

Procurement Practices Manual Best Practice for the Engagement of Consultants

(Building and Construction Projects)

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Background

Physical assets comprise a significant segment of public sector resources. Those assets under the control and stewardship of public sector agencies are held and used to meet Government policy objectives through the provision of goods and services.

Effective asset management is essential in an environment where there are competing demands for Government resources.

The publication *Best Practice for the Engagement of Consultants* is one of a suite of procurement practices publications which together with the Treasurer's Instructions and guidance information provided on the Purchasing website (www.purchasing.tas.gov.au), set out both mandatory requirements and best practice for Government building construction works projects, once they have received funding and are approved to proceed.

The aim of this information is to assist agencies to manage the Government's "building construction project risk" and to present a consistent view to industry for all Government building construction projects.

The *Best Practice for the Engagement of Consultants* publication provides guidelines to assist agencies to engage the right consultant and provides the framework to be followed when engaging consultants. A list of related publications is outlined in Section 9.

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I. INTRODUCTION

Infrastructure assets assist Government in the delivery of services. It is therefore important that any building construction project satisfies the output needs of the agency.

Detailed planning and evaluation of project solutions will assist agencies in establishing the most appropriate means of meeting their service delivery requirements and any resultant design brief for a building construction project must reflect those service delivery needs.

The decision to engage a consultant, to assist in the process of acquiring a new building or redeveloping existing accommodation, will generally derive from the agency's strategic asset management plan.

A consultant may initially be engaged to assist in establishing the need for a project. This association will often continue, with the consultant providing the agency with a service for developing a project brief that meets the requirement of the agency; providing the preliminary design for the project; developing the final design and producing procurement documentation and then contract administration.

***Note:** The consultant is responsible for delivering design and documentation of a technically and functionally efficient project in accordance with the project brief.*

However, the responsibility for a particular project remains with the agency and cannot be delegated to the consultant.

Agencies are required to participate in the Structured Infrastructure Investment Review Process, which prioritises infrastructure projects for funding by the Government.

SIIRP is a method for agencies to bid for budget funding for large scale infrastructure projects. SIIRP has four distinct phases: Investment Concept and Options Analysis; Business Case; Budget Committee Consideration; and Project Review – Closure and Benefits Realisation. Consultants may be engaged by an agency to support products required to be produced as part of the first three phases.

For further information on the SIIRP, please go to the [Treasury website](#).

1.1 Consultants Required

The consultants required for any particular project will vary depending on the size of the project, its nature and complexity. A variety of consultants may be necessary at any given phase of the project. For example:

1.1.1 Value Management Study phase

Value Management is a structured, systematic and analytical process that seeks to ensure that all necessary functions of a project are provided at the lowest total cost consistent with required levels of quality and performance.

Underlying the process is the principle that there is always more than one way to satisfy a need and that a rigorous and structured examination of the alternatives will produce the most acceptable solution.

The value management process encompasses the following steps:

- identifying and ranking the functions required, together with their relative cost and worth, and establishing benchmarks;
- arranging the required functions into process-related groups;
- generating value improvement options through considering innovative and alternative means of achieving the required functions; and
- short-listing viable options and developing them for evaluation.

Once the requirement for a build option has been established and funding is approved, a value management consultant may be required to continue the value management process. This will further identify such issues as site options and functional organisation. Value for money is optimised by extending the value management study, to include critical points in the project procurement process.

These are typically:

- functional brief;
- schematic design; and
- design development.

1.1.2 Functional Brief phase

The functional brief establishes all the functions which the facility must accommodate or provide to fulfil the specific needs of the agency.

The development of a functional brief requires a consultant to convert the agency's output needs into specific user requirements and details of relationships between spaces.

1.1.3 Project Brief phase

The project brief combines the functional brief with the specific physical and technical design requirements of the project. The design requirements include: site investigation and survey information, space/accommodation requirements, functions required, relationships between the functions, building services (structural, power, heating, ventilation, security, fire protection and communications systems/proposals), site development requirements (landscape philosophy, car parking), furniture and equipment requirements, anticipated growth and change requirements, environmental issues, planning constraints, aesthetic considerations, occupational health and safety, recurrent/maintenance cost considerations, life-cycle costing, budgeting, time program, and specific room data requirements.

To determine and assemble the information required in the project brief generally involves a consultant with a team of specialist sub-consultants.

