

DEPARTMENT OF PUBLIC WORKS

NOTICE 306 OF 2017

Construction Industry Development Board

**cidb Project Assessment Scheme:
Standard for Contract Participation Goals for
Targeting Enterprises and Labour through
Construction Works Contracts****Draft for Public Comment**

30 March 2017

In terms of sections 5(2) of the Construction Industry Development Board Act, 2000 (Act no. 38 of 2000) (the Act), the Construction Industry Development Board is empowered to establish and promote best practice Standards.

This *Standard for Contract Participation Goals for Targeting Enterprises and Labour* through Construction Works Contracts aims to promote uniformity and standardisation in contract participation goals (CPGs) and to provide for conflict resolution mechanisms in respect of contract participation goals relating to a contract for the provision of construction works.

This best practice Standard is issued here for public comment. Interested persons and the public are invited to submit comments on the draft best practice Standard within 30 days of the date of this publication.

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Standard for Contract Participation Goals for Targeting Enterprises and Labour through Construction Works Contracts

(31 March 2017)



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Standard for Contract Participation Goals for Targeting Enterprises and Labour through Construction Works Contracts

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Standard for Contract Participation Goals for Targeting Enterprises and Labour through Construction Works Contracts

Foreword

The CIDB Act (Act 38 of 2000) requires that the Board must establish a *Best Practice Project Assessment Scheme* based on the best practices identified by the Board. All construction contracts above a prescribed tender value will then be subject to an assessment of compliance with best practice standards and guidelines published by the Board.

The aim of this best practice *Standard for Contract Participation Goals for Targeting Enterprises and Labour through Construction Works Contracts* is to promote uniformity and standardisation in contract participation goals (CPGs) and to provide for conflict resolution mechanisms in respect of contract participation goals relating to a contract for the provision of construction works. Private and public sector employees are encouraged to adopt this Standard. Furthermore, it is encouraged that this Standard is adopted in the homebuilding sector.

This Standard will be subject to a review every five years, or sooner if required.

1. Scope

This Standard establishes uniformity and standardisation in contract participation goals (CPGs) relating to a contract for the provision of construction works.

This Standard is not applicable to the Expanded Public Works Programme (EPWP).

The Standard is aligned to SANS 10845 Construction Procurement:

- Part 5: *Participation of targeted enterprises in contracts*; and
- Part 8: *Participation of targeted labour in contracts*.

This Standard should be read in conjunction with the following cidb Standards which also specify developmental contract participation goals for construction works contracts:

- cidb *Standard for Indirect Targeting for Enterprise Development through Construction Works Contracts*; and
- cidb *Standard for Developing Skills through Infrastructure Contracts*.

This Standard should be read in conjunction with the following cidb Inform Practice Notes which promote socio-economic development:

- cidb Inform Practice Note 1: *Scaling up Delivery and Accelerating Empowerment*;
- cidb Inform Practice Note 10: *Attaining Social and Economic Deliverables*;
- cidb Inform Practice Note 28: *Objectives Linked to Infrastructure Delivery*;
- cidb Inform Practice Note 29: *Allocating Sustainable Work Opportunities to Contractor Development Programmes*; and
- cidb Inform Practice Note 33: *Balancing Delivery and Development on Infrastructure Projects*.

2. Terms and Definitions

For the purposes of this document, the following definitions apply:

allowance: amount provided for in the contract by the employer relating to one or more of the following:

- a) the performance by the contractor of work or services that are foreseen but cannot be accurately specified at the time that the contract was entered into;
- b) work or services to be performed, or goods provided, by a subcontractor nominated or selected by the employer;
- c) provision for price adjustment for inflation; or
- d) other provision of a budgetary provisions, e.g. contingencies.

community: South African citizens (defined in terms of the South African Citizenship Act, 1995 (Act 88 of 1995)) who permanently reside within the target area.

Note: Adapted from ISO 10845-8:2011

Community Liaison Officer (CLO): the CLO assists in the identification and selection of local enterprises and local labour, and is guided by the employer's approved CLO policy on construction works (see Section 6).

Community Project Committee (CPC): the CPC represents the affected communities, and includes the affected Ward Councillor(s) and relevant community leaders (see Section 5.1).

Construction Industry Development Board (cidb): the Board established in terms of the Construction Industry Development Board Act of 2000 (Act 38 of 2000).

construction works: the provision of a combination of goods and services arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure.

contract amount: the financial value of the contract at the time of the award of the contract, exclusive of all allowances and any value added tax or sales tax which the law requires the employer to pay to the contractor.

contract data: document that identifies the applicable conditions of a contract and states the associated contract-specific data.

Note: Adapted from ISO 10845-2:2011, definition 2.9

contract participation goal (CPG):

- a) in the case of targeted enterprises, manufacturers or suppliers, the amount equal to the value of goods, services and works for which the contractor contracts the targeted enterprises, manufacturer or supplier in the performance of the contract, expressed as a percentage of the tender value excluding escalation, contingency and value added tax associated with the targeting strategy that is identified in the targeting data; or

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- b) in the case of targeted labour the amount equal to the person days worked for which the contractor contracts to engage targeted labour expressed as a percentage of the total person days worked associated with the targeting strategy that is identified in the targeting data.

