Australian Procurement and Construction Council

APCC Principles for Consultant Selection

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Requests for additional copies of this document should be addressed to:

Australian Procurement & Construction Council Inc (APCC)
PO Box 106 DEAKIN WEST ACT 2600
Unit 6, 42 Geils Court
DEAKIN ACT 2600
Phone 02 6285 2255 Fax 6282 3787
Email: info@apcc.gov.au
Web site: http://www.apcc.gov.au
PDF version of this document available for download from our website

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PURPOSE

Recognising that procurement of infrastructure is both complex and risky, government clients employ consultants that can demonstrate the technical competence needed to supply expert advice at all stages of the investment decision process, as trusted advisers.

Consultants, as a result, play a central role in creating infrastructure to support economic development and deliver services efficiently to the community; and, the processes employed to select consultants can have a major effect on outcomes.

The principles described in this guide cover selection of consultants for work done at initiation or feasibility, planning, design, construction, operation, management, maintenance and demolition/disposal phases.

This guide provides information on government clients' selection of consultants in relation to all aspects of the procurement of infrastructure.

SCOPE OF THE GUIDE

This guide applies to traditional government procurement and recognises that increasingly government and private sector providers are collaborating in the planning, funding, delivering, operating and disposal of infrastructure.

Governments are also adopting a coordinated whole-of-government approach to infrastructure provision for greater efficiency in delivery of services, presenting all concerned with increased complexity in terms of the nature of projects and in relation to the choice of appropriate selection processes.

The procurement processes used in member jurisdictions vary but essentially aim to maintain the highest standards of transparency and probity, while enabling consultants to offer innovative approaches when defining, designing and delivering efficient and sustainable infrastructure.

The focus of this guide is on the involvement of consultants at all stages of infrastructure procurement processes, not simply during the design and construction phases. For example, consultants may be commissioned to undertake feasibility design and planning work only, while later stages are subject to new competition.

DEFINITIONS

For the purposes of this guide the term:

- '**client(s)**' refers to government clients (principals).
- '**value for money**' is defined as benefits or outcomes achieved compared with costs including 'whole of life' costs and the opportunity cost of the investment.

GENERAL PRINCIPLES

The guide acknowledges that the procurement and contracting strategies adopted by a client will influence the extent of the professional services required.

From a client's perspective the strategic objective is to procure infrastructure that meets the government's objectives, fulfils client and user requirements, and supports economic development and delivery of services optimally.

While differences exist between jurisdictions in terms of approaches to procurement, there is a considerable level of consistency in relation to the over-arching principles governing arrangements between the parties.

Clients seek relationships with their consultants that are open, cooperative and non-adversarial and both should work collaboratively to:

- deliver value for money outcomes in line with government priorities,
- develop relationships that encourage continuous improvement and aim to reward superior performance,
- allocate risks to the party best placed to manage them,
- demonstrate a commitment to cooperative workforce management practices,
- meet required services and quality, time and cost performance requirements,
- pursue innovation and expansion of knowledge,
- achieve savings through lowering overhead costs; and
- facilitate industry development and long-term sustainability.

Against that background, it is fundamental that, among other things, clients' selection processes:

- support the selection of the consultant that supplies the best proposal,
- employ only experienced knowledgeable people to assess proposals,
- express fair and reasonable standards of service or undertakings to be met by all participants,
- maximise transparency and probity,
- encourage effective communication and cooperation,
- serve as a model of best practice in the industry,
- minimise costs for developing and submitting proposals,
- maintain a commercially sustainable level of competition between appropriately skilled and experienced consultants,
- incorporate a range of selection criteria in addition to price; and
- provide regular opportunities for new consultants who have not previously undertaken government work.

These qualities should be reflected both in the selection procedures and in agreements between clients and consultants.