1.1.4 Design and Documentation phases

The design and documentation process of a project includes the following stages:

- schematic design – defines the solution to meet the project brief, including: energy conservation/efficiency features, cost effectiveness, construction methods, materials and finishes, integration with site strategy, operating/life-cycle cost analyses, environmental considerations, preliminary approval from relevant authorities, sun diagrams for winter and summer, cost estimate, time program;
- design development – firms up schematic design into final design, including: schedules of finishes and materials, integration of building services with architectural and structural systems, verification of cost estimate, verification of time program; and
- documentation – to document the final design, including: preparation of specification and tender drawings, final integration with structural and building services, statutory approvals as appropriate.

A full consultant team, complete with specialist sub-consultants, is generally required for these phases.

1.1.5 Construction phase

A full consultant team, complete with specialist sub-consultants, is generally required for this phase.

1.1.6 Post Occupancy Evaluation phase

This is an assessment that measures how effectively the facility meets the agency's needs. It provides feedback to the agency for the development of the functional brief for future projects.

The post occupancy evaluation is usually performed by the project architect, but can be carried out by an independent architect or a consultant specialising in post occupancy evaluation.

1.1.7 Facility Management, Operating Plans and Maintenance Plans phase

Every facility has operating and maintenance costs associated with it. These costs continue throughout the economic or functional life of the building and equal about 80 per cent of the combined capital and operating cost.

Consultant commission briefs should include a requirement to include operating plans and maintenance plans. Unless there is capacity available within an agency, a consultant should be engaged to manage the maintenance of the building - in particular, building services maintenance.

2. IMPORTANT INFORMATION FOR PROCUREMENT OFFICERS AND PROJECT MANAGERS

The following are important considerations to be taken into account by agency procurement officers and agency building construction project managers when commissioning consultants for building construction projects:

- Government must receive best value from its investments (value for money) and be seen to achieve maximum benefit in its spending of public funds.

The agency needs to ensure that the consultant engaged will provide the most cost efficient solution to satisfy the agency's needs and ensure that value for money is achieved during the planned life of the facility.

- Agencies must be seen to be fair and equitable in their dealings with the private sector and exercise probity in dealing with consultants. The processes and procedures used must bear public scrutiny and provide an audit trail of the commissioning and consultant briefing processes.

Further information is available from the Treasurer's Instructions, in particular Instruction 1201.

- Agencies must seek advice from the Office of the Crown Solicitor at the planning stage of engaging consultancy services to determine whether the Australian Standard contract AS 4122-2010 is appropriate for the circumstances of the procurement or another form of contract is more suitable. Where AS 4122-2010 is to be used agencies must obtain:
 - a copy of the Schedules that have been drafted by the Crown Solicitor amending the Annexures to AS 4122-2010 for inclusion with the contract; and
 - advice on how to complete the Annexures to AS 4122-2010.
- Depending on the size, nature, complexity and planned longevity of the proposed facility, project budgets should include fees for the following:
 - life-cycle costing;
 - estimates of maintenance and operation costs;
 - post occupancy evaluations;
 - design of operation and maintenance plans;

- allowance of contingency funding to carry out the recommendations of post occupancy evaluations; and
- costings related to any other tasks that are required to be undertaken by the consultant.
- The greatest potential for identifying and achieving capital and recurrent savings is in the early planning phases of a project.

Therefore, there is a critical relationship between an appropriate consultancy early in the procurement process and the life-cycle cost of the project.

- The design solution must provide efficient and effective service delivery for agencies.
- Innovative service delivery options should be encouraged.

Innovative service deliveries may include:

- solutions developed in conjunction with the private sector;
- using up-to-date technology to achieve desired outcomes;
- ‘no build’ solutions to satisfy service delivery needs; and
- ‘end use’ planning to provide alternative uses for built assets.
- The criteria that are required to satisfy the agency’s service delivery needs must be clearly defined and documented.
- An in-depth scope of work of a commission, including briefing of sub-consultants, must be prepared. Consultants (especially the value management pre-project analyst) may need to be involved in the preparation of the scope of work.
- Fees must relate to the quantity and quality of services required, not to a general fee scale.

Design fees represent about 0.1 per cent of the life-cycle cost of the building, and construction and operating costs are in the order of 80 per cent of the life-cycle cost. A variation of 20 per cent in the design fee (the difference between a high and a low fee) equates to a change in life-cycle cost of about 0.02 per cent. An additional fee of this order could be the difference between an ordinary design and one which reduces the life-cycle cost by 5 per cent or more in energy savings and other operating efficiencies. Allowing an adequate consultancy fee enables the consultant to spend the time required to develop a quality design that is cost effective over the life of the building, reducing energy and other operating costs.

