
Construction procurement —
Part 8:
Participation of targeted labour in
contracts

Marchés de construction —

Partie 8: Participation de la main d'œuvre cible 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 10845-8 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 8: Participation of targeted 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 targeted 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 targeted 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

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

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- 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]

2.3
contract participation goal
CPG
sum of the wages and allowances, for which the contractor contracts targeted labour in the performance of the contract, 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.

2.4
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]

2.5
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]

2.6
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]

2.7
targeting data
data, provisions and variations applicable to a particular contract

NOTE 1 Adapted from ISO 10845-5:2011, definition 2.18.

NOTE 2 See A.2.2 and Annex B.

2.8
targeted labour
individuals, employed by the contractor in the performance of the contract, who are defined as the target group in the targeting data

NOTE Adapted from ISO 10845-7:2011, definition 2.11.

2.9
target area
geographic area defined in the targeting data

[ISO 10845-7:2011, definition 2.9]

2.10
targeting strategy
an approach which is pursued to make a contract participation goal an obligation of contract

[ISO 10845-5:2011, definition 2.19]

2.10.1**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)

[ISO 10845-5:2011, definition 2.19.1]

2.10.2**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.

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[ISO 10845-5:2011, definition 2.19.2] <http://www.iso.org/iso/catalog/standards/sist/5bfe2353-796c-425d-a4fd-f2f61f23c3f0/iso-10845-8-2011>

2.11**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

[ISO 10845-7:2011, definition 2.16]

3 Requirements**3.1 Contract participation goal (CPG)**

The contractor shall engage targeted labour 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, expressed as a percentage of the contract amount for the targeting strategy specified in the targeting data, 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 to the employer's representative 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)

A contractor shall achieve the specified contract participation goal (CPG) by engaging targeted labour in the performance of the contract.

NOTE Annex D 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.

3.3 Contract participation goal credits

Credits towards the contract participation goal shall be granted by converting the total monetary value of wages and allowances paid to targeted labour, exclusive of any value added tax or sales tax required by law, to a percentage of the applicable contract amount and multiplying such values by the appropriate weightings for the different target groups, if any, specified in the targeting data.

3.4 Denial of credits

No credits shall be granted when the contractor fails to enter into written contracts with targeted labour. Cognizance shall be taken of any conditions of such contracts. Credits claimed towards the contract participation goal shall not be allowed if such contracts contain clauses which are not in accordance with requirements established in the targeting data.

NOTE 1 The weightings referred to should typically be between 0,5 and 1,5. Where no weighting is indicated in the procurement documents, the weighting is assumed to be unity.

NOTE 2 Annex E provides illustrative examples as to how a contractor can fulfil contract participation goal obligations.

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4 Compliance with requirements

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

5 Records

5.1 Submission of documentation

The contractor shall submit to the employer's representative all the documentation required in terms of 3.1, 4 and 5.2 in a timely manner.

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, and in a form approved by the employer's representative, a schedule which lists the names, identity numbers, nationality, gender, trade or occupation, period of employment, employment number and the like, of the individuals classified as targeted labour, together with the respective wage rates and allowances payable in respect of targeted labour, including the monetary value of wages and allowances paid, both on a cumulative basis and during the month for which credits are sought.

NOTE Annex F provides an example of a schedule which can be used to track payments made to targeted labour.

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.

5.4 Actions required upon termination of services of targeted labour

The contractor shall, upon termination of the services of the individuals classed as targeted labour engaged in activities relating to the performance of the contract, certify the amount paid to such individuals and submit the certificate, counter-certified by the relevant individuals, to the employer's representative for record-keeping purposes.

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 to be performed by targeted labour, 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 are set out in a tender evaluation schedule, the scope of work or contract data (see ISO 10845-2). 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 5.4 are received.

NOTE 2 No sanctions in the form of financial penalties are applied where the CPGs are used only to measure and report on the quantum of employment generated by a contract (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 should 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 (CPG)] are set and measured in relation to the participation of targeted labour in service or engineering and construction works contracts. These targets (CPGs) in addition to measuring and reporting on a key performance indicator which reflects the quantum of employment generated in respect of targeted labour 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 tender evaluation points 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 need to 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 G provides information on implementing employment-intensive infrastructure projects which target the increase of employment opportunities generated per unit of expenditure. Annex H provides an example of a tender evaluation schedule which enables this part of ISO 10845 to be used for tender evaluation purposes.

A.2 Commentary on terms and definitions

A.2.1 Targeted labour

Labour can be targeted on the basis of parameters such as

- a) citizenship, gender, race and ethnicity,
- b) residency (geographical areas),
- c) age,