

Table B.1 (continued)

Step	Action	Observations	Guidance
5	Understand the construction procurement regime	Compliance with the legislative framework for procurement is essential. Non-compliance will cause delays in the procurement process as a result of a lack of clarity in processes and procedures, the lodging of complaints, and court challenges.	<p>The designated procurement manager should be familiar with legislative framework and requirements for procurement. Such a person should also be familiar with development and social objectives that may be promoted through the project.</p> <p>This part of ISO 10845 provides a flexible range of options which are compliant with most legislative framework for public procurement.</p> <p>The risk of procurements not complying with system requirements (fair, equitable, transparent, competitive and cost-effective, and promotion of objectives associated with a procurement policy) should be managed cost-effectively.</p>
6	Allocate risk	The higher the risk taken, the greater the financial provision should the worst happen. Consequently, the higher the risk a contractor assumes, the greater will be the tender value and hence cost borne by the client, even if the risk does not materialize.	<p>Those tendering for a contract should know the degree of risk that they are expected to take.</p> <p>Whereas the careful checking of the facts about the existing circumstances will help to reduce the total risk, there will always be elements of uncertainty outside the control of all the parties to a contract. All the parties need to know the risks for which they are responsible so that they can make suitable financial provision, either by adding to the cost of the proposal or budget or by spreading the risk by such means as acquiring insurance.</p> <p>The business plan and the contract documents are the mechanisms for allocating risk.</p>
7	Identify and implement procurement strategies, methods and techniques	<p>The particular characteristics of each procurement should be analysed, so as to choose the most suitable and appropriate options.</p> <p>Optimization of these options will lead to obtaining the best value from the procurement process.</p>	<p>Best-value outcomes are obtained from selecting options for</p> <ul style="list-style-type: none"> <li>a) contracting and pricing strategies,</li> <li>b) procurement procedures,</li> <li>c) procedures for addressing quality in procurement,</li> <li>d) mechanisms for promoting and developing targeted contractors and labour,</li> <li>e) methods for evaluating offers, and</li> <li>f) forms of contract.</li> </ul> <p>Procurement documents should capture the selected options. The optimum choices made within the standard forms of contract and the standard tender conditions will achieve best-value outcomes.</p>
8	Monitor impacts	<p>Contractors will apply their own expertise to the contract. The client should employ its own experts to monitor the progress of the contractor.</p> <p>Any dispute, unless resolved at an early stage, is likely to be costly and disruptive to the project.</p>	<p>Reasons for monitoring include the following.</p> <p>Mistakes can be made. Whilst the contractor is responsible for his errors, resultant problems might be avoided if a contractor is advised of an error at an early stage.</p> <p>Payment of a contractor is invariably based on his achievements. The amount due to a contractor should be independently verified.</p> <p>Best value demands continuous improvements. How these are achieved and the consequent sharing of financial benefits should be agreed between the contractor and client.</p> <p>Each contract should be coordinated with other activities to ensure that the client can achieve best value for the project/service provision as a whole.</p> <p>Both the employer and the contractor should designate individuals to be the key contact between the two bodies.</p> <p>Differences in opinion or even disputes are bound to arise between the employer and contractor. The contract should set out the means for resolving these disputes.</p>

**Table B.1** (*continued*)

Step	Action	Observations	Guidance
9	Review the process	Procurement is a lengthy and complex process. There should always be room for improvement.	Clients should undertake regular reviews of the following.  Whether the contract has met its original service objectives.  Whether needs and expectations have changed such that the contract should be modified.  Whether the procurement process could be improved for the next round of procurement.  How external factors have changed.  The reviews should provide the necessary feedback so that better-informed procurement strategies, techniques and choices can be made in striving for best value.

