

#### **A.6.6 Award of contracts**

This subclause establishes requirements for the award of a contract. This ensures that tenders are only awarded to those tenderers who are not subject to restrictions to do business with the employer, have both the capability and capacity to perform the contract, have legal capacity to enter into the contract, are solvent, comply with all legal requirements and are free of conflicts of interest that might compromise their ability to perform the contract.

NOTE ISO 10845-3 provides guidance on the debriefing of tenderers.

#### **A.6.7 Resolution of disputes arising from a contract**

This subclause establishes the means by which disputes are to be resolved in the performance of the contract.

#### **A.6.8 Contract administration**

Contract administration requirements are linked to the conditions of contract which contain procedures for the administration of a contract. Appropriate conditions of contract should be used in relation to the nature of the contract. ISO 10845-2 provides guidance on the selection of a standard form of contract for the provision of goods, services and engineering and construction works.

Data should be captured upon completion or termination of a contract as it informs future selections in the pursuit of best-value procurement (see Annex B).

#### **A.6.9 Unsolicited proposals**

This subclause offers a way in which to deal with unsolicited proposals.

#### **A.6.10 Departures from established methods and procedures**

This part of ISO 10845 recognizes that there may be variations or hybrids in procedures in the case of certain types of procurement. This subclause permits employers to modify procedures within the framework for procurement established in this part of ISO 10845 without compromising the qualitative system criteria established in 4.1.

## **Annex B**

### **(informative)**

## **Best-value procurement**

Best-value procurement requires that employers operate effectively and efficiently, particularly in the area of procurement. Accordingly, the drivers of an efficient and effective procurement system are value for money, the promotion of development or social objectives (or both) through the delivery of construction projects, and the imperative to continuously improve performance. Much can go wrong in the appointment and supervision of contractors, especially where complex services or construction is required.

Best value demands that procurement strategies be reviewed and optimized. Any resultant changes should deliver better value. There is, however, no ideal way to procure, as each situation is different. There are, however, clear methods for choosing the most appropriate (or best) way for a given circumstance and there is a logical process which should be followed to confirm that decisions will indeed deliver the best value.

Procurement is an expensive process. The potential for waste and error is high. The potential for failing to meet expectations is higher still. The process should be properly planned and managed. Table B.1 outlines the steps associated with a best-value procurement process associated with engineering and construction works. Many choices are made when risks are allocated and procurement strategies, methods and techniques are identified and documented in procurement documents in order to arrive at best-value outcomes in contracts for engineering and construction works, as indicated in Figure B.1. The promotion of development or social objectives (or both) influences these choices both directly and indirectly.

An evaluation of the outcomes of the procurement process is fundamental to best-value procurement. Accordingly, the choices made at each stage of the process and the manner in which services and engineering and construction works are defined should be reviewed and, if necessary, amended to improve future procurement outcomes involving work of a similar nature. Best value is all about the manner in which services and engineering and construction works are defined and delivered. It necessitates that a culture of continuous improvement in performance be embraced.

**Table B.1 — Planning and managing the procurement strategy**

Step	Action	Observations	Guidance
1	Identify needs	The catastrophic and expensive failures of procurement are almost always the lack of clarity of the expected outcome.	<p>Be clear about what the community or user needs. Visualize and articulate the expected outcome. Decide what is important and what is not, and plan the procurement to meet the expected outcome. There is no substitute for proper research.</p> <p>If the delivered project is a building or includes a plant, state the importance of whole life cost (energy, maintenance, operation and carbon) and how this will factor into the assessment of best value.</p>
2	Document the brief	The main cause of procurement failures are the result of inadequate briefs, ill-conceived briefs or an absence of a brief.	<p>A brief is a written description of the completed project or service. It sets out what the expected outcome should be, what role the contractor will play and the constraints and difficulties in delivering the project. In essence it is the means of communicating the whole expected outcome to the people involved and, as such, should explain the facilities or services to be procured, how they are to be used in future, what role they will play in meeting community or user needs, how they will fit into their environment, the further stages of the procurement process and how the facilities or services are to be delivered.</p> <p>The brief is an output specification. It describes the end result and clarifies how the intended procurement combines with other activities to help achieve the client's overall goals.</p> <p>It is essential to consult others on the content of the brief to ensure that requirements are accurately and comprehensively set down, so as to meet defined expectations from all end users.</p>
3	Check the facts	The second most frequent cause of problems between clients and contractors are things that existed at the outset but had not been identified.	<p>Full surveys should be undertaken and documented describing the existing situations. Such surveys should include the following.</p> <p>Topography</p> <p>Soil and ground conditions</p> <p>The location and state of buildings or facilities that contractors might be expected to use or might be affected by the contractor's activities</p> <p>Environmental conditions</p> <p>Number and location of people who might be affected by the engineering and construction works</p> <p>Availability of materials</p> <p>Compatibility with other engineering and construction works contracts or services</p> <p>(The information should be collated and made available to tenderers. Contractors should make their own judgements from the information and collect whatever additional information they consider necessary.)</p>
4	Secure the finance	Business planning has often been ignored, leading to a lack of proper planning and consequent problems at a later stage in the process.	<p>Business plans should be prepared to obtain finance.</p> <p>Financial forecasts should include the following.</p> <ul style="list-style-type: none"> <li>— The total expenditure on the procurement itself and when the expenditure will occur.</li> <li>— The total costs of incomes (or savings) accruing from the new service or facility and when these can be expected to accrue.</li> <li>— The cost and timing of ongoing maintenance and renewals.</li> <li>— The cost of any advice (professional services) that will be needed.</li> </ul>