KEY CONSIDERATIONS

This guide reflects the APCC position in relation to the following key considerations that arise in respect to the selection of consultants to be involved in the procurement of infrastructure:

- Concept of Value for Money
- Prequalification: Qualification of Consultants
- Relationships: Responsibilities of Clients and Consultants
- Documentation: Business Case / Planning / Project / Consultant Briefs
- Selection Methods
    - Value Based Selection
    - Price Based Selection
    - Qualification Based Selection
    - Generic Selection Method
- Selection Assessment Criteria: Prequalification and Projects; and
- Knowledge & Skills: Building & Construction Procurement is a Skill

CONCEPT OF VALUE FOR MONEY (VFM)

Clients have a duty to ensure government obtains best value for money (VFM) from investment in infrastructure. At its simplest, value for money is achieved when: (a) service and price are optimised; or, (b) benefits or outcomes are optimised compared with whole of life costs when considered against alternative investments.
APCC further defines VFM with respect specifically to building and construction projects as:

The combination of whole of life cost and quality considerations that can be expressed in terms of outcomes, for example: functional performance, maintenance implications, longer-term adaptability and so on.

The insistence by clients on receiving VFM in such terms emphasises the importance placed on factors other than price when making procurement decisions.
For example, quality, reliability, timeliness, service, initial and recurrent costs can all have a significant effect on benefits and these costs and are an integral part of VFM evaluations.

Good design has an essential role in achieving value for money in building and construction projects particularly in resolving competing demands in functional relationships and the performance of materials and components.
Value for money in selecting consultants does not mean 'lowest price'. A low price may indicate that the consultant is attempting to “buy” the job and may not have allowed to provide an adequate service. Low price bids should therefore be carefully evaluated to ensure that the services offered and the capability of the consultant do provide best value for money. This will generally be the case if it can be demonstrated that the service offered meets other project essentials as defined by the client.

Generally speaking, approval by a project sponsor or agency head to engage a consultant is given only when the cost is justified by the anticipated benefits in a well-developed business case.

From a clients’ perspective it is important to be clear about how value for money will be determined in any particular set of circumstances ***prior to assessing bids***. From a consultant’s perspective it is essential to be clear about how value for money will be determined ***prior to developing proposals***.

VFM selection decisions are based on total performance rather than price alone. They are assisted through critical elements of consultant management systems that involve continuous measurement of consultants’ capacity to deliver VFM. Operational means include:

- Pre-Qualification Systems,
- Performance Reporting on Quality, Time, Cost; and
- Post Occupancy / User Evaluations.

In that context, clients’ evaluation of the merits of one consultant compared with another focus on VFM delivered in accordance with needs specified, for example a consultant’s proven ability to:

- produce high quality work,
- offer consistent innovative solutions,
- deliver projects on time, within budget and to required standards; and
- maintain effective working relationships with client representatives and other project team members.

PREQUALIFICATION / QUALIFICATION OF CONSULTANTS

The APCC defines prequalification of consultants as the process by which consultants are assessed against predetermined criteria as a basis for identifying their capability with respect to particular types of work associated with typical government projects.

APCC members have adopted prequalification generally in line with the APCC *National Prequalification Criteria Framework (1998)*.

Prequalification systems are regarded by clients as an effective and cost efficient process and are an integral element in the determination of best value and as such complements the consideration of price.

Advantages

It has been found that the advantages of prequalification overwhelmingly outweigh disadvantages. More specifically these systems:

- provide clients with enhanced confidence in the ability of their consultants to deliver satisfactory outcomes in terms of time, cost and quality,
- form a framework for assessing and aligning contract risk with supplier risk in the selection process (i.e. the invitation to submit offers can be limited to those with a proven track record that are genuine competitors and have a reasonable chance of winning),
- streamline the consultant selection process,
- supply objective, quantifiable data to support decision-making in the selection process and subsequent performance reviews,
- allow clients to build a knowledge base covering groups of prospective consultants that in turn assists in gauging costs and risk allocation for both clients and consultants,
- permit clients to set clear and transparent consultant performance standards
- differentiate consultants as a basis for making the best match between consultant's capabilities and clients' requirements; and
- provide scope to encourage industry development and continuous improvement through periodic review and adjustment of the prequalification criteria.

Disadvantages

The prequalification process can be resource intensive in terms of both people and information systems during its initial establishment and for ongoing maintenance with associated cost implications.

Prequalification Increases Opportunities for Work

Broadly speaking, consultants need to be appropriately registered in what may be termed a Register of Pre-qualified Consultants (prequalification system) to be eligible to submit proposals for particular types of work on government projects. Clients generally call for submissions only from consultants that have met particular selection criteria and are maintained on a prequalification system. It is common for consultants that are not pre-qualified for all work types to be required to make arrangements to sub-consult with registered consultants to carry out those work types. Selection of sub-consultants in submissions is entirely at the discretion of the pre-qualified consultant.

