

# CIDA Code of Ethics and Procedures for the Selection of Consultants

Set out below is the text of the Construction Industry Development Agency's Code of Ethics and Procedures for the Selection of Consultants. CIDA's kind permission for its replication in the Newsletter is gratefully acknowledged.

## Code of Ethics and Procedures for the Selection of Consultants

### Foreward

The purpose of this Code is to encourage high ethical standards in the procurement of professional services in the construction industry, in the belief that significant benefits will flow to the entire community through the delivery of high quality professional services with probity. It constitutes a statement of the ethics which underpin best practice selection procedures. It imposes an obligation on all those parties to refuse to condone unethical behaviour by others in the industry.

Inherent in adoption of this Code is a willingness to deal only with industry organisations and personnel whose standards of performance and behaviour conform to those expected by this Code.

### Contents

- 1. Scope
- 2. Application
- 3. Definitions
- 4. Ethics
- 5. Selection Procedures
- 6. Obligations of the Principal
- 7. Obligations of Consultants
- 8. Confidentiality

### 1. Scope

This Code sets out the ethics and the obligations of the principal and consultants in the selection and appointment of consultants and subconsultants through direct negotiations or invitation, proposal and selection process for the procurement of professional services in the construction industry. A separate Code covers the selection of contractors through the tender process.

### 2. Application

This Code applies equally to principals, their agents, consultants, subconsultants and suppliers and their associations and professional organisations.

### 3. Definitions

**3.1 Construction industry** - includes all building, refurbishment, maintenance, civil engineering, process engineering, mining and heavy engineering projects. It excludes cottage construction.

**3.2 Consultants** - any party submitting proposals.

**3.3 Principal** - any party inviting and receiving proposals and selecting a consultant.

**3.4 Intellectual property** - all copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

### 4. Ethics

This Code is based on the following principles:

- (a) The process used to select consultants shall be conducted honestly and in a manner that is fair to all parties involved.
- (b) Parties shall comply with all legislative obligations including those required by trade practices and consumer affairs legislation.
- (c) Principals shall have regard to the costs of preparing proposals with a view to minimising the overall cost of selection.
- (d) Parties shall seek and submit proposals with the firm intention to proceed.
- (e) The conditions of inviting proposals shall be the same for each consultant.
- (f) Consultants shall not respond to an invitation unless they genuinely believe they have the competence and capacity to undertake the project being offered.
- (g) Briefing documents shall specify the principal's requirements as precisely as possible.
- (h) Parties shall not engage in any practices which give one party an improper advantage over another.
- (i) Parties shall not engage in practices such as collusion, hidden commissions, or any other such secret arrangements.
- (j) Principals and consultants shall be prepared to attest to their probity, if necessary by Statutory Declaration or other reasonable means.

- (k) Any party with a conflict of interests shall declare those interests.
- (l) The confidentiality of all information provided in the selection process shall be fully preserved.
- (m) Consultants shall retain their right to intellectual property submitted with proposals, including title thereto.
- (n) Principals shall not require consultants to provide professional services without payment.

## 5. Selection of Procedures

The following procedures give practical effect to the principles contained in this Code.

## 6. Obligations of the Principal

### 6.1 Pre-invitation

#### 6.1.1 Project definition

The principal's brief shall adequately define the project or task for which consultants are required to be engaged. Adequate time shall be allowed to produce complete briefing documents in the quality assurance process.

Principals shall ensure that quality assurance principles apply to the entire process of defining and documenting the principal's requirements as well as to the design and construction processes.

Principals shall ensure that the project brief is clear and specific and that the time allowed for response is reasonable.

Where the consultant is required to develop the brief, this shall be recognised as part of the professional services provided.

#### 6.1.2 Briefing documents

Documentation shall be as complete as possible for the particular engagement strategy. Principals should have regard to the costs to the industry and the community at large of multiple proposals and repeated rounds of requests for proposals.

