
Construction procurement —

Part 5:

**Participation of targeted enterprises in
contracts**

Marchés de construction —

Partie 5: Participation des entreprises cibles aux 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 10845-5 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 more 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 5: Participation of targeted enterprises 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 enterprises on a contract for the provision of goods, 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 enterprises 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 with respect to two different targeting strategies: targeting strategy A and targeting strategy B (defined in Clause 2).

NOTE Annex A contains a 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.

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

value of goods, services and works for which the contractor contracts targeted enterprises exclusive of any value added tax or sales tax which the law requires the employer to pay to the contractor, 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

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

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

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

[ISO 6707-2:1993, definition 3.4.22]

2.10

manufacturer

sole trader, partnership or legal entity that operates or maintains a factory or establishment that produces on its premises, goods required in terms of the contract

2.11

main contractor

contractor who subcontracts part of his contract

[ISO 6707-2:1993, definition 3.8.13]

2.12

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

2.13**participation parameter**

fraction of the contract or subcontract which may be used to represent the value of the contribution and value of the commercially useful function performed by targeted partners in a joint venture

2.14**supplier**

sole trader, partnership or legal entity that 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 (or all three) in the usual course of business

2.15**targeted enterprise**

sole trader, partnership or legal entity which is engaged in the performance of the contract and defined as the target group in the targeting data

2.16**targeted enterprise declaration affidavit**

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

2.17**targeted partner**

targeted enterprise functioning as a partner in a joint venture

2.18**targeting data**

data, provisions and variations that make this part of ISO 10845 applicable to a particular contract (see Annex B)

2.19**targeting strategy**

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

2.19.1**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)

2.19.2**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 engage targeted enterprises directly or indirectly 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 to the employer's representative details of his 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 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 any of the following means, unless otherwise specified in the targeting data

- a) **Method 1:** by virtue of his targeted enterprise status,
- b) **Method 2:** by entering into a joint venture agreement with one or more targeted partners as set out in 3.2.3,
- c) **Method 3:** by engaging one or more targeted enterprises to perform commercially useful functions in the performance of the contract,
- d) **Method 4:** by engaging non-targeted enterprises who, in turn, engage one or more targeted enterprises to perform commercially useful functions in the performance of the contract,
- e) **Method 5:** by engaging non-targeted enterprises who, in turn, enter into joint venture agreements with one or more targeted partners as set out in 3.2.3 to perform commercially useful functions in the performance of the contract, or

by any combination of Methods 1 to 5.

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), with respect to 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.

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 contract 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 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 or value of the work performed by the joint venture.

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 ($0,15 \times \text{USD } 10 \text{ million}$). 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 E) and shall be submitted before the submission of the first payment certificate or as otherwise agreed, in writing, with the employer.

3.3 Contract participation goal credits

3.3.1 Granting of credits

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, as relevant:

- a) the total monetary value of the contributions made by targeted enterprises, other than targeted enterprises who are suppliers, in fulfilling contractual obligations, subject to such targeted enterprises not subcontracting more than 15 % of the value of their contribution to non-targeted enterprises;
- b) 50 % of the expenditure on goods required for the contract, which are obtained from suppliers who are targeted enterprises, subject to such enterprises not subcontracting more than 15 % of the value of their contribution to non-targeted enterprises;
- c) the total monetary value of expenditures made to manufacturers who are targeted enterprises;
- d) the total monetary value with respect to fees or commissions charged by targeted enterprises, which in the opinion of the employer are reasonable, justifiable, and not excessive when compared with fees or commissions normally allowed for similar services, with respect to:
 - 1) the provision of professional, technical or managerial services, including those required for the acquisition of essential personnel, facilities, equipment and goods necessary for the performance of the contract,
 - 2) the delivery of goods required in the performance of the contract (but not the cost of the goods themselves) when the transporter or delivery service is not also the manufacturer or supplier (or both), and
 - 3) the provision of any bonds or insurance policies specifically required for the performance of the contract;
- e) the total monetary value of the contributions made by joint ventures with targeted partners multiplied by the associated participation parameter with respect to each targeted partner, subject to compliance with the requirements of 3.2.3, and the total monetary value of such contributions being halved where such joint venture is a supplier who is not a main contractor; and
- f) in the case of a contractor who is a targeted enterprise, the monetary value of the work performed using his own employees and resources and 10 percent of the value of the subcontracts to non-targeted enterprises.

