

Facilitating Sustainable Development through Public and Donor Regimes: Tools and Techniques

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1 INTRODUCTION

Procurement is the process that creates, manages and fulfils contracts relating to:

- i) the provision of supplies, services or engineering and construction works;
- ii) the disposal of property;
- iii) the hiring of anything; and
- iv) the acquisition or granting of any rights and concessions.

Public procurement, because of its nature and size, can have a significant impact on social and economic development¹. Governments in both developed and developing countries have responded to the use of procurement to attain policy objectives in a number of ways, ranging from making it mandatory for officials to use procurement to attain socio-economic objectives to ruling out its use for such purposes. Others allow officials discretion in the use of procurement for such purposes. Certain international trade agreements limit the use of procurement to promote policy objectives by placing prohibitions on discrimination and other restrictive trade measures and / or by rules on contract award procedures eg the European Union rules on procurement and the World Trade Organization's Agreement on Government Procurement (GPA)².

The use of procurement as an instrument of policy is, however, not without controversy and questions have been raised regarding its legitimacy and effectiveness.³ The approach to implementation and policy outcomes has at the same time varied widely. In Zimbabwe, for example, the activities of black Zimbabwean contractors accounted for less than 1% of the construction work available 10 years after independence, despite measures being adopted to provide contracts to such contractors.⁴ In 1995, the president of the USA, following a successful challenge regarding the constitutionality of set aside programmes involving minority owned enterprises, instructed all federal bodies to review their policies and to eliminate any programme which creates a quota, creates preferences to unqualified individuals, creates reverse discrimination or continues even after its equal opportunity purposes have been achieved⁵.

The Aus Aid – SACBP study in South Africa in 2000 found a lack of procedures at both national and provincial level to enable an accurate assessment to be made of how effective the preferential procurement policies were in reaching those for whom they were intended. They also found no methodologies in place to judge whether the policies needed to be adjusted in any way in order to achieve the original objectives. As a result, the study was unable to determine whether government's objectives were being achieved.⁶ The Department

1 Arrowsmith S. Public Procurement as an instrument of policy and the implementation of market liberalisation. The Law Quarterly Review, pages 235 to 284. April 1995.

2 Arrowsmith S, Meyer G and Trybus M. Non-commercial factors in public procurement. The Public Procurement Research Group, School of Law, Nottingham University 2000.

3 Watermeyer RB, Gounden S, Letchmiah DR and Shezi S. Targeted Procurement : a means by which Socio-Economic Objectives can be realised through Engineering and Construction Works Contracts. JSA Inst Civ Eng, March 1998

4 Masiyiwa, ST. (1994). The African Experience, Zimbabwe. *Proceedings BEAM Conference*,. Implementing the RDP and Affirmative Action in the Construction Industry. Durban.

5 McCrudden, C. Public Procurement and Equal Opportunities in the European Community. A study of contract compliance in member states of the European Community and under European Community Law. Contract File No. SOC 9310257105B04, Oxford University, 1995.

6 AUS-AID and the South Africa Capacity Building Programme. Report on the opportunities for government procurement reform in South Africa.

of Public Works in South Africa, on the other hand, used targeted procurement procedures to implement a preferential procurement policy embedded in the constitution of that country aimed at overcoming past discrimination arising from the system of apartheid. This intervention increased the market share of small businesses that were owned, managed and controlled by black persons from approximately 2,5% of the Department's budget for public works, immediately prior to implementation, to 22,3% after the first 9 months after implementation and to 32,4% in its third year of operation, with nominal direct financial premiums.^{7,8}

This article reviews the fundamentals of some international procurement practices, establishes linkages between sustainability imperatives and procurement identified at the Earth Summit (1992) and the World Summit (2002), and proposes a set of secondary (non-commercial) objectives pertaining to sustainable development. It thereafter identifies widely held primary and secondary objectives for procurement, establishes generic schemes for using procurement to attain socio-economic objectives and methods for implementing policies relating to secondary (non-commercial) objectives, and analyses the risks associated with the failure to achieve primary and secondary procurement objectives associated with the identified methods. Following this, the article identifies the methods and practices which may be pursued to minimize the risk that primary procurement objectives are compromised by secondary objectives unrelated to the procurement itself. The article concludes by identifying and proposing tools and techniques which should be used to facilitate the alignment of public procurement systems to promote sustainable development objectives.

2 AN OVERVIEW OF SOME INTERNATIONAL APPROACHES TO PROCUREMENT

The World Bank

The World Bank, according to recent policy statements published on its web (July 2001), has four basic guiding principles, namely:

- i) ensuring economy and efficiency in the procurement of goods, works, and services;
- ii) giving eligible tenderers from developed and developing countries a fair opportunity to compete in providing goods, works, and services;
- iii) encouraging the development of domestic industries—contracting, manufacturing, and consulting industries—in borrowing countries; and
- iv) providing for transparency in the procurement process.

The Bank views competition as the basis for economic and efficient procurement. As a general principle, the Bank prefers the method of procurement that maximizes competition over methods that are less competitive. Accordingly, the Bank normally requires the use of international competitive bidding (ICB) for the procurement of goods and supplies and the use of quality and cost-based selection (QCBS) for the selection of consultants. It allows the use of other methods when ICB or QCBS is not the most economic and efficient method.

Each borrower is permitted by the Bank to give preference to bids offering goods manufactured within its country and permits those countries below a specified per capita threshold to give preference to bids for works contracts from eligible domestic contractors in order to encourage the development of domestic industries. The Bank also permits borrowers to give credit to proposals for consulting services that include nationals as key staff. The Bank does not favour counter trade measures and advocates the award of

7 Govender JN and Watermeyer RB. Potential Procurement Strategies for Construction Industry Development in the SADC region. Proceedings of the second International Conference on Construction Industry Development. Botswana National Construction Industry Council in association with the Faculty of Engineering Technology, University of Botswana under the auspices of the International Council for Research and Innovation in Building Construction. Gaborone, Botswana, November 2000.

8 Gounden SM. The Impact of the National Department of Public Works' Affirmative Procurement Policy on the Participation and Growth of Affirmable Business Enterprises in the South African Construction Sector. Phd Thesis, University of Natal, 2000

contracts solely on the basis of the financial offer made without the imposition of any counter trade obligations to purchase local goods and/or services in return.

The Bank views transparency as an essential part of the Bank's efforts to ensure effective use of loan funds and to combat fraud and corruption. The Bank, in order to promote transparency, requires public notification of procurement opportunities; favours the use of open competitive procedures that include public bid opening; supports mechanisms whereby a losing bidder may request, and receive, an explanation as to why its bid was not selected; and discloses the results of bidding processes, including the names of firms or individuals awarded contracts and the value of the contracts.

World Trade Organisation

General

The World Trade Organisation's point of departure, as stated in its website in its approach to procurement, is that best value for money is secured through an open and non-discriminatory procurement regime. Discrimination in government procurement procedures and practices is considered to lead to distortions in international trade.⁹

Agreement on Government Procurement

An Agreement on Government Procurement (GPA) was first negotiated and came into force on 1 January 1981. Its purpose remains to open up government procurement to international competition. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers. The GPA establishes an agreed framework of rights and obligations among its Parties with respect to their national laws, regulations, procedures and practices in the area of government procurement.

