

# Specification for social and economic deliverables in construction works contracts

March 2007



## Foreword

CIDB Inform Practice Note 1, Scaling up delivery and accelerating empowerment, points out that:

*Many departments and municipalities are currently struggling to spend their allotted capital budgets. This may be attributed to a number of capability and capacity constraints in the public sector, including inappropriate delivery models and a shortage of skilled programme and project managers. Where such skills exist, they are invariably overstretched due to poor delivery models which frequently overburden scarce skilled project management and administrative capacity.*

*This capacity problem may in part be attributed to the predominance of small contracts which results from:*

- *the project approach whereby, for each and every project, consultants are appointed, briefed, directed and overseen by a gradually disappearing cadre of skilled staff;*
- *unbundling strategies aimed at reducing the size of contract in order to “spread the sunshine” across as many constituents as possible and to target small emerging enterprises.*

Practice Note 1 advocates the use of approaches and contracting strategies that:

- increase the size and duration of contracts to facilitate enhanced delivery and the efficient use of resources; and
- promote sustainable enterprise growth, employment, workforce skills development and empowerment.

Current statistics from the CIDB Register of contractors suggest that contracts having a tender value, including VAT, greater than R10 million (about 20% of contracts) account for more than 85% of the value of public sector construction contracts.

The National Workshop (2000), *Emerging Contractor Development*, established the following objective for the emerging contractor development programme:

*To enable emerging contractors through the development of business and management skills to access the opportunities created by the Affirmative Procurement Policy, to consolidate their growth and development and to overcome the impediments which they face arising from the legacy of apartheid.*

This workshop made it clear that support should be given to those enterprises which make best use of the support provided and advocated that criteria for the provision and discontinuation of support should be clearly stated and made known to interested parties.

The National Workshop (2005), *Towards a Common Framework for Enterprise Development and Growth*, shifted the focus from job creation to business development and suggested that public sector enterprise development programmes should target construction businesses that:

- are not labour-only contractors;
- have the potential and desire to improve their CIDB contractor grading designation; and
- fall within the CIDB classes of works or contractor grading designations where gaps exist either nationally or regionally.

This specification establishes:

- a number of standard approaches to attain a range of commonly encountered socio-economic deliverables through the execution of large contracts; and
- a methodology to identify who may participate in a targeted development programme potentially emerging enterprises

This specification has been designed to be readily referenced in the scope of work associated with a specific contract to promote a standard approach to achieving these socio economic deliverables.

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# Specification for social and economic deliverables in construction works contracts

## 1 Scope

This specification provides for:

- a) the delivery of the social and economic deliverables listed in Table 1 through the performance of a construction contract; and
- b) a methodology for establishing who may participate in a targeted development programme.

**Table 1: Social and economic deliverables**

Theme	Deliverable		Overview of requirements
	Number	Description	
Employment of local resources	A1	Provide employment opportunities to targeted labour	The contractor is required to achieve a contract participation goal in accordance with the requirements of SANS 1914-5 relating to the participation of targeted labour: a) as a contractual obligation; or b) in order to receive a financial incentive. Alternatively, the contractor is not set a contract participation goal but is required to report on the contract participation goal that is achieved through the performance of the contract.
	A2	Utilise local resources	The contractor is required to achieve a contract participation goal in accordance with the requirements of SANS 1914-4 relating to the participation of targeted labour and targeted enterprises: a) as a contractual obligation; or b) in order to receive a financial incentive. Alternatively, the contractor is not set a contract participation goal but is required to report on the contract participation goal that is achieved through the performance of the contract.
Employment opportunities in labour intensive works	B1	Provide employment and skills development opportunities to targeted labour	The contractor is required to provide skills development and employment opportunities to unemployed persons along the lines of that advocated in the <i>Guidelines for the Implementation of Labour Intensive Projects under the Expanded Public Works Programme (EPWP)</i> . Contractors may receive financial incentives should they exceed specified contract participation goals.
Business opportunities	C1	Provide business opportunities for targeted enterprises	The contractor is required to achieve a contract participation goal in accordance with the requirements of SANS 1914-1 relating to the participation of targeted enterprises: a) as a contractual obligation; or b) in order to receive a financial incentive. Alternatively, the contractor is not set a contract participation goal but is required to report on the contract participation goal that is achieved through the performance of the contract.
	C2	Procure subcontractors for defined portions of the contract in terms of specified procedures	The contractor is required to procure targeted subcontractors for defined portions of the works in accordance with the requirements of the CIDB Standard for Uniformity in Construction Procurement.

Theme	Deliverable		Overview of requirements
	Number	Description	
Enterprise support and development programmes	D1	Provide third party management support services to targeted contractors	The contractor is required to provide in terms of SANS 1921-4 construction management services, materials management services, or a combination of such services in order to minimize the risk of works not being constructed to stated requirements, within budget and on time. (The contracts with targeted enterprises are with the employer and not the contractor)
	D2	Procure or manage (or both) mentoring services for targeted contractors	The contractor is required to procure or manage (or both) mentoring services in order to assist targeted enterprises in the establishing of business systems within their businesses in order to improve the sustainability and growth of their business.
	D3	Execute the contract in joint venture with a targeted partner	The contractor is required as an obligation of the contract to enter into a joint venture with a targeted enterprise after the award of the contract as an obligation of the contract in accordance with the requirements of SANS 1914-2 and to achieve a prescribed contract participation goal.
Skills development	E1	Provide experiential work opportunities towards a specified professional registration for designated persons	The contractor as an obligation of the contract is required to provide at least a specified quantum of work opportunities which enables designated persons to gain work place experience leading to a specified professional registration
	E2	Provide work learning opportunities towards a specified degree, diploma or certificate for designated persons	The contractor as an obligation of the contract is required to provide at least a specified quantum of work place opportunities which enables designated persons to gain work place experience leading to a specified degree, diploma or certificate from an accredited or registered formal institution of learning.
	E3	Provide experiential work opportunities towards a SAQA registered qualification or certificate for designated persons	The contractor as an obligation of the contract is required to provide at least a specified quantum of workplace opportunities and training towards trade competencies for designated persons
	E4	Procure and manage a training provider to provide specific training for designated persons	The contractor as an obligation of the contract is required to procure and manage at least a specified quantum of specific training work opportunities for designated persons
HIV/AIDS	F1	Promote HIV/AIDS awareness	The contractor as an obligation of the contract is required to promote HIV/AIDS awareness in accordance with the requirements of SANS 1921-6

**NOTES:**

- 1) This specification establishes requirements for contractors and is intended to be used by reference in the scope of work associated with a construction works contract. It does not establish requirements for those administering or monitoring the deliverables associated with construction contracts.
- 2) This specification presupposes that procurement documents are developed in accordance with the requirements of SANS 10403.
- 3) Annex A provides guidance on how to activate these specifications in the scope of work associated with a specific contract.
- 4) Annex B provides guidance on how to implement this specification in construction works contracts.

## 2 Normative references

The following referenced documents are indispensable for the application of this standard. For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

Basic Conditions of Employment Act, 1997 – Ministerial Determination No: 3 : *Special Public Works Programmes*, Government notice R63, Government Gazette No. 2304525 January, 2002

Construction Industry Development Board, *Standard for Uniformity in Construction Procurement*.

