



Civilution

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Focus on: National Treasury Standard for Infrastructure Procurement and Delivery Management



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REPUBLIC OF SOUTH AFRICA

Promoting social and economic objectives through procurement

The Standard for Infrastructure Procurement and Delivery Management (SIPDM) establishes developmental or secondary procurement policy relating to Broad-Based Black Economic Empowerment (B-BBEE), and where appropriate, work opportunities for target groups and national development goals. The SIPDM furthermore establishes targeted procurement procedures that may be used to promote social and economic objectives, as well as those for specifying minimum local content. It is important to understand the context within which developmental procurement policies are implemented and how targeted procurement procedures are applied.

LEGISLATION GOVERNING THE USE OF PROCUREMENT AS AN INSTRUMENT OF POLICY

Public procurement, because of its nature and size, can have a significant impact on social and economic development. Procurement has been used internationally for several decades to, amongst other things, stimulate regional and national economic activity, protect local industries, develop competitive local suppliers, develop supply chains, address regional, gender and racial inequities and disparities, create jobs particularly for local labour, create short-term work opportunities for unskilled and semi-skilled workers, employ the youth and people with disabilities, and improve working conditions.

The Constitution of the Republic of South Africa of 1996 (Act 108 of 1996) requires that the public procurement system be “fair, equitable, transparent, competitive and cost-effective”. The Constitution, however, establishes a procurement policy providing for “categories of preference in the allocation of contracts” and “the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination”, provided that such a policy is implemented in accordance with a framework provided for in national legislation. The Preferential Procurement Policy Framework Act of 2000 (Act No 5 of 2000) gives effect to these Constitutional provisions by providing a framework for the implementation of the procurement policy.

The Preferential Procurement Policy Framework Act requires organs of state to determine their preferential procurement policy and to implement it within a framework. The framework provided by the Act requires that a preference point system must be followed, namely:

- for contracts with a Rand value above a prescribed amount, a maximum of 10 points may be allocated for specific goals, provided that the lowest acceptable tender scores 90 points for price;
- for contracts with a Rand value equal to or below a prescribed amount, a maximum of 20 points may be allocated for specific goals provided that the lowest acceptable tender scores 80 points for price;
- any other acceptable tenders which are higher in price must score fewer points on a pro rata basis, calculated on their tender prices in relation to the lowest acceptable tender in accordance with a prescribed formula; and
- the contract must be awarded to the tenderer who scores the highest points unless objective criteria in addition to that pertaining to specific goals justify the award to another tenderer.

The framework states that specific goals may include contracting with persons, or categories of persons, historically

disadvantaged by unfair discrimination on the basis of race, gender or disability, and implementing the programme of the Reconstruction and Development Programme as published in Government Gazette No 16085 dated 23 November 1994. Regulations have been issued in terms of the Preferential Procurement Policy Framework Act to implement the Act. The 2011 Preferential Regulations include regulations relating to local (as opposed to imported) production and content whereby a minimum local content can be specified and applied.

The Broad-Based Black Economic Empowerment Act of 2003 (Act 53 of 2003) requires that organs of state and all public entities take into account and, as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act in developing and implementing a preferential procurement policy. This Act accordingly expands the framework provided in the Preferential Procurement Policy Framework Act to take into account and to apply codes of good practice.

The Promotion of Equality and the Prevention of Unfair Discrimination Act of 2000 (Act 4 of 2000) expressly prohibits the state and all persons (natural and juristic) from discriminating unfairly against any person on the grounds of race or gender through the denial of access to contractual opportunities for rendering services, or by failing to take steps to reasonably accommodate the needs of such persons. A schedule attached to the Act provides an illustrative list of unfair practices in certain sectors. This list cites “unfairly limiting access to contractual opportunities for supplying goods and services” as an unfair practice.

Figure 1 illustrates the manner in which these pieces of legislation relate to one another.