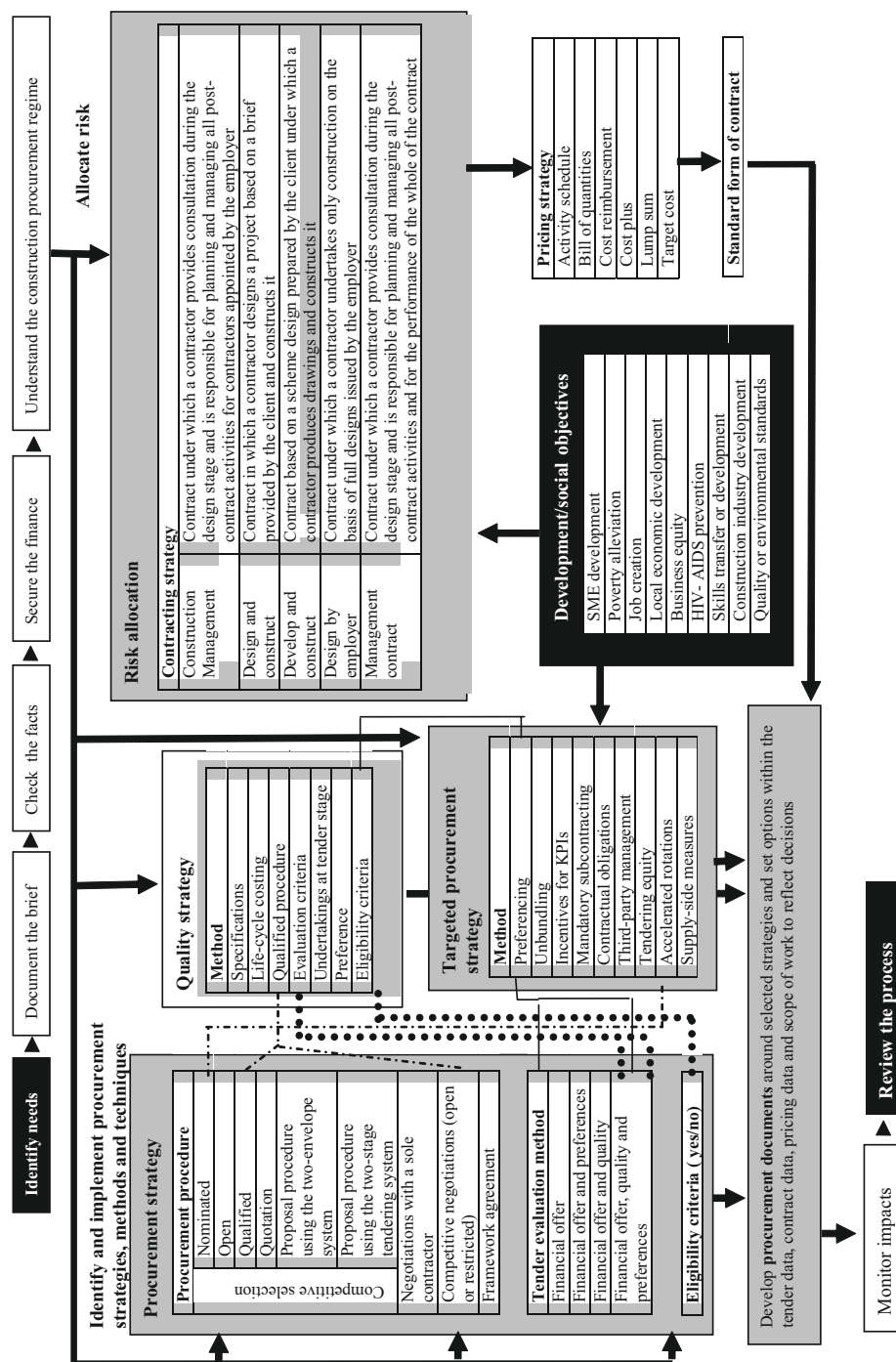


Figure B.1 — Best-value procurement process in contracts for engineering and construction works

## Annex C (informative)

### Generic procurement process

There are typically six principal activities associated with a generic procurement process:

- a) the establishment of what is to be procured,
- b) a decision on procurement strategies,
- c) the solicitation of tender offers,
- d) the evaluation of tender offers,
- e) the award of the contract,
- f) the administration of the contract and confirmation of compliance with the requirements.

The commonly encountered actions associated with the principal procurement activities are described in Table C.1. Each procurement activity may be broken down into a series of subactivities as in Table C.2. These subactivities should incorporate control points to facilitate the management of the procurement process.

