

# South African standards for construction procurement

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Standards South Africa, a division of the South African Bureau of Standards, has recently published national standards for procurement. (see Table 1).

All the standards contain the word 'construction' in their title as the Construction Standards Committee developed them. It should, however, be borne in mind that construction procurement involves not only engineering and construction works contracts, but also supplies contracts that involve the purchase of construction materials and equipment, services relating to any aspect of construction, including professional services, disposals of surplus materials and equipment and disposals in the form of demolitions.

They cover the full range of commonly encountered procurements in both the public and private sectors in most industrial sectors and are suitable for use by both public and private sector organisations<sup>1</sup>.

The standardisation of construction procurement enables uniformity in the process; procurement documents can be readily compiled. It will lead to cost savings, improvements in quality, improved efficiency and tenderers being able to more easily determine the scope and extent of risk.

Standardisation also allows governments to develop an internal procurement skills base, which is not lost when staff move between different departments or levels of government.

The South African Construction Industry Development Board (CIDB) has declared SANS 294 and SANS

10403 to be best practice and has based its *Standard for uniformity in construction procurement* on these standards. (All government bodies and municipalities in South Africa are required to apply this and the private sector is encouraged to make use the standards.)

The objectives and the principles on which SANS 294 has been developed, have been favourably reviewed by international experts in procurement outside the construction sector through the CUTS Centre for International Trade, Economics & Environment's International Working Group on the Doha Agenda II project. The report resulting from this project, which was presented at a Symposium on the WTO's July Package in Geneva in November, 2004, presents the thinking behind SANS 294 and raises the possibility of developing an ISO standard for procurement along similar lines to address a number of governance issues including that of transparency<sup>2,3</sup>.

## Formatting and compilation of construction procurement documents, SANS 10403:

Procurement documents are required primarily to solicit tender offers and form the basis for a contract. Fig 1 illustrates the concept of offer and

acceptance that results in a contract being entered into. Procurement documents provide tenderers with the necessary inputs to allow them to compile their tender submissions. These are in turn inputs into the contract that may be concluded following the acceptance of their tender offer.

To have a fair, transparent and equitable solicitation process, employers should provide tenderers with clear instructions on how they are to submit their tender offers and tell them how their tenders will be processed. Uniformity in procurement documentation can be achieved provided there is a complete separation of the component documents (i.e. the conditions of tender, conditions of contract, specifications and methods of measurement and payment) that make up a procurement document. Different conditions of contract, or for that matter payment systems, can then be used without affecting the remaining component document.

SANS 10403 (2003) provides a series of standard headings of component documents based on an 'offer' and 'acceptance' process illustrated in Fig 1 (see Tables 2 and 3) and provides comprehensive guidance on the drafting and formulation of these component documents.

## Implementing preferential procurement policies using targeted construction procurement procedures, SANS 10396

This defines targeted procurement procedures as the 'process used to create a demand for the services and supplies of, or to secure the participation of, targeted enterprises and targeted labour in contracts in response to the objectives of a preferential procurement policy.' The procedures, listed below, can be used to varying degrees to implement secondary objectives in all four of the categories identified in Table 4:

- defining target enterprises (ownership, control, independence, size, declaration affidavits and statements by auditors);
- defining targeted labour;
- goals associated with targeted

Table 1. Standards for procurement

<i>SANS 1914 (2002), Targeted construction procurement:</i>
Part 1: Participation of targeted enterprises
Part 2: Participation of targeted partners in joint ventures
Part 3: Participation of targeted enterprises and targeted partners in joint ventures
Part 4: Participation of targeted enterprises and targeted labour (local resources)
Part 5: Participation of targeted labour
Part 6: Participation of targeted enterprises in concession contracts
<i>SANS 10396 (2003), Implementing preferential procurement policies using targeted construction procurement procedures</i>
<i>SANS 10403 (2003): Formatting and compilation of construction procurement documents</i>
<i>SANS 294: 2004: Construction procurement processes, procedures and methods.</i>

The standard were approved by National Committee STANSA TC 5120.61, Construction standards, in accordance with the procedures of Standards South Africa, in compliance with annex 3 of the World Trade Organisation's Technical Barriers to Trade Agreement. Compliance with the provisions of the WTO/TBT agreement requires that particulars of the work programme and draft standards issued for comment be published in a national or regional publication of standardisation activities, a period of at least 60 days be allowed prior to the adoption of a standard to allow for the submission of comments on the draft standard by interested parties within the territory of a Member of the WTO, and that comments received be taken into account in the finalisation of a draft standard.