The present agreement, which took effect on 1 January 1996, reinforces rules guaranteeing fair and non-discriminatory conditions of international competition. The cornerstone of the rules in the Agreement is non-discrimination. Parties to the Agreement are, in terms of Article III (National Treatment and Non-Discrimination), required in procurements that are subject to the agreement to give the products, services and suppliers of any other party to the Agreement treatment "*no less favourable than that accorded to domestic products, services and suppliers; and that accorded to products, services and suppliers of any other party.*" Furthermore, each party is required to ensure that its entities do not "*treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership*" and do not "*discriminate against a locally-established supplier on the basis of country of production of the goods or service being supplied*".

Article IV (The Agreement on Special and Differential Treatment for Developing Countries) requires the parties to the Agreement to take into account the development, financial and trade needs of developing countries, particularly least-developed countries, in the implementation and administration of the Agreement. Article XVI (Offsets) prohibits the parties

⁹ The WTO in an overview of the Agreement on Government Procurement published on its website, states that governments sometimes seek to achieve certain other domestic policy goals through their purchasing decisions, such as promotion of local industrial sectors or business groups. Measures to this effect may be either explicitly prescribed in national legislations, for example prohibitions against the purchase of foreign goods or services or from foreign suppliers, preference margins, set-asides and offsets, or in the form of less overt measures or practices which have the effect of denying foreign products, services and suppliers the opportunity to compete in domestic government procurement markets, including excessive use of single or selective tendering, non-open technical specification requirements and, in particular, lack of transparency in tendering procedures including contract awards.

to the Agreement to impose, seek or consider offsets¹⁰ in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and the award of contracts. Provision is, however, made for a developing country at the time of accession to the agreement to negotiate conditions for the use of offsets only for qualification to participate in the procurement process and not as criteria for awarding contracts, providing that such offsets are “*objective, clearly defined and non-discriminatory*”.

In order to ensure that the basic principle of non-discrimination is adhered to and that access to procurement is available to foreign products, services and suppliers, the Agreement addresses a range of issues including technical specifications (Article V), tendering procedures (Articles VI to XVI) and transparency (Article XVII to XX)

Doha Ministerial Declaration

The November 2001 declaration of the Fourth Ministerial Conference in Doha, Qatar, provides the mandate for negotiations on a range of subjects, and other work including issues concerning the implementation of the present agreements.

Paragraph 2 of the declaration recognises that “*international trade can play a major role in the promotion of economic development and the alleviation of poverty*” and reinforces the requirement for “*positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development.*” The roles played by “*enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity-building programmes*” is also acknowledged.

It is acknowledged in paragraph 6 that “*under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements*”. Paragraph 26 confines the negotiations after the Fifth Session of the Ministerial Conference to transparency aspects. It expressly states that the negotiations will not restrict the scope for countries to give preferences to domestic supplies and suppliers.

United Nations Commission on International Trade Law

The United Nations Commission on International Trade Law (UNCITRAL) developed and published a Model Law on the Procurement of Goods, Construction and Services complete with a guide to enactment. (1994). The Model Law was developed “*to be of assistance to countries which are in the process of reforming their public procurement systems to increase the market orientation of the economy or which are considering to introduce a legislation on procurement or to update their current procurement legislation to enhance the dismantling of obstacles to international trade.*”

The objectives of the Model Law, which include maximising competition, according fair treatment to suppliers and contractors bidding to do government work, and enhancing transparency and objectivity, are considered to be essential for fostering economy and efficiency in procurement and for curbing abuses. The procedures embodied in the Model Law are intended to create an environment within which the public is assured that government as a procurer is likely to spend public funds responsibly with full accountability and thereby obtain value for money. They are also intended to confidently assure those doing business with government of fair treatment.

¹⁰ Offsets in government procurement are measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.

The Model Law establishes procedures to be used by procuring entities in selecting a supplier or contractor. It does not, however, provide procedural details that would normally be contained in rules and regulations that may be issued in terms of these laws. Some of the key features provided for include as a general rule, unrestricted solicitation of participation by suppliers and contractors, comprehensive description and specification in solicitation documents as to what is to be procured, full disclosure of the criteria to be used in evaluating and comparing tenders and in selecting the successful tenderer, strict prohibition against negotiations as to the substance of tenders and the public opening of tenders at the deadline for submissions.

Article 8 recognises that governments may wish in some cases to restrict foreign competition with a view to protecting certain vital economic sectors against foreign competition. Such restrictions are in terms of Article 8(1) subject to a requirement that the imposition of a restriction is based only on grounds specified in procurement regulations or should be pursuant to other provisions of laws. This provision is intended to promote transparency and to curb the placing of arbitrary and excessive restrictions on foreign competition.

Article 22(2) allows the use of single-source procurements under certain conditions relating to public comment, to promote a range of secondary policy objectives including those pertaining to countertrade arrangements, the extent of local content, the encouragement of employment, the transfer of technology and the development of skills. Article 34(4)(c) permits the aforementioned secondary objectives to be taken into account in determining the lowest evaluated tender along with the financial offer, the operation cost, terms of payment etc., Article 34(4)d and 39(2) provide for “margins of preference” in favour of local suppliers and contractors to provide a means for balancing the objectives of international participation in procurement and the fostering of national industrial capacity without resorting to purely domestic procurement.

3 THE LINKAGE BETWEEN SUSTAINABLE DEVELOPMENT AND PUBLIC PROCUREMENT

Introduction

Sustainable development is defined in the Brundtland report (1987) as “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*” The interpretation of this definition has, however, since 1987 broadened and matured. The protection of the environment is today recognised as but one element of sustainable development. Former Indian Prime Minister Indira Gandhi said almost 30 years ago that poverty was the world’s greatest polluter. Sustainable development is now also very much about eradicating poverty.¹¹

Dr Ben Ngubane (2000), South Africa’s Minister of Arts, Culture and Science, at a UNESCO conference in France, sums it up when he points out that “*one of the pre-eminent changes that has taken place is the recognition that sustainable development is a far more embracing and holistic concept than environmental sustainability. Indeed sustainable development is a way of looking at all the sources and resources that can lead to a higher quality of life for the current generation, without compromising future generations.*”¹²

The Earth Summit (1992)

The United Nations Conference on Environment and Development (UNCED) took place in Rio de Janeiro, Brazil in 1992. The Earth Summit was convened to address problems of environmental protection and socio-economic development. The assembled leaders signed the Framework Convention on Climate Change and the Convention on Biological Diversity, endorsed the Rio Declaration and the Forest Principles, and adopted Agenda 21 for achieving

¹¹ Watermeyer, RB. Article entitled “Sustainable construction: looking ahead to the World Summit on Sustainable Development in Johannesburg 2002” published in *The Structural Engineer*, August, 2002.

¹² *Ibid*

sustainable development. The Commission on Sustainable Development (CSD) was created in December 1992 to ensure follow-up of UNCED and to monitor and report on implementation of the Earth Summit agreements at the local, national, regional and international levels.