Table C.2 presents an example of a generic set of subactivities associated with each principal procurement activity and which incorporates actions leading to procedural milestones (control points).

**Table C.1 — Principal activities and related actions typically associated with a generic procurement process**

Principal activity		Related action
No.	Description	
1	Establish what is to be procured.	Clarify what is to be procured.
2	Decide on procurement strategies.	Determine how the procurement is to take place.
3	Solicit tender offers.	Solicit tender offers in terms of a set of procedures.
4	Evaluate tender offers.	Evaluate tender offers in terms of undertakings and parameters established in procurement documents.
5	Award the contract.	Enter into the contract with the successful tenderer.
6	Administer the contract and confirm compliance with requirements.	Act in terms of the contract and confirm that procurement is in accordance with all requirements.

Not all procurement systems will contain all the subactivities listed in Table C.2, as an employer's procurement policy may exclude certain options.

Employers should designate and empower persons to make decisions whenever a procedural milestone is attained.

**Table C.2 — Subactivities and related principal actions associated with each procurement activity**

Procurement activity		Subactivity	
No.	Description	Description	Principal action
1	Establish what is to be procured	1. Prepare broad scope of work for procurement	Develop a title for the procurement for the purpose of project identification and a broad scope of work.
		2. Estimate financial value of proposed procurement	Estimate the financial value of the proposed contract for budgetary purposes, based on the broad scope of work.
		3. Obtain permission to start with the procurement process <sup>a</sup>	Designated person or body makes a decision to proceed/not to proceed with the procurement based on the broad scope of work and the financial estimates.
2	Decide on procurement strategies	1. Establish opportunities for promoting secondary procurement policies, if any	Identify the specific goals which are to be pursued, if any, and establish quantitative targets and implementation procedures which are consistent with the employer's objectives.
		2. Establish contracting and pricing strategy	Decide on an appropriate allocation of responsibilities and risks and the methodology by which contractors are to be paid.
		3. Establish targeting strategy	Decide on the methodology that is to be used to implement secondary procurement policy.
		4. Establish procurement procedure	Identify the process that will be followed to solicit tender offers and to conclude a contract.
		5. Obtain approval for procurement strategies that are to be adopted <sup>a</sup>	Designated person or body confirms selection of strategies so that tender offers can be solicited.
3	Solicit tender offers	1. Prepare procurement documents	Prepare prequalification or tender documents (or both), as appropriate, that are compatible with the approved procurement strategies.
		2. Obtain approval for procurement documents <sup>a</sup>	Designated person or body reviews the procurement document, identifies sections, if any, which require amendments or improvements, and grants the necessary approval.
		3. Confirm that budgets are in place <sup>a</sup>	Designated person or body ensures that finance is available for the procurement to take place.
		4. Invite contractors to submit tender offers or expressions of interest	Advertise for tenders/identify contractor(s) that are to be invited to submit tender offers in accordance with the approved procurement procedure, issue procurement documents, respond to requests for clarification, conduct clarification/site meetings, issue attendees with minutes of such meetings, and issue addenda, as relevant.
		5. Receive tender offers or expressions of interest	Ensure that arrangements are in place to receive tender offers/expressions of interest and return unopened those that are received late, are not delivered in accordance with instructions given to respondents/tenderers or where only one tender is received and it is decided to call for fresh tenders.

Table C.2 (continued)