Fig 1. The concept of offer and acceptance that results in a contract being entered into

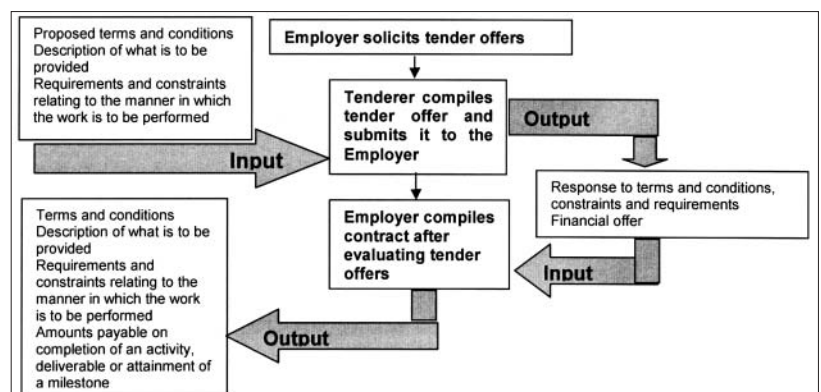


Table 2. Documents that relate to the 'Tender'

Contents Number	Heading	Function and broad outline of contents
<b>Tendering procedures</b>		
T1.1	Tender Notice and Invitation To Tender	Alerts tenderers to the nature of the supplies, services and engineering and construction works required by the employer and should contain sufficient information to enable them to respond appropriately
T1.2	Tender Data	States what the applicable conditions of tender are and where they may be found. Tender Data also provides the variables for standardised conditions of tender
<b>Returnable documents</b>		
T2.1	List of Returnable Documents	Ensures that everything the employer requires a tenderer to submit with his tender is included in, or returned with, his tender submission
T2.2	Returnable Schedules	Contains documents that the tenderer is required to complete for the purpose of evaluating tenders and other schedules which upon acceptance become part of the subsequent contract

Table 3: Documents that relate to the 'Contract'

Contents Number	Heading	Broad outline of contents
<b>Part 1: Agreements and contract data</b>		
C1.1	Form of Offer and Acceptance	Formalises the legal process of offer and acceptance
C1.2	Contract Data	States the applicable conditions of contract and associated contract specific data that collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract
<b>Part 2: Pricing data</b>		
C2.1	Pricing Instructions	Provides the criteria and assumptions which it will be assumed (in the contract) that the tenderer has taken into account when developing his prices, or target in the case of target and cost reimbursable contracts
C2.2	Activity Schedule/ Bill of Quantities	Records the contractor's prices for providing supplies/services/engineering and construction works which are described elsewhere in a specification within the Scope of Work section of the contract
<b>Part 3: Scope of Work</b>		
C3	Scope of Work	Specifies and describes the supplies, services, or engineering and construction works which are to be provided and any other requirements and constraints relating to the manner in which the contract work is to be performed
<b>Part 4: Site information (engineering and construction works contracts only)</b>		
C4	Site Information	Describes the site as at the time of tender to enable the tenderer to price his tender and to decide upon his method of working and programming and risks

- procurement procedures;
- resource specifications (drafting principles, standardised resource specifications, structured joint ventures, activating the standardised resource specifications in procurement documents and variations to the standardised resource specifications);
  - incentives for contractors to embrace goals (goal / price mechanism and bonus incentives);
  - third-party management support;
  - electronic rotating data bases

Fig 2. Generic structure of SANS 1914

- (rosters);
- equity in tendering entities;
- financial penalties.