The Rio Declaration on the Environment and Development proclaimed a set of 27 principles. The first principle states that *“human beings are at the centre of concerns for sustainable development.....”* Principle 5 identified the essential task of eradicating poverty as an indispensable requirement for sustainable development in order to *“decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.”*

Section I of Agenda 21 deals with the Social and Economic Dimension. Paragraph 2.9 of chapter 2 (International co-operation to accelerate sustainable development in developing countries and related domestic policies) suggests that governments should continue to strive to meet the objectives which, amongst others, *“promote an open, non-discriminatory and equitable multilateral trading system that will enable all countries - in particular, the developing countries - to improve their economic structures and improve the standard of living of their populations through sustained economic development; improve access to markets for exports of developing countries; and promote and support policies, domestic and international, that make economic growth and environmental protection mutually supportive.”* Paragraph 4.23 of chapter 4 (Changing consumption patterns) calls upon governments to *“also play a role in consumption, particularly in countries where the public sector plays a large role in the economy and can have a considerable influence on both corporate decisions and public perceptions. They should therefore review the purchasing policies of their agencies and departments so that they may improve, where possible, the environmental content of government procurement policies, without prejudice to international trade principles.”*

Paragraph 7.69 of Chapter 7 (Promoting Sustainable Human Settlement Development) calls upon all countries, as appropriate and in accordance with national plans, objectives and priorities to, amongst other things, *“establish and strengthen indigenous building materials industry, based, as much as possible, on inputs of locally available natural resources and to promote the use of labour-intensive construction and maintenance technologies which generate employment in the construction sector for the underemployed labour force found in most large cities, while at the same time promoting the development of skills in the construction sector”.* Paragraph 7.74 calls upon local authorities *“to play a pioneering role in promoting the increased use of environmentally sound building materials and construction technologies, e.g., by pursuing an innovative procurement policy.”*

The Johannesburg World Summit (2002)

The United Nations, ten years after the Rio de Janeiro Earth Summit, held a World Summit on Sustainable Development in Johannesburg. The Johannesburg World Summit (2002) brought about a clearer understanding of the relationship between poverty and environmental protection. This is reflected in the opening paragraphs of both the statement of the Key Outcomes and Key Commitments, Targets and Timetables from the Johannesburg Plan of Implementation. The fundamental global action associated with the international agenda for sustainable development, in which there are important linkages between poverty, the environment and the use of natural resources, is to fight poverty and to protect the environment. The basic poverty eradication target is, by the year 2015, to halve the proportion of the world's people whose income is less than US \$1 a day and the proportion of people who suffer from hunger, and to achieve by the year 2020, a significant improvement in the lives of at least 100 million slum dwellers.

Paragraph 6 of Chapter II (Poverty eradication) of the Plan of Implementation of the Johannesburg World Summit, states that the eradication of poverty is the greatest global challenge facing the world today and is an indispensable requirement for sustainable development, particularly for developing countries. This paragraph call for actions, which apart from halving the proportion of the world's people whose income is less than US \$1 a day, include the promotion of women's equal access to economic opportunity (6d) and the

development of policies and ways and means to improve access by indigenous people and their communities to economic activities and to increase their employment (6e). Paragraph 9 calls for the strengthening of “*the contribution of industrial development to poverty eradication and sustainable natural resource management*” and proposes actions which include the transfer of environmentally sound technologies on preferential terms (9a) and the promotion of the development of micro, small and medium-sized enterprises (9c).

Paragraph 18 of chapter III (Changing unsustainable patterns of consumption and production) encourages “*relevant authorities at all levels to take sustainable development considerations into account in decision-making, including on national and local development planning, investment in infrastructure, business development and public procurement* and proposes actions that include the promotion of *public procurement policies that encourage development and diffusion of environmentally sound goods and services* (18c). “

Paragraph 45 of Chapter V (Sustainable development in a globalizing world) states that “*globalization offers opportunities and challenges for sustainable development*” and recognises that “*the developing countries and countries with economies in transition face special difficulties in responding to those challenges and opportunities.*” This paragraph proposes a number of actions to ensure that globalization is fully inclusive and equitable including the continuation of the promotion of an “*open, equitable, rules-based, predictable and non-discriminatory multilateral trading and financial systems that benefit all countries in the pursuit of sustainable development*” (45a), the supporting of the successful completion of the work programme contained in the Doha Ministerial Declaration and the implementation of the Monterrey Consensus (45a), the encouraging of “*ongoing efforts by international financial and trade institutions to ensure that decision-making processes and institutional structures are open and transparent*” (45b) and the enhancement of the delivery of coordinated, effective and targeted trade-related technical assistance and capacity-building programmes (45e).

Paragraph 61(c) of chapter VIII (Sustainable development in Africa) calls for the improvement of market access for goods within the framework of the Doha Ministerial Declaration, without prejudging the outcome of the WTO negotiations and also within the framework of preferential agreements. Paragraph 84 of chapter IX (Means of Implementation), recognizing the major role that trade can play in achieving sustainable development and in eradicating poverty, encourages WTO members to pursue the work programme agreed at the Fourth WTO Ministerial Conference. Paragraph 86 calls upon WTO members to fulfil the commitments made in the Doha Ministerial Declaration, notably in terms of market access, in particular for products of export interest to developing countries, especially least developed countries.

Public procurement challenges arising from the Earth and World Summit

The procurement challenges flowing out of the Earth and World Summits are to utilise procurement, without prejudging international trade principles, to attain secondary objectives pertaining to:

- i) the alleviation and reduction of poverty;
- ii) minimising the harmful effects of development on the local environment;
- iii) the establishment and strengthening of indigenous building materials;
- iv) the promotion of construction technologies that increase employment; and
- v) the promotion of the increased use of environmentally sound goods, building materials and construction technologies.

The World Bank in a recent publication proposes a strategy for attacking poverty in three ways¹³, viz:

- i) promoting opportunity
- ii) facilitating empowerment; and

¹³ The World Bank. World Development Report 2000/2001. Attacking poverty. Partnerships for development, Spring 2001.

- iii) enhancing security

The World Bank's strategy recognises the importance of economic growth for generating opportunity, the necessity of market reform, the imperative in societies with high inequality for greater equity in order to reduce poverty, the need for strengthening the participation of the poor and the reduction in vulnerability to economic shocks, natural disasters and the like.

Secondary procurement objectives associated with the reduction of poverty in the light of the World Bank report and the outcomes of the Earth and World Summits include¹⁴:

1. the provision of work opportunities to vulnerable groups;
2. increasing the quantum of employment generated per unit of expenditure through the promotion of small scale enterprises¹⁵ and usage of labour-based¹⁶ technologies and methods; and
3. the provision of business and / or work opportunities to groups of people who are socially and economically marginalised in order to address inequities within a society.

4 INTERNATIONAL OBJECTIVES FOR PUBLIC PROCUREMENT

The United Nations Commission for International Trade Law's (UNCITRAL) *Model Law on Procurement of Goods, Construction and Services* (1995) contains desirable objectives for the procurement of supplies, construction works and services. These are:

- i). maximising economy and efficiency in procurement;
- ii) fostering and encouraging participation in procurement proceedings by suppliers and contractors, especially where appropriate, participation by suppliers and contractors regardless of nationality, and thereby promoting international trade;
- iii) promoting competition among suppliers and contractors for the supply of the goods, construction or services to be procured;
- iv) providing for the fair and equitable treatment of all suppliers and contractors;
- v) promoting the integrity of, and fairness and public confidence in, the procurement process; and
- vi) achieving transparency in the procedures relating to procurement.

