



Transparency in procurement:

- Industry initiatives
- Industry expectations

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1. Introduction



Generic procurement processes:

highlight the role of secondary objectives

Industry initiatives:

illustrate the supply-side level of transparency sought

Industry expectations for the demand side: similar concerns



2. Generic procurement - Create, manage and fulfil contracts

Chain of related activities	Processes: documented procedures, methods & policies	Management control	Design services
PROCURE DECISION STRATEGY	PREPARE PREFERENCES CONTRACT PACKAGE DESIGN EXTENT PRICE & PAYMENT PROCUREMENT PROCEDURE	START PERMISSION APPROVE STRATEGY (CONTRACT TYPE) APPROVE PROCUREMENT DOCUMENTS	CONCEPT PRELIMINARY
GET OFFERS	PREPARE DOCUMENTS ADVERTISEMENT SOLICITATION	CONFIRM BUDGETS CONFIRM SHORT LIST	DETAILED
EVALUATE	RECEIVE, OPEN & VALIDATE TENDER EVALUATION	CONFIRM TENDER EVALUATION	
AWARD CONTRACT ADMINISTER CONTRACT	AWARD OF CONTRACT CONTRACT ADMINISTRATION DISPUTE RESOLUTION	ACCEPT OFFER CAPTURE COMPLETION DATA	CONSTRUCT

As-built quality depends on the chain of activities from initial planning to handover.



2.1. Generic procurement - Procedures

<i>Negotiated</i>	Tender offers solicited from one tenderer.
<i>Nominated</i>	Tenderers that satisfy prescribed criteria are admitted to a database. Tenderers are invited to submit tender offers based on search criteria and their position in the database. Tenderers are repositioned in the database upon appointment or upon the submission of a tender offer.
<i>Open</i>	Tenderers submit offers in response to an advertisement.
<i>Qualified</i>	A call for expressions of interest is advertised and tenderers who have expressed interest, satisfy objective criteria and are selected to submit tender offers, are invited.
<i>Quotation</i>	Tender offers are solicited from not less than 3 tenders in any manner, subject to the procedures being fair, equitable, transparent, competitive and cost-effective.
<i>2-envelope proposal</i>	Tenderers submit technical and financial proposals in two envelopes envelopes. The financial proposal is only opened if the technical proposal is acceptable.
<i>2-stage proposal</i>	Non-financial proposals are called for. Tender offers are then invited from those that submit acceptable proposals based on revised procurement documents. Alternatively, a contract is negotiated with the tenderer scoring the most evaluation points.
<i>Shopping</i>	Written or verbal offers are solicited in respect of readily available supplies obtained from three sources. The supplies are purchased from the source providing the lowest price once it is confirmed in writing.



2.2. Generic procurement - Methods of tender evaluation

Financial offer

Rank tender offers from the most favourable to the least favourable comparative offer.

Recommend highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Financial offer & preferences

Score tender evaluation points for financial offer.

Confirm that tenderers are eligible for the preferences claimed and if so, score tender evaluation points for preferencing.

Calculate total tender evaluation points.

Rank tender offers from the highest number of tender evaluation points to the lowest.

Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Financial offer & quality

Financial offer, quality & preferences



2.3. Generic procurement - Quality approach

Quality methods: ensuring the totality of features that bear on the works' or services' ability to satisfy the client's requirements as specified in the contract while complying with public requirements (laws, codes, regulations)

Specifications

Specify the full and unambiguous requirements in the scope of work of a procurement document.

Life cycle costing

Take cognisance of whole-life costing in the financial evaluation of tender offers.

Qualified procedure

Make use of the qualified procurement procedure and ensure that respondents who are invited to submit tender offers are suitably qualified to do so.

Eligibility criteria

Introduce quality into the eligibility criteria for the submission of tender offers or for the attainment of a minimum score in terms of specified quality criteria for tender offers to be evaluated.

Undertakings at tender stage

Require tenderers to submit plans for monitoring and applying quality management principles in the performance of their contracts.

Preference

Establish a category of preference for quality in the evaluation of tenders.