SANS 1914-1, *Targeted construction procurement – Part 1: Participation of targeted enterprises*

SANS 1914-2, *Targeted construction procurement – Part 2: Participation of targeted partners in joint ventures*

SANS 1914-5, *Targeted construction procurement – Part 5: Participation of targeted labour*

SANS 1921-4, *Construction and management requirements for contracts – Part 4: Third-party management support in works contracts*

SANS 1921-5, *Construction and management requirements for contracts – Part 5: Earthworks activities which are to be performed by hand*

SANS 1921-6, *Construction and management requirements for contracts – Part 6: HIV/AIDS awareness*

SANS 10403, *Formatting and compilation of construction procurement documents*

### Notes:

- 1 South African National Standards may be purchased on line from the following website:  
[https://www.sabs.co.za/Business\\_Units/Standards\\_SA/WebStore/WebStoreHome.aspx](https://www.sabs.co.za/Business_Units/Standards_SA/WebStore/WebStoreHome.aspx)
- 2 Ministerial Determination No 3 may be downloaded from the following website:  
[www.epwp.gov.za/Downloads/legal\\_ministerialdetermination.doc](http://www.epwp.gov.za/Downloads/legal_ministerialdetermination.doc)
- 3 Documents published by the Construction Industry Development Board may be downloaded from [www.cidb.org.za](http://www.cidb.org.za)

## 3 Definitions

For the purposes of this specification, the definitions given in the normative references and the following definitions apply:

### **by hand**

through the use of tools which are manually operated and powered

### **entry level contractor**

a grade 1 contractor

### **grade**

a contractor's contractor grading designation established by the Construction Industry Development Board in terms of the Construction Industry Development Regulations issued in terms of the Construction Industry Development Board Act of 2000

### **labour-intensive:**

methods of construction involving a mix of machines and labour, where labour, utilising hand tools and light plant and equipment, is preferred to the use of heavy machines, where technically and economically feasible

**large contractor**

a grade 8 or 9 contractor

**learning programme**

any learning programme set out in the learning programme matrix set out in Table 1.

**Table 1: Learning programme matrix\***

Category	Narrative description	Delivery Mode	Learning site	Learning achievement
A	Institution-based theoretical instruction alone – formally assessed by the institution.	Instructional instruction	Institutions such as universities and colleges, schools and ABE providers	Recognised theoretical knowledge resulting in the achievement of a degree, diploma or certificate issued by an accredited or registered formal institution of learning.
B	Institution-based theoretical instruction as well as some practical learning with an employer or in a simulated work environment – formally assessed through the institution.	Mixed mode delivery with institutional instruction as well as supervised learning in an appropriate workplace or simulated work environment	Institution such as universities and colleges, schools, ABET providers and workplace	Theoretical knowledge and workplace experience with set requirements resulting in the achievement of a degree, diploma or certificate issued by an accredited or registered formal institution of learning.
C	Recognised or registered structured experiential learning in the workplace that is required after the achievement of a qualification – formally addressed by a statutory occupational or professional body	Structured learning in the workplace with mentoring or coaching	Workplace	Occupational or professional knowledge and experience formally recognised through registration or licensing
D	Occupationally directed instructional and work-based learning programme that requires a formal contract – formally assessed by an accredited body.	Institutional instruction together with structured, supervised experiential learning in the workplace	Institution and workplace	Theoretical knowledge and workplace learning, resulting in the achievement of a South African Qualification Authority registered qualification or certificate or other similar occupational or professional qualification issued by an accredited or registered formal institution of learning
E	Occupationally-directed instructional and work-based learning programme that does not require a formal contract – formally assessed by an accredited body.	Structured, supervised experiential learning in the workplace which may include some institutional instruction.	Workplace and some institutional as well as ABE providers	Credits awarded for registered unit standards
F	Occupationally-directed informal instructional programmes	Structured information sharing or direct instruction involving workshops, seminars and conferences and short courses.	Institutions, conferences and meetings	Continuing professional development, attendance certificates and credits against registered unit standards (in some instances)
G	Work based informal programmes	Internal training	Workplace	Increased understanding of job or work context or improved performance or skills

\*This learning programme matrix is the same as that contained in the Codes of Good Practice on Black Economic Empowerment published in terms of the Broad Based Black Economic Empowerment Act of 2003.

**leviable amount**

bears the meaning as defined in the Skills Development Act of 1999 as determined using the Fourth Schedule to the Income Tax Act

**medium contractor**

a grade 6 or 7 contractor

**small contractor**

a grade 2, 3, 4, or 5 contractor

**specification data**

data, provisions and variations that make this specification or a national specification applicable to a particular contract (see annex A)

**targeted development programme**

a development programme that targets construction businesses that have the potential and desire to improve their grades

## **4 Requirements for deliverables**

### ***4.1 Deliverable A1: Provide employment opportunities to targeted labour***

#### **4.1.1 General**

Targeted labour shall be engaged in the performance of the contract in accordance with the requirements of SANS 1914-5 as amended in 4.1.2.

#### **4.1.2 Amendments to SANS 1914-5**

##### **4.1.2.1** Replace the existing definitions with the following:

**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, the extent and scope of which were not defined at the time that the contract was entered into;
- b) work or services to be performed, or supplies provided, by a subcontractor nominated or selected by the employer;
- c) provision for escalation of costs; or
- d) budgetary provisions, e.g. contingencies

**contract participation goal (CPG)**

sum of the wages and allowances, for which the contractor contracts targeted labour in the performance of the contract, expressed as a percentage of the contract amount associated with the targeting strategy that is identified in the specification data

##### **4.1.2.2** Add the following definitions:

**contract amount**

- 1) targeting strategy A**



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

**2) targeting strategy B**

financial value of the contract upon completion of all contractual obligations, exclusive of any value added tax or sales tax which the law requires the employer to pay to the contractor

**targeting strategy A**

a strategy which:

- a) links the granting of a preference by the employer in the evaluation of tender offers in return for the tendering of a contract participation goal or an undertaking to attain a specified contract participation goal at the time that tenders are evaluated; or
- b) requires a contractor to achieve a minimum specified goal in the performance of a contract; or
- c) involves both a) and b)

**targeting strategy B**

a strategy which:

- a) links the payment of an incentive bonus to a contractor for the attainment of a specified contract participation goal; or
- b) requires the contractor to record and report on the quantum of work generated for targeted labour.

**4.1.2.3** Replace clauses 3.1.1 and 3.1.2 with the following:

**3.1.1** The contractor shall engage targeted labour directly in the performance of the contract to the extent that the total monetary value of such engagements, exclusive of any value added tax or sales tax required by law, expressed as a percentage of the contract amount for the targeting strategy specified in the specification data, is not less than the contract participation goal identified in the specification data.

**3.1.2** The contractor shall, in the case of targeting strategy A, submit details of his plan to achieve the contract participation goal to the employer's representative on the contract participation goal implementation plan form contained in annex C, within five working days of being instructed to do so. If no such instructions are given, these plans shall be submitted before the submission of the first claim for payment in terms of the contract.

**4.1.2.4** Replace clauses 3.3.1 and 3.3.2 with the following:

**3.3.1** Credits towards the contract participation goal shall be granted, subject to the provisions of 3.3.2, by converting the total monetary value of wages and allowances paid to targeted labour, exclusive of any value added tax or sales tax required by law, to a percentage of the applicable contract amount and multiplying such values by the appropriate weightings for the different target groups, if any, specified in the specification data.

**3.3.2** No credits shall be accorded should the contractor fail to enter into written contracts with targeted labour. Cognizance shall be taken of any conditions of such contracts. 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 specification data.

**4.1.2.5** Replace clause 6 with the following:

In the event that, and where targeting strategy A applies to the contract, the contractor fails to substantiate that any failure to achieve the contract participation goal was due to

- a) quantitative under runs,
  - b) the elimination of items to be performed by targeted labour, or
  - c) any other reason beyond the contractor's control which may be acceptable to the employer,
- the sanctions provided for in the contract shall apply.

**4.1.2.6** Delete “net amount” in definitions and replace “net amount” with “contract amount” wherever it appears in the text.