These objectives are widely supported amongst many international organisations and governments. They may be summarised by requiring procurements to be fair, equitable, transparent, competitive and cost effective.¹⁷

5 SECONDARY (NON-COMMERCIAL) OBJECTIVES FOR PROCUREMENT

A study undertaken for the European Community in 1995 cites five principle domestic (as distinguished from foreign policy) socio-economic or political functions which public

14 Watermeyer RB. The Use of Procurement to attain Labour-Based and Poverty Alleviation Objectives. 9th Regional Seminar for Labour-Based Practitioners: Towards Appropriate Engineering Practices and an Enabling Environment. Hosted by the National Road Administration of Mozambique in collaboration with the ILO/ASIST Programme, Maputo, May 2002.

15 Small scale enterprises are increasingly seen as the creators of new jobs and are regarded as being particularly effective in the economic implementation of employment intensive activities.

16 Labour- based in relation to the production process and technologies used in the production of goods and materials and in construction works means methods of production and technologies that are designed and managed so as to promote the creation of employment with predetermined socio-economic benefits.

17 The UNCITRAL objectives are provided in the preamble to the Model Law. According to the article-by-article remarks, the inclusion of a statement of objectives is to provide guidance to the interpretation and application of the Model Law.

An alternative approach is to provide a framework for procurement in law around a set of objectives. For example, section 217(1) of the Constitution of the Republic of South Africa (Act 108 of 1996) requires the procurement system to be fair, equitable, transparent, competitive and cost effective. The South African Public Finance Management Act (Act 1 of 1999) tasks accounting officers in all organs of state to *have an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective.*

procurements may be used to achieve, in addition to obtaining the required goods, services or works. These are ¹⁸:

- i) to stimulate economic activity;
- ii) to protect national industry against foreign competition;
- iii) to improve the competitiveness of certain industrial sectors;
- iv) to remedy regional disparities;
- v) to achieve certain more directly social policy functions such as to:
 - a) foster the creation of jobs;
 - b) promote fair labour conditions;
 - c) promote the use of local labour;
 - d) prohibit discrimination against minority groups;
 - e) improve environmental quality;
 - f) encourage equality of opportunity between men and women; or
 - g) promote the increased utilization of the disabled in employment.

This list comprehensively captures the main thrusts of socio-economic objectives that are commonly pursued.

Secondary or non-commercial objectives can be categorised in terms of obligations placed on tenderers or successful contractors as tabulated in Table 1. The focus of each of the four categories described in Table 1 is different. The Type I and II (structure / internal workings of the contracting entity) category typically focuses on the structure and internal workings within the company immediately prior to the commencement of the contract and for the duration of the contract. The Type III (outsourcing) on the other hand focuses on undertakings that targeted enterprises and / or labour will be engaged in economic activities in the performance of the contract and the monitoring thereof, while Type IV (nominated deliverables) uses procurement to leverage socio-economic benefits.

It should be noted that objectives associated with poverty reduction programmes focus on the targeting of enterprises and labour with defined characteristics i.e on Type I (structure of the contracting entity) and Type III (outsourcing) secondary objectives. (See Table 1). The objectives associated with environmental matters which are unrelated to poverty, relate to Type II (internal workings of the contracting entity) and Type IV (nominated deliverables) secondary objectives.

There are, however, two types of constraints to utilising procurement to attain sustainable development objectives. These relate to:

- i) prohibitions placed on using public procurement to attain secondary objectives; and
- ii) supply side constraints pertaining to small scale enterprises (eg access to markets, skills, finance and supportive institutional arrangements)¹⁹ and promoting choices in technologies that include the lack of appropriate methods, technologies and standards, the absence of design information pertaining to specific technologies, inappropriate means of verifying compliance with standards and a lack of performance based standards and building codes ²⁰.

18 McCrudden, C. Public Procurement and Equal Opportunities in the European Community. A study of contract compliance in member states of the European Community and under European Community Law. Contract File No. SOC 9310257105B04, Oxford University, 1995.

19 Watermeyer, R, Jacquet A and Noyana C. Developing the Capacity of Targeted Enterprises in Contractor Development Programmes. Regional conference on Developing the Construction Industries of Southern Africa, Department of Public Works, Pretoria, 23-25, April 2001.

20 Watermeyer RB. The Use of Procurement to attain Labour-Based and Poverty Alleviation Objectives. 9th Regional Seminar for Labour-Based Practitioners: Towards Appropriate Engineering Practices and an Enabling Environment. Hosted by the National Road Administration of Mozambique in collaboration with the ILO/ASIST Programme, Maputo, May 2002.

Table 1: Classification of secondary objectives in terms of obligations placed on tenderers / successful contractors

TYPE		OBLIGATION PLACED ON TENDERER / SUCCESSFUL CONTRACTOR	EXAMPLES OF OBLIGATIONS
#	DESCRIPTOR		
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 eg by assisting in tertiary and other advanced training programmes, in line with key indicators.

6 GENERIC SCHEMES USED TO IMPLEMENT POLICIES RELATING TO SECONDARY OBJECTIVES

Several models for public sector procurement interventions, based largely on country specific procurement regimes and requirements, have evolved.²¹ These can be broadly categorised as falling into one of four generic schemes indicated in Table 2, which in turn can be subdivided into one of the nine implementation methods identified by the Public Procurement Research Group²² to promote non-commercial objectives as tabulated in Table 3.²³

The four generic schemes described in Table 2 relate to the manner in which procurement can be used to support socio-economic policies in a particular procurement regime. For example, in the United States, reservation schemes and supply side schemes are used to ensure market share of small business enterprises and minority business enterprises. Recent legislation in Botswana makes provision for both reservation and preferencing schemes to promote citizen contractors i.e companies that are wholly owned by Botswanan citizens²⁴. In South Africa, the Constitution of that country makes provisions for preferencing schemes, many organs of state operate several supply side schemes and the Department of Trade and Industry operates an indirect scheme in terms of a cabinet memorandum whereby successful

21 Watermeyer R.B. The use of Targeted Procurement as an instrument of Poverty Alleviation and Job Creation in Infrastructure Projects. Public Sector Procurement Law Review, Number 5 pages 201-266. 2000.

22 Arrowsmith S, Meyer G and Trybus M . Non-commercial factors in public procurement. The Public Procurement Research Group, School of Law, Nottingham University 2000.

23 Watermeyer, RB. Implementing Preferential Procurement Policies in the public sector in South Africa. Paper accepted for publication in JSA Inst. Civ Eng., October 2003.

