

# Public construction procurement in a global economy

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## ABSTRACT

Public construction procurement, particularly in developing countries, represents a significant proportion of construction procurement. Governments can play a significant role in facilitating construction procurement in the global economy. Fundamental to such procurements is:

- the establishment and implementation of a procurement system that is fair, equitable, transparent, competitive and cost effective that allows developing countries to attain sustainable development objectives including those pertaining to their construction industries;
- a clear understanding of the procurement process and the manner in which it should be managed;
- generic procurement processes, procedures and documentation; and
- performance based standards which facilitate innovation.

With reference to international best practice this paper draws on recent South African experience. It discusses the procurement module of the Public Sector Delivery Management Toolkit developed by the Construction Industry Development Board in cooperation with public sector agencies. It highlights the potential of this model for public construction procurement in the global economy.

*Key words:* construction procurement; delivery management; toolkit; best practice; procurement processes; construction industry development.

## INTRODUCTION

### **Client requirements**

Client needs can be unique and consequently each project meeting those needs has unique characteristics. Achieving the right project for the right price in the right time is a challenge and procurement plays a critical role. Unlike the processes adopted in manufacturing, construction activities are not ongoing. The team drawn together for the proposed project will disband at project completion and seldom will the same team form again. Even if they do the project will probably be substantially different.

The establishment of a procurement strategy is key to the successful outcome of a project. The strategy should identify and prioritize important project objectives, reflect aspects of risk and establish how the process will be managed.

Many clients now employ various procurement routes for their projects. The current process of procurement selection tends to be carried out in a rather unstructured and perfunctory manner which may give rise to the adoption of a procurement system beyond the appropriate choice. The result of employing a rash procurement method could be an obstruction to the fruition of certain anticipated benefits associated with the designated method and may ultimately lead to project failure (Rwelamila and Meyer, 1999; Ambrose and Tucker, 1999). Previous studies in construction have identified several consistent procurement selection parameters such as time certainty, cost certainty, speed, flexibility, responsibility, complexity, price competition, risk allocation and quality (Luu et al., 2003). Recently developing countries have introduced socio-economic criteria, including that pertaining to construction industry development. (Watermeyer, 2000; Govender and Watermeyer, 2000).

### **Public Construction Procurement**

Historically, public procurement has largely been treated as a supporting function in government agencies and as an administrative process based on standardised procedures, usually delegated to purchasing staff (New South Wales Government, 2002).

The public procurement environment has undergone numerous changes in the last decade and has required a new approach to procurement and its relationship to the delivery of government services. The changes include:

- a shift from Government buying goods or built assets required to deliver services to the government purchasing or acquiring services through supply-chain management functions;
- greater considerations on environmental and occupational health and safety issues, employment generation, education and skills enhancement as well as electronic commerce<sup>1</sup> in procurement;
- increasing community expectations on governance, integrity and transparency in the overall procurement process;
- uniformity and standardisation of contracting strategies and documentation, with greater emphasis on performance assessment, longer term arrangements, innovation and risk management; and
- improved industry performance through value-for-money, increased cost savings, competition and quality.

The new procurement regime anticipates that co-operation and knowledge exchange between various governmental departments will avoid unnecessary duplication and enhance the standard of procurement practice across government as a whole.

## **AN OVERVIEW OF CONSTRUCTION PROCUREMENT IN SOUTH AFRICA**

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<sup>1</sup> eProcurement is the term used to describe the use of electronic methods in every stage of the purchasing process from identification or requirement through to payment and potentially to contract management. It can be further divided into three arenas: eSourcing – for contractual processes, eProcurement – for transactional processes and ePayment Tools – invoicing and self-billing (OGC, 2003, What is eProcurement?)

## **Role of South African Government in Procurement and Delivery Management**

The Government of South Africa is committed to good governance and use of procurement as an instrument of social policy. The recently adopted Constitution of South Africa prescribes that procurement for any organ of State should be dealt with through a system that is fair, competitive, equitable, transparent and cost effective<sup>2</sup>. The Constitution also allows for the implementation of procurement policies<sup>3</sup> providing for categories of preference in the allocation of contracts and the protection, or advancement, of persons, or categories of persons, disadvantaged by unfair discrimination. This allows for certain socio-economic objectives to be attained through the use of the public sector procurement system. This will not be achievable without adhering to sound financial management, which amongst other includes, the principle value of money, good financial control, eliminating and countering corruption and requiring all contractors to have a “good standing” in so far as their tax and service charge obligations are concerned (Green Paper on Public Sector Procurement Reform, 1997).