NOTE 1 The credits calculated in terms of (a) to (e) apply also with respect to non-targeted enterprises engaged by the contractor in the performance of the contract, should such enterprises comply with the relevant requirements. Annex F provides illustrative examples as to how a contractor can fulfil his contract participation goal obligations.

NOTE 2 Where targeted enterprises subcontract more than 15 % of the value of the contribution to non-targeted enterprises, the credits are limited to the actual value of the contributions made by targeted enterprises.

3.3.2 Denial of credits

3.3.2.1 Case 1

No credits shall be granted should the contractor make 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; or should the contractor fail to enter into written contractual agreements with the relevant targeted enterprises.

3.3.2.2 Case 2

Credits claimed towards the contract participation goal shall be denied where written contractual agreements contain any of the following:

- 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 his 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 procedures, such as mediation or adjudication, but which 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 and 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 and the written acceptances thereof. The contract to be performed by the targeted enterprises and 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 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 therefor.

In the event that the employer approves the contractor's request to be relieved of his 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 with respect to the proposed substitute targeted enterprise, and supply details of the nature and value of the contract which shall be performed by such an enterprise.

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 his 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 with respect to 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 with respect to 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.

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 4.2 in a timely manner and, together with his programme of activities, a schedule which clearly indicates the expected delivery dates of goods provided by targeted enterprises or the commencement and completion dates of work and services to be performed by all the targeted enterprises engaged on the contract for the purpose of securing credits towards the contract participation goal. 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 on a monthly basis 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, the following:

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

Should random inspections conducted by the employer's representative on targeted enterprise activities indicate that such enterprises 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 with respect to such targeted enterprises 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.

5.4 Actions required upon completion of a targeted enterprise's contract with the contractor

The contractor shall, upon completion of each individual targeted enterprise's contract, issue a completion certificate and certify the amount paid to such targeted enterprises. He shall submit the certificates, counter-certified by the relevant targeted enterprises, to the employer's representative for record-keeping purposes. The contractor shall furnish justification to the employer whenever it is not possible to obtain such counter-certification.

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 are set out in a tender evaluation schedule, the scope of work or contract data. Sanctions where tender evaluation points are granted with respect to 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 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 referenced in procurement documents, 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 enterprises in goods, engineering and construction works or service contracts. These targets (contract participation goals) can be used, in addition to measuring and reporting on a key performance indicator which reflects the quantum of business generated with respect to targeted enterprises through the performance of the contract, depending upon prevailing legislation, to

- a) reserve a portion of the contract work for specified target groups by setting minimum contract participation goals,
- b) establish the basis for the awarding of tender evaluation points in proportion to the quantum of the contract participation goal (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 ensure 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 an example of a tendered contract participation goal calculation. 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 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 ISO 10845-2).

A.2.2 Targeted enterprise

A.2.2.1 General considerations

Enterprises 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, for example businesses owned by women (generic), or business enterprises within a geographical region (area-bound).

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

A.2.2.2 Ownership of targeted enterprises

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, also should 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.2.2.3 Control of targeted enterprises

Control of targeted enterprises lies at the heart of empowerment initiatives. Control of a targeted 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, 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.2.2.4 Operational responsibilities

The person holding operational responsibilities within an enterprise might also be an 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.2.2.5 Independence of targeted enterprises

A critical issue with respect to empowerment companies is whether or not they are independent, i.e. whether they are 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.2.2.6 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 of the sizes of companies:

- a) **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].
- b) **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.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 done 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. Subclause 3.1 establishes qualitative (Level 2) and quantitative (Level 3) requirements in relation to the objective (Level 1).