Such arrangements ensure pre-qualified consultants can assist those that have not achieved prequalification status to be used for particular work and build their capabilities. However, registration is not a guarantee that any contract will be awarded.

Risk Management Tool

Essentially, a prequalification system is a risk management tool. Accordingly, risks accompanying the various services are correspondingly rated. On any infrastructure project, there is likely to be a number of separate services required, each having a potentially different risk rating.

Typically, clients' prequalification systems are designed so that only consultants that satisfy specific criteria become registered under the system and are eligible to provide proposals for particular types of work in accordance with a risk assessment of each project.

National Criteria

It is customary for consultants to be advised of the criteria used for prequalification, which are generally based on all or part of the eleven national criteria listed below:

- technical capability,
- financial capacity,
- quality management,
- occupational health safety and rehabilitation,
- compliance with the National Code of Practice,
- human resource management (including skill formation),
- commitment to client satisfaction,
- cooperative contracting and partnering,
- management of environmental issues,
- management for continuous improvement; and
- compliance with legislative requirements.

Broadly speaking, principals assign a rating with respect to effective work practices and superior capabilities even when compared globally with other leaders across diverse industry sectors.

Performance

The prequalification process provides a mechanism to continuously improve the performance of consultants seeking work and the clients they serve.

Performance evaluation occurs firstly as part of the prequalification process and subsequently during and upon completion of projects, it includes assessments of:

- qualifications of available resources,
- experience i.e. past performance in relation to government and other clients,
- past or current engagements on similar projects,
- past or current involvement in other programs; and
- number and size of contracts awarded in the past.

The number and size of contracts awarded can be used to differentiate two or more pre-qualified consultants that are assessed as equal, so that the consultant who has not previously supplied services can be considered.

Consultant performance is a critical element of an effective prequalification system and it is important that evaluation and reporting is completed in a timely and consistent manner.

It is best practice for clients to undertake post-completion evaluation of projects to ensure that the lessons of experience can be applied in the future.

Such evaluations should cover both the client's representatives and the consultant(s) in relation to their respective responsibilities.

A performance evaluation of the consultants engaged on the project is generally carried out during and/or at the conclusion of the work and the results retained in the prequalification system.

The performance data can be used to assist in the selection of consultants for new commissions and monitor growth in capabilities to facilitate the widening of opportunities for consultants.

Clients should:

- inform all invited consultants of the process by which submissions will be considered,
- use the same conditions of inviting proposals for each consultant,
- use consultant selection and engagement processes which are auditable, transparent and accountable,
- employ appropriately skilled and experienced persons on selection panels,
- consider insurance coverage commensurate with the level of risk involved with each consultancy,
- provide invitation documents that clearly and adequately specify the client's requirements,
- refrain from issuing invitations without a firm intention to proceed with the consultancy,
- use terms and conditions of selection and engagement which are (standard) in common use by public sector clients in the industry, with special conditions only where necessary,
- clearly determine the allocation of intellectual property rights in the contract documents ensuring clients rights and the public interest are protected,
- not accept late submissions unless the client has defined the circumstances where such can be considered,
- reject submissions which do not comply in a material way with the invitation documents,
- clearly specify evaluation criteria in the invitation documents,
- apply evaluation criteria in a predetermined and fair manner,
- if no submission is acceptable, negotiate with the initial best-value consultant to achieve an acceptable proposal,
- only re-invite submissions in compelling circumstances,
- not trade off one consultant's fee proposal against another or negotiate with more than one consultant at a time in an attempt to obtain a lower fee; and
- notify unsuccessful consultants in writing of the name of the successful consultant and, if requested, provide advice, which may be verbal, on the basis of the decision.

Consultants should:

- refrain from submitting proposals without a firm intention to proceed,
- refrain from responding if unable to provide the services required,
- immediately advise the client if unable to submit, having accepted an invitation to do so,
- ensure that their submissions comply with the requirements of the invitation documents; and
- provide evidence of professional indemnity and/or other insurance and management systems where required.

