) to be substantially responsive to the bidding documents; and (ii) to be the highest on points. A bidder should not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.
Rejection of all proposals and re-invitation	The accounting officer / authority will be justified in rejecting all proposals only if all proposals are non-responsive and unsuitable, either because they present major deficiencies in complying with the TOR, or because they involve costs substantially higher than the original estimate. In the latter case, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated. The new process may include revising the RFP and the budget.

10 Other methods of selection

10.1 Quality-Based Selection (QBS)

10.1.1 QBS is appropriate for the following types of assignments:

- complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sectoral feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);
- assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and
- assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice and sector and policy studies in which the value of the services depends on the quality of the analysis).

10.1.2 In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The RFP should not disclose the estimated budget, but it may provide the estimated number of key staff time, specifying that this information is given as an indication only and that consultants are free to propose their own estimates.

10.1.3 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the accounting officer / authority should request the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The accounting officer / authority and the consultant should then negotiate the financial proposal and the contract. All other aspects of the selection process should be identical to those of QCBS. If, however, consultants were requested to provide financial proposals initially together with the technical proposals, safeguards should be built in to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

10.2 Selection under a fixed budget

This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP should indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. The TOR should be particularly well prepared to ensure that the budget is sufficient for the consultants to perform the expected tasks. Evaluation of all technical proposals should be carried out first as in the QCBS method, where after the price envelopes should be opened in public. Proposals that exceed the indicated budget should be rejected. The consultant who has submitted the highest ranked technical proposal should be selected and invited to negotiate a contract.

10.3 Least-cost selection

This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well-established practices and standards exist and in which the contract amount is small. Under this method, a "minimum" qualifying mark for the "functionality" is established. Proposals to be submitted in two envelopes are invited. Technical envelopes are opened first and evaluated. Those securing less than the minimum mark should be rejected and the financial envelopes of the rest are opened in public. The firm with the highest points should then be selected. Under this method, the qualifying minimum mark should be established, keeping in view that all proposals above the minimum compete only on "cost" and promotion of HDIs and RDP objectives. The minimum mark to qualify should be stated in the RFP.

10.4 Selection based on Consultants' qualifications

This method may be used for very small assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the accounting officer / authority should prepare the TOR, request expressions of interest and information on the consultants' experience and competence relevant to the assignment and select the firm with the most appropriate qualifications and references. The selected firm should be requested to submit a combined technical-financial proposal and then be invited to negotiate the contract.

10.5 Single-source selection

- 10.5.1 Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost and lacks transparency in selection and could encourage unacceptable practices. Therefore, single-source selection should be used only in exceptional cases. The justification for single-source selection should be examined in the context of the overall interests of the client and the project.

10.5.2 Single-source selection may be appropriate only if it presents a clear advantage over competition:

- for tasks that represent a natural continuation of previous work carried out by the firm;
- where a rapid selection is essential (for example, in an emergency operation);
- for very small assignments; or
- when only one firm is qualified or has experience of exceptional worth for the assignment.

10.5.3 The reasons for a single-source selection should be recorded and approved by the accounting officer / authority or his / her delegate prior to the conclusion of a contract.

10.5.4 When continuity for downstream work is essential, the initial RFP should outline this prospect and if practical, the factors used for the selection of the consultant should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition, subject to satisfactory performance in the initial assignment. For such downstream assignments, the accounting officer / authority should ask the initially selected consultant to prepare technical and financial proposals on the basis of TOR furnished by the accounting officer / authority, which should then be negotiated.

10.5.5 If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or reserved procurement or if the downstream assignment is substantially larger in value, a competitive process acceptable to the accounting officer / authority should normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest.

10.5.6 Where, in exceptional instances, it is impractical to appoint the required consultants through a competitive bidding process and a South African based consultant is used, the *Guidelines on Hourly Fee Rates for Consultants* issued by the Department of Public Service and Administration should be used as a benchmark to establish the appropriate tariffs, or to determine the reasonableness of the tariffs.