NATIONAL PLANNING CONCERNS

The application of the 90–10 points system provided for in the Preferential

Procurement Policy Framework Act of 2000 can lead to the state paying a price premium of up to 11.1% on an individual transaction. On the 80–20 points system the price premium can be as high as 25%. This maximum price premium is only payable when a tenderer who has the lowest price claims no preference, and the tenderer who claims the maximum preference obtains the same number of points and is awarded the contract. The average price premium is usually significantly lower than this, as most tenderers would qualify for a preference.

The National Planning Commission in the *National Development Plan 2030: Our*

future – make it work points out that “the state’s ability to purchase what it needs on time at the right quality and for the right price is central to its ability to deliver on its priorities”. The Commission also recognises that “public-sector procurement expenditure also needs to be used to drive national priorities such as localisation and economic transformation”.

This report does acknowledge that economic rent is paid through the procurement system to reduce racial patterns of ownership of wealth and income, i.e. there is a difference between the selling price and the costs to provide the goods or services due to distortions in com-

petition to achieve these objectives. The Commission does, however, caution that efforts to “stimulate local procurement should not reinforce higher costs for the public sector and business because this will undermine growth and job creation”. It furthermore suggests in the context of using procurement to drive national priorities that “procurement systems tend to focus on procedural compliance rather than value for money, and place an excessive burden on weak support functions”.

There is accordingly a fine balance between leveraging objectives through the procurement process and specifying deliverables. The preferences offered can, within acceptable limits of economic rents, leverage objectives. The specifying of deliverables associated with a secondary or developmental objective, even if preferences are offered to leverage beyond minimum performance, can lead to higher prices being paid. It is therefore essential that the specifying of a deliverable or the formulation of eligibility criteria (criteria which a tenderer needs to satisfy in order for their submission to be evaluated) be set as far as possible on a cost-neutral basis.

KEY PERFORMANCE INDICATORS

A key performance indicator (KPI) is a quantifiable performance measurement of an individual, group or organisation against strategic or operational objectives. KPIs are commonly used to evaluate success in projects, to understand progress being made towards objectives, or as a tool to manage, control and achieve desired outcomes. A well formulated KPI translates complex metrics into a simple indicator.

ISO DIS 19208 defines an indicator as “a quantitative or qualitative measure of impacts” and an impact as “any change that may be beneficial or adverse”. This draft international standard requires that “indicators be objective, verifiable and reproducible and, wherever possible, linked to predetermined benchmarks, reference levels or scales of value which are within levels acceptable to the user and meet the expectations of the community and society”. It also suggests that an indicator be accompanied by an explanation that describes how to assign the value of the indicator.

KPIs in the context of contracts invariably relate to targets. For example, a key performance indicator is defined in the NEC3 Engineering and Construction Contract as “an aspect of performance for which a target is set”. This allows