## **4.2 Deliverable 2: Utilise local resources**

### **4.2.1 General**

Targeted labour shall be engaged in the performance of the contract in accordance with the requirements of SANS 1914-4 as amended in 4.2.2.

### **4.2.2 Amendments to SANS 1914-4**

**4.2.2.1** Replace the existing definitions with the following:

**contract participation goal (CPG)**

amount equal to the sum of:

- a) the wages and allowances for which the contractor contracts to engage targeted labour; and
- b) the value of supplies, services and works for which the contractor contracts targeted enterprises in the performance of the contract;

exclusive of any value added tax or sales tax required by law, expressed as a percentage of the contract amount associated with the targeting strategy that is identified in the specification data

**4.2.2.2** Add the following definitions:

**contract amount**

**1) targeting strategy A**

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

**2) targeting strategy B**

financial value of the contract upon completion of all contractual obligations, exclusive of any value added tax or sales tax which the law requires the employer to pay to the contractor

**targeting strategy A**

a strategy which:

- a) links the granting of a preference by the employer in the evaluation of tender offers in return for the tendering of a contract participation goal or an undertaking to attain a specified contract participation goal at the time that tenders are evaluated; or
  - b) requires a contractor to achieve a minimum specified goal in the performance of a contract;
- or

- c) involves both a) and b)

**targeting strategy B**

a strategy which:

- a) links the payment of an incentive bonus to a contractor for the attainment of a specified contract participation goal; or
- b) requires the contractor to record and report on the quantum of work generated for targeted labour.

**4.2.2.3** Replace clauses 3.1.1 and 3.1.2 with the following:

**3.1.1** The contractor shall engage targeted labour and targeted enterprises directly in the performance of the contract to the extent that the total monetary value of such engagements, exclusive of any value added tax or sales tax required by law, is not less than the contract participation goal provided for in the specification data.

**3.1.2** The contractor shall, in the case of targeting strategy A, submit details of his plan to achieve the contract participation goal on the contract participation goal implementation form contained in annex C, within five working days of being instructed to do so. If no such instructions are given, these plans shall be submitted before the submission of the first claim for payment.

**4.2.2.4** Replace 3.2.2 with the following:

**3.2.2** Contractors shall submit completed targeted enterprise declaration affidavits and, where targeting strategy A applies, letters of undertaking to act as subconsultants, subcontractors, suppliers, manufacturers or service providers (see annex D), in respect of each and every targeted enterprise and targeted partner whose contribution shall be counted towards the contract participation goal. These documents shall, unless otherwise stated in the specification data, be submitted to the employer's representative before the submission of the first claim for payment.

**4.2.2.5** Replace 4.1 with the following:

The contractor shall enter into written contractual agreements with all the targeted enterprises cited in the contract participation goal implementation plan and shall, as soon as is practicable, furnish the employer's representative with copies of such agreements and the written acceptances thereof. The contract to be performed by the targeted enterprises shall, in the case of targeting strategy A, thereafter neither be reduced in scope, nor terminated without the prior written approval of the employer's representative, which shall not be unreasonably withheld or delayed.

**4.2.2.6** Replace 4.2.1 with the following:

**4.2.1** Where targeting strategy A applies and In the event that, through no fault of the contractor, a contracted targeted enterprise is found to be:

- a) unable to perform, or to perform on time;
- b) unable to produce acceptable work;
- c) unwilling to perform work required; or
- d) not fit to perform the service;

the contractor shall notify the employer's representative of the apparent necessity to reduce or terminate such a targeted enterprise's contract, citing the reasons therefor.

**4.2.2.7** Replace 4.3 with the following:

Where, in the case of targeting strategy A, an enterprise under contract was initially considered to be a targeted enterprise but is later discovered not to be so, or is found not to be creditable

towards contract participation goals, the employer may consider a partial waiver of the contractor's obligations towards the achievement of the contract participation goal in respect of such a targeted enterprise, should the contractor satisfactorily demonstrate that he was justified in believing the enterprise to be a targeted enterprise and that eligibility standards were not violated.

#### **4.2.2.6** Replace 6 with the following:

In the event that, and where targeting strategy A applies, the contractor fails to substantiate that any failure to achieve the contract participation goal was due to

- a) quantitative underruns,
- b) the elimination of items contracted to targeted enterprises, or
- c) any other reason beyond the contractor's control which may be acceptable to the employer,

the sanctions provided for in the contract shall apply.

**4.2.2.7** Delete "net amount" in definitions and replace "net amount" with "contract amount" wherever it appears in the text.

### ***4.3 Deliverable B1: Provide employment and skills development opportunities to targeted labour***

#### **4.3.1 General requirements**

**4.3.1.1** Labour intensive works comprise the activities listed in the specification data associated with this specification. Such works shall be constructed using local workers who are temporarily employed in terms of the Ministerial Determination No: 3 of 2002 and the requirements of 4.3.2.

**4.3.1.2** Labour intensive works shall be managed and supervised by staff who have completed the following skills programmes:

- a) grade 5 and above contractors - staff who have completed the skills programmes as set out in Table 1;
- b) grade 1, 2, 3 and 4 contractors:
  - i) a managing principal of the contractor (i.e. a sole proprietor, the senior partner, the managing director or managing member of a close corporation, as relevant) who has personally completed, the NQF level 2 skills programme as described in Table 1; and
  - ii) other supervisory staff who have completed the NQF level 4 skills programme as described in Table 1.

**4.3.1.2** Labour intensive works shall be performed in accordance with the requirements of 4.3.4 and, if relevant, in accordance with the specification data.

#### **4.3.2 Requirements for the sourcing and engagement of labour**

##### **4.3.2.1 General**

**4.3.2.1.1** Unskilled and semi-skilled labour required for the execution of all labour intensive works shall be engaged strictly in accordance with prevailing legislation and the requirements of SANS 1914-5 as set out in 4.3.3

**4.3.2.1.2** The rate of pay set for the local workers who are temporarily employed is as specified in the specification data.

**4.3.2.1.3** Tasks established by the contractor must be such that:

- a) the average worker completes 5 tasks per week in 40 hours or less; and
- b) the weakest worker completes 5 tasks per week in 55 hours or less.

**Table 1: Skills programme for supervisory and management staff**

Personnel	NQF level	Unit standard titles	Skills programme description
Team leader / supervisor	2	Apply Labour Intensive Construction Systems and Techniques to Work Activities	This unit standard shall be completed, <b>and</b> any one of these 3 unit standards shall be completed
		Use Labour Intensive Construction Methods to Construct and Maintain Roads and Stormwater Drainage	
		Use Labour Intensive Construction Methods to Construct and Maintain Water and Sanitation Services	
		Use Labour Intensive Construction Methods to Construct, Repair and Maintain Structures	
Foreman/ supervisor	4	Implement labour Intensive Construction Systems and Techniques	This unit standard shall be completed, <b>and</b> any one of these 3 unit standards shall be completed
		Use Labour Intensive Construction Methods to Construct and Maintain Roads and Stormwater Drainage	
		Use Labour Intensive Construction Methods to Construct and Maintain Water and Sanitation Services	
		Use Labour Intensive Construction Methods to Construct, Repair and Maintain Structures	
Site Agent / Manager (i.e the contractor's most senior representative that is resident on the site)	5	Manage Labour Intensive Construction Processes	Skills Programme against this single unit standard

**4.3.2.1.4** The contractor shall revise the time taken to complete a task whenever it is established that the time taken to complete a weekly task is not within the requirements of 4.3.2.1.3.