Evaluation criteria

Evaluate specified quality criteria as an integral part of the tender offer.



2. Generic procurement - How objectives are met

Primary objectives via (*Watermayer & Jacquet, 2004*):

Procurement procedure + Tender evaluation method + Quality approach

Secondary objectives

Structure of the contracting entity

Satisfy nominated requirements to be eligible for the award of a contract.

Internal workings of the contracting entity

Satisfy nominated requirements to be eligible for the award of a contract; or undertake to implement certain work place actions during the performance of the contract.

Outsourcing

Provide business and/or employment opportunities to target groups through activities directly related to the contract.

Nominated deliverables

Undertake to provide specific deliverables, related or unrelated to the contract.



Secondary objectives: implementation methods

Reservation (set asides; qualification criteria; contract conditions; offers back)

Contracts or portions thereof are reserved for contractors who satisfy certain prescribed criteria.

Preferencing (preferences at prequalification/shortlisting; tender award criteria)

Although all contractors qualified to undertake the contract are eligible to tender, tender evaluation points are granted to those contractors who satisfy prescribed criteria or undertake to attain specific goals in the performance of the contract.

Indirect (specification; specifications, contracts & procurement processes benefit certain contractors)

Procurement strategies and requirements are used to promote policy objectives by constraining the manner in which the procurement is delivered or by being used to generate offsets in parallel to the procurement.

Supply side (general assistance)

Measures are provided to targeted enterprises to overcome barriers to competing for tenders or for participating procurements within the supply chain.



3. Transparency in procurement - industry initiatives

Achieving appropriate levels of transparency and accountability

Industry initiatives

All stages of procurement activity

Speak for consulting engineering industry (3 million staff)

Global construction

- Revenue	BoozAllen 2005	9.2% GDP
	WTO, 2002	6.3 - 8.8% GDP
	Developed countries (EU 15, UK, 2003)	10% GDP

- Investment, global construction, to maintain GDP, World Bank, 2005

Infrastructure	New	\$370 billion
	Maintenance	\$480 billion
	Total	\$850 billion

Non-infrastructure		Assume 20%
Total (50% government)		8.9% GDP

Civil engineering & engineering services

- Revenue	BoozAllen, 2005	1.5% GDP
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- Demand	FIDIC, 2005	1.1% GDP
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Civil engineering & engineering services design

Need

No common language on the varying types of design services available, as well as their applicability to particular requirements.

Outcome

Lack of transparency and accountability for project stakeholders: designers, builders and clients.

Response

Industry is developing a set of guidelines and checklists to clearly define:

- the various design stages
- the range of services available



3.1. Design extent

Architectural

Structural

Electrical

Hydraulic

Fire engineering

Fire protection

HVAC

Electrical ancillary services

ARCHITECTURE – CONCEPT PHASE

Inputs:

Client brief, including budget and time schedule.

Client advice in respect to the structure of the design process.

Data collection:

- topography
- existing structures and services
- certificate of title
- other legal information
- geotechnical information.
- as-built measure of existing structures.
- engineering reports on existing structures.
- district plan rules and objectives.
- other design constraints.

Tasks:

Attend regular design phase meetings with relevant parties.

Inspect site and prepare site analysis.

Prepare schedule of accommodation. Agree with client. Distribute.

Prepare document register.

Inspect the site and prepare site analysis diagrammes.



3.2. Contract harmonisation

FIDIC 1999

- Construction (client design)
- Plant & Design Build (electrical & mechanical, and contractor design)
- Design-Build-Operate, 2007
- EPC/Turnkey (contractor design)

Twenty clauses; exceptions: Clauses 3, 5 and 12:

	Construction	Plant and D-B	EPC/Turnkey
3	Engineer	Engineer	Employer's Admin.
5	Subcontractors	Design	Design
12	Measurement	Tests after Completion	Tests after Completion

- Transparent and fair apportioning of risks, rights and obligations between the parties.
- Clear and complete conditions; time limits; provisions for efficient dispute adjudication.
- Long case history for earlier contracts; much jurisprudence.
- Known and recognised; in wide use for international contracts.
- Recommended or required by development banks, EU programmes, etc.
- Quality oriented.