These targeted procurement procedures enable undertakings made by tenderers at the award stage to be clearly defined to make them contractually enforceable, measurable and quantifiable. This in turn allows these undertakings to be monitored and evaluated, and ultimately verified and audited.

**Targeted construction procurement family of standards, SANS 1914:**

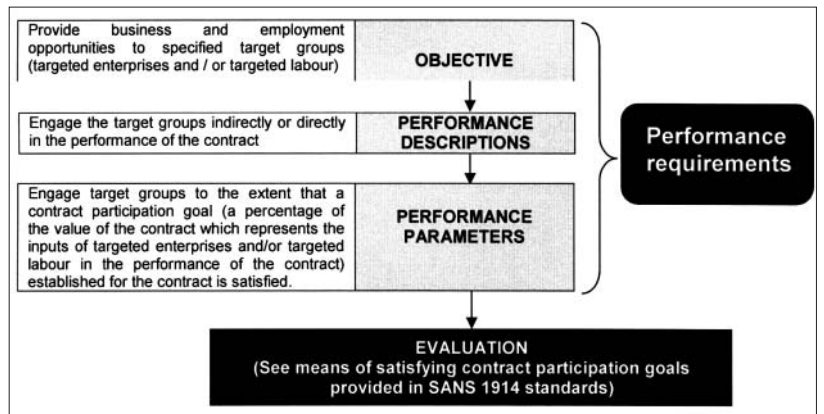
Resource specifications are required to specify and describe contract participation goals at tender stage. Tenderers

can either tender contract participation goals (i.e., offer to engage targeted enterprises, targeted labour or a combination of these in tendered amounts), or agree to achieve specified contract participation goals in the performance of the contract. Organisations can then evaluate tenders in terms of the tendered contract participation goals and financial parameters, or prescribe minimum contract participation goals, which are to be achieved in the performance of the contract. They can then use the resource specification to monitor and verify that the contractor achieves the contract participation goal, and apply sanctions, should the goal not be achieved.

There are six parts to SANS 1914,

Table 4: Classification of secondary objectives in terms of obligations placed on tenderer/successful tenderers

Type #	Descriptor	Obligation placed on tenderer/successful contractor	Examples of obligations
I	Structure of the contracting entity	Satisfy nominated requirements to be eligible for the award of a contract or a preference	Have a company profile (e.g. equity ownership/control/operational responsibilities/size) that satisfies prescribed criteria
II	Internal workings of the contracting entity	Satisfy nominated requirements to be eligible for the award of a contract or a preference; or undertake to implement certain work place actions during the performance of a particular contract	Have a company staffing structure that satisfies prescribed criteria. Establish and maintain a drug free workplace. Be in good standing with tax collection authorities. Implement a policy and programme of equal employment opportunity on the grounds of race/gender/disability. Provide conditions of employment more favourable than that provided for in the law. Embrace environment friendly technologies and/or practices.
III	Outsourcing	Provide business and/or employment opportunities to target groups through activities directly related to a particular contract.	Subcontract a portion of the contract to targeted enterprises. Engage targeted enterprises and/or targeted labour in the performance of the contract. Enter into joint venture with targeted enterprises at prime or subcontract level.
IV	Nominated deliverables	Undertake to provide specific deliverables, which may be related or unrelated to a particular contract.	Participate in a country's economy to the extent that the sum total of all commercial / industrial activity equals or exceeds a monetary value over a period of time. Develop human resources e.g. by assisting in tertiary and other advanced training programmes, in line with key indicators.



the generic structure of which is outlined in Fig 2. Each part enables certain targeted procurement procedures associated with a preferential procurement policy, as described in SANS 10396, to be implemented. Each part:

- a) describes the general requirements for engaging targeted enterprises and/or targeted labour on a contract for the provision of supplies, services or works, as relevant;
- b) specifies the contract participation goal (the value of a percentage of the

- value of the contract which represents the inputs of targeted enterprises and/or targeted labour in the performance of the contract);
- c) sets out the methods by which the contract participation goal will be measured, quantified and verified in the performance of the contract;
- d) describes the means by which:
  - progress towards the attainment of the contract participation goal is to be monitored;
  - compliance with requirements will be verified and monitored; and
  - the contract participation goal will be adjusted to accommodate variations to the scope of the work in the performance of the contract.