**4.3.2.1.5** The contractor shall, through all available community structures, inform the local community of the labour intensive works and the employment opportunities presented thereby. Preference must be given to people with previous practical experience in construction and / or who come from households:

- a) where the head of the household has less than a primary school education;
- b) that have less than one full time person earning an income;
- c) where subsistence agriculture is the source of income; and
- d) those who are not in receipt of any social security pension income

**4.3.2.1.6** The Contractor shall endeavour to ensure that the expenditure on the employment of temporary workers is in the following proportions:

- a) 60 % women;
- b) 20% youth who are between the ages of 18 and 25; and
- c) 2% on persons with disabilities.

where people with disabilities are people with a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.

#### **4.3.2.2 Training of targeted labour**

**4.3.2.2.1** The contractor shall provide all the necessary 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 in a manner that does not compromise worker health and safety.

**4.3.2.2.2** The cost of the formal training of targeted labour, will be funded by the provincial office of the Department of Labour. This training should take place as close to the project site as practically possible.

**4.3.2.2.3** The contractor shall access this training by informing in writing the relevant provincial office of the Department of Labour in writing, within 14 days of being awarded the contract, of the likely number of persons that will undergo training and when such training is required. The contractor shall deliver to the employer copies of all correspondence to and received from the Department of Labour in this regard.

**4.3.2.2.4** The contractor shall also fax a copy of the request for training made in terms of 4.3.2.2.4 to the EPWP Training Director in the Department of Public Works– Cinderella Makunike, Fax Number 012 328 6820 or email [cinderella.makunike@dpw.gov.za](mailto:cinderella.makunike@dpw.gov.za) (Tel: 083 677 4026)

**4.3.2.2.5** The contractor shall be responsible for scheduling the training of targeted labour and shall take all reasonable steps to ensure that each person is provided with a minimum of six days of formal training if he or she is employed for 3 months or less and a minimum of ten days if he she is employed for 4 months or more.

**4.3.2.2.6** The contractors shall do nothing to dissuade targeted labour from participating in the above mentioned training programmes.

**4.3.2.2.7** An allowance equal to 100% of the task rate or daily rate shall be paid by the contractor to targeted labour who attend formal training, in terms of 1.3.4 above.

**4.3.2.2.8** The contractor shall prepare and attach to his claims for payment, in a form approved by the employer, a schedule which lists the names of all targeted labour that has received training, the number of days worked, the number of days training received and the quantum of the allowances paid.

### **4.3.3 Specific provisions pertaining to SANS 1914-5**

#### **4.3.3.1 General**

**4.3.3.1.1** Targeted labour means unemployed persons who are employed as local labour on the project.

**4.3.3.1.2** There is no specified contract participation goal for the contract. The contract participation goal shall be measured in the performance of the contract to enable the employment provided to targeted labour to be quantified.

**4.3.3.1.3** The wages and allowances used to calculate the contract participation goal shall, with respect to both time-rated and task rated workers, comprise all wages paid and any training allowance paid in respect of agreed training programmes.

#### **4.3.3.2 Terms and conditions for the engagement of targeted labour**

Further to the provisions of clause 3.3.2 of SANS 1914-5, written contracts shall be entered into with targeted labour.

### **4.3.3.3 Variations to SANS 1914-5**

**4.3.3.3.1** Delete “net amount” in definitions and replace “net amount” with contract amount wherever it appears in the text.

**4.3.3.3.2** Add the following definition:

**contract amount**

financial value of the contract upon completion of all contractual obligations, exclusive of any value added tax or sales tax which the law requires the employer to pay the contractor.

**4.3.3.3.3** The schedule referred to in 5.2 of clause SANS 1914-5 shall in addition reflect the status of targeted labour as women, youth and persons with disabilities and the number of days of formal training provided to targeted labour.

### **4.3.4 Requirements for labour intensive works**

#### **4.3.3.1 Earthworks activities which are to be performed by hand**

Earthworks activities which are to be performed by hand shall be undertaken in accordance with the requirements of SANS 1921-5 read in conjunction with its associated specification data as set out in the specification data; and

#### **4.3.3.2 Stone pitching and rubble concrete masonry**

**4.3.3.2.1** All stone required for stone pitching and rubble concrete masonry, whether grouted or dry, must to be collected, loaded, off loaded and placed by hand.

**4.3.3.2.2** Sand and stone shall be hauled to its point of placement by means of wheelbarrows where the haul distance is not greater than 150m.

**4.3.3.2.3** Grout shall be mixed and placed by hand.

#### **4.3.3.3 Manufactured elements**

Elements manufactured or designed by the Contractor, such as manhole rings and cover slabs, precast concrete planks and pipes, masonry units and edge beams shall not individually, have a mass of more than 320kg. In addition the items shall be large enough so that four workers can conveniently and simultaneously acquire a proper hand hold on them.

## ***4.4 Deliverable C1: Provide business opportunities for targeted enterprises***

### **4.4.1 General**

Targeted enterprises shall be engaged in the performance of the contract in accordance with the requirements of SANS 1914-4 as amended in 4.2.2.

### **4.4.2 Amendments to SANS 1914-4**

**4.4.2.1** Replace the existing definitions with the following:

**contract participation goal (CPG)**

value of supplies, services and works for which the contractor contracts targeted enterprises exclusive of any value added tax or sales tax which the law requires the employer to pay to the contractor, expressed as a percentage of the contract amount associated with the targeting strategy that is identified in the specification data

**4.4.2.2** Add the following definitions:

**contract amount**

**1) targeting strategy A**

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

**2) targeting strategy B**

financial value of the contract upon completion of all contractual obligations, exclusive of any value added tax or sales tax which the law requires the employer to pay to the contractor

**targeting strategy A**

a strategy which:

- a) links the granting of a preference by the employer in the evaluation of tender offers in return for the tendering of a contract participation goal or an undertaking to attain a specified contract participation goal at the time that tenders are evaluated; or
- b) requires a contractor to achieve a minimum specified goal in the performance of a contract; or
- c) involves both a) and b)

**targeting strategy B**

a strategy which:

- a) links the payment of an incentive bonus to a contractor for the attainment of a specified contract participation goal; or
- b) requires the contractor to record and report on the quantum of work generated for targeted labour.

**4.4.2.3** Replace clauses 3.1.1 and 3.1.2 with the following:

**3.1.1** The contractor shall engage targeted enterprises directly or indirectly in the performance of the contract to the extent that the total monetary value of such engagements exclusive of any value added tax or sales tax required by law, is sufficient to achieve the contract participation goal provided for in the specification data.

**3.1.2** The contractor shall, in the case of targeting strategy A, submit details of his plan to achieve the contract participation goal to the employer's representative on the contract participation goal implementation plan form contained in annex C, within five working days of being instructed to do so. If no such instructions are given, these plans shall be submitted before the submission of the first claim for payment.

**4.2.2.4** Replace 3.2.2 with the following:

**3.2.2** Contractors shall submit completed targeted enterprise declaration affidavits and, where targeting strategy A applies, letters of undertaking to act as subconsultants, subcontractors, suppliers, manufacturers or service providers (see annex D), in respect of each and every targeted enterprise and targeted partner whose contribution shall be counted towards the contract



participation goal. These documents shall, unless otherwise stated in the specification data, be submitted to the employer's representative before the submission of the first claim for payment.

**4.2.2.5** Replace 4.1 with the following:

**4.1** The contractor shall enter into written contractual agreements with all the targeted enterprises and targeted partners cited in the contract participation goal implementation plan and shall, as soon as is practicable, furnish the employer's representative with copies of such agreements and the written acceptances thereof. The contract to be performed by the targeted enterprises and targeted partners shall, in the case of targeting strategy A, thereafter neither be reduced in scope, nor terminated without the prior written approval of the employer's representative, which shall not be unreasonably withheld or delayed.