10.6 Selection of individual consultants

10.6.1 Individual consultants may normally be employed on assignments for which:

- teams of personnel are not required;
- no additional outside (home office) professional support is required; and
- the experience and qualifications of the individual are the paramount requirement.

10.6.2 When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

10.6.3 Individual consultants should be selected on the basis of their qualifications for the assignment. They may be selected on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the accounting officer / authority. Individuals employed by the accounting officer / authority should meet all relevant qualifications and should be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience and as appropriate, knowledge of the local conditions, such as local language, culture, administrative system and government organization.

10.6.4 From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in this practice note should apply to the parent firm.

10.7 Selection of particular types of consultants

10.7.1 *Use of Nongovernmental Organizations (NGOs).* NGOs are voluntary nonprofit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGOs may be included in the short list if they express interest and provided that the accounting officer / authority is satisfied with their qualifications. For assignments that emphasize participation and considerable local knowledge, the short list entirely NGOs. If so, the QCBS procedure should be followed and the evaluation criteria should reflect the unique qualifications of NGOs, such as voluntarism, nonprofit status, local knowledge, scale of operation, and reputation. An accounting officer / authority may select the NGO on a single-source basis, provided the criteria outlined for single source selection are fulfilled.

10.7.2 *Inspection Agents.* Accounting officers / authorities may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in the country. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection agencies should be registered with the South African National Accreditation System (SANAS) and the services of these inspection agents should be obtained by means of competitive bidding.

10.7.3 *Banks.* Investment and commercial banks, financial firms, and fund managers hired by accounting officers / authorities for the sale of assets, issuance of financial instruments and other corporate financial transactions, notably in the context of privatization operations, should be selected under QCBS. The RFP should specify selection criteria relevant to the activity—for example, experience in similar assignments or network of potential purchasers—and the cost of the services. In addition to the conventional remuneration (called a “retainer fee”), the compensation includes a “success fee.” This fee can be

fixed, but is usually expressed as a percentage of the value of the assets or other financial instruments to be sold. The RFP should indicate that the cost evaluation will take into account the success fee, either in combination with the retainer fee or alone. If alone, a standard retainer fee should be prescribed for all short-listed consultants and indicated in the RFP, and the financial scores should be based on the success fee as a percentage of a pre-disclosed notional value of the assets. For the combined evaluation (notably for large contracts), cost may be accorded a weight higher or the selection may be based on cost alone among those who secure a minimum passing mark for the quality of the proposal. The RFP should specify clearly how proposals will be presented and how they will be compared.

10.7.4 *Auditors.* Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They should be selected according to QCBS, with cost as a substantial selection factor (40–50 points), or by the “Least-Cost Selection.” When consultants are appointed to execute an audit function on behalf of the accounting officer / authority, the tariffs agreed by the Auditor-General and the South African Institute for Chartered Accountants (SAICA) may be used as a guideline to determine the appropriate tariff or to determine the reasonableness of the tariffs. These tariffs can be obtained from SAICA’s website under www.saica.co.za. The tariffs are captured in a circular issued by SAICA.

10.7.5 *“Service Delivery Contractors.”* Projects in the social sectors in particular may involve hiring of large numbers of individuals who deliver services on a contract basis (for example, social workers, nurses and paramedics). The job descriptions, minimum qualifications, terms of employment and selection procedures should be described in the project documentation.

11 Establishment of a list of approved service providers

11.1 Where consultancy services are required on a recurring basis, a panel of consultants/list of approved service providers for the rendering of these services may be established. These panels/lists should be established through the competitive bidding process, usually for services that are of a routine or simple nature where the scope and content of the work to be done can be described in detail.

11.2 The intention to establish a panel/list of approved service providers is published in the Government Tender Bulletin and the closing time and date for inclusion in the panel/list of approved service providers should be indicated. For this purpose, a questionnaire should be made available and should make provision for the following:

Full details of the service provider, among others:

- composition of the firm in terms of shareholding;
- personnel complement;
- representation of expertise in respect of the disciplines required, e.g. accounting, legal, educational, engineering, computer, etc.;

- national/international acceptability of experts in the various professions;
- experience as reflected in projects already dealt with; and
- financial position.