Multilateral Development Bank (MDB) Harmonised Construction Contract 2005

Need

MDBs have for many years adopted the FIDIC Construction in Standard Bidding Documents.

Regular practice to introduce Particular Conditions that varied between the MDBs.

Outcome

Inefficiencies and uncertainties among users.

Increased possibilities for disputes.

Response

Contract harmonisation:

- simplifies use for all users
- reduces the number of additions and amendments in Particular Conditions.



Quality management in FIDIC 1999 works contracts

"The Contractor shall institute a quality assurance system."

FIDIC guideline ("should be proposed by all tenderers") is widely accepted.

System

Must demonstrate compliance with the requirements of the Contract (system in accordance with the details stated in the contract and applicable to the contract works)

Not a reiteration of specifications.

Role of the Engineer

Engineer in the contract entitled to audit the system.

Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced.

When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor shall be apparent on the document.



FIDIC Business Integrity Management System (BIMS)

Need

Too many firms have tolerated or encouraged corruption as it makes it easier to:

- Maximize short-term profit
- Disguise poor performance
- Achieve personal gain
- Under-pay and control staff

Outcome

Cost of corruption maybe as high as USD 400 billion per year.

Response

BIMS introduced in 2001 with MDB support.

Based on ISO 9001-2000 quality management extended to cover supply side business processes.

Includes all procurement activities.

Efficient, effective, low-overhead.

2005 FIDIC survey: adopted by over 70 small, medium and large firms in 12 developed and developing countries; 90% of non-implementers had not implemented because they were unaware of the requirements.

Vigorous BIMS promotion campaign in partnership with other industry sectors; further development of best-practice guidance and resources.



3.4. Project Sustainability Management - Principles

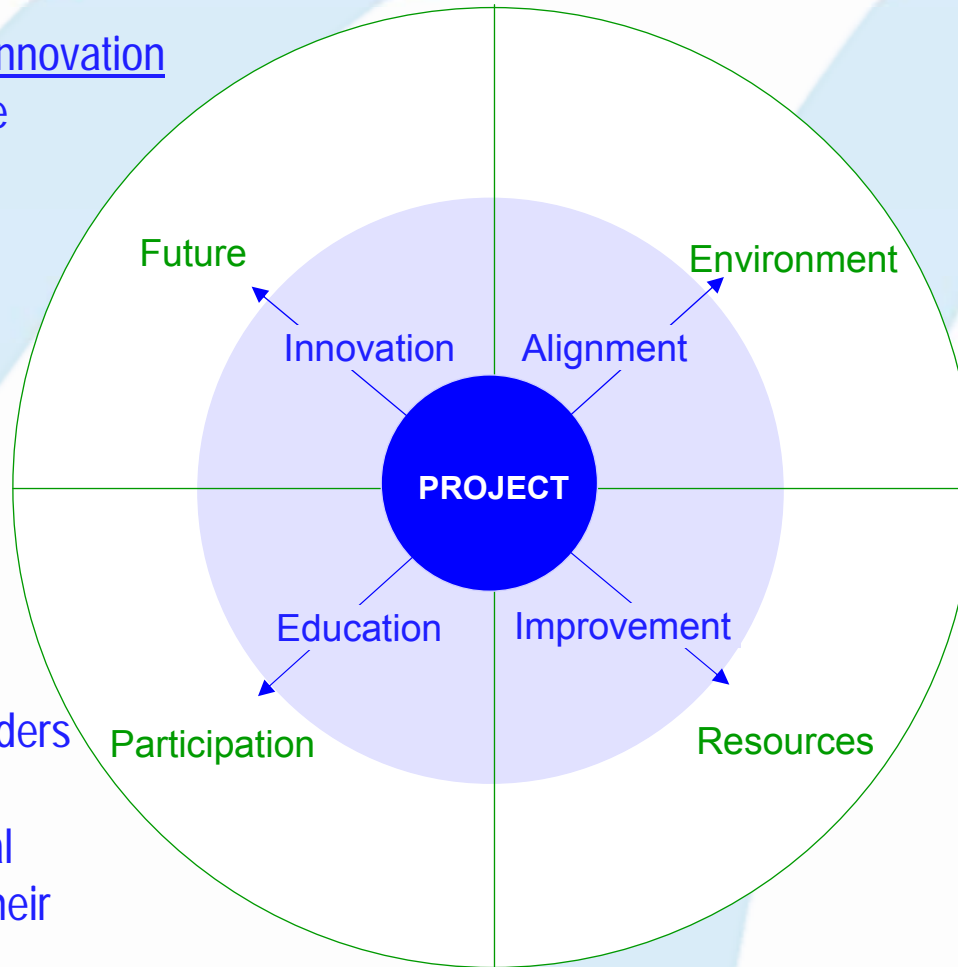
**PSM drives projects towards global goals for sustainable development by forcing
Alignment - Improvement - Education - Innovation**

