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**Construction procurement —**  
**Part 1:**  
**Processes, methods and procedures**

*Marchés de construction —*

*Partie 1: Processus, méthodes et procédures*



Reference number  
ISO 10845-1:2010(E)

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## Foreword

ISO (the International Organization for Standardization) is a worldwide federation of national standards bodies (ISO member bodies). The work of preparing International Standards is normally carried out through ISO technical committees. Each member body interested in a subject for which a technical committee has been established has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work. ISO collaborates closely with the International Electrotechnical Commission (IEC) on all matters of electrotechnical standardization.

International Standards are drafted in accordance with the rules given in the ISO/IEC Directives, Part 2.

The main task of technical committees is to prepare International Standards. Draft International Standards adopted by the technical committees are circulated to the member bodies for voting. Publication as an International Standard requires approval by at least 75 % of the member bodies casting a vote.

Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. ISO shall not be held responsible for identifying any or all such patent rights.

ISO 10845-1 was prepared by Technical Committee ISO/TC 59, *Building construction*.

ISO 10845 consists of the following parts, under the general title *Construction procurement*:

- *Part 1: Processes, methods and procedures*
- *Part 2: Formatting and compilation of procurement documentation*
- *Part 3: Standard conditions of tender*
- *Part 4: Standard conditions for the calling for expressions of interest*
- *Part 5: Participation of targeted enterprises in contracts*
- *Part 6: Participation of targeted partners in joint ventures in contracts*
- *Part 7: Participation of local enterprises and labour in contracts*
- *Part 8: Participation of targeted labour in contracts*

## Introduction

Procurement is the process which creates, manages and fulfils contracts. Procurement can, as such, be described as a succession of logically related actions occurring or performed in a definite manner and which culminate in the completion of a major deliverable or the attainment of a milestone. Processes, in turn, are underpinned by methods (i.e. a documented, systematically-ordered collection of rules or approaches) and procedures (i.e. the formal steps to be taken in the performance of a specific task), which are informed and shaped by the policy of an employer. Methods and procedures can likewise be documented and linked to processes.

Procurement activities commence once the need for procurement is identified and end when the transaction is completed. There are six principal activities associated with the procurement process, namely:

- 1) establish what is to be procured;
- 2) decide on procurement strategies in terms of packaging, contracting, pricing and targeting strategy and procurement procedure;
- 3) solicit tender offers;
- 4) evaluate tender offers;
- 5) award contract;
- 6) administer contracts and confirm compliance with requirements.

Methods, procedures and operational policies are required to implement these principal activities. There is a finite range of methods and procedures associated with the various procurement sub-processes which can be standardized around a set of system objectives. Public, private, international organizations and main contractors can then establish their procurement systems around these standard procedures and methods. Contractors who contract with such organizations can in turn be required, as an obligation of the contract, to apply relevant standard procedures and methods when procuring goods and services or subcontracting construction works associated with their contracts.

This part of ISO 10845 is one of a series of International Standards entitled "Construction procurement" which cover various aspects of procurement within the construction industry. Each part of the series relates to a different aspect of procurement. The objective of this series of standards is to provide a generic and standard set of processes, procedures and methods for a procurement system that is fair, equitable, transparent, competitive and cost-effective and which can be used to promote objectives additional to those associated with the immediate objective of the procurement itself.

This series of standards is especially relevant for developing countries that lack experience and instruments in this field and can be used to improve international trade. This part of ISO 10845 provides a framework around which public, private and international organizations can develop their procurement systems to achieve fair competition, to reduce the possibilities for abuse and to improve predictability in procurement outcomes.

NOTE Standardization, apart from removing technical barriers to trade, enables

- a) those engaged in procurement activities to perform their duties, within the confines of their organization's procurement policy, in a uniform and generic manner;
- b) procurement documents to be readily compiled in a uniform and generic manner; and
- c) curricula to be developed to capacitate those engaged in a range of procurement activities.

Furthermore, it allows governments to readily develop an internal procurement-skills base, which is not lost when members of staff move between different departments or levels of government or organizations.



# Construction procurement —

## Part 1: Processes, methods and procedures

### 1 Scope

This part of ISO 10845 describes processes, methods and procedures for the establishment within an organization of a procurement system that is fair, equitable, transparent, competitive and cost-effective. This part of ISO 10845

- a) describes generic procurement processes around which an employer can develop its procurement system,
- b) establishes basic requirements for the conduct of an employer's employees, agents, board members and office bearers when engaging in procurement,
- c) establishes the framework for the development of an employer's procurement policy, including any secondary procurement policy, and
- d) establishes generic methods and procedures for procurements, including those pertaining to disposals.

Guidance on the application of certain clauses is provided in Annex A and on the establishment and management of procurement processes in Annex E. An approach for obtaining best-value procurement outcomes is outlined in Annex B. Various types of procurement procedures are discussed in Annexes C, F and G. A tender-adjudication procedure to challenge decisions made during the tender process is given in Annex D and suggested Auction Data is given in Annex H.

### 2 Normative references

The following referenced documents are indispensable for the application of this document. For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

ISO 10845-5, *Construction procurement — Part 5: Participation of targeted enterprises in contracts*

ISO 10845-6, *Construction procurement — Part 6: Participation of targeted partners in joint ventures in contracts*

ISO 10845-7, *Construction procurement — Part 7: Participation of local enterprises and labour in contracts*

ISO 10845-8, *Construction procurement — Part 8: Participation of targeted labour in contracts*

ISO 15392:2008, *Sustainability in building construction — General principles*

ISO 15686 (all parts), *Buildings and constructed assets — Service life planning*

### 3 Terms and definitions

For the purposes of this document, the following terms and definitions apply.

#### 3.1

##### **acceptance**

agreeing to a contractor's offer or tender, thereby creating a binding contract

[ISO 6707-2:1993, definition 3.4.2]

#### 3.2

##### **agent**

person or organization that is not an employee of the employer and that acts on the employer's behalf

#### 3.3

##### **bill of quantities**

document that lists the items of work and the quantities and rates associated with each item to allow contractors to be paid, at regular intervals, an amount equal to the agreed rate for the work multiplied by the quantity of work completed

#### 3.4

##### **bond**

sum of money or securities submitted to the employer or placed in the hands of a third party to guarantee completion of the work and recovery of the sums which the contractor would be recognized as owing under the terms of contract

[ISO 6707-2:1993, definition 3.5.4]

#### 3.5

##### **competitive negotiation procedure**

procurement procedure which, through a series of negotiations, reduces the number of tenderers competing for the contract until the remaining tenderers are invited to submit final offers

#### 3.6

##### **competitive selection procedure**

any procurement procedure in which the contract is normally awarded to the contractor who submits the lowest financial offer or obtains the highest number of tender-evaluation points

#### 3.7

##### **conditions of contract**

terms that collectively describe the rights and obligations of contracting parties and the agreed procedures for the administration of their contract or document containing conditions of contract

NOTE Adapted from ISO 6707-2:1993, definitions 3.2.1 and 3.2.2.

#### 3.8

##### **conflict of interest**

any situation in which someone in a position of trust has competing professional or personal interests which make it difficult for him to fulfil his duties impartially, an individual or organization is in a position to exploit a professional or official capacity in some way for his personal or for corporate benefit, or incompatibility or contradictory interests exist between an employee and the organization which employs that employee

#### 3.9

##### **contract**

legally enforceable agreement to supply goods, execute work or provide services

[ISO 6707-2:1993, definition 3.4.8]



**3.10****contract data**

document that identifies the applicable conditions of a contract and states the associated contract-specific data

**3.11****contracting strategy**

strategy that governs the nature of the relationship which the employer wishes to foster with the contractor, which in turn determines the risks and responsibilities between the parties to the contract and the methodology by which the contractor is to be paid

**3.12****contractor**

person or organization that contracts to provide the goods, services or engineering and construction works covered by the contract

**3.13****corrupt practice**

offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the procurement process or the administration of the contract

**3.14****cost plus contract**

cost reimbursement contract in which the contractor is paid for his actual expenditure plus a percentage or fee

[ISO 6707-2:1993, definition 3.4.11]

**3.15****cost reimbursement contract**

contract based on costs expended

[ISO 6707-2:1993, definition 3.4.12]

**3.16****electronic auction**

repetitive process involving an electronic device for the presentation of new prices, revised downwards or new values concerning certain elements of tenders (or both), and which occurs after an initial full evaluation of the tenders, enabling them to be ranked using an automatic evaluation method

**3.17****employer**

person or organization intending to or entering into a contract with the contractor for the provision of goods, services, or engineering and construction works

**3.18****expression of interest**

request for respondents to register their interest in undertaking a specific contract or to participate in a project or programme and to submit their credentials so they may, in terms of the employer's procurement procedures, be invited to submit a tender offer should they qualify or be selected to do so

**3.19****framework agreement**

agreement between an employer and one or more contractors, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged

**3.20**

**fraudulent practice**

misrepresentation of the facts in order to influence the tender process, the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels, or the administration of the contract including compensation procedures

**3.21**

**joint venture**

grouping of two or more contractors acting as one legal entity, where each is liable for the actions of the other

[ISO 6707-2:1993, definition 3.4.22]

**3.22**

**method**

documented, systematically ordered collection of rules or approaches

**3.23**

**organization**

company, firm, enterprise, association or other legal entity, whether incorporated or not, or a public body

**3.24**

**packaging strategy**

organization of work packages into contracts

**3.25**

**price adjustment**

amount to be added or to be deducted from the contract price in accordance with the terms of the contract by way of allowances for increases or decreases in the costs of labour, plant, materials and equipment occurring during the performance of the contract

**3.26**

**pricing strategy**

strategy which is adopted to secure financial offers and to remunerate contractors in terms of the contract

**3.27**

**principal**, noun

owner, partner, director or office bearer

**3.28**

**procedure**

formal steps to be taken in the performance of a specific task, which may be called upon in the course of a process

**3.29**

**process**

succession of logically related actions occurring or performed in a definite manner which culminates in the completion of a major deliverable or the attainment of a milestone

**3.30**

**procurement**

process which creates, manages and fulfils contracts relating to the provision of goods, services and engineering and construction works or disposals, or any combination thereof

**3.31**

**procurement document**

documentation used to initiate or conclude (or both) a contract

**3.32****procurement procedure**

selected procedure for a specific procurement

NOTE Specific procedures provided in terms of this part of ISO 10845 may be described as auction, competitive negotiations, electronic auction, negotiated, nominated, open, qualified, quotation, proposal or shopping.

**3.33****procurement strategy**

selected packaging, contracting, pricing and targeting strategy, and procurement procedure for a particular procurement

**3.34****project**

contract or a series of related contracts

**3.35****quality**

totality of features and characteristics of a product or service that bears on the ability of the product or service to satisfy stated or implied needs

**3.36****respondent**

person or organization that submits an expression of interest in response to an invitation to do so

**3.37****scope of work**

document that specifies and describes the goods, services, or engineering and construction works which are to be provided, and any other requirements and constraints relating to the manner in which the contract work is to be performed

**3.38****secondary procurement policy**

procurement policy that promotes objectives additional to those associated with the immediate objective of the procurement itself

**3.39****submission data**

document that establishes the respondent's obligations in responding to a call for an expression of interest and the employer's undertakings in administering the process of calling for and receiving expressions of interest

**3.40****suitable**

capable of fulfilling or having fulfilled the intended function, or fit for its intended purpose

**3.41****sustainability**

state in which components of the ecosystem and their functions are maintained for the present and future generations

[ISO 15392:2008, definition 3.20]

**3.42****system**

organized scheme or plan of action or an orderly or regular procedure or method

**3.43**

**target cost contract**

cost reimbursement contract in which a preliminary target cost is estimated and on completion of the work the difference between the target cost and the actual cost is apportioned between the employer and contractor on an agreed basis

NOTE Adapted from ISO 6707-2.

**3.44**

**targeted procurement procedure**

process used to create a demand for the services or goods (or both) of, or to secure the participation of, targeted enterprises and targeted labour in contracts in response to the objectives of a secondary procurement policy

**3.45**

**tender data**

document that establishes the tenderer's obligations in submitting a tender and the employer's undertakings in administering the tender process and evaluating tender offers

**3.46**

**tender offer**

written offer for the provision of goods, or to carry out a service or engineering and construction works under given conditions, usually at a stated price, and which is capable of acceptance and conversion into a binding contract

**3.47**

**tenderer**

person or organization that submits a tender offer

## **4 Establishing a procurement system**

### **4.1 General**

#### **4.1.1 Developing and documenting the system**

An employer shall develop and document its procurement system

- a) in a manner which is fair, equitable, transparent, competitive and cost-effective and which may, subject to the policies of an employer and any prevailing legislation, include the promotion of other objectives, in accordance with the requirements of Table 1, and
- b) around a process which commences once the need for procurement is identified, ends when the transaction is completed and includes the attainment of procedural milestones which enable the system to be controlled and managed.

The employer's executive shall designate persons to undertake the actions associated with the attainment of procedural milestones.

NOTE Annex C provides a generic procurement process which incorporates activities linked to procedural milestones. A procurement system can be developed around this generic process. Separate processes might (but not necessarily) be required for different categories of procurement, e.g. disposals, services, goods, and engineering and construction works.

Table 1 — Basic procurement system requirements

Attribute	Basic system requirement
Fair	The process of offer and acceptance is conducted impartially without bias and provides participating parties simultaneous and timely access to the same information. Terms and conditions for performing the work do not unfairly prejudice the interests of the parties.
Equitable	The only grounds for not awarding a contract to a tenderer who complies with all requirements are restrictions from doing business with the employer, lack of capability or capacity, legal impediments and conflicts of interest.
Transparent	The procurement process and criteria upon which decisions are to be made shall be publicized. Decisions (award and intermediate) are made publicly available, together with reasons for those decisions. It is possible to verify that criteria were applied. The requirements of procurement documents are presented in a clear, unambiguous, comprehensive and understandable manner.
Competitive	The system provides for appropriate levels of competition to ensure cost-effective and best-value outcomes.
Cost-effective	The processes, procedures and methods are standardized with sufficient flexibility to attain best-value outcomes in respect of quality, timing and price, and the least resources to effectively manage and control procurement processes.
Promotion of other objectives	The system may incorporate measures to promote objectives associated with a secondary procurement policy (see 4.4) subject to qualified tenderers not being excluded and deliverables or evaluation criteria being measurable, quantifiable and monitored for compliance.

#### 4.1.2 Responding to decisions taken

The employer shall provide, upon request, written reasons to respondents and tenderers for any decisions that are taken during a call for an expression of interest and an invitation to tender, but may withhold information which

- a) would not be in the public interest to be divulged,
- b) is considered to prejudice the legitimate commercial interests of tenderers and respondents, or
- c) might prejudice fair competition between tenderers.

Organizations should consider, when developing their procurement systems, how challenges resulting from the outcomes of the tender process should be dealt with.

NOTE Annex D suggests an adjudication procedure to enable disputes around the tender processes to be resolved.

## 4.2 Conduct of employees, agents and contractors

### 4.2.1 Code of conduct

The employer shall comply with all legal obligations and shall establish a code of conduct for procurement to regulate the actions of its employees, agents, public office bearers or board members. Such a code shall at least require that these persons

- a) discharge their duties and obligations on time and with integrity,
- b) behave equitably, honestly and transparently,
- c) avoid conflicts of interest and, where a conflict of interest is known, declare and address that conflict, and
- d) not maliciously or recklessly injure, or attempt to injure, the reputation of another party.

NOTE ISO 10845-3 deals with the manner in which conflicts of interest are to be dealt with during the process of offer and acceptance. The commentary to this part of ISO 10845 contained in Annex A provides guidance on how to deal with conflicts of interest in a number of situations.

#### **4.2.2 Disciplinary action**

Employers should discipline their employees, agents, public office bearers or board members who contravene the requirements of their code of conduct for procurement.

Employers may place contractors or their principals (or both) who have engaged in corrupt and fraudulent practices under restrictions from participating in the employer's procurement for periods of time. Contractors and persons placed under restrictions shall be advised of the restriction and the reason for it.

NOTE 1 The standard conditions of tender contained in ISO 10845-3 require both the employer and each tenderer to discharge their duties and obligations on time and with integrity, behave equitably, honestly and transparently, comply with all legal obligations, not engage in anti-competitive practices and avoid conflicts of interest.

NOTE 2 A conflict of interest might exist even if there are no improper acts as a result of it. This might arise due to a conflict of roles which might provide an incentive for improper acts in some circumstances. A conflict of interest can create an appearance of impropriety that might undermine confidence in the ability of that person to act properly in his position.

NOTE 3 Conflicts of interest in respect of those engaged in the procurement process include direct, indirect or family interests in the tender or outcome of the procurement process, and any personal bias, inclination, obligation, allegiance or loyalty which would in any way affect any decisions taken.

#### **4.3 Procurement policy**

The employer's executive shall, taking into account all laws governing procurement processes and laws governing contracts locally and internationally, develop and document a procurement policy which should, as a minimum, establish

- a) which of the standard procurement procedures listed in Table 2 and described in 6.3 apply to which categories of procurement and under which circumstances,
- b) whether or not framework agreements may be utilized,
- c) the manner in which procurements, including disposals, shall be managed and controlled,
- d) the employer's secondary procurement policy, if any, in accordance with the requirements of 4.4,
- e) requirements for recording and reporting,
- f) the functioning and composition of the employer's oversight structures and evaluation panels (see Annex E),
- g) requirements for managing risks associated with the breaching of the basic procurement system requirements established in Table 1,
- h) the legal requirements, if any, which will be sufficient grounds for the employer to decline to enter into a contract, in terms of 6.7,
- i) the employer's procedures for placing contractors and persons under procurement restrictions,
- j) advertising arrangements for the calling for tender submissions and expressions of interest,
- k) which standard forms of contract and industry standards shall be incorporated by reference in procurement documents and how procurement documents shall be formatted and compiled,
- l) which standard conditions of tender (e.g. ISO 10845-3) and standard conditions for the calling for expressions of interest (e.g. ISO 10845-4) shall be adopted,

- m) levels of retention and bonds in the various categories of procurement, if any,
- n) insurance arrangements, if any,
- o) quality standards,
- p) health and safety policy,
- q) the cost of procurement documents (see 6.6.2),
- r) the authorized percentage increase in the final contract amount (see 6.7),
- s) the procedures for unsolicited proposals (see 6.9),
- t) departures from procedures (see 6.10),
- u) the language in which procurement documents are prepared and the language for communications,
- v) the preferred means of communication (see 4.6),
- w) the maximum term of framework agreements that may be permitted (see 6.3.7),
- x) the minimum number of framework agreements which need to be entered into should competition be reopened amongst framework contractors (see 6.3.7),
- y) whether or not agents and contractors that are commissioned to prepare a procurement document or part thereof for a particular procurement shall be excluded from submitting a tender for that procurement even if it is determined that the outputs of their commission and the procurement document is objective and unbiased with regard to their role and recommendations, and
- z) whether or not use may be made of contracts awarded by other employers for economies of scale and improved purchasing power.

NOTE 1 Annex E provides guidance on establishing, managing and controlling procurement processes. Annex F provides guidance on the selection of standard procurement procedures.

NOTE 2 Employers need to be aware that they are responsible for the correct application of the processes, methods and procedures contained in this part of ISO 10845 and for ensuring consistency with prevailing legislation. Compliance with this part of ISO 10845 cannot confer immunity from legal obligations. If doubt exists, legal advice should be sought.

**Table 2 — Standard procurement procedures**

Procedure		Description
1	Negotiation procedure	A tender offer is solicited from a single tenderer.
2	Competitive selection procedure	Any procurement procedure in which the contract is normally awarded to the contractor who submits the lowest financial offer or obtains the highest number of tender-evaluation points.
	A Nominated procedure	Tenderers that satisfy prescribed criteria are entered into an electronic database. Tenderers are invited to submit tender offers based on search criteria and, if relevant, their position in the database. Tenderers are repositioned in the database upon appointment or upon submission of a tender offer.
	B Open procedure	Tenderers may submit tender offers in response to an advertisement by the employer to do so.
	C Qualified procedure	A call for expressions of interest is advertised and thereafter only those tenderers who have expressed interest, satisfy objective criteria and who are selected to submit tender offers, are invited to do so.
	D Quotation procedure	Tender offers are solicited from not less than three tenderers in any manner the employer chooses, subject to the procedures being fair, equitable, transparent, competitive and cost-effective.
	E Proposal procedure using the two-envelope system	Tenderers submit technical and financial proposals in two envelopes. The financial proposal is only opened if the technical proposal is found to attain the minimum threshold score.
	F Proposal procedure using the two-stage system	Non-financial proposals are called for. Tender offers are then invited from those tenderers that submit acceptable proposals based on revised procurement documents. Alternatively, a contract is negotiated with the tenderer scoring the highest number of evaluation points.
G Shopping procedure	Written or verbal offers are solicited in respect of readily available goods obtained from three sources. The goods are purchased from the source providing the lowest financial offer once it is confirmed in writing.	
3	Competitive negotiation procedure	A procurement procedure which reduces the number of tenderers competing for the contract through a series of negotiations until the remaining tenderers are invited to submit their final offers.
	A Restricted competitive negotiations	A call for expressions of interest is advertised and thereafter only those tenderers who have expressed interest, satisfy objective criteria and who are selected to submit tender offers, are invited to do so. The employer evaluates the offers and determines who may enter into competitive negotiations.
	B Open competitive negotiations	Tenderers may submit tender offers in response to an advertisement by the employer to do so. The employer evaluates the offers and determines who may enter into competitive negotiations.
4	Electronic auction procedure	Tender submissions are initially evaluated using stated methods and criteria. All tenderers who submit responsive tenders are invited simultaneously, by electronic means, to submit new evaluation parameters and have their evaluation scored, without having their identity made known to other tenderers. Tenderers may amend their offers up until the time when the auction is closed.



## 4.4 Secondary procurement policy

### 4.4.1 General requirements

#### 4.4.1.1 Minimum requirements

The employer's executive shall develop and document the employer's secondary procurement policy, if any, which, as a minimum, shall establish

- a) the specific objectives that are to be pursued, such as those pertaining to the promotion of small and medium enterprises (SMEs), poverty alleviation, job creation, local economic development, business equity, HIV-Aids prevention, skills transfer, skills development, construction industry development, quality standards, environmental standards, sustainability, etc.,
- b) targeted procurement procedures that may be used, as well as any limitations placed on their use or application, and
- c) recording and reporting requirements associated with a) and b) above.

NOTE Annex G provides information on the range of targeted procurement procedures that might be applicable.

#### 4.4.1.2 Contract-specific goals

Contract-specific goals [(deliverables or key performance indicators, (KPIs)] relating to a secondary procurement policy should be capable of being measured, verified and audited and should be achievable within the contract period, unless

- a) specific arrangements are put in place to monitor and enforce compliance after the contract has been completed,
- b) they are measured before the award of a contract and maintained for the duration of the contract, or
- c) they are assessed in terms of objective criteria or an evidence-based system of evaluation before the award of the contract.

Goals may include minimizing the environmental impacts of the goods and engineering and construction works over their whole life.

NOTE 1 Environmental impacts might be reduced by selecting

- products that are reusable, recyclable or contain recycled content, and
- design, manufacturing, production, distribution and service processes that reduce the use of resources (energy, water); reduce greenhouse gas emissions; minimize the release of toxic substances; and minimize waste disposal to landfills.

NOTE 2 The targeted procurement procedures set out in Annex G provide a framework within which

- access to markets can be provided for targeted enterprises and targeted labour,
- incentives can be provided for contractors to satisfy the objectives of an employer's secondary procurement policy in the performance of the contract, and
- the participation of targeted enterprises and targeted labour can be secured or promoted in contracts.

NOTE 3 When formulating specific goals, consideration can be given to measures to prevent fraudulent practices, the application of sanctions as an instrument to promote compliance and the implementation of supply-side interventions (see Annex G).

NOTE 4 SANS 1921-6 enables requirements for the prevention of HIV-Aids to be incorporated in the scope of work of a contract.

#### **4.4.1.3 Break-out procurement**

The breaking down of projects into smaller contracts (unbundling) should only be undertaken when

- a) there is administrative capacity to administer the increased number of contracts that result from the unbundling of the project; and
- b) the unbundling does not result in an inappropriate division of responsibilities, increased contractual risk, duplication of establishment charges and under-utilization of resources.

#### **4.4.2 Requirements relating to the granting of evaluation points**

##### **4.4.2.1 General**

Tenderers and respondents shall be advised of all evaluation points offered by the employer for contract-specific goals in relation to a particular procurement, the conditions relating thereto and the manner in which such goals will be evaluated.

The weighting between contract-specific goals and other evaluation criteria at the shortlisting stage or in the evaluation of tenders shall be fair and equitable (see Annex G).

##### **4.4.2.2 Evaluating contract-specific goals**

Tender-evaluation points for contract-specific goals should be granted using one of the following methods:

- a) award a fixed number of points for attaining a specific goal;
- b) award a variable number of points in proportion to the degree to which a tenderer responds to a particular goal (i.e. in proportion to the quantum of the goal offered);
- c) award points on a comparative basis in terms of which
  - 1) the best offer received scores the maximum number of allotted points,
  - 2) the worst offer scores no points, and
  - 3) the remaining offers are scored between the limits of 1) and 2).

As a general rule, the number of specific goals for which tender-evaluation points are awarded should be kept to a minimum, in order to ensure efficiency in administration and monitoring for compliance, promote greater clarity of requirements in procurement documents, and maintain focus on the primary policy objectives.

NOTE 1 Methods a) and b) are objective and require no subjective judgements to be exercised in the quantification of the contract-specific goal. The evaluation of these methods merely ascertains whether or not the tenderer is eligible for a tender-evaluation point. Method c), on the other hand, requires a somewhat subjective judgement to arrive at the quantum of the points allocated, unless tenderers are required to submit contract-participation goals in accordance with ISO 10845-5, ISO 10845-6, ISO 10845-7 or ISO 10845-8.

NOTE 2 The granting of too wide a range of contract-specific goals can lead to a situation whereby most tenderers become eligible for the awarding of evaluation points. This can undermine the thrust and intent of the use of tender-evaluation points to promote contract-specific goals.

#### 4.4.2.3 Formulating contract-specific goals

The granting of tender-evaluation points for the participation of targeted enterprises and targeted labour should, as far as possible, be based on the attainment of contract-participation goals as measured in accordance with the requirements of ISO 10845-5, ISO 10845-6, ISO 10845-7 or ISO 10845-8.

Tender-evaluation points awarded in respect of the structure of the contracting entity should be subject to the tenderer undertaking to maintain such a structure within nominated requirements for the duration of the contract and to limit the quantum of work subcontracted to firms not contributing to such goals.

Goals relating to development issues that are unrelated to a specific contract, such as the granting of bursaries, staff training, the provision of housing, education and transport to members of staff and their dependents, donations to community organizations, etc., should be based on amounts paid and certified by auditors, and expressed as a percentage of audited turnover or wage bills.

NOTE 1 Evaluation points relating to the targeting of enterprises on the basis of geographic locations can be based on the conducting of business from premises located in defined geographic locations, as evidenced from indicators such as payment of rentals or bonds for premises and payment for service charges, levies, rates and taxes to a local or regional authority.

NOTE 2 Evaluation points relating to the targeting of labour on the basis of geographic locations can be based on residency as recognized by members of the community residing within that area.

#### 4.4.3 Requirements relating to accelerated rotations in electronic databases

The formulation for accelerating work opportunities for targeted enterprises in rotating electronic databases (see 4.5) should be such that

- a) non-targeted enterprises obtain a reasonable opportunity to tender for work, and
- b) the rate of rotation for targeted enterprises decreases as the number of such enterprises grows, so that a point is reached whereby the accelerated rotation serves no further purpose (see Annex G).

### 4.5 Rotating electronic databases

#### 4.5.1 Operating principles

A rotating electronic database linked to the nominated procedure shall be designed and implemented around the following principles:

- a) calls for expressions of interest for admission to the database in specified fields of services and goods are made at least once a year in suitable media and in a manner that enables a wide spectrum of qualified respondents to respond to the call;
- b) only those respondents who comply with all the employer's requirements for the award of a contract and possess the capability to provide the goods or perform the service or work in a specified field of service or supply are admitted to the database;
- c) all admissions to the database are listed sequentially after an initial ranking in terms of a random number generator;
- d) new admissions are entered at the bottom of the database in the sequence that they are received;
- e) a transaction (negotiated contract or invitation to tender) is made with the highest ranking entry that satisfies the search criteria relating to a field of service or supply;
- f) after a transaction, all those involved in the transaction, i.e. those who declined an appointment, those invited to submit tenders and those that were awarded a contract, are moved to the bottom of the database;

- g) those admitted to the database are admitted for a period of not more than three years on condition that they advise the administrator of the database of any changes in contact particulars and parameters which might result in them no longer satisfying the admission criteria upon becoming aware of any such changes.

Provision may be made for the accelerated rotation of targeted enterprises (see Annex G), subject to the requirements of 4.4.3.

Respondents should be entered into the database whenever they choose to submit an application which complies with the entry requirements. The employer shall advise respondents in writing of the administrative action taken regarding their submission, i.e. whether or not they have been entered, and if not, on what grounds.

NOTE 1 This procedure creates a “black box” approach in that it removes subjectivity and cannot be manipulated as it is impossible to predict who is next in line. This greatly improves transparency.

NOTE 2 Rotating electronic databases are well suited to routine and recurring professional service appointments.

## **4.5.2 Software requirements**

### **4.5.2.1 Minimum requirements**

The nominated procedure shall only be utilized when a policy, operational procedures and appropriate software associated with the operation of an electronic database are in place.

The software associated with an electronic database shall, as a minimum, be capable of

- a) registering entries in an electronic database in fields of services or types of goods or, if relevant, their geographical location,
- b) ranking entries in the database in terms of date of entry to the system and, where applicable, their preferred status in terms of a secondary procurement policy (see 4.4.3 and Annex G),
- c) selecting a single entry for a low-value contract or a limited number of entries (not less than five) to submit tender offers, based on their rankings in the database and specific criteria such as locality, services or goods offered, and specific capabilities,
- d) electronically notifying identified or shortlisted entries of any business opportunities by Short Message Service (SMS) or email (or both),
- e) repositioning entries (whether successful or not) in the database at new positions dependent on their preferred enterprise status, if relevant (see Annex G),
- f) minimizing fraudulent manipulation of the database by persons in the employ of the employer to secure nominations for registered enterprises, and
- g) reporting on all procurement transactions.

All records of admissions, deletions and transactions in the database should be stored electronically for a period of five years.

NOTE The system can be set up in such a manner that those admitted to the database are able to amend their particulars online and report any changes which will affect their prequalification or admission status.

