
Construction procurement —

Part 6:

Participation of targeted partners in joint ventures in contracts

Marchés de construction —

Partie 6: Participation des partenaires cibles en co-entreprise dans les contrats



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Contents

Page

Foreword	iv
Introduction.....	v
1 Scope.....	1
2 Terms and definitions	1
3 Requirements.....	4
3.1 Contract participation goal.....	4
3.2 Achieving the contract participation goal.....	4
3.2.1 General	4
3.2.2 Verification of the status of targeted partners	4
3.2.3 Joint ventures	4
3.3 Contract participation goal credits.....	5
4 Compliance with requirements	5
4.1 General	5
4.2 Substitutions.....	6
4.3 Bona fides of targeted partners	6
5 Records	6
5.1 Submission of documentation.....	6
5.2 Monthly submission of supporting documentation	7
5.3 Certification of credits	7
6 Sanctions	7
Annex A (informative) Commentary	8
Annex B (informative) Preparation of targeting data associated with this part of ISO 10845 for inclusion in the scope of work.....	17
Annex C (normative) Contract participation goal implementation plan (targeting strategy A).....	20
Annex D (normative) Joint venture disclosure form.....	22
Annex E (informative) Examples of how contractors can fulfil their contract participation goal obligations	30
Annex F (informative) Tendered contract participation goal (targeting strategy A).....	31
Annex G (informative) Sample tender evaluation schedule where use is made of this part of ISO 10845	33
Annex H (informative) Contract schedule for targeted enterprises.....	35
Annex I (informative) Third-party management support.....	38
Bibliography.....	42

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 10845-6 was prepared by Technical Committee ISO/TC 59, *Buildings and civil engineering works*.

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 organization. Methods and procedures can likewise be documented and linked to processes.

It is becoming increasingly important to consider procurement-related deliverables other than those relating to the primary purpose of the procurement itself, particularly those relating to poverty reduction, job creation, local economic development and local industry development. Key performance indicators relating to the engagement of enterprises, joint venture partners, local resources and local labour in contracts are needed to set targets in contracts or to measure procurement outcomes. Processes, procedures and methods are required to quantify, measure and verify a contractor's performance in relation to such indicators in an auditable manner.

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Construction procurement —

Part 6:

Participation of targeted partners in joint ventures in contracts

1 Scope

This part of ISO 10845 establishes a key performance indicator, in the form of a contract participation goal, relating to the engagement of targeted partners in a joint venture on a contract for the provision of goods, services or engineering and construction works. A contract participation goal may be used to measure the outcomes of a contract in relation to the engagement of targeted partners in a joint venture or to establish a target level of performance for the contractor to achieve or exceed in the performance of a contract.

This part of ISO 10845 sets out the methods by which the key performance indicator can be measured, quantified and verified in the performance of the contract in respect of two different targeting strategies: targeting strategy A and targeting strategy B (defined below).

NOTE Annex A contains commentary on the clauses in this part of ISO 10845. Annex B provides guidance on how to develop the targeting data for a procurement document using this part of ISO 10845.

2 Terms and definitions

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

2.1

allowance

amount provided for in the contract by the employer relating to one or more of the following:

- a) the performance by the contractor of work or services that are foreseen but cannot be accurately specified at the time the contract is entered into;
- b) work or services to be performed, or goods provided, by a subcontractor who is either nominated by the employer or selected by the employer in consultation with the contractor after the award of the contract;
- c) provision for price adjustment for inflation; or
- d) other budgetary provisions intended to cover employer risks

2.2

commercially useful function

performance of real and actual work, or the provision of services, in the discharge of any contractual obligation which includes, but is not limited to, the performance of a distinct element of work which the enterprise has the skills and expertise to undertake and the responsibility for management and supervision

2.3

contract amount

financial value of the contract

- a) at the time of the award of the contract, exclusive of all allowances and any value added tax or sales tax which the law requires the employer to pay to the contractor (targeting strategy A); or
- b) upon completion of all contractual obligations, exclusive of any value added tax or sales tax which the law requires the employer to pay to the contractor (targeting strategy B)

2.4

contract participation goal

CPG

amount equal to the sum of the participation parameters in respect of each targeted partner multiplied by the contract amount of the contract, expressed as a percentage of the contract amount, associated with the targeting strategy that is identified in the targeting data

2.5

contractor

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

[ISO 10845-1:2010, definition 3.12]

2.6

control

possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of an enterprise, and the active and continuous exercise of appropriate managerial and financial authority and power in determining the policies and directing the operations of the said enterprise

2.7

employer

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

[ISO 10845-1:2010, definition 3.17]

2.8

employer's representative

person authorized to represent the employer and named as such in the contract data or targeting data

2.9

joint venture

association or consortium of enterprises in which expertise, property, capital, efforts, resources, skills and knowledge are combined in order to perform the contract or a portion thereof

2.10

main contractor

contractor who subcontracts part of his contract

[ISO 6707-2:1993, definition 3.8.13]

2.11

ownership

legal right of possession, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest or shareholding, as demonstrated by an examination of the substance, rather than the form, of ownership arrangements

2.12**participation parameter**

fraction of the contract which may be used to represent the value of the contribution and the value of the commercially useful function performed by the targeted partners

2.13**targeted partner**

person or organization engaged in the performance of the contract at main contract level as a joint venture partner and defined as the target group in the targeting data

2.14**targeted partner declaration affidavit**

affidavit, of the format provided for in the procurement documents, which confirms the bona fides of a targeted partner

2.15**targeting data**

data, provisions and variations applicable to a particular contract

NOTE See A.2.15 and Annex B.

2.16**targeting strategy**

an approach which is pursued to make a contract participation goal an obligation of contract

2.16.1**targeting strategy A**

targeting strategy which

- a) involves the granting of tender evaluation points by the employer in the evaluation of tender offers in return for the tendering of a contract participation goal or an undertaking to attain a specified contract participation goal at the time that tenders are evaluated, or
- b) requires a contractor to achieve a minimum specified goal in the performance of a contract, or
- c) involves both (a) and (b)

2.16.2**targeting strategy B**

targeting strategy which

- a) involves the payment of a financial incentive to a contractor for the attainment of a specified contract participation goal, or
- b) requires the contractor to record and report on the quantum of work generated for targeted labour

NOTE Targeting strategy A bases the contract participation goal on the tendered amount minus allowances, i.e. on the expenditure which the contractor can commit to at tender stage. This strategy allows the employer to adjust the contract participation goal to take account of any failure to achieve such goal in the performance of the contract due to factors which are beyond the contractor's control or are unforeseen at tender stage. Targeting strategy B measures the contract participation goal based on the final contract value. Targeting strategy A accordingly measures the performance of contractors in the engagement of targeted labour in relation to that which can be committed to at tender stage, whereas targeting strategy B does so in relation to that which is finally achieved.

3 Requirements

3.1 Contract participation goal

The contractor shall enter into a joint venture agreement at a main contract level with one or more targeted partners in the performance of the contract to the extent that the total monetary value of such engagements, exclusive of any value added tax or sales tax required by law, is sufficient to achieve the contract participation goal for the targeting strategy specified in the targeting data.

The contractor shall, in the case of targeting strategy A, submit details of his plan to achieve the contract participation goal, on the contract participation goal implementation plan form contained in Annex C, and details of the joint venture on the joint venture disclosure form contained in Annex D within five working days of being instructed to do so. If no instructions are given, these plans shall be submitted five working days before the submission of the first claim for payment.

NOTE The information contained in the contract participation goal implementation plan facilitates, in the first instance, the monitoring of the performance of the contractor in terms of his contract participation goal obligations and, in the second instance, the making of any adjustments to compensate for quantitative underruns, the elimination of items, etc. (see Clause 6).