Create an environment for innovation

Anticipate the future, enable information by opening organizational borders and reward information sharing.

Educate, and be educated

Trust and engage stakeholders and build their capacity to identify issues, include local values and communicate their experience.



Align globally, adjust locally

Use a core set of indicators traceable to Agenda 21 to align project goals with global goals, while factoring in local conditions.

Raise the bar

Continuously improve ways to mitigate resource consumption by seeking new knowledge and information on performance.



3.4. PSM - System

A process for setting and amending project indicators

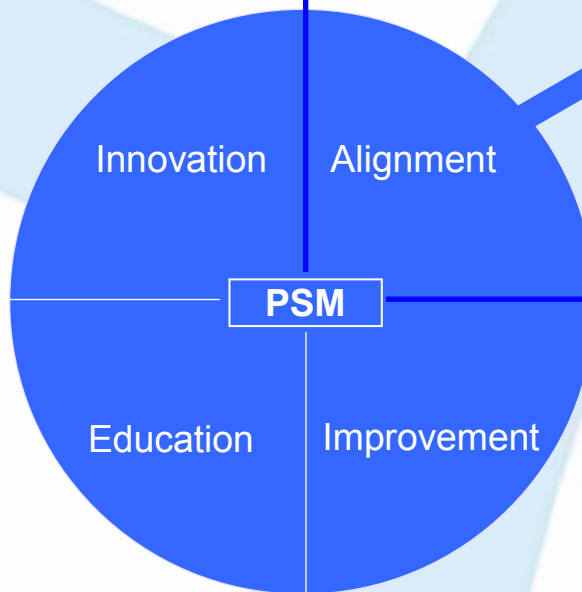
Requires

- environment for innovation
- education of all stakeholders
- continuous improvement