Note: Adapted from ISO 10845-5:2011, definition 2.4

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

employer: person or organization entering into the contract with the contractor for the provision of goods, services, or engineering and construction works.

employer's representative: person authorized to represent the employer and named as such in the contract data or targeting data.

designated groups: the groups that are designated in terms of this Standard (see Section 3.4).

designated sector: sector, sub-sector or industry that has been designated by the Department of Trade and Industry.

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

mediation: process where a neutral third party assists disputing parties in resolving conflict.

principal contractor: contractor who contracts with the employer for the provision of construction works, and who may subcontract part of this contract.

skills: knowledge, ability, or training to perform a certain activity or task well (see Table 2).

target area: geographic area defined in the targeting data (see Table 1).

targeting data: data, provisions and variations applicable to a particular contract.

Note: Adapted from ISO 10845-5:2011, definition 2.18

targeted enterprise: sole trader, partnership or legal entity which is

- a) a business within the target area other than targeted manufacturer or supplier;
- b) engaged in the performance of the contract; and
- c) defined as the target group in the targeting data.

Note: Adapted from ISO 10845-5:2011, definition 2.15

targeted labour: individuals who

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

Note: Adapted from ISO 10845-7:2011, definition 2.12

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

Note: Adapted from ISO 10845-7:2011, definition 2.13

targeted supplier: targeted enterprise that

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

Note: Adapted from ISO 10845-7:2011, definition 2.14

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

Note: Adapted from ISO 10845-5:2011, definition 2.19

tender data: document that establishes the tenderer's obligations in submitting a tender and the employer's undertakings in administering the tender process and evaluating tender offers.

Note: Adapted from ISO 10845-2:2011, definition 2.30

3. General

3.1 Target Areas

The target areas that may be used in terms of this Standard shall be restricted to the following geographic areas:

- a) one or more Provinces;
- b) one or more Metropolitan and District Municipalities;
- c) one or more Local Municipalities; or
- d) an area within a predefined radius of the construction activity.

3.2 Enterprises Categories

The enterprise categories that may be used in terms of this Standard shall equate to the enterprise categories defined in the most recent Sector Code of Good Practice issued under the Broad-Based Black Economic Empowerment Act relevant to the enterprise being targeted.

Informative: The enterprise categories in terms of the draft Construction Sector Code (June 2016) are given in Table 1.

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Table 1. Enterprise Categories

Enterprise Category	Total Turnover (less than)	Approximate cidb Grade for Contractors
Large Enterprise		greater than Grade 7
Qualifying Small Enterprise (QSE)	R50m pa	Grade 6 to 7
Exempt Micro Enterprise (EME)	R10m pa	less than Grade 6

3.3 Skills Categories

The skills categories for labour that may be used in terms of this Standard shall be restricted to the categories given in Table 2.

Skill Category	Definition
Skilled	Typically craft or skilled occupations where the employee is capable of working efficiently and exercising considerable independent judgement and of discharging his/her duties with responsibility. He/she must possess a thorough and comprehensive knowledge of the trade, craft or industry in which he/she is employed.
Semi-skilled	Typically operator occupations where the employee does work generally of defined routine nature wherein the major requirement is not so much of the judgment, skill and but for proper discharge of duties assigned to him/her or relatively narrow job and where important decisions made by others. His/her work is thus limited to the performance of routine operations of limited scope.
Unskilled	Typically elementary occupations where the employee does operations that involve the performance of simple duties, which require the experience of little or no independent judgment or previous experience although familiarity with the occupational environment is necessary. His/her work may thus require in addition to physical exertion familiarity with variety of articles or goods.

3.4 Designated Groups

Unless otherwise permissible in terms of procurement regulation or the PPPFA, the designated groups that may be used in terms of this Standard for defining the ownership and/or control of targeted enterprises shall be restricted to^{1,2}:

- a) black people who:
 - i) are citizens of the Republic of South Africa by birth or descent; or
 - ii) became citizens of the Republic of South Africa by naturalisation:
 - before 27 April 1994; or
 - on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date;
- b) women who are South African citizens;
- c) youth as defined in the National Youth Commission Act of 1996;
- d) people with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act;

¹ After draft Construction Sector Code (June 2016)

² After PPPFA (2017). *Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017*. Government Gazette No. 40553, 20 January 2017

- e) unemployed persons not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; and
- f) black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011.

3.5 Targeting

The following targeting principles shall apply:

- a) The employer shall only specify contract participation goals where a feasibility study has been undertaken at a programme level or at a project level to verify that the contract participation goal can realistically be achieved within the targeted area. Such feasibility study shall be included in the contract data. Guidelines for undertaking a feasibility study are given in Appendix A.
- b) Contract participation goals established for targeted enterprises and for targeted labour shall apply to the construction works contract in total (i.e. including the principal contractor, sub-contractors and service providers to the construction works contract). Unless where specified in other legislation, no sub-division of contract participation goals by principal contractor, sub-contractors or service providers is allowed.