3.2 Achieving the contract participation goal

3.2.1 General

A contractor shall achieve the contract participation goal by entering into a joint venture agreement with one or more targeted partners as set out in 3.2.3.

3.2.2 Verification of the status of targeted partners

Contractors shall submit completed targeted partner declaration affidavits in respect of each and every targeted partner whose contribution shall be counted towards the contract participation goal. These documents shall, unless otherwise stated in the targeting data, be submitted to the employer's representative before the submission of the first claim for payment.

3.2.3 Joint ventures

3.2.3.1 General

Contractors shall develop joint venture agreements with targeted partners in order to fulfil contract participation goal obligations.

Credits towards the achievement of the contract participation goal shall only be granted subject to compliance with the following requirements:

- a) the targeted partner shares in the following aspects of the joint venture in an appropriate and meaningful manner, consistent with reasonable business practices:
 - 1) ownership,
 - 2) control,
 - 3) management responsibilities,
 - 4) risks, and
 - 5) profits;

- b) the targeted partner is responsible for a clearly defined portion of the contract; and
- c) the targeted partner performs part of the defined portion of the work for which he is responsible, using his own resources or resources hired by him independently of his non-targeted partners.

3.2.3.2 Participation parameter

The participation parameter shall be equated to the lesser of

- a) the financial value of the work for which the targeted partner is responsible, and
- b) twice the financial value of the work which the targeted partner carries out using his own resources or resources hired by him independently of his non-targeted partners,

expressed as a fraction of the contract amount.

EXAMPLE If targeted partners within a joint venture have, in total, a participation parameter of 0,15 in a contract with a contract amount of USD 10 million, the targeted partners are responsible for work to the certified value of at least USD 1,5 million ($0,15 \times \$ 10$ million). Work to the value of at least USD 750 000 (50 % of USD 1,5 million) is carried out using their own resources or resources hired by them independently of their non-targeted partners.

3.2.3.3 Joint venture disclosure forms

Details of any joint ventures developed with targeted partners shall be disclosed on the joint venture disclosure form (see Annex D) and shall be submitted five working days before the submission of the first payment certificate or as otherwise agreed, in writing, with the employer.

3.3 Contract participation goal credits

Credits towards the contract participation goal shall be granted by summing the products of the contract amount and the participation parameters of targeted partners within the joint venture and reducing this amount to a percentage of the contract amount subject to compliance with the requirements of 3.2.3.

Where all joint venture parties enjoy targeted partner status, such joint ventures shall be credited with a contract participation goal of 100 %, provided that each targeted partner has a participation parameter of 0,10 or more.

Credits shall be denied should targeted partners not adhere to statutory labour practices or fail to perform commercially useful functions.

NOTE Annex E provides illustrative examples as to how a contractor can fulfil his contract participation goal obligations.

4 Compliance with requirements

4.1 General

The contractor shall enter into written contractual agreements with all the targeted partners cited in the contract participation goal implementation plan and shall, as soon as is practicable, furnish the employer's representative with copies of such agreements. The contract to be performed by the targeted partners shall, in the case of targeting strategy A, thereafter neither be reduced in scope nor terminated without the prior written approval of the employer's representative, which shall not be unreasonably withheld or delayed.

4.2 Substitutions

Where targeting strategy A applies and in the event that, through no fault of the contractor, a targeted partner is found to be

- a) unable to perform,
- b) unable to perform on time, or
- c) unable to produce acceptable work, or
- d) unwilling to perform the work required, or
- e) not fit to perform the service,

the contractor shall notify the employer's representative of the apparent necessity to reduce or terminate such a targeted partner's contract, citing the reasons therefor.

In the event that the employer approves the contractor's request to restructure the joint venture formation, the contractor shall either provide a substitute targeted partner to take over the contract, or engage a targeted partner within the joint venture on another aspect of the contract so as to secure the required credits to achieve the contract participation goal. The contractor shall, in such circumstances, submit to the employer details of the nature and value of the contract which shall be performed by such a targeted partner.

The contractor may only restructure the joint venture and enter into agreements with substitute targeted partners for the purpose of securing credits towards the contract participation goal, with the employer's approval, which will not be unreasonably withheld.

The employer may, at his sole discretion and upon the basis of evidence submitted by the contractor in support of fruitless efforts made in good faith to secure substitute targeted partner participation, grant a waiver in respect of contract participation goal obligations.

NOTE Subclause 4.2 is only applicable where targeting strategy A applies.

4.3 Bona fides of targeted partners

Where, in the case of targeting strategy A, an enterprise under contract was initially considered to be a targeted partner but is later discovered not to be so, or is found not to be creditable towards contract participation goals, the employer may consider a partial waiver of the contractor's obligations towards the achievement of contract participation goals in respect of such a targeted partner, should the contractor satisfactorily demonstrate that he was justified in believing the enterprise to be a targeted partner and that eligibility standards were not violated.

5 Records

5.1 Submission of documentation

The contractor shall submit all the documentation required in terms of 3.1, 3.2.2, 3.2.3, 4.1 and 5.2 in a timely manner and, together with a programme of activities, a schedule which indicates clearly the expected delivery dates of goods provided by targeted partners or the commencement and completion dates of work and services to be performed by all the targeted partners engaged on the contract. This schedule shall be updated by the contractor whenever a change in programme occurs.

5.2 Monthly submission of supporting documentation

The contractor shall prepare and submit monthly to the employer's representative, on or before the date specified in the targeting data, in a form approved by the employer's representative, the following:

- a) a brief report which describes the commercially useful functions performed by the targeted partners in the performance of the contract, both over the interim period and on a cumulative basis; and
- b) a schedule reflecting the estimated total value of the goods to be provided and work and services to be performed, the cumulative value of the goods provided or work and services performed (or both) and the value of goods provided or work and services performed (or both) over the period for which payment is claimed in respect of each and every targeted partner.

Should random inspections conducted by the employer's representative on targeted partner activities indicate that such partners are not performing in accordance with the requirements of this part of ISO 10845, the contractor shall provide, in addition to the monthly reporting requirements, separate weekly resource returns and any other relevant information in respect of such targeted partners in a format approved by the employer's representative.

5.3 Certification of credits

The employer's representative shall certify the value of the credits counted towards the contract participation goal whenever a claim for payment is issued to the employer, and shall notify the contractor of this amount.

6 Sanctions

In the event that, and where targeting strategy A applies, the contractor fails to substantiate that any failure to achieve the contract participation goal was due to

- a) quantitative underruns,
- b) the elimination by the employer of items included in the contract participation goal, or
- c) any other reason beyond the contractor's control which may be acceptable to the employer,

the sanctions provided for in the contract shall apply.

NOTE 1 The contract establishes the sanctions that apply. These can be set out in a tender evaluation schedule, the scope of work or contract data. Sanctions where tender evaluation points are granted in respect of a tendered CPG or where a minimum CPG is specified (i.e. targeting strategy A) are usually applied in the form of

- a) financial penalties, typically formulated on the difference between the contracted contract participation goal and the contract participation goal achieved in the performance of the contract;
- b) the rejection of claims for payments as being incomplete, should the appropriate supporting documentation not be provided; and
- c) the issuing of completion certificates only after the certificates described in 5.3 are received.

NOTE 2 No sanctions in the form of financial penalties are applied where the CPGs are only used to measure and report on the quantum of economic activity generated by a contract for targeted enterprises (i.e. targeting strategy B). The sanction where financial incentives are applied is simply that the incentive is not paid if the target is not attained.

Annex A (informative)

Commentary

NOTE 1 This annex includes background information on this part of ISO 10845, guidance on its use and suggestions on good practice. The clauses in the commentary refer directly to the respective clauses in this part of ISO 10845, e.g. A.1 refers to Clause 1.