The Preferential Procurement Policy Framework Act enables the provisions for preferencing provided in the Constitution to be implemented. The implementation methodology provided for in this Act, namely award criteria, is the method which is least likely to compromise good governance objectives. (Watermeyer, 2003). Performance based standards (SANS 1914 series) recently published by Standards South Africa enable goals relating to the targeting of enterprises and labour to be measured, quantified and verified during the performance of the contract.

In the recent State of the Nation address (2003), President Thabo Mbeki highlighted the significance of infrastructure delivery to social development and growth of the South African economy:

*Further improvement in the quality of lives of our people also requires that we take new measures to increase the volume and quality of our investment in the social infrastructure. This includes such areas as housing and municipal infrastructure, hospitals and clinics, schools, roads, water, electricity and government facilities. In all areas, we must improve our performance relative to the previous year.*

*Accordingly, additional resources will be set aside to meet this obligation. We will ensure that these resources are actually used, consistent with what we have said about the need to ensure that we have the necessary mechanisms to implement our policies and decisions.*

*In this regard, we must commend the provinces for significantly improved efficiency in the area of capital investment. For the period of 9 months of the current fiscal year, expenditure in this area has increased by 48 percent compared to the same period during the previous fiscal year. At the same time it seem(s) clear that not all the allocated funds will be spent by the end of the financial year. It is precisely this shortcoming that we must address this year.”*

South Africa is embarking on an economic programme to encourage growth and development. This economic programme focuses on investment in the economic

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<sup>2</sup> The Constitution of the Republic of South Africa (Act 108 of 1996) establishes the overarching framework for procurement.

<sup>3</sup> The preferential procurement policy developed by an institution has to be in accordance with the requirements of section 217(2) of the Constitution of the Republic of South Africa (Act 108 of 1996) and the Preferential Procurement Policy Framework Act (Act 5 of 2000).

infrastructure, small and medium business development, micro-credit for productive purposes, black economic empowerment and job creation.

It is through sound, stable and effective public sector procurement policy, practices and procedures and a delivery management model that many of these issues can be addressed through infrastructure projects. Failure to deliver infrastructure on time, within budget, to the required quality and satisfying all related socio-economic objectives will lead to public funds being reallocated to other sectors that are capable of delivering on the aforementioned issues.

### **The role of the Construction Industry Development Board in Procurement and Delivery Management**

The Construction Industry Development Board (CIDB) is a public entity established by legislation (CIDB Act 38 of 2000) to provide leadership to stakeholders and to stimulate sustainable growth, reform and improvement of the construction sector for effective delivery and the industry's enhanced role in the country's economy. The CIDB is tasked by the Act to:

- determine and establish best practice (desirable and appropriate standards, processes, procedures and methods) that promotes improved industry stability; improved industry performance, efficiency and effectiveness; procurement and delivery management reform;
- establish and maintain a national register of contractors which facilitates public sector procurement;
- establish and maintain a best practice contractor recognition scheme which promotes contractor development and monitors contractor performance; and
- establish and maintain the register of projects and the best practice project assessment scheme for the promotion, assessment and evaluation of best practice on construction contracts.

Procurement<sup>4</sup>, is high on the CIDB agenda. A provisional procurement agenda, based on the CIDB's mandate provided in terms of legislation, has been developed (See Annexure A). Some 35 documents have been developed in response to this agenda. (See [www.cidb.org.za](http://www.cidb.org.za)). These include:

- generic procurement rules;
- a code of conduct for the parties involved in the procurement process;
- an adjudication procedure;
- standard conditions of tender and conditions for the calling for expressions of interest;
- a standard professional services contract;
- a subcontract for labour only works;
- standard conditions of contract for the provision of supplies;
- a generic specification for aids awareness;
- standard joint venture agreement; and
- practice guides pertaining to procurement policies, procedures and practices, preferencing to attain socio-economic objectives, procurement documentation and joint venture and subcontracting arrangement.

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<sup>4</sup> Procurement is the whole process of acquisition (including logistical aspects) and covers goods, services, supplies, engineering and construction works, the hiring of anything, disposal and granting of any rights and concessions. This process spans the whole life cycle from initial concept and definition of business needs through to the end of the useful life of an asset or the end of a service contract. Adapted from Gershon P, 1999 and CIDB Toolkit module 6, 2003.

