
Construction procurement —

Part 7:

**Participation of local enterprises and
labour in contracts**

Marchés de construction —

*Partie 7: Participation des entreprises et de la main d'oeuvre locales
dans les contrats*

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Foreword

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

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

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

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

ISO 10845-7 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 7: Participation of local enterprises and labour in contracts

1 Scope

This part of ISO 10845 establishes a key performance indicator in the form of a contract participation goal (CPG) relating to the engagement of local enterprises and labour on a contract for the provision of services or engineering and construction works. A CPG may be used to measure the outcomes of a contract in relation to the engagement of local enterprises and labour 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 is measured, quantified and verified in the performance of the contract in respect of two different targeting strategies: targeting strategy A and targeting strategy B.

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 that the contract was entered into;
- b) work or services to be performed, or goods provided, by a subcontractor who is either nominated by the employer or is 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

[ISO 10845-5:2011, definition 2.1]

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

[ISO 10845-5:2011, definition 2.2]

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)

[ISO 10845-5:2011, definition 2.3]

2.4

contract participation goal

CPG

amount equal to the sum of

- a) the wages and allowances for which the contractor contracts to engage targeted labour; and
- b) the value of goods, services and works for which the contractor contracts targeted enterprises in the performance of the contract;

exclusive of any value added tax or sales tax required by law, expressed as a percentage of the contract amount associated with the targeting strategy that is identified in the targeting data

NOTE Adapted from ISO 10845-5:2011, definition 2.4.

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2.5

contractor

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

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[ISO 10845-1:2010, definition 3.12]

2.6

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]

2.7

employer's representative

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

[ISO 10845-5:2011, definition 2.8]

2.8

main contractor

contractor who subcontracts part of his contract

[ISO 6707-2:1993, definition 3.8.13]

2.9

target area

geographic area defined in the targeting data

2.10**targeted enterprise**

sole trader, partnership or legal entity which is

- a) a business within the target area,
- b) engaged in the performance of the contract, and
- c) defined as the target group in the targeting data

NOTE Adapted from ISO 10845-5:2011, definition 2.15.

2.11**targeted labour**

individuals who

- a) are employed by the contractor in the performance of the contract,
- b) are defined as the target group in the targeting data, and
- c) permanently reside in the target area or who are recognized as being residents of the target area on the basis of identification and association with and recognition by the residents of the target area

2.12**targeted manufacturer**

targeted enterprise that operates or maintains a factory or establishment that produces on its premises materials or goods required by the contractor for the performance of the contract

2.13**targeted supplier**

targeted enterprise that

- a) owns, operates or maintains a store, warehouse or other establishment in which goods are bought, kept in stock and regularly sold to wholesalers, retailers or the public in the usual course of business, and
- b) engages, as its principal business and in its own name, in the purchase and sale of goods

2.14**targeting data**

data, provisions and variations applicable to a particular contract

[ISO 10845-5:2011, definition 2.18]

NOTE See A.2.3 and Annex B.

2.15**targeting strategy**

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

[ISO 10845-5:2011, definition 2.19]

2.15.1**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

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- b) requires a contractor to achieve a minimum specified goal in the performance of a contract, or
- c) involves both (a) and (b)

[ISO 10845-5:2011, definition 2.19.1]

2.15.2

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.

[ISO 10845-5:2011, definition 2.19.2]

2.16 weighting

number which, depending on its value, is used to introduce a bias in favour of or against a specific target group in the calculation of contract participation goal credits

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3 Requirements

3.1 Contract participation goal (CPG)

The contractor shall engage targeted labour and targeted enterprises directly 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 not less than the contract participation goal (CPG) for the targeting strategy specified in the targeting data.

The contractor shall, in the case of targeting strategy A, submit details of a plan to achieve the contract participation goal on the contract participation goal implementation plan form contained in Annex C, within five working days of being instructed to do so. If no such instructions are given, these plans shall be submitted 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 the 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 (CPG)

3.2.1 General

A contractor shall achieve the specified contract participation goal (CPG) by one of two methods, unless otherwise specified in the targeting data.

a) **Method 1**

- 1) Using Method 1, the contractor shall achieve the specified CPG by
 - i) virtue of the contractor's targeted enterprise status, provided that not less than 50 % of the wages and allowances paid to employees in the performance of the contract is in respect of targeted labour; and, if so desired,
 - ii) subcontracting one or more targeted enterprises to perform work in the performance of the contract at a subcontract level.

b) **Method 2**

- 1) Using Method 2, the contractor shall achieve the specified CPG by
 - i) engaging targeted labour, or
 - ii) engaging one or more targeted enterprises to perform commercially useful functions in the performance of the contract, or
 - iii) a combination of (i) and (ii).