DOCUMENTATION

The quality of the initial planning by clients increases the prospects of delivering VFM outcomes.

It is vital, prior to inviting submissions and selecting consultants, clients allow adequate time and apply appropriate resources to the preparation of precise, and accurate information for interested parties; and, that the procurement options described have been thoroughly tested and costed.

The key documents are:

- Business Case
- Project Brief / Specification / Terms of Reference / Terms of Engagement
- Expressions of Interest invitation documentation; and
- Invitations

The APCC has produced a guide *Improving Project Documentation – A Guide to Improve Current Practice, October 2003* which establishes a number of principles and protocols to guide both clients and consultants.

Business Case

The Business Case must establish direct connections between the proposed infrastructure / project and the client's (thus the government's) specific economic, social and environmental outcomes that justified approval being given for the project to proceed.

Consultants can, and frequently do, play a significant part in developing the Business Case and in assisting with development, for example, of non-build solutions that can have a profound impact on VFM outcomes in the short, medium and long-term.

The client's best interest is served when consultants are given adequate time to develop innovative solutions, and are encouraged to add value with respect to materials and improvements in processes that could be used at all stages of the project.

The Business Case and the decision to proceed should be soundly based on a combination of detailed studies, analyses and decisions covering such things as:

- supply / demand considerations,
- identification of alternative infrastructure / service delivery mechanisms,
- opportunities for innovative design,
- procurement solutions,
- measurements of functional suitability,
- estimates of initial capital and life cycle costs,
- options for risk allocation / mitigation; and
- economic, social and cultural benefits.

The Business Case should confirm the preferred / viable option and how it:

- meets client / user needs,
- delivers value for money; and
- takes account of the associated risks and impacts on time, cost and performance.

DOCUMENTATION CONT'D

Project Brief / Specification[1]

The documentation issued to consultants outlining the project and defining VFM objectives must be constructed in a proper, impartial manner that supports equal competition between those invited to provide proposals and stands up to scrutiny.

The Project Brief / Specification describes the client's requirements and should present the consultant with the optimum combination of whole of life cost and quality outcomes that meet the client's requirements i.e. value for money. A Project Brief will typically include:

- rationale for creation of the infrastructure and objectives to be achieved,
- functional aspects of the project including user needs spatial parameters etc,
- quality standards taking account of whole of life sustainability and whole of life costing,
- equipment and special features,
- operational and maintenance requirements,
- environmental imperatives,
- statutory requirements to be met; and
- asset disposal plan.

Consultants Brief

The Consultant's Brief including Terms of Reference (TOR) will describe in precise terms the objective and scope of a proposed consultancy; the functions and responsibilities to be assigned to the consultant, and services they are expected to supply and information on timing, oversight and reporting arrangements.

The brief must supply sufficient information to allow consultants to readily understand the client's requirements and the services the consultant is to carry out, including:

- specification of requirements
    - information about the work to be done,
    - objectives pursued; and
    - outputs sought.
- terms of reference
    - information on timing of services and required deliverables,
    - oversight and reporting arrangements; and
    - conditions of bidding.
- proposed conditions of contract
    - ownership of outputs; and
    - payments.
- information about the selection process
    - selection criteria,
    - process of selection,
    - instructions on the format of submissions; and
    - deadline for submissions and place for delivery of submissions.

[1] For many consultancies, all the information can be in one document called 'an invitation for proposals' or 'the specification' or 'the brief'. The amount of information provided varies according to a project's complexity.

Expressions of Interest

The use of Expressions of Interest (EOI) to pre-qualify consultants on a project specific basis should only be used as an invitation method where special skills or a high level of innovation is required. For example, projects associated with a design competition; or when it is desirable to provide opportunities for consultants to work together, such as to meet policy objectives associated with local industry participation. Interest may be invited from those currently on a PQ system or by open invitation. Using EOI for prequalification limits the cost of responding to the full requirements of the client brief to a small number of consultants assessed as most suitable for the project.

The following activities should be undertaken in the early planning stages of the Expression of Interest, to manage risk associated with the procurement of consultant services:

- assessment of supply market for the consultant services,
- alignment of project requirements and the supply market capability; and
- preparation of the Expression of Interest Terms of Reference.