- Competition between consultants should not be undertaken to reduce the cost of fees.

Competition should be used only as a tool to improve the quality of the services provided by consultants for the services needed.

- Agencies must have an in-depth understanding of the consultants available, which may involve undertaking preliminary research to acquire such knowledge.
- Consultants must have the relevant experience and/or ability in providing the services that are required; they must have the resources to manage the proposed commission; they must have these resources available to suit the project program; and they must have a history of satisfactory performance in the required scope of works.

- Consultants must be appropriately professionally qualified to provide the services required. They may also be required to be registered with a professional body.
- Consultants engaged for Government building work must have professional indemnity insurance to allow Government to recover costs for professional negligence, through negotiation or litigation.
- Consultant commissions must be a formal contract between a consultant and the Principal.
 - This involves a written offer from the consultant and a written acceptance of that offer from the Principal. It is usual in a Government commission that the Principal is a Head of Agency or a Minister.*
- Consultants must design all elements of the building based on a life-cycle cost analysis utilising an appropriate discount factor.

This also identifies the real cost of the building to an agency.

3. AGENCY—CONSULTANT RELATIONSHIP

The selection of the appropriate consultant is an important issue. Through this appointment, an agency retains a professional (or a team of professionals) on which it will ultimately depend on for the financial, functional, design quality and cost/time success of the building project.

Throughout the design and construction phases, the consultant(s) will also provide a service as an adviser. This relationship continues until completion of the building, and generally beyond, into fit-out and future extensions.

3.1 Partnering

The relationship between an agency and the consultant(s) needs to be an open and co-operative one to achieve a successful partnership. This partnership aligns the consultant with the client and, in addition to the traditional procurement of services, requires the consultant to provide advice and assistance to achieve the agency's ongoing objectives.

3.2 Risk

The consultant will need to assist the agency to identify and assess risks, and provide advice to the agency as to how to manage those risks.

4. FEE LEVELS AND QUALITY OF SERVICE

Commission fees need to relate to the quality of intellectual effort and time required by the consultant to fulfil the required task. However, the key to assessing the acceptability of a fee is the value for money it represents to Government. Rather than reducing their fees, consultants should be encouraged to reduce the capital and recurrent costs of a project while still retaining the agency's output needs.

4.1 Fees

To provide a partnering service, consultants need to charge an appropriate fee. As consultants are in competition for a limited pool of work, which may lead to a market that is sensitive to fees, agencies should concentrate on the level and quality of service which they need and ensure that fees are value for money rather than just low. This will provide incentive to consultants to improve the quality of the service provided and ensure that fees are not over-emphasised relative to other issues (ie such as the performance of the building).

It is important to ensure not only that the consultant receives an adequate fee to perform the task, but that all sub-consultants in the commission will also receive fees that are adequate for effective performance of the tasks in the commission.

The fee level determines the time spent on research, considering opportunity, refining the design and detailing of documentation. Inadequate effort spent on these factors can reduce real savings, may cost contract variations during the construction phase and may lead to higher life-cycle cost in the form of increased maintenance and energy costs.

Fees which require consultants to economise on the service may lead to the tendency for consultants to take a preliminary brief at face value and not explore alternative design solutions or assess long-term consequences. Inadequate consideration of a project at the briefing stage can result in buildings and building services that may meet the project budget but leave the State and the procuring agency with an asset that is a long-term liability, due to energy inefficiency, occupant discomfort, or lack of planning and infrastructure to accommodate predictable change. Inadequate fees can also tend to reduce input in the design development and documentation stages, preventing consideration of alternative solutions, systems and equipment.

On the other hand, increasing the fee beyond value for money will not increase the quality of the service provided.

A commission fee framework should take into consideration the following:

- the nature of the project in respect of size, complexity and delivery method;
- the consultant skills required; and
- an appropriate fee framework that provides budgetary control of commission fees.

The concept of selecting a consultant on the basis of the fee presupposes that all consultants have the same experience, qualifications and resources. Although consultants receive similar initial training, some will be better suited, more experienced and more capable of undertaking particular projects than others. The most appropriate means of ensuring value for money is to attribute a low importance to fees (see Value Based Selection method under Section 6.3) or, in some cases, negotiate fees with a consultant for a specific service (see Qualifications Based Selection method under Section 6.3). This requires an understanding of the cost structure of consultants, the resources involved in a service, and the needs of the project (as set out in the functional brief) which the agency determines. In addition, the life-cycle cost of the project is generally reduced when a low weighting is attributed to fees in the selection criteria of the commission brief, or when the fees are excluded from the selection criteria and are negotiated at the end of the selection process. Selection of a consultant should be made on the basis of the particular consultant's experience and ability to provide the service required.