These documents have been peer-reviewed by a focus group comprising some fifty knowledgeable practitioners, representing a broad spectrum of stakeholders including public and private sector clients, investors, voluntary associations of established and emerging business, contractors, the consulting professions, subcontractors, materials suppliers, and others, with a view to them being declared as best practice.

The CIDB's strategy in promoting procurement best practice, given that the public procurement reform process had resulted in a flexible regulatory framework for public procurement, is to locate procurement best practices (documents) within a generic procurement process and in turn, within a comprehensive delivery management system. To this end, the CIDB, in cooperation with organs of State, has developed a delivery management system (Toolkit) that provides a holistic state-of-the-art response to meeting this challenge. This Toolkit comprises 8 modules and a work flow process schedule comprising its 'backbone' with a compendium of templates, guidelines and examples providing deliverables for each step in the delivery process. Encapsulated within the delivery management system is the module that is concerned with procurement and links procurement best practices to specific procurement activities. This module covers the entire procurement cycle within programmes/projects.

## A MODEL FOR PUBLIC CONSTRUCTION PROCUREMENT

### **Establishment of a procurement system**

Public sector procurement must be seen as a strategic management function, which requires a commitment by practitioners to effective procurement planning, innovative contracting strategies, active contract management and continuous improvement in the procurement processes. Procurement is a strategic function that should help the public sector to conduct its business.

A procurement system cannot function properly and deliver the much needed growth and infrastructure unless it is backed by a sound fiscal policy and dedicated budgetary cycle. To this end, the South African government has established a fiscal period known as the Medium Term Expenditure Framework whereby allocated budgets are assigned to cyclical periods. South Africa has set aside more than R100 billion for capital expenditure in the forthcoming MTEF period, including at the national level, R55 billion for infrastructure (Mbeki, 2003). The application of 3-year Budgeting best practice will help Local Authority Finance and Service Departments to meet the challenges of Best Value (National Treasury, 2002). In the context of the Best Value agenda and continuous improvement, meaningful financial planning will help ensure that authorities have budgets that are relevant at the level of service delivery. Benefits include:

- assisting Best Value by providing improved financial planning over the medium term and a framework for continuous improvement;
- identifying the cost of activities that are undertaken to achieve service plans;
- ensuring better and more informed decision making about the use of resources and delivery of services; and
- enhanced performance management and re-engineering business-planning arrangements.

### **The procurement process and the how it is managed**

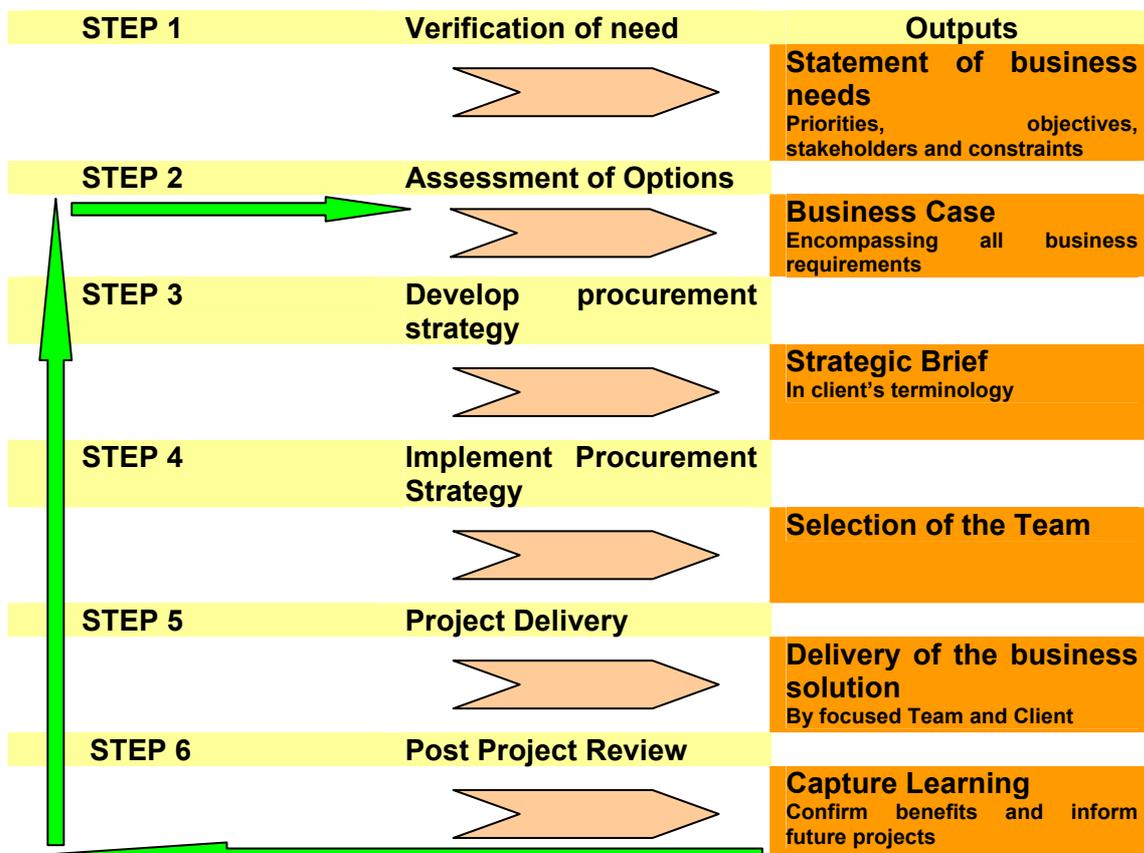
The success of a project is dependent on the alignment of service outputs with project objectives in all phases of the procurement strategy. The realizations of the required levels of benefit are only possible if proper planning had been undertaken.