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.	<p>Clients should undertake regular reviews of the following.</p> <p>Whether the contract has met its original service objectives.</p> <p>Whether needs and expectations have changed such that the contract should be modified.</p> <p>Whether the procurement process could be improved for the next round of procurement.</p> <p>How external factors have changed.</p> <p>The reviews should provide the necessary feedback so that better-informed procurement strategies, techniques and choices can be made in striving for best value.</p>

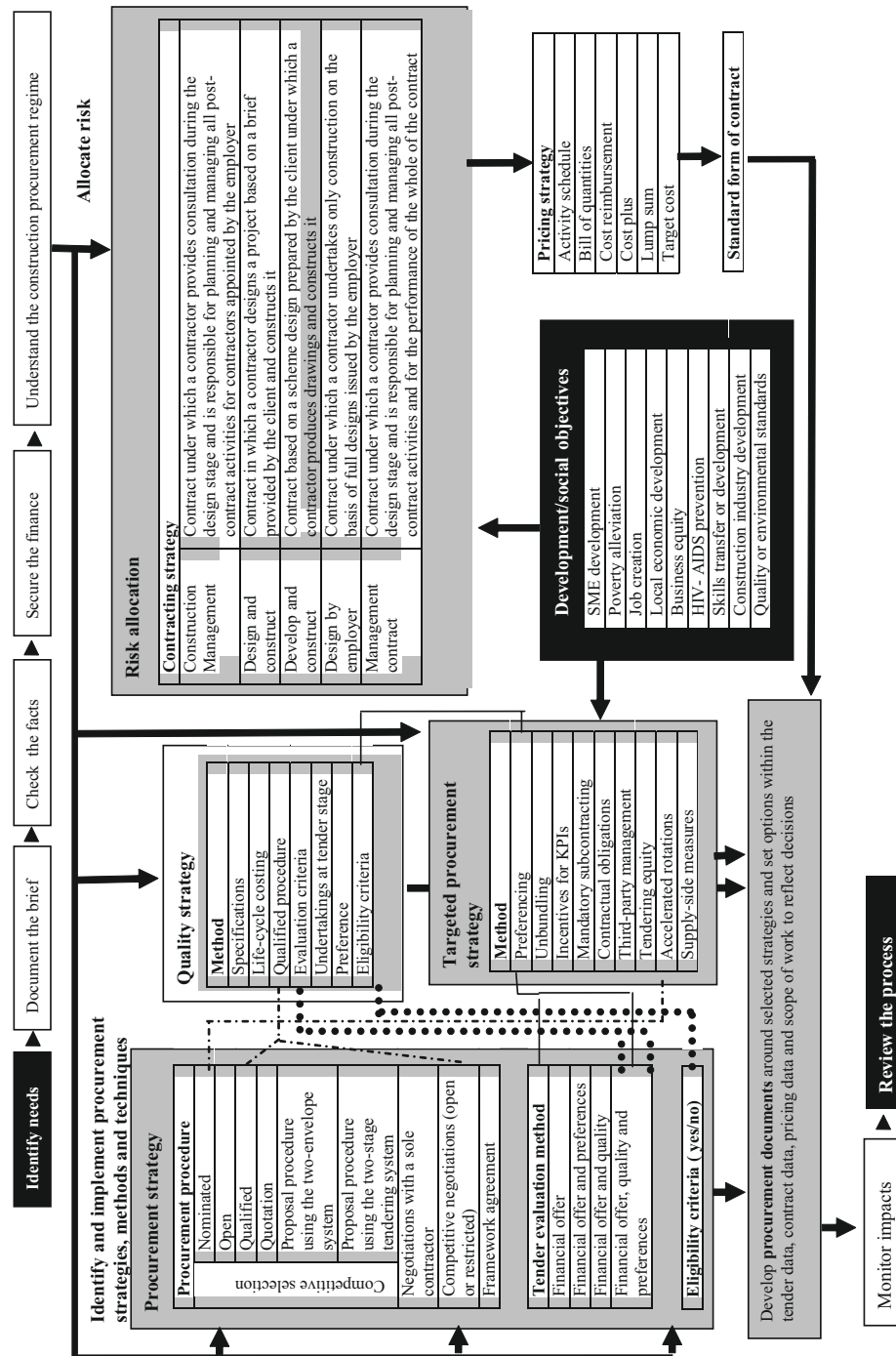


Figure B.1 — Best-value procurement process in contracts for engineering and construction works

## 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.