The information sought at the first stage is broader in nature and generally includes:

- the objectives and the nature of the task to be undertaken by the consultants,
- a statement of the purpose of the first stage (to develop a short-list, etc),
- an indicative timetable for the commencement of the second stage,
- selection criteria for short-listing; and
- conditions of responding to the invitation.

Fundamentally, the invitation at the first stage should ask pre-qualified consultants to make submissions:

- stating their ability to meet specific project requirements, either individually or by combining their abilities; and
- on the understanding that assessment of their submission will be the basis for determining their inclusion or otherwise in a shortlist for invitation to submit a consultancy proposal.

Invitations

The invitation documents should conform to the following objectives:

- clearly state the conditions of engagement,
- clearly define the brief in physical, financial and functional terms,
- provide adequate definition of the scope of service to be provided by the consultant and outputs to be delivered,
- ensure that the time allowed for the consultant's response is reasonable,
- clearly establish the program, budget and quality requirements for the project; and
- define the supporting information to be provided by the consultant with the submission.

Clients should:

- allow sufficient time for project definition, design and documentation,
- concurrently advise all consultants of amendments to invitation documents during the submission stage while ensuring sufficient time remains to prepare proposals before the time of closing,
- make the names of all those who lodge submissions publicly available upon request after the time for lodging submissions has expired,
- arrange for submissions to be assessed by persons with relevant skills and knowledge,
- generally accept those submissions representing best value as determined by the application of the evaluation criteria, and
- depending upon the size and complexity of the submission process, consider reimbursing consultants reasonable costs of preparing submissions, particularly if the consultancy does not proceed or where any preliminary conceptual design work is requested.

SELECTION METHODS COMPARED

As APCC members use prequalification systems to shortlist consultants to supply particular types of services, best value may be obtained by employing one of the first two methods described, or a combination of these:

Value Based Selection (VBS)

VBS is a preferred method of selection used by a number of APCC member jurisdictions.

VBS is defined as a selection method where submissions are solicited (publicly or by invitation) by means of a request for proposals (RFP) process and a consultant is selected whose submission offers best value for money, taking into consideration both the qualifications of the consultant and other essentials such as quality, reliability and price.

Value based selection does not mean 'lowest price'. However, the lowest price bid might offer the best value if it can be clearly demonstrated that it meets other essential criteria.

Price Based Selection (PBS)

For the purposes of this guide:

PBS is defined as occurring when submissions are solicited (publicly or by invitation) by means of a competitive bidding process, and a consultant is selected taking into consideration only price and compliance with the specification.

From time to time sections of the industry indicate that selection of consultants to undertake work appear to have been substantially determined on the basis of the price offered such as for industrial type, repeat design or low innovation/design content facilities. PBS will only be a relevant value for money selection method for government where proposed commissions are low risk and low fee value and where it is a partial service or is relating to a single discipline.

Qualifications Based Selection (QBS)

There has been a continuing drive by the Australian Council of Building Design Professions for adoption of Qualification Based Selection (QBS).

QBS is defined as a selection method where, based on submissions received, consultants are ranked by their qualifications and capability to provide the required services but without consideration of price. Price is negotiated with the highest ranked consultant. .

Qualification Based Selection is not compatible with the principles in this document.

GENERIC SELECTION PROCESS

Basic steps are:

1. **Develop the Client's Brief:** Client's value for money outcomes as specified in documentation that supports the project proceeding. Consideration will be given to: time frame for completion; access to site for prospective consultants; time needed to conduct selection process and other factors.

2. **Identify Prospective Consultants**: Consideration of pre-qualified consultants in relation to the Client's Brief and their known capabilities and the type of work to be done having regard for:

   - qualifications of available human resources
   - experience i.e. past performance in relation to government and other clients
   - past or current engagements on similar projects, building types or procurement systems
   - past or current involvement on other projects; and
   - number and size of contracts awarded in the past

3. **Shortlist Consultants**: Listing of a number of consultants (not exceeding three) that best match the client's requirements.

4. **Solicit Consultants**: Publicly Advertised / Call for Expression of Interest / Request for Proposals, in one or more stages depending on the scope of the project and complexity.

5. **Evaluate Consultant Submissions**: Assessment of submissions using a formal methodology, and predetermined and disclosed project specific criteria and weightings included in the solicitation documents.