NOTE 2 This part of ISO 10845 can be incorporated into procurement documents by reference, usually in the scope of work or a tender evaluation schedule (see ISO 10845-2).

A.1 Commentary on scope

The purpose of this part of ISO 10845 is to standardize the manner in which targets (contract participation goals) are set and measured in relation to the participation of targeted partners in joint ventures at the main contract level in goods, engineering and construction works or service contracts. These targets, in addition to measuring and reporting on a key performance indicator which reflects the quantum of involvement in the workings of the joint venture by targeted partners through the performance of the contract, can, depending upon prevailing legislation, be used to

- a) reserve a portion of the contract work for specified target groups through the setting of minimum contract participation goals,
- b) establish the basis for the awarding of preferences in proportion to the quantum of the CPG that is tendered, or
- c) establish performance targets for the payment of financial incentives relating to the attainment of key performance indicators.

It should be noted that (a) and (b) above can be used in combination with each other should tender evaluation points be granted for tendering a contract participation goal which exceeds a minimum value.

Public sector procurement is frequently governed by local and international laws. Employers should be aware that they are responsible for the correct application of this part of ISO 10845 and ensuring that such application is consistent with prevailing legislation. Compliance with this part of ISO 10845 cannot confer immunity from legal obligations. If doubt exists, legal advice should be sought.

NOTE Annex F provides an example of a tendered contract participation goal calculation. Annex G provides an example of a tender evaluation schedule which enables this part of ISO 10845 to be used for tender evaluation purposes. Annex I provides information on the use of this part of ISO 10845 to provide third-party management support to fledgling contractors.

A.2 Commentary on terms and definitions

A.2.13 Targeted partner

A.2.13.1 General considerations

Targeted partners can be targeted upon the basis of

- a) locality (domicile),

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

Targeting can either be on a generic or an area-bound (localized) basis, e.g. business enterprises owned by women (generic), or business enterprises within a geographical region (area-bound).

The formulation of definitions for targeted partners can determine the success, or otherwise, of secondary procurement policies, as the business environment can respond to, and structure itself around, such policies. For example, a loose definition can promote fronting (practices which are against the spirit or provisions of this part of ISO 10845) which can, ultimately, undermine the integrity and intent of a policy. An ambiguous definition can promote collusion between procurement officers and suppliers (“gatekeeping”), as discretion invariably needs to be exercised to determine whether or not a business is a targeted partner. Too wide a definition can promote tokenism, as businesses that have some sort of the desired characteristics are permitted to derive benefit from the policy. Too tight a definition, on the other hand, can promote a culture of elitism, as too few businesses qualify. An inappropriate definition can promote the status quo and give a false impression of business empowerment.

Definitions for targeted partners should be contractually enforceable and mirror the intent of the secondary procurement policy. Poor definitions are often indicative of ill-defined policies.

A.2.13.2 Ownership of targeted partners

Ownership, including the right of disposition and sharing in the risks and profits commensurate with the degree of ownership, is, from a procurement point of view, particularly important in privately-owned companies as this issue lies at the heart of any programme of economic empowerment.

Ownership of publicly-listed companies is usually not a relevant characteristic, except where concessions are granted, as such companies are rarely able to exercise control over who acquires shares. In public sector concessions, however, ownership can be used to allow disadvantaged communities to acquire shares in new ventures, particularly in fields in which no empowerment companies are operating. This often presents challenges to empowerment consortia, who have to raise the necessary capital to purchase such shares up front. Various innovative mechanisms, including “buy back” options and the financing of such share purchases until such time as dividends and earnings from operating the concession can redeem the loans, are frequently used to enable empowerment companies to take advantage of the opportunities presented.

It is important to clearly define what constitutes ownership for an empowerment company in a given situation. It is also important to examine interlocking ownership between empowerment companies to establish factors such as control and independence.

The level of ownership necessary to constitute an empowerment company, as such, should also be carefully considered, as well as how, in practice, it can be monitored. The level of ownership in small businesses should be such that it is significant and is not readily open to manipulation.

A.2.13.3 Control of targeted partners

Control of businesses lies at the heart of empowerment initiatives. Control of an enterprise by a disadvantaged group of individuals is fundamental to empowerment. Ownership is often linked to control but this is not, in all instances, feasible or even desirable. In publicly-listed companies it might not be possible and in consortia arising from concessions, it might be too onerous. Control over an enterprise, from an empowerment perspective, should result in the policies implemented being effective, both in terms of business success and employee empowerment.

Control of a business should centre around the authority and power to manage the assets, goodwill and daily operations of the business, the determination of policies and the directing of business operations. Indicators of control include ownership, management responsibilities, and the assumption of risk. Factors such as who

makes major financial decisions (e.g. those pertaining to major purchases and acquisitions and the acquisition of lines of credit) and major management decisions (e.g. those pertaining to hiring and firing of senior personnel and supervision of office control) demonstrate control. In larger companies, an absolute majority of voting rights on boards in the hands of targeted population groups can demonstrate control.

A.2.13.4 Operational responsibilities

The person holding operational responsibilities within an enterprise might also have an impact on the empowerment issue. In public companies, operational responsibility is important. In such enterprises, consideration should be given to levels of reporting, particularly to executive directors, in order to understand in whose hands the operational control of an enterprise lies. In small companies, this is not usually an important consideration as owners are frequently responsible for the operation of an enterprise.

A.2.13.5 Independence

A critical issue in respect of empowerment companies is whether or not they are independent, i.e. free of direct or indirect control from another company, particularly by a non-empowerment company (some measure of control by financial institutions is acceptable). Over-dependency on another company is usually indicative of fronting. The practice of some companies to set up employees in front companies, which they effectively manipulate and control in order to access contracts, undermines the objectives of empowerment.

Interdependence should not be confused with independence. In franchises, for example, the franchiser usually contributes the brand, the management systems and promotional resources, whilst the franchisee puts up the capital and supplies the operating resources. Such a relationship can be described as interdependence. If, however, the franchisee were to act merely as a conduit and to add limited value, the relationship would be one of dependency. The acid test for independence in such instances would be the market value of the franchisee's business.

A.2.13.6 Size of enterprises

The size of an enterprise might be a consideration in some programmes. Internationally recognized criteria for the determination of the size of a business typically include

- a) the total number of employees,
- b) the value of fixed assets,
- c) the paid-up capital,
- d) the annual turnover, and
- e) the annual volume of physical production.

The following factors might have to be taken into account when formulating definitions for the size of a company:

- f) **Affiliation:** turnover might have to be considered together with the turnovers of the enterprise's affiliates in order to prevent the enterprise from forming affiliated enterprises in order to maintain its size status. [Enterprises are affiliates when, either directly or indirectly, one enterprise controls or has the power to control the other; a third party (or parties) controls or has the power to control both; or an identity of interests between or among parties exists such that affiliation might be found.]
- g) **Nature of business:** if formal enterprises in the small and micro sectors are to be targeted, requirements for compliance with tax obligations and statutory labour standards might have to be stipulated.

NOTE ISO 10845-1 provides more information on the empowerment of enterprises.

A.2.15 Targeting data

This part of ISO 10845 should be referenced in the scope of work or the tender evaluation schedule along with associated targeting data in accordance with the guidance provided in Annex B (see also ISO 10845-2).

A.3 Commentary on requirements

A.3.1 Contract participation goal

The participation of target groups should, as far as possible, be measured in monetary terms, as monetary transactions can normally be verified and audited. The participation of targeted enterprises can generally be measured in terms of receipts for work or services performed or for the provision of goods for a contract. The participation of a targeted enterprise partner in a structured joint venture can be measured in terms of the portion of the financial value of the contract for which such enterprise is responsible. There should, however, be a qualification to this parameter to ensure that such a partner adds value to the venture commensurate with its level of participation. This qualification should generally be framed around the value of the portion of the contract that is performed by the targeted partner with resources that are independent of other partners.