Procurement activity		Subactivity	
No.	Description	Description	Principal action
		6. Evaluate expressions of interest	Open expressions of interest, record data relating to the submission and evaluate in accordance with undertakings made to respondents.
		7. Prepare evaluation report on shortlisting process	Prepare evaluation report and make recommendations in respect of actions to be taken, depending upon the procurement procedure that is adopted.
		8. Confirm shortlist <sup>a</sup>	Designated person or body reviews evaluation report and ratifies recommendations.
		9. Invite tender offers from short-listed tenderers	Invite tender offers from shortlisted tenderers, respond to requests for clarifications by tenderers, conduct clarification/site meetings, issue all attendees with the minutes of such meetings, and issue addenda to amend or amplify the procurement documents, as relevant.
4	Evaluate tender offers	1. Open and record tender offers received	Open tender offers, either in public or in the presence of designated persons, record pertinent details and notify interested parties of pertinent details if requested to do so.
		2. Determine whether or not tender offers are complete	Examine tenders and determine whether or not they are complete, request tenderers to complete items that are required only for tender-evaluation purposes and record what is incomplete in each tender submission.
		3. Determine whether or not tender offers are responsive	Confirm compliance with all the requirements of the procurement documents, including eligibility criteria. If not, declare tender offers non-responsive and record reasons for declaring a tender to be non-responsive and disregard such tender offers from further consideration.
		4. Evaluate tender submissions	Identify parameters included in the tender submission that have a bearing on the financial offer and reduce all tender offers to a common base.  Judge the reasonableness of financial offers and reject all tender offers with unrealistic financial offers.  Evaluate tender submissions in accordance with the tender-evaluation method adopted for the procurement.
		5. Perform a risk analysis	Perform a risk analysis on the tenderer ranked highest in terms of the tender evaluation and, if found to be unsatisfactory, undertake an analysis on the next highest ranked tenderer and so on until such time as a tenderer satisfies the risk assessment, and recommend this tenderer for the award of the contract.
		6. Prepare a tender-evaluation report	Prepare a tender-evaluation report which, as a minimum, contains the tender-evaluation points awarded to each tenderer, the reasons for eliminating a tender offer and a recommendation for the award of the contract.
		7. Confirm recommendation contained in the tender-evaluation report <sup>a</sup>	Designated person or body reviews report and ratifies the recommendation.

Table C.2 (continued)

Procurement activity		Subactivity	
No.	Description	Description	Principal action
5	Award contract	1. Notify successful tenderer and unsuccessful tenderers of outcome	Notify the successful tenderer and unsuccessful tenderers in writing.
		2. Compile contract document	Assemble contract document from the relevant tender returnables and issue draft contract to tenderer, capturing all the changes that were agreed to between the offer and acceptance.
		3. Formally accept tender offer <sup>a</sup>	Confirm that the tenderer has provided evidence of complying with all requirements stated in the tender data and formally accept the tender offer in writing and issue the contractor with a signed copy of the contract.
		4. Capture contract award data	Capture, into a database, essential contract data for record purposes.
6	Administer contracts and confirm compliance with requirements	1. Administer contract in accordance with the terms and provisions of the contract	Administer the contract in accordance with its terms and conditions and pay contractors within the time periods provided for in the contract, so as to avoid interest on late payments.
		2. Ensure compliance with requirements	Monitor the contractor's performance to ensure that the requisite quality standards are attained and all requirements are complied with, and certify compliance upon completion.
		3. Capture contract completion/ termination data <sup>a</sup>	Record, in a database, key performance indicators relating to time, cost and the attainment of specific goals associated with a secondary procurement policy, or if the contract is terminated or cancelled, the reasons for this.

<sup>a</sup> Subactivity represents control points, i.e. procedural milestones.

## **Annex D** (informative)

### **Adjudication procedures to challenge decisions made during the tender process**

#### **D.1 Introduction**

Decisions made by employees or agents of an employer may be disputed, should procurement be conducted in accordance with the requirements of ISO 10845-3. A tender-dispute adjudicator can be appointed to decide if a complainant should have been awarded the contract and, if so, to determine the tenderer's reasonable cost of tendering. This provides a fair, rapid and inexpensive means to resolve a dispute arising from the evaluation of tender offers, without delaying the procurement or resorting to legal remedies.

Ideally, the employer should establish a panel of tender-dispute adjudicators, comprising independent and suitably qualified individuals, and should conduct the adjudication in the following manner:

- a) the tenderer disputing the evaluation (the complainant) should be required to lodge a complaint with the employer's executive in writing within 10 days of being notified that his tender is unsuccessful and agree to
  - 1) waive all rights to overturn the award of the tender to another party, and
  - 2) limit any compensation to the reasonable costs of preparing the tender;
- b) the complainant should be entitled to nominate a tender-dispute adjudicator from a panel of tender-dispute adjudicators;
- c) the complainant should agree to pay half the tender-dispute adjudicator's fee and be required to lodge a deposit equal to half the estimated fee amount with the employer; and
- d) in the event that the tender adjudication does not proceed, for whatever reason, the complainant may refer the matter to court or resort to any other legal remedy that he may have and have his deposit refunded.