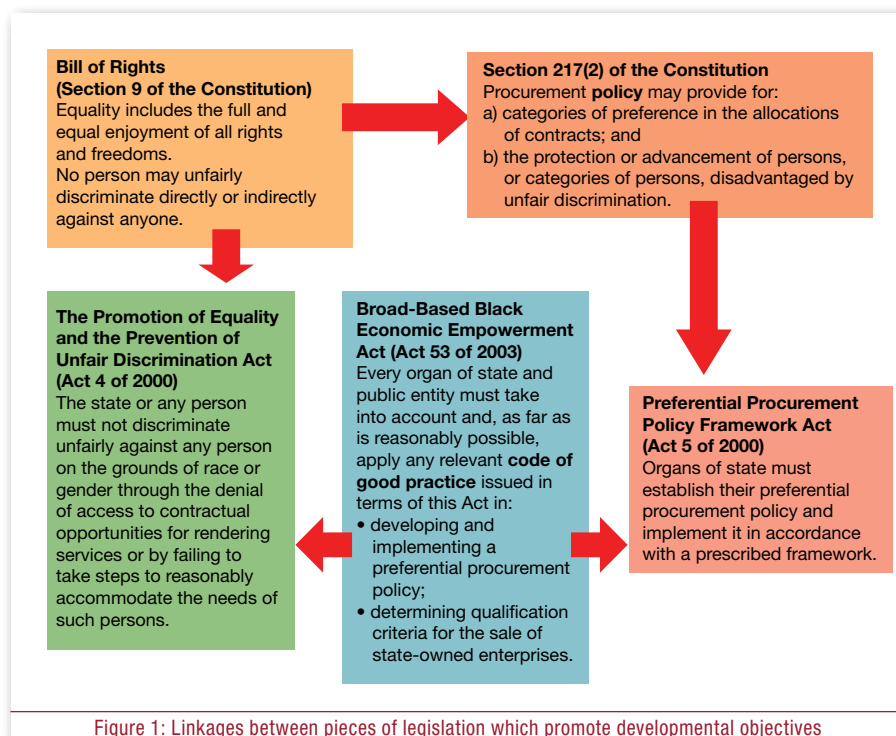


Figure 1: Linkages between pieces of legislation which promote developmental objectives

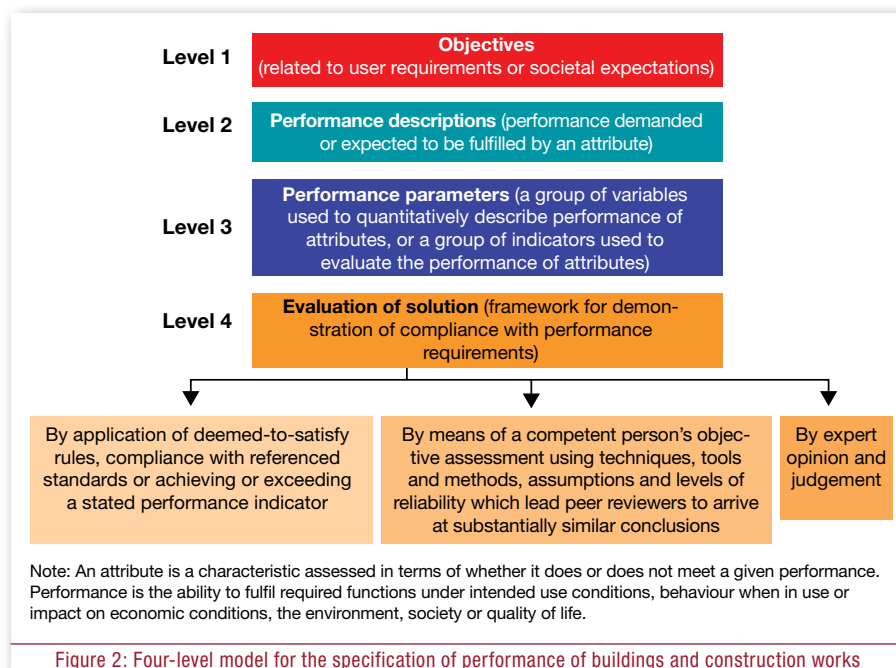


Figure 2: Four-level model for the specification of performance of buildings and construction works

payment in terms of this contract to be made in accordance with an incentive schedule “if the target stated for a key performance indicator is improved upon or achieved”. SANS 10845-1, when discussing targeted procurement procedures, links KPIs to contract-specific goals for which a quantifiable target can be established in a contract. This enables preferences to be applied in the evaluation of tenders, financial incentives to be paid to encourage beyond-minimum levels of performance and sanctions including penalties (low performance damages) to be applied should a contractual KPI not be achieved in the performance of the contract.

KPIs associated with a contract need to be linked to clear objectives or goals (desired results) and to be formulated in such a manner that they are contractually enforceable. They need as such to be described in qualitative terms, and to be linked to measureable and quantifiable targets and a means of verifying and auditing claims regarding performance in relation to a target. Figure 2 provides a four-level model for specifying performance of buildings and construction works as a whole or as a part, to satisfy specified user requirements and societal expectations, based on the provisions of ISO DIS 19208. A performance parameter in terms of this model may be regarded as a KPI.