Note: If a CPG is established for targeted enterprises, and if the contractor falls within that definition of the targeted enterprises, provided that the contractor is from the targeted area, the work undertaken by the contractor will then contribute towards the CPG.

- c) Targeting of labour by skills categories is only permissible within categories of semi-skilled and unskilled labour.
- d) Contract participation goals can be specified in terms of individual enterprise categories and in terms of individual skills categories.

Note: For example, CPGs can be specified individually for qualifying small enterprises and exempt micro enterprises, and for semi-skilled and unskilled labour.

- e) Targeting of enterprises, manufacturers and suppliers which are owned and/or controlled by designated groups shall not be specified unless:
 - such targeting is permissible in terms of procurement regulations or the PPPFA; or
 - such targeting is accompanied by targeted developmental outcomes associated with the targeting³ (Section 4.2).
- f) Contract participation goals shall only be specified in terms of one target area for each contract participation goal.

³ cidb Inform Practice Note 32: *Allocating Sustainable Work Opportunities to Contractor Development Programmes*, July 2012

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- g) Where the construction works crosses one or more geographic areas (such as roads, pipelines, etc.), the target area shall be based on an area within a predefined radius of the construction activity. No sub-division of geographic areas is then allowed.
- h) Contract participation goals for targeted enterprises or targeted manufacturers and suppliers shall not prescribe rates, prices or profit margins that will be applicable to the targeted enterprises or targeted manufacturers and suppliers.

3.6 Contract Participation Goals

Guidelines for maximum participation goals for targeted enterprises, for targeted manufacturers and suppliers, and for targeted labour are given in Appendix B.

4. Training and Development

4.1 Targeted Labour

Requirements for skills development for skilled- and semi-skilled labour shall be limited to contracts of tender Grade 7 to 9, and shall be undertaken in terms of the cidb *Standard for Developing Skills through Infrastructure Contracts*.

Requirements for unskilled labour shall be limited to on-the-job training to targeted labour to enable such labour to master the basic work techniques required to undertake the work in accordance with the requirements of the contract and in a manner that does not compromise worker health and safety.

4.2 Targeted Enterprises

Requirements for enterprise development in General Building (GB) and Civil Engineering (CE) classes of works shall be limited to contracts of tender Grade 7 to 9 and shall be undertaken in terms of the cidb *Standard for Indirect Targeting for Enterprise Development through Construction Works Contracts*.

Requirements for enterprise development in classes of works other than General Building (GB) and Civil Engineering (CE) shall be limited to contracts of tender Grade 7 to 9 and shall be undertaken taking cognisance of the cidb *Standard for Indirect Targeting for Enterprise Development through Construction Works Contracts*.

5. Community Engagement and Dispute Resolution

5.1 Community Engagement

Prior to the appointment of the Community Liaison Officer (Section 6), the employer shall undertake a process of engagement with the targeted communities where contract participation goals are to be specified for targeted areas in terms of:

- a) one or more Metropolitan or District Municipalities;
- b) one of more Local Municipalities; or
- c) an area within a predefined radius of the construction activity.

The employer shall facilitate the establishment of a Community Project Committee (CPC) representing the affected communities. The Community Project Committee shall include the affected Ward Councillor(s) and relevant community leaders. The employer engagement with the Community Project Committee shall seek to obtain agreement with the community on the targeting strategy, contract participation goals to be employed on the construction works and dispute resolution mechanisms (Section 5.2). The agreement reached by the employer with the Community Project Committee shall be included in the contract data.

Guidelines for the community engagement process are given in Appendix C, and a model agreement between the employer and the Community Project Committee is given in Appendix D.

5.2 Dispute Resolution

Disputes by community participants affecting the performance of the construction works contract, but which fall outside and contract between the contractor and targeted enterprises and targeted labour, shall be brought to the Community Project Committee for resolution through mediation.

The resolution of the disputes by community participants shall be firstly sought through mediation by a member of the Community Project Committee, who is identified and appointed by the Committee.

Where resolution of the dispute is not achieved through the Community Project Committee, resolution of the disputes by community participants shall then be sought through mediation by an appointed representative of the employer.

Note: Guidelines for conducting mediation can be obtained from:

- South Africa Branch of the Chartered Institute of Arbitrators (CI Arb), <http://www.ciarb.org/branches/africa/south-africa>
- The Arbitration Foundation of Southern Africa; <http://www.arbitration.co.za/>

The outcome of such mediation shall be binding on the employer and the affected community, represented by the Community Project Committee.

Note: Where progress on the contract programme is delayed due to community participation matters, the contractor shall have the right to claim for time and cost delays in terms of the relevant Conditions of Contract.

Draft**6. Community Liaison Officers**

A Community Liaison Officer (CLO) shall be appointed where contract participation goals are specified for targeted areas in terms of:

- a) one or more Metropolitan or District Municipalities;
- b) one of more Local Municipalities; or
- c) an area within a predefined radius of the construction activity.

Where the appointment of the Community Liaison Officer is the responsibility of the contractor, the requirements for the appointment and payment of the Community Liaison Officer shall be as specified in the contract data.