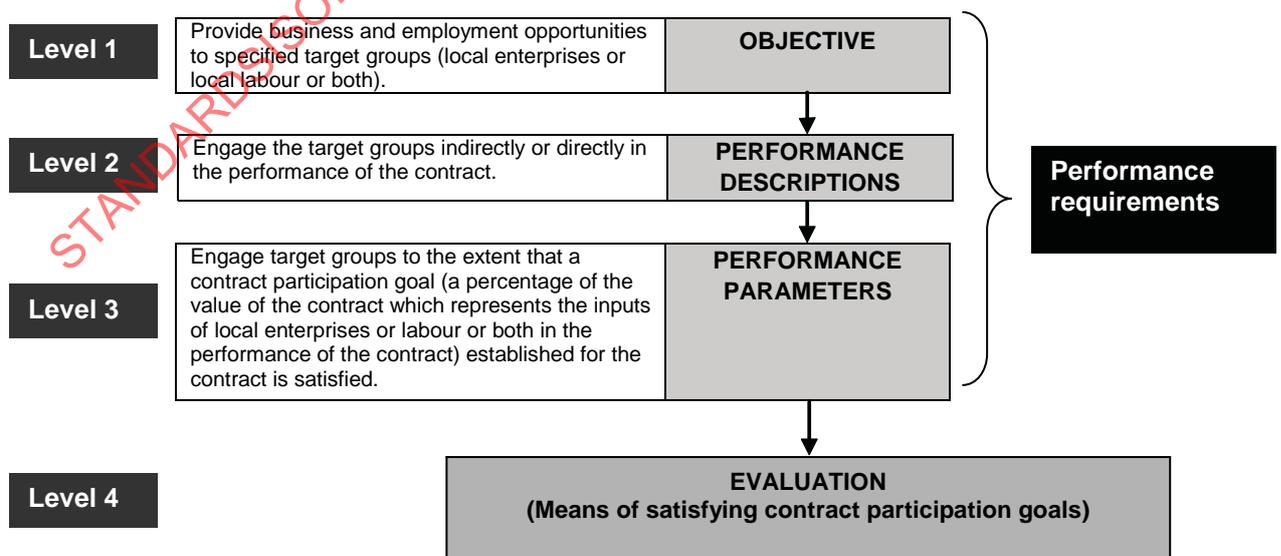


Figure A.1 — Structure of a performance-based resource specification

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 G 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 by virtue of a contractor's targeted enterprise status or through joint venture formation, subcontracting or contracting with targeted enterprises at both the main and subcontract level. The contract participation goal, as such, measures the flows of monies to targeted enterprises throughout the supply chain.

The range of methods which can be used to achieve the contract participation goal can be limited by nominating whichever of the methodologies apply to a particular contract in the targeting data. For example, it can be specified in the targeting data that the only manner in which the contract participation goal can be achieved is by means of Method 3, i.e. by engaging one or more targeted enterprises to perform commercially useful functions in the performance of the contract. Alternatively, it can be made a requirement that the contract participation goal can only be achieved by subcontracting work to one or more targeted enterprises to perform commercially useful functions in the performance of the contract.

A.3.2.2 Verification of the status of targeted enterprises

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

The letters of undertaking confirm the contractor's proposals to satisfy contract participation goal obligations and can provide information on decisions regarding waivers to be made where targeted enterprises fail to enter into contracts with contractors.

NOTE 1 In order to obviate the unnecessary work occasioned by repeated applications and evaluations for recognition as a targeted enterprise, an applicant enterprise can be registered on a database after an initial successful evaluation. Thereafter, only confirmation, or updating, of enterprise status is necessary, unless a challenge to the status of the registered enterprise arises, in which case a more in-depth assessment or interrogation becomes necessary. Registered enterprises are able to quote a registration number in lieu of the submission of a declaration affidavit in order to be recognized as a targeted enterprise on a contract-specific basis. A directory of targeted enterprises registered with a procuring entity can be published on a regular basis, to ensure that the registration of targeted enterprises 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 enterprises and non-targeted enterprises. Accordingly, all the essential details of the enterprises, including those which underpin the status of the enterprises, the fields in which they operate and their contact particulars, can be published.