The lack of structured procedures, based on good information, for the selection of construction procurement system sometimes inhibits the opportunity for clients to choose a procurement option in a fully informed manner. The selection and application of an inappropriate procurement system could lead to project failure. To establish procurement selection procedures, clients should formalise a set of suitable procurement selection parameters based on their needs, objectives, project requirements and external environments. Luu et al (2003) performed a study that identified various parameters and sub-parameters that clients considered important for the selection of an appropriate procurement system. The following three parameters identified were considered to be the most important parameters for procurement selection:

- Client's requirement for within-budget completion
- Client's requirement for on-time completion
- Client's requirement for value for money

These short-term client objectives tend to be the most influential in the determination of a procurement system. This leads to the importance of identifying the client's objectives clearly in selecting an appropriate contracting strategy.

Six generic key steps that a client should follow have been identified in a number of studies (Construction Best Practice, 2003; CIDB, 2003; OGC, 2000; New South Wales Government, 2002). These key steps are illustrated in Figure 1.



**Figure 1 : Key Steps a client must consider when faced with a business need (adapted from: Construction Best Practice, 2003)**

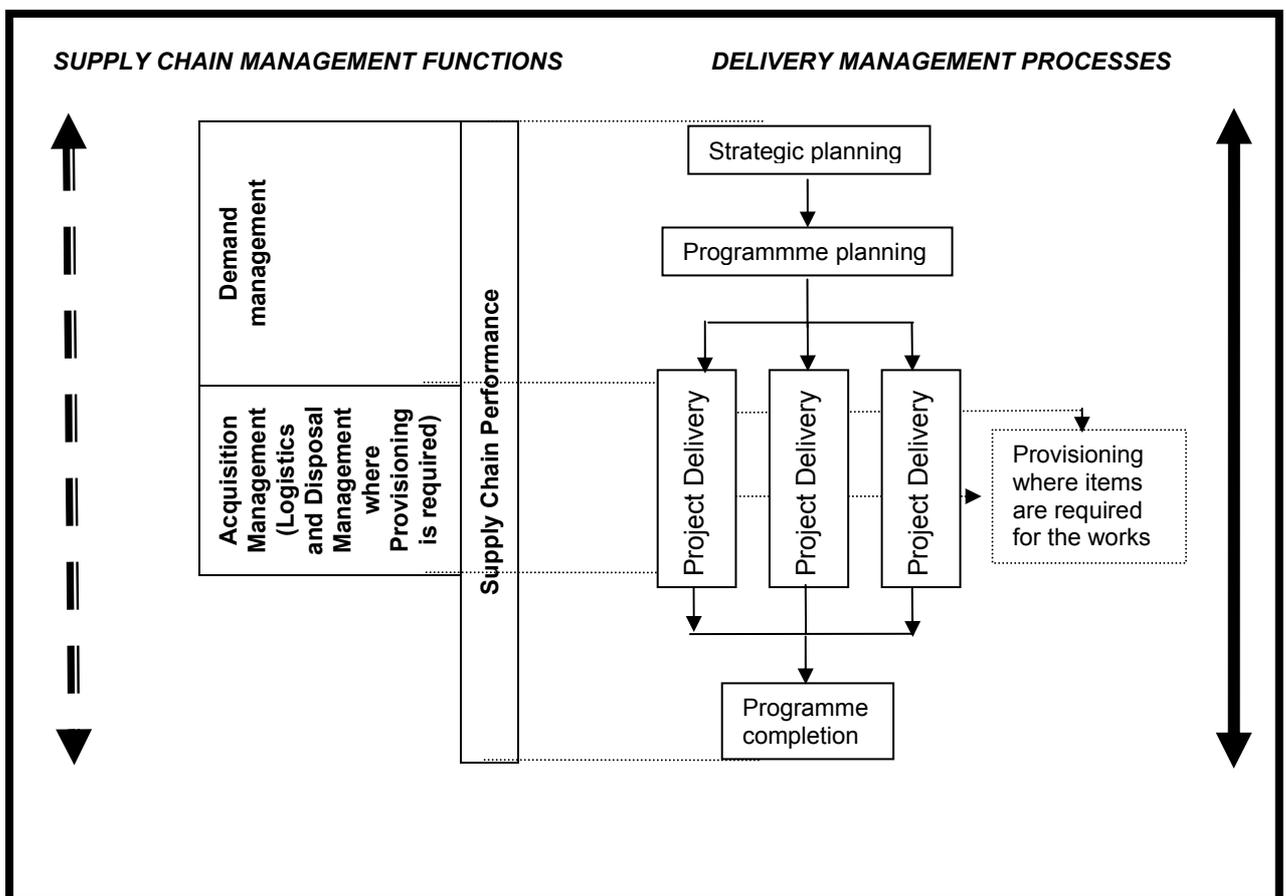
The inclusion of a client's trust in the involvement of a project is supplemented by the concept of responsibility and risk allocation. Risk also forms the major consideration in

choosing an appropriate system. Theoretically, all the risks can be transferred into the hands of one organisation through the use of certain procurement methods e.g. a perfect design and build contract can possibly pass nearly all the usual risk, at a price, to a single contracting body.