4.2 Quality of Service

When engaging a consultant, it is essential to ensure that:

- the technical content of a project is adequately briefed in accordance with the stated agency need;
- the intended design solution produced by the consultant satisfies the brief; and
- the scope of work for a project is adequately defined by the agency and has a realistic budget.

Project procurement process do not necessarily ensure that adequate thought has been given to the needs which the project is required to fulfil, or that the quality of the solution offered encompasses all the opportunities that are available. These issues should be considered in addition to the procurement process.

If sub-consultants have an inadequate brief for the commission, they have little information on which to base a fee submission. The functional brief, developed through the value management study, therefore needs to include briefing information on the internal environmental conditions and services systems to be incorporated into the project. If this information has not been developed at commissioning, then the inclusion into the commission of sub-consultants should be delayed until such information is available.

4.3 Involvement of Specialist Sub-Consultants in Project Brief and Schematic Design Phases

The project brief should not be commenced until the functional brief is resolved and approved. The functional brief may require the input of specialist sub-consultants.

At the project briefing phase, architectural and engineering consultants develop the project brief on behalf of the agency. As this stage determines the project response that is intended to meet the output delivery needs, it is crucial that adequate effort is spent on it.

If multiple schematic design options are required for an agency to assess, it may be appropriate for the fees for the project brief and schematic design phases to be time based or a negotiated fee for each stage of the additional work, in order to ensure that these phases are thoroughly researched.

In all cases where multiple schematic design options are required, the procuring agency must ensure that:

- consultant architects involve the specialist sub-consultants at project brief and design phases, so that all technical requirements, such as, for example, maximum energy efficiency options, are considered;
- specialist sub-consultants are consulted for building services advice on alternative quality standards that can be applied to a project, together with the accepted quality benchmarks and an assessment of the benefits that accrue from each alternative;
- specialist sub-consultants quantify the capital, operating and maintenance costs for typical alternative systems. The analysis should use the Net Present Value Technique over the design life of the building;
- consultants prepare at least two costed viable concepts for consideration; and
- project brief and schematic design are documented, agreed to by all parties and approved by the agency.

Should the agency consider that there is insufficient in-house expertise to assess schematic design proposals, a consultant with this expertise should be engaged to provide that assistance (refer section 1.1.2 Value Management Study phase).

While fees will be charged for the involvement of specialist sub-consultants in the project brief and early design phases, increased fees are generally justified by:

- the improvements to the overall project design;
- increased long-term satisfaction in the building performance;
- increased building efficiency;
- significant and ongoing savings in energy and operation costs; and
- achievement of optimum long-term asset value for Government.

Building space and operational efficiency can be increased by detailed consideration of space requirements and functional considerations. Critical appraisal of these aspects can reduce initial capital costs as well as reduce the staffing required to operate a facility such as a hospital.

4.4 Design and Documentation Stage

The agency must ensure that:

- all aspects of design are subjected to agency review to ensure that the requirements of the brief are achieved;

Consultants occasionally make decisions early in the design period that are sometimes later found to be capable of improvement, but due to the pressure of time, limited fees and fixed ideas those decisions are not revisited or revised. Reviews expose those decisions. The prospect of a review entices the consultant to critically assess designs on a continuous basis. The benefits which accrue from reviews are buildings that operate more effectively and efficiently and cost savings due to having fewer variations during the construction period. Such a review should precede the agency's formal approval of the final schematic design.

- safety in design considerations have been implemented early in the design and documentation stage (safety in design will be reviewed throughout the procurement process);
- changes made to the functional brief, during the design process, are thoroughly assessed for their impact on the whole project and are documented in detail for future reference. This is essential in case of future litigation and the need to allocate legal liability. Changes to the required consulting services will also change the value of the fees; and
- procurement documentation is thoroughly assessed prior to calling for quotes or tenders, to avoid the need for issuing addenda, to avoid qualifications being submitted with offers and to avoid delays at the assessment stage. An agency cannot promptly award a contract when a significant doubt or confusion exists and this can cause considerable delays.

Should the procuring agency consider that there is insufficient in-house expertise to carry out the independent review of any of the above tasks, then a consultant with this expertise should be engaged to provide the overview.

5. CONSULTANT PREQUALIFICATION SCHEME

The availability of accurate and relevant data on the capabilities and performance of consultants is essential if the agency is to fulfil its risk management responsibility.