Contract participation goals can be used to measure the participation of targeted enterprises, i.e. the flow of money from the contract to the target group. Procedures as to how such goals can be quantified and verified in the performance of the contract should be included in the contract. This can be noted in specifications or other contract information which applies to the contract.

Figure A.1 illustrates a generic four-level performance-based resource specification which specifies and describes contract participation goals. The objective (Level 1) of this part of ISO 10845 focuses on the provision of employment opportunities to targeted groups. Subclauses 3.1 and 3.2 establish qualitative (Level 2) and quantitative (Level 3) requirements in relation to the objective (Level 1).

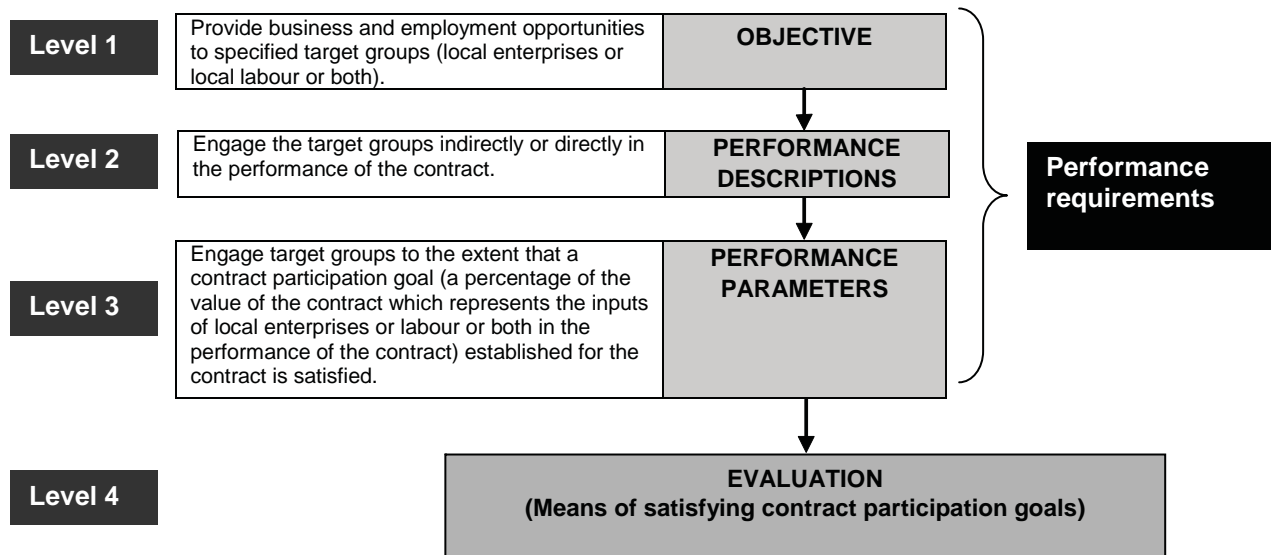


Figure A.1 — Structure of a performance-based resource specification

The objective (Level 1) and the performance description (Level 2) as set out in Figure A.1 can alternatively be viewed as key performance indicators, in which case the contract participation goal enables targets to be set and the performance parameters (Level 3) and the evaluation (Level 4) establish the measurement arrangements.

When using targeting strategy A, the contractor should complete the contract participation goal implementation plan (see Annex C) at the commencement of the contract, particularly where a contractor has

tendered a contract participation goal, as this document can be used to determine whether or not the sanctions provided for in the contract (see Clause 6) should be applied.

NOTE 1 Annex F sets out the manner in which the contract participation goal can be estimated by tenderers and evaluated by employers at tender stage where targeting strategy A is adopted.

NOTE 2 The information contained in the contract participation goal implementation plan facilitates, in the first instance, the monitoring of the performance of the contractor in terms of his contract participation goal obligations and, in the second instance, the making of any adjustments to compensate for quantitative underruns, the elimination of items, etc. (see Clause 6). This reduces a contractor's risk exposure.

A.3.2 Achieving the contract participation goal

A.3.2.1 General

This part of ISO 10845 permits the contract participation goal to be achieved only through joint venture formation. The contract participation goal, as such, measures the flows of monies to targeted enterprises throughout the supply chain.

A.3.2.2 Verification of the status of targeted partners

Specially designed declarations to verify the bona fides of targeted partners should be used to minimize fronting or the abuse of secondary procurement policies and to maintain the integrity of the reporting on key performance indicators and the measurement of procurement outcomes.

Each targeted partner should be required to confirm its bona fides in a targeted partner declaration affidavit. Such a declaration should comprise a series of questions which are designed to probe aspects of the relevant definition for the targeted partner. The information provided should as a minimum be reviewed to confirm that the enterprise satisfies eligibility criteria for recognition as a targeted partner. Interrogation in more depth is not usually required unless a challenge to eligibility for recognition as a targeted partner arises or the review identifies possible areas of non-compliance or areas of uncertainty.

NOTE 1 In order to obviate the unnecessary work occasioned by repeated applications and evaluations for recognition as a targeted partner, an applicant partner can be registered on a database after an initial successful evaluation. Thereafter, only confirmation, or updating, of partner status is necessary, unless a challenge to the status of the registered partner arises, in which case an assessment, or interrogation in more depth, becomes necessary. Registered partners are then able to quote a registration number in lieu of the submission of a declaration affidavit in order to be recognized as a targeted partner on a contract-specific basis. A directory of targeted partners registered with a procuring entity can be published on a regular basis to ensure that the registration of targeted partners is a transparent process. Such publication is not only an essential management integrity measure, but also an important means to facilitate and foster the development of business relationships between targeted partner and non-targeted partner. Accordingly, all the essential details of the partners, including those which underpin the status of the partners, the fields in which they operate and their contract particulars, can be published.

NOTE 2 A challenge to the status of a targeted partner becomes necessary if and when doubt arises as to the authenticity of information originally furnished by such partner in a declaration affidavit to gain recognition as a targeted partner, or if there is reason to believe that the circumstances of the partner have changed in such a way as to render it ineligible for continued recognition as a targeted enterprise. The investigation and interrogation resulting from a challenge to status can be more probing and intensive than the initial review. The enterprise being investigated can be required to furnish any additional and supplementary information found to be required as the investigation proceeds.

NOTE 3 An enterprise's external auditors can be called upon to certify some of the characteristics of an enterprise, for example annual average turnover, ownership percentages, number of senior managers who fall within certain population groups, etc.

A.3.2.3 Joint ventures

A.3.2.3.1 General

A.3.2.3.1.1 A joint venture is an association of different enterprises on an ad hoc basis for a specific project, in which the obligations, risks and rewards are shared by two or more parties. Joint ventures in the procurement context are formed to realize commercial opportunities made available through the award of contracts. Joint ventures can operate in two distinctly different ways, but, in practice, most operate as a mixture of two broad alternatives, namely

- a) the members of the joint venture pool their resources and the contract is performed by the joint venture using the pooled resources, or
- b) the work and obligations making up the contract are broken down into separate elements, or sections, usually on the basis of locality, the nature of the work, or the capabilities and resources required, and each element is assigned to a specific member of the joint venture who assumes full responsibility for its execution, under the direction of the joint venture.

A joint venture, from an empowerment or development perspective, can enable an enterprise to gain exposure and experience in new fields with the assistance of a partner who already has experience therein. It is also an excellent vehicle for technology transfer and the improvement of managerial and technical skills, as well as being a means to access finance. Accordingly, joint ventures can be useful tools in accelerating the empowerment or development of targeted enterprises in particular fields and subsectors where capacity is lacking.