The tender-dispute adjudication should be conducted in accordance with the procedure established in this annex.

The waiving of rights to overturn an award prevents this system from being used to inexpensively test whether or not there is a case for a court of law to overturn a decision. Aggrieved tenderers should make a choice at the outset to obtain relief through the courts or through a tender-dispute adjudicator.

#### **D.2 Recommended tender-dispute adjudication procedure**

##### **D.2.1 General principles**

The tender-dispute adjudicator should decide if the complainant should have, in terms of the procurement documents issued in respect of the contract in question, been awarded the contract, and if so, should determine the tenderer's reasonable cost of tendering.

The tender-dispute adjudicator should act impartially and in accordance with the rules of natural justice.



The cost of tendering should be confined to direct staff costs and should include reasonable office overheads and travel costs, but should exclude profits, copying costs, typing charges, courier and postage charges.

The tender-dispute adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as tender-dispute adjudicator, unless the act or omission was in bad faith, and any employee or agent of the tender-dispute adjudicator is similarly protected from liability.

### **D.2.2 Notice of tender-dispute adjudication**

A complainant should, within 10 days of receiving a notice advising that the tenderer was unsuccessful, give notice to the employer's executive of his intention to refer the dispute to adjudication by giving a written notice of tender-dispute adjudication.

The notice of adjudication should include

- a) the name of the proposed tender-dispute adjudicator,
- b) the title of the contract, and the tender reference number,
- c) a breakdown of the tenderer's cost of tendering in relation to that tender, and
- d) a cash deposit equal to 50 % of the estimated tender-dispute adjudicator's fee.

### **D.2.3 Administrative procedures**

The employer's executive should notify, in writing, the tender-dispute adjudicator, the complainant and the employer's employee or agent responsible for the procurement of the adjudication, within five working days of receipt of the notice of adjudication.

The employer's employee or agent responsible for the procurement should deliver to the tender-dispute adjudicator the tender-evaluation report together with a copy of the tender submissions of the complainant and the tenderer who was awarded the contract, within seven working days of being notified that adjudication will take place. The tender-dispute adjudicator should notify the employer's executive if the copy of the tender submission is not received within the stated period. Should the tender-dispute adjudicator not receive the copy of the tender submissions from the responsible employee or agent within 20 working days, the adjudication should be abandoned and the complainant should be notified accordingly.

### **D.2.4 The tender-dispute adjudicator's decision**

In making a decision, the tender-dispute adjudicator may take the initiative in ascertaining the facts and the correct procedure provided for in the employer's procurement policy and standard procedures. The tender-dispute adjudication should be neither an expert determination nor arbitration but the tender-dispute adjudicator may rely on his own expert knowledge and experience.

The tender-dispute adjudicator should have complete discretion as to how to conduct the adjudication, and should establish the procedure and timetable. He should not be required to observe any rule of evidence, procedure or otherwise, of any court, except the rules of natural justice. Without prejudice to the generality of these powers, he may ask for further information and meet and question the employer's tender panel and any other person involved in the evaluation of the tender.

The tender-dispute adjudicator may obtain legal or technical advice, having first notified the employer's executive of his intention.

Wherever possible, the tender-dispute adjudicator should reach his decision without the process of a formal hearing.

The tender-dispute adjudicator should reach his decision and notify both the employer's executive and the complainant within 21 days of the tender submissions having been handed to him for adjudication, unless the employer's executive agrees to extend this period.

The tender-dispute adjudicator's decision should be binding on both the employer and the complainant.

The employer should pay the complainant his reasonable cost of tendering without delay, should the tender-dispute adjudicator find that the complainant should have been awarded the contract, but not before the complainant has paid the tender-dispute adjudicator any outstanding fees not covered by the cash deposit.