Treasury maintains a Consultant Prequalification Scheme which provides a record of consultants prequalified to perform Government work. This Scheme serves to maintain a comprehensive record of consultants available, their expertise, experience, capacity to perform and a history of their performance on Government projects.

It is crucial to the viability of the Consultant Prequalification Scheme to maintain the currency of the information in the system and one of the ways this is done is by using Performance Reporting. However, if the reports are to be useful as evidence in the future, and not just a project officer's opinion, they must be discussed with the consultant, especially when the report is to be negative.

For further information on performance reporting, refer to the information on the Purchasing website at www.purchasing.tas.gov.au.

5.1 Clauses for inclusion in Letter of Invitation and the General Conditions of Engagement of Prequalified Consultants in relation to performance reporting

Consultants should be advised that during the course of a contract, the consultant's performance will be monitored.

Clauses must be included in the documents that call for submissions (the commission brief) to ensure that consultants are quite clear on the Government's policy in regard to the recording and reporting of consultants' performance.

“By tendering or quoting for this contract, the consultant acknowledges:

- that the performance of the Services by the successful consultant will be monitored and evaluated by the Principal (or the Principal's authorised officer) as frequently as deemed appropriate by the Principal;
- that the successful consultant will be required to provide such assistance and documentation as is required by the Principal (or the Principal's authorised officer) in relation to the monitoring and evaluation;
- that all information provided to the Principal (or the Principal's authorised officer) for the purposes of the monitoring and evaluation will not be regarded as confidential; and
- that all the information obtained by the Principal (or the Principal's authorised officer) for the purposes of the monitoring and evaluation may be used by all areas of the Tasmanian Government for the purposes of:
 - evaluating future tenders or offers by the successful consultant to perform other services; and
 - re-evaluating the prequalification status of the successful consultant.”

The following clause must also be contained in all contracts:

“The Consultant agrees:

- that the performance of the Services will be monitored and evaluated by the Principal (or the Principal's authorised officer) as frequently as deemed appropriate by the Principal;
- to provide such assistance and documentation as is required by the Principal (or the Principal's authorised officer) in relation to the monitoring and evaluation;
- that all information provided to the Principal (or the Principal's authorised officer) for the purposes of the monitoring or evaluation will not be regarded as confidential; and
- that all information obtained by the Principal (or the Principal's authorised officer) for the purposes of the monitoring and evaluation may be used by all areas of the Tasmanian Government for the purposes of:
 - evaluating future tenders or offers by the Consultant to perform other services; and
 - re-evaluating the prequalification status of the Consultant.”

6. CONSULTANT PROCUREMENT

The following sections should be read in conjunction with the requirements of the Treasurer's Instruction 1216 and any other TIs in the [1200 series](#) that are relevant to the engagement of the consultant (such as 1201-1204, 1208, 1209, 1211-1214, 1217-1220, 1225 and 1229). Where the procurement is impacted by a free trade agreement, references must also be had to the publication International Procurement Obligations.

6.1 Buy Local Policy

An agency's engagement of consultants must comply with the requirements of the Buy Local Policy contained in Treasurer's Instruction 1225, unless otherwise stated in the Instruction.

6.2 Tasmanian Wood Encouragement Policy

An agency's engagement of consultants must comply with relevant requirements of the Tasmanian Wood Encouragement Policy issued by the Department of State Growth. Specifically applicable to the engagement of consultants are the requirements on page 3 and 4 of the policy document [Tasmanian Wood Encouragement Policy](#), which is available from the Purchasing website>Buying for Government>Resource Library>Publications.

This policy is administered by the Department of State Growth and queries in relation to the policy are to be directed to State Growth at forests@stategrowth.tas.gov.au.

6.3 General Information

Successful consulting services depend on sufficient time being spent by professionally qualified staff. This makes it essential that the method of selecting consultants will not drive fees down to a point where consultants cannot afford to assign properly qualified staff for sufficient periods of time to carry out the assigned task as this would lead to a reduction in the scope and quality of the service provided.

The consultant is entrusted with the design and implementation of an asset costing a large sum of money, with even greater recurring costs over the life of the asset. In comparison, the consultant's fee for providing the service is relatively minor.

Even though the fee is minor compared to the total project life-cycle cost, it is still part of the process of obtaining value for money and the fee needs to relate to the effort expended by the consultant in providing the service required.

Consultants should be selected on the basis of:

- professional competence, qualification and expertise in providing the service required;

- managerial ability;
- availability of the necessary resources for the duration of the project;
- a demonstrated understanding of the agency's needs; and
- a demonstrated preparedness to provide the required quality of service.