NOTE 2 A challenge to the status of a targeted enterprise becomes necessary if and when doubt arises as to the authenticity of information originally furnished by such an enterprise in a declaration affidavit to gain recognition as a targeted enterprise, or if there is reason to believe that the circumstances of the enterprise has 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 joint venture is a partnership 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 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.

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 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 only come together 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 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.

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 before 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

A.3.3.1 Granting of 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.

It is generally easier for suppliers to achieve higher participation levels than is the case for other categories of targeted enterprises, for example, manufacturers. Accordingly, some reduction in their participation might need to be considered. This part of ISO 10845 reduces such credits by 50 %.

Targeted enterprises at both subcontract and main contract levels should perform commercially useful functions in the performance of a contract and contracting authorities should place limits on the amounts of work which can be subcontracted to non-targeted enterprises.

Participation of targeted enterprises can be weighted in instances where several groups are targeted. This can provide a bias to favour the selection of particular subcategories of targeted enterprises on a contract. Special clauses should be included in the targeting data to provide for this.

A.3.3.2 Denial of credits

Subcontractors have very little negotiating power with main contractors since they are concerned about future work, delay of payment by the main contractor and possible victimization. Invariably, as contracting authorities only have a relationship with the main contractor, they regard subcontracting issues as the main contractor's problem and not their concern. Subcontracting is an effective means of involving small, medium and micro enterprises in public sector procurement activities and the plight of subcontractors cannot be ignored by procuring entities that seek the participation of targeted enterprises at subcontract level. Subcontracts should be regulated to ensure that subcontractors are engaged in terms of fair and equitable conditions of contract, which are recorded in writing.

The minimum requirements for subcontracts prohibit the setting off (counter claiming) of items relating to a subcontract against items relating to another contract in the settlement of accounts and ensure that subcontractors have dispute provisions which facilitate the settlement of disputes at lower cost. They also ensure that payment is made by a specified date to provide cash flow certainty to targeted enterprises.

A requirement for contractors to enter into written contracts with targeted enterprises also ensures that amounts paid to these targeted groups can be verified and audited.

It should be noted that the requirement for targeted enterprises 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 enterprises 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 with respect to contract participation goal obligations.

A.4.2 Substitutions

The provisions of 4.2 permit, under certain conditions, the substitution of targeted enterprises 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 enterprises

The provisions of 4.2 relieve a contractor of his goal obligations (and penalties that can be applied for failing to achieve a contract participation goal obligation) where a targeted enterprise is engaged in good faith after having performed basic due diligence checks, only to discover that the targeted enterprise is not entitled to targeted enterprise 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 with respect to the contract participation goal.

A.5.2 Monthly submission of supporting documentation

The certification of credits relating to participation goals is based on information provided by the contractor on a monthly basis. It should be noted that the contractor needs to compile this information to pay the targeted enterprises at regular intervals.

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 with respect to 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.

A.5.4 Actions required upon completion of a targeted enterprise's contract with the contractor

The contractor is required to certify the amount paid to targeted enterprises when they come to the end of their contract. The targeted enterprise is also required to countersign this certificate. This minimizes the opportunities for fraudulent credit claims.

Annex I 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 or her 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 his 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" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;">Targeting data pertaining to ISO 10845</td> <td style="width: 50%; vertical-align: top;"> <p>Essential data:</p> <p>The requirements for are</p> <p>The requirements for are</p> <hr/> <p>Variations:</p> <p>1)</p> <p>2)</p> <hr/> <p>Additional clauses:</p> <p>1)</p> </td> </tr> </table>	Targeting data pertaining to ISO 10845	<p>Essential data:</p> <p>The requirements for are</p> <p>The requirements for are</p> <hr/> <p>Variations:</p> <p>1)</p> <p>2)</p> <hr/> <p>Additional clauses:</p> <p>1)</p>
Targeting data pertaining to ISO 10845	<p>Essential data:</p> <p>The requirements for are</p> <p>The requirements for are</p> <hr/> <p>Variations:</p> <p>1)</p> <p>2)</p> <hr/> <p>Additional clauses:</p> <p>1)</p>			