The briefing documents shall conform to the following objectives:

- (a) Clearly define the conditions of engagement including payment arrangements.
- (b) Provide adequate definition of the scope of work to be performed by the consultancy.
- (c) Provide information known to the principal which may affect the risks in the project.
- (d) Clearly identify the risks accepted by the principal and those to be accepted by the consultant.
- (e) Draw attention to any special conditions or obligations under the contract which are not normally part of the principal conditions.
- (f) Define any supporting information required from consultants.
- (g) Nominate a person for the provision of additional information.

- (h) Provide encouragement to consultants, to incorporate innovation while still satisfying the principal's basic commercial and technical objectives.
- (i) Not require any professional services prior to the selection of a consultant, unless the principal offers to pay for such services.
- (j) Specify the time available for the provision of the consultancy services.
- (k) Consultants may be encouraged to offer alternative proposals which shall satisfy the principal's requirements. Principals shall specify the conditions under which alternative proposals are to be submitted.

### 6.1.3 Preselection

In determining which consultants shall be invited to respond, principals shall take into account the Code of Practice. The Code of Practice may be attached to this document as a Schedule A, by the relevant authority.

Principals shall not discriminate against a consultant who occasionally but promptly declines an invitation to propose.

## 6.2 Call for proposals

### 6.2.1 General

Principals shall only call for proposals after they have made a firm commitment to proceed with the consultancy and have arranged funding to complete the consultancy.

### 6.2.2 Invitation and selection

While it is the prerogative of principals to use any method to select a consultant, contracts shall normally be entered into as a result of one of the following procedures:

- (a) **By negotiation**  
Principals negotiate with a particular consultant to achieve a desired outcome. Negotiations should be fair to both parties.
- (b) **Invited proposals**  
Principals invite proposals from a number of consultants known to have the ability to undertake a project of the type proposed.
- (c) **Select list**  
Principals maintain a register of consultants whose capability has been confirmed. A small number of registrants is invited to propose on an appropriate basis. Principals should regularly advertise for consultants wishing to be considered for inclusion on the register and review and amend the register against established criteria.
- (d) **Preregistration**  
Principals invite expressions of interest in being preregistered for a specific project or specific types of projects. Applicants are evaluated and a small number of those meeting the required criteria are invited to propose.
- (e) **Open to all**  
Principals invite by public advertisement with-

out restriction on the number of proposals sought. Principals would normally require that consultants provide only information outlining their capability and experience to carry out the work. Principals utilising this selection method must have the capability and resources to properly assess all submissions.

### 6.3 Invitation for proposals

#### 6.3.1 General

Principals shall allow sufficient time between invitations and the closing date for proposals for consultants to undertake any other work necessary to allow them to respond fully.

Invitations for proposals should include the following:

- (a) Adequate description of the work required.
- (b) Advice from where briefing documents may be obtained.
- (c) Precise details of the closing time and place for the invitations.
- (d) Applicability of the Code of Practice.

#### 6.3.2 Inquiries

Principals shall not give information to any consultant that is not also given to all other invited consultants.

No information provided in a proposal by a consultant shall be divulged to another consultant at any stage during the selection process or after it has concluded.

Principals shall nominate a person with knowledge of the work required to respond to all inquiries from consultants. All such inquiries shall be recorded, noting time and date of receipt of the issue discussed.

Where an inquiry reveals a significant error, ambiguity or discrepancy in documentation, the information provided shall be promptly conveyed in writing to all other consultants who received the briefing documents. Similarly, where briefing meetings are held for consultants, such meetings shall be minuted. The minutes shall be forwarded to all consultants, and become a part of the briefing documents.

#### 6.3.3 Amendments to briefing documents

Where matters of significance make it necessary to amend briefing documents, the amendments shall be advised to all consultants who received briefing documents in sufficient time for all consultants to properly and fully consider them before the closing date.

Consideration shall be given to extending the closing date when an amendment is issued.