24 Republic of Botswana. Public Procurement and Asset Disposal Act, 2001.

tenderers on certain high value contracts are required to participate in the South African economy.²⁵

Table 2: Generic schemes for using procurement to attain socio-economic objectives (Watermeyer, 2003)

SCHEME TYPE	DESCRIPTION
Reservation	Contracts or portions thereof are reserved for contractors who satisfy certain prescribed criteria eg contractors who: are owned, managed and controlled by a target population group; are classified as being a small business enterprise; have equity ownership by companies with prescribed characteristics; or are joint ventures between non-targeted and targeted joint ventures.
Preferencing	Although all contractors who are qualified to undertake the contract are eligible to tender, tender evaluation points are granted to those contractors who satisfy prescribed criteria or who undertake to attain specific goals in the performance of the contract.
Indirect	Procurement strategies and requirements are used to promote policy objectives by constraining the manner in which the procurement is delivered or by being used to generate offsets in parallel to the procurement eg specifications require that work associated with the contract is undertaken in a manner that supports policy objectives or offsets whereby undertakings such as the provision of bursaries, participation in an economy, the provisions of community centres etc that are unrelated to the procurement itself are, in order to secure the contract, committed to.
Supply side	Supply side measures are provided to targeted enterprises to overcome barriers to competing for tenders or for participating in procurements within the supply chain, eg access to bridging finance and / or securities, mentorship, capacitation workshops etc.

7 ATTAINING SECONDARY OBJECTIVES THROUGH PROCUREMENT WITHOUT COMPROMISING PRIMARY PROCUREMENT OBJECTIVES

Concerns regarding the undermining of primary procurement objectives are invariably expressed whenever procurement is used as an instrument of socio-economic policy. Typically the concerns raised revolve around the risk of the following occurring when implementing a preferential procurement policy:

- i) loss of economy and inefficiency in procurement;
- ii) the exclusion of certain eligible tenderers from competing for contracts;
- iii) the reduction in competition;
- iv) unfair and inequitable treatment of contractors;
- v) lack of integrity or fairness;
- vi) lack of transparency in procurement procedures; and
- vii) failure to achieve secondary procurement objectives through the procurement itself.

Type IV (nominated deliverables) secondary objects that are unrelated to a particular contract (offsets) are extremely difficult to implement in a manner which does not violate most of the abovementioned concerns, particularly if obligations extend beyond the procurement contract period. Accordingly, these secondary objectives are considered from the outset to compromise primary procurement objectives.

²⁵ Section 217(2) of the Constitution of the Republic of South Africa (Act 108 of 1996) makes provision for preferencing in terms of the Preferential Procurement Policy Framework Act (Act 5 of 2000). The Department of Trade and Industry's Industrial Participation Programmes requires successful bidders on contracts having a value in excess of US\$10 million to participate in the South African economy to the extent that the total of all commercial / industrial activity (subject to the Department's crediting criteria) equals or exceeds 30% of the imported content within a period of 7 years.

Table 3: Methods used to implement policies relating to secondary objectives (Watermeyer, 2003)

SCHEME TYPE	METHODS		ACTIONS ASSOCIATED WITH THE METHOD
Reservation	#1	Set asides	Allow only enterprises that have prescribed characteristics to compete for the contracts or portions thereof, which have been reserved for their exclusive execution.
	#2	Qualification criteria	Exclude firms that cannot meet a specified requirement, or norm, relating to the policy objective from participation in contracts other than those provided for in the law.
	#3	Contractual conditions	Make policy objectives a contractual condition eg a fixed percentage of work must be subcontracted out to enterprises that have prescribed characteristics or a joint venture must be entered into.
	#4	Offering back	Offer tenderers that satisfy criteria relating to policy objectives an opportunity to undertake the whole or part of the contract if that tenderer is prepared to match the price and quality of the best tender received.
Preferencing	#5	Preferences at the short listing stage	Limit the number of suppliers / service providers who are invited to tender on the basis of qualifications and give a weighting to policy objectives along with the usual commercial criteria, such as quality, at the shortlisting stage.
	#6	Award criteria (tender evaluation criteria)	Give a weighting to policy objectives along with the usual commercial criteria, such as price and quality, at the award stage.
Indirect	#7	Product/service specification	State requirements in product or service specifications eg by specifying labour-based construction methods.
	#8	Design of specifications, contract conditions and procurement processes to benefit particular contractors	Design specifications and/or set contract terms to facilitate participation by targeted groups of suppliers.
Supply side	#9	General assistance	Provide support for targeted groups to compete for business, without giving these parties any favourable treatment in the actual procurement.

Type II (internal workings of the contracting entity) can be implemented on a compliance / non-compliance basis. Those that require implementation on a basis other than this can be implemented in the same manner as Type I and Type III objectives. Type IV secondary objectives that relate specifically to contracts, similarly can either be implemented on a compliance / non-compliance basis or in the same manner as Type I and III objectives.

A risk assessment based on AS/NZS 4360:1999 (Risk Management) on the implementation of a preferential procurement policy which has objectives that can be realised by creating a demand for services and supplies from, or to secure the participation of, targeted enterprises and targeted labour (Types I and III secondary objectives with respect to Table 1), using the first eight methods listed in Table 3 is presented in Tables 4 and 5.²⁶ Table 4 presents the

²⁶ The Australian / New Zealand Standard AS/NZS 4360:1999 provides a generic guide for the establishment and implementation of the risk management process involving the establishment of the context and the identification, analysis, evaluation, treatment, communication and ongoing monitoring of risks. The risk of the aforementioned concerns being realized in the implementation of a preferential procurement policy can be assessed in terms of this standard. Risks associated with a programme of procurement can then be minimized should the implementation methodology that has the least negative impact be adopted and this methodology be implemented within a well defined framework. (See Watermeyer, RB. Implementing Preferential Procurement Policies in the public sector in South Africa. Paper accepted for publication in JSA Inst. Civ Eng., October 2003). Any preferential procurement policy distorts the market. This risk assessment technique provides a useful means for indicating the extent to which the market is distorted by a particular policy.

risks that are to be managed and identifies what can happen and how it can happen in relation to the methodology that is adopted. Table 5 presents the outcome of the risk assessment based on the author's subjective estimates and degree of belief that a particular outcome or event will occur, using a three point scale²⁷. (This qualitative analysis was carried out on the assumption that the implementation method under consideration is managed and implemented in a manner so as to achieve the most favourable outcomes.)

Table 4: The risk of immediate procurement objectives being undermined by secondary considerations in implementing preferential procurement policies which involve the targeting of enterprises and labour (Type I and III secondary objectives) (Watermeyer, 2003)