**4.2.2.5** Replace 4.2.1 with the following:

**4.2.1** Where targeting strategy A applies and in the event that, through no fault of the contractor, a contracted targeted enterprise is found to be:

- a) unable to perform, or to perform on time;
- b) unable to produce acceptable work;
- c) unwilling to perform work required; or
- d) not fit to perform the service;

the contractor shall notify the employer's representative of the apparent necessity to reduce or terminate such a targeted enterprise's contract, citing the reasons therefor.

**4.2.2.6** Replace 4.3 with the following:

Where, in the case of targeting strategy A, an enterprise under contract was initially considered to be a targeted enterprise but is later discovered not to be so, or is found not to be creditable towards contract participation goals, the employer may consider a partial waiver of the contractor's obligations towards the achievement of the contract participation goal in respect of such a targeted enterprise, should the contractor satisfactorily demonstrate that he was justified in believing the enterprise to be a targeted enterprise and that eligibility standards were not violated.

**4.2.2.7** Replace 6 with the following:

In the event that, and where targeting strategy A applies, the contractor fails to substantiate that any failure to achieve the contract participation goal was due to

- a) quantitative underruns,
- b) the elimination of items contracted to targeted enterprises, or
- c) any other reason beyond the contractor's control which may be acceptable to the employer,

the sanctions provided for in the contract shall apply.

**4.2.2.8** Delete "net amount" in definitions and replace "net amount" with "contract amount" wherever it appears in the text.

## ***4.5 Deliverable C2: Procure subcontractors for defined portions of the contract in terms of specified procedures***

### **4.5.1 Portions of work to be subcontracted**

The portions of the works identified in the specification data shall be subcontracted in accordance with the subcontracting procedures described in 4.5.2.

## **4.5.2 Subcontracting procedures**

**4.5.2.1** Competitive tenders shall be advertised and invited in accordance with the requirements stated in the specification data in respect of each portion of the works that are required to be subcontracted in terms of 4.5.1 in accordance with the relevant provisions of the latest edition of the CIDB Standard for Uniformity in Construction Procurement. The Contract Data in the associated procurement documents shall be based on the standard form of contract identified in the specification data, with minimal project specific variations and amendments that do not change their intended usage.

**4.5.2.2** The employer together with the contractor shall evaluate the tenders received in accordance with the provisions of the Standard Conditions of Tender contained in Annex F of Standard for Uniformity in Construction Procurement. The evaluation panel shall comprise equal representatives from the Employer and from the Contractor.

**4.5.2.3** The Contractor shall without delay enter into written contract with the successful tendering subcontractor based on their accepted tender submission.

**4.5.2.4** The Contractor shall remain responsible for providing the subcontracted portion of the works as if the work had not been subcontracted.

## ***4.6 Deliverable D1: Provide third party management support services to targeted contractors***

Construction management and materials management services shall be provided in accordance with the requirements of SANS 1921-4

## ***4.7 Deliverable D2: Procure or manage (or both) mentoring services for targeted contractors***

(To be developed with CIDB)

## ***4.8 Deliverable D3: Execute the contract in joint venture with a targeted partner***

### **4.8.1 General**

Targeted partners shall be engaged in the performance of the contract in accordance with the requirements of SANS 1914-2 as amended in 4.8.2.

### **4.8.2 Amendments to SANS 1914-2**

**4.8.2.1** Replace the existing definitions with the following:

#### **contract participation goal (CPG)**

amount equal to the sum of the participation parameters in respect of each targeted partner multiplied by the contract amount of the contract, expressed as a percentage of the contract amount associated with the targeting strategy that is identified in the specification data

**4.8.2.2** Add the following definitions:

**contract amount**

**1) targeting strategy A**

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

**2) targeting strategy B**

financial value of the contract upon completion of all contractual obligations, exclusive of any value added tax or sales tax which the law requires the employer to pay to the contractor

**targeting strategy A**

a strategy which:

- a) links the granting of a preference by the employer in the evaluation of tender offers in return for the tendering of a contract participation goal or an undertaking to attain a specified contract participation goal at the time that tenders are evaluated; or
- b) requires a contractor to achieve a minimum specified goal in the performance of a contract; or
- c) involves both a) and b)

**targeting strategy B**

a strategy which:

- a) links the payment of an incentive bonus to a contractor for the attainment of a specified contract participation goal; or
- b) requires the contractor to record and report on the quantum of work generated for targeted labour.

**4.8.2.3** Replace clauses 3.1.1 and 3.1.2 with the following:

**3.1.1** The contractor shall enter into a joint venture agreement at a prime contract level with one or more targeted partners in the performance of the contract to the extent that the total monetary value of such engagements, exclusive of any value added tax or sales tax required by law, is sufficient to achieve the contract participation goal provided for in the specification data.

**3.1.2** The contractor shall, in the case of targeting strategy A, submit details of his plan to achieve the contract participation goal on the contract participation goal implementation plan form contained in annex C, and details of the joint venture on the joint venture disclosure form contained in annex D within five working days of being instructed to do so. If no instructions are given, these plans shall be submitted before the submission of the first claim for payment.

**4.8.2.4** Replace 3.2.2 with the following:

Contractors shall submit completed targeted partner declaration affidavits in respect of each and every targeted partner whose contribution shall be counted towards the contract participation goal. These documents shall, unless otherwise stated in the specification data, be submitted to the employer's representative before the submission of the first claim for payment.

**4.8.2.5** Replace 3.3.1 with the following:

**3.3.1** Credits towards the contract participation goal shall be granted by summing the products of the contract amount and the participation parameters of targeted partners within the joint

venture and reducing this amount to a percentage of the contract amount subject to compliance with the requirements of 3.2.

**4.8.2.6** Replace 4.1 with the following:

The contractor shall enter into written contractual agreements with all the targeted partners cited in the contract participation goal implementation plan and shall, as soon as is practicable, furnish the employer's representative with copies of such agreements. The contract to be performed by the targeted partners shall, in the case of targeting strategy A, thereafter neither be reduced in scope, nor terminated without the prior written approval of the employer's representative, which shall not be unreasonably withheld or delayed.

**4.8.2.7** Replace 4.2.1 with the following:

**4.2.1** Where targeting strategy A applies and in the event that, through no fault of the contractor, a contracted targeted enterprise is found to be:

- a) unable to perform, or to perform on time;
- b) unable to produce acceptable work;
- c) unwilling to perform work required; or
- d) not fit to perform the service;

the contractor shall notify the employer's representative of the apparent necessity to reduce or terminate such a targeted enterprise's contract, citing the reasons therefor.

**4.8.2.8** Replace 4.3 with the following:

Where, in the case of targeting strategy A, an enterprise under contract was initially considered to be a targeted partner but is later discovered not to be so, or is found not to be creditable towards contract participation goals, the employer may consider a partial waiver of the contractor's obligations towards the achievement of contract participation goals in respect of such a targeted partner, should the contractor satisfactorily demonstrate that he was justified in believing the enterprise to be a targeted partner and that eligibility standards were not violated.

**4.8.2.9** Replace 6 with the following:

In the event that, and where targeting strategy A applies, the contractor fails to substantiate that any failure to achieve the contract participation goal was due to

- a) quantitative underruns,
- b) the elimination of items contracted to targeted enterprises, or
- c) any other reason beyond the contractor's control which may be acceptable to the employer,

the sanctions provided for in the contract shall apply.

**4.8.2.10** Delete "net amount" in definitions and replace "net amount" with "contract amount" wherever it appears in the text.