A.3.2.3.1.2 It is important that joint ventures which are structured with the purpose of satisfying the business empowerment objectives of a procuring entity do, in fact, promote the transfer of technology, expertise, etc. In order to achieve this, targeted partners should

- a) share meaningfully in the ownership, control, management, responsibilities, risks and profits of the joint venture,
- b) be responsible for clearly defined aspects of the contract, and
- c) provide some of the resources necessary to perform the contract.

Permanent joint venture relationships, in terms of which the targeted partners are not pursuing business activities in their own right outside of the joint ventures, should be carefully examined as they might be no different from non-targeted enterprises which have some shareholders from a targeted community. Business empowerment is generally better served by the formation of project-specific joint ventures, where partners come together only for the duration of specific contracts.

The successful operation of a joint venture requires a high degree of trust and cooperation between the members. Nevertheless, it is essential that the joint venture be constituted by means of a comprehensive and fair written agreement between the members, which sets out their obligations, rights, risks, liabilities and rewards. The targeted procurement procedure, however, does not concern itself with joint venture agreements per se; its sole concern is that such agreements are in place and that the agreements do not violate the specified principles for the engagement of targeted partners.

A.3.2.3.1.3 Joint ventures can be formed before the award of a contract, with the objective of securing the contract, or as a condition for the award of a contract. In the latter case, the contract can be awarded either to a tendering entity which already complies with the requirements for a joint venture, or to a single firm which undertakes to form a joint venture with targeted partners after the award of the contract. Awarding a contract to a single firm, which undertakes to form a joint venture after the award of the contract, has the following advantages:

- a) termination of the services of a targeted partner for a valid reason is relatively simple, as the contract was awarded to a single firm and not to the joint venture;

- b) shorter tender periods can be permitted as time need not be allowed for the formation of joint ventures prior to the submission of tenders, and
- c) targeted enterprises can negotiate with the successful tenderer to become joint venture partners instead of having, from the outset, to commit themselves to specific partners; this is particularly useful in situations where the supply of targeted enterprises is limited.

Joint venture questionnaires can assist a procuring entity to understand the nature and workings of a proposed joint venture. Tender goal calculation forms assist tenderers to calculate the quantum of participation which they offer in their tenders and enable those evaluating tenders to assess the reasonableness of the offers.

NOTE Joint ventures are, normally, unincorporated bodies, regarded in law as partnerships in which the partners are jointly and severally liable for the acts, neglects and omissions of the partnership.

A.3.3 Contract participation goal credits

The contract participation goal is based on the contract amount determined in accordance with the targeting strategy selected for the contract and the means by which the contract participation goal can be achieved.

The requirement for a minimum participation parameter of 0,1 where all joint venture partners are targeted partners ensures that participation is spread in a meaningful manner to others in need of development opportunities.

It should be noted that the requirement for targeted partners to perform commercially useful functions ensures that such enterprises add value within the supply chain.

A.4 Commentary on compliance with requirements

A.4.1 General

Compliance with the requirements for the granting of credits relating to contract participation goals is linked to the entering into of contracts with targeted partners and the furnishing of such agreements and acceptances thereof.

The requirement, in the case of targeting strategy A, for the employer's written approval to terminate the contract or reduce the scope enables the employer's representative to make informed decisions regarding substitutions and waivers in respect of contract participation goal obligations.

A.4.2 Substitutions

The provisions of 4.2 permit, under certain conditions, the substitution of targeted partners with others or the waiver of goals. Subclause 4.2 enables contractors to manage risk associated with non-compliance with the requirements of this part of ISO 10845 in a fair and equitable manner.

A.4.3 Bona fides of targeted partners

The provisions of 4.3 relieve a contractor of his contract participation goal obligations (and penalties that can be applied for failing to achieve a contract participation goal obligation) where a targeted partner is engaged in good faith after having performed basic due diligence checks, only to discover that the targeted enterprise is not entitled to targeted partner status. In such circumstances, it would be unfair to apply penalties.

A.5 Commentary on records

A.5.1 Submission of documentation

All documents relating to compliance with the requirements of this part of ISO 10845 should be submitted to the employer's representative, who is responsible for certifying the credits granted in respect of the contract participation goal.

A.5.2 Monthly submission of supporting documentation

The requirement for additional information enables the employer's representative to monitor compliance with requirements more closely.

A.5.3 Certification of credits

The employer's representative is responsible for certifying the credits granted in respect of the contract participation goal. Any dispute relating to the passing of credits should be resolved in terms of the dispute resolution mechanisms provided for in the contract.

Annex H provides an example of a schedule that can be used to certify and counter-certify payments.

A.6 Commentary on sanctions

Sanctions should be provided for in the contract if targeting strategy A is pursued and the contractor fails to substantiate that any failure to achieve the contract participation goal was due to quantitative underruns, the elimination of items, or any other reason beyond the contractor's control which can be acceptable to the employer. This clause is designed to limit a contractor's risk exposure in failing to achieve contractual obligations beyond his control.

NOTE In targeting strategy B, the provisions of this clause are not applicable as there is no need to minimize a contractor's risk exposure.

Appropriate action should be taken by procuring entities against tenderers who are awarded contracts on a fraudulent basis or against contractors who fail to achieve their contractual obligations relating to the engagement of targeted labour. Procuring entities should have a number of penalties and contractual remedies available to address such situations, including

- a) recovering all costs, losses or damages incurred or suffered,
- b) cancelling the contract/tender and claiming any damages suffered as a result of having to make less favourable arrangements for the award of the contract,
- c) the rejection of payment certificates as being incomplete should the appropriate supporting documentation not be provided,
- d) the withholding of the issuing of completion certificates until such time that the contractor has satisfactorily demonstrated that targeted labour has been engaged in accordance with the contract participation goal implementation plan,
- e) imposing a financial penalty more severe than the financial advantage calculated at the time when tenders were evaluated or more severe than the cost of complying with contractual obligations, or
- f) restricting the contractor and its shareholders and directors from being awarded further contracts by the procuring entity for a specified period of time.

Sanctions should be sufficiently punitive to encourage compliance. Care should be taken when offering tender evaluation points that the sanction is not more attractive than compliance, e.g. the quantum of the penalty for non-compliance is less than the competitive advantage gained from the tender evaluation points.

NOTE It is often not in the employer's interest to cancel a contract and the imposition of financial penalties is often the most practical sanction where legislation permits the employer to deduct liquidated damages from amounts owed to the contractor.

Annex B
(informative)

Preparation of targeting data associated with this part of ISO 10845 for inclusion in the scope of work

Targeting data form an essential part of this part of ISO 10845; without such data, requirements are incomplete.

The format for the targeting data has been developed to be compatible with the guidance provided in Annex C of ISO 10845-2:2011. The targeting data should be incorporated in the scope of work as shown in Table B.1.

Table B.1 — Incorporating this part of ISO 10845 in the scope of work

Topic	Aspect	Commentary				
Procurement procedures	Participation of target groups	<p>The following parts of ISO 10845 and associated targeting data are applicable:</p> <ol style="list-style-type: none"> 1) ISO 10845- 2) ISO 10845- <p>The associated targeting data are as follows:</p> <table border="1" data-bbox="657 1066 1455 1415"> <tr> <td data-bbox="657 1066 849 1415" rowspan="3">Targeting data pertaining to ISO 10845-</td> <td data-bbox="849 1066 1455 1196"> Essential data: The requirements for are The requirements for are </td> </tr> <tr> <td data-bbox="849 1196 1455 1326"> Variations: 1) 2) </td> </tr> <tr> <td data-bbox="849 1326 1455 1415"> Additional clauses: 1) </td> </tr> </table>	Targeting data pertaining to ISO 10845-	Essential data: The requirements for are The requirements for are	Variations: 1) 2)	Additional clauses: 1)
Targeting data pertaining to ISO 10845-	Essential data: The requirements for are The requirements for are					
	Variations: 1) 2)					
	Additional clauses: 1)					

Develop the targeting data based on the contents of Table B.2.