An indicator framework of goals and indicators that map back to Agenda 21

UNCSD-based goals and indicators

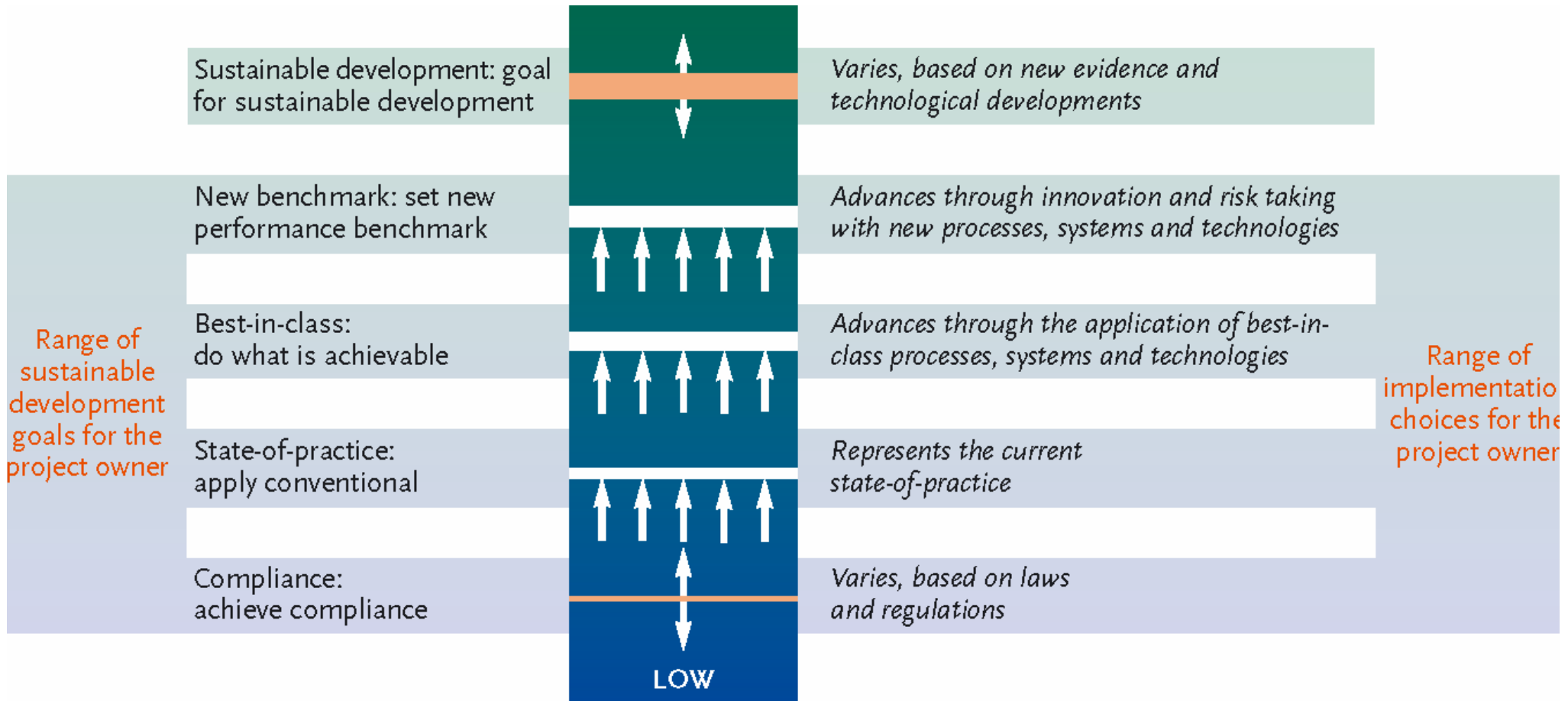
PSM-driven, quality management based process