The Community Liaison Officer should be recommended by the Community Project Committee (CPC).

Note: Due cognizance must be taken of the risk of the Community Liaison Officer not being a member of the targeted community, and/or the Community Liaison Officer not being recommended by the Ward Councillor(s).

6.1 Key Duties and Functions

The key duties and functions of the Community Liaison Officer should (where relevant) include:

- a) identifying labour available in the target community;
- b) identifying enterprises available in the targeted community;
- c) coordinating community activities with respect to construction works activities;
- d) arranging and attending meetings with the community;
- e) educating community with regard to the dispute resolution mechanism adopted by the Community Project Committee (CPC) and recorded in the agreement between the employer and the CPC;
- f) facilitating labour, community and contractor concerns; and
- g) providing daily feedback regarding community concerns to the contractor.

Further details of the key duties and functions of the Community Liaison Officer are given in Appendix E.

6.2 Minimum Eligibility Requirements

Recommended minimum eligibility requirements for a Community Liaison Officer are included in Appendix E.

7. Selection and Recruitment of Targeted Labour

The employer shall establish a procedure for the selection and recruitment of targeted semi-skilled and unskilled labour by the contractor. This procedure shall apply for the selection and recruitment

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of labour where contract participation goals for targeted labour are specified for targeted areas in terms of:

- a) one or more Metropolitan and District Municipalities;
- b) one or more Local Municipalities; or
- c) an area within a predefined radius of the construction activity.

The employer shall establish a mechanism to compile and record the prospective targeted labour that meet the relevant targeting requirements for semi-skills and unskilled labour. Semi-skilled and unskilled labour drawn by the contractor from the prospective pool of targeted labour shall be deemed to comply with the requirements of the targeting data for semi-skilled and unskilled labour.

Guidelines for the selection and recruitment of targeted semi-skilled and unskilled labour by the employer are given in Appendix F.

8. Records

The contractor shall submit all the documentation required in terms of substantiating contract participation goals in a timely manner and according to a prescribed format where applicable.

The employer's representative shall certify the value of the credits counted towards the contract participation goal, if any, whenever a claim for payment is issued to the employer, and shall notify the contractor of this amount.

The targeted enterprise, manufacturer or supplier shall, upon termination of the opportunities provided in order to satisfy the contract participation goal, certify the quantum and nature of the opportunity and submit the certificate, counter-certified by the relevant individual insofar it is possible, to the contractor and employer's representative for record-keeping purposes.

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

9. Denial of Credits

9.1 Targeted Enterprises

- a) Credits claimed towards the contract participation goal shall be denied where:
 - i) the contractor makes a direct payment to a supplier, manufacturer or plant hire or lease company on behalf of a targeted enterprise when such payment is recovered by making deductions from payments to the targeted enterprise in connection with the contract; or
 - ii) the contractor fails to enter into written contractual agreements with the relevant targeted enterprises.

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- b) Credits claimed towards the contract participation goal shall be denied where written contractual agreements contain any of the following:
- i) a right to set off in favour of the employing contractor not provided for by law;
 - ii) authoritarian rights given to the employing contractor or his agent, with no recourse to independent adjudication in the event of a dispute arising;
 - iii) payment procedures based on a pay-when-paid system;
 - iv) a dispute resolution process which does not include inexpensive alternative dispute resolution procedures, such as mediation or adjudication, but which only makes use of formal proceedings such as arbitration or litigation; or
 - v) conditions which are more onerous than those which exist in the main contract.
- c) Credits shall be denied where targeted enterprises do not adhere to statutory labour practices or fail to perform commercially useful functions.

Note: Adapted from ISO 10845-5:2011, Part 3.3.2

9.2 Targeted Labour

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

Note: Adapted from ISO 10845-8:2011, Part 3.4

10. Sanctions

In the event that the contractor fails to substantiate that any failure to achieve the contract participation goal was due to reasons beyond the contractor's control which may be acceptable to the employer, the sanctions provided for in the contract or order shall apply.

Note: The contract establishes the sanctions that will apply. These are set out in a tender evaluation schedule, the scope of work or contract data. Sanctions where tender evaluation points are granted with respect to a tendered CPG or where a minimum CPG is specified are usually applied in the form of:

- a) financial penalties (low performance damages), typically formulated on the difference between the contracted CPG and the CPG achieved in the performance of the contract; and
- b) the issuing of completion certificates only after the certificates described in Section 7 are received.

Appendix A: Guidelines for Undertaking a Feasibility Study for Specifying CPGs

The objective for a feasibility study for contract participation goals (CPGs) for construction works contracts is to inform the determination of achievable CPGs for targeted enterprises and labour for various targeted areas, and to assess possible risks to the employer associated with the specification of such CPGs.

The feasibility study should be undertaken at concept report stage, which establishes the detailed brief, scope, scale, form and control budget, and sets out the integrated concept for one or more packages (Stage 4: Concept and Viability of the National Treasury *Standard for Infrastructure Procurement and Delivery Management* (SIPDM)).