Table B.2 — Targeting data associated with this part of ISO 10845

Targeting data associated with this part of ISO 10845	Guidance notes	
	Clause number	Consideration
Essential data		
The employer's representative is	2.8	Insert the name or designation of the employer's representative (usually the name of the person responsible for administering the contract, e.g. engineer, project manager or principal agent).
Targeted partner	2.13	<p>Define the targeted partner (see A.2.13), e.g.</p> <p>A sole trader, partnership or legal entity which is a continuing and independent enterprise for profit, and which</p> <p>a) is in the control of one or more women who are principals; and</p> <p>b) in the case of public companies, at least 50 % is run by senior managers, of which or in the case of enterprises other than public companies, at least 51 % is owned by one or more women.</p> <p>Where:</p> <p>Independent enterprise means an enterprise which is free of any significant degree of direct or indirect ownership or control by any business which engages in the same business activities.</p> <p>NOTE Indicators of control include, without limitation, interlocking management or ownership, common principals, identity of interests among family members, shared facilities and equipment, or common use of employees.</p> <p>Owned means having all the customary incidents of ownership, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest or shareholding as demonstrated by an examination of the substance rather than the form of ownership arrangements.</p> <p>Senior manager means a full-time employee who is responsible for planning, organizing, leading and controlling operations within an organization and who reports directly to a principal.</p> <p>Principal means a person in a business who is a partner in a partnership, a sole proprietor, a director in a company established in terms of legislation.</p>
The targeting strategy is	3.1 2.16.1 2.16.2	State the applicable targeting strategy A or B, depending upon the usage of CPGs in the contract.

Table B.2 (continued)

Targeting data associated with this part of ISO 10845	Guidance notes	
	Clause number	Consideration
<p>The contract participation goal is %.</p> <p><i>or</i></p> <p>The contract participation goal is as stated in the tender evaluation schedule.</p> <p><i>or</i></p> <p>The contract participation goal is as stated in the scope of work/partnering schedule.</p> <p><i>or</i></p> <p>There is no specific contract participation goal set for this contract.</p>	3.1	<p>Specify the contract participation goal, if any, that applies to the contract or identify the document in which the applicable CPG is located.</p> <p>Select the appropriate statement, depending on what is to be achieved and which targeting strategy is used.</p> <p>Ensure that the tendered contract participation goals form part of the offer, if they are not captured in a returnable schedule which is included in the scope of work in the contract.</p>
<p>The targeted partner declaration shall be submitted within three months of the commencement of the contract.</p>	3.2.2	<p>State when the targeted enterprise declaration shall be submitted if it is not to be submitted before the first submission for payment.</p>
<p>Supporting documentation shall be delivered to the employer's representative on or before the day of the month.</p> <p><i>or</i></p> <p>Supporting documentation shall be delivered to the employer's representative on the date that claims for payments are to be submitted by the contractor in terms of the contract.</p>	5.2	<p>State day of the month if contractor is not responsible for assessing amounts due or insert alternative statement if contractor is responsible for preparing claims for payment.</p>
<p>Variations</p> <p>.....</p>		<p>State variations, if any.</p>
<p>Additional clauses</p> <p>.....</p>		<p>State additional clauses, if any.</p>

Annex C (normative)

Contract participation goal implementation plan (targeting strategy A)

C.1 General information

Employer:

Contract description:

Contract number:

Project reference number:

C.2 Contract parameters

Contract participation goal applicable to the contract %

Financial value of the contract at the time of the award of the contract (exclusive of any value added tax or sales tax required by law)

Less all allowances

Contract amount 1

C.3 Achieving the contract participation goal

I/We intend to achieve the contract participation goal (CPG) by entering into a joint venture with the following targeted partners:

Name of targeted partner	Financial value of the contract for which the targeted partner is responsible (excluding value added tax or sales tax)	Financial value of the contract which the targeted partner performs independently with own resources (excluding value added tax or sales tax)	Participation parameter	Percentage participation to be claimed towards CPG
			(1)	(1) × 100
				%
				%
				%
				%
Total contribution towards CPG				%

NOTE The participation parameter (see 3.2.3.2) is equated to the lesser of

- a) the financial value of the contract for which the targeted partner is responsible, and
- b) twice the financial value of the contract which the targeted partner performs using his own resources or resources hired by him independently of his non-targeted partners,

expressed as a fraction of the contract amount.

C.4 Undertakings

I/We hereby certify that, to the best of my/our knowledge, the above information, facts and representations are correct and the proposed targeted partners named shall perform commercially useful functions in the performance of the contract and are bona fide targeted partners.

I/We hereby delegate to be our targeted partner liaison officer.

Tel:

Fax:

Signature:

Address:

.....

.....

Date:

Annex D
(normative)

Joint venture disclosure form

Employer:

Contract description:

Contract number:

Project reference number:

INSTRUCTIONS

- a) Unless otherwise directed by the employer's representative, this form need not be completed if all joint venture partners are targeted partners.
- b) Fill in all the information requested in the spaces provided. Attach additional sheets if required.
- c) Attach a copy of the joint venture agreement to this form. In order to demonstrate that the targeted partners share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement includes specific details relating to:
 - 1) the contributions of capital and equipment;
 - 2) portions of the contract to be performed by the targeted partner's own resources; and
 - 3) portions of the contract to be performed under the supervision of the targeted partner.
- d) Attach to this form copies of all written agreements between partners concerning the contract, including those that relate to ownership options and to restrictions/limits regarding ownership and control.
- e) Targeted partners are required to complete targeted enterprise declaration affidavits.

D.1 Joint venture particulars

Name:

Postal address:

.....
.....

Physical address:

.....
.....

Telephone:

Fax:

Name of authorized representative:

D.2 Identity of each non-targeted partner

Name:

Postal address:

.....
.....

Physical address:

.....
.....

Telephone:

Fax:

Contact person for matters pertaining to contract participation goal requirements:

(Continue as required for further non-targeted partners.)

D.3 Identity of each targeted partner

Name:

Postal address:

.....
.....

Physical address:

.....
.....

Telephone:

Fax:

Contact person for matters pertaining to contract participation goal requirements:

Detailed description of the portions of the contract to be managed by the targeted partner:

.....
.....
.....
.....

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Resources which shall be employed by the targeted partner:

a) Activities performed with own resources:

.....
.....
.....
.....

b) Describe resources which shall be provided independently of other partners:

.....
.....
.....
.....

(Continue as required for further targeted partners.)

D.4 Description of the role of the targeted partners in the joint venture

.....
.....
.....
.....

D.5 Ownership of the joint venture

a) Targeted partner ownership percentage(s): %

Non-targeted partner ownership percentage(s): %

b) Targeted partner percentages* in respect of

1) profit and loss sharing: %

2) initial capital contribution: %

.....
.....
.....

(* Brief descriptions and further particulars should be provided to clarify percentages.)

3) Anticipated ongoing capital contributions:

.....
.....

4) Contributions of equipment (specify types, quality, and quantities of equipment) to be provided by each partner:

.....
.....
.....
.....

D.6 Recent contracts performed by partners in their own right or as partners in other joint ventures

a) Non-targeted partners

- 1)
- 2)
- 3)
- 4)
- 5)

b) Targeted partners

- 1)
- 2)
- 3)
- 4)
- 5)

D.7 Control and participation in the joint venture

(Identify by name and firm those individuals who are, or will be, responsible for, and have authority to engage in, the relevant management functions and policy and decision making, indicating any limitations in their authority, for example co-signature requirements and monetary limits.)

a) Joint venture cheque signing:

.....
.....
.....

b) Authority to enter into contracts on behalf of the joint venture:

.....
.....
.....

c) Signing, co-signing or collateralizing of loans:

.....

d) Acquisition of lines of credit:

.....
.....
.....

e) Acquisition of performance bonds:

.....
.....
.....

f) Negotiating and signing of labour agreements:

.....
.....
.....