RISK TO BE MANAGED	WHAT CAN HAPPEN	HOW IT CAN HAPPEN (numbers in brackets refer to the method that is adopted – see Table 3)
<p>Loss of economy and inefficiency in procurement</p>	<p>Tenders are not awarded to the most advantageous offer. The tenders received / contracts awarded do not represent value for money. Time taken to solicit and award tenders is excessive. Tenders are awarded to contractors who cannot deliver on time and to the required quality either in terms of policy objectives or due to imposed constraints relating to socio-economic objectives. Impositions on the contractor constrain contractors to the extent that they cannot operate efficiently</p>	<p>The product/service specification (#7) forces contractors to utilise inefficient and costly technologies. Contractual conditions constrain the contractor in the performance of the contract. Set asides (#1), qualification criteria (#2) and preferencing at the shortlisting stage (#5) reduce competition and exclude contractors who are capable of satisfactorily executing the contracts. The award criteria (#6) contain too high a margin of preference and unduly distort the market. The offering back method (#4) awards contracts to those who are not necessarily capable of performing the contract within the nominated contract price. The contractual conditions (#3) impose inefficient and uneconomical restraints on contractors in the execution of the contract. Design of procurement for the benefit of particular contractors (#8) by breaking work down into smaller contracts overextends the administrative capacity of the public body due to the high number of contracts awarded, cause economies of scale to be lost or extend the tender period unduly. Poor choices in method of policy implementation which place excessive and unnecessary risks on tenderers / overlook quality or capacity in the selection of contractors due to overriding socio-economic objectives.</p>
<p>The exclusion of certain eligible tenderers from competing for contracts</p>	<p>Enterprises, which fall outside of those enterprises targeted in terms of a preferential procurement policy, or which fail to have achieved a certain staffing structure, are excluded from tendering or are discouraged from tendering.</p>	<p>Set asides (#1), qualification criteria (#2), and preferencing at the shortlisting stage (#5) can exclude or be used to exclude some contractors from participation. The product/service specification (#7), award criteria (#6), the offering back method (#4), the contractual conditions (#3) and the design of procurement for the benefit of particular contractors (#8) make the procurement unattractive to some tenderers.</p>

27 AS/NZS 4360:1999 permits the risk analysis to be undertaken to various degrees of refinement, depending upon the risk information and data available. Analysis may be qualitative, semi-qualitative or quantitative or a combination of these. The author elected to perform a qualitative analysis.

Reduction in competition	Tenderers are not confident in the predictability of the system and as such decline to submit tenders. The procurement procedures are designed to restrict competition.	Unfair and inequitable treatment of contractors cause prospective tenderers to decline to submit tenders. Only a limited number of contractors are invited to submit tenders. Contracts are allocated and not competed for. Very few contractors can satisfy the requirements established in terms of the product/service specification (#7) and the contractual conditions (#3).
Unfair and inequitable treatment of contractors	Public bodies have double standards in dealing with contractors, based on factors other than ability and capacity to perform the procurement.	Set asides (#1), qualification criteria (#2), preferencing at the shortlisting stage (#5), and the offering back method unavoidably result in the unfair and inequitable treatment of contractors.
Lack of integrity and fairness.	Those involved in procurement do not discharge their duties and obligations timeously and with integrity / behave equitably, honestly and transparently / comply with all applicable legislation and regulations. The method used to achieve an end does not inspire public confidence.	Set asides (#1), qualification criteria (#2), preferencing at the shortlisting stage (#5), the offering back method (#4), and the design of procurement for the benefit of particular contractors (#8) can be applied subjectively. The manner in which the product/service specification (#7), the award criteria (#6) and the contractual conditions (#3) are applied do not inspire public confidence.
Lack of transparency in procurement procedures.	Tenderers do not understand why they failed to secure a contract / failed to prequalify or where they are positioned with respect to a contract.	Reasons for administrative actions taken are not furnished. Eligibility criteria are not well defined / known. Tender prices and preferences in terms of award criteria are not made public or made known in procurement documents.
Failure to achieve secondary procurement objectives through procurement	Socio-economic objectives are not achieved despite mechanisms being in place to do so.	Lack of compliance monitoring / enforcement. Practices and procedures that are not contractually enforceable.

The analysis indicated that preferencing schemes (methods 5 (preferencing at the short listing stage) and 6 (award criteria)), whilst not guaranteeing that socio-economic objectives will be met, is the method that is most likely not to compromise immediate / primary procurement objectives if appropriately managed. The analysis furthermore indicates that method 3 (contractual conditions), method 7 (product / description specification), and method 8 (design of procurement to benefit particular contractors) have the potential under certain circumstances to satisfy primary objectives while method 1 (set asides), method 2 (qualification criteria), and method 4 (offering back) are most likely to compromise such objectives.

8 TARGETED PROCUREMENT PROCEDURES

Background

The South African Ministries of Finance and Public Works established the Procurement Reform Task Team, in 1995, to reform the procurement system. A specific focus of the work of this task team was to utilise procurement to address skewed racial ownership patterns in the South African economy arising from the system of apartheid and the alleviation of poverty.

The work of this team in this regard focused on the use of direct preferences (granting tender evaluation points to businesses which satisfied certain criteria) and direct participation in contracts through the engagement of targeted groups in the performance of the contract as joint venture partners, suppliers / service providers / subcontractors or labour. This task team used a combination of methods 5 (award criteria), 7 (contractual conditions) and 8 (design of procurement for the benefit of particular contractors) presented in Table 3 in the design of a preferencing system to utilise the public procurement system to attain these socio economic objectives in a fair, equitable, transparent, competitive and cost effective manner.

Table 5: Probability of the risk being managed within acceptable limits in most procurements where labour and enterprises are targeted (Type I and III secondary objectives) (Watermeyer, 2003)

RISK TO BE MANAGED	METHOD OF POLICY IMPLEMENTATION (see Table 3)							
	Reservation scheme				Preferring scheme		Indirect Scheme	
	#1: Set asides	#2: Qualification criteria	#3: Contractual conditions	#4: Offering back	#5: Preferences at short listing stage	#6: Award criteria	#7: Product /service specification	#8: Design of specifications, contract conditions and procurement processes to benefit particular contractors
Loss of economy and inefficiency in procurement	3	3	2	1	1	1	2	2
Exclusion of qualified tenderers from competing for tenders	3	3	2	-	-	1	2	2
Reduction in competition	2	3	2	2	1	1	2	2
Unfair and inequitable treatment of contractors	3	3	2	3	1	1	2	2
Lack of integrity or fairness	2	2	1	2	1	1	1	2
Lack of transparency in procurement procedures.	1	1	1	2	1	1	1	1
Failure to achieve secondary procurement objectives through procurement	2	2	1	2	2	2	1	2

legend 1= favourable outcome will probably occur in most circumstances;
 2= unfavourable outcome might occur;
 3 = unfavourable outcome likely in most circumstances.

This task team developed several innovative techniques or targeted procurement procedures (see www.targetedprocurement.com) to implement preferential procurement policies. These techniques are fully described by Watermeyer (2000).²⁸

National standards for targeted procurement procedures

Standards South Africa (a division of the South African Bureau of Standards) has recently published seven South African national standards, namely SANS 10396 (Implementing Preferential Procurement Policies using Targeted Construction Procurement Procedures) and SANS 1914 parts 1 to 6 (Targeted Construction Procurement standards), based on the work of the Procurement Reform Task Team²⁹. These standards have been developed in accordance with the provisions of Annex 3 (Code of Good Practice for the Preparation, Adoption and Application of Standards) of the World Trade Organisation's Agreement on Technical Barriers to Trade.

SANS 10396 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 targeted procurement procedures as described in SANS 10396 and listed below

²⁸ Watermeyer R.B. The use of Targeted Procurement as an instrument of Poverty Alleviation and Job Creation in Infrastructure Projects. Public Sector Procurement Law Review, Number 5 pages 201-266. 2000.