The following are five essential factors to ensure probity of the selection process:

- value for money;
- transparency of the process;
- dealing with conflicts of interest;
- accountability; and
- monitoring and evaluating performance.

6.4 Developing the Commission Brief

When the service to be provided has been determined and the need to engage a consultant has been established, the commission brief is developed.

The commission brief will include a detailed scope of work, explaining to the consultant the outcome that is expected from the service. Included in the scope of works will be reference to such issues as:

- preparation for and attendance at the Parliamentary Standing Committee on Public Works hearing(s);
- preparation of estimates;
- construction cost control;
- value management study requirements; and
- documentation standards to be adhered to, for example the national specification standard, NATSPEC.

For multiple submissions, it is critical that the selection criteria and their weighting are included in the commission brief. This indicates to the consultants what emphasis the agency places on the consultant's capabilities, allowing submissions to be more focused. It provides the basis for selecting a consultant and ensures that an auditable process is set in place.

The commission brief:

- details the proposed commission and includes an initial functional brief;
- forms the basis for the consultant to submit a fee proposal;
- forms the basis for further fee-claim negotiations when a brief is changed;
- provides a common basis for submissions when more than one consultant is invited to submit a proposal; and
- includes a set of criteria critical to the project that form the basis for selecting the appropriate submission when more than one consultant is invited to make a submission.

6.5 Professional Standards Act and Personal Information Protection Act requirements

In certain circumstances it may be necessary, in addition to clauses relating to prequalification performance reporting (refer to section 5.1 above) to include clauses relating to the *Professional Standards Act 2005* and the *Personal Information Protection Act 2004*. Such matters should be referred to the Crown Solicitor for advice on appropriate drafting.

6.6 Method of Selection - Covered Procurements

Where the procurement is a 'covered' procurement and the provisions of a free trade agreement apply (refer to the *International Procurement Obligations* publication on www.purchasing.tas.gov.au for current thresholds), agencies are to use either:

- an open tender process; or
- an expression of interest / request for proposal multi stage procurement process (where the first stage of the process is open);

as the method of selection.

As part of that process, agencies are to ensure that contracts are only awarded to consultants appropriately prequalified under the Treasury Prequalification Scheme - Consultants.

Consultants must be prequalified by the closing date for submissions to enable their response to be considered for evaluation given that prequalification will be a condition for participation. As prequalification may take a number of weeks to finalise, agencies should factor this timeframe into their procurement plan where it is likely that consultants that are not prequalified are likely to submit tenders.

Sections 6.7 and 6.8 of this Procurement Practice Manual do not apply for 'covered' procurements. All other sections of this manual apply.

6.7 Methods of Selection - Non Covered Procurements

For non-'covered' procurements the two methods that agencies are to consider when looking to select a consultant to provide a service relating to procurement and maintenance of Government building assets are:

- Value Based Selection; and
- Qualifications Based Selection.

It is a matter for the agency selecting the consultant to choose the most appropriate of the two methods of selection to match the size and complexity of the project.

Value Based Selection

Using the Value Based Selection method, the consultant is selected on the submission that offers best value for money, taking into consideration both the qualifications of the consultant and other criteria including quality, reliability and price.

This method may be used where the requirements of the consultancy are reasonably well-defined and proposals may be assessed taking into account both price and non-price criteria. Thus, proposals will be assessed on the basis of experience of the consultant/s, understanding of the consultancy, quality, reliability and price.

In the majority of cases, this value for money based assessment will be the most appropriate method of consultant selection. Note that when using this method of selection, it is recommended that there should only be a low weighting attributed to price (eg 20 per cent or less).

Qualifications Based Selection

The Qualifications Based Selection method of procuring consultants is the process of ranking submissions from consultants based on their qualifications and ability to provide the services sought, but with no consideration of price at the initial stage. During the second stage, price (as a component of the overall value for money assessment) is negotiated with the highest ranked consultant in the first instance. If the agency and the first preferred candidate cannot negotiate a price that represents value for money, the agency then moves on to a price negotiation with the second preferred candidate, and so on.

This method may be suitable in some cases, such as for a project that is particularly complex and lacking definition, thus requiring more innovative solutions.

Agencies must ensure that, whatever method is used for selecting consultants, the process is an auditable one.

6.8 Invitation to Prequalified Consultant(s)

As noted above, Treasury maintains a register of consultants qualified to provide building consulting services to Government. Depending on the cost and complexity of the services required, where prequalified consultants exist, one or more consultants capable of performing the work are selected from the prequalified consultants register.