#### 4.5.2.2 Publicly accessible information

The following information should, as a minimum, be accessible to the public via a website:

- a) The names, geographic location, targeted enterprise status, if applicable, and fields of service or supply of all entries (and offices) admitted to the database in a searchable format, based on fields of service or supply.
- b) The relative position of the entries from the top of the database, described in the following bands:
  - 1) band 1: position between 0 % and 25 % from the top,
  - 2) band 2: position between 25 % and 50 % from the top,
  - 3) band 3: position between 50 % and 75 % from the top,
  - 4) band 4: position between 75 % and 100 % from the top.
- c) The following information relating to transactions and award of contracts:
  - contract title;
  - contract number;
  - project reference number;
  - required field;
  - geographical area within which project falls, if relevant;
  - name of entry invited to negotiate contract or names of entries invited to submit tenders;
  - name of contractor awarded contract, contract price including VAT and, where applicable, scores for financial offer, quality and preference.

#### 4.5.3 Conduct of those admitted to the database

Respondents who are admitted to the electronic database shall abide by the employer's code of conduct and shall

- a) maintain the accuracy of the data stored in the database and notify the administrator, in writing, of
  - 1) any changes in composition which will affect its target group status, if any, and
  - 2) any change in the particulars which will disqualify the contractor from being in the database or in any field of service or supply, and
- b) discharge all contractual obligations on time and in accordance with the provisions of the contract.

Any attempt to exploit or influence the operation of the electronic database by misrepresentation of information used in the admittance to or operation of the electronic database shall be deemed to constitute misconduct. Repeated declining to submit a tender or enter into a contract following a nomination may also be regarded as misconduct.

Those who are found to be guilty of misconduct may, in terms of an employer's disciplinary procedures, be removed from the electronic database for a period of time.

## 4.6 Means of communication

All communication and information exchange should be sent by post, by fax or by electronic means, provided that such means is generally available and interoperable with the information and communication technology products in general use, or by a combination of these means, according to the preference of the employer.

The means of communication chosen shall be generally available and thus not unreasonably restrict a respondent's or tenderer's access to a procurement procedure.

## 4.7 Devices relating to the electronic receipt of submissions

Devices for the electronic receipt of submissions shall, as a minimum, guarantee, through technical means and appropriate procedures, that

- a) electronic signatures relating to tender submissions or requests to participate comply with the requirements of prevailing legislation,
- b) the exact time and date of the receipt of tender submissions or requests to participate can be determined precisely,
- c) it can be reasonably ensured that, before the time limits which are laid down, no one may have access to data transmitted under these requirements,
- d) if that access prohibition is infringed, it can be reasonably ensured that the infringement is clearly detectable,
- e) only authorized persons may set or change the dates for opening data received,
- f) during the different stages of the contract award procedure, access to all data submitted, or to part thereof, is possible only through simultaneous action by authorized persons,
- g) simultaneous action by authorized persons gives access to data transmitted only after the prescribed date, and
- h) data received and opened in accordance with the requirements contained in a) and b) remain accessible only to persons authorized to acquaint themselves therewith.

## 5 Preparing for procurement

### 5.1 Preparation for a procurement other than a disposal

#### 5.1.1 Initial considerations

Each time an employer undertakes a procurement, it should commence by establishing the following (see Annex C):

- a) the broad scope of work associated with the procurement, including aspects such as
  - 1) sustainability (social, economic and environmental aspects – see ISO 15392),
  - 2) health and safety,
  - 3) considerations involving the service life of buildings and infrastructure (see ISO 15686);
- b) the need and justification for the procurement;

- c) if it is possible to avoid unnecessary consumption through demand management initiatives or by considering alternatives, reuse, refurbishment or reconditioning or the acquiring of second-hand or used items;
- d) the estimated market-related costs, whole-life costs and benefits of the procurement;
- e) the resources and expertise available for the management, administration and supervision of the procurement;
- f) the risks associated with the procurement;
- g) the public authorities, if any, which should be consulted in connection with the procurement;
- h) the secondary procurement policies and targeted procurement strategies (see Annex G), if any, which apply to the contract or project;
- i) the appropriate contract and pricing strategy;
- j) the appropriate procurement procedure(s);
- k) the funding source(s) for the contract or project.

### 5.1.2 Readiness to solicit tender offers

Tender offers should not be solicited unless and until

- a) the necessary resources to administer the contract or project have been obtained or put in place,
- b) all the necessary organizational approvals for the project or contract have been obtained,
- c) organizational approval has been obtained for the selected contract and pricing strategy, for the procurement procedure, and, where a secondary procurement policy is to be pursued, for the targeting strategy,
- d) all necessary feasibility studies, impact assessments, preliminary investigations and life-cycle costs commensurate with the selected contract strategy have been completed and their outcomes captured in the procurement documents,
- e) all the necessary and appropriate procurement documents have been prepared,
- f) the need for the procurement, the financial and technical viability of the proposed procurement, and the employer's firm intention of proceeding with the procurement is confirmed, and
- g) the funding for, or the arrangements for, the financing of the contract or project are in place.

### 5.1.3 Records

The employer shall keep written records of all decisions and determinations made, as well as the reasons and details relating thereto.

## 5.2 Preparation for a disposal

### 5.2.1 Initial considerations

Each time an employer intends to undertake a disposal, it should commence by establishing

- a) the need and justification for the disposal,

- b) the estimated market-related costs and benefits of the disposal,
- c) the resources and expertise available for the management, administration and supervision of the disposal,
- d) the risks associated with the disposal, including those relating to sustainability and health and safety,
- e) the appropriate procurement procedure,
- f) the secondary procurement policies which will apply to the disposal, and
- g) the appropriate procurement strategy for the disposal.

### **5.2.2 Readiness to proceed**

A disposal should not be proceeded with unless and until

- a) all the necessary approvals for the disposal have been obtained from the employer's executive,
- b) all relevant legislation has been complied with,
- c) an appropriate disposal procedure has been decided upon,
- d) the total revenue which might be realized through the proposed disposal has been estimated,
- e) all necessary and appropriate procurement documentation has been prepared in accordance with the requirements of 6.2, insofar as the requirements can be applied,
- f) the need and justification for the proposed disposal have been confirmed, and
- g) the employer's firm intention of proceeding with the disposal has been established.

### **5.2.3 Records**

The employer shall make and keep records of all decisions made.

## **6 Procurement methods and procedures**

### **6.1 General**

Tenderers may submit tenders as a joint venture, provided that before the contract is awarded to the joint venture, all the partners enter into a joint-venture agreement which jointly and severally binds the partners to perform the contract. However, where the qualified procedure is used, short-listed respondents who elect to enter joint ventures after the shortlisting stage shall, if required in terms of the tender data, obtain the employer's permission to do so.

Any negotiations or discussions with respondents or tenderers shall be conducted in an open, competitive, transparent and fair manner and shall not be used as an opportunity to trade-off one tenderer's financial offer against another tenderer's financial offer in order to obtain lower prices or to provide any tenderer with a second or unfair advantage.

An employer shall be justified in rejecting all tender submissions only if such submissions are non-responsive and are unsuitable, either because they do not fully comply with the requirements or involve costs substantially higher than the budget.

Agents and contractors that are commissioned to prepare a procurement document or part thereof for a particular procurement may, unless otherwise precluded from doing so in terms of the employer's procurement policy, only submit a tender for that procurement if it is determined that the outputs of their commission and the procurement document is objective and unbiased with regard to their role and recommendations.



## 6.2 Procurement documentation

### 6.2.1 General requirements

Procurement documents shall, as relevant,

- a) be prepared in accordance with the employer's procurement policy,
- b) be prepared in the language stated in the employer's procurement policy,
- c) present requirements in a clear, unambiguous, comprehensive and understandable manner,
- d) where a nominated or qualified procedure is used, require respondents to register their interest in undertaking a specific contract or to participate in a project or programme and to submit their credentials for the employer to admit them to an electronic database or invite them to submit tenders, should they qualify or be selected to do so,
- e) require tenderers to submit particulars sufficient for the employer to evaluate their tenders and to establish their credentials, and to assess their capabilities and capacities to perform the contract,
- f) set out, in a clear and unambiguous manner, the criteria by which tenders are to be evaluated,
- g) define the risks, liabilities and obligations of the parties to the contract and the procedures for the administration of the contract, and
- h) define the nature, quality and quantity of goods, services or engineering and construction works to be provided in the performance of the contract.

NOTE ISO 10845-2 establishes

- a uniform format for the compilation of calls for expressions of interest, tender documents and contract documents; and
- the general principles for compiling procurement documents.

### 6.2.2 Basic terms and conditions

The terms and conditions of the contract should not contain unreasonable provisions which could unfairly prejudice the interests of any party.

Procurement documents should contain provisions for

- a) price adjustments to reflect changes in economic conditions, where appropriate, and
- b) if permitted in terms of the laws of the country, interest, based on the cost to the contractor of borrowing money on the commercial market, on money due to the contractor, and which are not paid within 30 days of being due, to deter late payment.

### 6.2.3 Submission data

Submission data shall

- a) bind the employer and respondent to behave in a particular manner,
- b) establish what a respondent shall do to submit a compliant submission,
- c) make known to a respondent the criteria by which he will be evaluated, and

## ISO 10845-1:2010(E)

- d) establish the manner in which the employer will conduct the process of the calling for expressions of interest.

The submission data shall comply with the procurement system requirements of 4.1.

NOTE ISO 10845-4 provides standard conditions for the calling for expressions of interest which enable, and submission data which comply with, the requirements of this part of ISO 10845 to be readily satisfied.

### 6.2.4 Tender data

Tender data shall

- a) bind the employer and tenderer to behave in a particular manner,
- b) establish what a tenderer shall do to submit a compliant tender,
- c) make known to tenderers the criteria by which the tenderer will be evaluated, and
- d) establish the manner in which the employer will conduct the process of offer and acceptance and provide the necessary feedback to tenderers on the outcomes of the process.

The tender data shall comply with the procurement system requirements of 4.1.

NOTE ISO 10845-3 provides standard conditions of tender which enable tender data which comply with the requirements of this part of ISO 10845 to be readily satisfied.

### 6.2.5 Eligibility criteria

Any eligibility criteria introduced into the tender data or submission data should not introduce criteria additional to those provided for in 6.7 and shall generally be based on the demonstration of the following, as necessary:

- a) professional and technical qualifications;
- b) professional and technical competence;
- c) financial resources;
- d) equipment and other physical facilities;
- e) expertise and personnel;
- f) managerial capacity, reliability and experience;
- g) previous experience in relation to the scope of work;
- h) where relevant, health and safety history.

### 6.2.6 Evaluation criteria

The evaluation criteria used to evaluate submissions following a call for expressions of interest or the inviting of tenders shall, where relevant, be based on one of the following:

- a) financial offer only;
- b) financial offer and preference;
- c) quality only;

- d) financial offer and quality;
- e) financial offer, quality and preference; or
- f) quality and preference.

The evaluation criteria, including the precise manner in which the evaluation is to be performed, as well as the weightings attached to any points-scoring system, shall be stated in the tender data or submission data, as relevant.

The manner in which financial offers are reduced to a common basis shall also be stated in procurement documents.

### 6.2.7 Scope of work

The scope of work should be

- a) described in terms of performance of functional characteristics rather than the design of descriptive characteristics, and
- b) based on national or international standards, where such exist.

Contract requirements in the form of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling or conformity certification should not create trade barriers. Reference to any particular trademark, name, patent, design, type, specific origin or producer should not be made unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work. Such reference should be accompanied by the words "or equivalent".

Technical specifications should afford equal access for tenderers and not have the effect of creating unreasonable obstacles to competition.

The scope of work should be sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow employers to award the contract.

### 6.2.8 Cost reimbursement and cost plus contracts

Cost reimbursement and cost plus contracts should be structured such that

- a) expenditure can be readily audited,
- b) reimbursable costs are at market or competitively tendered prices,
- c) the end costs of the contract can be continuously tracked and reported at regular intervals, and
- d) within a short time after the completion of the contract, the final contract amount is known and can be settled.

NOTE Target-cost contracts provide an incentive for contractors to contain costs.

### 6.2.9 Delivery periods

Requirements for delivery periods that are incorporated into procurement documents shall be consistent with the employer's reasonable needs and shall take into account factors such as the complexity of the intended procurement and realistic time frames for completing the work.

### **6.2.10 Preferencing**

Goals shall be in accordance with the employer's procurement policy and the relevant provisions of 4.4.2.

Procurement documents should specify goals in an unambiguous manner and include the means by which such goals may be measured, quantified, verified and audited. In this regard, procurement documents should require the submission of sufficient information to enable claims for preferences to be evaluated at the tender stage and to document undertakings in the subsequent contract so that they can be monitored for compliance.

Procurement documents should provide sanctions to enable compliance to be encouraged or enforced.

NOTE ISO 10845-5, ISO 10845-6, ISO 10845-7 and ISO 10845-8 provide guidance as to how requirements for preferences relating to key performance indicators associated with the participation of target groups can be incorporated in procurement documents, and contain examples of preferencing schedules (which establish all the requirements and undertakings required to claim a preference). Such schedules can be incorporated into the scope of work to establish contractual requirements.

### **6.2.11 Quality**

#### **6.2.11.1 General**

The manner in which quality is to be ensured shall be incorporated in procurement documents using one or more of the following methods:

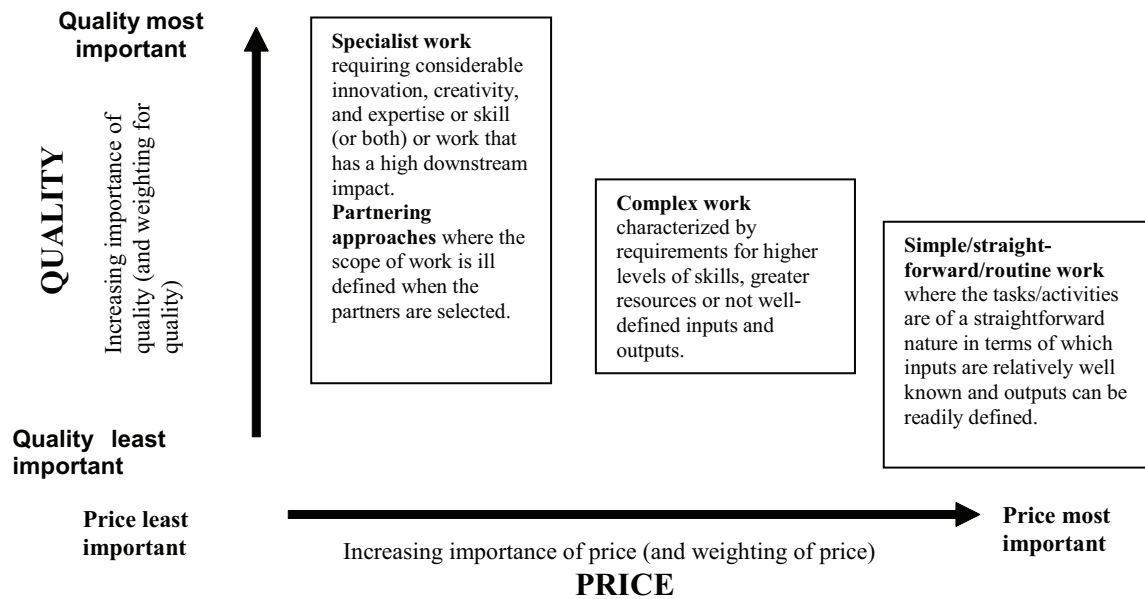
- a) the full and unambiguous specification of requirements in the scope of work;
- b) taking cognizance of whole-life costing in the financial evaluation of tender offers;
- c) where exceptional quality is required, making use of the qualified procurement procedure and ensuring that respondents who are invited to submit tender offers are suitably qualified to do so;
- d) requiring tenderers to submit plans for monitoring and applying quality management principles in the performance of their contracts;
- e) introducing quality into the eligibility criteria;
- f) establishing a category of preference for quality in the evaluation of tenders; or
- g) evaluating selected quality criteria as an integral part of the tender offer (see 6.2.11.2).

Quality measures should not promote captive markets and should result in quality that is appropriate to comply with user requirements as opposed to the best quality available.

#### **6.2.11.2 Evaluation of quality in tender submissions**

##### **6.2.11.2.1 General**

Quality may only be introduced into the evaluation of tender submissions where it is required to achieve policy objectives in terms of an employer's procurement policy or it is justifiable in terms of procurement outcomes (see Figure 1).



**Figure 1 — Quality considerations and approaches to the evaluation of quality in tender submissions**

Quality criteria used in the evaluation of tender offers shall form an integral part of the tender offer and hence the outcome of the procurement. Such criteria shall

- a) relate directly to the goods, services or engineering and construction works that are being procured and to matters that cannot directly be expressed in monetary terms,
- b) be justifiable in terms of projected procurement outcomes,
- c) enable the most economically advantageous offer to be established, and
- d) to the extent that it is practicable, be objective and quantifiable to enable tenders to be compared and assessed objectively.

#### 6.2.11.2.2 Formulation of quality criteria

Quality criteria may include

- a) technical merit,
- b) response to (ability to relate to) the proposed scope of work/project design,
- c) aesthetics,
- d) functional characteristics,
- e) ease of use or maintainability,
- f) adaptability for changes in use,
- g) safety and environmental characteristics,
- h) risk or quality-control plans, practices or procedures which ensure compliance with specified employer's requirements,

- i) reliability,
- j) durability,
- k) organization, logistics and support resources relevant to the scope of work,
- l) qualifications and demonstrated experience of key staff (assigned personnel) in relation to the scope of work,
- m) demonstrated experience of tendering entity with respect to specific aspects of the project or comparable projects,
- n) teamwork or partnering arrangements with employer or subcontractors,
- o) management of the contract or procedures for planning, programming and management,
- p) programme for completing contract, including milestones for achieving objectives,
- q) project team organization,
- r) degree of flexibility in carrying out the contract,
- s) method of carrying out the contract,
- t) approach to health and safety or the protection of the environment,
- u) how health and safety issues will be identified, assessed and managed during the design and construction stages,
- v) demonstration of innovation in proposals,
- w) running costs,
- x) after-sales service and technical assistance,
- y) delivery date or delivery period or period of completion, and
- z) specific goals relating to secondary procurement policies.

Quality criteria should not include matters relating to the basic capability or capacity of the tendering entity to perform the contract as this is a commercial risk issue (see 6.7).

### **6.2.11.2.3 Scoring of quality**

To ensure consistency in scoring, members of the evaluation panel should be provided with prompts for judgements or qualitative indicators relating to all quality criteria and any subcriteria that are linked to a specific score (see Annex A). Such prompts should be communicated to respondents or tenderers in procurement documents. The rating of submissions shall be based on the information submitted or, where relevant, from interviews, and not on mere speculation or suspicion or the personal knowledge of a panel member.

The scoring of interviews should not form a substantive portion of the overall scoring for quality. Tenderers who score less than a threshold score shall be eliminated from further consideration.

**NOTE 1** Too high a weighting can lead to the unintended consequence of unnecessarily paying a cost premium for the project.

**NOTE 2** Preferences for quality can be provided to reward tenderers for achieving quality standards or good performance on previous contracts performed for the organization or to encourage accreditation of certification in best practices.

## 6.3 Solicitation of tender offers

### 6.3.1 General

#### 6.3.1.1 Basic procedures

Tender offers shall be solicited in accordance with the employer's documented procurement policy using one of the following procurement procedures:

- a) competitive selection procedure (see 6.3.2);
- b) negotiated procedure with a sole contractor (see 6.3.3);
- c) competitive negotiation procedure (see 6.3.4);
- d) electronic auction procedure (see 6.3.6); or
- e) disposal procedures (see 6.3.5).

#### 6.3.1.2 Reduction of time frames

The minimum time frames associated with any procurement procedure may only be reduced where they cannot be adhered to due to the presence of, or the imminent risk of, an extreme or emergency situation arising from one or more of the following:

- a) human injury or death;
- b) human suffering or deprivation of human rights;
- c) serious damage to property or financial loss;
- d) livestock or animal injury, suffering or death;
- e) serious environmental damage or degradation; or
- f) interruption of essential services.

Where the time frames are reduced, the reason for doing so shall be recorded for audit purposes.

### 6.3.2 Competitive selection procedures

#### 6.3.2.1 General

A competitive selection procedure shall result in the identification of a single preferred tenderer in terms of the requirements of, and the evaluation criteria stated in, the tender data.

Negotiations on items such as the scope of work, the methodology, staffing and the terms of the contract may take place with the preferred tenderer. Such negotiations shall not change the competitive position of tenderers and shall not, as a general rule, substantially alter the original scope of work or the terms of the contract to the extent that the quality of the final product, its cost, and the relevance of the initial evaluation are significantly changed. The scope of work of the preferred tenderer may be scaled down to accommodate budgetary constraints.

In the event that a tenderer becomes ineligible for the award of a tender, the negotiations result in the competitive position of a tenderer changing, or the negotiations fail to reach mutual agreement, the next highest scoring or highest ranked tenderer shall be declared to be the preferred tenderer, and the procedure shall be repeated until such time that a contract is concluded.

### **6.3.2.2 Nominated procedure**

Procurement documents should be prepared in accordance with the requirements of 6.2.

A rotating electronic database which has been established and is operated in accordance with the requirements of 4.5 shall be used to identify

- a) a sole qualified tenderer, or
- b) not less than five qualified tenderers.

Alternatively, all qualified tenderers on a database shall be invited to submit tender offers.

The contract shall be concluded using the negotiated procedure described in 6.3.3 where a sole tenderer is nominated.

The nominated tenderers shall be invited to submit tenders by a prescribed date either by post, hand, telefax or by electronic means. All tenders received shall be evaluated in accordance with the provisions of 6.6 and the contract shall be awarded in accordance with the provisions of 6.7, following negotiations of the final terms of the contract, if any, with the highest ranked or highest scoring tenderer.

### **6.3.2.3 Open procedure**

Procurement documents should be prepared in accordance with the requirements of 6.2.

The procurement shall be advertised in accordance with the provisions of 6.3.8 and 6.3.9 and tender offers shall be closed not less than 10 working days from the date of the advertisement, and not less than 7 working days from the date that the procurement documents are made available.

All tenders received shall be evaluated in accordance with the provisions of 6.5 and the contract shall be awarded in accordance with the provisions of 6.6 following negotiations, if any, with the highest ranked or highest scoring tenderer.

### **6.3.2.4 Qualified procedure**

Procurement documents should be prepared in accordance with the requirements of 6.2.

Calls for expressions of interest shall be advertised in accordance with the provisions of 6.3.8 and 6.3.9 and receipt of expressions of interest shall be closed not less than 10 working days from the date of the advertisement.

Submissions in response to a call for an expression of interest shall be evaluated in the manner stated in the submission data. Such evaluations shall not result in the exclusion of respondents who comply with the requirements of 6.7 and may include the evaluation of quality and preferences, if any, provided that respondents scoring the highest scores are shortlisted.

A shortlist of not less than three respondents should be prepared, based on objective criteria stated in the documentation associated with a call for expressions of interest.

All shortlisted respondents shall be invited to submit tenders by a prescribed date or to participate in one of the proposal procedures contained in 6.3.2.6 or 6.3.2.7.

All tender offers received shall be evaluated in accordance with the provisions of 6.5 and the contract shall be awarded in accordance with the provisions of 6.6 following negotiations, if any, with the highest ranked or highest scoring tenderer.

The period between the calling for expressions of interest and the inviting of tender offers or proposals should not exceed 12 months. Where tender offers or proposals cannot be invited within this period, fresh calls for expressions of interest should be made.



**NOTE** Prequalification is usually necessary for large or complex engineering and construction works, or in any other circumstances in which the high costs of preparing detailed tenders could discourage competition, such as custom-designed equipment, industrial plant, specialized services and contracts to be let under a design and construct contract or management contract. This also ensures that invitations to tender are extended only to those who have adequate capabilities and resources. Prequalification can be based upon the capability and resources of prospective tenderers to perform the particular contract satisfactorily, taking into account their capabilities with respect to personnel, equipment and construction or manufacturing facilities, and compliance with administrative requirements for the award of a contract established in 6.7.

#### **6.3.2.5 Quotation procedure**

Procurement documents should be prepared in accordance with the provisions of 6.2.

Tender offers shall be solicited from not less than three tenderers in a fair, equitable, transparent, competitive and cost-effective manner, giving tenderers a minimum of three working days to respond to the invitation.

All tenders received shall be evaluated in accordance with the provisions of 6.5 and the contract shall be awarded in accordance with the provisions of 6.6.

**NOTE 1** Tenders in the quotation procedure are typically advertised using one or more of the following methods:

- posting a notice on a website;
- posting a notice on a demarcated notice board in a public area;
- placing an advertisement in a suitable local newspaper or publication.

Alternatively, all qualified tenderers in an appropriate category in a database are invited to submit quotations.

**NOTE 2** The nominated procedure is typically used where the list of names in a database becomes lengthy and the invitation to submit quotations from all qualified tenderers in a category in a database becomes unmanageable.

#### **6.3.2.6 Proposal procedure using the two-envelope system**

Procurement documents should be prepared in accordance with the provisions of 6.2 to call for non-financial and financial proposals.

Requests for proposals shall be advertised in accordance with the provisions of 6.3.8 and 6.3.9 and receipt of proposals shall be closed not less than 20 working days from the date of the advertisement.

Non-financial proposals shall be evaluated and thereafter the financial proposals of only those tenderers who have submitted acceptable non-financial proposals shall be evaluated.

The remaining tender offers shall be evaluated in accordance with the provisions of 6.5 and the contract shall be awarded in accordance with the provisions of 6.6 following negotiations, if any, with the highest ranked or highest scoring tenderer.

**NOTE** The standard conditions of tender contained in ISO 10845-3 describe the manner in which tenderers are to submit tenders in two envelopes and the manner in which employers are to process the envelopes.

#### **6.3.2.7 Proposal procedure using the two-stage tendering system**

Procurement documents should be prepared in accordance with the provisions of 6.2 to call for non-financial proposals.

Requests for proposals shall be advertised in accordance with the provisions of 6.3.8 and 6.3.9 and receipt of proposals shall be closed not less than 20 working days from the date of the advertisement.

Non-financial proposals shall be evaluated, and unacceptable proposals shall be rejected. Thereafter,

- a) the procurement documents shall be modified and only those tenderers with acceptable proposals shall be invited to submit tender offers based on the revised procurement documents and have their tender offers evaluated in accordance with the provisions of 6.5, or
- b) the scope of work, terms and conditions and prices shall be negotiated in the best interests of the employer with the tenderer scoring the highest number of evaluation points.

The contract shall be awarded in accordance with the provisions of 6.6 following any negotiations, if any.

**NOTE** This procedure is suitable for use in design competition whereby a jury selects a plan or design. Typically, a small group of prequalified contestants are invited to participate in a design competition. The contestants are requested to submit a "concept design", estimates of construction cost and their fee proposal to complete the overall project. Contestants are commonly either paid for their concepts at cost or (more commonly) paid a set fee established by the employer. The concept that best meets the needs of the employer is usually accepted as the winner. Ownership of the unsuccessful design submissions can be addressed in procurement documentation issued regarding the design competition.

#### **6.3.2.8 Shopping procedure**

Three written or verbal offers for goods shall be solicited.

A written offer from the lowest financial offer shall be obtained and purchases shall be made against this written offer.

**NOTE** This procedure is only applicable to readily available goods that have a very low purchase price.

#### **6.3.3 Negotiated procedure**

A single tenderer shall be issued with a procurement document, prepared in accordance with the provisions of 6.2, to serve as the basis for negotiation, allowing an adequate number of working days for an initial tender offer to be prepared.

The scope of work, terms and conditions and prices shall be negotiated in the best interests of the employer and the contract shall be awarded in accordance with the provisions of 6.6.

Minutes of such negotiations and the reasons for pursuing this procedure shall be kept for record and audit purposes.

#### **6.3.4 Competitive negotiation procedures**

Procurement documents shall be prepared in accordance with the provisions of 6.2. Calls for expressions of interest and the evaluation thereof, where applicable, shall be conducted in accordance with the requirements of 6.3.2.4.

Restricted and open competitive negotiation procedures shall be used to negotiate with a number of responsive and qualified tenderers in order to arrive at the most advantageous offer, in terms of one of the methods for the evaluation of tenders as described in Table 3.

When using the competitive negotiation, the employer shall negotiate, with responsive and qualified tenderers, procedures through one or more rounds of competitive negotiations, based on their rankings or the number of tender-evaluation points, until the remaining tenderers are invited to submit final offers. During such negotiations, employers

- a) shall ensure equal treatment of all tenderers and not provide any requirements, criteria, guidelines, documents, clarification or other information relative to the negotiations in a discriminatory manner which might give some tenderers an advantage over others,

- b) may provide for this negotiated procedure to take place in successive stages in order to reduce the number of tenderers to be negotiated with, by applying the evaluation criteria disclosed in the procurement documents that are issued to tenderers,
- c) shall not reveal to the other participants solutions proposed or other confidential information communicated by a tenderer participating in the process without that tenderer's agreement,
- d) may request that tender offers be clarified, specified and fine-tuned, provided that such clarification, specification, fine-tuning or additional information does not
  - 1) involve changes to the basic features of the tender process or the tender data, or
  - 2) alter any fundamental aspects of the offers or impose substantial new requirements which restrict or distort competition or have a discriminatory effect on the tender process, and
- e) shall close the negotiation with tenderers when a solution or solutions which are capable of meeting its needs are identified, inform the tenderers accordingly and call for best and final offers.

Tenderers shall be informed of the competitive negotiation process and notified of the evaluation criteria and associated weightings in the tender data. The evaluation criteria associated with each successive round of negotiations shall not be varied. Tenderers shall be notified in advance of the weighting attached to each category or subcategory of evaluation criteria, whenever another round of offers is called for.

The scope of work, terms and conditions and prices that are negotiated shall be in the best interests of the employer. Minutes of such negotiations and the reasons for pursuing this procedure shall be kept for record and audit purposes.

**NOTE** The competitive negotiation procedure is well suited to situations where interactions with the tenderers are essential to refine aspects of the proposed approach to the contract, the contract data or scope of work, in order to arrive at a best-value outcome.

### 6.3.5 Disposal procedures

Disposals shall be undertaken using one of the following disposal procedures:

- a) the negotiated procedure (see 6.3.3);
- b) the open procedure (see 6.3.2.3);
- c) the qualified procedure (see 6.3.2.4); or
- d) public auction.

Where the auction procedure is utilized, the assets or items which are to be auctioned shall be displayed in public for a reasonable time before the date of the auction. The date shall be advertised in accordance with the provisions of 6.3.8 and 6.3.9 at least five working days before the auction.