Requirements for admission to the list and criteria should be linked to the numeric value in terms of which applicants will be measured, for example qualifications, experience, acceptability, facilities and resources, etc. A pre-determined standard method of awarding points should be followed.

- 11.3 The applications received should be evaluated and any rejection of applicants should be motivated and recorded.
- 11.4 Once the panel/approved list of service providers has been approved, only the successful applicants are approached, depending on the circumstances, either by obtaining quotes on a rotation basis, or according to the bid procedure when services are required, with the exception that the requirement is not advertised in the Government Tender Bulletin again.
- 11.5 This list should be updated continuously, at least quarterly.

12 Evaluation of the performance of consultants

- 12.1 Consultants should observe due diligence and prevailing standards in the performance of the assignment. The accounting officer/authority should evaluate the performance of consultants appointed in a fair and confidential process. In the case of repeated poor performance, the firm should be notified and provided an opportunity to explain the reasons for it and the remedial action proposed.
- 12.2 Consultants should be responsible for the accuracy and suitability of their work. Although accounting officers/authorities supervise and review the consultants' work, no modifications should be made in the final documents prepared by the consultants without mutual agreement. In the case of supervision of works, consultants may have more or less authority to supervise, from full responsibility as an independent engineer, to that of advisor to the client with little authority to make decisions, as determined by the accounting officer/authority and captured in the contract agreement between the accounting officer/authority and the consultant.

13 Types of contracts

- 13.1 *Lump Sum (Firm Fixed Price) Contract:* Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents and software programs. Lump sum contracts are easy to administer because payments are due on clearly specified outputs.

- 13.2 *Time-Based Contract*: This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overheads, fees (or profit), and, where appropriate, special allowances. This type of contract should include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration and provision for price adjustments, where appropriate. Time-based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and payments claimed by the consultants are appropriate. Again the Guidelines on fees for Consultants issued by the Department of Public Service and Administration should be used as a benchmark to establish the appropriate tariffs, or to determine the reasonableness of the tariffs.
- 13.3 *Retainer and/or Contingency (Success) Fee Contract*: Retainer and contingency fee contracts are widely used when consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatization operations. The remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.
- 13.4 *Percentage Contract*: These contracts are commonly used for architectural services. They may be also used for procurement and inspection agents. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitive bid. It should be borne in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (for example, not works supervision).
- 13.5 *Indefinite Delivery Contract (Price Agreement)*: These contracts are used when accounting officers / authorities need to have "on call" specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. These are commonly used to retain "advisers" for implementation of complex projects (for example, dam panel), expert adjudicators for dispute resolution panels, accounting officer / authority reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more. The accounting officer / authority and the firm

agree on the unit rates to be paid for the experts and payments are made on the basis of the time actually used.

14 Important provisions

- 14.1 *Currency.* RFPs should clearly state that firms must express the price for their services, in Rand. If the consultants wish to express the price as a sum of amounts in different foreign currencies, they may do so, provided that the accounting officer / authority concurs with this practice and that the proposal includes no more than three foreign currencies outside the borders of South Africa. The accounting officer / authority should require consultants to state the portion of the price representing local costs in Rand. Payment under the contract should be made in the currency or currencies expressed in the formal contract.
- 14.2 *Price Adjustment.* To adjust the remuneration for foreign and/or local inflation, a price adjustment provision should be included in the contract if its duration is expected to exceed 12 months. Exceptionally, contracts of shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.
- 14.3 *Payment Provisions.* Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, should be agreed upon during negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts). Payments for advances (for example, for mobilization costs) exceeding 10 percent of the contract amount should normally be backed by advance payment securities. Payments should be made promptly in accordance with the contract provisions. To that end,
- consultants can be paid directly by the accounting officer / authority;
 - only disputed amounts should be withheld, with the remainder of the invoice paid in accordance with the contract; and
 - the contract should provide for the payment of financing charges if payment is delayed due to the client's fault beyond the time allowed in the contract. The rate of charges should be specified in the contract.
- 14.4 *Bid and Performance Securities.* Bid and performance securities are not recommended for consultants' services. Their enforcement is often subject to judgment calls, they can be easily abused and they tend to increase the costs to the consulting industry without evident benefits, which are eventually passed on to the accounting officer / authority.
- 14.5 *Accounting officer / authority's contribution.* The accounting officer / authority normally assigns members of its own professional staff to the assignment in different capacities. The contract between the accounting officer / authority and the consultant should give the details governing such staff, known as counterpart staff, as well as facilities that should be provided by the accounting