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 enterprise	2.15	<p>Define targeted enterprises, see A.2.2, e.g.</p> <p>A sole trader, partnership or legal entity which is a continuing and independent enterprise for profit, which</p> <ul style="list-style-type: none"> a) is in the control of one or more women who are principals; and b) in the case of public companies, at least 50 % is run by senior managers, of which 50 % are women or, in the case of enterprises other than public companies, at least 51 % is owned by one or more women. <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, or a director in a company established in terms legislation.</p>
The targeting strategy is	2.19	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 contractor 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 or 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 (CPG), 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>A contractor may achieve the contract participation goal only by means of Methods ..., ... and ...</p> <p><i>or</i></p> <p>The contract participation goal may only be achieved by subcontracting work to one or more targeted enterprises to perform commercially useful functions in the performance of the contract.</p>	3.2.1	Where only some of the methods apply, state which of the methods apply. Alternatively, if required, modify the standard methods.
<p>The targeted enterprise declaration and letters of undertaking shall be submitted within three months of the commencement of the contract.</p>	3.2.2	State when the targeted enterprise declaration affidavit and letters of undertaking shall be submitted if they are not to be submitted before the first submission for payment.
<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	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.
Variations		
<p>Further to the requirements of 3.3, the credits of type 2 targeted enterprises are reduced by 40 %.</p>	3.3	State variations, if any.
<p>Additional clauses</p> <p>.....</p>		State additional clauses, if any.

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 means of one or more of the following methods. Tick the box(es) which are applicable.

- Method 1 by virtue of my/our targeted enterprise status
- Method 2 by entering into an acceptable joint venture agreement with one or more targeted partners
- Method 3 by engaging one or more targeted enterprises to perform commercially useful functions in the performance of the contract
- Method 4 by engaging non-targeted enterprises who, in turn, engage one or more targeted enterprises to perform commercially useful functions in the performance of the contract
- Method 5 by engaging non-targeted enterprises, who, in turn, enter into joint venture agreements with one or more targeted partners

C.4 Implementation plan

C.4.1 General

Complete the following with respect to each selected method.

C.4.2 Method 1: by virtue of my/our targeted enterprise status

Value of work performed using own resources 2

Value of work subcontracted to non-targeted enterprises (see below) 3

Name of subcontractor	Scope of contract	Contract amount (excluding value added tax or sales tax)	

Total contribution towards CPG $2 + 0,1 \times 3$ 4

Total towards CPG $100 \times 4/1$ %

C.4.3 Method 2: by entering into an acceptable joint venture agreement with one or more 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 (1)	Percentage participation to be claimed towards CPG (1) × 100
				%
				%
				%
				%
				%
Total contribution towards CPG				%

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

- the financial value of the contract for which the targeted partner is responsible, and
- 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.4.4 Method 3: by engaging one or more targeted enterprises to perform commercially useful functions in the performance of the contract

Name of contracted targeted enterprise	Estimated value of contracts (excluding value added tax or sales tax) (1)	Multiplier (2)	Total (1) × (2)
Subcontractors			
		1,0	
		1,0	
Suppliers			
		0,5	
		0,5	
Manufacturers			
		1,0	
		1,0	
Service providers			
		1,0	
		1,0	
Total contribution towards CPG			5

Total towards CPG $100 \times 5/1$ %

C.4.5 Method 4: by engaging non-targeted enterprises who, in turn, engage one or more targeted enterprises to perform commercially useful functions in the performance of the contract

Name of targeted enterprise	Estimated value of work contracted to targeted enterprises (excluding value added tax or sales tax) (1)	Multiplier ^a (2)	Total (1) × (2)
Name of non-targeted enterprise:			
Name of non-targeted enterprise:			
Total contribution towards CPG			6

Total towards CPG $100 \times 6/1$ %

^a The multiplier is 1,0 except in the case of suppliers, where the multiplier is 0,5.