²⁹ The construction industry is a broad conglomeration of industries and sectors that add value in the creation and maintenance of fixed assets within the built environment. Construction procurement as such covers all categories of procurement commonly encountered in other industrial sectors and is not confined to engineering and construction works. Construction procurement includes services, supplies, engineering and construction works and disposals in the form of demolitions and the reduction of surplus materials and equipment.

can be used to varying degrees to implement secondary objectives in all four of the categories identified in Table 1:

- Defining target enterprises (ownership, control, independence, size, declaration affidavits and statements by auditors)
- Defining targeted labour
- Goals associated with targeted 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 mechanism³⁰ and bonus incentives)
- Third party management support
- Electronic rotating data bases (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.

One of the primary instrument used to achieve this are the performance based SANS 1914 resource standards identified in Table 6, the generic structure of which is outlined in Figure 1.³¹ These six standard targeted construction procurement resource standards are provided to:

- a) describe 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) specify 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) set out the methods by which the contract participation goal will be measured, quantified and verified in the performance of the contract;
- d) describe the means by which:
 - i) progress towards the attainment of the contract participation goal is to be monitored;
 - ii) compliance with requirements will be verified and monitored; and
 - iii) the contract participation goal will be adjusted to accommodate variations to the scope of the work in the performance of the contract.

These resource standards in effect set the framework within which the prime or main contractors structure and marshal their resources in the performance of a contract. They require contractors to “unpack” or “unbundle” their contract into smaller contracts in order to procure the services of targeted enterprises, and / or engage with targeted enterprises as joint venture partners, and / or structure their resources to provide work for targeted enterprises. Resource standards furthermore require contractors to engage targeted enterprises in terms of fair conditions of contract and require that targeted partners in joint venture formation share meaningfully in the ownership, control, management, responsibilities, risks and profits of the joint venture, be responsible for clearly defined aspects of the contract, and provide some of the resources to execute the contract.

30 SANS 10396 defines a goal/price mechanism as a system of tender evaluation which measures value for money in terms of the financial offer and goals emanating from a preferential procurement policy, by awarding tender evaluation points for price and for undertakings to attain contract participation goals in the performance of the contract or the status of an enterprise in terms of specific parameters.

31 Watermeyer, RB. Promoting Sustainable Construction in Human Settlements using Performance Based Standards. Paper submitted for publication in *The Structural Engineer*, November 2003.

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

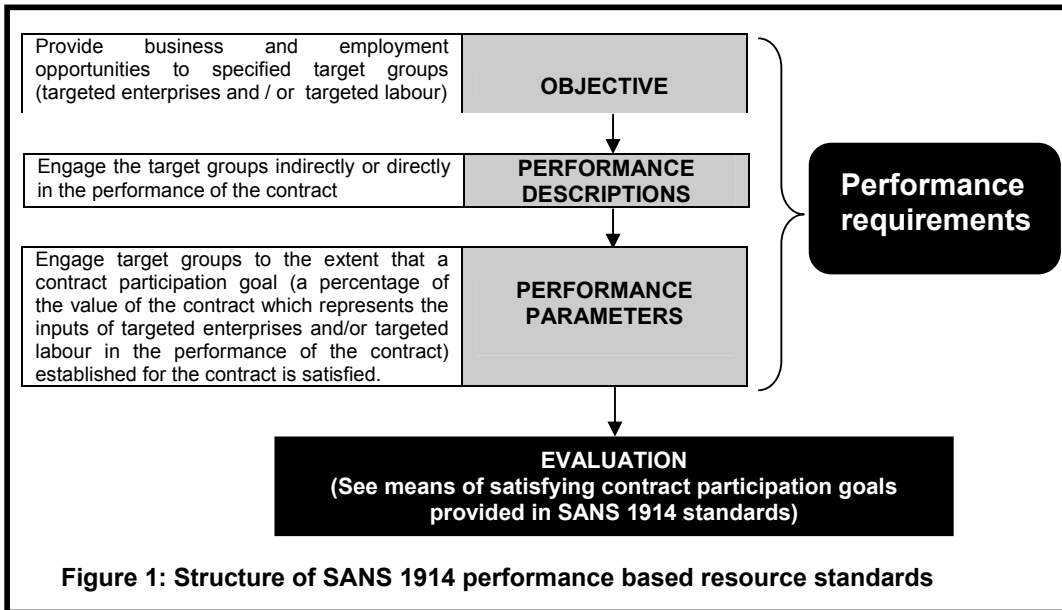


Table 6: SANS 1914 resource standards

Part #	Title	Target groups provided for** (TE= targeted enterprise; TP= targeted partner; TL= targeted labour)	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 -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

*Suitable for use in public private partnerships

**Target groups need to be defined by the employer in contracts.

SANS 10396 in addition to describing targeted procurement procedures establishes targeting frameworks and strategies flowing out of standard combinations of these procedures for a range of commonly encountered socio-economic objectives, including unbundling strategies, targeting frameworks for contractor development programmes and targeting frameworks for employment intensive projects. Monitoring for contract compliance is also considered with specific reference to the confirming of the bona fides of targeted enterprises at tender stage, monitoring where direct preferences are granted and monitoring of contract participation goals using resource specifications. It also provides guidance on how to evaluate programmes with specific references to standard indices and touches on aspects of software programmes to monitor and report on policy outcomes.

SANS 10396 makes a useful distinction when categorising targeted procurement procedures relating to the targeting of enterprises. The term “direct preference” is used to designate the procedure whereby the contracting entities that have structures / internal workings satisfying prescribed criteria are granted tender evaluation points in terms of a goal / price mechanism. The term “direct participation” is used to designate the procedure whereby contracting entities that commit to the attainment of a contract participation goal measured in accordance with the provision of SANS 1914 are granted tender evaluation points in terms of a goal / price mechanism.

The techniques and mechanisms associated with targeted procurement procedures described in SANS 10396 can be used in most procurement regimes to attain policy objectives using most of the methods presented in Table 3. There is accordingly a need to match targeted procurement techniques with the requirements of the regulatory regime for procurement within a country.

9 BALANCED SCORECARD APPROACH

In the balanced scorecard approach, the desirable characteristics of attributes of products or processes are either defined in absolute terms or are qualitatively or quantitatively measured in terms of an indicator. A weighting, reflecting importance, is assigned to each characteristic. Tender submissions are evaluated and scored on a compliance / non-compliance basis or on a comparative basis with a specified parameter for an indicator. The total score for the scorecard is the product of the score in respect of each desirable characteristic and its respective weighting.³²

Tender submissions are usually scored on the basis of a balance between the satisfying of sustainable development criteria and the financial offer. This approach recognises that it is not possible to satisfy all the desirable characteristics of attributes and allows contracting entities to strike a balance between satisfying sustainability criteria and the cost of doing so.

Tender evaluation points can be awarded either on a comparative basis (lowest score receives no tender evaluation points and highest score receives maximum points; all other tenders are scored on a pro rata basis between these two values) or in proportion to their score (no tender evaluation points for a zero score and maximum points for the maximum possible score). The linking of the balanced scorecard to award criteria, encourages innovation and a shift towards the embracing of solutions that support sustainable development.

ISO 9000, *Quality management systems - Fundamentals and vocabulary*, defines quality as *the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs*. The balanced scorecard approach to the promotion of sustainable development objectives in effect measures quality aspects of a tender offer. It is therefore no different to the quality based approach to the evaluation of tender offers advocated by the United Nations Commission on International Trade Law, the World Bank,

³² The South African government is advocating the use of a balanced score card approach to measure progress made in black economic empowerment in their Broad-based Black Economic Empowerment Strategy (March 2003) (see www.dti.gov.za).

the Federation Internationale des Ingenieurs-Conceils, the International Union of Architects and others.