A1. Targeted Enterprises

As CPGs for targeted enterprises must be expressed in terms of percentage of total contract amount, the following must therefore be known or estimated:

- a) the estimated tender value of the construction works contract;
- b) the capability requirements⁴ of the principal (or main) contractor and subcontracting opportunities; and
- c) the available capacity⁵ of the targeted enterprises, within the targeted areas by enterprise category.

In general, the larger the targeted area, the more scope will exist for targeted enterprises with higher capability (such as higher cidb Grade).

For construction related works packages that can be subcontracted to and undertaken by targeted enterprises, the targeted enterprises should be cidb registered or should meet the competence requirements of the cidb *Competence Standard for Contractors*⁶. Information on cidb registered contractors by Class of Works and Grade by province can be obtained from the cidb *Register of Contractors*.

Information on cidb registered contractors at a metropolitan, district or local municipality level can be obtained from the cidb on request. Further information on potential targeted enterprises, and in particular at district and local municipality level, should be obtained from local surveys.

Information on the available capacity of targeted enterprises by targeted areas should be included in the feasibility study in support of estimating the achievable CPGs.

4 i.e. technical competence, track record and capacity requirements

5 i.e. the amount of work that can be undertaken in addition to current workload

6 cidb *Competence Standard for Contractors*, gazette 39074 of 7 August 2015, accessible on www.cidb.org.za

Draft**A2. Targeted Manufacturers and Suppliers**

As CPGs for targeted enterprises and for targeted manufacturers and suppliers must be expressed in terms of percentage of total contract amount, the following must therefore be known or estimated:

- a) the estimated tender value of the construction works contract;
- b) the estimated requirements for materials and products that can be provided by targeted area, together with the required specifications and quality standards; and
- c) the available capacity⁷ of the manufacturers and suppliers, within the targeted areas by enterprise category, that can provide materials and products to the required specifications and quality standards.

In general, the larger the targeted area, the more scope will exist for targeted enterprises with larger capacity.

Information on the available capacity of targeted enterprises by targeted areas should be included in the feasibility study in support of estimating the achievable CPGs.

A3. Targeted Labour

As CPGs for targeted labour must be expressed in terms of percentage of total labour, the following should therefore be known or estimated:

- a) the estimated number of person days to be provided in the construction works by skills category; and
- b) the available labour within the targeted areas by skills category.

In general, the larger the targeted area, the more scope will exist for targeted labour with higher skills levels.

Information on the available capacity of targeted enterprises by targeted areas should be included in the feasibility study in support of estimating the achievable CPGs.

Cognisance must also be taken of the impact of demobilisation of labour on project closure.

⁷ i.e. the amount of work that can be undertaken in addition to current workload

Appendix B: Guidelines for Maximum CPGs

B1. Targeted Enterprises

Guidelines for maximum contract participation goals for targeted enterprises in construction works contracts, including sub-contractors and service providers, but other than materials manufacturers and suppliers, for new construction works, for refurbishments, or for maintenance contracts are given in Tables B1a or B1b.

Table B1a. Maximum contract participation goals for targeted enterprises

Geographic Area	CPG (% Contract amount)	
	New Works	Maintenance
One or more Provinces	40%	80%
One or more Metropolitan or District Municipalities	30%	40%
One or more Local Municipalities	10%	20%

Table B1b. Maximum contract participation goals for targeted enterprises

Geographic Area	CPG (% Contract amount)	
	New Works	Maintenance
Within a 100 km radius	40%	80%
Within a 50 km radius	30%	40%
Within a 10 km radius	10%	20%

B2. Targeted Manufacturers and Suppliers

Guidelines for maximum contract participation goals for targeted manufacturers and suppliers in contracts other than bitumen and cement, for construction works are given in Tables B2a or B2b.

Table B2a. Maximum contract participation goals for targeted manufacturers and suppliers

Geographic Area	CPG (% Contract amount)
One or more Provinces	30%
One or more Metropolitan or District Municipalities	10%
One or more Local Municipalities	5%

Table B2b. Maximum contract participation goals for targeted manufacturers and suppliers

Geographic Area	CPG (% Contract amount)
Within a 100 km radius	30%
Within a 50 km radius	10%
Within a 10 km radius	5%

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Guidelines for maximum contract participation goals for targeted labour are given in Tables B3a or B3b.

Table B3a. Maximum contract participation goals for targeted labour

Geographic Area	CPG (% Person days)
One or more Provinces	90%
One or more Metropolitan or District Municipalities	80%
One or more Local Municipalities	70%

Table B3b. Maximum contract participation goals for targeted labour

Geographic Area	CPG (% Person days)
Within a 100 km radius	90%
Within a 50 km radius	80%
Within a 10 km radius	70%

Appendix C: Guidelines for Community Engagement

Public engagement and participation is a principle that is accepted by all spheres of government in South Africa. Engagement and participation also helps to build an informed and responsible citizenry with a sense of ownership of government developments and projects. It allows employers to get buy-in and to develop partnerships with stakeholders^{8,9}.