6. **Rank Consultants**: Consultants assigned ranking based on the assessment process.

7. **Recommend a Consultant**: Assessment panel make a recommendation to the client or their representative as to the most suitable consultant for the work. The recommendation to be documented covering such aspects as: scope of services; reasons for selection; and costs for the services to be delivered.

8. **Negotiate with Consultant**: Negotiation is centred on client amendments to the terms or scope of the services required with corresponding amendment to fees. If negotiation is unsuccessful with the initially preferred consultant, approval is usually sought to negotiate with the next ranked consultant.

9. **Award of Contract**: Formal award and execution of relevant contract(s).

SELECTION / ASSESSMENT CRITERIA

The criteria used to evaluate consultant proposals should, as a minimum, include:

- Consultant's expressed understanding of the project objectives
- Methodology i.e. proposed process for delivery of the services and solutions offered that deliver value for money
- Resource strategy i.e. human, technical specialist resources to be applied
- Value adding; and
- Fees

Understanding project objectives

The consultants' understanding of client's VFM objectives is essential. A consultant's response should make distinct linkages between the client's VFM objectives and the proposed solution, not simply repeat those stated in the Terms of Reference.

Relevant sub-criteria could include:

- the scope of work
- project objectives and deliverables in terms of time, cost, quality and function
- design intent or approach to design solution
- operational efficiency requirements / intended service delivery from the facility
- flexibility requirements; and
- sustainability i.e. built asset whole of life factors such as maintenance, operating costs, etc

Methodology

The consultant must outline the processes for delivery of the proposed services. Consultant responses may include diagrammatic representation of the proposed processes, reporting relationships, systems, procedures, etc.

Sub-criteria that clients could require consultants to address in their proposals and that may provide the basis for identifying or suggesting added value include:

- process management
- relationship management
- overall design (or trade package) documentation process
- programming issues
- cost planning and cost management
- built asset whole of life cost issues
- training, handover and commissioning processes
- buildability issues
- quality management, safety and environment policies
- management systems
- key support equipment and systems
- alternative forms of procurement
- strategy for maximising value for money
- community consultation strategy; and
- environmental management/sustainability

Resource Strategy

Consultants would be assessed on the resources to be applied to the project and their alignment with the project objectives.

Sub-criteria could include:

- capability of the project team (both managerial and supervisory personnel and key team members)
- personnel backup strategies
- referees
- resource management strategies
- management structures and reporting relationships (including identification of key activities and the proportion of time that identified personnel will be allocated to these activities)
- past and current time related performance
- impact on agency resources; and
- use of special Information and Communication Technology (ICT) packages

Value adding

Consultants should be given the maximum possible opportunity to introduce innovative approaches to solving issues. The consultant should define the VFM benefits that would exceed those described in the Terms of Reference, including how these are to be achieved and their relevance to the project.

In addition to the above, sub-criteria could also include:

- innovative approaches to design issues described in the Terms of Reference
- incorporation of research and development findings into project deliverables
- prior knowledge of the particular site
- understanding of local issues
- special skills of personnel (may also be reflected in resources section); and
- contribution to the built environment

Fees

Under Value Selection, price and non-price criteria for each consultant are assessed together to identify the best proposal.

Consultant fees need to be stated in accordance with the invitation documents. Generally, this will be in the form of a lump sum or percentage of the estimated building cost or based on an hourly rate with an agreed maximum limit.

KNOWLEDGE & SKILLS: PROCUREMENT IS A SKILL

The collaborative approach to procurement of infrastructure implies continuous improvement in terms of the professional skills employed in procurement, contract management, asset management on the part of clients, their representatives and consultants.

To assist government clients in this regard, the APCC has issued a guideline entitled *Client Skills: Skills required by Government as the Construction Industry Client, July 2002.*

Steps have been taken by some jurisdictions to accredit client agencies or specific persons within agencies, recognising that some possess the knowledge, skills and experience required to manage complex procurement assignments while others may not.

In this context, clients have an obligation to ensure decision makers possess or can access adequate specialist advice.

The people conducting the assessments must have relevant skills and knowledge appropriate to the nature, value and risk associated with the projects.

The assessors must be free of any conflict of interest that may undermine the objectivity of assessments.