D.8 Management of the performance of the contract

(Fill in the name and firm of the responsible person.)

a) Supervision of field operations:

.....

b) Major purchasing:

.....

c) Estimating:

.....

d) Technical management:

.....

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D.9 Management and control of the joint venture

a) Identify the managing partner, if any:

.....

.....

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b) What authority does each partner have to commit or obligate the other to financial institutions, insurance companies, suppliers, subcontractors or other parties participating in the performance of the contemplated works?

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.....

.....

c) Describe the management structure for the joint venture's work under the contract:

Management function/designation	Name	Partner (from a non-targeted partner/from a targeted partner) ^a

^a Fill in whether the partner is a targeted partner or a non-targeted partner.

D.10 Personnel

a) State the approximate number of operative personnel (by trade/function/discipline) needed to perform the joint venture contract.

Trade/function/discipline	Number from a targeted partner	Number from a non-targeted partner

b) State the number of operative personnel to be employed on the contract who are currently in the employ of partners:

- 1) number currently employed by a targeted partner:
- 2) number currently employed by a non-targeted partner:

c) State the number of operative personnel who are not currently in the employ of the respective partners and shall be engaged on the project by the joint venture:

d) State the name of the individual who shall be responsible for hiring joint venture employees:

e) State the name of the partner who shall be responsible for the preparation of joint venture payrolls:

D.11 Control and structure of the joint venture

Briefly describe the manner in which the joint venture shall be structured and controlled.

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The undersigned warrants that he/she is duly authorized to sign this joint venture disclosure form and affirms that the foregoing statements are correct and include all the material information necessary to identify and explain the terms and operations of the joint venture and the intended participation of each partner in the undertaking.

The undersigned further covenants and agrees to provide the employer with complete and accurate information regarding actual joint venture work and the payment therefor, and any proposed changes in any provisions of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each partner relevant to the joint venture, by duly authorized representatives of the employer.

Signature:

Duly authorized to sign on behalf of:

Name:

Address:

.....

Telephone:

Date:

Signature:

Duly authorized to sign on behalf of:

Name:

Address:

.....

Telephone:

Date:

Signature:

Duly authorized to sign on behalf of:

Name:

Address:

.....

Telephone:

Date:

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Annex E (informative)

Examples of how contractors can fulfil their contract participation goal obligations

E.1 Contract parameters

For the purposes of this example,

- 1) the value of the contract, exclusive of any value added tax or sales tax required by law, provisional sums and all allowances for escalation and contingencies, is assumed to be USD 10 000 000; and
- 2) the contract is a building contract.

E.2 Tendered contract participation goal options

Contractors can tender a contract participation goal in a variety of ways, as illustrated below.

E.2.1 Contractor A

Contractor A, who is not a targeted partner, enters into a joint venture with a targeted partner who has a participation parameter amounting to 0,2.

The targeted partner is responsible for work to the value of USD 2 000 000 of which at least 50 % is performed with resources independent of the non-targeted partner.

Value of credits = USD 2 000 000

Credit = $2\,000\,000/10\,000\,000 \times 100 = 20\%$

The joint venture can tender a contract participation goal of 20 %.

E.2.2 Contractor B

Contractor B, who is not a targeted partner, enters into a joint venture with three targeted partners, who collectively have a participation parameter amounting to 0,35.

The targeted partners are responsible for work to the value of USD 3 500 000 of which at least 50 % is performed with resources independent of the non-targeted partners.

Value of credits = USD 3 500 000

Credit = $3\,500\,000/10\,000\,000 \times 100 = 35\%$

The joint venture can tender a goal of 35 %.

Annex F (informative)

Tendered contract participation goal (targeting strategy A)

NOTE This annex can be used by tenderers to calculate their expected contract participation goal for a given contract. Employers can use this annex to assist them in understanding how the tenderer intends to fulfil his goal obligations in the performance of the contract during the evaluation of tenders.

F.1 Tender parameters

Sum tendered (exclusive of any value added tax or sales tax required by law)		
Less all allowances		
Contract amount		1

NOTE The contract participation goal is based on the contract amount.

F.2 Joint venture proposal

Complete the following in respect of each selected method.

Name of targeted partners ^a	Participation parameter (1)	Percentage participation to be claimed towards CPG (1) × 100
		%
		%
		%
		%
Total towards CPG		%
<p>NOTE The participation parameter (see 3.2.3.2) is equated to the lesser of</p> <p>a) the financial value of the contract for which the targeted partner is responsible, and</p> <p>b) twice the financial value of the contract which the targeted partner performs using his own resources or resources hired by him independently of his non-targeted partners,</p> <p>expressed as a fraction of the net amount.</p> <p>^a Insert A,B,C, etc. as appropriate, if unknown or not finalized.</p>		

Contract participation goal which is likely to be achieved in the performance of the contract: ____% (≤ 100%)

NOTE This value should equal or exceed the tendered contract participation goal.

Briefly describe the portions of the contract which each targeted partner is likely to manage in the performance of the contract:

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Briefly describe the resources which are to be employed/provided by each targeted partner:

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Briefly describe the role of the targeted partners in the joint venture:

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Annex G
(informative)

Sample tender evaluation schedule where use is made of this part of ISO 10845

TENDER EVALUATION SCHEDULE	
1 ENGAGEMENT OF TARGETED PARTNERS IN THE PERFORMANCE OF THE CONTRACT	
Targeted partners shall be engaged in the performance of the contract in accordance with the requirements of ISO 10845-6 and the following targeting data:	
Clause number	Essential data^a: The Employer's representative is A targeted partner is The targeting strategy is
	Variations^b: 1) 2)
	Additional clauses: 1)
<p>^a See Annex B.</p> <p>^b Insert "none" if there are none.</p>	
Should any requirements of the variations conflict with the requirements of ISO 10845-6, the requirements of the variations shall prevail.	
2 CONDITIONS ASSOCIATED WITH THE GRANTING OF TENDER EVALUATION POINTS	
The Tenderer undertakes to	
<ul style="list-style-type: none"> — engage targeted enterprises in accordance with the provisions of ISO 10845-6 as set out in Section 1 above; — accept the sanctions set out in Section 3 below, should such conditions be breached; — complete the Tender Points Claim Form contained in Section 4 below; and — complete the Supporting Contract Participation Goal Calculation contained in this schedule. 	

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3 SANCTIONS

In the event that the Contractor fails to substantiate that any failure to achieve the contract participation goal relating to the granting of tender evaluation points was due to quantitative underruns, the elimination of items, or any other reason beyond the Contractor's control which may be acceptable to the Employer, the Contractor shall be liable to pay to the Employer a financial penalty calculated in the following manner:^c

$$P = 0,15 \times \frac{(D - D_o)}{(100)} \times C_A$$

where

- D* is the tendered contract participation goal percentage;
- D_o* is the contract participation goal which the Employer's representative certifies, based on the credits passed, as being achieved upon completion of the contract;
- C_A* is the contract amount based on 10 points being allocated to the preference so that the penalty is 1,5 times more severe than the preference granted;
- P* is the monetary value of penalty payable.

^c Based on 10 points out of a total of 100 points being allocated to the contract participation goal so that the penalty is 1,5 times more severe than the points granted.

4 TENDER POINTS CLAIM

We hereby tender a Contract Participation Goal of % in order to claim tender evaluation points.