In addressing issues such as life-cycle costing and sustainability issues, a few major organisations e.g. New South Wales Department of Public Works, have developed and applied a so-called “design, build and maintain” procurement system. Apart from the design and construction components, a maintenance contract stipulating the performance requirements is entered into between the parties for an extended period after the defects liability period.

**Generic procurement processes, procedures and documentation**

Procurement activities identified in the procurement module of the CIDB Toolkit which support delivery management processes as set out in Figure 2 are illustrated in Table 1 (see first column). Procurement can take place whenever resources external to the institution are required to deliver services. Typical procurement activities that have key decision points can also be found in Table 1.



**Figure 2 : the CIDB model for delivery management (CIDB, 2003)**

Table 2 outlines the generic activities associated with the project delivery processes of the CIDB model for delivery management outlined in Figure 2. The left hand column outlines the core processes and generic activities while the right hand column establishes the activities associated with a specific contracting strategy.

The approach advocated in the CIDB's Toolkit is a structured process, which examines, requires and confirms critical decision points from concept development and over the life cycle of the procurement undertaking. It provides a robust risk management framework that ensures that public sector procurement in engineering and construction works are successfully delivered and feed back is obtained, so that future projects can be better managed. It also provides much needed guidance to enable users to execute activities and sub-activities associated with the various processes.