officer / authority, such as housing, office space, secretarial support, utilities, materials and vehicles. The contract should indicate measures the consultant can take if some of the items cannot be provided or have to be withdrawn during the assignment and the compensation the consultant will receive in such a case.

14.6 *Conflict of Interest.* The consultant should not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates should not engage in consulting activities that conflict with the interests of the client under the contract, and should be excluded from downstream supply of goods or construction of works or purchase of any asset or provision of any other service related to the assignment other than a continuation of the "Services" under the ongoing contract.

14.7 *Professional Liability.* The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the accounting officer / authority will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that:

- there should be no such limitation in case of the consultant's gross negligence or willful misconduct;
- the consultant's liability to the accounting officer / authority in no case be limited to less than the total payments expected to be made under the consultant's contract, or the proceeds the consultant is entitled to receive under its insurance, whichever is higher; and
- any such limitation may deal only with the consultant's liability toward the client and not with the consultant's liability toward third parties.

14.8 *Staff Substitution.* During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable), the consultant should propose other staff of at least the same level of qualifications for approval by the accounting officer / authority.

14.9 *Applicable Law and Settlement of Disputes.* The contract should include provisions dealing with the applicable law and the forum for the settlement of disputes. Should it not be possible to settle a dispute by means of mediation, the dispute may be settled in a South African court of law.

15 Advertising of expected and outstanding procurement

To obtain expressions of interest, the accounting officer / authority should include a list of expected consulting assignments in a General Procurement Notice, which should be updated annually for all outstanding procurement. This should be advertised in the Government Tender Bulletin. When

appropriate, accounting officers / authorities may also advertise these contracts in an international newspaper or a technical magazine, seeking "expressions of interest." In such cases the accounting officer / authority may also contact embassies and professional organizations. The information requested should be the minimum required to make a judgment on the firm's suitability and not be so complex as to discourage consultants from expressing interest. Sufficient time (not less than 30 days) should be provided for responses, before preparation of the short list.

16 Information to Consultants (ITC)

Scheduling the Selection Process

16.1 Modifications of Contract

16.1.1 Any granting of a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 percent, will be subject to the approval of the accounting officer / authority or his / her delegate.

16.1.2 Whenever possible, the accounting officer / authority should use RFPs, which include the ITC, covering the majority of assignments. If under exceptional circumstances, the accounting officer / authority needs to amend the standard ITC, it should do so through the technical data sheet and not by amending the main text. The ITC should include adequate information on the following aspects of the assignment:

- (i) a very brief description of the assignment;
- (ii) standard formats for the technical and financial proposals;
- (iii) the names and contact information of officials to whom clarifications should be addressed and with whom the consultants' representative should meet, if necessary;
- (iv) details of the selection procedure to be followed, including:
 - (a) a description of the two-stage process, if appropriate;
 - (b) a listing of the technical evaluation criteria and weights given to each criterion;
 - (c) the details of the financial evaluation;
 - (d) the relative weights for quality and cost in the case of QCBS;
 - (e) the minimum pass score for quality; and
 - (f) the details on the public opening of financial proposals;
 - (v) an estimate of the level of key staff inputs (in staff-months) required of the consultants; and indication of minimum experience, academic achievement, and so forth, expected of key staff or the total budget, if a given figure cannot be exceeded;
 - (vi) information on negotiations; and financial and other information that should be required of the selected firm during negotiation of the contract;