Auction Data shall be prepared, as necessary, in order to inform prospective bidders of any requirements for deposits, eligibility criteria and the procedures for making payment and taking delivery of the purchased items (see Annex H).

### 6.3.6 Electronic auction procedure

#### 6.3.6.1 General

The electronic auction procedure may be used where the scope of work can be precisely established in conjunction with the open, qualified or nominated procedure.

The electronic auction shall be based on

- a) financial offer only,
- b) financial offer and preference,
- c) financial offer and quality, or
- d) financial offer, quality and preference.

**NOTE** Electronic auction procedures are not necessarily appropriate where intellectual performance forms part of their subject matter, such as the design of engineering and construction works.

**6.3.6.2 Procurement documentation**

The procurement documentation shall include the following details:

- a) the features and the parameters or values which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- b) any limits on the parameters or values which may be submitted, as they result from the scope of work;
- c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- d) the relevant information concerning the electronic auction process;
- e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

**6.3.6.3 Procedures**

Before proceeding with an electronic auction, the employer shall make a full initial evaluation of the tenders in accordance with the methods nominated for the evaluation of tenders, using the weightings associated with such methods, which are stated in the tender data. All tenderers who have submitted responsive tenders shall be invited simultaneously by electronic means to submit new evaluation parameters. The invitation shall contain all the relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases.

The electronic auction shall not start sooner than two working days after the date on which invitations are sent out.

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic rerankings on the basis of the new prices or new values submitted (or both). This formula shall incorporate the weighting of all the criteria fixed to determine the price and, where relevant, quality linked to a numerical value. Where variants are authorized, a separate formula shall be provided for each variant.

Throughout each phase of an electronic auction, the employer shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any point in time. They may also, at any time, announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

The electronic auction shall be closed

- a) on a date and time stated in the procurement documents, or
- b) when no more new prices or new values which comply with the requirements concerning minimum differences are received within a stated time period, or
- c) when the number of phases in the auction, fixed in the invitation to take part in the auction, have been completed.

After closing an electronic auction, the employer shall award the contract in accordance with the provisions of 6.6.

NOTE 1 Electronic auctions deal only with contracts for engineering and construction works, goods or services for which

- the scope of work can be determined with precision, e.g. recurring engineering and construction works, goods or service contracts, and
- it is possible to establish the respective ranking of the tenderers at any stage of the electronic auction.

NOTE 2 Electronic auctions enable employers to ask tenderers to submit new prices, revised downwards, and when the contract is awarded on the basis of quality and financial offer, also to improve elements of the tenders other than prices. In order to guarantee compliance with the principle of transparency, only the elements suitable for automatic evaluation by electronic means, without any intervention or appreciation by the employer (or both), are the object of electronic auctions, i.e. only the elements which are quantifiable so that they can be expressed in figures or percentages.

NOTE 3 Electronic auctions can, in some instances, be applied to the parties in a framework agreement when competition is opened to the parties.

### 6.3.7 Framework agreements

Employers may conclude framework agreements with one or more contractors following a competitive selection process or competitive negotiations process (see 6.3.2), provided that the term of the framework agreement does not exceed the period stated in the employer's procurement policy.

Framework contracts may be entered into, based on a framework agreement during its period of validity, either by applying the terms set forth in the framework agreement or, if all the terms have not been fixed in advance in the framework agreement, by reopening competition between the parties to the framework agreement in relation to those terms, in which case, contractors will be required to submit tenders. Competition between the parties that are capable of providing goods, and engineering and construction works or services, shall either occur between all the parties to the framework agreement, or to the parties selected from a rotating electronic database based on the relevant requirements of 4.5.

When awarding contracts based on a framework agreement, the parties may not, under any circumstances, make substantial amendments to the terms laid down in that framework agreement. Employers shall not use framework agreements improperly, or in such a way as to prevent, restrict or distort competition.

NOTE 1 Framework agreements are designed to allow the employer to invite tenders from contractors to carry out work on an as-instructed basis over a set term. Broadly speaking, framework agreements are agreements between two parties that establish the terms for supply of goods, engineering and construction works or services, but which do not set out the precise quantities required. The rationale behind using such agreements is that it saves the parties from having to negotiate the terms and conditions for each particular supply. This results in savings, to both parties, of time, cost and other resources each time a specific supply request is made.

NOTE 2 Framework agreements are often characterized by upwards of three-year relationships that frequently involve extensive selection requirements to determine the desired contractor for that period. Unsuccessful contractors have to sit and wait for the next opportunity to present itself, possibly years later. Because of this, selection of the right contractor is vital.

## 6.4 Advertisements

### 6.4.1 General

Advertisements shall be published in the language directed by the employer's executive, in a medium that enables a wide spectrum of suitably qualified and eligible tenderers to access the opportunities that are presented.

### 6.4.2 Minimum information to be conveyed in advertisements for tenders

The notice and invitation to submit tender offers shall, as a minimum, contain the following information, as appropriate:

- a) the tender, project or contract reference number;
- b) the title of the proposed contract or project;
- c) a brief description of the goods, services or engineering and construction works which are required;
- d) a brief description of eligibility criteria, if any;
- e) the closing date, place and time for submission of tenders;
- f) the date and time of the site inspection or briefing session, if any, whether or not attendance is compulsory;
- g) the time and place for collecting procurement documents.

### 6.4.3 Minimum information to be conveyed in advertisements for expressions of interest

The notice and invitation to submit expressions of interest shall include the following information:

- a) the tender, project or contract reference number, if applicable;
- b) the title of the proposed contract or the project;
- c) a brief description of the goods, services or engineering and construction works which are required;
- d) a brief description of eligibility criteria, if any;
- e) the closing date, place and time for expressions of interest;
- f) the objective selection criteria for shortlisting firms to submit tender offers or entry to an electronic database;
- g) the date and time of the briefing session, if any, and whether or not attendance is compulsory;
- h) the time and place for collecting the procurement documentation.

## 6.5 Tender process and procedures

### 6.5.1 General

The process of offer and acceptance shall, except where use is made of the negotiated or shopping procedure, or where the nominated procedure is used to negotiate a contract with a single nominee, be conducted in accordance with appropriate submission data and tender data, as relevant, included in the procurement documents. Submissions shall not be evaluated against any criteria that are not disclosed in the procurement documents.

Submissions shall be safeguarded from the time of receipt until the conclusion of the processes associated with a call for an expression of interest or the solicitation of a tender offer.

The reasons for overlooking or rejecting a tender offer shall be recorded for audit purposes.

**NOTE** Submissions can preferably be received in secure tender boxes which are accessible 24 h a day, 7 days a week.

### 6.5.2 Tender deposits

Tenderers shall either be required to pay a non-refundable amount for procurement documents approximately equivalent to the cost of reproducing such documents or be issued with documents free of charge. Where non-refundable amounts for procurement documents are provided for, such documents shall be made available for inspection by tenderers.

### 6.5.3 Contacting of tenderers before the close of tenders

Those persons responsible for procuring on behalf of the employer shall, except in the negotiated or disposal procedures, not contact individual tenderers who are submitting or are likely to submit tender offers before the receipt of tenders. Should it be necessary in exceptional circumstances to do so, it shall be done in a manner which does not obligate the employer, risk distorting competition, lead to discrimination or give any unfair advantage to those who were contacted.

Persons responsible for soliciting tender offers shall respond to any request by a tenderer for clarification regarding the procurement documents within a reasonable time before the deadline for the submission, or extend the deadline in order to do so.

If, for any reason, those responsible for soliciting tender submissions before the deadline for tender submissions are determined to modify the procurement documents, they shall do so by issuing an addendum that shall be communicated to all prospective tenderers that have obtained procurement documents only if such an addendum can be communicated in advance of the closing date and tenderers can be given reasonable time to react to the contents of such an addendum. Should this not be possible, the addendum shall either not be issued, or the closing date for tender offers or expressions of interest shall be postponed to enable the addendum to be issued.

Minutes of any briefing meeting that might be convened shall be taken, recording all requests for clarification received and responses thereto, without identifying the sources of the requests. The minutes of such meetings shall be promptly distributed to those attending the meetings and, if necessary, to all tenderers who obtain procurement documents.

### 6.5.4 Receipt of tender submissions

Tender submissions, except those which the employer permits to be submitted by telefax or by electronic means, shall only be accepted for evaluation when they are

- a) submitted in sealed envelopes,
- b) annotated with the required particulars, and
- c) placed in the nominated tender box or delivered to the specified place for receipt of tender submissions.

Tender submissions received by telefax shall be placed in a sealed envelope and safeguarded until the tender is opened.

### 6.5.5 Return of unopened submissions

Tender submissions shall be returned unopened (unless it is necessary to open a tender submission to obtain a forwarding address) when

- a) the tender submission is received after the closing time for tenders,

- b) the tender submission is received by a method other than the method prescribed in the procurement documents, or
- c) only one tender submission is received and the employer decides to call for fresh tender submissions.

#### **6.5.6 Opening of tender submissions**

All tender submissions shall, unless there are justifiable reasons not to do so, be opened in public, or in the presence of those tenderers who made submissions or their representatives, immediately after the closing time for receipt of tender submissions. Where this is impossible, arrangements shall be made to ensure that no further submissions are received and that such submissions are not tampered with in any way before their opening. Such tender submissions shall be opened not more than one week after the closing time for tenders, in the presence of not less than two persons representing the employer and one other person who is independent of the employer, named in the procurement documents.

All tender submissions should each be given a mark of authenticity upon opening and, where appropriate, on every page of returnable documents as proof that the submission was received before the closing time.

After opening each tender submission, the person responsible for overseeing the opening of tender submissions shall record, for each tender offer, including all alternative tender offers, as relevant:

- a) the name of the tenderer;
- b) the total of prices, unless the competitive selection procedure is used or it is impractical to do so;
- c) contract data that have a bearing on the tendered price, unless the competitive selection procedure is used, e.g. time for completion, settlement discounts, price adjustment;
- d) preferences claimed.

The record shall be made available to all interested persons upon request.

Where a proposal procedure is followed, the procedures shall be modified so that the non-financial proposals are opened as soon as is practical and the financial proposals of responsive tenderers, if any, are opened only after the non-financial proposals have been evaluated. Financial proposals from tenderers who have not made a submission that is responsive to requirements shall be returned unopened.

Where contracts are not awarded in totality to a single tenderer, the recording of the total of prices is not required. Where defined portions of contracts can be awarded to multiple tenderers and such portions can be readily totalled in the tender submission, those totals should, where practicable, be recorded.

#### **6.5.7 Evaluation of tender submissions**

##### **6.5.7.1 Disqualification of tenderers**

A tenderer (and his tender submission) shall be disqualified where it is determined that there has been an effort by that tenderer to influence the processing of tender submissions or if it is established that such a tenderer engaged in corrupt or fraudulent practices.

##### **6.5.7.2 Test for responsiveness**

The evaluation of tender submissions shall commence with a determination as to whether or not each tender submission properly received is responsive. A responsive tender submission is one which

- a) complies with the requirements of the tender data,
- b) has been properly and fully completed and signed, and



- c) conforms to all the terms, conditions and specifications of the procurement documents without material deviation or qualification which, in the employer's opinion, would
- 1) detrimentally affect the scope, quality or performance of engineering and construction works, services or supply identified in the scope of work,
  - 2) significantly change the employer's or the tenderer's risks and responsibilities under the contract, or
  - 3) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Non-responsive tender submissions shall not be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

### 6.5.7.3 Test for capability and capacity to perform the contract

Tenderers shall, as necessary, and in relation to the proposed contract, be able to demonstrate that they possess the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel to perform the contract.

NOTE Aspects of capability and capacity to perform the contract can be demonstrated through the satisfying of eligibility criteria, the obtaining of a minimum score where quality is evaluated or during a call for expressions of interest in the qualified procedure.

### 6.5.7.4 Arithmetical errors and omissions

Where a bill of quantities or a schedule of prices is utilized:

- a) the price submitted (i.e. the offer), which is made known to interested parties at the opening of tenders, shall be used as the basis for establishing the competitive position of tenderers;
- b) the most competitive tender shall be checked for arithmetical errors, where relevant, and where such errors are found, the tenderer shall be notified of the errors and invited to either confirm the tender offer as tendered or accept the corrected total of prices;
- c) where the correction of the errors results in a change in the competitive position of tenderers, the process in b) shall be repeated.

NOTE Allowing the competitive position of tenderers to be determined on the basis of the correction of errors in all tenders received by the tender evaluator has the potential to undermine transparency in the procurement process.

### 6.5.7.5 Ranking and scoring of responsive tenderers

#### 6.5.7.5.1 Evaluation panel

An evaluation panel of not less than three persons shall be appointed by the employer to evaluate expressions of interest or tender submissions

- a) obtained through the qualified procedure (see 6.3.2.4) or proposal procedures (see 6.3.2.6 and 6.3.2.7),
- b) where quality (see 6.2.11.2) is evaluated in tender submissions,
- c) where eligibility criteria are based on the attainment of a minimum score for quality, or
- d) where preferences are to be evaluated.

**6.5.7.5.2 Procedures**

Submissions shall not be evaluated against any criteria that are not disclosed in the procurement documents.

Each responsive tender offer shall be reduced to a comparative offer and shall be evaluated using the procedure contained in Table 3 associated with the method nominated in the tender data. A record shall be kept of all the tender-evaluation points that are awarded to every tenderer making a tender submission.

The maximum score in respect of the financial offer, quality and preference, as relevant, shall be such that the procurement remains fair, equitable, competitive and cost-effective.

Quality shall be scored for each of the criteria stated in the tender data. Each member of the evaluation panel shall score each and every criterion, preferably independently. The scores shall thereafter be averaged or adjusted at a meeting of the panel and retained for auditing purposes.

Preferences shall be scored using a method provided for in 4.4.2.2 as stated in the tender data. Where preferences are evaluated using the method stated in 4.4.2.2 c), each member of the evaluation panel shall score each preference. The scores shall thereafter be averaged and retained for auditing purposes.

The reasonableness of comparative offers shall be judged. All tender offers with unrealistic financial offers shall be rejected and the remaining comparative offers scored in accordance with the formula stated in the tender data.

Financial offers, preferences and quality, as relevant, shall be scored to two decimal places. Where two or more tender offers score an equal number of tender-evaluation points, the tenderer who is recommended for the award of the contract shall be the tenderer with the highest number of

- a) preference points when method 3 or method 4 (see Table 3) is used, and
- b) quality points when method 2 (see Table 3) is used.

NOTE Unrealistic financial offers (i.e. where it is not economically possible to perform the contract at that price) distort the scoring of financial offers.

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Table 3 — Standard tender-evaluation methods

Method	Procedure
Method 1: Financial offer	<ol style="list-style-type: none"> <li>1) Rank tender offers from the most favourable to the least favourable comparative offer.</li> <li>2) Recommend highest ranked tenderer for the award of the contract.</li> </ol>
Method 2: Financial offer and quality	<ol style="list-style-type: none"> <li>1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the tender data, if any.</li> <li>2) Score tender-evaluation points for financial offer.</li> <li>3) Calculate total tender-evaluation points.</li> <li>4) Rank tender offers from the highest number of tender-evaluation points to the lowest.</li> <li>5) Recommend tenderer with the highest number of tender-evaluation points for the award of the contract.</li> </ol>
Method 3: Financial offer and preferences	<ol style="list-style-type: none"> <li>1) Score tender-evaluation points for financial offer.</li> <li>2) Confirm that tenderers are eligible for the preferences claimed and if so, score tender-evaluation points for preferencing.</li> <li>3) Calculate total tender-evaluation points.</li> <li>4) Rank tender offers from the highest number of tender-evaluation points to the lowest.</li> <li>5) Recommend tenderer with the highest number of tender-evaluation points for the award of the contract.</li> </ol>
Method 4: Financial offer, quality and preferences	<ol style="list-style-type: none"> <li>1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the tender data, if any.</li> <li>2) Score tender-evaluation points for financial offer.</li> <li>3) Confirm that tenderers are eligible for the preferences claimed and if so, score tender-evaluation points for preferencing.</li> <li>4) Calculate total tender-evaluation points.</li> <li>5) Rank tender offers from the highest number of tender-evaluation points to the lowest.</li> <li>6) Recommend tenderer with the highest number of tender-evaluation points for the award of the contract.</li> </ol>

#### 6.5.7.6 Abnormally low tenders

If, for a given contract, tenders appear to be abnormally low, the employer may reject those tenders, on the grounds that these present an unacceptable commercial risk or the tenderer has insufficient financial capability to perform the contract. However, before doing so, the employer shall request, in writing, details of the constituent elements of the tender which it considers relevant, including

- a) the economics of the construction method, the manufacturing process or the services provided,
- b) the technical solutions chosen or any exceptionally favourable conditions (or both) available to the tenderer for the execution of the work or the provision of the goods or services,
- c) the originality of the work, goods or services proposed by the tenderer,
- d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed, and
- e) the possibility of the tenderer obtaining state aid.

The employer shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.

#### 6.5.7.7 Risk assessment

Compliance with the provisions of 6.7 shall be confirmed in respect of the highest ranked tenderer (method 1) or the tenderer scoring the highest number of tender-evaluation points (method 2, 3 or 4). In the event of non-compliance, compliance shall be established in respect of the next highest ranked tenderer or tenderer scoring the highest points after the points have been recalculated, based on the most favourable comparative offer remaining in contention for the award of the contract. The process shall be repeated until a tenderer who complies with such requirements is identified.

A risk analysis shall be performed on the tender submission of the highest ranked tenderer or tenderer who scores the highest number of tender-evaluation points and complies with the provisions of 6.7 to ascertain if any of the following, as relevant, present an unacceptable commercial risk to the employer:

- a) unduly high or unduly low tendered rates or amounts in the tender offer;
- b) contract data provided by the tenderer; or
- c) the content of tender returnables which are to be included in the contract.

The tenderer shall be approached to amend any part of his tender submission that might, in the opinion of the employer, present an unacceptable commercial risk, provided that such negotiations do not affect the competitive position of the tenderer. Failure to make unacceptable commercial risks acceptable to the employer might be sufficient grounds for the employer to reject the tender.

In the event that it is determined that an unacceptable commercial risk to the employer is present and cannot be made acceptable, a risk analysis shall be conducted on the next highest ranked tenderer or tenderer scoring the highest points after the points have been recalculated, based on the most favourable comparative offer remaining in contention for the award of the contract. The process shall be repeated until a tenderer who satisfies the risk analysis is identified.

Clarifications shall be obtained from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer.

The reasons for overlooking or rejecting a tender offer shall be recorded for audit purposes.

**NOTE** In the nominated procedure, the admittance criteria can ensure that only tenderers who comply with the requirements of 6.7 are entered into the electronic database, in which case the establishment of compliance in accordance with the provisions of 6.3.2.2 is not necessary. In the qualified procedure and where eligibility criteria are based on the provisions of 6.7, it might not be necessary to establish compliance.

#### 6.5.7.8 Tender-evaluation report

A tender-evaluation report shall be prepared for all procurements undertaken, except where not required in terms of the employer's procurement policy, and shall, as a minimum, contain

- a) the contract number and description,
- b) an outline of the procurement strategy that was adopted, i.e. the targeting, contracting and pricing strategy and the procurement procedure, as relevant,
- c) the tender-validity expiry date and the tender closing date,
- d) the date of advertisement and the place where advertised,
- e) the method of tender evaluation (method 1, 2, 3 or 4),
- f) the number of tenders received and the number of responsive tenders,
- g) the name of the recommended tenderer and key aspects of the recommended tenderer's offer,

- h) the cost estimate (budget) prepared ahead of the tender,
- i) the parameters used for scoring tenderers and the score assigned to each tenderer in respect of each component of the evaluation that is evaluated, and
- j) the reasons for rejecting or overlooking a tenderer.

## 6.6 Award of contracts

### 6.6.1 General

Following the completion of the evaluation process, the employer shall award the contract only if he is satisfied that the tenderer

- a) is not under restrictions, or has principals who are under restrictions, preventing participation in the organization's procurement,
- b) does have the legal capacity to enter into the contract,
- c) is not insolvent, in receivership, bankrupt or being wound up, has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings,
- d) complies with the legal requirements, if any, stated in the employer's procurement policy, and
- e) is able to perform the contract in the best interest of the employer owing to conflicts of interest.

Contracts shall be signed as soon as possible after the contract is awarded by the person authorized to do so in terms of the employer's procurement policy.

In situations where no contract is awarded, the employer shall review the procurement requirements and procurement procedures and begin the procurement process again, unless there are compelling reasons not to do so.

NOTE 1 It is usually sufficient to merely sign the acceptance portion of the form of offer and acceptance (see ISO 10845-2), where provided, to accept the tender offer.

NOTE 2 It can be necessary to compile the contract from the procurement documents issued to tenderers and the returnable documents to take account of

- addenda issued during the tender period,
- the content of returnable documents, and
- any revisions agreed between the employer and the successful tenderer.

NOTE 3 Guidance on establishing what constitutes an unacceptable commercial risk is provided in ISO 10845-3.

NOTE 4 Conflicts of interest can arise from prior or current obligations to other employers. They might also arise where a contractor provides goods, or engineering and engineering and construction works to a particular project and is then called upon to provide professional services relating to that project.

### 6.6.2 Records

The details of every contract awarded shall be recorded. This record shall include

- a) the contract reference number,
- b) a description of the work,

- c) the contract price,
- d) preferences claimed,
- e) tender-evaluation points awarded,
- f) the price of the tender offer used for comparative purposes where preferences were applied in the evaluation of tenders, and
- g) the name and address of the successful tenderer.

### **6.6.3 Notification of unsuccessful tenderers**

After the successful tenderer has received the employer's notice of acceptance, all other tenderers shall be notified that their tender offers have not been accepted by post, telefax or another electronic method, or by publication of the name of the successful tenderer on a website or in an accessible publication, as appropriate.

The following details of every contract that is awarded shall be made known to interested parties upon request after the successful tenderer has received notification of acceptance:

- a) the contract reference number;
- b) a description of the procurement;
- c) the total contract price or price for a portion thereof, if relevant;
- d) tender-evaluation points awarded, if any; and
- e) the name of the successful tenderer.

## **6.7 Contract administration**

Every contractor awarded a contract shall complete that contract in accordance with its terms and requirements.

If, at any point during the term of a contract, a contract is terminated or cancelled by either the contractor or the employer, a record of the reasons for this cancellation or termination shall be made.

Upon completion of a contract, a record of the key performance indicators relating to time, cost and the attainment of goals associated with a secondary procurement policy pertaining to that contract shall be made.

A post-project evaluation should be undertaken to consider and assess the efficacy of the procurement and to identify potential areas for improvements on future procurements of a similar nature.

**NOTE** A procurement policy can establish approval procedures to approve increases in contract prices which exceed a specified margin.

## **6.8 Resolution of disputes arising from a contract**

Disputes shall be resolved in accordance with the provisions of the contract. This shall not, however, preclude the parties from settling their differences using alternative means, such as expert determination, mediation and conciliation; failing this, the dispute shall be resolved in terms of the contract.

**NOTE** Standard forms of contract usually provide for the final settlement of disputes through litigation [system by which the advocates representing each side adduce arguments in a court of law to persuade the tribunal (judge, jury or assessors) that they have the better legal case] or arbitration (means of settling a dispute outside the courts by one or several persons, usually chosen by the parties concerned). Fair and equitable forms of contract usually make provision for alternative means of resolving disputes before resorting to litigation or arbitration to finally resolve disputes.

## 6.9 Unsolicited proposals

Unless otherwise provided in an employer's procurement policy, unsolicited proposals may be considered if

- a) the goods or services offered are a demonstrably or proven unique innovative concept that will be exceptionally beneficial to, or have exceptional cost advantages for the employer, and
- b) the tenderer who made the offer is the sole provider of the goods or service.

## 6.10 Departures from established methods and procedures

Departures may be made from the methods and procedures provided in 6.3 to 6.7 with the approval of the employer's executive, provided that the procurement complies with the basic procurement system requirements established in Table 1.

## Annex A (informative)

### Commentary

NOTE This annex includes background information on this part of ISO 10845, guidance on its use and suggestions on good practice.

#### A.1 Commentary on scope

The construction industry is a broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment. Construction procurement, as such, covers all categories of procurement commonly encountered in other industrial sectors and is not confined to engineering and construction works. Construction procurement includes services, goods, engineering and construction works and disposals in the form of demolitions and the disposal of surplus materials, plant and equipment.

Procurement may be regarded as the process that creates, manages and fulfils contracts. Procurement commences once a need for goods, services, engineering and construction works or disposals has been identified and ends when the goods are received, the services or engineering and construction works are completed or the asset is disposed of. Accordingly, a procurement system comprises processes which are underpinned by methods and procedures, and which are informed and shaped by societal goals and the policy of an employer. These processes, procedures and methods should, at the same time, provide a means by which risk relating to corrupt and fraudulent practices, fruitless and wasteful, irregular and unauthorized expenditure, and overspending is minimized.

A procurement system should be developed around a set of outcomes or objectives which reflect societal or employer (or both) expectations. These objectives, in effect, establish overarching performance requirements for the system. These high-level performance requirements, however, should be interpreted both qualitatively and quantitatively. At the same time, a means of verifying that the established requirements have been complied with should be put in place.

This part of ISO 10845 provides a four-level performance framework for construction procurement as outlined in Figure A.1.

The risk of the procurement system objectives being breached during implementation should be managed. At the same time, measures should be put in place to curb fraudulent and corrupt practices that inevitably lead to a distortion of fair competition and to the wastage of scarce resources, which, in turn, contribute to the neglect of basic needs and to an increase in poverty levels.

There are two approaches to the establishment of qualitative procurement system requirements (i.e. standard operating procedures), namely the guidelines approach and the standards approach. These approaches cannot be divorced from the means of evaluation, i.e. the manner in which the integrity of the procurement system is managed and maintained (see Figure A.1).

In the guideline approach, guidance and ethical principles are provided to enable users of the procurement system to achieve the end objectives within implied qualitative system requirements. In well-developed systems, standard bidding documents capture some of these procedures in the document that establishes the tenderer's obligations in submitting a tender and the employer's undertakings in administering the tender process and evaluating tender offers. The system's integrity is invariably maintained by a number of committees who interpret the guidelines, apply the ethical principles and decide on what course of action to take. Put in another way, these committees adjudicate whether or not the process, at any particular point, satisfies the procurement system objectives and qualitative requirements. Senior people in employment, who are not necessarily technical experts in a field, invariably serve on these committees. As a result, technical-



evaluation subcommittees are required to provide the necessary technical inputs in the evaluation process. This approach consumes scarce resources in its application.

In the standards approach, International Standards, such as ISO 10845, establish minimum requirements for

- a) the conduct of employees, agents, board members and office bearers when engaging in procurement,
- b) generic methods and procedures for procurements, including those pertaining to disposals, and
- c) standard conditions of tender which place obligations on tenderers and commit employers to certain undertakings in the procurement process including the manner in which submissions are to be evaluated.

Employers develop their procurement system around the generic processes outlined in this part of ISO 10845 and specify, in their procurement policies, the circumstances under which each procedure and method is to be used. In this manner, a comprehensive and flexible rule-based framework is developed.

Since the relevant standard, when read with an employer's policy, establishes requirements in the form of a set of rules, the evaluation necessary at each of the control points in the procurement process is limited to confirming compliance with the requirements which can be entrusted to suitably qualified technical staff. The standards approach also allows for auditing to take place at any stage in the process, and in particular, after the award of a contract. The standards approach also facilitates the prosecution of offenders relating to corrupt and fraudulent practices as its application does not require interpretation; the system can simply be tested by asking the question "were requirements complied with?"

**NOTE** This part of ISO 10845 comprehensively and systematically establishes standard rules for a wide range of procedures and methods and the limits of discretionary powers. It achieves this without establishing specific requirements for the management and control of the system. Accordingly, any procurement system developed in terms of this part of ISO 10845 can be managed and controlled by a range of flexible oversight structures or designated persons. Compliance with the aforementioned system requirements can be readily established by merely auditing processes, procedures and methods for compliance with this part of ISO 10845.

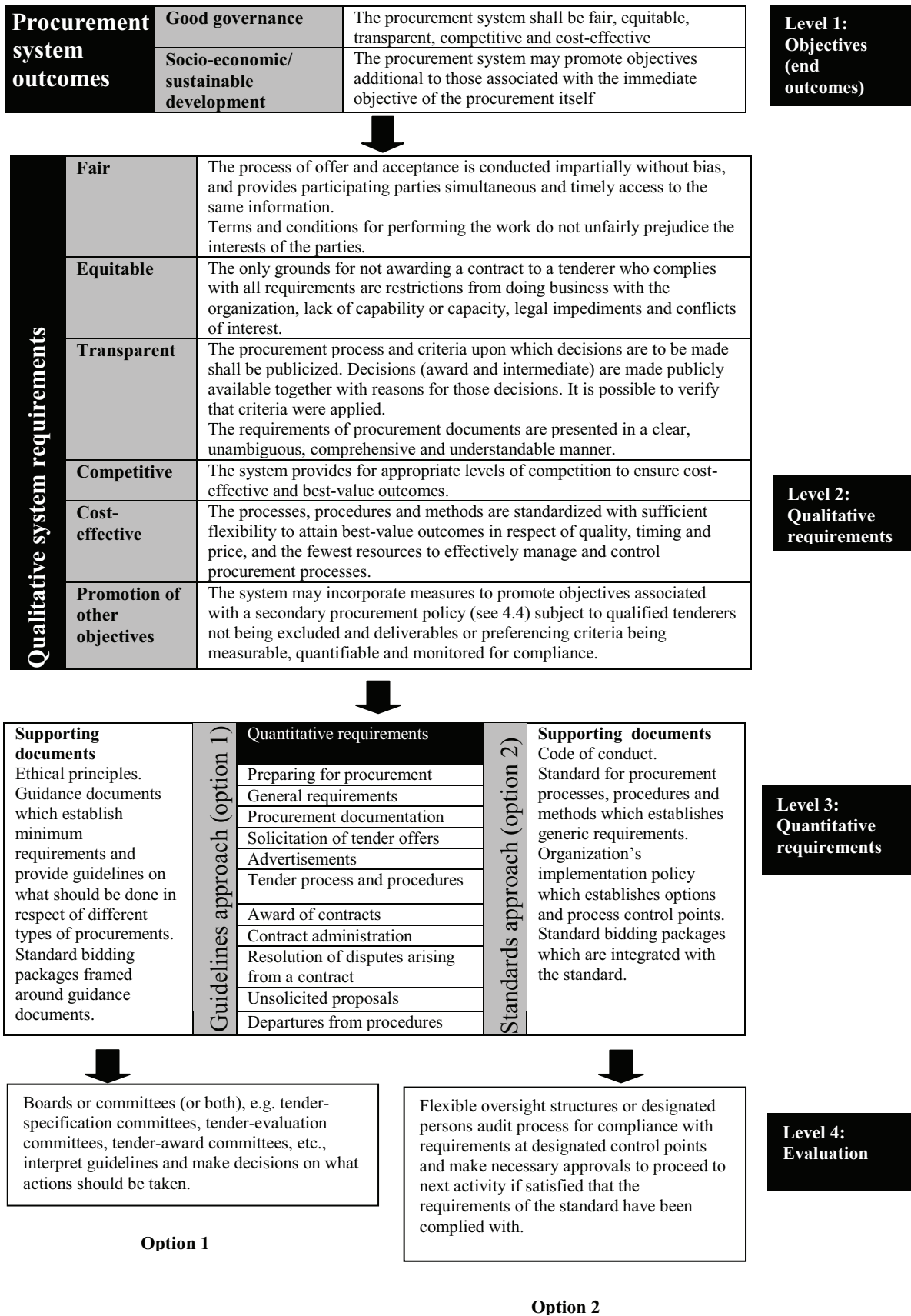


Figure A.1 — Framework for the development of a procurement system

## A.2 Commentary on normative references

Each part of ISO 10845 may be used independently from this part of ISO 10845.