The terms of reference for selecting consultants should be based on the project consultant commission brief, which will include type, size and complexity of the service required and the timetable that must be achieved.

There are options available for requesting proposals from prequalified consultants.

- Single Submission; and
- Multiple Submissions

Before approaching the market, refer to Section 6.6 *Developing the Commission Brief* and Section 7 *Commission Contract* for information on developing documentation to engage consultants.

6.8.1 Single Submission

Note: This approach has been accepted by the consulting industry for projects with a capital value up to and including \$1 million (or a fee value up to and including \$100 000 where a capital value is not yet determined). This approach should **not** be used for projects with a capital value over \$1 million (or a fee value over \$100 000).

A submission from a single consultant is the least resource intensive and should be considered as the first option. Where the Treasury register of consultants can provide a consultant that has the required expertise in the type of service needed and has the staff available for the duration of the project, then a single submission should be sought.

This will reduce the costs, to both Government and the consulting industry. It will save the industry from being loaded with the costs incurred through multiple submissions for projects that have a low capital value and consequently little scope for recovering these costs.

Before selecting a consultant, agencies should prepare a list of selection criteria framed to ensure a successful project. This list will be the same as the list of criteria described in section 6.6.2 *Multiple Submissions*. In addition, agencies should identify an estimated fee for the proposed consultancy. If in-house expertise is not available, an independent expert should be engaged to provide advice on the estimated fee.

In order to satisfy probity issues, the selection should follow a formal process. The decision to request a single submission and the procedures applied should be scrutinised by a senior officer within the agency who is not directly associated with the project. Agencies need to ensure the process is fair – for example, where there are equally suitable consultants for particular engagements, agencies should be mindful of not necessarily engaging the same consultant every time, but rather allowing other suitable consultants the opportunity to undertake the work.

6.8.2 Multiple Submissions

This approach requires:

- that consultants making a submission will each develop a proposal to provide the required service; and
- the procuring agency to nominate a selection committee of three senior officers to assess the submissions requiring each to gain an understanding of the project criteria, spend time in preparing for and attending the consultant interviews, preparing reports on the interviews and making a report recommending a consultant.

If interviews are held by the selection committee (which would usually occur), the consultants will need to prepare further material for the interviews.

This whole process is thus time consuming, costly and, for the consultants other than the one selected, abortive work which adds to their overheads. Where the project is small and the

potential fee unable to absorb these additional overheads, consultants will generally not respond to invitations for multiple submissions.

It is therefore important that single submissions be sought where possible.

However, where the commission is of significant value, that is, where the capital value of the project is greater than \$1 million (or the fee value is in excess of \$100 000 where a capital value is not yet determined), the advantages of multiple submissions outweigh the increased cost of the process to both Government and the consulting industry.

To contain costs to the consulting industry, multiple submissions should normally be sought from three consultants only.

When seeking multiple submissions, agencies must provide consultants with at least one electronic option for the lodging of their submission. The method used is a matter for the agency to determine ensuring all requirements in relation to handling and confidentiality can be met. Electronic options may include, for example, the use of the Tenders website electronic lodgement functionality or a secure email or facsimile facility. Where email or facsimile is used:

- the facility should be secure;
- access to the submissions should be controllable to prevent compromising security of responses/confidentiality; and
- access should be auditable and/or documented.

The following are typical criteria applied in selecting the short list of consultants, from the Treasury Consultant Prequalification Scheme:

- expertise in the type of project proposed;
- ability to develop a brief;
- ability to develop functional requirements;
- technical and management skills;
- previous experience and track record;
- methodology and project control methods;
- time, cost and quality performance on previous projects;
- design approach;
- qualification, experience and availability of key personnel; and
- knowledge of the political, social and environmental issues.

In establishing the basis for assessing proposals and selecting the preferred consultant, it is important that evaluation criteria be included in the commission brief. This requires both client and consultant to focus on the qualities required of the consultant to enable the consultant to provide the required service. This process converts a subjective assessment into a quantitative

comparison, which is more easily formalised. It ensures that the selection process is auditable and probity aspects are met. The basis of evaluation must be clearly defined and consistently applied.

The basis of evaluating submissions from consultants should be determined before consultants are selected to submit a proposal.

The following guidelines should be applied in determining the evaluation criteria, weighting(s) and evaluation methodology:

- criteria are derived from the project terms of reference;
- criteria are relevant;
- criteria are defined clearly to allow them to be applied consistently;
- criteria are identified before applying the weighting;
- weighting scales to be applied are defined; and
- the method of scoring is defined.