Each amendment shall state clearly that it is meant to be incorporated in the briefing documents. Consultants shall be required to confirm its receipt in writing, and shall confirm in their proposals that allowance has been made for each amendment. Minor changes to briefing documents should be dealt with in pre-engagement negotiations.

### 6.4 Receipt of proposals

The principle of equity, important at all stages of the

selection process, is particularly so in the receipt and processing of proposals.

The security and confidentiality of all proposals shall be safeguarded. Information provided in a proposal shall not be used by the principal in a subsequent invitation for consulting work.

Briefing documents shall specify the method and closing date for lodgement of proposals.

### 6.5 Evaluation of proposals

Any proposal which does not comply with the briefing documents is liable to be rejected.

Generally, the proposal most advantageous to the principal should be accepted.

The principal may reject a proposal provided that he acts honestly and with probity in so doing.

Where a consultant offers an alternative, a comparable alternative shall not be obtained from other consultants nor should it be used as the basis for the re-call of proposals.

Should the principal decide not to accept any proposal and to re-call proposals, the original consultants shall be advised the reasons for re-calling and, as a general principle where appropriate, invited to submit a new proposal. Principals should only add to the list of consultants with good reason.

Evaluation of proposals should include consideration of the following factors:

- (a) Compliance with this Code.
- (b) Appreciation of the task.
- (c) Demonstrated ability.
- (d) Value of the proposed services.
- (e) Consultancy period.
- (f) Technical, managerial, physical and financial resources.
- (g) Current commitments.
- (h) Methodology and work plan.
- (i) Personnel.

Each of the factors may have a varying weighting or priority depending on the principal or projects involved. The use of a system of evaluation based on the weighting of the various criteria is recommended.

### 6.6 Negotiation and selection

Unless time restraints dictate to the contrary, principals should first exhaust negotiations with the initial preferred consultant, before negotiating with subsequent consultants.

Principals shall not utilise information from other consultants in negotiation with the initial preferred consultant or other preferred consultants.

Should none of the proposals be acceptable, negotiations for an amended proposal may be conducted, preferably in the first instance with the initial preferred consultant.

Both successful and unsuccessful consultants should be advised in writing of the decision and that the consultancy has been let.

## **7. Obligations of Consultants**

### **7.1 Invitation for proposals**

In the case of negotiation, invited proposals, select list or preregistration, a consultant or subconsultant may decline to propose, provided they give the principal prompt advice that they do not wish to respond.

### **7.2 Evaluation of briefing documents**

Consultants shall thoroughly familiarize themselves with the briefing documents, to ensure that their proposals are complete and reflect a full understanding of the work required.

Consultants shall promptly advise the principal of errors, omissions, ambiguities or discrepancies in the documents of which they become aware.

### **7.3 Formulation of proposals**

Consultants shall observe all relevant statutory and other regulatory authority requirements in the formulation of their proposals and shall not:

- (a) accept or provide secret commissions;
- (b) collude with other consultants;
- (c) enter any improper commercial arrangements with any other consultant, subconsultants, suppliers, agents or any other party;
- (d) seek to influence decisions by improper means; or
- (e) accept incentives to provide services to their consultants, subconsultants or suppliers, which financially disadvantage the principal.

### **7.4 Submission of proposals**

As a safeguard against malpractice, consultants or, where the consultant is a corporation, a representative of the consultant, shall, if requested by the principal, demonstrate or attest to:

- (a) whether the consultant has entered into a contract, arrangement or understanding to pay any moneys to an association and, if so, the details of that contract, arrangement or understanding; and
- (b) whether the consultant has entered directly or indirectly into any contract, arrangement or understanding with any other consultant and, if so, the details of that contract, arrangement or understanding.

## **8. Confidentiality**

All information provided to consultants by the principal following submission of proposals shall be treated as confidential information. Both the consultant and principal shall undertake to maintain that information as confidential. ☐