## A.3 Commentary on terms and definitions

The terms “tender” and “tenderer” have been used in preference to “bid” and “bidder” as this is the terminology used in ISO 6707-2 and by the United Nations Commission for International Trade Law's Model Law on Procurement of Goods, Construction and Services, the World Trade Organization's Agreement on Government Procurement, the European Commission in their procurement directives and the Fédération Internationale des Ingénieurs-Conseils (FIDIC) in their conditions of contract. The terms “bid” and “bidder,” where encountered in these documents, are only used in the context of auctions.

A contractor is defined as a person or organization that contracts to provide the goods, services or engineering and construction works covered by the contract. The use of the generic term “contractor” in all the parts of ISO 10845 eliminates the need to introduce the terms “service provider” and “supplier”, as it has been defined to cover these terms.

The term “scope of work” is a generic term that may be used to describe that which is commonly referred to in forms of contract and publications as

- a) supply contract: goods information, specifications,
- b) service contract: scope, services information, specifications, scope of services, terms of reference, technical specification, and
- c) engineering and construction contracts: works information, production information, specifications, project specifications, specifications and performance requirements, specification of work.

The term “scope of work” is also sufficiently broad to include design and procurement requirements in design and construct, develop and construct and management contract contracting strategies relating to engineering and engineering and construction works contracts.

The definitions for employer and contractor are such that relevant subclauses of this part of ISO 10845 can be applied at any point in the supply chain. For example, in a contract, a contractor can be an employer and a contractor can be a subcontractor.

## A.4 Establishing a procurement system

### A.4.1 General

Responsibilities should be assigned to an employer's own staff or to contractors performing the actions listed in Table C.2. Careful consideration should be given to the assigning of responsibilities relating to control points (procedural milestones). A single person may be mandated to make some of the decisions. In some instances it might be more appropriate to establish a small committee of not less than three people to make the necessary decisions, e.g. to obtain approval for procurement strategies that are to be adopted, confirm shortlists and to confirm recommendations contained in the tender-evaluation report.

Those responsible for approving procurement documents should review the procurement document with a view to confirming that such documents have been formatted and compiled in accordance with the organization's requirements, the documents correctly capture the approved procurement strategies, the scope of work adequately establishes what is required and the risk allocations are appropriate.

Where quality is evaluated, three persons who are fully conversant with the technical aspects of the procurement should undertake such evaluation. Quality should be scored in terms of the prompts for judgement, either individually and averaged or collectively, as appropriate. Evaluation ratings and selections

should be made on the basis of the material requested and included in the submission and not on speculation, suspicion or personal knowledge of a panel member.

The evaluation panel should:

- a) determine whether or not submissions or tender offers were responsive to requirements established in the procurement documents,
- b) evaluate submissions strictly in accordance with the criteria and procedures established in the procurement documents,
- c) reduce tender offers to a comparative basis, taking into account factors such as operating or life-cycle costs, non-firm prices, all unconditional discounts and employer's risk,
- d) determine whether or not there are any grounds for disqualification,
- e) determine the acceptability of preferred tenderers or respondents,
- f) identify and evaluate commercial risks, and
- g) prepare a tender-evaluation report or shortlisting report complete with recommendations which clearly states the reasons for overlooking a tenderer or respondent.

Those responsible for confirming the recommendations contained in evaluation reports should verify compliance of the procurement process with the employer's requirements and confirm the integrity of the process and the reasonableness and correctness of reasons provided for the elimination of tenderers or respondents.

Annex D provides a means by which disputes arising from the tender process may be resolved without delaying the procurement itself.

The provision of written reasons for administrative actions taken underpins the transparency of the procurement system.

#### **A.4.2 Conduct of employees, agents and contractors**

The code of conduct which is established in 4.2 is fundamental to the establishment of a procurement system that is fair, equitable, transparent, competitive and cost-effective. The provisions of the basic code of conduct might have to be expanded to address a range of governance issues within the employer's own organization.

The placing of contractors or their principals (or both) who have engaged in corrupt and fraudulent practices under restrictions from participating in the employer's procurement for periods of time, should be undertaken in accordance with the rules of natural justice or applicable legislation. Those accused of corrupt and fraudulent practice should know what they are accused of and should be afforded an opportunity to respond to their accusers.

#### **A.4.3 Procurement policy**

An employer's procurement policy in the context of this part of ISO 10845 should simply document

- a) its procurement system around a process which commences once the need for procurement is identified and ends when the transaction is completed,
- b) its code of conduct for procurement and the procedures for disciplining those that transgress the code,
- c) the names or positions of persons or bodies designated to manage and control procurement activities, and

- d) the choices made in terms of procedures, methods, parameters and options in the implementation of a procurement system and the conditions under which such choices may be exercised.

ISO 10845 is sufficiently generic to be used in conjunction with most legislative regimes and international procurement systems (see Annex C). The procurement policy of an employer is all about the choices or options which may be exercised and under what conditions. The procurement policy of an employer accordingly sets boundaries for the implementation of ISO 10845.

The procurement policy, read together with this part of ISO 10845, establishes the procurement system of an employer (see Annex E).

#### A.4.4 Secondary procurement policy

Secondary procurement policies, by definition, promote objectives additional to those associated with the immediate objective of the procurement itself. Such policies can be framed around both social, economic and environmental goals. Social goals include the redefining of business ownership patterns and the composition of the workforce, the distribution of employment opportunities, the relief of poverty and health and safety. Economic goals include the redefining of the distribution of the size of businesses, increased use of local resources and job creation (i.e. the increase in the total volume of employment generated per unit of expenditure). Environmental goals include reductions in greenhouse gas emissions, minimizing of waste, use of renewable materials, the harvesting of rain water and the effects on the environment relating to the production and disposal of building products.

Many secondary procurement policies, particularly those in developing countries, focus on the participation of targeted enterprises and targeted labour in the performance of a contract, the precise definitions of these target groups being dependent upon the goals associated with a particular secondary policy. Annex G describes a wide range of procedures that may be used to secure or promote such participation.

Well-formulated secondary procurement policies should outline clear policy themes, establish priorities where there is more than one policy theme and project policy outcomes. Such policies should enable short-term and medium-term targets or goals (deliverables) to be established when the policy is put into operation.

Goals at project or contract level should be

- a) clearly defined to make them contractually enforceable,
- b) measurable and quantifiable to allow them to be monitored and evaluated, and
- c) verifiable and auditable for reasons of transparency and to ensure that the policy intent is achieved.

Goals at programme level should be aggregated and evaluated to facilitate the monitoring of progress towards the attainment of specific policy objectives (see Annex G).

The linking of social and economic goals to procurement causes value for money to be redefined. Depending on the objectives of a secondary procurement policy, value for money can be redefined in terms of a combination of price and factors such as the quantum of employment generated by choices in technologies and methods, or the quantum of the engagement of targeted enterprises and labour.

The redefining of value for money in terms of objectives additional to those relating to the immediate objectives of procurement necessitates and requires that

- a) the tender-evaluation criteria and contractual obligations, as relevant, relating to secondary procurement policies be objective and fully described in procurement documents,
- b) tenderers structure their tenders to facilitate the engagement of targeted enterprises and targeted labour in an economical manner in order to win or secure contracts,
- c) the performance of the contracts be monitored to verify that objectives are in fact met, and

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- d) measures be put in place to sanction those contractors who secure contracts on a fraudulent basis, or fail to deliver on their undertakings in the performance of the contract.

The targeted procurement procedures that are presented in Annex G, particularly when used in conjunction with ISO 10845-5, ISO 10845-6, ISO 10845-7 or ISO 10845-8, facilitate the above in relation to the social and economic goals relating to business and employment opportunities.

Ideally, secondary procurement policies should seek to promote social and economic objectives. It might, however, be necessary to reserve contracts in support of sheltered employment programmes to provide work for handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry out occupations under normal conditions.

### A.4.5 Electronic databases

An electronic database should be established and operated in order to

- a) establish
  - 1) recurring fields of services or goods that are required,
  - 2) general criteria relating to the admission to the database, including those relating to branch offices,
  - 3) prequalification criteria, based on capabilities and the ability to provide the required service or supply, for admission to the database in one or more fields, and
  - 4) target groups, if any, who will rotate in the database at an accelerated rate (see Annex G),
- b) place an advertisement in suitable media for a call for expressions of interest to be admitted to the database to provide goods or services in the required fields at least once a year,
- c) admit to the database, in one or more fields, only those respondents who submit expressions of interest that comply with both the admission and prequalification requirements, and where applicable, to a preferred category,
- d) notify applicants of the administrative action taken, i.e. whether or not they have been entered, and if not, on what grounds, and
- e) establish the search criteria associated with a particular appointment and identify the
  - 1) highest ranked entry which satisfies the search criteria and value limits for a small contract and negotiate a contract with this contractor, or
  - 2) five highest ranked entries which satisfy the search criteria where the value limits for a small contract are exceeded.

Annex E provides guidance on the use of this method of procurement and suggests that its use might not be appropriate in high-value contracts. Annex G describes a mechanism for providing accelerated work opportunities to targeted enterprises.

### A.4.6 Means of communication

The employer should only use a means of communication that is appropriate within the employer's organizational context.

### A.4.7 Devices relating to the electronic receipt of tenders

This subclause establishes the basic requirements for electronic tendering systems.

## A.5 Commentary on preparing for procurement

### A.5.1 Preparation for a procurement other than a disposal

This subclause establishes a set of requirements which are preparatory to any procurement. They are designed to ensure that the procurement is approached in a systematic manner, the necessary choices in the procurement processes and procedures are made, and procurement-related risks are managed from the outset.

The built environment (buildings and civil engineering works) is a key element in determining the quality of life, and contributing to cultural identity and heritage and, as such, is an important factor in the appreciation of the quality of the environment in which society lives and works. The building and construction sector has a significant interface with poverty reduction through the basic economic and social services provided in the built environment and the potential opportunities for the poor to be engaged in construction, operation and maintenance. It has potential to show improvement relative to its economic, environmental and social impacts. Over their life cycle, engineering and construction works absorb considerable resources and contribute to the transformation of areas. As a result, they can have significant economic consequences and impacts on the environment, human health and livelihoods. It is accordingly important, when procuring, to consider the environmental, social and economic impacts of such procurement.

Life-cycle costs might be required during

- a) the investment stage, in order to provide an economic prediction of the total life-cycle cost, to enable the owner of the engineering and construction works to make informed decisions regarding which project option is viable, sustainable and represents the best value,
- b) the early stages of scheme design to inform the selection of fundamental or cost-significant elements, such as structure, building envelope or services, and
- c) the detailed design stage, to appraise and select the detailed design options from a life-cycle cost and performance perspective, and optimize the life-cycle cost plan.

Life-cycle costs might also be required during the tender-evaluation process to compare the competitiveness of tenders received and to assess the project affordability.

### A.5.2 Preparation for a disposal

This subclause establishes a set of requirements which are preparatory to any disposal. They are designed to ensure that the disposal is approached in a systematic manner, the necessary choices in the procurement processes and procedures are made and procurement-related risks are managed from the outset. It might be necessary, prior to deciding to proceed with a procurement strategy, to consider alternative disposal strategies, such as transfer to another organization, either at market-related value or free of charge, recycling or reuse of component materials, or dispose of by means of dumping at an authorized dump site, burning, demolition, etc.

## A.6 Commentary on procurement methods and procedures

### A.6.1 General

Shortlisting is based on the qualifications of the respondents. The formation of a joint venture after shortlisting may necessitate that the respondent be re-evaluated. This might change the shortlist, depending upon the criteria for drawing up such a list, hence the need to obtain consent to do so.

The requirement relating to the prohibiting of those responsible for the preparation of a procurement document or part thereof from submitting a tender for such work relates to a conflict of interest. Professional service providers are required to provide professional, objective and impartial advice and at all times hold the employer's interests paramount, without any consideration for future work. Conflicts of interest accordingly

might arise from the preparation of procurement documents for an employer, should such a service provider tender for work associated with such documents. If, for reasons acceptable to the employer, it is not desirable to debar a professional service provider who has participated in the development of the scope of work and other such documentation associated with a particular tender, the employer should state in the tender data that such a professional service provider is a potential tenderer and that all the information which was made available to, and the advice provided by, that professional service provider which is relevant to the tender will be made equally available to all potential tenderers upon request, if not already included in the scope of work. The employer should, in such circumstances, review the outputs of the professional service provider and be satisfied that the procurement document is objective and unbiased, taking the role and recommendations of that professional service provider into account.

### **A.6.2 Procurement documentation**

The requirements for procurement documentation are designed to ensure that the procurement remains fair, equitable, transparent, competitive and cost-effective.

Examples of commonly encountered quality criteria, appropriate to the different categories of contract, are listed in Table A.1. Table A.2 provides a range of indicative quality:financial-offer ratios which are appropriate to a range of professional services and engineering and construction works. The ratio which is selected needs to be carefully considered, as the ratio is sensitive to the manner in which quality is scored. It might be necessary to consider a number of scenarios before deciding on a particular ratio.

The prompts for judgements provided to the tender-evaluation panel should be framed around those provided in Tables A.3 and A.4. The making known of the prompts for judgement to prospective tenderers allows tenderers or respondents to focus their submissions.

### **A.6.3 Solicitation of tender offers**

This subclause establishes the generic range of procurement methods. Annex E provides guidance on the usage of these standard methods and illustrates their equivalency with the procedures advocated by international bodies, such as the World Bank, the World Trade Organization, the United Nations Commission on International Trade Law and the European Commission (UNCITRAL).

The methods and procedures for procurements are generic in nature and are not specific to a category of procurement, i.e. services, goods or engineering and construction works. Some methods may, however, be more frequently used than others as they might be better suited to a particular category of contract (see Annex E).

The minimum time frames associated with a procedure are the absolute minimum that should be given to domestic tenderers and respondents. These time frames might need to be increased when soliciting tender offers and submissions of interest from international tenderers and respondents.

### **A.6.4 Advertisements**

This subclause establishes the advertising requirements for the invitation of tenders and the calling for expressions of interest.

### **A.6.5 Tender process and procedures**

The tender procedures are compatible with those framed in ISO 10845-3. Comprehensive guidance on the application of these procedures is given in ISO 10845-3.



Table A.1 — Examples of commonly encountered quality criteria

Category of contract	Description of quality criteria
Engineering and construction works	<p>Quality control/health and safety/environmental practices and procedures which are geared towards complying with stated requirements</p> <p>Technical approach/methodology/proposed programme for satisfying stated employer's objectives/managing project risks</p> <p>Demonstrable capability to mobilize own, hired and subcontracted resources in projects of a similar nature</p> <p>Qualifications/experience of staff allocated to the project/availability of skills to manage and perform the contract (assigned personnel)</p> <p>Experience (track record) on previous contracts of a similar nature, scope or complexity (over the last five years)</p> <p>Availability of equipment and personnel required for the project and contingency plans</p> <p>Management structure and resources allocated to the contract</p> <p>Time to completion</p> <p>Aesthetic (design and construct/develop and construct contracts)</p> <p>Functional characteristics (design and construct/develop and construct contracts)</p> <p>Projected life-cycle costs of the construction works (design and construct/develop and construct contracts)</p>
Services (including professional services)	<p>Response to (ability to relate to) the proposed scope of work/project design (approach paper) which establishes the manner in which the respondent or tenderer intends to perform the contract and add value in the attainment of the employer's stated objectives</p> <p>Adequacy of proposed work plan and proposed methodology</p> <p>Organization, logistics and support resources</p> <p>Demonstrable managerial ability appropriate to the size and nature of work</p> <p>Control procedures</p> <p>Qualifications and competence of the key staff (assigned personnel) in relation to the scope of work</p> <p>Demonstrated experience (past performance) in comparable projects</p> <p>Demonstrated experience with respect to specific aspects of the project</p> <p>Experience (familiarity) in the region or similar regions (local knowledge)</p> <p>Quality assurance systems which ensure compliance with stated employer's requirements</p> <p>Sound knowledge of the employer's policies or work procedures (or both)</p> <p>Arrangements for the transfer of knowledge</p> <p>Demonstrable capability to mobilize own, hired and subcontracted resources in projects of a similar nature</p>
Goods	<p>Attainment of quality standards, e.g. quality marks</p> <p>Quality assurance systems/environmental practices which ensure compliance with stated employer's requirements or objectives</p> <p>Periods for delivery</p> <p>Availability of after-sales service/technical support/spare parts</p> <p>Safety and environmental benefits</p> <p>Product reliability and performance</p> <p>Life-cycle costs</p>

**Table A.2 — Indicative ranges of quality:financial offer ratio for professional services and engineering and construction works**

Type of project	Indicative ranges of quality:financial offer ratio	
	Professional services	Engineering and construction works where contractor is not responsible for the design of such works <sup>a</sup>
Feasibility studies and investigations	80:20 to 90:10	—
Innovative projects	70:30 to 85:15	20:80 to 40:60
Complex projects	60:40 to 80:20	15:85 to 35:65
Straightforward projects	30:70 to 60:40	10:90 to 25:75
Repeat projects	10:90 to 30:70	5:95 to 10:90

<sup>a</sup> The indicative ratios for design and construct projects are 60:40 to 85:15.

**Table A.3 — Qualitative indicators or prompts for judgement used in the evaluation of quality (linear scale)**

Score <sup>a</sup> %	Qualitative indicator or prompt for judgement
0	Failed to address the question/issue.
20	A detrimental response/answer/solution — limited or poor evidence of skill/experience sought, high risk that relevant skills will not be available.
40	Less than acceptable response/answer/solution — lacks convincing evidence of skill/experience sought, medium risk that relevant skills will not be available.
60	Acceptable response/answer/solution to the particular aspect of the requirement — evidence given of skill/experience sought.
80	Above acceptable response/answer/solution — demonstrates real understanding of requirement and evidence of ability to meet it based on .....
100	Excellent response/answer/solution — gives real confidence that the supplier will add real value based on .....

<sup>a</sup> The threshold score, below which tenderers are eliminated from further consideration, should be between 50 % and 60 %.

**Table A.4 — Qualitative indicators or prompts for judgement used in the evaluation of quality (logarithmic scale)**

Score <sup>a</sup> %	Rating	Qualitative indicator or prompt for judgement		
		Example 1 (Proposed organization and staffing)	Example 2 (Approach paper)	Example 3 (Knowledge of issues pertinent to the project)
0	No response	Failed to provide information	Failed to provide information	Failed to provide information
40	Poor	The organization chart is sketchy, the staffing plan is weak in important areas.  There is no clarity in allocation of tasks and responsibilities.	The technical approach and/or methodology is poor/unlikely to satisfy project objectives or requirements. The tenderer has misunderstood certain aspects of the scope of work and does not deal with the critical aspects of the project.	Key staff have limited experience of issues pertinent to the project.
70	Satisfactory	The organizational chart is complete and detailed, the technical level and composition of the staffing arrangements are adequate.	The approach is generic and not tailored to address the specific project objectives and methodology. The approach does not adequately deal with the critical characteristics of the project.  The quality plan, manner in which risk is to be managed, etc., is too generic.	Key staff have reasonable experience of issues pertinent to the project.
90	Good	Besides meeting the “satisfactory” rating, staff are well balanced, i.e. they show good coordination, complementary skills, clear and defined duties and responsibilities.  Some members of the project team have worked together before on limited occasions.	The approach is specifically tailored to address the specific project objectives and methodology and is sufficiently flexible to accommodate changes that might occur during execution. The quality plan and approach to managing risk, etc., is specifically tailored to the critical characteristics of the project.	Key staff have extensive experience of issues pertinent to the project.
100	Very good	Besides meeting the “good” rating, the proposed team is well integrated and several members have worked together extensively in the past.	Besides meeting the “good” rating, the important issues are approached in an innovative and efficient way, indicating that the tenderer has outstanding knowledge of state-of-the-art approaches.  The approach paper details ways to improve the project outcomes and the quality of the outputs.	Key staff have outstanding experience of issues pertinent to the project.

<sup>a</sup> The threshold score, below which tenderers are eliminated from further consideration, should be between 50 % and 60%.

### **A.6.6 Award of contracts**

This subclause establishes requirements for the award of a contract. This ensures that tenders are only awarded to those tenderers who are not subject to restrictions to do business with the employer, have both the capability and capacity to perform the contract, have legal capacity to enter into the contract, are solvent, comply with all legal requirements and are free of conflicts of interest that might compromise their ability to perform the contract.

NOTE ISO 10845-3 provides guidance on the debriefing of tenderers.

### **A.6.7 Resolution of disputes arising from a contract**

This subclause establishes the means by which disputes are to be resolved in the performance of the contract.

### **A.6.8 Contract administration**

Contract administration requirements are linked to the conditions of contract which contain procedures for the administration of a contract. Appropriate conditions of contract should be used in relation to the nature of the contract. ISO 10845-2 provides guidance on the selection of a standard form of contract for the provision of goods, services and engineering and construction works.

Data should be captured upon completion or termination of a contract as it informs future selections in the pursuit of best-value procurement (see Annex B).

### **A.6.9 Unsolicited proposals**

This subclause offers a way in which to deal with unsolicited proposals.

### **A.6.10 Departures from established methods and procedures**

This part of ISO 10845 recognizes that there may be variations or hybrids in procedures in the case of certain types of procurement. This subclause permits employers to modify procedures within the framework for procurement established in this part of ISO 10845 without compromising the qualitative system criteria established in 4.1.

## **Annex B** **(informative)**

### **Best-value procurement**

Best-value procurement requires that employers operate effectively and efficiently, particularly in the area of procurement. Accordingly, the drivers of an efficient and effective procurement system are value for money, the promotion of development or social objectives (or both) through the delivery of construction projects, and the imperative to continuously improve performance. Much can go wrong in the appointment and supervision of contractors, especially where complex services or construction is required.

Best value demands that procurement strategies be reviewed and optimized. Any resultant changes should deliver better value. There is, however, no ideal way to procure, as each situation is different. There are, however, clear methods for choosing the most appropriate (or best) way for a given circumstance and there is a logical process which should be followed to confirm that decisions will indeed deliver the best value.

Procurement is an expensive process. The potential for waste and error is high. The potential for failing to meet expectations is higher still. The process should be properly planned and managed. Table B.1 outlines the steps associated with a best-value procurement process associated with engineering and construction works. Many choices are made when risks are allocated and procurement strategies, methods and techniques are identified and documented in procurement documents in order to arrive at best-value outcomes in contracts for engineering and construction works, as indicated in Figure B.1. The promotion of development or social objectives (or both) influences these choices both directly and indirectly.

An evaluation of the outcomes of the procurement process is fundamental to best-value procurement. Accordingly, the choices made at each stage of the process and the manner in which services and engineering and construction works are defined should be reviewed and, if necessary, amended to improve future procurement outcomes involving work of a similar nature. Best value is all about the manner in which services and engineering and construction works are defined and delivered. It necessitates that a culture of continuous improvement in performance be embraced.

**Table B.1 — Planning and managing the procurement strategy**

Step	Action	Observations	Guidance
1	Identify needs	The catastrophic and expensive failures of procurement are almost always the lack of clarity of the expected outcome.	<p>Be clear about what the community or user needs. Visualize and articulate the expected outcome. Decide what is important and what is not, and plan the procurement to meet the expected outcome. There is no substitute for proper research.</p> <p>If the delivered project is a building or includes a plant, state the importance of whole life cost (energy, maintenance, operation and carbon) and how this will factor into the assessment of best value.</p>
2	Document the brief	The main cause of procurement failures are the result of inadequate briefs, ill-conceived briefs or an absence of a brief.	<p>A brief is a written description of the completed project or service. It sets out what the expected outcome should be, what role the contractor will play and the constraints and difficulties in delivering the project. In essence it is the means of communicating the whole expected outcome to the people involved and, as such, should explain the facilities or services to be procured, how they are to be used in future, what role they will play in meeting community or user needs, how they will fit into their environment, the further stages of the procurement process and how the facilities or services are to be delivered.</p> <p>The brief is an output specification. It describes the end result and clarifies how the intended procurement combines with other activities to help achieve the client's overall goals.</p> <p>It is essential to consult others on the content of the brief to ensure that requirements are accurately and comprehensively set down, so as to meet defined expectations from all end users.</p>
3	Check the facts	The second most frequent cause of problems between clients and contractors are things that existed at the outset but had not been identified.	<p>Full surveys should be undertaken and documented describing the existing situations. Such surveys should include the following.</p> <p>Topography</p> <p>Soil and ground conditions</p> <p>The location and state of buildings or facilities that contractors might be expected to use or might be affected by the contractor's activities</p> <p>Environmental conditions</p> <p>Number and location of people who might be affected by the engineering and construction works</p> <p>Availability of materials</p> <p>Compatibility with other engineering and construction works contracts or services</p> <p>(The information should be collated and made available to tenderers. Contractors should make their own judgements from the information and collect whatever additional information they consider necessary.)</p>
4	Secure the finance	Business planning has often been ignored, leading to a lack of proper planning and consequent problems at a later stage in the process.	<p>Business plans should be prepared to obtain finance.</p> <p>Financial forecasts should include the following.</p> <ul style="list-style-type: none"> <li>— The total expenditure on the procurement itself and when the expenditure will occur.</li> <li>— The total costs of incomes (or savings) accruing from the new service or facility and when these can be expected to accrue.</li> <li>— The cost and timing of ongoing maintenance and renewals.</li> <li>— The cost of any advice (professional services) that will be needed.</li> </ul>

Table B.1 (continued)

Step	Action	Observations	Guidance
5	Understand the construction procurement regime	Compliance with the legislative framework for procurement is essential. Non-compliance will cause delays in the procurement process as a result of a lack of clarity in processes and procedures, the lodging of complaints, and court challenges.	<p>The designated procurement manager should be familiar with legislative framework and requirements for procurement. Such a person should also be familiar with development and social objectives that may be promoted through the project.</p> <p>This part of ISO 10845 provides a flexible range of options which are compliant with most legislative framework for public procurement.</p> <p>The risk of procurements not complying with system requirements (fair, equitable, transparent, competitive and cost-effective, and promotion of objectives associated with a procurement policy) should be managed cost-effectively.</p>
6	Allocate risk	The higher the risk taken, the greater the financial provision should the worst happen. Consequently, the higher the risk a contractor assumes, the greater will be the tender value and hence cost borne by the client, even if the risk does not materialize.	<p>Those tendering for a contract should know the degree of risk that they are expected to take.</p> <p>Whereas the careful checking of the facts about the existing circumstances will help to reduce the total risk, there will always be elements of uncertainty outside the control of all the parties to a contract. All the parties need to know the risks for which they are responsible so that they can make suitable financial provision, either by adding to the cost of the proposal or budget or by spreading the risk by such means as acquiring insurance.</p> <p>The business plan and the contract documents are the mechanisms for allocating risk.</p>
7	Identify and implement procurement strategies, methods and techniques	<p>The particular characteristics of each procurement should be analysed, so as to choose the most suitable and appropriate options.</p> <p>Optimization of these options will lead to obtaining the best value from the procurement process.</p>	<p>Best-value outcomes are obtained from selecting options for</p> <ol style="list-style-type: none"> <li>contracting and pricing strategies,</li> <li>procurement procedures,</li> <li>procedures for addressing quality in procurement,</li> <li>mechanisms for promoting and developing targeted contractors and labour,</li> <li>methods for evaluating offers, and</li> <li>forms of contract.</li> </ol> <p>Procurement documents should capture the selected options. The optimum choices made within the standard forms of contract and the standard tender conditions will achieve best-value outcomes.</p>
8	Monitor impacts	<p>Contractors will apply their own expertise to the contract. The client should employ its own experts to monitor the progress of the contractor.</p> <p>Any dispute, unless resolved at an early stage, is likely to be costly and disruptive to the project.</p>	<p>Reasons for monitoring include the following.</p> <p>Mistakes can be made. Whilst the contractor is responsible for his errors, resultant problems might be avoided if a contractor is advised of an error at an early stage.</p> <p>Payment of a contractor is invariably based on his achievements. The amount due to a contractor should be independently verified.</p> <p>Best value demands continuous improvements. How these are achieved and the consequent sharing of financial benefits should be agreed between the contractor and client.</p> <p>Each contract should be coordinated with other activities to ensure that the client can achieve best value for the project/service provision as a whole.</p> <p>Both the employer and the contractor should designate individuals to be the key contact between the two bodies.</p> <p>Differences in opinion or even disputes are bound to arise between the employer and contractor. The contract should set out the means for resolving these disputes.</p>

Table B.1 (continued)

Step	Action	Observations	Guidance
9	Review the process	Procurement is a lengthy and complex process. There should always be room for improvement.	<p>Clients should undertake regular reviews of the following.</p> <p>Whether the contract has met its original service objectives.</p> <p>Whether needs and expectations have changed such that the contract should be modified.</p> <p>Whether the procurement process could be improved for the next round of procurement.</p> <p>How external factors have changed.</p> <p>The reviews should provide the necessary feedback so that better-informed procurement strategies, techniques and choices can be made in striving for best value.</p>

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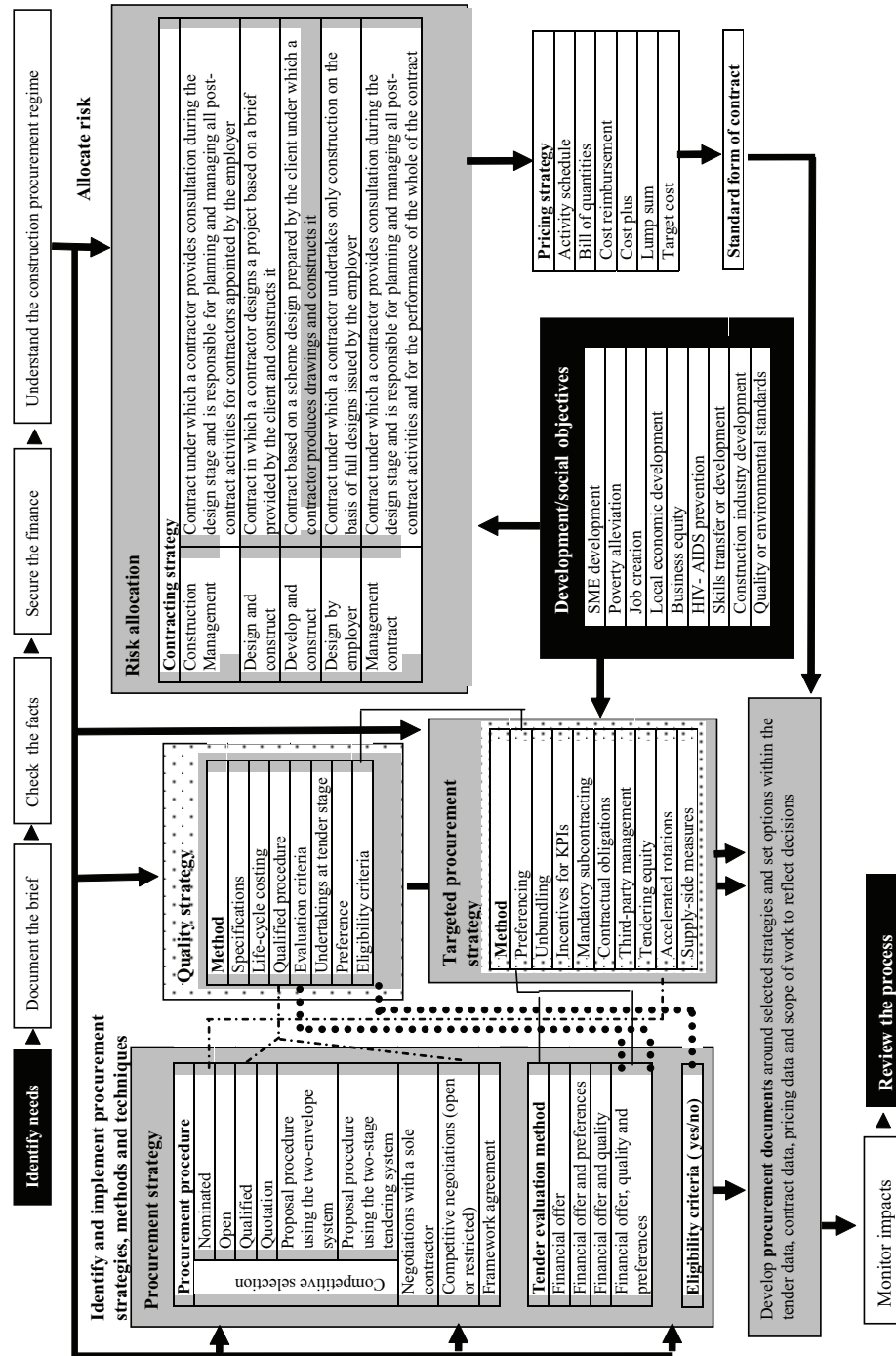


Figure B.1 — Best-value procurement process in contracts for engineering and construction works

## Annex C (informative)

### Generic procurement process

There are typically six principal activities associated with a generic procurement process:

- a) the establishment of what is to be procured,
- b) a decision on procurement strategies,
- c) the solicitation of tender offers,
- d) the evaluation of tender offers,
- e) the award of the contract,
- f) the administration of the contract and confirmation of compliance with the requirements.