FIDC PSM Guidelines
2004

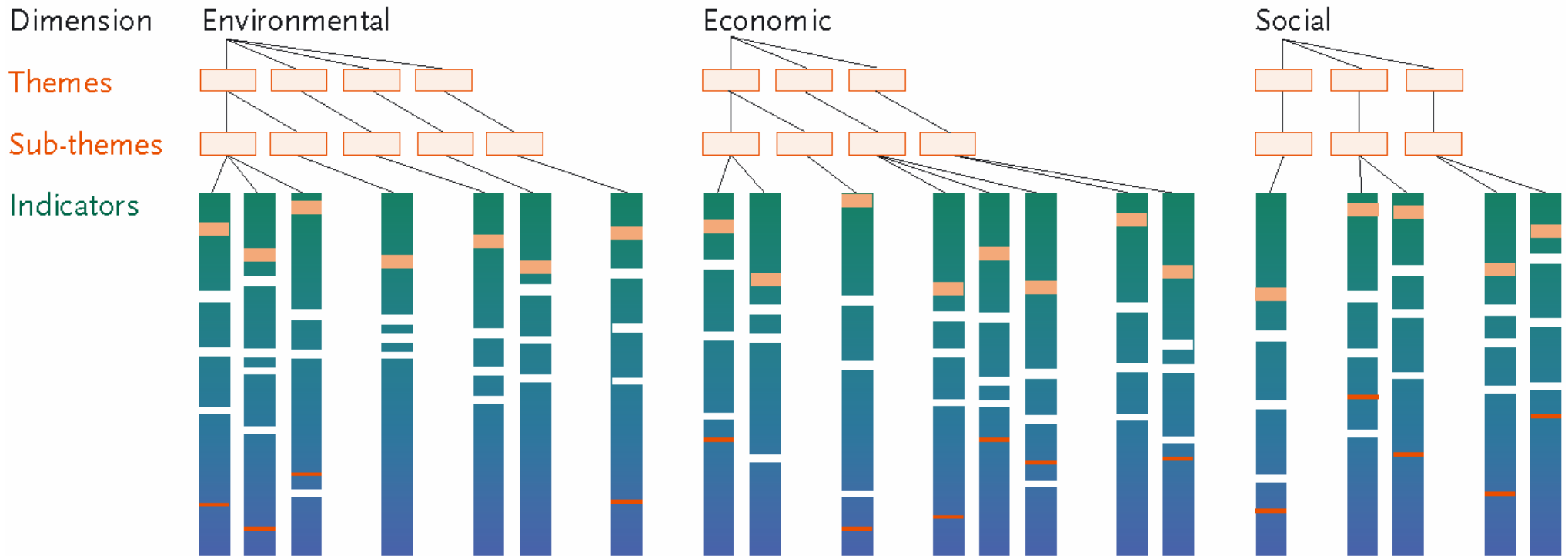


3.4. PSM - Indicator



Framework for sustainable development project indicators

Based on UNCSD modified for projects.



Achieving appropriate levels of transparency and accountability

Industry expectations

All stages of procurement activity

Speak for consulting engineering industry (3 million staff)

- 1 Capacity development
- 2 Contract development
- 3 Government Procurement Integrity Management System - GPIMS
- 4 System integrity: pre-and post-contract award activities not directly affected by the contract to have the same rigour as the contract, especially:
 - Preferencing and reservation methods to achieve secondary objectives

EVALUATE: Non-price award criteria ("Preferencing") - PSM
Capacity utilisation ("Reservation")

GET OFFERS: Prequalification ("Preferencing")

- Trust creation

AWARD: Commercially sensitive debriefing



World Bank lessons learnt 2006

The World Bank and MDBs, in refocusing on infrastructure investments, reviewed the measures needed to rebuild shortfalls.

1. Tailor financial management of projects to the country capacity:
 - well-governed: assess and redress weaknesses upstream of project design and implementation;
 - middle- and low-ranked: combine the agent functions and government capacity building aspects through
 - more intense supervision by bank staff
 - development of anticorruption instruments by project teams (BIMS).
2. Use the stakeholder engagement used for resolving the social and environmental issues of a project to address corruption (PSM)
3. Address sector-level corruption through a consistent reform agenda, adapted to the country, with a close monitoring of outcomes (PSM)

4.2. Contract development

Harmonised contracts

Projects funded by participating banks/agencies
Generally significant percentage of project cost

Multilaterals: 9 MDBs (World Bank, ...)
WB Group (IFC and similar)

Regionals: EU

Bilaterals: ASEAN, AU, NAFTA
Development agencies

New EU model contract :
Annexes: Services, Supplies, Works annexes

?
MDB Harmonised?

Contracts

FIDIC MDB MDB Harmonised

Short Form Minor Works FIDIC Short Form?

 Works - Smaller Contracts ADB Minor Works

Construction Major Works FIDIC MDB Harmonised

Plant Supply & Installation of Plant & Equipment ENEA Plant

DBO Design-Build-Operate Solid Waste Facility FIDIC DBO?



Dispute Resolution

Dispute Boards introduced by FIDIC 1995

- Provide transparency & impartiality
- Resolve disputes in 84 days; real-time assessment
- Lower costs than arbitration or litigation
- Improve standards; diffuses problems
- Encourage competitiveness in tenders

Positive outcomes

2005 survey: "in 76% of cases, parties were able to settle their disputes on the basis of the DB decision".