## ***4.9 Deliverable E1: Provide work opportunities towards professional registration for designated persons***

(To be developed with CIDB)

**4.10 Deliverable E2: Provide experiential work opportunities towards a technical qualification for designated persons**

(To be developed with CIDB)

**4.11 Deliverable E3: Provide experiential work opportunities and training towards trade competencies for designated persons**

(To be developed with CIDB)

**4.12 Deliverable E4: Procure and manage a training provider to provide specific training for designated persons**

(To be developed with CIDB)

**4.13 Deliverable F1: Promote HIV/AIDS awareness**

HIV/AIDS awareness shall be provided in accordance with the requirements of SANS 1921-6.

**5 Identifying contractors that are capable of being developed within a targeted development programme**

Contractors that are considered capable of being developed within a targeted development programme are enterprises:

- a) that are separate and distinct business entities managed by one owner or more.;
- b) who earn more than 75% of their annual turnover through the provision of construction works; and
- c) that can demonstrate on the date of assessment compliance with the indicators listed in Table 1.

**Table 1: Indicators for assessing a contractor's development potential**

Indicator		entry level	small enterprise				medium enterprise	large enterprise	
		CIDB Contractor Grading Designation							
No	Description	1	2	3	4	5	6	7	8
1	Enterprise can produce a valid tax clearance certificate	yes	yes	yes	yes	yes	yes	yes	yes
2	Principal owner or manager (or both) is numerate and literate and has either a grade 10 or higher school certificate or has been assessed through a process of recognition of prior learning to have an equivalent qualification.	yes	yes	yes	yes	yes	yes	yes	yes
3	Registered for VAT	na	yes	yes	yes	yes	yes	yes	yes
4	Construction business is operated from permanent premises which are rented, owned or leased specifically for that purpose.	na	yes	yes	yes	yes	yes	yes	yes
5	Enterprise registered as a close corporation in terms of the Close Corporation Act of 1984 or as a company in terms of the Companies Act of 1973	na	yes	yes	yes	yes	yes	yes	yes
6	Enterprise has business account in the name of the company which is separate from personal bank account	na	yes	yes	yes	yes	yes	yes	yes
7	Enterprise can produce complete financial statements for: <ul style="list-style-type: none"> <li>last financial year within 6 months of the end of its financial year; or</li> <li>the financial year preceding the last financial year where the financial year end is less than six months before the date of assessment.</li> </ul>	na	na	yes	yes	yes	yes	yes	yes
8	Has at least one full time employee other than an owner, responsible for each of: <ul style="list-style-type: none"> <li>administration of business systems; and</li> <li>supervision of construction</li> </ul>	na	na	na	yes	yes	yes	yes	yes
9	Have credit facilities with at least this number of different suppliers	-	1	2	3	4	5	5	5
10	Has successfully completed, as evidenced by a satisfactory performance report, at least two contracts in the class of works under consideration involving the provision of labour and materials in the absence of any cession agreement each having at least this value in Rands including VAT	32k	150k	480k	1,12m	2,16m	5,0m	15,2m	47,6m
11	Total annual average turnover in Rands over last two financial years	na	na	1,05m	1,9m	3,9m	10,8m	38,8m	126m
12	Have in full time employment at least this number of persons professionally registered with any of the Councils referred to in the Built Environment Council Act of 2000	na	na	na	na	1	2	3	4
13	Have a growth in turnover over last two financial years that exceeds the rate of inflation plus 7,5%.	na	na	na	na	yes	yes	yes	yes
14	A centralised administration of the business's processes and decentralised supervision structures for each project in terms of which employees carry full responsibility and accountability for that project*	na	na	na	na	na	yes	yes	yes
15	Policy statements in respect of: <ul style="list-style-type: none"> <li>human resources;</li> <li>health and safety;</li> <li>quality management;</li> </ul>	na	na	na	na	na	yes	yes	yes
16	Policy statements in respect of environmental management	na	na	na	na	na	na	na	yes
17	Skills development expenditure on Learning Programmes, excluding amount of levy payable in terms of the skills development levies Act, as percentage of leviable amount equals or exceeds this amount.	na	na	na	na	na	0,8%	1,2%	1,2%
18	Number of employees participating in Learnerships or Category A, B, C or D Learning Programmes as a percentage of total employees equals or exceeds	na	na	na	na	na	na	2,0%	2,0%

\* As demonstrated through an interview

## Annex A: Specification data

Specification data form an essential part of this specification, without which requirements are incomplete.

The format for the specification data has been developed to be readily included in the scope of work of a particular contract.

### Example:

#### Social and economic development requirements

The contractor shall deliver the following deliverables as described in the March 2007 edition of the CIDB Specification for Social and Economic Deliverables in Construction Works Contracts (SSED) ([www.cidb.org.za](http://www.cidb.org.za)) and the following associated specification data

**Note:** Delete deliverables that do not apply and insert relevant specification data taking account of the guidance notes

Clause number	Specification data	Guidance notes (don't include in scope of works)
<b>Deliverable A1: Provide employment opportunities to targeted labour</b>		
The specification data associated with SANS 1914-5 is as follows:		
2.5	The employer's representative is .....	Insert the name or designation of the employer's representative. (Usually the name of the person responsible for administering the contract e.g. Engineer, Project Manager or Principal Agent.)
	Target area <b>Target Area 1</b> shall be the geographic area which falls under the jurisdiction of ..... <b>Target Area 2</b> shall be the geographic area, excluding Target Area 1, which falls under the jurisdiction of the ..... Council. <b>Target Area 3</b> shall be the geographic area which falls within the ..... Province.	Define target area if referred to in the definition for targeted labour.
2.8	Targeted labour means .....	Define targeted labour (see SANS 10396)
	The targeting strategy is .....	State the applicable targeting strategy A or B, depending upon the usage of CPGs in the contract
2.2	The contract participation goal is .....% <i>or</i> The contractor participation goal is as stated in the Preferencing Schedule <i>or</i> The contract participation goal is as stated in the scope of work / partnering schedule <i>or</i> There is no specific contract participation goal set for this contract	Specify the contract participation goal, if any, that applies to the contract or identify the document in which the applicable CPG is located.  Select the appropriate statement, depending on what is to be achieved and which targeting strategy is used.  Ensure that the tendered contract participation goals form part of the offer, if they are not captured in a returnable schedule which is included in the scope of work in the contract.
2.9	The following weightings shall apply: 1 Targeted labour other than ..... 2 Targeted labour (.....) ..... 3 Targeted labour (.....) .....	Where none are provided, a default value of 1 is assumed.
3.3.2	Contracts with targeted labour must include the following clauses / comply with the following: .....	State requirements for contracts, if any.