Figure 2 provides a suitable framework within which performance related to developmental objectives can be specified and solutions tested for compliance with requirements. Table 1 illustrates the structure of a performance standard relating to the participation of target groups in contract as provided for in some of the parts of ISO 10845. The objective (Level 1) of Parts 4, 6, 7 and 8 of ISO 10845 focuses on different aspects of the participation of target groups in a contract. Clause 3 of each of these standards establishes qualitative (Level 2) and quantitative (Level 3) requirements in relation to the objective (Level 1), and how credits towards the contract participation goal can be obtained. The remainder of the clauses establish the means for verifying and auditing the attainment of the contract participation goals (key performance indicators).

The approach to leveraging objectives through the codes of good practice issued in terms of the Broad-Based Black Economic Empowerment Act of 2003 can also be viewed in terms of the framework

for the specifying of performance contained in Figure 2. This is illustrated in Table 2. The B-BBEE status level of a contributor is a performance parameter or KPI. This KPI is used to award preferences, i.e. the percentage preferences of the maximum points granted for Levels 1 to 8 contributors are 100, 90, 80, 50, 40, 30, 20 and 10%, respectively. Non-compliant contributors are assigned zero preference points.

The 2011 Preferential Procurement Regulations, issued in terms of the Preferential Procurement Policy Framework Act of 2000, establish requirements for local production and content, i.e. local goods, services or works. The requirements for local content can also be viewed in terms of the framework for the specifying of performance contained in Figure 2. This is illustrated in Table 3. Local content is a performance parameter or KPI. This KPI forms part of the eligibility criteria which needs to be satisfied in order for a tender to be evaluated, and upon the award of the contract becomes a contractual requirement.

TARGETED PROCUREMENT PROCEDURES

SANS 10845-1 defines a targeted procurement procedure as “the 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”. This standard also defines a secondary procurement policy as “procurement policy that promotes objectives additional to those associated with the immediate objective of the procurement itself”. SANS 10845-1 provides guidance on the implementation of targeted procurement procedures. It also provides guidance regarding the definition of target groups. Targeted procurement procedures can be used to promote objectives other than those relating to employment and business opportunities, e.g. training and work place experiential learning opportunities. Such procedures can be linked to the implementation of any well formulated KPI.

The SIPDM permits the use of the targeted procurement procedures outlined in Table 4 to promote social and economic goals (desired results). This standard does, however, require that a minimum of 50% of the points allocated to preferences in a points-scoring system in the evaluation of tenders need to be allocated to B-BBEE goals.

KPIs need to be well formulated and documented to enable targeted procurement procedures to be understood by tenderers, and to be implemented by contractors and those responsible for administering a contract. Returnable schedules need to be developed to enable the tenderer to communicate his understanding of requirements or to verify his claims for achieving or exceeding a KPI. The scope of work in the contract needs to capture requirements where KPIs need to be achieved or improved upon during the performance of a contract.

Care needs to be taken to promote social and economic goals on, as far as possible, a cost-neutral basis to minimise economic rents being paid. The consequences of not attaining KPIs in the performance of the contract need to be considered. Low-performance damages may be required in the contract to discourage substandard performance.

In framework agreements a contractor's performance in attaining social and economic goals may be a justifiable reason for issuing further orders.

NOTE

Further insights and information can be obtained from:

Construction Industry Development Board
2013. Standard for Developing Skills through Infrastructure Contracts. Board Notice 180 of 2013. *Government Gazette* No 36760 of 8 August 2013.

Construction Industry Development Board
2013. Standard for Indirect Targeting for Enterprise Development through Construction Works Contracts. Board Notice 21 of 2013. *Government Gazette* No 36190 of 25 February 2013.