The evaluation criteria, weighting and the method of scoring should be stated in the commission brief.

A selection panel to assess submissions, interview consultants and make the selection should be established. Potential conflicts of interest may occur where members of the selection panel have had previous experience with the consultants submitting proposals. It is therefore important to establish a strong element of independence on the selection committee to ensure that a consistent and impartial approach is taken. Further information on conflicts of interest is contained in the Treasurer's Instruction I201.

To promote transparency of the process, it is important to notify the unsuccessful consultants of the panel decision. Usually this notification is in the form of a debriefing session.

6.9 Appointing Selected Consultant

Refer to Section 7, *Commission Contract*, for the requirements of appointing the selected consultant.

6.10 Engagement of non-Prequalified Consultant(s)

While it is a mandatory requirement for prequalified consultants to be engaged, on some occasions there will be a need to engage consultants where there is no existing prequalification category. When this occurs agencies are required to undertake a procurement process in accordance with the Treasurer's Instruction I216(6).

7. COMMISSION CONTRACT

7.1 Standards

The Australian Standard *AS 4121-1994 Code of ethics and procedures for the selection of consultants* must be adhered to when selecting and commissioning consultants.

The commission brief and contract (as advised by the Crown Solicitor) form the contract between the Crown and the consultant.

The contract formally applied to a consultant commission is normally the Australian Standard *AS 4122-2010 General Conditions of Contract for Consultants*. This contract, including its Annexures and the Schedules prepared by Crown Law amending the contract, together with the commission brief, details all contractual requirements between the Crown and the consultant. However, depending on the particular circumstances of the procurement, the Crown Solicitor may advise that another form of contract is more suitable, such as the use of a Contract for Services document or a bespoke contract.

At the planning stage of engaging consultancy services agencies must have:

- sought advice from the Office of the Crown Solicitor to ensure *AS 4122-2010* is the appropriate contract to be used for the circumstances of the particular case; and if so obtained:
 - a copy of the Schedules that have been drafted by the Crown Solicitor amending the Annexures to *AS 4122-2010* for inclusion with the contract; and
 - advice on how to complete the Annexures to *AS 4122-2010*.

Where *AS 4122-2010* is to be used, agencies must ensure they have an appropriate licence from SAI Global to use and amend *the Standard* before seeking proposals.

The User Guide, *AS 4122-2010* and its Annexures are available to download from the SAI Global website at www.sai-global.com. To obtain a licence for the amendment and use, reproduction and distribution of SAI Global material, contact SAI Global on (02) 8206 6355 or email copyright@saiglobal.com.

7.2 Confirmation of Engagement

A commission is a contract between the parties involved and requires an offer by one party and acceptance by the other party: that is, offer and acceptance. The attention to detail in this matter is important.

7.3 Annexures and Schedules

Where *AS 4122-2010* is used, the Annexures to *AS 4122-2010* set down the contract conditions specific to that particular project. Schedules that have been drafted by the Crown Solicitor amending the Annexures to *AS 4122-2010* must be attached to the contract. Any Annexures must be filled out specifically as instructed by the Crown Solicitor for each commission and as well as

providing details of the commission itself, set out the specific Tasmanian Government amendments to the Australian Standard contract. Advice on the completion of the Annexures should be obtained from the Crown Solicitor's office.

In determining the insurance levels to be included, a risk assessment should be undertaken to determine an appropriate level of insurance – refer to the [Guidelines – Professional Indemnity Insurance and Public Liability Insurance for Building and Construction and Maintenance Services Consultants](#) located on the Purchasing website at www.purchasing.tas.gov.au > Buying for Government > Resources > Publications.

8. CROWN CONTRACTS CONFIDENTIALITY POLICY

Contracts with consultants must comply with the Crown Contracts Confidentiality Policy. This policy is detailed in the Treasurer's Instructions [1229](#) and [1401](#). The Crown Solicitor will provide appropriate wording for inclusion in the commission brief and resulting contract.

9. PROCUREMENT PRACTICES INFORMATION

The following publications will constitute the complete *Procurement Practices Manual*:

- *Best Practice for the Engagement of Consultants (Building and Construction Projects)*;
- *Contractual Documentation, Delegation and Risk*;
- *Best Practice for the Maintenance of Building Assets*; and
- *Tasmanian Annexure to the National Code of Practice for the Construction Industry*.

All publications, together with other relevant guidance material, templates and checklists are available from the Purchasing website at www.purchasing.tas.gov.au > Buying for Government > Resources > Publications.