Clause number	Specification data	Guidance notes (don't include in scope of works)
<b>Deliverable A2: Utilise local resources</b>		
The specification data associated with SANS 1914-4 is as follows:		
2.6	The employer's representative is .....	Insert the name or designation of the employer's representative. (Usually the name of the person responsible for administering the contract e.g. Engineer, Project Manager or Principal Agent.)
	<p>Target area</p> <p><b>Target Area 1</b> shall be the geographic area which falls under the jurisdiction of .....</p> <p><b>Target Area 2</b> shall be the geographic area, excluding Target Area 1, which falls under the jurisdiction of the ..... Council.</p> <p><b>Target Area 3</b> shall be the geographic area which falls within the ..... Province.</p>	Define the geographical area which defines the target area, e.g. the geographical area which falls under the jurisdiction of .....council.
2.11	A targeted enterprise is .....	Define targeted enterprises (see SANS 10396)
2.12	Targeted labour means .....	Define targeted labour (see SANS 10396)
	The targeting strategy is .....	State the applicable targeting strategy A or B, depending upon the usage of CPGs in the contract
2.3	<p>The contract participation goal is .....%</p> <p><i>or</i></p> <p>The contractor participation goal is as stated in the Preferencing Schedule</p> <p><i>or</i></p> <p>The contract participation goal is as stated in the scope of work / partnering schedule</p> <p><i>or</i></p> <p>There is no specific contract participation goal set for this contract</p>	<p>Specify the contract participation goal, if any, that applies to the contract or identify the document in which the applicable CPG is located.</p> <p>Select the appropriate statement, depending on what is to be achieved and which targeting strategy is used.</p> <p>Ensure that the tendered contract participation goals form part of the offer, if they are not captured in a returnable schedule which is included in the scope of work in the contract.</p>
3.2.1	A contractor may achieve the contract participation goal only by means of Method .....	Where only one Method applies, state which of the methods apply.
3.2.2	The targeted enterprise declaration and letters of undertaking are to be submitted within 3 months of the commencement of the contract.	State when the targeted enterprise declaration and letters of undertaking are to be submitted if they are not to be submitted before the first submission for payment.
3.3	<p>The following weightings shall apply:</p> <p>Targeted area 1 .....</p> <p>Targeted area 2 .....</p> <p>Targeted area 3 .....</p> <p><i>or</i></p> <p>Targeted enterprise type 1 .....</p> <p>Targeted enterprise type 2 .....</p> <p>Targeted enterprise type 3 .....</p>	Where none are provided, a default value of 1 is assumed.



Clause number	Specification data	Guidance notes (don't include in scope of works)
<b>Deliverable B1: Provide employment and skills development opportunities to targeted labour</b>		
4.3.1.1	<p>The following activities are to be carried out by temporarily employed local workers:</p> <ul style="list-style-type: none"> <li>• earthworks activities which are to be performed by hand, namely. trench excavation, compaction of backfilling to trenches in areas not subject to traffic, clearing and grubbing, shaping, loading, haul, off-loading, spreading, compaction and grassing</li> <li>• stone pitching and rubble masonry</li> <li>• manufactured elements</li> <li>• .....</li> </ul>	<p>Delete any activities which are not be performed by hand</p> <p>Delete if not applicable Delete if not applicable Add in additional items</p>
4.3.2.1.2	The rate of pay set is R .....per task or per day.	<p>Set the rate of pay. Clause 10.4 of the Ministerial Determination No 3 of 2002 requires that the following should be considered when setting rates of pay for workers:</p> <p><i>10.4.1 The rate set should take into account wages paid for comparable unskilled work in the local area per sector, if necessary.</i></p> <p><i>10.4.2 The rate should be an appropriate wage to offer an incentive for work, to reward effort provided and to ensure a reasonable quality of work. It should not be more than the average local rate to ensure people are not recruited away from other employment and jobs with longer-term prospects.</i></p> <p><i>10.4.3 Men, women, disabled persons and the aged must receive the same pay for work of equal value.</i></p>
The specification data associated with SANS 1921-5 is as follows		
	<p><b>Essential data</b> 5.1 The depth of trenches which are to be excavated by hand is ..... m</p> <p><b>Variations</b> ..... .....</p> <p><b>Additional clauses</b> .....</p>	<p>State depth. Typically less than 1,5m provided that the ground is stable.</p> <p>State variations if any e.g. specific compaction requirements or any activities that are not to be performed by hand</p> <p>State additional requirements and identify other activities to be performed by hand, as required.</p>
<b>Deliverable C1: Provide business opportunities for targeted enterprises</b>		
The specification data associated with SANS 1914-1 is as follows:		
2.7	The employer's representative is .....	Insert the name or designation of the employer's representative. (Usually the name of the person responsible for administering the contract e.g. Engineer, Project Manager or Principal Agent.)
2.17	A targeted enterprise is .....	Define targeted enterprise (See SANS 10396)
	The targeting strategy is .....	State the applicable targeting strategy A or B, depending upon the usage of CPGs in the contract.

Clause number	Specification data	Guidance notes (don't include in scope of works)
	<p>The contract participation goal is .....%</p> <p><i>or</i></p> <p>The contractor participation goal is as stated in the Preferencing Schedule</p> <p><i>or</i></p> <p>The contract participation goal is as stated in the scope of work / partnering schedule</p> <p><i>or</i></p> <p>There is no specific contract participation goal set for this contract</p>	<p>Specify the contract participation goal, if any, that applies to the contract or identify the document in which the applicable CPG is located.</p> <p>Select the appropriate statement, depending on what is to be achieved and which targeting strategy is used.</p> <p>Ensure that the tendered contract participation goals form part of the offer, if they are not captured in a returnable schedule which is included in the scope of work in the contract.</p>
	<p>A contractor may achieve the contract participation goal only by means of the methods set out in ..), ...) of 3.2.1.</p> <p><i>or</i></p> <p>The contract participation goal may only be achieved by subcontracting work to one or more targeted enterprises to perform commercially useful functions in the performance of the contract.</p>	<p>Where only some of the options provided in 3.2.1 a) to f) apply, state which of the methods apply. Alternatively, if required, modify the standard methods</p>
	<p>The targeted enterprise declaration and letters of undertaking are to be submitted within 3 months of the commencement of the contract.</p>	<p>State when the targeted enterprise declaration and letters of undertaking are to be submitted if they are not to be submitted before the first submission for payment.</p>
<p><b>Deliverable C2: Procure subcontractors for defined portions of the contract in terms of specified procedures</b></p>		
<p>4.5.1</p>	<p>The following portions of the works shall be subcontracted:</p> <p>.....</p> <p>.....</p> <p><i>or</i></p> <p>A contractor shall achieve the contract participation goal by subcontracting work to targeted enterprises in accordance with the provisions of 4.4 for deliverable C1.</p>	<p>Identify the portions of the works that are to be subcontracted.</p> <p>State specific portions of the work or activities that are to be subcontracted.</p> <p>Complete if contractor is to subcontract a percentage of the works in accordance with the requirements of SANS 1914-1 and provide the appropriate specification data for deliverable C1.</p>
<p>4.5.2</p>	<p>The advertising procedure to be followed is .....</p> <p>The manner in which subcontractors are to be prequalified is .....</p> <p>The eligibility criteria for submitting a tender is .....</p> <p>The preferences set out in annexure .... are to be offered to tenderers. The maximum number of points allocated to</p> <p>Method ... is to be used in the evaluation of tenders.</p>	<p>State the procedures, as relevant, to be followed in respect of the following:</p> <ul style="list-style-type: none"> <li>i) placing of advertisements;</li> <li>ii) prequalification of tenderers;</li> <li>iii) eligibility criteria</li> <li>iv) preferences</li> <li>v) method of evaluation to be used in terms of the standard conditions of tender.</li> </ul>

Clause number	Specification data	Guidance notes (don't include in scope of works)
4.5.2.1	The Contract Data shall be based on the latest edition of .....	Omit if contractor is permitted to choose a particular form of subcontract or state which of the following standard forms apply: <b>BIFSA</b> - BIFSA Non-Nominated Subcontract for use with the JBCC Series 2000 Principal Building Agreement - BIFSA Standard Subcontract Agreement 1995 edition (Amended 2000), for use with Principal Building Agreements other than the JBCC Principal Building Agreement. - BIFSA Labour-only sub-contract <b>Construction Industry Development Board</b> - Standard subcontract (labour only) <b>The Joint Building Contracts Committee (JBCC series 2000)</b> - Nominated / selected Subcontract Agreement <b>New Engineering Contract (NEC)</b> - NEC Engineering and Construction Subcontract - NEC Engineering and Construction Short Subcontract <b>SAFCEC</b> - General conditions of subcontract
<b>Deliverable D1: Provide third party management support to targeted contractors</b>		
	Construction management services only are required. Construction and materials management services are required. Construction management services are required. Materials management services will be provided by others.	Select which of the statements apply.
5.1.1(b)	The construction manager is required to arrange for the supply of mechanical equipment and the supply and delivery to site of materials.	Amend as appropriate or omit if not a requirement.
5.1.1(i)	The construction manager is required to provide the following site facilities: ..... .....	State facilities or omit if not a requirement.
5.1.1(l)	The construction manager is required to assist the contractor to register with the following public bodies: ..... .....	Identify public bodies or omit if not a requirement.
5.2.1(b)	The employer's policy pertaining to conditions of employment is as follows: .....	State policy or omit if there is none.
5.1.3.1(h)	The following name boards are required: .....	State requirements or omit item.
<b>Deliverable D2: Procure or manage (or both) mentoring services for targeted contractors</b>		
<b>Deliverable D3: Execute the contract in joint venture with a targeted partner</b>		
	The specification data associated with SANS 1914-2 is as follows:	