C.4.6 Method 5: by engaging non-targeted enterprises who, in turn, enter into joint venture agreements with one or more 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 (1)	Percentage participation to be claimed towards CPG $(2) \times (1) \times 100/1$
Name of joint venture:				
Value of contract ^a : (2)				
				%
				%
				%
Name of joint venture:				
Value of contract ^a : (2)				
				%
				%
				%
Total contribution 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 value of the contract for which the joint venture is responsible for.</p>				
<p>^a The monetary value of the contract shall be halved with respect to joint ventures which are suppliers.</p>				

C.5 Summary

Total for	Method 1 (see C.4.2)
	Method 2 (see C.4.3)
	Method 3 (see C.4.4)
	Method 4 (see C.4.5)
	Method 5 (see C.4.6)
Target contract participation goal	 % ($\leq 100\%$)

C.6 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 enterprises and targeted partners named shall perform commercially useful functions in the performance of the contract and are bona fide targeted enterprises and targeted partners.

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

Tel:

Fax:

Signature:

Address:

.....

.....

Date:

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Annex D
(normative)

**Letter of undertaking from a targeted enterprise to act as
a subcontractor, supplier, manufacturer or service provider**

Employer:

Contract description:

Contract number:

Project reference number:

From: (Name and address of targeted enterprise)

.....
.....

To: (Name and address of main contractor/joint venture/subcontractor)

.....
.....

The undersigned undertakes to perform the following work/provide the following services or goods in connection with the above-mentioned contract (delete if not applicable):

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

for an estimated amount of excluding any value added tax or sales tax required by law subject to the terms of any agreement made between us for the purposes of the contract.

The status of the undersigned as a targeted enterprise is confirmed in the attached targeted enterprise declaration affidavit.

Signature:

Name:

Designation:

Date:

who duly warrants that he/she is authorized to sign this letter

Annex E
(normative)

Joint venture disclosure form

Employer:
Contract description:
Contract number:
Project reference number:

INSTRUCTIONS

- 1 Unless otherwise directed by the employer's representative, this form need not be completed if all joint venture partners are targeted partners.
- 2 Fill in all the information requested in the spaces provided. Attach additional sheets if required.
- 3 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
 - a) the contributions of capital and equipment;
 - b) portions of the contract to be performed by the targeted partner's own resources; and
 - c) portions of the contract to be performed under the supervision of the targeted partner.
- 4 Attach copies of all written agreements between partners concerning the contract to this form, including those that relate to ownership options and to restrictions/limits regarding ownership and control.
- 5 Targeted partners are required to complete targeted enterprise declaration affidavits.

E.1 Joint venture particulars

Name:
Postal address:
.....
.....
Physical address:
.....
.....
Telephone:
Fax:
Name of authorized representative:

E.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 additional non-targeted partners)

E.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:

.....

.....

.....

.....

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 additional targeted partners)

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

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

E.5 Ownership of the joint venture

a) Targeted partner ownership percentage(s): %

Non-targeted partner ownership percentage(s): %

b) Targeted partner percentages* with respect to

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:

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

E.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)

a) Targeted partners

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

E.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

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

E.8 Management of the performance of the contract

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

a) Supervision of field operations

.....
.....

b) Major purchasing

.....
.....

c) Estimating

.....
.....

d) Technical management

.....
.....

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E.9 Management and control of the joint venture

a) Identify the managing partner, if any

.....

.....

.....

.....

b) As a partner, what are you allowed to commit to in terms of financial institutions, insurance companies, suppliers, subcontractors or other parties participating in the performance of the contemplated works? What authority do you have to commit another partner to in terms of the above?

.....

.....

.....

.....

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 with either targeted partner or a non-targeted partner.

E.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 of personnel from a targeted partner	Number of personnel from a non-targeted partner

- b) State the number of operative personnel to be employed on the contract who are currently employed by 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 employed by 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:

.....

E.11 Control and structure of the joint venture

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

.....