**Table 1: Principal procurement activities and associated steps and internal controls (CIDB, 2003)**

ACTIVITY		STEPS	
#	DESCRIPTION	Inputs	Procedural milestone (control point)
1	Establish what is to be procured	1. Prepare broad scope of work for procurement	
		2. Estimate financial value of proposed procurement	
			3. Obtain permission to start with the procurement process
2	Decide on procurement strategies	1. Establish applicable preferential procurement policy	
		2. Establish contract and pricing strategy	
		3. Establish targeting strategy	
		4. Establish procurement procedure	
		5. Obtain approval for procurement strategies that are to be adopted	
3	Solicit tender offers*	1. Prepare procurement documents	
			2. Obtain approval for procurement documents
			3. Confirm that budgets are in place
		4. Invite contractors to submit tender offers or expressions of interest#	
		5. Receive tender offers or expressions of interest#	
		6. Evaluate expressions of interests #	
		7. Prepare evaluation report on shortlisting process#	
	8. Confirm shortlist #		
4	Evaluate tender offers*	1. Open and record tender offers received	
		2. Determine whether or not tenders offers are complete	
		3. Determine whether or not tender offers are responsive	
		4. Evaluate tender submissions	
		5. Perform a risk analysis.	
		6. Prepare a tender evaluation report	
		7. Confirm recommendation contained in the tender evaluation report.	
5	Award contract*	1. Notify successful tenderer and unsuccessful tenderers of outcome	
		2. Compile contract document	
			3. Formally accept tender offer
		4. Capture contract award data	
6	Administer contracts and confirm compliance with requirements	1. Administer contract in accordance with the terms and provisions of the contract	
		2. Ensure compliance with requirements	
			3. Capture contract completion / termination data

**Table 2: Project Delivery activities associated with the design by employer procurement strategy**

PROJECT DELIVERY		ACTIVITIES ASSOCIATED WITH THE DESIGN BY EMPLOYER PROCUREMENT STRATEGY
Core processes	Generic activities	
Project initiation	Establish project scope	Formulate project scope
		Obtain approval of project scope
	Confirm Project Feasibility	Undertake a project feasibility study
		Obtain approval of project feasibility report
	Decide on procurement strategies	Formulate procurement strategy
		Obtain approval of the procurement strategies that are to be adopted.
Project implementation	Design works	Initiate design process
		Develop conceptual design
		Finalise and document design
	Undertake renovation / construction / maintenance / refurbishment/ demolition	Appoint a contractor
		Perform and complete the works
	Commission / hand over works	Commission works
		Rectify defects
Hand project over to end user		
Project completion	Complete contract	Complete contract
	Archive documentation	Archive documentation
	Compile completion report	Compile completion report

### The impact of public procurement on construction industry development

The Procurement module of the CIDB's Toolkit<sup>5</sup> is aimed at government as a whole and to private sector clients wishing to do business with government. Benefits and efficiencies are obtained from:

- improved contract management capability where the module serves the basis for capacitation;
- better purchasing practices and improved outcomes;
- uniform and standardised approach to procurement and supply-chain management across all levels of government, resulting in reduced cost of doing business for both agencies and service providers;
- greater predictability and certainty in the procurement processes;
- the management of procurement becoming routine and administration procedures becoming mechanized;
- cost efficiencies in terms of staff training, the submission of tenders, the compilation of procurement documents and the management of the procurement processes;
- improved industry performance, with a recognition of socio-economic, economic and regional development;
- ethical, acceptable and enhanced responsible business practices;
- establishment of a base for further advancement into electronic procurement; and
- improved business relationships between the private and public sector through a procurement process that is consistent, transparent and easily understood;
- an improved understanding of the requirements of the regulatory regime for procurement; and
- improved understanding of facets of the procurement and related activities.

<sup>5</sup> The CIDB's toolkit describes proven good practice for procurement, programmes, projects, risk and service management. The Toolkit brings together policy and best practice in a single point of reference. It helps to ask the critical questions about capability and project delivery; it provides practical advice and guidance on how to improve.

## CONCLUSION

South Africa is witnessing increasing levels of investment in infrastructure driven by its commitment to economic and social development. All spheres of government and state-owned enterprises are challenged to increase the pace and efficiency of construction delivery. The CIDB's innovative approach to improving procurement and delivery management offers a practical approach to improving construction outputs.

The CIDB Public Sector Delivery Management Toolkit and related procurement best practices provide a suitable model for public construction procurement in a global economy, since it is:

- based on a procurement regime that is fair, equitable, transparent, competitive and cost effective;
- is generic in nature;
- facilitates the attainment of sustainable development objectives without compromising the primary objectives associated with procurement; and
- provides a logical framework within which procurement can be managed without stifling innovation;

Government procurement is important because failure to acquire goods, works and services cost effectively and efficiently can hinder and frustrate service delivery. The generic nature of the CIDB Toolkit and the procurement module, which is based on a logical flow of activities, can be readily adapted to suit the requirements and needs of other countries.