The commonly encountered actions associated with the principal procurement activities are described in Table C.1. Each procurement activity may be broken down into a series of subactivities as in Table C.2. These subactivities should incorporate control points to facilitate the management of the procurement process.

Table C.2 presents an example of a generic set of subactivities associated with each principal procurement activity and which incorporates actions leading to procedural milestones (control points).

**Table C.1 — Principal activities and related actions typically associated with a generic procurement process**

Principal activity		Related action
No.	Description	
1	Establish what is to be procured.	Clarify what is to be procured.
2	Decide on procurement strategies.	Determine how the procurement is to take place.
3	Solicit tender offers.	Solicit tender offers in terms of a set of procedures.
4	Evaluate tender offers.	Evaluate tender offers in terms of undertakings and parameters established in procurement documents.
5	Award the contract.	Enter into the contract with the successful tenderer.
6	Administer the contract and confirm compliance with requirements.	Act in terms of the contract and confirm that procurement is in accordance with all requirements.

Not all procurement systems will contain all the subactivities listed in Table C.2, as an employer's procurement policy may exclude certain options.

Employers should designate and empower persons to make decisions whenever a procedural milestone is attained.

Table C.2 — Subactivities and related principal actions associated with each procurement activity

Procurement activity		Subactivity	
No.	Description	Description	Principal action
1	Establish what is to be procured	1. Prepare broad scope of work for procurement	Develop a title for the procurement for the purpose of project identification and a broad scope of work.
		2. Estimate financial value of proposed procurement	Estimate the financial value of the proposed contract for budgetary purposes, based on the broad scope of work.
		3. Obtain permission to start with the procurement process <sup>a</sup>	Designated person or body makes a decision to proceed/not to proceed with the procurement based on the broad scope of work and the financial estimates.
2	Decide on procurement strategies	1. Establish opportunities for promoting secondary procurement policies, if any	Identify the specific goals which are to be pursued, if any, and establish quantitative targets and implementation procedures which are consistent with the employer's objectives.
		2. Establish contracting and pricing strategy	Decide on an appropriate allocation of responsibilities and risks and the methodology by which contractors are to be paid.
		3. Establish targeting strategy	Decide on the methodology that is to be used to implement secondary procurement policy.
		4. Establish procurement procedure	Identify the process that will be followed to solicit tender offers and to conclude a contract.
		5. Obtain approval for procurement strategies that are to be adopted <sup>a</sup>	Designated person or body confirms selection of strategies so that tender offers can be solicited.
3	Solicit tender offers	1. Prepare procurement documents	Prepare prequalification or tender documents (or both), as appropriate, that are compatible with the approved procurement strategies.
		2. Obtain approval for procurement documents <sup>a</sup>	Designated person or body reviews the procurement document, identifies sections, if any, which require amendments or improvements, and grants the necessary approval.
		3. Confirm that budgets are in place <sup>a</sup>	Designated person or body ensures that finance is available for the procurement to take place.
		4. Invite contractors to submit tender offers or expressions of interest	Advertise for tenders/identify contractor(s) that are to be invited to submit tender offers in accordance with the approved procurement procedure, issue procurement documents, respond to requests for clarification, conduct clarification/site meetings, issue attendees with minutes of such meetings, and issue addenda, as relevant.
		5. Receive tender offers or expressions of interest	Ensure that arrangements are in place to receive tender offers/expressions of interest and return unopened those that are received late, are not delivered in accordance with instructions given to respondents/tenderers or where only one tender is received and it is decided to call for fresh tenders.

Table C.2 (continued)

Procurement activity		Subactivity	
No.	Description	Description	Principal action
		6. Evaluate expressions of interest	Open expressions of interest, record data relating to the submission and evaluate in accordance with undertakings made to respondents.
		7. Prepare evaluation report on shortlisting process	Prepare evaluation report and make recommendations in respect of actions to be taken, depending upon the procurement procedure that is adopted.
		8. Confirm shortlist <sup>a</sup>	Designated person or body reviews evaluation report and ratifies recommendations.
		9. Invite tender offers from short-listed tenderers	Invite tender offers from shortlisted tenderers, respond to requests for clarifications by tenderers, conduct clarification/site meetings, issue all attendees with the minutes of such meetings, and issue addenda to amend or amplify the procurement documents, as relevant.
4	Evaluate tender offers	1. Open and record tender offers received	Open tender offers, either in public or in the presence of designated persons, record pertinent details and notify interested parties of pertinent details if requested to do so.
		2. Determine whether or not tender offers are complete	Examine tenders and determine whether or not they are complete, request tenderers to complete items that are required only for tender-evaluation purposes and record what is incomplete in each tender submission.
		3. Determine whether or not tender offers are responsive	Confirm compliance with all the requirements of the procurement documents, including eligibility criteria. If not, declare tender offers non-responsive and record reasons for declaring a tender to be non-responsive and disregard such tender offers from further consideration.
		4. Evaluate tender submissions	Identify parameters included in the tender submission that have a bearing on the financial offer and reduce all tender offers to a common base.  Judge the reasonableness of financial offers and reject all tender offers with unrealistic financial offers.  Evaluate tender submissions in accordance with the tender-evaluation method adopted for the procurement.
		5. Perform a risk analysis	Perform a risk analysis on the tenderer ranked highest in terms of the tender evaluation and, if found to be unsatisfactory, undertake an analysis on the next highest ranked tenderer and so on until such time as a tenderer satisfies the risk assessment, and recommend this tenderer for the award of the contract.
		6. Prepare a tender-evaluation report	Prepare a tender-evaluation report which, as a minimum, contains the tender-evaluation points awarded to each tenderer, the reasons for eliminating a tender offer and a recommendation for the award of the contract.
		7. Confirm recommendation contained in the tender-evaluation report <sup>a</sup>	Designated person or body reviews report and ratifies the recommendation.

Table C.2 (continued)

Procurement activity		Subactivity	
No.	Description	Description	Principal action
5	Award contract	1. Notify successful tenderer and unsuccessful tenderers of outcome	Notify the successful tenderer and unsuccessful tenderers in writing.
		2. Compile contract document	Assemble contract document from the relevant tender returnables and issue draft contract to tenderer, capturing all the changes that were agreed to between the offer and acceptance.
		3. Formally accept tender offer <sup>a</sup>	Confirm that the tenderer has provided evidence of complying with all requirements stated in the tender data and formally accept the tender offer in writing and issue the contractor with a signed copy of the contract.
		4. Capture contract award data	Capture, into a database, essential contract data for record purposes.
6	Administer contracts and confirm compliance with requirements	1. Administer contract in accordance with the terms and provisions of the contract	Administer the contract in accordance with its terms and conditions and pay contractors within the time periods provided for in the contract, so as to avoid interest on late payments.
		2. Ensure compliance with requirements	Monitor the contractor's performance to ensure that the requisite quality standards are attained and all requirements are complied with, and certify compliance upon completion.
		3. Capture contract completion/ termination data <sup>a</sup>	Record, in a database, key performance indicators relating to time, cost and the attainment of specific goals associated with a secondary procurement policy, or if the contract is terminated or cancelled, the reasons for this.
<sup>a</sup> Subactivity represents control points, i.e. procedural milestones.			

## Annex D (informative)

### Adjudication procedures to challenge decisions made during the tender process

#### D.1 Introduction

Decisions made by employees or agents of an employer may be disputed, should procurement be conducted in accordance with the requirements of ISO 10845-3. A tender-dispute adjudicator can be appointed to decide if a complainant should have been awarded the contract and, if so, to determine the tenderer's reasonable cost of tendering. This provides a fair, rapid and inexpensive means to resolve a dispute arising from the evaluation of tender offers, without delaying the procurement or resorting to legal remedies.

Ideally, the employer should establish a panel of tender-dispute adjudicators, comprising independent and suitably qualified individuals, and should conduct the adjudication in the following manner:

- a) the tenderer disputing the evaluation (the complainant) should be required to lodge a complaint with the employer's executive in writing within 10 days of being notified that his tender is unsuccessful and agree to
  - 1) waive all rights to overturn the award of the tender to another party, and
  - 2) limit any compensation to the reasonable costs of preparing the tender;
- b) the complainant should be entitled to nominate a tender-dispute adjudicator from a panel of tender-dispute adjudicators;
- c) the complainant should agree to pay half the tender-dispute adjudicator's fee and be required to lodge a deposit equal to half the estimated fee amount with the employer; and
- d) in the event that the tender adjudication does not proceed, for whatever reason, the complainant may refer the matter to court or resort to any other legal remedy that he may have and have his deposit refunded.

The tender-dispute adjudication should be conducted in accordance with the procedure established in this annex.

The waiving of rights to overturn an award prevents this system from being used to inexpensively test whether or not there is a case for a court of law to overturn a decision. Aggrieved tenderers should make a choice at the outset to obtain relief through the courts or through a tender-dispute adjudicator.

#### D.2 Recommended tender-dispute adjudication procedure

##### D.2.1 General principles

The tender-dispute adjudicator should decide if the complainant should have, in terms of the procurement documents issued in respect of the contract in question, been awarded the contract, and if so, should determine the tenderer's reasonable cost of tendering.

The tender-dispute adjudicator should act impartially and in accordance with the rules of natural justice.

The cost of tendering should be confined to direct staff costs and should include reasonable office overheads and travel costs, but should exclude profits, copying costs, typing charges, courier and postage charges.

The tender-dispute adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as tender-dispute adjudicator, unless the act or omission was in bad faith, and any employee or agent of the tender-dispute adjudicator is similarly protected from liability.

### **D.2.2 Notice of tender-dispute adjudication**

A complainant should, within 10 days of receiving a notice advising that the tenderer was unsuccessful, give notice to the employer's executive of his intention to refer the dispute to adjudication by giving a written notice of tender-dispute adjudication.

The notice of adjudication should include

- a) the name of the proposed tender-dispute adjudicator,
- b) the title of the contract, and the tender reference number,
- c) a breakdown of the tenderer's cost of tendering in relation to that tender, and
- d) a cash deposit equal to 50 % of the estimated tender-dispute adjudicator's fee.

### **D.2.3 Administrative procedures**

The employer's executive should notify, in writing, the tender-dispute adjudicator, the complainant and the employer's employee or agent responsible for the procurement of the adjudication, within five working days of receipt of the notice of adjudication.

The employer's employee or agent responsible for the procurement should deliver to the tender-dispute adjudicator the tender-evaluation report together with a copy of the tender submissions of the complainant and the tenderer who was awarded the contract, within seven working days of being notified that adjudication will take place. The tender-dispute adjudicator should notify the employer's executive if the copy of the tender submission is not received within the stated period. Should the tender-dispute adjudicator not receive the copy of the tender submissions from the responsible employee or agent within 20 working days, the adjudication should be abandoned and the complainant should be notified accordingly.

### **D.2.4 The tender-dispute adjudicator's decision**

In making a decision, the tender-dispute adjudicator may take the initiative in ascertaining the facts and the correct procedure provided for in the employer's procurement policy and standard procedures. The tender-dispute adjudication should be neither an expert determination nor arbitration but the tender-dispute adjudicator may rely on his own expert knowledge and experience.

The tender-dispute adjudicator should have complete discretion as to how to conduct the adjudication, and should establish the procedure and timetable. He should not be required to observe any rule of evidence, procedure or otherwise, of any court, except the rules of natural justice. Without prejudice to the generality of these powers, he may ask for further information and meet and question the employer's tender panel and any other person involved in the evaluation of the tender.

The tender-dispute adjudicator may obtain legal or technical advice, having first notified the employer's executive of his intention.

Wherever possible, the tender-dispute adjudicator should reach his decision without the process of a formal hearing.

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The tender-dispute adjudicator should reach his decision and notify both the employer's executive and the complainant within 21 days of the tender submissions having been handed to him for adjudication, unless the employer's executive agrees to extend this period.

The tender-dispute adjudicator's decision should be binding on both the employer and the complainant.

The employer should pay the complainant his reasonable cost of tendering without delay, should the tender-dispute adjudicator find that the complainant should have been awarded the contract, but not before the complainant has paid the tender-dispute adjudicator any outstanding fees not covered by the cash deposit.



## Annex E (informative)

### Establishing a procurement system and managing procurement processes

#### E.1 Establishing an employer's procurement system

An employer can develop its procurement system around the generic procurement processes and generic procurement procedures outlined in Annexes C and F, respectively, as illustrated in Figure E.1. This is possible as this part of ISO 10845 contains the full range of methods and other procedures that both public and private sector organizations may require in their procurements without prescribing when and under what circumstances such methods may be utilized or imposing the manner in which procurement is to be managed and controlled. Being generic in nature, it does not impose matters of policy on an employer. Instead, it establishes a comprehensive rule-based framework within which an employer may develop its procurement policy in order to implement the wide range of standard procurement methods and procedures.

#### E.2 Managing procurement processes

##### E.2.1 Introduction

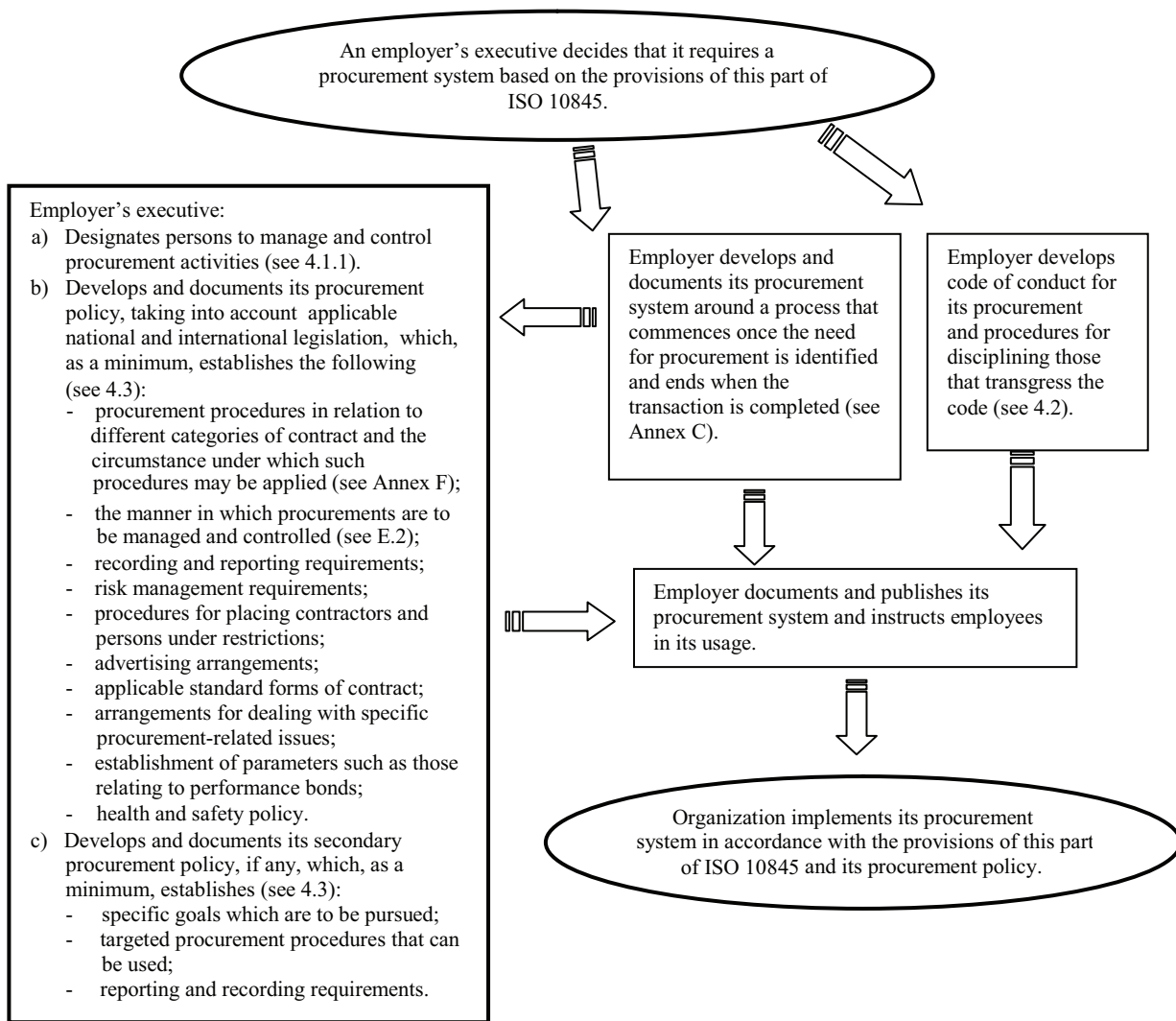
The fundamentals of a four-level performance framework for construction procurement are outlined in A.1, as well as the two approaches to the establishment of qualitative procurement system requirements (i.e. standard operating procedures), namely the guidelines approach and the standards approach.

In the guidelines approach, a number of committees are tasked to interpret the guidelines, apply the ethical principles and decide on what course of action to take, i.e. these committees adjudicate whether or not the process at any particular point satisfies the procurement system objectives and qualitative requirements in a manner consistent with the guidelines. On the other hand, in the standards approach, the evaluation necessary at each of the control points in the procurement process is limited to confirming compliance with the requirements established in this part of ISO 10845 and the employer's procurement policy (see 4.3).

A number of control points are identified in the generic procurement process outlined in Annex C (see Table C.2). These are

- a) obtain permission to start with the procurement process (Activity 1.3),
- b) obtain approval for procurement strategies that are to be adopted (Activity 2.5),
- c) obtain approval for procurement documents (Activity 3.2),
- d) confirm that budgets are in place (Activity 3.3),
- e) confirm a shortlist (Activity 3.8),
- f) confirm a recommendation in the tender-evaluation report (Activity 4.7),
- g) formally accept a tender offer (Activity 5.3), and
- h) capture contract completion or termination data (Activity 6.3).

Some of these control points relate to financial and business decisions that need to be taken.



NOTE The policy referred to in this part of ISO 10845 generally relates to choices made in the use of generic procedures and methods and the circumstances under which a certain procedure can be used.

**Figure E.1 — Establishing a procurement system in accordance with the requirements of this part of ISO 10845**

There are many ways in which to manage procurement processes and the integrity thereof. It is, however, recommended that employers put in place documentation-review teams, evaluation panels, acquisition committees and disposal committees.

Employees or committees can also be delegated authority to award a contract. Such delegations are usually based on financial value.

**E.2.2 Procurement-documentation review team**

A procurement-documentation review team can be appointed on a contract-specific basis or for a series of contracts.

The procurement-documentation review team should review the procurement document with a view to confirming that

- a) the procurement documents have been formatted and compiled in accordance with the requirements of the employer procurement policy (see 4.3),
- b) the selected form of contract is appropriate for the procurement that is contemplated,
- c) the relevant standard employer templates have been correctly applied,
- d) legal approval has been obtained for additional conditions of contract or the modifying of conditions of contract not provided in the approved standard templates,
- e) the selected contract data or tender data options are likely to satisfy procurement objectives and are likely to yield best-value outcomes,
- f) the scope of work adequately establishes what is required and the constraints to the manner in which the contract work is to be provided, and
- g) the risk allocations are appropriate.

The procurement-documentation review team should identify sections, if any, which require amendments or improvements, and grants the necessary approval, as relevant.

### E.2.3 Evaluation panels

Where quality is evaluated, at least three persons who are fully conversant with the technical aspects of the procurement should undertake such an evaluation. Quality should be scored in terms of the prompts for judgement, included in the procurement documents either individually and averaged or collectively, as appropriate (see 6.2.11.2.3).

The evaluation panel should

- a) require each of its members to declare their interest or confirm that they have no interest prior to commencing with the evaluation,
- b) determine whether or not submissions or tender offers were responsive to requirements established in the procurement documents,
- c) evaluate submissions strictly in accordance with the criteria and procedures established in the procurement documents,
- d) reduce tender offers to a comparative basis, taking into account, where appropriate, factors such as operating or life-cycle costs, particularly those relating to the plant tendered (total cost of ownership), factors of non-firm prices, all unconditional discounts and employer's risk,
- e) determine whether or not there are any grounds for disqualification,
- f) determine the acceptability of preferred tenderers or respondents (legal compliance, capability, capacity and commercial risk),
- g) identify and evaluate commercial risks, and
- h) prepare a tender-evaluation report, prequalification, shortlisting or approved listing report, as relevant, complete with recommendations, which clearly states the reasons for overlooking a tenderer or respondent.

The evaluation panel should record their scores for quality against each of the criteria during the process of evaluation, preferably with notes to substantiate the scores. Individuals should record their own markings on a

separate sheet. These documents should be placed on file as an audit trail leading up to the decision and may form the basis of any debriefing that takes place.

The evaluation panel should prepare evaluation reports in accordance with the employer's standard template.

The evaluation panel should develop a forecasted final cost which includes allowances for the effect on the likely final amount payable to the contractor in terms of the total of prices for scope changes, price adjustment, currency fluctuations, identified risks, and other contingencies and provide a build-up of this cost in the evaluation report.

All communications with tenderers during the procurement process to obtain information and clarifications should be made through the relevant procurement manager. Records of all communications in this regard should be made and retained for auditing purposes.

**NOTE** The forecasted final cost is the estimate of the likely cost of completing the contract, i.e. the approved amount. The employer's procurement policy can require that approval of the delegated authority that signed the contract be obtained to approve increases in the contract price above this amount.

#### **E.2.4 Acquisition committee**

The acquisition committees should be established to consider and approve certain strategic actions relating to procurement transactions.

The membership of the composition of an acquisition committee should be determined by the employer's executive and should meet whenever the chairman of such a committee deems necessary. A quorum for a meeting should be 50 % plus one of the members. The chairperson should submit any matter to a vote where there is a difference of opinion or when requested to do so by a member of the acquisition committee. The chairperson should have the casting vote in the event of there being equal votes.

Members of the acquisition committee who have a direct or personal interest in a matter that requires a decision should recuse themselves from all deliberations on the matter and in any decision taken on the matter by voting.

The acquisition committee should

- a) review the need for disposals and appoint a disposal committee to advise on how best to conduct a disposal,
- b) approve or refer back the items submitted for approval to the originator, as indicated in Table E.1, and
- c) review the reasons submitted for the use of the negotiated procedure in an emergency and either accept them or reject them.

The chairman of the acquisition committee can, where urgent decisions motivated and required by a project director or manager cannot be held over to the next meeting, circulate the papers to members and request that written votes be submitted by a deadline. A unanimous approval by a quorum of members made by the stipulated deadline can be deemed to be a resolution of the acquisition committee. Such decisions should be ratified at the next acquisition committee meeting.

Table E.1 — Typical actions to be taken by the acquisition committee

Item for approval	Actions
Placing of contractors under restrictions	Make a recommendation to place a person or contractor under restrictions.
Packaging plan for a project	Review the proposed overall project strategy including applicable secondary procurement policy, contract, pricing, targeting and procurement strategies. Approve or refer back.
Deviation in strategies from the approved packaging plan	Review changes in proposed strategies from the approved packaging plan. Approve or refer back.
Names of prequalified or shortlisted respondents or approved list of respondents	Review the evaluation report, verify compliance of the procurement process with the requirements of this part of ISO 10845 read in conjunction with the employer's policies, confirm the integrity of the process and the reasonableness and correctness of reasons provided for the elimination of respondents. Approve or refer back.
Award of contract	<p>Consider the report and recommendations (tender-evaluation report) of the evaluation committee and:</p> <ul style="list-style-type: none"> <li>— verify compliance of the procurement process with requirements,</li> <li>— confirm the integrity of the process, and</li> <li>— confirm the reasonableness and correctness of reasons provided for the elimination of tenderers or respondents.</li> </ul> <p>Consider commercial risks and identify any risks that have been overlooked and warrant investigation prior to taking a final decision.</p> <p>Consider the approval amount submitted in the tender-evaluation report (i.e. the forecasted final cost) and approve or do not approve the award of the contract.</p>
Use of a negotiation procedure	<p>Review motivation to proceed with the negotiation procedure. Approve or refer back.</p> <p>Provide a mandate for the award of the contract or not.</p> <p>Ratify the use of the procedure in an emergency.</p>
Issuing of task order in terms of a framework agreement	<p>Consider the recommendations of the request and, where appropriate, the tender-evaluation report, and</p> <ul style="list-style-type: none"> <li>— verify compliance of the procurement process with the established requirements,</li> <li>— confirm the integrity of the process, and</li> <li>— confirm the reasonableness of the recommendations.</li> </ul> <p>Consider commercial risks and identify any risks that have been overlooked and warrant investigation prior to taking a final decision.</p> <p>Consider the approval amount submitted in the tender-evaluation report and approve or do not approve the award of the contract.</p>
Waiving of penalties	<p>Consider the motivation for and the circumstances surrounding the waiver of penalties and low performance damages.</p> <p>Approve or do not approve waiver.</p>
Approval of increase in the total of prices beyond the sanctioned amounts	<p>Consider motivations and reasons for increase.</p> <p>Consider consequences on not approving the increase or alternative ways of dealing with the causes of the projected increase.</p>
Use of a disposal strategy	Review disposal strategy put forward by the disposal committee. Approve or refer back.

Table E.1 (continued)

Item for approval	Actions
Approval to award a contract or issue a task order	Where required, approve the award of the contract or the issuing of a task order.
Use of two-stage procedure	Review motivation for use of the procedure and approve or refer back.
Establish a framework agreement	Review motivation for establishing a framework agreement and approve or refer back.
Removal of a name from a pre-approved list	Review motivation for removing a name and approve or do not approve the removal of the name from the list.
Use of a disposal procedure	Review disposal procedure put forward by the disposal committee. Approve or refer back.
Increase in the final contract amount	Review motivation for increase in final contract which exceeds the approved amount by more than the percentage stipulated in the employer's policy. Seek alternatives and approve or do not approve cost overrun.

**E.2.5 Disposal committee**

A disposal committees should decide how best to undertake disposals. Disposal should be carried out only after the feasibility and desirability of using a number of alternative disposal strategies has been considered, including the transfer to another organization at market-related value, or free of charge, or recycling or reuse of component materials.

The reasons for adopting a disposal strategy should be recorded and forwarded to the acquisition committee for acceptance and auditing purposes prior to proceeding with such disposal.