- (vii) the deadline for submission of proposals;
- (viii) a statement that the firm and any of its affiliates should be disqualified from providing downstream goods, works, or services under the project if, in the accounting officer's / authority's judgment, such activities constitute a conflict of interest with the services provided under the assignment;
- (ix) the method in which the proposal should be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that should ensure that the technical evaluation is not influenced by price;
- (x) request that the invited firm acknowledges receipt of the RFP and informs the accounting officer / authority whether or not it will be submitting a proposal;
- (xi) the short list of consultants being invited to submit proposals, and whether or not associations between short-listed consultants are acceptable;
- (xii) the period for which the consultants' proposals should be held valid (normally 60–90 days) and during which the consultants should undertake to maintain, without change, the proposed key staff, and should hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;
- (xiii) the anticipated date on which the selected consultant should be expected to commence the assignment;
- (xiv) a statement indicating all prices should be VAT inclusive;
- (xv) if not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the accounting officer / authority;
- (xvi) phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
- (xvii) the procedure to handle clarifications about the information given in the RFP; and
- (xviii) any conditions for subcontracting part of the assignment.

16.2 Disbursements

The responsibility for the implementation of the project, and therefore for the payment of consulting services under the project, rests solely with the accounting officer / authority.

16.3 Consultants' role

16.3.1 When consultants receive the RFP, and if they can meet the requirements of the TOR, and the commercial and contractual conditions, they should make the arrangements necessary to prepare a responsive proposal (for example, visiting the principal of the assignment, seeking associations, collecting documentation, setting up the preparation team). If the consultants find in the RFP documents—especially in the selection procedure and evaluation criteria—any ambiguity, omission or internal contradiction, or any feature that is unclear or that appears discriminatory or restrictive, they should seek

clarification from the accounting officer / authority, in writing, within the period specified in the RFP for seeking clarifications.

16.3.2 In this connection, it should be emphasized that the specific RFP issued by the accounting officer / authority governs each selection. If consultants feel that any of the provisions in the RFP are inconsistent with the prescripts of the Framework for Supply Chain Management and / or the PPPFA and its regulations, they should raise this issue with the accounting officer / authority in writing.

16.3.3 Consultants should ensure that they submit a fully responsive proposal including all the supporting documents requested in the RFP. It is essential to ensure accuracy in the *curricula vitae* of key staff submitted with the proposals. The *curricula vitae* should be signed by the consultants and the individuals and dated. Noncompliance with important requirements should result in rejection of the proposal. Once technical proposals are received and opened, consultants should not be required nor permitted to change the substance, the key staff, and so forth. Similarly, once financial proposals are received, consultants should not be required or permitted to change the quoted fee and so forth, except at the time of negotiations carried out in accordance with the provisions of the RFP.

16.4 Confidentiality

16.4.1 The process of proposal evaluation is to be confidential until the contract award is notified to the successful firm. Confidentiality enables the accounting officer / authority to avoid either the reality or perception of improper interference. If, during the evaluation process, consultants wish to bring additional information to the notice of the accounting officer / authority, they should do so in writing.

16.4.2 If consultants wish to raise issues or questions about the selection process, they should communicate directly in writing with the accounting officer / authority in this regard. All such communications should be addressed to the chief of the division for the relevant sector for the accounting officer / authority.

16.4.3 Communications that the accounting officer / authority receives from consultants after the opening of the technical proposals should be handled as follows:

- In the case of contracts any communication should be sent to the accounting officer / authority for due consideration and appropriate action. If additional information or clarification is required from the consultant, the accounting officer / authority should obtain it and comment on or incorporate it, as appropriate, in the evaluation report.

16.5 Debriefing

If after notification of award, a consultant wishes to ascertain the grounds on which its proposal was not selected, it should address its request in writing to the accounting officer / authority. If the consultant is not satisfied with the explanation given by the accounting officer / authority, the consultant may refer this matter to the relevant treasury, Public Protector or court of law.



JAN BREYTENBACH

CHIEF DIRECTOR: NORMS AND STANDARDS

5 DECEMBER 2003

Policy:\SCM-PracNote-Appoint Consultants