ISO/DIS 19208:2014. Framework for specifying performance in buildings. International Organisation for Standardisation.

SANS 10845-1:2015 ISO 10845-1:2010.
Construction procurement – Part 1: Processes, methods and procedures. South African Bureau of Standards.

SANS 10845-5:2015 ISO 10845-5:2011.
Construction procurement – Part 5: Participation of targeted enterprises in contracts. South African Bureau of Standards.

SANS 10845-6:2015 ISO 10845-6:2011.
Construction procurement – Part 6: Participation of targeted partners in joint ventures in contracts. South African Bureau of Standards.

SANS 10845-7:2015 ISO 10845-7:2011.
Construction procurement – Part 7:

Table 1: Performance framework for the engagement of target groups in contracts				
Performance framework	Subject matter of standard			
	Participation of targeted enterprises in contracts	Participation of targeted partners in joint ventures in contracts	Participation of local enterprises and labour in contracts	Participation of targeted labour in contracts
Level 1: Objective	Provide business opportunities to specified targeted enterprises.	Provide joint venture partner opportunities to specified target groups.	Provide business and employment opportunities to local enterprises and targeted labour.	Provide employment opportunities to specified targeted labour.
Level 2: Performance descriptions	Engage targeted enterprises directly or indirectly in the performance of the contract.	Enter into a joint venture agreement at a main contract level with one or more targeted partners to perform the contract.	Engage targeted labour and targeted enterprises directly in the performance of the contract.	Engage targeted labour directly in the performance of the contract.
Level 3: Performance parameters	The contract participation goal (value of goods, services and works for which the contractor contracts targeted enterprises expressed as a percentage of the contract amount) is not less than . . . %.	The contract participation goal (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) is not less than . . . %.	The contract participation goal (amount equal to the sum of the wages and allowances for which the contractor contracts to engage targeted labour and the value of goods, services and works for which the contractor contracts targeted enterprises, expressed as a percentage of the contract amount) is not less than . . . %.	The contract participation goal (sum of the wages and allowances expressed as a percentage of the contract amount) is not less than . . . %.
Level 4: Evaluation of solution	Apply the relevant provisions of SANS 10845-5.	Apply the relevant provisions of SANS 10845-6.	Apply the relevant provisions of SANS 10845-7.	Apply the relevant provisions of SANS 10845-8.

Table 2: The specification of performance of B-BBEE contributors in terms of the ISO DIS 19208 framework		
Performance framework	Subject matter of codes	
Objective	Advance economic transformation and enhance the economic participation of black people in the South African economy.	
Performance description	Structure and manage the entity to meet a number of targets and conditions relating to the advancement of the objective, which may include ownership, management control, skills development, enterprise and supplier development, and socio-economic development commensurate with the turnover of the entity.	
Performance parameter	B-BBEE status level of a contributor as measured in terms of prescribed criteria (Exempted Micro Enterprise) or a score in terms of a balanced scorecard which measured performance against a number of targets and sub-targets as indicated below.	
	B-BBEE status level of contributor	Overall performance of a measured entity in terms of the generic score card
	Level 1 contributor	≥ 100
	Level 2 contributor	≥ 95 but < 100
	Level 3 contributor	≥ 90 but < 95
	Level 4 contributor	≥ 80 but < 90
	Level 5 contributor	≥ 75 but < 80
	Level 6 contributor	≥ 70 but < 75
	Level 7 contributor	≥ 55 but < 70
	Level 8 contributor	≥ 40 but < 55
	Non-compliant contributor	< 40
Evaluation of solution	Measurement against relevant criteria and compliance targets stated in a balanced scorecard contained in the relevant gazetted code of good practice issued in terms of the Broad-Based Black Economic Empowerment Act of 2003. Sufficient evidence of compliance: ■ Exempted micro enterprise: a sworn affidavit on an annual basis, confirming the annual total revenue of R10 million or less and the level of Black ownership. ■ Qualifying small enterprise: a sworn affidavit on an annual basis, confirming the annual total revenue of R50 million or less and the level of Black ownership. ■ Other: a valid original or certified copy of the certificate issued by a verification agency accredited by the South African National Accreditation System (SANAS) or registered auditors approved by the Independent Regulatory Board for Auditors (IRBA).	