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## Annexure A - A provisional CIDB procurement agenda

WORK ITEM		KEY ACTIONS ASSOCIATED WITH WORK ITEM
#	DESCRIPTION	
<b>THEME 1: THE USE OF PROCUREMENT TO PROMOTE POLICY OBJECTIVES</b>		
1.1	The promotion of health and safety objectives	Identify a set of pertinent health and safety objectives. Establish uniform procurement-related measures and systems to promote health and safety.
1.2	The promotion of environmental objectives through procurement	Identify a set of pertinent environmental objectives. Establish uniform procurement-related measures and systems to promote environmental objectives
1.3	The promotion of business and employment opportunities through procurement	Identify a set of pertinent business and employment objectives. Establish uniform procurement-related measures and systems to promote business and employment objectives, to attain empowerment, job creation and poverty relief.
1.4	The promotion of performance standards including those relating to SME participation	Identify and develop appropriate performance standards Establish appropriate pre-qualification procedures.
1.5	Procurement incentives for certain categories of contract which promote a stable work environment	Develop procurement incentives which relate to performance standards that promote: -the use of labour covered by a collective bargaining agreement or wage determination; -appropriate training and human-resource development; and - improved safety, health and environmental protection, productivity and quality . Develop a system of accreditation to recognise sustained performance. Establish a pilot register of accredited contractors.
<b>THEME 2: PROCUREMENT DOCUMENTATION</b>		
2.1	Overhaul and rationalisation of procurement documents	Review procurement documents to ensure that they do not present a barrier to the emerging sector. Develop and incorporate transparent adjudication processes. Standardise procurement documents so that they are easy to comprehend and free of unduly onerous requirements and conditions. Introduce short forms of contract in contracts of low complexity.
2.2	Uniformity in and standardisation of procurement documents	Develop standardised procurement documents for construction procurements. Limit the number of conditions of contract in use. Develop construction standards common to all disciplines.
<b>THEME 3: BEST PRACTICES AND APPROPRIATE STANDARDS AND PROCEDURES</b>		
3.1	Best practices for establishing partnering approaches	Develop practices and procedures for establishing partnering relationships which are compatible with procurement legislation in South Africa. Develop delivery models such as design and build which promote partnering. Develop standardised procurement documents to facilitate partnering approaches.
3.2	Participative management and workplace forums	Develop best practices relating to the participation of employees and subcontractors in the construction process - even if not required by law. Develop monitoring approaches at project level & encourage post-contract review.
3.3	Appropriate alternative dispute resolution procedures in contracts	Establish appropriate ADR procedures at both the prime and subcontract level Establish / recognise panels of persons competent to perform ADR Establish ADR procedures that enable immediate award. Ensure that ADR provisions are incorporated in standardised documents.
3.4	Quality and productivity improvement programmes	Establish appropriate productivity and quality programmes Establish incentive schemes to promote improved quality / recognise consistent quality and productivity achievements
3.5	Payment and sureties	Develop best practices to streamline payment and surety requirements
3.6	Review of regulatory environment	Review regulatory environment to remove regulatory impediments and to streamline the regulatory environment
3.7	Construction procurement best practices and uniform minimum standards	Establish uniform minimum standards for construction procurement in the form of rules issued in terms of the Public Finance Management Act. Establish a range of construction procurement best practices
3.8	Integrating the register of contractors in public sector construction works	Establish procedures to incorporate requirements for registration /accreditation in procurement documents, to access the register of contractors for the purpose of verifying a contractor's credentials and to provide feedback on performance
3.9	Code of conduct for all participants in procurement	Publish a code of conduct. Establish disciplinary procedures / sanctions which may be applied to transgressors of the code.
<b>THEME 4: SUPPLY SIDE INTERVENTIONS</b>		
4.1	Steadier work flows to small and emerging contractors	Develop strategies compliant with the prevailing legislative framework which would promote steadier work flows to small and emerging contractors
4.2	Access to information	Establish mechanisms for the dissemination of information relating to tenders, tendering procedures, training, finance and credit opportunities.
4.3	Labour-intensity	Establish labour-intensive construction and job creation best practices.
<b>THEME 5: MONITORING AND EVALUATION SYSTEMS</b>		
5.1	Monitoring and evaluation	Establish monitoring and evaluation systems for identified work items
<b>THEME 6: ESTABLISHMENT BEST PRACTICE GOALS, TARGETS AND PERFORMANCE INDICATORS</b>		
6.1	Targets and indicators	Establish targets and performance indicators for identified work items