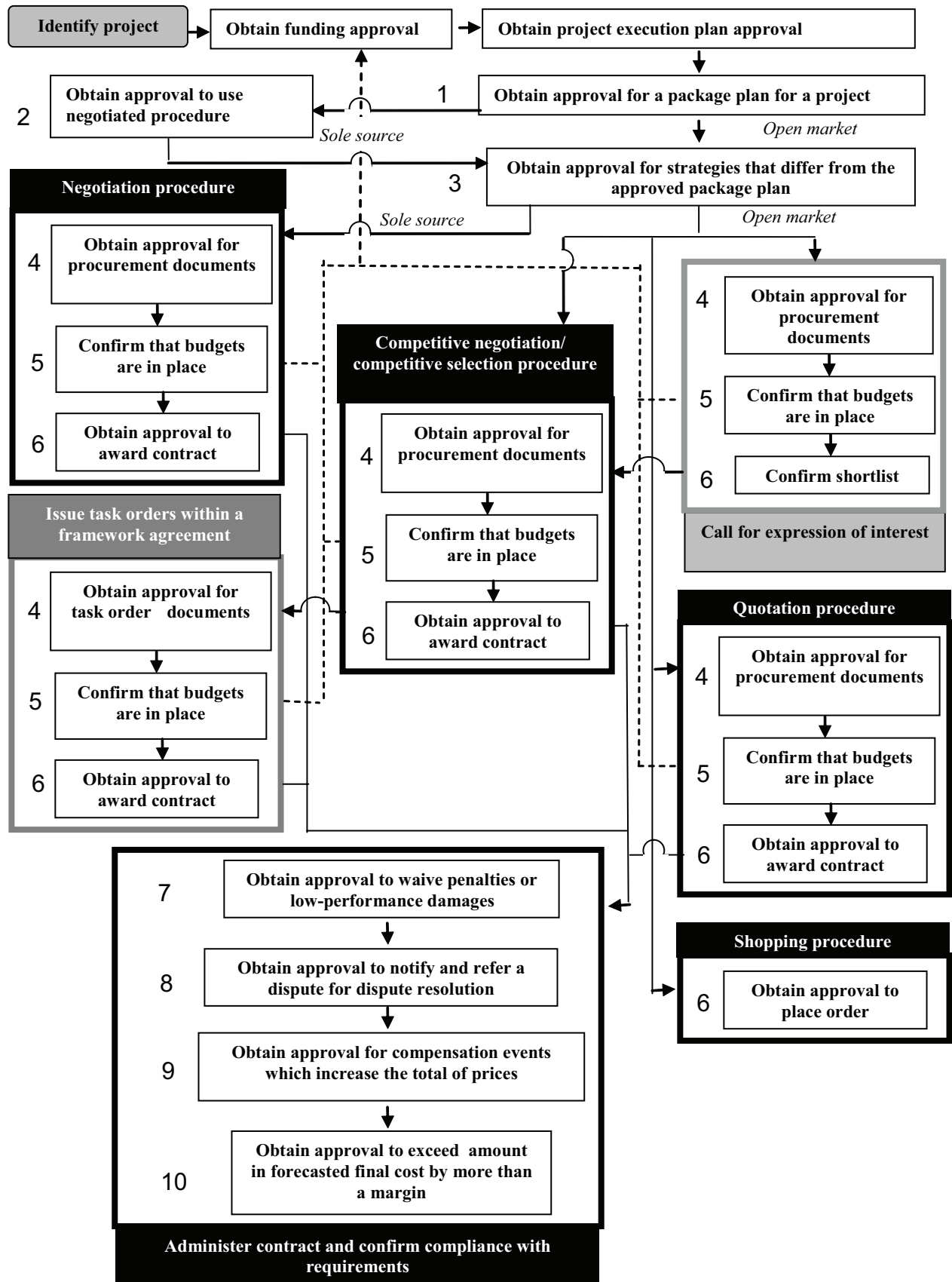
**E.2.6 Delegated authority to award a contract**

The delegated authority, unless acquisition committee approval is required to approve the award of a contract or a task order in relation to a framework agreement, should consider the report and recommendations of the evaluation panel and

- a) verify compliance of the established procurement process and procedures,
- b) confirm the integrity of the process,
- c) confirm the reasonableness and correctness of reasons provided for the elimination of tenderers, and
- d) approve the award of the contract.

**E.2.7 Procurement approval gates**

Figure E.2 illustrates the typical process flow for a project and the recommended approval gates to effectively manage procurement processes. The employer's financial units should confirm that the necessary budgets are in place. The other approvals should be provided by the procurement-documentation review team or the acquisition committee.



NOTE The approval gates are numbered.

Figure E.2 — Recommended procurement approval gates

## Annex F (informative)

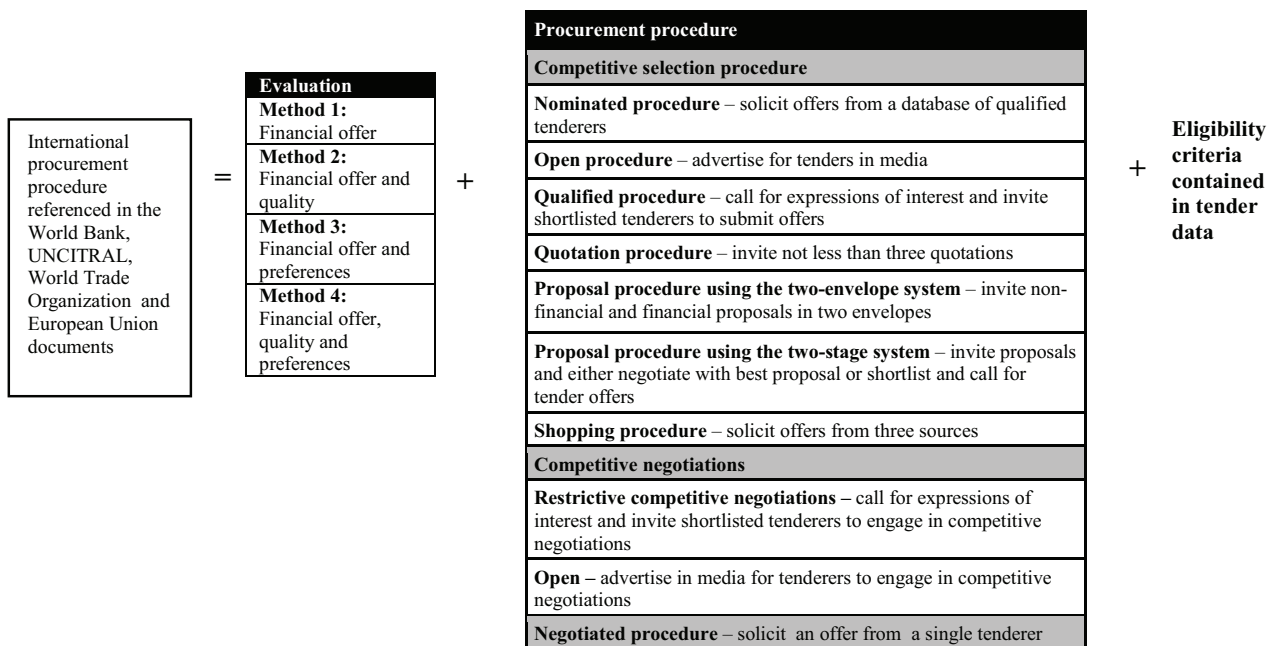
### Standard procurement procedures

#### F.1 Introduction

This part of ISO 10845 provides for

- a) 10 generic procurement procedures associated with procurements other than those relating to disposals by auction, framework agreements and electronic actions,
- b) four generic evaluation methods, and
- c) eligibility criteria which may form part of a procurement procedure.

Combinations of the generic procedures and methods, with or without eligibility criteria, can be used to simulate most international and national procurement procedures and methods applicable to goods, services and engineering and construction works, as illustrated in Figure F.1. They provide employers with a wide range of procedures and methods in order to attain best-value procurement outcomes (see Annex B).



**Figure F.1 — Relationship between international procurement procedures and the generic methods contained in this part of ISO 10845**

The World Bank, the World Trade Organization, the United Nations Commission on International Trade Law and the European Union promote a number of procurement procedures and a number of variations relating thereto. The typical mapping between these procedures and the approach advocated in this part of ISO 10845 is briefly outlined in Table F.1.



**Table F.1 — The relationship between international procedures and those contained in this part of ISO 10845**

International methods and procedures		Illustrative equivalent approach using this part of ISO 10845		
Descriptor	Description	Procurement procedure (see Table 2)	Standard tender-evaluation method (see Table 3)	Tender data (see ISO 10845-3)
<b>World Trade Organization's Government Procurement Agreement</b>				
Open tendering procedure	In this procedure, all interested tenderers may submit tender offers.  (This procedure may include a qualification procedure whereby all those that have expressed an interest to participate in a procurement and that are found to satisfy qualification criteria are allowed to tender.)	Open or qualified procedure	Method 1, 2, 3 or 4, depending upon the agreements that are in place	Tender data states which method is to be used.
Selective tendering procedure	In this procedure, the tenders are invited from a number of domestic suppliers and suppliers of other countries to ensure international competition in a fair and non-discriminatory manner.	Qualified or nominated procedure	Method 1, 2, 3 or 4, depending upon the agreements that are in place	
Limited tendering procedure	In this procedure, the open or selective tendering procedures do not apply.	Negotiated <sup>a</sup> , qualified, quotation or proposal procedure	Method 1, 2, 3 or 4, depending upon the agreements that are in place	
<b>UNCITRAL Model Law on Procurement of Goods, Construction and Services</b>				
Restricted tendering	In this procedure, a limited number of tenderers who are qualified are invited to submit tender offers.	Nominated or qualified procedure	Method 1 or 2, depending upon preferencing arrangements	Tender data states which method is to be used.
Two-stage tendering	In this procedure, tenderers are invited to submit proposals relating to the technical, quality or other characteristics of the procurement without a price. Negotiations are entered into with qualified tenderers concerning any aspect of their tenders. In the second-stage, tenderers whose tenders have not been rejected are invited to submit final tenders with prices in respect of a revised scope of work. Price, or any combination of price preference and quality may be used in the evaluation of tenders.	Proposal procedure using the two-stage system	Method 1, 2, 3 or 4, depending upon preferencing arrangements	Tender data states which method is to be used.
Request for proposals	In this procedure, expressions of interest in submitting a proposal are sought. Proposals are invited from those respondents who expressed an interest in submitting a proposal. The quality of the proposal is evaluated separately from and before the price proposal. Price, or any combination of price, preference and quality may be used in the evaluation of tenders.	Modified proposal procedure using the two-envelope system	Method 2 or 4, depending upon preferencing arrangements	Tender data states which method is to be used.

Table F.1 (continued)

International methods and procedures		Illustrative equivalent approach using this part of ISO 10845		
Descriptor	Description	Procurement procedure  (see Table 2)	Standard tender-evaluation method  (see Table 3)	Tender data  (see ISO 10845-3)
Competitive negotiation	In this procedure, negotiations are entered into with a sufficient number of suppliers or contractors to ensure effective competition. Any requirements, guidelines, documents, clarifications or other information relative to the negotiations that are communicated by the procuring entity to a supplier or contractor are communicated on an equal basis to all other tenderers engaging in negotiations. Following completion of negotiations, the remaining tenderers are invited to submit best and final offers with respect to all aspects of their proposals.	Proposal procedure using the two-stage system	Method 1, 2, 3 or 4, depending upon preferencing arrangements	Tender data states which method is to be used.
<b>International methods and procedures</b>		Illustrative equivalent approach using this part of ISO 10845		
Pre-qualification proceedings	In this procedure, tenderers are requested to pre-qualify. Tender offers are only solicited from pre-qualified tenderers.	Nominated or qualified procedure	Method 1, 2, 3 or 4, depending upon preferencing arrangements	Tender data states which method is to be used.
Request for quotations	In this procedure, quotations are solicited from at least three tenderers. The contract is awarded to the tenderer submitting the lowest financial offer.	Quotation procedure	Method 1 or 3, depending upon preferencing arrangements	Tender data states which method is to be used.
Single-source procurement	In this procedure, a proposal or price quotation from a single tenderer is solicited.	Negotiated procedure <sup>a</sup> Nominated procedure	—	—
Selection procedure without negotiation (services contract)	In this procedure, there is an establishment of a threshold with respect to quality and technical aspects. Only those tenderers who are rated at or above the threshold are considered. Quality is not considered any further in the evaluation of tender offers.	Nominated, qualified or open proposal (two-envelope) procedure	Method 1 or 3, depending upon preferencing arrangements	The tender data, in addition to stating which method is to be used, states that all the tenders that fail to achieve the threshold score for quality will be considered as being non-responsive.
Selection procedure with simultaneous negotiations (services contract)	In this procedure, negotiations are entered into with tenderers who have submitted acceptable proposals subject to the opportunity to participate in negotiations being extended to all participants. Following the completion of negotiations, all tenderers are requested to submit their best and final offer with respect to all aspects of their proposals. The evaluation of best and final offers is evaluated on a balance between price and the quality of the proposal.	Proposal (two-stage tendering system) or qualified procedure	Method 2 or 4, depending upon preferencing arrangements	

Table F.1 (continued)

International methods and procedures		Illustrative equivalent approach using this part of ISO 10845		
Descriptor	Description	Procurement procedure (see Table 2)	Standard tender-evaluation method (see Table 3)	Tender data (see ISO 10845-3)
Selection procedure with consecutive negotiations (services contract)	In this procedure, the tenderer who has the best rating in terms of the submissions made is invited to negotiate the price. Negotiations are terminated when it becomes apparent that the negotiations will not result in a contract. The process is repeated with the next highest rated submission and so on until a contract is concluded.	Proposal (two-stage tendering system) procedure	—	The tender data indicate that negotiations will be entered into with the tenderer that has the highest score for quality.
<b>World Bank</b>				
International competitive bidding	In this procedure, all eligible tenderers are provided with timely and adequate notification requirements and an equal opportunity to tender for the required goods or construction works.	Open procedure	Method 1 or 3, depending upon preferencing arrangements	Tender data state which method is to be used.
Two-stage (turnkey contracts or contracts for large, complex plants or works of a special nature)	In this procedure, the submission of unpriced technical proposals on the basis of a conceptual design or performance specifications are required, subject to technical as well as commercial clarifications and adjustments, followed by amended procurement documents and the submission of final technical proposals and priced tenders in the second stage.	Proposal procedure using two-stage tendering system	Method 1 or 3, depending upon preferencing arrangements	
Prequalification of bidders	In this procedure, prospective tenderers are invited to prequalify for the submission of tenders on the basis of the capability and resources of prospective tenderers to perform the particular contract satisfactorily, taking into account their experience and past performance on similar contracts, capabilities with respect to personnel, equipment and construction or manufacturing facilities, and financial position. Only those tenderers who qualify are invited to make tender submissions.	Qualified procedure	Method 1 or 3, depending upon preferencing arrangements	Tender data state which method is to be used.
Limited international bidding	In this procedure, the same is done as for international competitive bidding except that direct invitations are made without open advertisement.	Nominated procedure	Method 1 or 3, depending upon preferencing arrangements	Tender data state which method is to be used.
Shopping	In this procedure, there is a comparison of quotations usually obtained from at least three tenderers to assure competitive prices.	Quotation procedure	Method 1	—
Direct contracting	In this procedure, there is direct contracting without competition (single source).	Negotiated procedure <sup>a</sup>	—	—
Quality and cost-based selection (QCBS) (consultants)	In this procedure, there is a competitive process amongst shortlisted tenderers that takes into account the quality of the proposal and the cost of the services in the selection of the successful tenderer.  Tenderers are provided with an indication of the expected input of key professionals (staff time).	Nominated or qualified procedure <sup>b</sup>	Method 2 with a quality weighting of 0	Tender data state which method is to be used.

Table F.1 (continued)

International methods and procedures		Illustrative equivalent approach using this part of ISO 10845		
Descriptor	Description	Procurement procedure (see Table 2)	Standard tender-evaluation method (see Table 3)	Tender data (see ISO 10845-3)
Quality-based selection (QBS) (consultants)	In this procedure, the submission of either a technical proposal only (without the financial proposal), or both technical and financial proposals at the same time, but in separate envelopes, are required. The tenderer submitting the highest ranked proposal, where only technical proposals are requested, is invited to negotiate the financial proposal. If the two-envelope system is used, the financial proposals of only those respondents that provide acceptable proposals are opened and evaluated on the basis of a balance between quality and financial offer. The final contract is thereafter negotiated.  Tenderers are provided with an indication of the expected input of key professionals (staff time).	Proposal procedure either using the two-stage tendering system or the two-envelope system	Method 2 or 4, depending upon preferencing arrangements	Tender data states which method is to be used.
Selection under a fixed budget (consultants)	In this procedure, tenderers are provided with a scope of work and the available budget and are invited to provide their best technical and financial proposals in separate envelopes, within the budget. The quality of the technical offer is evaluated before opening the financial offer. Financial offers within the budget are evaluated. A contract is negotiated with the tenderer submitting the highest ranked technical offer.	Proposal procedure using the two-envelope system <sup>c</sup>	Method 2 or 4, depending upon preferencing arrangements	Tender data states which method is to be used and makes it an obligation for tenderers to submit tenders that do not exceed the budget.
International methods and procedures		Illustrative equivalent approach using this standard		
Least cost selection (consultants)	In this procedure, a minimum qualifying mark for quality is established. Proposals are invited in two envelopes from a shortlist. Technical envelopes are opened first and evaluated. Those securing less than the minimum are rejected, and the financial envelopes of the rest are opened in public. The tenderer with the lowest price is selected.	Proposal procedure using the two-envelope system	Method 1 or 3, depending upon preferencing arrangements	The tender data, in addition to stating which method is to be used, states that all the tenders that fail to achieve the threshold score for quality will be considered as being non-responsive.
Selection based on consultants' qualifications (consultants)	In this procedure, a call for expressions of interest and information on the consultants' experience and competence relevant to the assignment is made in order to establish a shortlist and to select the tenderer with the most appropriate qualifications and references. A contract is negotiated with a selected tenderer.	Select tenderer from electronic database or call for expressions of interest	—	The submission data states that a contract will be entered into with the tenderer who has the most appropriate qualifications and references.

Table F.1 (continued)

International methods and procedures		Illustrative equivalent approach using this part of ISO 10845		
Descriptor	Description	Procurement procedure (see Table 2)	Standard tender-evaluation method (see Table 3)	Tender data (see ISO 10845-3)
Single-source selection (consultants)	In this procedure, a suitable tenderer is identified and a contract is negotiated.	Negotiated procedure <sup>a</sup>	—	—
<b>European Commission</b>				
Open procedure	In this procedure, any tenderer may submit a tender in response to an invitation to do so.	Open procedure	Method 1 or 2	Tender data states which method is to be used.
Restricted procedure	In this procedure, any tenderer may request to participate and only those tenderers invited by the employer may submit a tender.	Qualified procedure	Method 1 or 2	Tender data states which method is to be used.
Negotiated procedure	In this procedure, the employer consults the tenderers of its choice and negotiates the terms of contract with one or more of these.	Negotiated procedure	—	—
Competitive dialogue	In this procedure, the tenderers submit a tender in response to enter into a competitive dialogue which is concluded when tenderers remaining in the dialogue are requested to submit best and final offers.	Open competitive negotiations	Method 2	Tender data states which method is to be used.
Design contest	In this procedure, the employer acquires, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition, with or without the award of prizes.	Proposal procedure using the two-stage system	Method 2 with a quality weighting of 0	Particulars of the competition are set out in the tender data.
<p><sup>a</sup> In the negotiated procedure, there will be no standard tender-evaluation method.</p> <p><sup>b</sup> The open procedure with eligibility criteria stated in the tender data can be used as an alternative.</p> <p><sup>c</sup> The open, qualified or nominated procedure can also be used, as a price is not a factor.</p>				

## F.2 Selecting a standard procedure

Procurements, other than those involving disposals, fall into one of the following categories or subcategories:

- a) services:
  - 1) professional,
  - 2) miscellaneous,
  - 3) term service, or
  - 4) hire of a plant and equipment;
- b) goods:
  - 1) contracts that require sophisticated arrangements for importation of substantial items of a plant, or
  - 2) provision on a local, off-the-shelf basis;
- c) engineering and construction works:
  - 1) small, low-risk works, or
  - 2) major, high-risk works.

Not all procurement procedures (see Figure F.1) are appropriate to all these categories and subcategories of procurement. Best value (see Annex B) should be the determinant in selecting a particular procurement procedure.

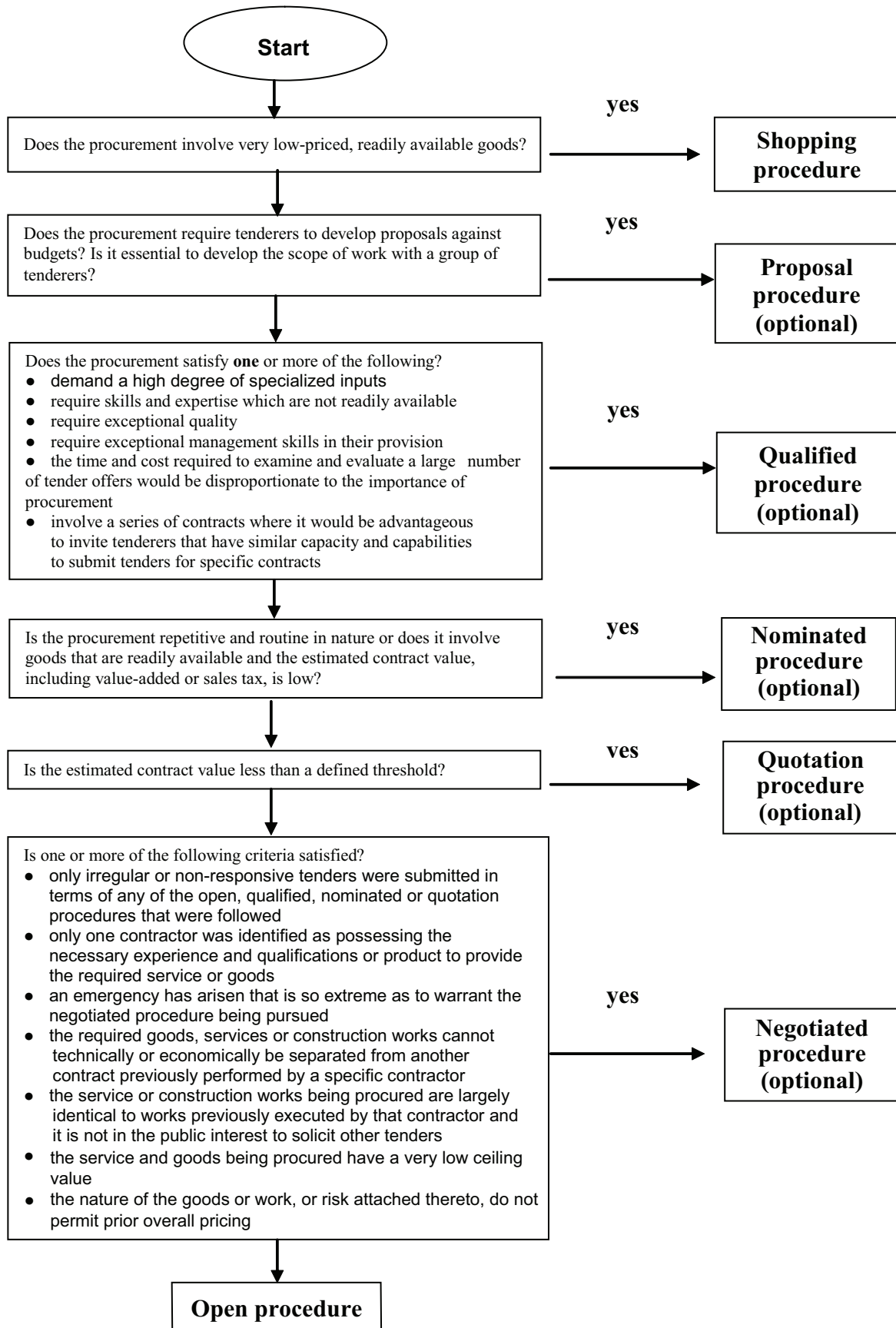
Figure F.2 shows the typical considerations associated with the selection of a specific procurement procedure.

## F.3 Negotiated procedure

The negotiated procedure should be used when

- a) an emergency has arisen that is so extreme as to warrant the negotiated procedure to be pursued,
- b) the required goods, services or engineering and construction works cannot technically or economically be separated from another contract previously performed by a specific contractor,
- c) only one contractor has been identified as possessing the necessary experience and qualifications or product for providing the required service, goods or engineering and construction works,
- d) services and goods have a very low ceiling value,
- e) the service or engineering and construction works being procured are largely identical to works previously executed by a specific contractor and it is not in the interest of the public or the employer to solicit other tender offers,
- f) a professional service contract has a relatively low ceiling value, which can be based on time and proven cost, in accordance with tariffs issued by statutory councils or national departments, or
- g) the nature of the engineering and construction works, goods, or services, or the risks attached thereto do not permit prior overall pricing.

**NOTE** Sole source or direct appointments are frequently encountered where an organization selects a professional service provider based on its knowledge of such provider's abilities, usually through previous working relationships.



NOTE If any doubt exists as to which procedure should be used in a given situation, or the organization does not have the capacity to perform a particular procedure, the open procedure should be adopted.

Figure F.2 — Typical considerations when selecting a specific competitive selection procedure

## F.4 Competitive selection procedures

### F.4.1 Nominated procedure

The nominated procedure should only be used for work that is of a relatively simple and routine nature or in respect of goods and services that are readily obtainable and the value of which is below a prescribed threshold. This procedure is appropriate only where an employer is required to make a large number of such procurements over a period of time and the cost of maintaining the list and administering the system in relation to the cost of advertising tenders and evaluating a possibly larger number of tenders, justifies this approach.

This procedure should not be used where the estimated contract value is above the threshold amount. Fairness and cost-effectiveness on higher-value procurements is arguable, particularly as the procedure solicits tenders from a restricted segment of the market and, as such, does not allow those tenderers to form joint ventures to comply with the requirements. It may be further argued that where the search criteria are linked to the geographic location of a contractor's office, such criteria become unfair as the value of the contract increases.

The procedure furthermore does not encourage contractors to develop relationships with an employer and reduces access to work opportunities. This can constrain or inhibit the growth of contractors.

### F.4.2 Open procedure

The open procedure is a suitable procedure for most procurements. Its use should, however, be questioned where

- a) the cost of advertising or the evaluation of a large number of tender submissions is disproportionate to the value of the work, or
- b) only one contractor has been identified as possessing the necessary experience and qualifications or product for providing the required service, goods or engineering and construction works.

### F.4.3 Qualified procedure

The qualified procedure should be used when

- a) a contract requires a high degree of specialized input or requires skills and expertise that are not readily available,
- b) a contract requires exceptional management skills or quality,
- c) a contract requires significant tenderer inputs in order to respond appropriately to requirements so that a financial offer can be determined,
- d) it is desirable, in a large programme, to link parcels of work to tenderers who have the appropriate capacity and capability to compete against each other,
- e) the time and cost required to examine and evaluate a large number of tender offers would be disproportionate to the procurement, or
- f) for practical reasons, it is necessary to limit the number of tender submissions that are received.

The strength of the procedure lies in the elimination of unlikely candidates for the award of the contract from the outset and to limit the number of tender submissions that require evaluation. Tenderers, particularly in high-value tenders or high-input tenders, e.g. design and construct, are more willing to submit competitive tenders in the knowledge that there are a limited number of competitors. In some large programmes, this procedure can be used to identify, at an early stage, those firms that are interested in tendering. Firms can be prequalified to undertake work commensurate with their capacity and capabilities and be invited in relatively



small numbers to submit tenders for work that is within the scope of their capacity and capabilities, in such a manner that all prequalified tenderers have an equal opportunity to access work opportunities.

The weakness of this procedure lies in the considerable administrative cost and time taken to shortlist tenderers, particularly where shortlisting is based on a points-scoring system.

It should be noted, however, that it is possible to prequalify tenderers in an open procedure, should eligibility criteria be established in the tender data. Where this is done, only eligible (prequalified) tenderers would be permitted to submit tenders, and evaluators would confirm eligibility to submit a tender before the evaluation of a tender.

Many professional service providers have the qualifications necessary to undertake most assignments. As a result, employers are faced with the challenge of deciding who is most or best qualified for the assignment. If the assignment is advertised for all interested parties to respond, evaluating requests for proposals can entail a considerable (and inefficient) use of time and effort for the owner. To prevent this waste of time and effort, employers should issue a call for expressions of interest to develop a shortlist of professional service providers who will be invited to submit tenders.

#### **F.4.4 Quotation procedure**

The quotation procedure should only be used on relatively low-value procurements.

#### **F.4.5 Proposal procedure**

##### **F.4.5.1 Two-envelope system**

The two-envelope system is recommended for use in service contracts where tenderers are required to develop and price proposals to satisfy a broad scope of work established by the employer. The benefits of this approach are that quality (technical submission) may be evaluated in the absence of a financial offer, i.e. a financial offer is only considered should the quality offered comply with the requirements.

The danger in this approach is that quality is scored on a comparative basis. Where tenderers are not given an indication of the project budget or the man-hours considered appropriate to execute the scope of work, there is a danger that a proposal that complies with the minimum requirements with a moderate financial offer is unfairly compared against a proposal that provides “all the bells and whistles” with an unacceptably high price and is eliminated from consideration. It is therefore recommended that, where this procedure is used, the project budget or the estimated time inputs are indicated to tenderers so that proposals can be compared with each other.

##### **F.4.5.2 Two-stage tendering system**

The two-stage tendering system is appropriate only where the employer is not really sure as to what it requires or has extreme difficulty in expressing its requirements. The procedure allows the scope of work to be developed together with tenderers.

#### **F.4.6 Shopping**

This procedure should only be used in respect of very low-value purchases. It provides a simple means of obtaining off-the-shelf items. The requirement for the obtaining of a written offer provides an audit trail.

### **F.5 Competitive negotiations**

This procedure should be used where tenderers need to discuss aspects of the service, goods or construction which might influence their financial and non-financial proposals. This procedure is well suited to situations in which tenderers might benefit from discussions with designers before finalizing their proposals and turnkey developments.

This procedure should be used where

- a) it is not feasible to formulate detailed specifications for the work or to identify the characteristics of goods or engineering and construction works to obtain the most satisfactory solution to procurement needs,
- b) there are various possible means of satisfying procurement needs,
- c) the technical character of the goods or engineering and construction works or nature of the services warrants the use of competitive negotiations to realize the most satisfactory solution to procurement needs,
- d) the purpose of the contract is research, experiment, study or development,
- e) all the tenders received in a competitive selection procedure are non-responsive and the calling for fresh tenders is likely to result in a similar outcome, or
- f) extreme or emergency situations arise from
  - 1) human injury or death,
  - 2) human suffering or deprivation of human rights,
  - 3) serious damage to property or financial loss,
  - 4) livestock or animal injury, suffering or death,
  - 5) serious environmental damage or degradation, or
  - 6) interruption of essential services.

### F.6 Eligibility criteria

Eligibility criteria can also form part of a procurement procedure. Eligibility criteria in the form of attaining a minimum quality score can provide a simple and cost-effective alternative to the scoring of quality in tender submissions in professional service contracts. In this procedure, the scoring of quality serves merely to establish that the tenderer is capable of providing the service and to reject the tender submissions of those who fail to attain the threshold score. Thereafter, the tender offers can be evaluated on the basis of financial offer or financial offer and preference.