.....

.....

.....

.....

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:

Signature:

Duly authorized to sign on behalf of:

Name:

Address:

.....

Telephone: Date:

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Annex F (informative)

Examples of how contractors can fulfil their contract participation goal obligations

F.1 Contract parameters

For the purposes of this example,

- a) the value of the contract, exclusive of any value added tax or sales tax required by law, and all allowances, is assumed to be USD 10 000 000; and
- b) the contract involves the construction of a building.

F.2 Tendered contract participation goal options

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

Contractor A

Contractor A, who is not a targeted enterprise,

- obtains professional services from a targeted enterprise for a fee of USD 100 000;
- purchases manufactured articles from a targeted enterprise manufacturer for the sum of USD 250 000;
- obtains goods from a targeted enterprise supplier valued at USD 500 000; and
- subcontracts work to the value of USD 1 200 000 to a targeted enterprise subcontractor.

$$\text{Value of credits} = 100\,000 + 250\,000 + (0,5 \times 500\,000) + 1\,200\,000 = \text{R}1\,800\,000$$

$$\text{Credit} = 1\,800\,000 / 10\,000\,000 \times 100 = 18,0 \%$$

Contractor A can tender a contract participation goal of 18 %.

Contractor B

Contractor B, who is not a targeted enterprise,

- subcontracts 30 % of the contract to a non-targeted enterprise who, in turn, subcontracts USD 500 000 to a targeted enterprise; and
- subcontracts work to the value of USD 450 000 to a targeted enterprise subcontractor.

$$\text{Value of credits} = 500\,000 + 450\,000 = \text{USD } 950\,000$$

$$\text{Credit} = 950\,000 / 10\,000\,000 \times 100 = 9,5 \%$$

Contractor B can tender a contract participation goal of 9,5 %.

Contractor C

Contractor C is a targeted enterprise but subcontracts 70 % of the work to non-targeted enterprises.

$$\text{Value of credits} = \begin{matrix} (0,3 \times 10\,000\,000) \\ (0,1 \times 0,7 \times 10\,000\,000) \end{matrix} + = \text{USD } 3\,700\,000$$

$$\text{Credit} = 3\,700\,000 / 10\,000\,000 \times 100 = 37 \%$$

Contractor C can tender a contract participation goal of 37 %.

Contractor D

Contractor D, who is not a targeted enterprise, enters into a joint venture with a targeted partner.

The targeted partner is responsible for work to the value of USD 2 500 000 (participation parameter of 0,25) of which at least 50 % is performed with resources independent of the non-targeted partner.

The joint venture obtains goods from a targeted enterprise supplier valued at USD 1 000 000.

$$\text{Value of credits} = 2\,500\,000 + (0,5 \times 1\,000\,000) = \text{USD } 3\,000\,000$$

$$\text{Credit} = 3\,000\,000 / 10\,000\,000 \times 100 = 30 \%$$

Contractor D can tender a contract participation goal of 30 %.

Annex G (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.

G.1 Tender parameters

Sum tendered (exclusive of any value added tax or sales tax required by law)	
Less all allowances	
Contract amount	<div style="border: 1px solid black; width: 100%; height: 15px; margin-bottom: 2px;"></div>	1

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

G.2 Achieving the contract participation goal

I/We intend to achieve the contract participation goal (CPG) by means of one or more of the following methods. Tick the box(es) which are applicable.

- Method 1

by virtue of my/our targeted enterprise status
- Method 2

by entering into an acceptable joint venture agreement with one or more targeted partners
- Method 3

by engaging one or more targeted enterprises to perform commercially useful functions in the performance of the contract
- Method 4

by engaging non-targeted enterprises, who, in turn, engage one or more targeted enterprises to perform commercially useful functions in the performance of the contract
- Method 5

by engaging non-targeted enterprises, who, in turn, enter into joint venture agreements with one or more targeted partners

G.3 Implementation proposal summary

G.3.1 General

Fill in the information required for the appropriate method selected (G.3.2 to G.3.6).