This Appendix presents guidelines for community engagement on Contract Participation Goals (CPGs) which employers may include in the delivery of construction works contracts. The guidelines are restricted to use for where Contract Participation Goals are specified for targeted areas in terms of:

- a) one or more Metropolitan or District Municipalities;
- b) one of more Local Municipalities; or
- c) within a 50 km radius or less.

Such community engagement should be undertaken at concept report stage, which establishes the detailed brief, scope, scale, form and control budget, and sets out the integrated concept for one or more packages (Stage 4: Concept and Viability of the National Treasury Standard for Infrastructure Procurement and Delivery Management (SIPDM)).

C1. Legislative and Policy Context

The context and purpose of the engagement must be communicated to the community.

The use of preferential and targeted procurement as an instrument to effect socio-economic change is one of the central strategies of government. By using procurement optimally employers can achieve development goals without compromising on effective delivery and maintenance of infrastructure.

The Standard for Infrastructure Procurement and Delivery Management by the National Treasury (effective from 1 July 2016) was issued as an instruction in terms of Section 76(4)(c) of the Public Finance Management Act of 1999 (Act No.1 of 1999).

The SIPDM establishes control frameworks for:

- a) the planning, design and execution of infrastructure projects and infrastructure procurement;
- b) requirements for a number of matters as applied to the supply chain management system for infrastructure procurement and delivery management; and
- c) minimum requirements for infrastructure procurement.

8 ETU. *Accountability and Community Participation, Community Organisers Toolbox*. Education and Training Unit for Democracy and Development, <http://etu.org.za/toolbox/>

9 PSC (2010). *Template for Developing Guidelines on Public Participation*. Public Service Commission, www.psc.gov.za/documents/guidelines.asp

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The SIPDM also establishes developmental or secondary procurement policy relating to Broad-Based Black Economic Empowerment (B-BBEE), and where appropriate, work opportunities for target groups and national development goals. The SIPDM furthermore establishes targeted procurement procedures that may be used to promote social and economic objectives, as well as those for specifying minimum local content.

Requirements relating to the preparation of procurement documents, and the solicitation and evaluation of expressions of interest and tenders are linked to the South African National Standard, SANS 10845 Construction Procurement – which the Standard for Contract Participation Goals is aligned to.

The Standard for Contract Participation Goals prescribes maximum contract participation goals, the content of which should be shared with the affected communities.

C2. Purpose of Community Engagement

The purpose of the community engagement should be to:

- a) communicate the legislative and policy context within which the employer has determined the contract participation goals for the construction works contract;
- b) (if available) communicate the employer's feasibility study that was been undertaken to verify that the contract participation goal can realistically be achieved within the targeted area;
- c) communicate the dispute resolution mechanism that the employer will establish to receive and facilitate resolution of community matters affecting the performance of the construction works contract;
- d) seek agreement from the affected community to abide by the employer's judgement and specification in its determination of the contract participation goals; and
- e) reduce the risk to the employer and the contractor of unintended community matters impacting on the construction works contract.

C3. Community Project Committee (CPC)

A Community Project Committee should be established to facilitate and to obtain agreement on the community participation. The following role players should be involved in the Community Project Committee:

- a) relevant Ward Councillor(s);
- b) relevant community leaders; and
- c) relevant community participants, as determined by the Ward Councillor(s).

C3. Social Facilitators

Community engagement should make use of trained and experienced social facilitators well experienced social facilitators with experience in community engagement, conducting situational analysis within the targeted community.

Guidelines for the minimum requirements for the appointment of a social facilitator are given below:

- a) At least 4 years' experience in social facilitation with emphasis on community engagements and consultations.
- b) Experience of working in similar targeted communities.
- c) Ability to conduct enumeration using electronic devices and system to allow for collection of real time data, mapping of communities and profiling of enterprises, labour and households.
- d) Experience in undertaking socio-economic/situational analysis in similar targeted communities.
- e) Experience in community empowerment, skills facilitation and capacity building within similar targeted communities.
- f) Proven ability in effective written and oral communication.
- g) Proficiency in the use of standard word processing, web browsers, spreadsheets and presentation software, database systems.
- h) Institutional capacity to successfully carry out an assignment of the required nature.

C4. Outcome of Community Engagement

The intended outcome of the community engagement is to obtain a written agreement between the employer and the affected community:

- a) to abide by the employer's judgement and specification in its determination of the contract participation goals; and
- b) to abide by mediation as the dispute resolution mechanism to be implemented in the case of any disputes.

The written agreement must be signed off by the employer and the Community Project Committee, and should be appended to the contract data.

Draft**Appendix D: Model Memorandum of Understanding**

Memorandum of Understanding (MOU)

Between

_____ (the Employer)

and

_____ (the Community Project Committee)

for

_____ (the Project)

Date: _____

D1. Interpretations and Definitions

Agreement: means this Agreement, including any Annexures attached hereto.

Employer: means the [*insert name of employer*].

Contractor: means the principal contractor that will be appointed to undertake the construction works project.

contract amount: the financial value of the contract at the time of the award of the contract, exclusive of all allowances and any value added tax or sales tax which the law requires the employer to pay to the contractor.