The undersigned, who warrants that he is duly authorized to do so on behalf of the firm or sole proprietor, confirms that he understands the conditions under which such tender evaluation points are granted and confirms that the tenderer satisfies the conditions pertaining to the granting of tender evaluation points.

Signature:

Name:

Duly authorized to sign on behalf of:

Telephone:

Fax: Date:

SUPPORTING CONTRACT PARTICIPATION GOAL CALCULATION

Insert Annex F of ISO 10845-6

Annex H

(informative)

Contract schedule for targeted enterprises

Monitoring for contract compliance necessitates that records of all documents and contracts which the Contractor is required to furnish the Employer with (in terms of this part of ISO 10845), are recorded in a systematic manner. The summary schedules contained in this annex facilitate this. These schedules should be completed and maintained by the Employer's representative.

NOTE Contractors are required, in terms of this part of ISO 10845, to regularly submit details relating to targeted partners and to report on the programming of activities relating to, and the commercially useful functions performed by, targeted partners in the performance of the contract.

—

Schedule H.1 — Documentation for targeted enterprises

Contractor: Report number: Certified by: Name

Contract number: Date: Signature:

Name of targeted partner	Category	Record of submissions		Status ^c
		Targeted partner declaration affidavit	Joint venture disclosure form and joint venture agreement	
		Date ^a	Status ^b	

a Insert date when verified and accepted.

b Insert one of the following:
 NS = not submitted
 NR = not required
 SI = submitted
 VA = verified and accepted

c Insert one of the following:
 NC = not compliant
 C = compliance in all respects

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Schedule H.2 — Contract schedule for targeted partners

Contractor: Report number: Certified by: Name
 Contract number: Date: Signature:

Name of targeted partner	Value of contract completed by joint venture (excluding sales and value added tax)	Final value of the contract for which the targeted partner was responsible (excluding value added and sales tax)	Final value of the contract which the targeted partner performed independently with own resources (excluding value added and sales tax)	Participation parameter	Status ^a
a Insert one of the following: DV = data verified and certified by employer's representative DN = data not verified or certified by employer's representative					

Annex I (informative)

Third-party management support

I.1 Introduction

In this arrangement, a procuring entity provides 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. These third-party service providers 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.

NOTE Third-party management support can be

- a) used to develop 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.

In some programmes it might be necessary to define groups of workers or labour teams as targeted enterprises.

I.2 Contractual arrangements for third-party management support

I.2.1 Introduction

Third-party management support can be provided in a number of ways and should be either directly or indirectly procured by procuring entities.

I.2.2 Method 1 (direct procurement)

I.2.2.1 General considerations

The procuring entity can directly contract a third-party to render any necessary support, on either 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 partner. There is, however, no contract between the service provider and the targeted partner; nor should there be. In this arrangement, the procuring entity's risk of the targeted partner not performing the contract satisfactorily can be minimized by requiring the service provider to provide on-site support and monitoring. The service provider can only be held responsible for the support services provided, not for the performance of the targeted partner. For example, timely supply of plant and the monitoring of the targeted partners 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.

I.2.2.2 Cost consideration services

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

- a) construction management;
- b) materials management;
- c) facility management;
- 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 plant at cost and directly engaging targeted enterprises with low-overhead structures, the foregoing contractual arrangement results in construction and manufacturing costs (or a combination thereof) which are comparable to those of conventional contracting. In effect, profit on materials and plant, risk pricing and the conventional contractor's overhead costs are traded off against development support costs.

NOTE 1 A variation to Method 1 is to require main contractors to provide third-party support to targeted partners who are engaged as nominated subcontractors or selected subcontractors (see ISO 10845-1). This arrangement, however, engages targeted enterprises at subcontract level, which might not be desirable in a contractor development programme or on community projects.

NOTE 2 SANS 1921-4 provides details of the services that may be required.

I.2.2.3 Clauses inserted into contracts

The following clauses are typically inserted in the contract between the contracting authority and the targeted partner:

- 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) deliver or arrange for the supply of certain materials to the place of work (where required in terms of the scope of work).

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

- a) Duties and powers of the materials manager

The duties of the materials manager are to

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

ISO 10845-6:2011(E)

- 2) account for the net quantities of materials obtained by, or on behalf of, the contractor for use in the construction of the works.

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

I.2.3 Method 2 (indirect procurement)

Third-party development support can also be provided by requiring main contractors (well-established contractors) to enter into joint ventures with targeted partners (developing contractors) in accordance with the requirements of this part of ISO 10845, upon award of the contract. Main contractors are thus obliged to provide third-party management support to targeted partners, which they engage as joint venture partners, in order to achieve contract participation goals, without the contracting authority 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, this part of ISO 10845 makes provision for the procuring entity to relieve the contractor of his contract participation goal obligations under certain circumstances in order to reduce his risk exposure.

NOTE A variation to Method 2 is to require main contractors to outsource portions of the work to targeted partners who are engaged as nominated subcontractors. This arrangement, however, engages targeted partners at subcontract level which is not necessarily desirable in a contractor development programme or on certain community projects.

I.3 Selecting the appropriate strategy for the engagement of third-party management support

I.3.1 General considerations

Factors such as the following should be taken in account when deciding upon the most appropriate strategy for the engagement of third-party management support:

- a) complexity of the project;
- b) plant requirements;
- c) experience (or the lack thereof) of targeted partners;
- d) degree to which the contracting authority wishes to become involved in the contract or project;
- e) ownership of the contract (targeted partners, as main contractors or subcontractors); and
- f) risk exposure of the parties.

I.3.2 Method 1 considerations

Method 1 is best suited to situations in which there is limited plant usage and the bulk of the construction is carried out by labour only, or by labour and materials contractors. It is not well suited to projects which require significant plant inputs, as it is difficult to ensure that the plant is utilized in the most cost-effective manner, nor are there incentives to do so. Service providers can be engaged either in terms of a standard service contract or through a standard engineering and construction work contract that is sufficiently flexible to accommodate the provision of third-party management support services alongside the provision of works. The scope of work in both options should be defined in terms of the management specifications. Consideration should be given to the question of contract administration and oversight. On small contracts, it might be advantageous, for reasons of economy, to appoint the service provider to administer and oversee the contract as the employer's representative. This arrangement should be approached with caution, however, as it is preferable, for reasons relating to the management of risk, to separate these roles.

Method 1 enables targeted enterprises to own the contract (i.e. to have a direct contract with the contracting authority), enables the contracting authority to exercise direct control over the development of the targeted enterprises and provides for the greatest flexibility and least risk exposure to the third-party management support service providers.

I.3.3 Method 2 considerations

In Method 2, the major advantage of using this part of ISO 10845 to secure third-party management support is that the contracting authority does not have to structure the relationships between the parties and transfers the risk and costs associated with any failure to perform to an established contractor. There is, however, the potential for price premiums to creep in due to the higher risk exposure for the party which provides the management support. However, where plant requirements are relatively high, there is an incentive for the contractor to minimize plant costs and greater efficiency in plant utilization is more than likely to offset any costs associated with the acceptance of increased risks.

The disadvantages of using this part of ISO 10845 is that, since the targeted partners only co-own the contract with their joint venture partner, the procuring entity exercises less control over the development of the targeted partners, who require some previous experience or training to enable them to engage and interact with established contractors. This part of ISO 10845 does, however, cover situations where main contractors could significantly exploit the targeted enterprises. There is nevertheless a possibility that targeted partners might be offered fixed-rate contracts and not be exposed to competitive tendering, thereby failing to gain the necessary experience in pricing contracts.

Method 2 has the potential to expose targeted partners to a wider range of management activities than if they had been engaged as subcontractors. It does not, however, necessarily overcome the problems inherent in the use of fixed-rate contracts.

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