10 RECOMMENDED TOOLS AND TECHNIQUES FOR PROMOTING SUSTAINABLE DEVELOPMENT OBJECTIVES

Mandatory aspects of sustainable development must form part of the requirements for a contract. Where sustainable development objectives are promoted through procurement, they should be introduced into the evaluation of tender submissions, either in the form of preferences at the short listing stage or award criteria, as these implementation methods are most likely not to compromise the objectives of the procurement itself. Any nominated deliverables should relate to that which can be achieved in the performance of the contract.

The recommended tools and techniques associated with the award criteria methodology to promote sustainable development objectives are outlined in Table 7. Preferences in the form of direct participation may, where appropriate be scored alongside the financial offer and a balanced scorecard. Pre-qualification processes should pre-qualify respondents on the basis of their score measured in terms of a balanced score card, and if appropriate, preferences using either direct preference or direct participation targeted procurement techniques.

Table 7: Recommended tools and techniques associated with the award criteria methodology to promote sustainable development objectives

SUSTAINABLE DEVELOPMENT OBJECTIVE	RECOMMENDED TOOLS AND TECHNIQUES
Alleviation and reduction of poverty	Provide preferences in relatively low value contracts to generate work opportunities to targeted enterprises. (Direct preference targeted procurement technique) Secure the participation of targeted labour and targeted enterprises in contracts by providing a preference to those entities that commit to the attainment of a contract participation goal. (Direct participation targeted procurement technique)
Minimising the harmful effects of development on the local environment	Score tender submissions on the basis of a balance between price and score in terms of a balanced scorecard.
Establishment and strengthening of indigenous building materials; Promotion of construction technologies that increase employment	Provide performance based construction standards and secure the participation of targeted labour and targeted enterprises in contracts by providing a preference to those entities that commit to the attainment of a contract participation goal measured in accordance with the provisions of a relevant part(s) of SANS 1914. (Direct participation targeted procurement technique and choice of technology – see Annex G of SANS 10396)
Promotion of the increased use of environmentally sound goods, building materials and construction technologies	Provide a preference to those who attain a score in terms of a balanced scorecard.

Target groups (enterprises and labour) should be defined in accordance with the guidance provided in SANS 10396 to target small scale enterprises, particularly those owned and controlled by vulnerable groups, low income wage earners and groups of people who are socially and economically marginalized within a nation. Standards describing materials, products, engineering and construction works should be prepared in accordance with the provisions of clause 2.8 and clause I of Annexure 3 of the World Trade Organisation's Agreement on Technical Barriers to Trade to facilitate choices in technologies i.e. they should be performance based.³³ Contractors should, when pursuing goals relating to poverty alleviation and the increase in employment opportunities afford contractors choices in technologies and construction methods.³⁴

33 Watermeyer, RB. Promoting Sustainable Construction in Human Settlements using Performance Based Standards. Paper submitted for publication in The Structural Engineer., November, 2003.

34 Watermeyer, RB. Watermeyer RB. Mobilising the Private Sector to engage in Labour Based Infrastructure Works : A South African Perspective. Sixth Regional Seminar for Labour Based Practitioners. International Labour Organisation . Jinja, Uganda, September 1997.

The recommended methodology to implement targeted procurement procedures in accordance with a procurement regime that is fair, equitable, transparent, competitive and cost effective is described in Table 8.

Table 8: Applying the SANS 10396 targeted procurement procedures to preferencing schemes

CONSIDERATION	RECOMMENDED PROCEDURE									
Fair /equitable	<p>Tenders should be evaluated in accordance with a set of rules which provide for the awarding of tenders to tenderers obtaining the highest number of tender evaluation points subject to tenderers satisfying the requirements of Article 6 of the UNCITRAL Model Law on Procurement of Goods, Construction and Services (Qualifications of suppliers and contractors).</p> <p>Sanctions, possibly in the form of financial penalties more severe than any theoretical price advantage gained through the goal / price mechanism should be applied where contractors fail to attain goals for which a preference was granted.</p>									
Transparent	<p>Targeted enterprises and targeted labour should be defined in accordance with the provisions of SANS 10396.</p> <p>The number of preference points claimed should be read out / published when tender offers are opened.</p> <p>The name of the successful tenderer , the number of tender evaluation points obtained and the value of the contract should be published.</p> <p>The SANS 1914 standards should be used to measure, quantify and verify any contract participation goals that are committed to).</p> <p>The procedures contained in SANS 10396 should be adhered to in verifying compliance with contractual obligations.</p>									
Competitive	<p>Tenders should be evaluated using the goal / price mechanism as follows: $W_1 \times A + W_2 + W_3$ Where $W_1 + W_2 + W_3 = 100$ and <u>$A =$ a number calculated using either formulas 1 or 2 below, as appropriate.</u></p> <table border="1"> <thead> <tr> <th>Formula</th> <th>Comparison aimed at achieving</th> <th>Value</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Highest price or discount</td> <td>$A = \frac{(1 + (P - P_m))}{P_m}$</td> </tr> <tr> <td>2</td> <td>Lowest price or percentage commission / fee</td> <td>$A = \frac{(1 - (P - P_m))}{P_m}$</td> </tr> </tbody> </table> <p>where: <u>$P_m =$ the comparative offer of the most favourable tender offer.</u> <u>$P =$ the comparative offer of tender offer under consideration.</u> <u>$W_1 =$ the maximum possible number of tender evaluation points awarded for the financial offer.</u> $W_2 =$ the maximum possible number of tender evaluation points awarded for quality / in respect of asustainable development scorecard $W_3 =$ the maximum possible number of tender evaluation points for preference</p>	Formula	Comparison aimed at achieving	Value	1	Highest price or discount	$A = \frac{(1 + (P - P_m))}{P_m}$	2	Lowest price or percentage commission / fee	$A = \frac{(1 - (P - P_m))}{P_m}$
Formula	Comparison aimed at achieving	Value								
1	Highest price or discount	$A = \frac{(1 + (P - P_m))}{P_m}$								
2	Lowest price or percentage commission / fee	$A = \frac{(1 - (P - P_m))}{P_m}$								
Cost effective	<p>The value of W_3 (i.e the maximum possible number of tender evaluation points allocated for preference) should be limited to a maximum of 10 points, except on construction projects where the objective is to increase the volume of employment per unit of expenditure, where a value of up to 15 may be adopted.</p>									

The scorecard approach should be implemented in accordance with the principles for the quality based approach to the evaluation of tender offers advocated by various international institutions. The scorecard, including weightings assigned to each component, must be made known to tenderers in tender solicitation documents.

11 CONCLUSION

Value for money from a public body or donor's perspective is not necessarily least cost. Best value from a sustainable development perspective is procurement that promotes sustainable development objectives without compromising the objectives of the

procurement itself. There are a number of well developed tools and techniques that enable public bodies and donors to achieve this.

It is essential that public bodies, international institutions and donors review their procurement arrangements and align them to contribute to sustainable development policy objectives.