3.2.2 Verification of the status of targeted enterprises

Contractors shall submit completed targeted enterprise declaration affidavits and, where targeting strategy A applies, letters of undertaking to act as subconsultants, subcontractors, suppliers, manufacturers or service providers (see Annex D), in respect of each and every targeted enterprise and targeted partner whose contribution shall be counted towards the contract participation goal. These documents shall, unless otherwise specified in the targeting data, be submitted to the employer's representative before the submission of the first claim for payment.

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3.3 Contract participation goal (CPG) credits**3.3.1 Granting of credits**

Using Method 1 or Method 2, credits towards the contract participation goal shall be granted by converting the value of the following (exclusive of any value added tax or sales tax required by law) to a percentage of the contract amount and multiplying such values by the appropriate weightings for the different target areas and different categories of targeted enterprises and targeted labour, if any, provided for in the targeting data.

a) **Method 1**

In the case of a contractor who is a targeted enterprise, the sum of the monetary value of the work performed using the contractor's own employees and resources, and the monetary value of the work and services subcontracted to targeted enterprises, subject to the provisions of 3.2.1 (a).

b) **Method 2**

In the case of a contractor who is not a targeted enterprise:

- 1) the total monetary value of the contributions made by targeted enterprises (other than targeted suppliers) in fulfilling contractual obligations, subject to such targeted enterprises not subcontracting more than 15 % of the value of their contributions to non-targeted enterprises;
- 2) 50 % of the expenditure on goods required for the contract, which are obtained from targeted suppliers, subject to such targeted suppliers not subcontracting more than 15 % of the value of their contributions to non-targeted enterprises; and

- 3) the total monetary value of wages and allowances paid by the contractor and any non-targeted enterprise subcontractor to targeted labour.

NOTE 1 The total value of expenditures made to targeted manufacturers can be claimed.

NOTE 2 The weightings referred to usually range between 0,5 and 1,5. Where no weighting is indicated in the contract, the weighting is assumed to be unity.

NOTE 3 Where targeted enterprises subcontract more than 15 % of the value of their contribution to non-targeted enterprises, the credits are limited to the actual value of the contributions made by targeted enterprises.

NOTE 4 Annex E provides illustrative examples as to how a contractor can fulfil contract participation goal obligations.

3.3.2 Denial of credits

3.3.2.1 General

No credits shall be granted when the contractor

- a) makes a direct payment to a supplier, manufacturer or plant hire or lease company on behalf of a targeted enterprise when such payment is recovered by making deductions from payments to the targeted enterprise in connection with the contract,
- b) fails to enter into written contractual agreements with targeted labour, or
- c) fails to enter into written contractual agreements with targeted enterprises.

3.3.2.2 Contractual agreements (standards.iteh.ai)

Credits claimed towards the contract participation goal shall be denied if written contractual agreements contain clauses which are not in accordance with the provisions of the contract and, where targeted enterprises are contracted, contain provisions for

- a) a right to set off in favour of the employing contractor not provided for by law,
- b) authoritarian rights given to the employing contractor or the contractor's agent, with no recourse to independent adjudication in the event of a dispute arising,
- c) payment procedures based on a pay-when-paid system,
- d) a dispute resolution process which does not include inexpensive alternative dispute resolution (ADR) procedures, such as mediation or adjudication, but only makes use of formal proceedings such as arbitration or litigation, or
- e) conditions which are more onerous than those which exist in the main contract.

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

4 Compliance with requirements

4.1 General

The contractor shall enter into written contractual agreements with all the targeted enterprises 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 and the written acceptances thereof. The contract to be performed by the targeted enterprises 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.

The contractor who makes use of targeted labour for the purpose of securing credits shall enter into written contracts with all the individuals classed as targeted labour and, during the performance of the contract, furnish the employer's representative with copies or pro formas of all contracts entered into.

4.2 Substitutions

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

- a) unable to perform,
- b) unable to perform on time,
- c) unable to produce acceptable work,
- d) unwilling to perform 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 enterprise's contract, citing the reasons.

In the event that the employer approves the contractor's request to be relieved of the obligation to make use of a contracted targeted enterprise, the contractor shall either provide a substitute targeted enterprise to take over the contract, or engage a targeted enterprise 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 a targeted enterprise declaration affidavit in respect of the proposed substitute targeted enterprise, and supply details of the nature and value of the contract which shall be performed by such an enterprise.

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Contracts with contracted targeted enterprises may only be terminated and new contracts entered into with substitute targeted enterprises for the purpose of securing credits towards the contract participation goal, with the employer's approval, which shall not be unreasonably withheld. Where the employer approves such substitutions, the contractor shall comply with all the requirements of this part of ISO 10845.

The employer may, at the employer's sole discretion and upon the basis of evidence submitted by the contractor in support of fruitless efforts in good faith to secure substitute targeted enterprise 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 enterprises

Where, in the case of targeting strategy A, an enterprise under contract was initially considered to be a targeted enterprise 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 the contract participation goal in respect of such a targeted enterprise, should the contractor satisfactorily demonstrate that he was justified in believing the enterprise to be a targeted enterprise and that eligibility standards were not violated.