## Annex G (informative)

### Targeted procurement procedures

#### G.1 The use of procurement to achieve social and development policy objectives

Public procurement, because of its nature and size, can have a significant impact on social and economic development. Governments in both developed and developing countries have responded to the use of procurement to attain policy objectives in a number of ways, ranging from making it mandatory for officials to use procurement to attain socio-economic objectives to ruling out its use for such purposes. Others allow officials discretion in the use of procurement for such purposes. Certain international trade agreements limit the use of procurement to promote policy objectives by placing prohibitions on discrimination and other restrictive trade measures.

The public procurement system has typically been used for several decades to achieve the following five principle domestic (as distinguished from foreign policy), socio-economic or political functions, in addition to obtaining the required goods, services or engineering and construction works:

- a) to stimulate economic activity;
- b) to protect national industry against foreign competition;
- c) to improve the competitiveness of certain industrial sectors;
- d) to remedy regional disparities;
- e) to achieve certain more directly social policy functions, such as to
  - 1) foster the creation of jobs,
  - 2) promote fair labour conditions,
  - 3) promote the use of local labour,
  - 4) prohibit discrimination against minority groups,
  - 5) improve environmental quality,
  - 6) encourage equality of opportunity between men and women, or
  - 7) promote the increased utilization of the disabled in employment.

Secondary or non-commercial objectives can be categorized in terms of obligations placed on tenderers or successful contractors, as tabulated in Table G.1. The focus of each of the four types described in Table G.1 is different. The Type I and II categories (structure or internal workings of the contracting entity) typically focus on the structure and internal workings within the contractor's organization immediately before the commencement of the contract and for the duration of the contract. The Type III category (outsourcing), on the other hand, focuses on undertakings that targeted enterprises or labour (or both) will be engaged in economic activities in the performance of the contract and the monitoring thereof, while Type IV (nominated deliverables) uses procurement to leverage socio-economic benefits.

Several models for public-sector procurement interventions, based largely on country-specific procurement regimes and requirements, have evolved. These can be broadly categorized as falling into one of five generic schemes indicated in Table G.2, which, in turn, can be subdivided into one of the 10 implementation methods identified in Table G.3.

**Table G.1 — Classification of secondary objectives in terms of obligations placed on tenderers or contractors**

Number	Type Descriptor	Obligation placed on tenderer or successful contractor	Examples of obligations
I	Structure of the contracting entity	Comply with nominated requirements to be eligible for the award of a contract or a score in the evaluation of tender offers	Have a company profile (e.g. equity ownership/control/ operational responsibilities/size) that satisfies prescribed criteria.
II	Internal workings of the contracting entity	Comply with nominated requirements to be eligible for the award of a contract or a score in the evaluation of tender offers, or undertake to implement certain work-place actions during the performance of a particular contract	<p>Have a company staffing structure that satisfies prescribed criteria.</p> <p>Establish and maintain a drug-free work place.</p> <p>Be in good standing with tax-collection authorities.</p> <p>Implement a policy and programme of equal employment opportunity on the grounds of race/gender/disability.</p> <p>Provide conditions of employment more favourable than that provided for in the law. Embrace environment-friendly technologies or practices (or both).</p>
III	Outsourcing	Provide business or employment opportunities (or both) to target groups through activities directly related to a particular contract	<p>Subcontract a portion of the contract to targeted enterprises.</p> <p>Engage targeted enterprises or targeted labour (or both) in the performance of the contract.</p> <p>Enter into a joint venture with targeted enterprises at main or subcontract level.</p>
IV	Nominated deliverables	Undertake to provide specific deliverables, which might be related or unrelated to a particular contract	<p>Participate in a country's economy to the extent that the sum total of all commercial or industrial activity equals or exceeds a monetary value over a period of time.</p> <p>Develop human resources, e.g. by assisting in tertiary and other advanced training programmes, in line with key indicators.</p>

Table G.2 — Generic schemes for using procurement to attain socio-economic objectives

Scheme type	Description
Reservation	<p>Contracts, or portions thereof, are reserved for contractors who satisfy certain prescribed criteria, e.g. contractors who</p> <ul style="list-style-type: none"> <li>— are owned, managed and controlled by a target population group,</li> <li>— are classified as being a small business enterprise,</li> <li>— have equity ownership by companies with prescribed characteristics, or</li> <li>— are joint ventures between non-targeted and targeted joint ventures.</li> </ul>
Award criteria	<p>Although all contractors who are qualified to undertake the contract are eligible to tender, tender-evaluation points are granted to those contractors who satisfy prescribed criteria or who undertake to attain specific goals in the performance of the contract.</p>
Incentives	<p>Financial incentives are offered to contractors should they attain key performance indicators in the performance of a contract relating to policy objectives.</p>
Indirect	<p>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 parallel to the procurement. For example, specifications may require that work associated with the contract be undertaken in a manner that supports policy objectives or offsets are committed to in order to secure the contract [i.e. undertakings (such as the provision of bursaries, participation in an economy, the provisions of community centres, etc.) that are unrelated to the procurement itself].</p>
Supply side	<p>Supply-side measures are provided to targeted enterprises to overcome barriers to competing for tenders or for participating in procurements within the supply chain, e.g. access to bridging finance, securities, mentorship, capacitation workshops, etc.</p>

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Table G.3 — Methods used to implement policies relating to secondary objective

Scheme Type	Methods		Actions associated with the method
Reservation	1	Set asides	Allow only enterprises that have prescribed characteristics to compete for the contracts or portions thereof, which have been reserved for their exclusive execution.
	2	Qualification criteria	Exclude firms that cannot comply with a specified requirement or standard relating to the policy objectives from participation in contracts other than those provided for in the law.
	3	Contractual conditions	Make policy objectives a contractual condition, e.g. a fixed percentage of the work shall be subcontracted out to enterprises that have prescribed characteristics, or a joint venture shall be entered into.
	4	Offering back	Offer tenderers that satisfy criteria relating to policy objectives an opportunity to undertake the whole or part of the contract if that tenderer is prepared to match the price and quality of the best tender received.
Award criteria	5	Weighting of objectives at the shortlisting stage	Limit the number of tenderers who are invited to tender on the basis of qualifications and give a weighting to policy objectives along with the usual commercial criteria at the shortlisting stage.
	6	Award criteria (tender-evaluation criteria)	Give a weighting to policy objectives along with the usual commercial criteria, such as price and quality, at the award stage.
Incentives	7	Incentive payments	Incentive payments are made to contractors should they achieve a specified target (key performance indicator) in the performance of a contract.
Indirect	8	Product/service specifications	State requirements in product or service specifications, e.g. by specifying labour-based construction methods.
	9	Design of specifications, contract conditions and procurement processes to benefit particular contractors	Design specifications or set contract terms (or both) to facilitate participation by targeted groups of suppliers.
Supply side	10	General assistance	Provide support for targeted groups to compete for business, without giving these parties any favourable treatment in the actual procurement.

Concerns regarding the undermining of primary procurement (good governance) objectives are invariably expressed whenever procurement is used as an instrument of socio-economic policy. Typically, the concerns raised revolve around the risk of the following occurring during policy implementation:

- a) loss of economy and inefficiency in procurement;
- b) the exclusion of certain eligible tenderers from competing for contracts;
- c) the reduction in competition;
- d) unfair and inequitable treatment of contractors;
- e) lack of integrity or fairness;
- f) lack of transparency in procurement procedures;
- g) failure to achieve secondary procurement objectives through the procurement itself.

It should be noted that these risks relate to the compromising of a procurement system's good governance objectives.

Type IV (nominated deliverables) secondary objectives that are unrelated to a particular contract (offsets) are extremely difficult to implement in a manner which does not violate most of the above-mentioned concerns, particularly if obligations extend beyond the procurement contract period.

Type II (internal workings of the contracting entity) can be implemented on a compliance or non-compliance basis. Secondary objectives that require implementation on a basis other than this can be implemented in the same manner as Type I and Type III objectives. Type IV secondary objectives that relate specifically to contracts can be similarly implemented either on a compliance or non-compliance basis or in the same manner as Type I and Type III objectives.

Risk assessments performed on the implementation of a secondary procurement policy which has objectives that can be realized by creating a demand for services and goods from, or to secure the participation of, targeted enterprises and targeted labour, using the first nine methods listed in Table G.3, indicate that the methods which relate to weighting of objectives at the shortlisting stage and award (tender evaluation) criteria (methods 5 and 6) and incentives (method 7), whilst not guaranteeing that socio-economic objectives will be met, are the methods that are most likely not to compromise the requirements for a system which has fair, equitable, transparent, competitive and cost-effective good governance goals, if appropriately managed. Furthermore, method 3 (contractual conditions), method 8 (product/service specification), and method 9 (design of procurement to benefit particular contractors) have the potential under certain circumstances to satisfy good governance objectives, while method 1 (set asides), method 2 (qualification criteria), and method 4 (offering back) are most likely to compromise such objectives.

## **G.2 Promoting policy objectives that relate to the targeting of enterprises and labour**

### **G.2.1 Introduction**

Disparities in income and business activity are frequently found between different sectors of society within a nation. This is often a result of the direct or indirect denial of access to employment and business opportunity, based on factors such as gender, race, religion, ethnicity, age, disability and locality. The resulting disparities in rates of employment and distribution of wealth are frequently of concern to governments.

Poverty alleviation, job creation and sustainable local development are generally regarded as being the responsibility of government. Governments are, accordingly, often called upon to address unemployment and underemployment in a visible manner, particularly where growth in the economy is slow or negative.

Secondary procurement objectives relate to objectives additional to those associated with the immediate objective of the procurement itself. Such objectives may be framed around both social and economic goals. Social goals include the redefining of business ownership patterns and the composition of the workforce, the distribution of employment opportunities and the relief of poverty. Economic goals include the redefining of the distribution of the size of businesses, increased use of local resources and job creation (i.e. the increase in the total volume of employment generated per unit of expenditure).

### **G.2.2 Economic empowerment**

#### **G.2.2.1 General**

Economic empowerment of marginalized or disadvantaged communities consists of two thrusts, namely employee empowerment and business empowerment. Ideally, economic empowerment interventions should strive for the removal of disparities in employment practices and business ownership in a country or a region.

#### **G.2.2.2 Employee empowerment**

In general, employee empowerment should be pursued through legislative instruments and business empowerment through procurement practices and internal programmes within companies. Employment equity should be linked to procurement only in instances where it can be adequately defined, quantified, measured, verified and audited, and be implemented in a manner in which companies of different sizes are equitably treated.

Frequently, legislation covers non-discriminatory employment practices. There is, in such situations, little or no purpose in rewarding tenderers for embracing non-discriminatory practices, which are, in any event, required by law. This should preferably be dealt with as a requirement relating to the eligibility of a tenderer for an award of a contract.

**NOTE** The redefinition of the staff complement of smaller companies to increase the representation of disadvantaged communities is more difficult to achieve than is the case in medium- and large-sized companies which have higher staff turnovers.

### **G.2.2.3 Business empowerment**

Business empowerment is about independence and the ability to make decisions without being unduly influenced by any financial institution. As such, it includes changing patterns of the ownership of capital and management in general. Business empowerment has three basic elements, namely equity, control, and operational responsibility. Two or more of these basic elements should be present for business empowerment to occur. Accordingly, there are four possible categories of business empowerment (see Figure G.1):

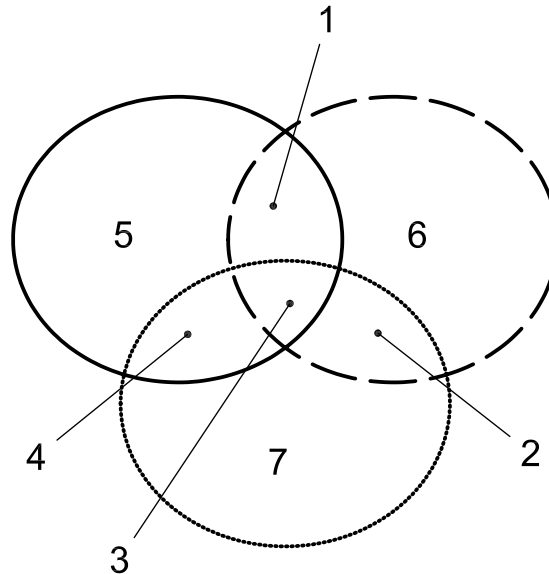
- a) ownership (equity and control);
- b) small and medium enterprise (equity, control and operational responsibility);
- c) corporate transformation level (control and operational responsibility);
- d) “green field” or new enterprise level (equity of operational responsibility).

Real empowerment occurs when individuals have control, especially insofar as financial matters are concerned. Without control, even with equity, genuine empowerment will not happen. The objective of an empowerment programme should be an increase in both ownership and participation by the target group in control and operational responsibility, so that targeted enterprises achieve the ability to make business decisions without undue dependence on financial institutions.

Genuine empowerment should result in sufficient income (profit) being derived to allow the accumulation of significant financial resources and the growth of the business. The business component of an empowerment programme should be able to promote income generation, the creation of wealth, independence, operational control, decision making, risk taking, sustainability, success and the ability to eventually compete effectively with established businesses.

By-products of an empowerment programme include job creation, skills development and the broadening of the tax base.





### Key

- 1 “green field” or new enterprise level
- 2 ownership level
- 3 small and medium enterprise level
- 4 corporate transformation level
- 5 operational responsibilities
- 6 equity

**Figure G.1 — The empowerment model**

## G.2.3 Creation of new jobs and the intensification of labour absorption

### G.2.3.1 General

Secondary procurement policies can facilitate the generation of jobs by

- a) ensuring that the foreign content in contracts involving goods, services and engineering and construction works is minimized,
- b) encouraging the substitution of labour for capital,
- c) supporting the use of labour-based technologies and methods of construction and manufacture which utilize a higher degree of labour input than is the case for conventional technologies, or that are well suited for implementation by small-scale enterprises (see ISO 10845-8), and
- d) encouraging and developing small-scale enterprises, particularly those which implement employment-intensive practices and labour-based technologies and methods of construction and manufacture.

### G.2.3.2 Choices in technologies and methods

Choices in technologies and construction and manufacturing methods determine, to a large extent,

- a) the number of employment opportunities generated for a particular activity or process,
- b) where employment opportunities are located, and
- c) what scale or types of enterprises (or both) can perform contracts.

Appropriate changes in methods and technologies in construction and the manufacture of materials can yield the greatest increases in the number of employment opportunities generated per unit of expenditure. This requires well-established enterprises to reduce their reliance on capital-intensive technologies. Employment-intensive methods and technologies are usually readily implemented by small-scale enterprises who, being small, have limited access to capital and invariably operate and conduct their businesses in a more employment-intensive fashion.

### G.2.3.3 Special considerations

The choice of technology for construction work is generally made during the basic design phase, whereas the method of manufacture of goods is usually decided upon during the implementation phase. Any cost premiums to be borne in respect of employment-intensive practices should be determined before the award of contracts, since they might not be considered acceptable. A distinction should be made between the targeting of local labour, in order to stimulate local economies and the targeting of local labour in order to increase the employment opportunities generated per unit of expenditure (see also ISO 10845-8).

NOTE Globally, small and micro-enterprises are increasingly seen as the creators of new jobs and are regarded as being more efficient in the creation of jobs than large-scale companies for a given output in an economy. They are also often the vehicles by which the lowest-income people in society gain access to economic opportunities.

### G.2.4 Engaging marginalized communities in infrastructure projects

The targeting of communities in construction projects is frequently linked to employment-intensive works and results in a purposeful flow of income to the poorest sectors of communities. Secondary procurement policies enable communities to participate in normal construction projects in a number of ways without special programmes having to be created. The resources of targeted communities (labour, enterprises, materials and equipment) can be targeted in any contract for the provision of infrastructure without having to restructure projects to accommodate community contracting, or having to channel funds through the communities.

It should be noted, with regard to employment sustainability, that work on infrastructure construction is, by its nature, temporary. It is also self-targeting towards the poorest members of society, because unskilled workers in the construction industry are paid low wages. Workers with skills tend to go into other kinds of work and leave the temporary jobs in construction to those with fewer options, i.e. the unskilled. Nevertheless, although the construction jobs created are not permanent, the volume of work available to the poor is considerably increased.

## G.3 Targeted procurement procedures

### G.3.1 Introduction

Economic activity is necessary to create employment and business opportunities in a community. Both the private and public sectors can use the procurement of capital projects and consumption to achieve objectives relating to the creation of employment and business opportunities in targeted communities. The use of procurement as an instrument of social and economic policy should, however, be constantly monitored to ensure that policy objectives are met. Furthermore, the procurement itself should be structured in a manner which does not

- a) impose an undue administrative burden on the employer,
- b) create unfair competition within sectors of the economy,
- c) compromise value for money, or
- d) compromise the efficiency and effectiveness of delivery.

Targeted procurement procedures enable an employer to effectively and efficiently implement procurement intended, amongst other things, to create employment and business opportunities for targeted labour and enterprises, respectively, in a measurable, quantifiable, verifiable and auditable manner. See Table G.4.

The targeted procurement procedure that is adopted for any programme or project is dependent upon the specific secondary procurement policy objectives and the procurement regime within which it is implemented.

EXAMPLE Secondary procurement policy for poverty alleviation in the provision of civil engineering infrastructure.

**Table G.4 — Creation of short-term employment opportunities for unemployed persons**

Focus	Creation of short-term employment opportunities for unemployed persons
Key performance indicators:	Expenditure on unemployed people expressed as a percentage of the total cost of construction.
Target:	At least 30 % of the cost of construction represents the expenditure on unemployed persons.
Direct impact of procurement policy:	Provide incentive through award criteria in the form of a preference and incentive payments to contractors to employ unemployed people, and select construction work methods and technologies which promote the creation of employment for unemployed persons.
Indirect effects of procurement policy:	Unemployed unskilled and semi-skilled workers shall receive some training. Money will flow from the project into the local community and households.
Focus:	Creation of short-term employment opportunities for unemployed persons.
Strategy for implementation:	<p>Policy for the employment of temporary (contract-specific) workers, acceptable to stakeholders, shall be put in place to establish conditions under which temporary workers will be employed.</p> <p>A mechanism in terms of which contractors can define the portion of the excavation works which will be excavated by hand methods shall be included in procurement documents in line with that described in Annex H.</p> <p>Tenderers may choose which road-construction technology they wish to make use of.</p> <p>A contract-participation goal of 10 % shall be set in respect of each contract.</p> <p>No tender-evaluation points shall be granted in respect of contract-participation goals less than 10 %. Tenderers will be granted preferences in proportion to their tendered contract-participation goal with the maximum points being awarded to the tenderer with the highest tendered contract-participation goal.</p> <p>or</p> <p>Incentive payments of up to 3 % of the contract value shall be made available for the attainment of key performance indicators relating to contract-participation goals in excess of 35 %.</p>
Target group:	Unemployed persons who are employed as local labour on the project.
Actions:	<p>Gather statistics on employment generated in different types of civil engineering infrastructure projects.</p> <p>Review labour-based technologies to enable tenderers to exercise a wide choice of technologies in contracts.</p> <p>Gather data on household incomes and profile of unemployed persons in specified areas.</p>
Data capture:	<p>Capture the following data upon award and termination or completion of the contract in respect of</p> <ul style="list-style-type: none"> <li>— choices/options selected,</li> <li>— goals tendered and achieved,</li> <li>— incentive payments offered in relation to a contract-participation goal, incentive payments paid in respect of the achievements and contract-participation goal achieved,</li> <li>— price (successful tenderer and lowest acceptable tender used for evaluation purposes),</li> <li>— number of people employed and duration of employment.</li> </ul>

Table G.4 (continued)

Focus	Creation of short-term employment opportunities for unemployed persons
Monitoring for contract compliance:	Monitor for compliance with conditions attached to the granting of preferences and incentive payments.
	Monitor the attainment of contract-participation goals in terms of Annex E of ISO 10845-8.
Key performance indicators:	Expenditure on unemployed people expressed as a percentage of the total cost of construction.
Target:	At least 30 % of the cost of construction represents the expenditure on unemployed persons.
Evaluation:	<p>Calculate the quantum of income earned by unemployed persons from the following formula:</p> $\frac{\sum (\text{contract participation goals} \times \text{contract value})}{\sum (\text{contract a value} \times 100)}$ <p>Establish, with respect to unemployed persons, the cumulative</p> <ul style="list-style-type: none"> <li>— person-days of employment created, i.e. the number of people who worked on a project × the number of days each person worked,</li> <li>— job opportunities, i.e. paid work created for an individual for any period of time, irrespective of how many periods of employment a person has, and</li> <li>— demographic characteristics of workers, i.e. the number of workers that fall within the following categories: <ul style="list-style-type: none"> <li>— youth (i.e. 18 to 35 years of age),</li> <li>— women,</li> <li>— people with disabilities.</li> </ul> </li> </ul>
	Produce reports on a quarterly basis which provide details at both project and programme level.
Review:	The policy outcomes, strategy used to achieve policy outcomes, and the selected technologies in specific projects will be reviewed on an annual basis with a view to improving the performance in subsequent years.

### G.3.2 Basic techniques and methods

#### G.3.2.1 General

There are a number of techniques and mechanisms associated with targeted procurement procedures, all of which are designed to promote or attain the participation of targeted enterprises and targeted labour in contracts. These procedures relate to the

- a) measurement and quantification of the participation of target groups,
- b) definition and identification of target groups,
- c) unbundling of contracts,
- d) award criteria,
- e) provision of incentives for the attainment of key performance indicators in the performance of the contract,
- f) creation of contractual obligations to engage target groups in the performance of the contract,
- g) provision of third-party management support,

- h) requirements for minimum prescribed levels of equity in the tendering entity,
- i) acceleration of targeted enterprises in rotating electronic databases,
- j) evaluation of procurement outcomes.

### **G.3.2.2 Measurement and quantification of the participation of target groups**

#### **G.3.2.2.1 Guiding principles**

The participation of targeted enterprises and targeted labour should, as far as possible, be measured in monetary terms, as monetary transactions can normally be verified and audited. The participation of

- a) targeted labour can be readily measured in terms of the amounts spent on wages and allowances paid to such labour,
- b) targeted enterprises can generally be measured in terms of receipts for work or services performed or for the provision of goods for a contract,
- c) targeted enterprise partners in a structured joint venture (see ISO 10845-5 and ISO 10845-6) can be measured in terms of the portion of the financial value of the contract for which such an enterprise is responsible.

Accordingly, the participation of a targeted enterprise or targeted labour (or both) may be defined, measured, quantified, verified and audited, should a contract-participation goal be defined as the value of goods, services and engineering and construction works for which the contractor contracts targeted enterprises or targeted labour expressed as a percentage of the contract amount.

#### **G.3.2.2.2 Standards**

Standards can be developed to

- a) specify the general requirements for engaging target groups on a contract,
- b) define a contract-participation goal or a contract, set out the methods by which the contract-participation goal will be measured, quantified and verified in the performance of the contract, and
- c) describe the means by which progress towards the achievement of the contract-participation goal will be monitored and compliance with requirements will be determined.

ISO 10845-5, ISO 10845-6, ISO 10845-7 and ISO 10845-8 standardize the manner in which targets (contract-participation goals) are set, measured and monitored for compliance relating to the participation of targeted enterprises, targeted partners in joint ventures, targeted enterprises and targeted labour (local resources) and targeted labour (in contracts).

### **G.3.2.3 Definition and identification of target groups**

#### **G.3.2.3.1 General**

The definition and identification of targeted enterprise and targeted labour is fundamental to the success of any secondary procurement policy.

#### **G.3.2.3.2 Enterprises**

Enterprises are commonly targeted on the basis of factors such as

- a) locality (domicile),

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- b) status as a small, medium, or micro-enterprise,
- c) ownership, operational responsibilities or control, (or a combination thereof), by marginalized population groups; or
- d) any combination of a), b) and c).

### G.3.2.3.3 Labour

Labour is commonly targeted on the basis of factors such as

- a) gender, race and ethnicity,
- b) residency,
- c) age,
- d) disability,
- e) period of unemployment, and
- f) level of skill (wage levels).

NOTE Further guidance on formulating these definitions and verifying the bona fides of target groups can be found in ISO 10845-5, ISO 10845-6, ISO 10845-7 and ISO 10845-8, depending upon the type and intended usage of such definitions.

### G.3.2.4 Unbundling of contracts

Small-scale enterprises can participate in procurement in one of two ways. They can either contract directly with an employer, or act as a subcontractor, supplier or service provider to a main contractor in the delivery chain.

Employers can unbundle (break down) projects into smaller contracts to increase the participation of small and medium enterprises. The strength of this approach is that it provides more opportunities to small and very small contractors to perform contracts as main contractors.

The breaking down of contracts into smaller main contracts is not always justifiable, particularly for engineering and construction works. The reasons for this include division of responsibilities, interdependence of activities, programming, duplication of establishment charges and under-utilization of resources. The breaking down of a contract into smaller main contracts in order to accommodate the aspirations of smaller firms can, also, have a negative impact on cost and time, and place a considerable administrative burden on employers.

Alternatively, ISO 10845-5, ISO 10845-6 or ISO 10845-7 can be used to require main contractors to “unpack” their contracts into smaller contracts and to procure the services of small businesses to perform such contracts and to administer them and, in so doing, remove this burden from employers. This may be achieved by establishing contractual obligations for the attainment of a specified contract-participation goal in accordance with the provisions of one of these parts of ISO 10845.

Main contracts also offer an effective means for establishing new business linkages, particularly between large and small businesses.

NOTE 1 Minimum contract-participation goals can be set for a contract. Contractors offered tender-evaluation points or incentive payments if they elect to attain a higher contract-participation goal than they are contractually obliged to achieve.

NOTE 2 G.3.2.7 outlines a procedure whereby the contractor is obliged to call for tenders when subcontracting work. This allows smaller contractors to compete for subcontracts in the same manner that they would compete for main contracts. However, upon award of the contract, they become domestic subcontractors and not nominated subcontractors.

### G.3.2.5 Granting of tender-evaluation points

#### G.3.2.5.1 General

Submissions in response to calls for expressions of interest or an invitation to tender may be evaluated in terms of tender-evaluation criteria (see 6.2.6). Each of these criteria is weighted in the evaluation of submissions. The total score provides the ranking for the shortlisting of respondents or the award of the contract. The granting of tender-evaluation points permits tenderers to compete on the basis of providing the required goods, services or engineering and construction works, in a manner that promotes stated social and developmental objectives whilst capping the premium payable. Market forces ultimately dictate the degree to which contractors can meet such objectives in the most cost-effective manner.

Employers may offer tender-evaluation points in the shortlisting of respondents where the qualified or two-stage procedures are used or in the evaluation of tenders using procedures provided for in this part of ISO 10845 (or both). Such tender-evaluation points should be stated in the submission data and tender data prepared in accordance with the requirements of ISO 10845-4 and ISO 10845-3, respectively. The conditions attached to evaluation points, the claim for tender-evaluation points and the sanctions relating to a breach of such conditions should be included in a tender-evaluation schedule which forms part of the scope of work of a contract.

#### G.3.2.5.2 Types of contract-specific goals

Contract-specific goals relating to business and employment opportunities may be linked to targeted enterprise status or to undertakings made to achieve nominated contract-participation goals relating to

- a) targeted enterprises (see ISO 10845-5),
- b) targeted partners in joint ventures (see ISO 10845-6),
- c) local resources (targeted enterprises and targeted labour) (see ISO 10845-7), or
- d) targeted labour (see ISO 10845-8).

#### G.3.2.5.3 Formulation of contract-specific goals

Contract-specific goals may be formulated by awarding

- a) a fixed number of points for attaining a specific goal, e.g. having a particular targeted enterprise status or undertaking to achieve a specified contract-participation goal,
- b) a variable number of points in proportion to the degree to which a tenderer responds to a particular contract-participation goal (i.e. in proportion to the quantum offered),
- c) points on a comparative basis in terms of which the best offer received scores the maximum number of allotted points; the worst offer scores no points; and the remaining offers are scored between these limits.

The weighting for such contract-specific goals should be carefully considered. Too high a goal for enterprises that enjoy targeted enterprise status might distort the market and either inflate prices or, where goals are offered to those that have targeted enterprise status, create reservations for a target group. Too low a goal might not achieve the policy outcomes that are sought. As a general rule, goals should not cause the contract price to exceed a theoretical value of 11,1 % (i.e. 10 points out of 100), or 15 % in the case of employment-intensive works in poverty-relief programmes, or constitute more than 15 % of the tender-evaluation points in the evaluation of calls for expressions of interest.

Any financial premium should be as low as possible, as funds are better spent on supply-side measures (i.e. capacity building) rather than on securing participation (see G.3.2.11).

#### G.3.2.5.4 Sanctions

The contract should also make provision for sanctions to deal with the contractor that fails to satisfy any conditions relating to the granting of tender-evaluation points. Sanctions should be sufficiently punitive to make it more attractive for contractors to comply with the conditions under which tender-evaluation points are granted. It is generally neither practical nor in an employer's best interests to terminate a contract for failure to comply with the requirements of a resource specification, or to abide by the conditions under which evaluation points are granted in the performance of the contract. Sanctions are usually applied in the form of a financial penalty.

As a general principle, the quantum of the financial penalty should relate to the theoretical maximum cost advantage secured at the tender stage (the penalty being, typically, one and a half times more severe), or the degree to which a contract-participation goal has not been achieved where tenderers were required to accept a minimum contract-participation goal (see ISO 10845-5, ISO 10845-6, ISO 10845-7 and ISO 10845-8).

NOTE 1 It might, however, be desirable in some instances to cancel the award of a contract to a contractor who is found to have secured tender-evaluation points in a fraudulent manner.

NOTE 2 ISO 10845-5 permits a tenderer to satisfy a contract-participation goal by virtue of his enterprise status, by entering into a joint venture with targeted partners, by contracting with targeted enterprises and by engaging non-targeted enterprises who, in turn, enter into joint ventures with targeted enterprises or contract with targeted enterprises. Use of ISO 10845-5 eliminates the need to formulate separate contract-specific goals for targeted enterprises and non-targeted enterprises.

NOTE 3 It might not be appropriate in relatively small contracts to offer tender-evaluation points for contract-participation goals, particularly where small enterprises are targeted.

#### G.3.2.6 Provision of incentives for the attainment of key performance indicators in the performance of a contract

Financial incentives may be offered to contractors, should they attain a key performance indicator in the performance of a contract in the form of a contract-participation goal in accordance with the requirements of ISO 10845-5, ISO 10845-6, ISO 10845-7 or ISO 10845-8. Such key performance indicators can be either agreed to before or after the contract is awarded.