Participation of local enterprises and labour in contracts. South African Bureau of Standards.	Technical Specification. South African Bureau of Standards.	Regimes: Tools and Techniques. <i>Public Procurement Law Review</i> , No 1, pp 30–55.
SANS 10845-8:2015 ISO 10845-8:2011.	Watermeyer, R B 2000. The use of Targeted Procurement as an instrument of Poverty Alleviation and Job Creation in Infrastructure Projects. <i>Public Procurement Law Review</i> , No 5, pp 201–266.	Watermeyer, R B 2006. Poverty reduction responses to the Millennium Development Goals. <i>The Structural Engineer</i> , 84(9): 27–34. ●
Construction procurement – Part 8: Participation of targeted labour in contracts. South African Bureau of Standards.		
SATS 2011. Local goods, services and works – measurement and verification of local content.	Watermeyer, R B 2004. Facilitating Sustainable Development through Public and Donor	

Table 3: The specification of requirements for local production and content in terms of the ISO DIS 19208 framework

Performance framework	Subject matter
Objective	Support economic growth and the creation of jobs within South Africa.
Performance description	Provide goods, services or work with local production and content.
Performance parameter	The local content (the portion of the tender price which is not included in the imported content, provided that local manufacture does take place) is not less than . . . %.
Evaluation of solution	Measured and declared in terms of SATS 1286, local goods, services and works – measurement of the verification of local content, published by the South African Bureau of Standards.

Table 4: Targeted procurement procedures

Targeted procurement procedure	Description of procedure
Granting of preferences	Tender evaluation points for contract-specific goals can be granted using one of the following methods: a) award a fixed number of points for attaining a specific KPI; b) award a variable number of points in proportion to the degree to which a tenderer responds to a particular KPI (i.e. in proportion to the quantum of the KPI offered); c) award 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 remaining offers are scored between these limits. Claims for preferences where tenderers are not eligible for such preferences are rejected. Financial offers are reduced to a common base and scored out of 90 or 80 depending upon the financial value of the procurement. Preference points are added to points for financial offers and the contract. The tenderer with the highest number of tender evaluation points (financial offer and preference) is recommended for the award of the contract, unless there are compelling and justifiable reasons, including other objective criteria, not to do so.
Accelerated rotations on electronic databases	Target groups are identified and accelerated at a faster rate than non-target groups on electronic databases linked to the nominated procurement procedure. The formulation for accelerating work opportunities for target groups needs to be such that non-targeted groups obtain a reasonable opportunity to tender for work, and the rate of rotation for target groups decreases as the number of such enterprises grows, so that a point is reached whereby the accelerated rotation serves no further purpose.
Granting of up to 10% of the total number of evaluation points used to short-list tenderers following a call for expressions of interest	Where a points-scoring system is used to shortlist respondents following a call for expressions of interest in the qualified procedure, up to 10% of the points may be linked to the attainment of KPIs linked to the promotion of social and economic objectives.
Financial incentives for the attainment of key performance indicators in the performance of the contract	Payment is linked to the improvement upon or attainment of a KPI in the execution of a contract.
The creation of contractual obligations to engage target groups in the performance of the contract by establishing requirements for the tendering of subcontracts in terms of a specified procedure, or establishing obligations to attain contract participation goals in accordance with the relevant provisions of SANS 10845	Contractors can 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 achieve 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 be free to negotiate the prices and terms for subcontracting, or be required to invite competitive tenders from amongst targeted enterprises in terms of a specified procedure and specific forms of subcontract.