Table 5: SANS 1914 resource standards

Part #	Title	Target groups provided for**	Means of satisfying contract participation goals (CPG) requirements
1	Participation of targeted enterprises	Targeted enterprises (TEs) (and targeted partners (TPs) who are TEs)	By one or more of the following: - performing the work as a TE Prime Contractor - performing the work as a TE Prime Contractor - subcontracting portions of the contract to TEs - obtaining supplies from Suppliers who are TE - purchasing materials from Manufacturers who are TEs - obtaining bonds and insurance policies from TEs - engaging service providers who are TEs - engaging non-TEs who in turn engage TEs - entering into a Joint Venture with one or more TPs - engaging non-TEs who in turn enter into Joint Ventures with TEs
2	Participation of targeted partners in joint ventures	Targeted partners (TPs)	By forming a joint venture at the Prime Contract level with one or more TPs
3	Participation of targeted enterprises and targeted partners in joint ventures	Targeted Partners (TPs) and targeted enterprises (TEs) who are not necessarily TPs	By: - forming a joint venture at Prime Contract level with one or more TPs - engaging TPs as subcontractors/service providers/manufacturers and suppliers
6	Participation of targeted enterprises in concession contracts*	Targeted enterprises (TEs) (and targeted partners (TPs) who are TEs)	By one or more of the following: - by engaging one or more TEs; - by engaging non-TEs who in turn enter into Joint Venture agreements with one or more TPs; - by engaging non-TEs who in turn engage one or more TEs

TE= targeted enterprise; TP= targeted partner; TL= targeted labour)  
 \*Suitable for use in public private partnerships  
 \*\*Target groups need to be defined by the employer in contracts

The SANS 1914 family of standards may be used to measure, quantify, verify and audit the socio-economic deliverables relating to the engagement by a contractor of targeted enterprises and/or targeted labour in the performance of a contract. These standards enable goals (targets) for the engagement of targeted enterprises and targeted labour to be set in a standard quantifiable, measurable and auditable manner.

The target groups are all users defined and as such must be defined in the contract. This permits users to choose the group, which they wish to target e.g. women, youth, low wage earners, small-scale enterprises, local enterprises etc. The specifications also permit the employer to establish the terms and conditions under which targeted enterprises and targeted labour are to be engaged.

Parts 1, 3, 4, and 6 of the SANS 1914 standards facilitate the targeting of enterprises throughout the supply chain, as indicated in Table 4, and are particularly suited to services and engineering and construction works contracts. They also provide a particularly useful means of promoting business linkages between large and small contractors.

### SANS 294, Construction procurement processes, procedures and methods

SANS 294 provides processes, methods and procedures for the establishment within an organisation of a procurement system that is fair, equitable, transparent, competitive and cost effective. It is designed around the system requirements in Table 6. SANS 294:

- a) describes generic procurement processes around which an organisation may develop its procurement system and place their own control points to manage their procurement.
- b) establishes minimum requirements for the conduct of an organisation's employees, agents, board members and office bearers when engaging in procurement, namely that they:

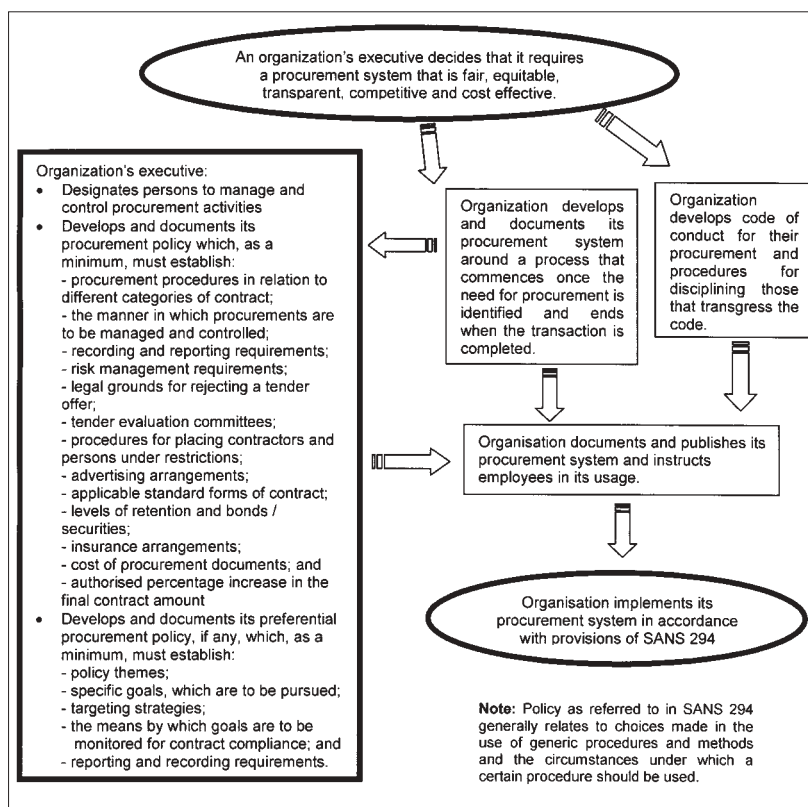


Fig 3. Generic structure of SANS 294

- discharge their duties and obligations timeously and with integrity;
  - behave equitably, honestly and transparently;
  - avoid conflicts of interest;
  - do not maliciously or recklessly injure or attempt to injure the reputation of another party.
- c) establishes the framework for the development of an organisation's procurement policy including any preferential procurement policy.
- d) establishes generic methods and procedures for procurements including those pertaining to disposals.
- e) provides standard conditions of tender and conditions for the calling for expressions of interest which place obligations on tenderers/respondents and commits employers to certain undertakings in the procurement process including the manner in which submissions are to be evaluated.

This standard provides the generic processes around which an organisation can develop its procurement system as illustrated in Fig 3. There are eight standard generic procurement procedures methods and four generic evaluation methods, which may be combined in the presence or absence of eligibility criteria to simulate most international procurement procedures (See Fig 4). It contains the full range of methods and procedures, with the exception of e-procurement, that public and private sector organisations may require. The standard does not prescribe when and under what circumstances such methods may be utilised, or impose the way in which procurement is to be managed and controlled. Being generic in nature, it does not impose matters of policy on organisations. It rather establishes a comprehensive rule-based framework within which an organisation may develop its procurement policy.

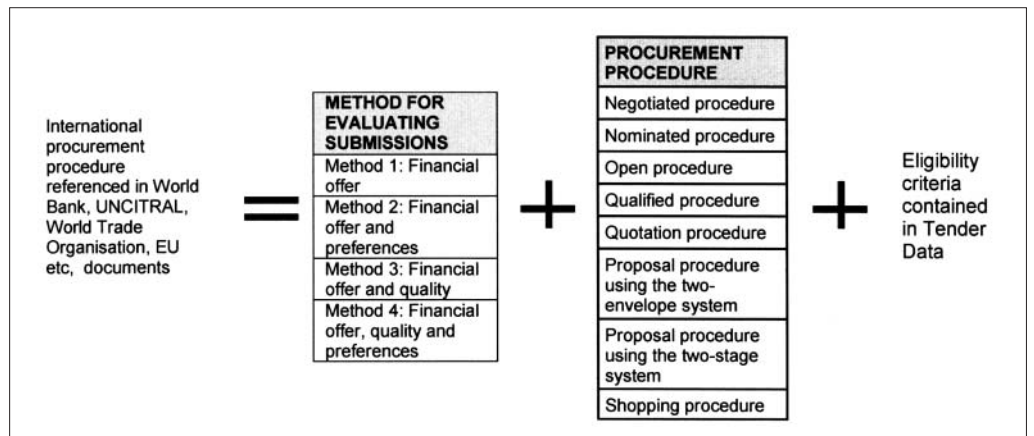
SANS 294 is based on the premise that, subject to prevailing legislation, preferential procurement policies are implemented using one of the following methods:

- preferences at the shortlisting stage;
- accelerated rotation on an electronic database where the nominated procedure is used;
- tender evaluation criteria;
- breaking down (unbundling) of projects into smaller contracts to facilitate the participation of targeted enterprises.

It also standardises:

- requirements for the preparation of specifications;
- conditions of tender framed around the obligations of the tenderer and the undertakings of the employer;
- conditions for the calling for expressions of interest framed around the obligations of the respondent and

**Fig 4. Relationship between international procurement procedures and the generic methods contained in SANS 294**



*Table 6: Qualitative system performance requirements based on identified system objectives*

System objective	System requirement
Fair	The process of offer and acceptance within the procurement system is to be conducted: i) impartially without a bias i.e. in a manner which favours or seems to favour one tenderer or in a manner which is seen as supporting one tenderer to the detriment of another; and ii) in a manner which affords tenderers timely access to the same information.
Equitable	The only grounds for not awarding a contract to a tenderer who satisfies all the terms and conditions of the tender are that the tenderer: i) is under restrictions to do business with the organisation as a result of prior corrupt and fraudulent practices; ii) does not have the capability or capacity (or both) to perform the contract; iii) is not in good standing insofar as statutory obligations (eg taxes) are concerned; and iv) may not be able to perform the contract in the best interest of the organization owing to conflicts of interest.
Transparent	The procurement system shall be such that: i) the terms upon which the procurement process is to be conducted and the criteria upon which any decisions are to be made are properly documented and communicated to both tenderers and those responsible for the processing of tender offers; ii) the eventual procurement award decision, and where appropriate, any intermediate decisions, is made publicly available; iii) the reasons given for decisions are made known to tenderers; and iv) it is possible to verify that the documented procedures and criteria were indeed applied.
Competitive	The procurement system provides for appropriate levels of competition to ensure that cost effective and best value procurement outcomes are attained.
Cost effective	The procurement system is standardized as far as possible and provided with sufficient flexibility to facilitate the attainment of best value procurement outcomes in terms of quality, timing and price, using the least amount of resources necessary to effectively manage and control the procurement process.
Attainment of secondary (non commercial objectives)	The procurement system may incorporate measures to promote objectives associated with a preferential procurement policy provided that: i) such measures do not exclude qualified tenderers from competing for the award of contracts and are fair, equitable, transparent, competitive and cost effective; and ii) any deliverable or preferencing criteria associated with such procedures are measurable, quantifiable and monitored for compliance.

- the undertakings of the employer;
- requirements for advertisements;
- tender procedures (receipt of tender submissions and opening of tender submissions);
- evaluation of tender submissions (disqualification of tenders, test for responsiveness, arithmetical errors, ranking and scoring of responsive tenderers, risk assessment, negotiations with tenderers, and tender evaluation reports);
- award of contracts (finalising the contract and notifying unsuccessful tenderers);
- contract administration; and
- resolution of disputes.

The generic conditions of tender and

conditions for the calling for expressions of interest contained in SANS 294 include an obligation on the parties in dealing with each other to act in a manner consistent with the code of conduct provided for. <sup>se</sup>

## REFERENCES

1. See CUTS-CITEE synthesis report: website:([www.cuts-international.org/tgp.htm](http://www.cuts-international.org/tgp.htm))
2. See website: ([www.cuts-international.org/tgp.htm](http://www.cuts-international.org/tgp.htm))
3. Watermeyer, R. 'Transparency Issues in government procurement', The Structural Engineer v83/2 18 January 2005