"... jurisprudence .. confirms the importance of adhering to the pre-agreed contractual procedures. This may cause parties to proceed with caution if they are considering trying to side-step contractual provisions requiring some procedure prior to arbitration."

"... indicates very directly that DBs decisions should be given effect to until revised in arbitration, and that the Courts should be loathe to involve themselves in the DB process."

Attention

"There could be problems in jurisdictions which adopted common law when that law was relatively hostile to non-state dispute resolution" Non-common law countries?

Anti-arbitration legislation



4.3. Government Procurement Integrity Management System

Government Procurement Integrity Management System (GPIMS)

- For government procurement units
- Builds on BIMS for firms
- Quality management based
- Being prepared for presentation to MDBs

GPIMS Principles

- Leadership commitment
- Involvement of staff
- A process approach
- A systems approach
- A documented process



4.3. GPIMS - methods and procedures

Identifying and validating the procurement need

- Signed written statement of compliance with provisions & scope
- Adequate ex post facto evaluation of consulting services
- Record of corrective action
- Control of potential conflict of interest procedure
- Signed disclosure that control procedures have been followed
- Government procurement integrity evaluation

Establishing the procurement strategy

- Signed affidavit of absence of irregular or wrongdoing behaviour
- Availability of a procurement information system
- Publishing of tender documents prior to invitation to bid
- Integrity clauses in procurement documents
- Control of potential conflict of interest procedure
- Participation of a social witness



4.3. GPIMS - methods and procedures

Soliciting of tender offers

- Disclosure of the GPIMS to tender offerers
- Explicitly abstaining from project-fixing practices
- Participation with tender offerers “procurement integrity pacts”

Evaluate offers and select contractor

- Signed declaration of absence of irregular or wrongdoing behavior
- Detailed tender evaluation results for participants
- Procedure for control of potential conflict of interest
- Social witness acceptance statement
- Availability of an agency’s ombudsman

Award contract

- Signed declaration of compliance with scope and provisions
- On site survey of participants regarding the tender offer evaluation procedure
- Random annual survey of the agency’s offerers of consulting services
- Internal ISO 9001-2000 Audit.
- Review payment requests with compliance of provisions
- Proceed with payment in accordance with terms and provisions



Administer contract and confirm compliance

- Reviewal by the Agency's Auditor of all consulting services costs adjustments
- Abstaining from soliciting unnecessary project modifications
- Explicit documentation on decisions to contractors claims or procurement
- Ex-post facto evaluation of consulting services rendered vs. specifications & scope

Payment and compensation

- Signed declaration of reasons for payments in less than average time
- Signed declaration of reasons for payment in excessively long time
- Availability of an Agency's ombudsman
- Systematic evaluation of procurement process by service suppliers



Quality-oriented selection process that combines price & non-price award criteria

Non-Price Item	Weight (%)	Contractor 1 Score	Weighted Score
Methodology (includes provision for traffic)	15	7	10.5
Construction Programme	10	6	6
Personnel (includes skills transfer)	15	8	12
Experience and Equipment	10	5	5
QMS and Environmental	10	4	4
Customer Focus	10	3	3
Sub-Contractors (includes local use)	10	6	6
Financial & Company Strength	20	6	12.8
Total weighted score	100		58.5
Non-price evaluation index			0.65

Improving the quality of construction: a guide for actions, FIDIC, 2004



Prequalification of bidding firms

Need

To receive responsive proposals from suitably qualified firms at a reasonable cost to the designer and the client.

Response

Establish a list of 3 - 7 capable (qualified and competent) firms which appear suitable to provide the required works while ensuring that proper competition is maintained.

Conducted in three stages, with evaluation aimed to minimise subjective judgments by defining beforehand evaluation factors and criteria:

- invitation to pre-qualify
- issue and submission of pre-qualification documents
- assessment of the pre-qualification applications.

Outcome

Guarantees that bids that require a substantial investment of effort and money will not be rejected at the evaluation stage.



Industry initiatives

Well balanced
Cover most of the crucial procurement activities

Industry expectations

Largely address the same issues
Clear potential for collaborative solutions