Financial incentives can be formulated in a number of ways. The most common way is to make them linearly proportional to increases in contract-participation goals. Stepped incentives may also be used. Consideration should be given to capping the quantum of the financial incentive.

NOTE Financial incentives are used where tenderers are not invited to tender contract-participation goals, but are required to accept a minimum contract-participation goal and are rewarded for performance beyond the minimum.

Method 1 in ISO 10845-5, which allows a contractor to satisfy contract-participation goals by virtue of targeted enterprise status, should not be used together with financial incentives.

#### G.3.2.7 Creation of contractual obligations to engage target groups in the performance of the contract

Contractors may be required, as a contractual obligation, to subcontract a percentage of the work to targeted enterprises or contract goods or services from targeted enterprises. They may also be required to enter into joint ventures with targeted enterprises or engage targeted labour in the performance of a contract. This can most readily be achieved by requiring contractors to archive a minimum contract-participation goal in accordance with the requirements of ISO 10845-5, ISO 10845-6, ISO 10845-7 or ISO 10845-8.

Alternatively, contractors may be required to subcontract specific portions of a contract to targeted enterprises.

Requirements for subcontracting work, including subcontracting procedures, if any, should be established in the scope of work.



Main contractors may

- a) be free to negotiate the prices and terms for subcontracting, or
- b) be required to invite competitive tenders from amongst targeted enterprises in terms of a specified procedure and specific forms of subcontract and, upon the award of the contract, become domestic subcontractors, i.e. the contractor remains responsible for providing the subcontracted portion of the work as if the work had not been subcontracted.

Where contractors are required to invite tenders, they may be required to do so in accordance with this part of ISO 10845 using the standard conditions of tender contained in ISO 10845-3. The evaluation panel may include representatives of the employer or the employer's agent. Alternatively, the contractor may be required to conduct the entire procurement process and be required to resolve challenges to decisions made during the tender process by means of adjudication in terms of Annex D.

The advantage of the approach whereby contractors are required to call for tenders is that targeted enterprises tender for the work in the same manner as the main contractor. It also allows the employer to determine the terms and conditions under which targeted enterprises are subcontracted.

NOTE 1 ISO 10845-5 and ISO 10845-7 establish requirements for subcontracts to ensure that subcontractors are engaged in terms of fair conditions of subcontract.

NOTE 2 An alternative to the subcontracting procedure described in this subclause is to use a nominated procedure provided in certain standard forms of contract to award nominated subcontracts to targeted enterprises.

### **G.3.2.8 Provision of third-party management support**

#### **G.3.2.8.1 General**

Organizations may provide third-party management support in the form of service providers who supply specific management services that relate to construction and materials management, or the management of the manufacture of materials. Organizations also advise, assist and train fledgling contractors, embryonic enterprises or aspirant entrepreneurs (targeted enterprises) in the performance of contracts as main contractors and ensure that work progresses satisfactorily.

An employer can directly contract a third party to render any necessary support, either on a competitively tendered or a cost-reimbursable basis. In such circumstances, the procuring entity has a direct contract with both the third-party management-support service provider and the targeted enterprise. There is, however, no contract between the service provider and the targeted enterprise; nor should there be. In this arrangement, the procuring entity's risk of the targeted enterprise not performing the contract satisfactorily can be minimized by requiring the service provider to provide on-site support and monitoring. The service provider cannot be held responsible for the performance of the targeted enterprise but only for the support services provided, for example, timely supply of a plant and the monitoring of the targeted enterprises to ensure that they make satisfactory progress, show technical competence and generally fulfil their other contractual obligations. The service provider is, in short, only at risk for its own negligence, a risk which is normally insurable in terms of professional indemnity insurance.

Service providers are, typically, required to provide or arrange for some, or all, of the following services:

- a) construction management;
- b) materials management;
- c) site facilities;
- d) materials supply;
- e) services of a specialist nature, e.g. blasting, horizontal boring, etc.; and
- f) plant hire or supply.

By reducing the risk exposure of the service provider, providing materials and a plant at cost and directly engaging targeted enterprises with low overhead structures, the contractual arrangement described in G.3.2.8.2 results in construction and manufacturing costs, (or a combination thereof), which are comparable to those of conventional contracting. In effect, profit on materials and a plant, risk pricing and the conventional contractor's overhead costs, are traded off against development support costs.

NOTE SANS 1921-4 establishes requirements for construction management services, materials management services, or a combination of such services, in engineering and construction works contracts in which the employer appoints third parties to provide certain resources which a works contractor lacks.

Third-party development support can also be provided by requiring main contractors (well-established contractors) to enter into joint ventures with targeted enterprises (developing contractors) in accordance with the requirements of ISO 10845-6, upon award of the contract. Main contractors are thus obliged to provide third-party management support to targeted enterprises, which they engage as joint-venture partners, in order to achieve contract-participation goals, without the employer imposing the manner in which this is to be structured and achieved. Although the main contractor is held accountable for the outcome of the project, ISO 10845-6 makes provisions for the procuring entity to relieve the contractor of his contract-participation goal obligations under certain circumstances in order to reduce his risk exposure.

#### **G.3.2.8.2 Focus of support**

Third-party management support can be

- a) used to develop a new contracting capacity in the context of a contractor development programme. In such a programme, third-party development support is progressively reduced as developing contractors become more proficient and acquire the necessary skills, or
- b) utilized on poverty-alleviation projects, where the objective is to maximize expenditure retained by the community. In such programmes, a requirement should be for the third-party management-support staff to be recruited as far as possible from the targeted community.

#### **G.3.2.8.3 Clauses for incorporation in contracts**

The following clauses are typically inserted in the contract between the employer and the targeted enterprise.

##### **a) Duties and powers of the construction manager**

The duties of the construction manager are to

- 1) arrange, on behalf of the employer, for specialist work to be carried out,
- 2) supply the contractor, on behalf of the employer, with certain items of equipment for the construction of the works,
- 3) advise, assist and train the contractor in administering and performing the contract, and
- 4) where required in terms of the scope of work, to deliver or arrange for the supply of certain materials to the place of work.

The construction manager has no authority to relieve the contractor or the employer of any obligations under the contract.

##### **b) Duties and powers of the materials manager**

The duties of the materials manager are to

- procure, store and issue to the contractor, on behalf of the employer, materials for incorporation in both the temporary and permanent works, and

- account for the net quantities of materials obtained from the materials manager's store by, or on behalf of, the contractor for use in the construction of the works.

The materials manager has no authority to relieve the contractor or the employer of any obligations under the contract.

### **G.3.2.9 Requirements for minimum prescribed levels of equity in the tendering entity**

Empowerment requirements for a project or programme may necessitate that tenders be invited only from tendering entities in which a defined population group has a minimum equity stake. This practice, however, is usually confined to the granting of concessions and very large, prestigious projects.

Such contracts should ensure that

- a) the organization has mechanisms in place to ensure that the equity of the targeted population group remains at or above the specified minimum level for the duration of the contract,
- b) the targeted population group, in addition to owning equity, also actively participates in the strategic and managerial workings of the contracting entity,
- c) the targeted population group is empowered in the performance of the contract, and
- d) compliance with a) to c) is regularly monitored.

### **G.3.2.10 Acceleration of targeted enterprises in rotating electronic databases**

The principles of a rotating electronic database are that

- a) all entries are listed sequentially in the database, initially in terms of a random number generator,
- b) every new admission is entered at the bottom of the database in the sequence that it is received,
- c) a transaction (negotiated appointment or invitation to tender) is made with the highest ranking entry that satisfies the search criteria, and
- d) after a transaction, all those involved in the transaction, i.e. those who declined an appointment, those invited to submit tenders and those that were awarded a contract, are moved to the bottom of the database.

An accelerated rotation may be introduced to ensure that more opportunity is given to target groups, to ensure that they have greater access to work opportunities. This may be achieved by keeping all the target groups above a certain ranking and moving them after each transaction to this ranking. In this manner, targeted entries will rotate at a faster rate than non-target groups, and will have more tender opportunities.

The new ranking in the database of the target groups after a transaction should be determined such that the rates of rotation of targeted entries are high when the percentage of such entries is low and decrease as the percentage of targeted entries increases until parity in the rates of rotation are reached.

The new ranking in the database of targeted entries, upon appointment or submission of tenders, can be calculated in accordance with the following formula (see Figure G.2):

$$R = T \times A / 100 \times W \tag{G.1}$$

where *R* is the position in the database from the top.

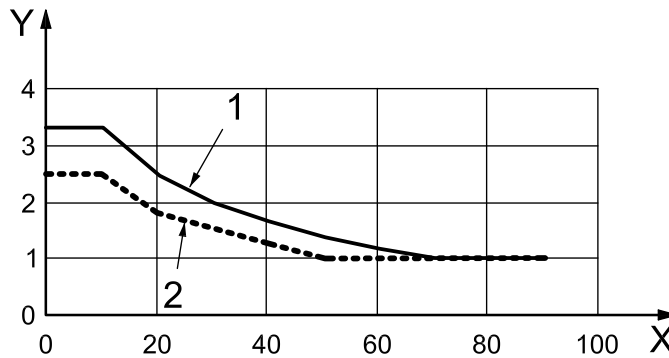
$$A = 100 / [6,01 - 1,18 \times \ln(N/T \times 100)] \tag{G.2}$$

subject to *A* being less than 100 and greater than or equal to 30.

where

- T* is the total number of active entries in the database;
- N* is the total number of active targeted entries in the database;
- W* is the weighting factor for the category of entry.

**NOTE** A weighting of 1,0 allows parity to be reached when 70 % of the entries in the database are targeted entities. A weighting of 1,3 allows parity to be reached when 55 % of the entries in the database are targeted entities. The formula, as such, incorporates “sunset” provisions and can be calibrated for given circumstances.



**Key**

- X total number of targeted entities (%)
- Y rate of rotation
- 1 category 1 targeted entities (weighting = 1,0)
- 2 category 2 targeted entities (weighting = 1,3)

**Figure G.2 — Rates of rotation for targeted entries relative to non-targeted entries**

**G.3.2.11 Evaluation of procurement outcomes**

**G.3.2.11.1 General**

The monitoring of the attainment of socio-economic deliverables at a contract level cannot commence until

- a) all aspects of the deliverables have been clearly defined and accepted by all the parties to a contract,
- b) the criteria for measuring and quantifying the attainment of deliverables are understood, and
- c) the method by which the deliverables can be audited and verified is laid down.

The targeted procurement procedures outlined in this annex provide a framework within which all of the above can be achieved before a contract is awarded, or shortly thereafter. This enables monitoring for compliance in respect of social and economic objectives to commence around the time that a contract is awarded.

### G.3.2.11.2 Monitoring at a contract level

Any evaluation of the degree of success achieved in providing social and economic deliverables is dependent on effective monitoring. Evaluation is an ongoing process and should not be deferred. This is necessary to ensure that any inadequate provision of deliverables is detected at an early enough stage to remedy the situation.

Targeted procurement requirements are established in the contract associated with a project. ISO 10845-5, ISO 10845-6, ISO 10845-7 and ISO 10845-8, which are incorporated into contracts through specification data, establish contract-participation goals (deliverables) which may be used in the implementation of a number of targeted procurement procedures in a contract. Each of these parts of ISO 10845 provide the means by which progress towards the achievement of the contract-participation goal will be monitored and compliance with requirements will be verified and monitored. Requirements for subcontracting work are established in the contract, as are conditions associated with the granting of tender-evaluation points.

Accordingly, monitoring at a contract level should focus on ensuring that deliverables, requirements and conditions are attained or complied with within the performance of the contract.

### G.3.2.11.3 Evaluation at a project or programme level

Data gathered on the participation of targeted enterprises and targeted labour can be used to measure the flow of money through contracts to the beneficiaries of a secondary procurement policy. A set of standard indices to evaluate the range of socio-economic objectives associated with a secondary procurement policy should be developed for a particular programme based on one of the participation indices ( $p$ ) presented in Table G.5 and the following formula:

$$p = \left[ \sum (A \times B) + \sum (C \times D) \right] / E \quad (\text{G.3})$$

where

- $A$  is the coefficient (usually not greater than 0,9) which takes account of “leakages” in participation, which occur through subcontracting and distortions in the measurement of the contract-participation goal arising from the manner in which participation in joint ventures is measured, and the use of weighting factors;
- $B$  is the product of the contract amount and the contract-participation goal that was achieved (see ISO 10845-5, ISO 10845-6, ISO 10845-7 or ISO 10845-8);
- $C$  is the coefficient which takes account of “leakage” in participation through permissible subcontracting to non-targeted enterprises (typically a value of 0,9 is recommended where the permissible level of subcontracting is not to exceed 25 %);
- $D$  is the contract amount of main contracts or subcontracts awarded to targeted enterprises, and that are not measured by contract-participation goals;
- $E$  is the sum of the contract amounts of all contracts awarded where participation of the target group was sought using targeted procurement procedures.

The values of the coefficients  $A$  and  $C$  should be formulated with a clear understanding of the specific targeted procurement procedures which are utilized and the manner in which participation is measured.

Although it is possible to target more than one category of targeted enterprise in a particular programme, the practicality of gathering data to reflect the participation index of each category of targeted enterprise should be considered.

Table G.5 — Basic participation indices

Participation index ( <i>pi</i> )	Definition	Contributors towards the index
Targeted enterprise index	The estimated total value of work undertaken by targeted enterprises, expressed as a percentage of the total value of contracts awarded where targeted enterprises are targeted.	Contracts performed by targeted enterprises at main contract level resulting from unbundling of contracts, award criteria or the provision of third-party management support.  Contract-participation goals linked to the granting of tender-evaluation points, the provision of incentives for the attainment of key performance indicators in the performance of the contract or the creation of contractual obligations to engage targeted enterprises in the performance of the contract.  Value of mandatory work subcontracted to targeted enterprises where not measured using contract-participation goals.  Value of work performed by targeted enterprises as measured using contract-participation goals
Targeted labour index	The estimated total value of work undertaken by targeted labour, expressed as a percentage of the total value of contracts awarded where targeted labour is targeted.	Contract-participation goals linked to the granting of tender-evaluation points, the provision of incentives for the attainment of key performance indicators in the performance of the contract or the creation of contractual obligations to engage targeted labour in the performance of the contract.  Value of work performed by targeted labour as measured by contract-participation goals
Local resource index	The total value of work undertaken by targeted enterprises and targeted labour, expressed as a percentage of the total value of contracts awarded where targeted procurement procedures are used.	As for targeted enterprise index and targeted labour index.

NOTE The participation indices indicated in Table G.5 reflect the flow of money (market share) to targeted enterprises, or targeted labour, or both.

#### G.3.2.11.4 Monitoring and evaluating deliverables

The financial premium associated with the attainment of socio-economic objectives using targeted procurement procedures relating to tender-evaluation points has direct and indirect cost components. The direct cost component relates to the increased contract cost which may be payable to accommodate socio-economic objectives. The indirect cost component relates to costs not included in tendered amounts, such as increased administration requirements and internal staff training.

The direct financial premium (*P*), where tenders are evaluated, can be calculated in accordance with the following formula:

$$P = (X - Y) / X \times 100 \quad (\text{G.4})$$

where

*X* is the sum of tender prices of awarded contracts;

*Y* is the sum of tender prices of the lowest responsive tender, used as the base value for the awarding of tender-evaluation points for financial offer.

The direct financial premium ( $P$ ) should be reduced to a direct financial premium index ( $f$ ) using the following formula:

$$f = P / (N_M / M \times 100) \quad (\text{G.5})$$

where

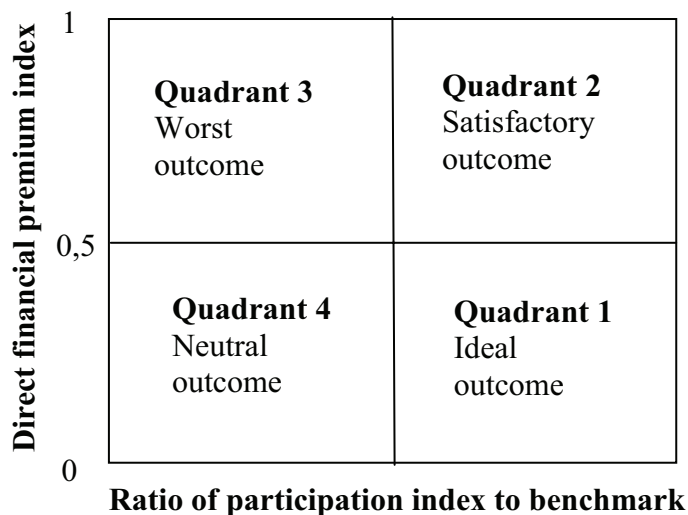
$N_M$  is the maximum number of tender-evaluation points relating to targeted enterprises or targeted labour (or both);

$M$  is the maximum number of tender-evaluation points awarded for financial offer.

The standard indices ( $i$  and  $p$ ) can be best interpreted in terms of a quadrant comparator as illustrated in Figure G.3.

The direct financial premium index ( $f$ ) should be plotted on the Y-axis and the ratio of the participation index ( $p$ ) to a benchmark on the X-axis. (This benchmark may relate to the maximum projected participation index based on an understanding of probable supply levels, in which case the maximum value will be 1,0. Alternatively, it may relate to the average participation indices of a number of contracting authorities in a programme, or the average for all regions in which an employer operates, in which case the midpoint along the axis will have a value of 1,0.)

The interpretation of how a policy is performing can be readily evaluated depending on the quadrant in which the coordinates for each data set fall (see Table G.6). These indices can be used to compare the outcomes of different programmes, different sectors, different regions and different implementers. They also enable organizations to make decisions regarding the funding of programmes which have specific objectives, for example, poverty alleviation, job creation, etc. They can also be used to evaluate progress being made towards specific objectives, assess the effectiveness of selected targeting strategies, motivate supply-side interventions and formulate policy amendments and adjustments.



**Figure G.3 — Use of the quadrant comparator to interpret secondary procurement policy outcomes**

Table G.6 — Quadrant interpretation

Quadrant	Implementation	Indications	Action
1	Ideal outcome: the policy is being implemented in a cost-effective manner.	There is appropriate absorptive capacity amongst targeted enterprises; targeted enterprises are operating effectively.	None.
2	Satisfactory outcome: the policy implementation procedures are yielding satisfactory outcomes, but these are not at optimum efficiency.	Targeted enterprise availability within the sector. Targeted enterprises are not necessarily operating as effectively as non-targeted enterprises.	Focus on supply-side measures to improve efficiency.
3	Worst outcome: the policy implementation procedures are yielding disappointing participation levels for the financial premiums incurred.	Limited targeted enterprise capacity in the sector, perhaps arising from a small group of targeted enterprises controlling the market, which accounts for the high premiums.	Focus on supply-side interventions to develop new targeted enterprise capacity in sector or amend policy implementation procedures (or both).
4	Neutral outcome: the policy implementation procedures are yielding disappointing participation levels, but these are not attracting significant financial investment to implement.	Limited or negligible targeted enterprise capacity in this sector, probably due to entry thresholds, e.g. specialized skills, plant requirements, etc., which militate against targeted enterprise participation.	Focus on supply-side interventions to develop new capacity. Increased targeted enterprise participation levels only likely in the medium term. Amend policy implementation procedures.

## G.4 Supply-side interventions

### G.4.1 Supply and demand considerations

Procurement policies relating to social and economic development create a demand for targeted labour and a demand for services and products of targeted enterprises. The procedures, accordingly, provide access to markets for both targeted enterprises and targeted labour. Supply-side interventions are, however, required to ensure that demand is balanced by supply. This is important where enterprises are targeted, particularly if such enterprises fall into the small and micro-enterprise sector, and growth in new entrant small-scale enterprises is encouraged. Accordingly, interventions might be necessary to ensure meaningful and effective participation in the market (see Figure G.4).

### G.4.2 Constraints facing entrepreneurs

Constraints facing entrepreneurs may be categorized as being

- a) internal constraints, such as deficiencies in numeracy and literacy, managerial, administrative and commercial skills and technical knowledge, which inhibit business efficiency and over which an entrepreneur has direct control provided that support structures are in place; and
- b) external constraints, such as market distortions, prevailing socio-economic structures, for example, laws, regulations, procurement procedures, perceptions and access to finance and opportunities, all of which are beyond the entrepreneur's control.

Broadly speaking, internal constraints can be addressed through the provision of training and mentorship and exposure to business practices such as joint-venture relationships. External constraints require financial assistance and a restructured procurement environment which is enabling and sustainable.



### G.4.3 Appropriate technologies and specifications

The targeted procurement procedures used to promote objectives associated with employment creation cannot be divorced from choices in technology. Appropriate technology choices are necessary to increase demand, particularly where increases in employment per unit of expenditure and the use of local resources are targeted. The availability, or lack thereof, of appropriate specifications and suitable technology options can have a marked influence on the degree to which socio-economic objectives can be attained on contracts for engineering and construction works by means of targeted procurement procedures. The success or otherwise of the use of procurement to attain some policy objectives is very dependent upon technical choices being made available to tenderers (see Figure G.4).

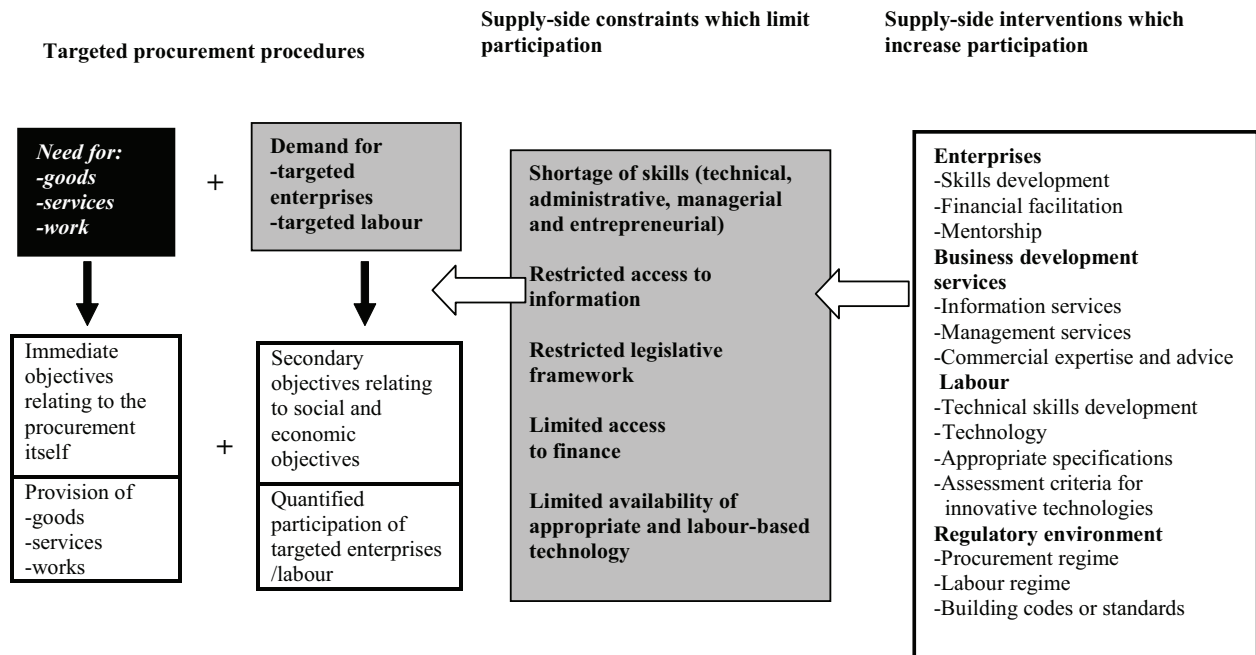


Figure G.4 — Optimizing the outcomes of secondary procurement policies

## G.5 Application of targeted procurement procedures in various procurement regimes

Targeted procurement procedures can be applied to a number of procurement regimes and are not specific to a particular procurement regime, as indicated in Table G.7. They are, however, well suited to procurement regimes that are fair, equitable, transparent, competitive and cost-effective.

**Table G.7 — Methods used to implement policies relating to secondary objectives**

Scheme type	Methods (see Table G.3)		Techniques and mechanisms associated with targeted procurement procedures which may be utilized
Reservation	1	Set asides	The techniques for defining targeted enterprises (see G.3.2.3) can be used to monitor that the businesses offered work in set asides satisfy the policy intent. Contract-participation goals established in terms of ISO 10845-5, ISO 10845-6 or ISO 10845-7 (see G.3.2.2) can be used to set aside a portion of a contract for targeted enterprises.
	2	Qualification criteria	The setting of minimum contract-participation goals in terms of ISO 10845-5, ISO 10845-6 or ISO 10845-7 (see G.3.2.2) can be used to exclude from consideration tenderers who fail to structure their resources to achieve certain objectives.
	3	Contractual conditions	The setting of minimum contract-participation goals in terms of ISO 10845-5, ISO 10845-6 or ISO 10845-7 (see G.3.2.2) can be used to achieve a range of objectives. Requirements for tendering equity (see G.3.2.9) can also be used to attain objectives.
	4	Offering back	Not applicable.
Award criteria	5	Weighting of objectives at the shortlisting stage	Accelerated rotations in rotating electronic databases (see G.3.2.10) can be used to increase the likelihood of award of small contracts or of being shortlisted to submit tenders in the nominated procedure.  Weightings relating to policy objectives (see G.3.2.5) can be introduced in the form of evaluation points, e.g. to those that undertake to deliver a contract-participation goal measured in accordance with ISO 10845-5, ISO 10845-6, ISO 10845-7 or ISO 10845-8.
	6	Award criteria (tender-evaluation criteria)	The granting of tender-evaluation points (see G.3.2.5) can be used to introduce weightings to promote secondary procurement policy objectives e.g. to participation goals measured in accordance with ISO 10845-5, ISO 10845-6, ISO 10845-7 or ISO 10845-8.
Incentives	7	Incentive payments	Financial incentives may be offered to contractors who attain a key performance indicator in the performance of a contract, i.e. a contract-participation goal as measured by ISO 10845-5, ISO 10845-6, ISO 10845-7 or ISO 10845-8 (see G.3.2.6).
Indirect	8	Product/service specifications	ISO 10845-5, ISO 10845-6, ISO 10845-7 or ISO 10845-8 may be used to establish requirements to achieve a minimum contract-participation goal in the performance of a contract (see G.3.2.7).
	9	Design of specifications, contract conditions and procurement processes to benefit particular contractors	Unbundling strategies (see G.3.2.4), the use of third-party management support (see G.3.2.8) or requirements for minimum prescribed levels of equity in the tendering entity (see G.3.2.9) can be used to make the procurement process more attractive to particular enterprises.
Supply side	10	General assistance	Supply-side interventions (G.4) can be adopted to provide support to targeted enterprises.

## Annex H (informative)

### Auction Data

Potential bidders should be informed of the terms and conditions of auctions, as well as what is to be auctioned. Auction Data should be prepared. Auction Data should comprise general conditions of auction, auction-specific variables and a lot schedule.

General conditions of auction should be prepared along the lines of the example presented in Table H.1.

**Table H.1 — Example of general conditions of auction**

Clause	Heading	Content
1	<b>Place of auction</b>	A public auction shall take place at the place and time stated in the Auction Data. The lots to be auctioned are described in the lot schedule.
2	<b>Lots</b>	Items will be sold in lot numbers to the highest bidder. Lots may be viewed during office hours at the location and during the period stated in the Auction Data.  Lots are offered “as in the condition” without any warranty, expressed or implied.  After each successful bid, the auctioneers will collect the bidding card relating to the lot under bid.
3	<b>Eligibility</b>	Only those bidders who satisfy the criteria stated in the Auction Data may bid.
4	<b>Prequalification</b>	Bidders wishing to participate in the auction shall pay the deposit stated in the Auction Data, failing which they shall not bid.
5	<b>Deposits</b>	Deposits shall be paid at the place and during the period stated in the Auction Data.  Deposits will only be accepted from bidders who produce the documentation stated in the Auction Data.  Deposits will be returned to bidders at the time and place stated in the Auction Data. Deposits to successful bidders will be returned upon proof of payment for a lot.
6	<b>Clarifications and further information</b>	Further information and clarifications may be obtained from the official named in the Auction Data.
7	<b>Payments and removal of lots</b>	Payment for a lot shall be made in cash or by bank-certified cheques, immediately after the auction at the place named in the Auction Data. Any successful bidder who fails to make payment within two working days, will lose his deposits and those items not paid for will be re-auctioned at a later date.  Lots may only be removed upon presentation of the official receipt of purchase.
8	<b>Ownership</b>	The successful bidder shall become the owner of the lot upon payment for the lot. All ownership risks shall be transferred to the successful bidder from the close of business on the day upon which payment is made.  Ownership of a lot will revert back to the disposer if such lot is not removed within seven working days after the date of the auction, without any compensation to the successful bidder.

EXAMPLE Where use is made of the general conditions of auction provided in Table H.1, the auction data and the lot data should be prepared as shown in Table H.2.

**Table H.2 — Auction Data**

Clause	Data	Guidance notes
	<p>The general conditions of auction are contained in this annex.</p> <p>The general conditions of auction make several references to the Auction Data for details that apply specifically to this auction. The Auction Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the standard conditions of auction.</p> <p>Each item of data given below is cross-referenced to the clause in the general conditions of auction in Table H.1 to which it mainly applies.</p>	
1 8	<p>Auction particulars:</p> <p>Disposer: .....</p> <p>Place: .....</p> <p>Date: .....</p> <p>Time: .....</p>	Insert name of disposer and data.
2	<p>Viewing of lots:</p> <p>Place: .....</p> <p>Dates: ..... to .....</p> <p>Times: .....</p>	Insert data.
3	<p>Only those bidders who satisfy the following eligibility criteria may bid:</p> <p>.....</p>	Omit if there are no eligibility criteria, e.g. permit requirements, company registration requirements. State eligibility requirements, if any.
4	<p>The deposit payable in respect of lot numbers ..... is \$.....</p>	State amount of deposits in respect of a lot. If there is no deposit, insert "0". (Rephrase as necessary.)
5	<p>Deposits are to be paid in at ..... on ..... between ..... and .....</p>	Insert particulars, rephrase as necessary.
5	<p>Deposits will be returned to unsuccessful bidders immediately after the auction.</p>	State date, time and place if not immediately after the auction. (Modify as necessary.)
6	<p>Further information may be obtained from:</p> <p>Name: .....</p> <p>Tel.: .....</p>	Insert data.
5	<p>Payment for lots shall be made at ..... between ..... and .....</p>	State place and time.

Table H.3 illustrates a lot schedule.

**Table H.3 — Lot schedule**

Lot No.	Description

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