Community Project Committee (CPC): the appointed representatives of the affected communities, including Ward Councillors.

contract participation goal (CPG):

a) in the case of targeted enterprises, manufacturers or suppliers, the amount equal to the value of goods, services and works for which the contractor contracts the targeted enterprises, manufacturer or supplier in the performance of the contract, expressed as a percentage of the tender value excluding escalation, contingency and value added tax associated with the targeting strategy that is identified in the targeting data.

b) in the case of targeted labour the amount equal to the person days worked for which the contractor contracts to engage targeted labour expressed as a percentage of the total person days worked associated with the targeting strategy that is identified in the targeting data.

mediation: a process where a neutral third party assists disputing parties in resolving conflict.

Parties: means the [*insert name of employer*] and the Community Project Committee.

practical completion certificate: a certificate issued in terms of a contract by the employer, signifying that the whole of the construction works have reached a state of readiness for occupation or use for the purposes intended, although some minor work may be outstanding.

project: means the [*insert name of construction works project*].

signature date: means when the last signing party has signed the agreement.

targeted enterprise: a sole trader, partnership or legal entity which is

- a) a business within the target area other than targeted manufacturer or supplier,
- b) engaged in the performance of the contract, and
- c) defined as the target group in the targeting data.

targeted labour: individuals who

- a) are employed by the contractor in the performance of the contract,
- b) are defined as the target group in the targeting data, and

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- c) permanently reside in the target area or who are recognized as being residents of the target area on the basis of identification and association with and recognition by the residents of the target area.

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

targeted supplier: targeted enterprise that

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

Note: Adapted from ISO 10845-7:2011, definition 2.14

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

D2. Background

The *[insert name of employer]* aims to enter into a contract with a cidb registered contractor for the construction of the *[insert name of construction works project]*, which will be constructed in the following municipality/municipalities *[delete which is not applicable]*:

- a) *[insert name of affected municipality/municipalities]*;
- b) *[insert name of affected municipality/municipalities]*;

The construction will take place within the following Wards:

- a) *[insert name of affected Wards]*;
- b) *[insert name of affected Wards]*;

The construction works will target the use of local enterprises and local labour.

D3. Objectives of this Agreement

The objectives of this Agreement are to obtain agreement with the Community Project Committee, representing the affected communities:

- a) on the targeting strategy and contract participation goals to be employed on the construction works; and
- b) on mediation for the resolution of community matters affecting the performance of the construction works contract (see cidb *Standard for Contract Participation Goals for Targeting Enterprises and Labour through Construction Works Contracts*).

D4. Roles and Responsibilities**D4.1 The Employer's responsibilities:**

- a) The Employer shall facilitate the establishment of a Community Project Committee representing the affected communities. The Community Project Committee shall include the affected Ward Councillor(s).
- b) The Employer shall present the Employer's proposed targeting strategy and contract participation goals to be employed on the construction work.
- c) The Employer shall seek agreement with the Community Project Committee, representing the affected communities, on a targeting strategy and contract participation goals to be employed on the construction work.
- d) The Employer shall seek agreement with the Community Project Committee, representing the affected communities, on mediation for the resolution of community matters affecting the performance of the construction works contract¹⁰.
- e) The cost of such mediation shall be to the Employer's account.

D4.2 The Community Project Committee's responsibilities:

- a) The Community Project Committee shall represent the affected communities, and shall seek to obtain the mandate to represent the affected communities in good faith. The affected communities shall be represented by their relevant Ward Councillors, and the Community Project Committee shall record this mandate in writing.
- b) The Community Project Committee shall seek agreement with the Employer on a targeting strategy and contract participation goals to be employed on the construction work.
- d) The Community Project Committee shall seek agreement on mediation for the resolution of community matters affecting the performance of the construction works contract¹¹.

D4.3 Agreement:

- a) The agreement reached between the Parties shall be included as Annex 1 to this Agreement, and shall also be included in the contract data of the Project.

¹⁰ As specified in the cidb Standard for Contract Participation Goals for Construction Works Contracts.

¹¹ *ibid*

Draft**D5. Deliverables and Timeframes**

This Agreement will come into effect on the date of signing of this agreement, and shall remain in effect until issuing of a practical completion certificate.

D6. Sole Agreement

This Agreement constitutes the sole record of understanding between the Parties with respect to the subject matter and supersedes any previous agreement between parties.

Signatures

[insert name of employer]

[insert name of CPC]

Authorised Signature: _____

Authorised Signature: _____

Name: _____

Name: _____

Date: _____

Date: _____

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Annex 1: Community Agreement

Draft**Appendix E: Community Liaison Officer (CLO) ¹²****E1. Duties and Responsibilities of the CLO**

The Community Liaison Officer shall:

- 1) Represent the community and assist the employer, the employer's agent and the contractor with communication between them and the community.
- 2) Inform community regarding the project detail, safety precautions and programme.
- 3) Be available at the site offices generally between the hours of 07:00 and 09:00 and again from 15:00 until end of working day. Normal working hours will be from 07:00 am till 17:00.
- 4) Assist with relocation of people, where applicable.
- 5) Maintain an up-to-date record of potential employees within the community and provide the contractor with copies of this information.
- 6) To identify, screen and nominate labour from the community in accordance with the contractor's requirements and determine, in consultation with the contractor, the needs of local labour for employment and relevant technical training, where applicable.
- 7) Liaise between contractor and labour regarding wages and conditions of employment.
- 8) Communicate daily with the contractor on labour related issues such as numbers and skills.
- 9) Identify possible labour disputes, unrest, strikes, etc., in advance and assist in their resolution.
- 10) Have a good working knowledge of the contents of the contract document regarding labour and training matters.
- 11) Attend all meetings at which the community and/or labour is represented or discussed.
- 12) Attend contract site meetings and report on community and labour issues at these meetings.
- 13) Co-ordinate and assist with the obtaining of information regarding the community's needs (questionnaires, etc.).
- 14) Inform local labour of their conditions of temporary employment, to ensure their timeous availability and to inform them timeously of when they will be relieved.
- 15) Ensure that all labour involved in activities when tasks have been set, are fully informed of the principle of task based work.
- 16) Attend disciplinary proceedings to ensure that hearings are fair and reasonable.
- 17) Keep a daily written record of interviews and community liaison.
- 18) Arrange venues for training if required.
- 19) Assist with the training and education of the community regarding the correct usage of the services, where applicable.
- 20) Any other duties that may become necessary as the works progress.

¹² After Nelson Mandela Bay Municipality.

E2. Minimum Requirements

Guidelines for the minimum requirements for the appointment of a Community Liaison Officer are given below¹³:

- 1) Should have a Grade 12 with the ability to comprehensively read and write in English and relevant language spoken by the community.
- 2) Should be able to demonstrate or provide evidence of knowledge of community and in forming good relations within the community.
- 3) Should be able to recruit local labour for contract employment.
- 4) Should be able to identify local enterprises as suppliers or subcontractors.
- 5) Should be reliable and accountable.
- 6) Should have an understanding of construction and be able to communicate with contractors and sub-contractors.
- 7) Should reside in the community.

¹³ Adapted from *Policy on Community Participation and Recruitment And Selection of Local Labour in Construction Contracts For The Department Of Transport And Public Works*; Department of Transport and Public Works, Western Cape Government.

Draft**Appendix F: Guidelines for the Selection and Recruitment of Targeted Labour¹⁴**

- 1) The identification of potential semi-skilled and unskilled labour that meet the requirements of the targeting data (including targeting area) should take place within the Community Project Committee (CPC), and led by the Community Liaison Officer (CLO).
- 2) A Community Project Committee meeting to identify potential semi-skilled and unskilled must be well advertised in the target area, being cognisant of the main language spoken in the area, as well as the media most accessible to the community.
- 3) Should the target area from which possible local labourers are to be drawn be too large, meetings should be held in each ward.
- 4) A representative from the employer should be present at the Community Project Committee meetings.
- 5) The following information should be made available at the meeting:
 - details of the project;
 - type of work available in the project;
 - explanation of work methods to be used;
 - estimated number of unskilled and skilled work opportunities available.
- 6) A basic job application form is to be distributed to all present and explained.
- 7) The job application form should require verifiable information to identify the potential labour as being from the target area, including place of residence.
- 8) The process that will be followed to determine the selected local labour is to be explained to all individuals present.
- 9) A basic job application form is to be completed by all present.
- 10) The prospective labourer is required to place the application in a sealed box.
- 11) Different application boxes must be provided for each skill or trade as well as for the unskilled.
- 12) The Community Liaison Officer is to draw double the number of applications from each box in full view of the entire meeting. One list is to be according to the labour requirements (i.e. the number of opportunities available) and another with the same amount of names for standby - per application box.

¹⁴ Adapted from *Policy on Community Participation and Recruitment And Selection of Local Labour in Construction Contracts for the Department of Transport and Public Works*; Department of Transport and Public Works, Western Cape Government.

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- 13) Individuals whose names are drawn must be contacted and present themselves at the front of the meeting. (It is compulsory that all applicants attend the Community Project Committee meeting where the selection process will take place).
- 14) After the drawing process has been completed, the meeting should be informed of an appeal process to be followed should individuals have a problem with the drawing process.
- 15) The meeting must be informed of the date by when the successful applicants will be made public.
- 16) Once the appeal period has elapsed, the two lists per category must be made public by putting them up in key locations in the community. Lists are also to be provided to the CLO and to the contractor.
- 17) A database of all applications should be compiled after the meeting by the contractor to ensure that all applications are captured for future reference should the need arise.
- 18) Workers are to be appointed in the order in which they were drawn from the box i.e. in the order on the list.
- 19) Should the successful applicant not accept the work, his or her name is to be removed from the list. Should all people on the first list have been given a chance or appointed, the individuals on the second list are provided with an opportunity on a first drawn first opportunity basis.
- 20) Should all individuals on the two lists have been afforded an opportunity, then the individuals whose names have been captured in the database (i.e. the balance of the individuals' who submitted an application into the respective box) should be provided with an opportunity.
- 21) Only individuals who applied through this application process and whose names appear on the database may be appointed as local labour on the project.