Clause number	Specification data	Guidance notes (don't include in scope of works)
2.7	The employer's representative is .....	Insert the name or designation of the employer's representative. (Usually the name of the person responsible for administering the contract e.g. Engineer, Project Manager or Principal Agent.)
2.13	Targeted partner	Define targeted enterprises (see SANS 10396)
	The targeting strategy is .....	State the applicable targeting strategy A or B, depending upon the usage of CPGs in the contract.
2.3	The contract participation goal is .....% or The contractor participation goal is as stated in the Preferencing Schedule or The contract participation goal is as stated in the scope of work / partnering schedule or There is no specific contract participation goal set for this contract	Specify the contract participation goal, if any, that applies to the contract or identify the document in which the applicable CPG is located.  Select the appropriate statement, depending on what is to be achieved and which targeting strategy is used.  Ensure that the tendered contract participation goals form part of the offer, if they are not captured in a returnable schedule which is included in the scope of work in the contract.
3.2.2	The targeted partner declaration is to be submitted within 3 months of the commencement of the contract.	State when the targeted enterprise declaration is to be submitted if it is not to be submitted before the first submission for payment.
<b>Deliverable E1: Provide work opportunities towards professional registration for designated persons</b>		
<b>Deliverable E2: Provide experiential work opportunities towards a technical qualification for designated persons</b>		
<b>Deliverable E3: Provide experiential work opportunities and training towards trade competencies for designated persons</b>		
<b>Deliverable E4: Procure and manage a training provider to provide specific training for designated persons</b>		
<b>Deliverable F1: Promote HIV/AIDS awareness</b>		
5.2.1(a)	A qualified service provider is service provider that is one that is accredited by ..... / appears on the list of recognised service providers published by ..... The contact particulars of qualified service providers are as follows: <u>Name</u> <u>Tel</u> <u>Fax</u> <u>email</u> .....	Establish what constitutes a qualified service provider e.g. recognition by the South African Department of Health as specialist.
5.2.1(a)	The HIV/ Aids awareness programme is to be repeated at four month intervals throughout the duration of the contract. (Four times in total, including the initial one at the start of the contract)	State the intervals at which the HIV/Aids awareness programme is to be conducted

The specification data complete requirements established in SSED, modify the requirements of SSED and introduce new requirements, as relevant, in relation to a specific contract. The specification data shall have precedence in the interpretation of any ambiguity or inconsistency between it and SSED and any national standards that are referenced in the SSED.

# **Annex B: Guidance on implementing this specification in construction works contracts**

## ***B.1 General***

### **B.1.1 Introduction**

A secondary procurement policy is a policy that promotes objectives additional to those associated with the immediate objective of the procurement itself. Secondary procurement objectives relate to objectives additional to those associated with the immediate objective of the procurement itself. Such objectives may be framed around both social and economic goals. Social goals include the redefining of business ownership patterns and the composition of the workforce, the distribution of employment opportunities and the relief of poverty. Economic goals include the redefining of the distribution of the size of businesses, increased use of local resources and job creation (i.e. the increase in the total volume of employment generated per unit of expenditure).

Client bodies should develop and document their secondary procurement policy which should establish:

- a) the specific objectives that are to be pursued, such as those pertaining to the promotion of small and medium enterprises (SMEs), broad based black economic empowerment (B-BBEE), poverty alleviation, job creation, local economic development, business equity, HIV-Aids prevention, skills transfer, skills development, construction industry development, quality standards, environmental standards, etc
- b) targeted procurement procedures that may be used as well as any limitations placed on their use or application, and
- c) recording and reporting requirements.

Contract specific goals (deliverables) relating to a secondary procurement policy should be capable of being measured, verified and audited.

### **B.1.2 Overarching requirements**

The overarching requirements in applying this specification to social and economic deliverables in construction works contracts is that the procurement system remains fair, equitable, transparent, competitive and cost effective.

The formulation of specification data to enable this specification to be activated in procurement documents should be formulated in a manner that the system remains fair, equitable, transparent, competitive and cost effective.

### **B.1.3 Preferencing**

Submissions in response to calls for expressions of interest may be evaluated in terms of quality and preference and submissions in response to invitations to tender in terms of financial offer, quality and preference. Each of these criteria is weighted in the evaluation of submissions. The total score provides the ranking for the short listing of respondents or the award of the contract. Preferences accordingly permit tenderers to compete on the basis of providing the required supplies, services or works in a manner that promotes stated social and developmental objectives whilst capping the premium payable.

Market forces ultimately dictate the degree to which contractors can meet such objectives in the most cost effective manner.

Preferences may accordingly be offered in the short listing of respondents where the qualified or two stage procedures are used or preferences in the evaluation of tenders in accordance with the requirements of the Preferential Procurement Policy Framework Act. Such preferences should be stated in the submission data and tender data prepared in accordance with the requirements of the CIDB Standard for Uniformity in Construction Procurement. The conditions attached to preferences, the claim for a preference and the sanctions relating to a breach of the conditions of preferences should be included in a preferencing schedule which forms part of the scope of work of a contract.

#### **B.1.4 Provision of incentives for the attainment of key performance indicators in the performance of contract**

Financial incentives may be offered to contractors should they attain a key performance indicator in the performance a contract in the form of a contract participation goal in accordance with the requirements of one of the parts of SANS 1914. Such key performance indicators can be either agreed to before or after a contract is awarded.

Financial incentives can be formulated in a number of ways. The most common way is to make them linearly proportional to increases in contract participation goals. Stepped incentives may also be used. Consideration should be given to capping the quantum of the financial incentive.

Option X20 (Key Performance Indicators) of the NEC3 Engineering and Construction Contract makes provision for a contractor to be paid an amount stated in an incentive schedule if the target stated for a key performance indicator is improved upon or achieved.

Additional conditions of contact need to be framed and included in the contract data where use is made of other forms of contract, e.g. FIDIC, JBCC series 2000 or GCC 2004.

Note: Financial incentives are used where tenderers are not invited to tender contract participation goals, but are required to accept a minimum contract participation goal and are rewarded for performance beyond the minimum.

#### **B.1.5 Creation of contractual obligations to engage target groups in the performance of the contract**

Contractors may be required as a contractual obligation to subcontract a percentage of the works to targeted enterprises or contract supplies or services from targeted enterprises. They may also be required to enter into joint venture with targeted enterprises or engage targeted labour in the performance of a contract. This can most readily be achieved by requiring contractors to archive a minimum contract participation goal in accordance with the requirements of SANS 1914-1, SANS 1914-2, SANS 1914-4 or SANS 1914-5.

Alternatively, contractors may be required to subcontract specific portions of a contract to targeted enterprises.

Requirements for subcontracting work including subcontracting procedures, if any, should be established in the scope of work.

Prime contractors may:

- a) be free to negotiate the prices and terms for subcontracting; or

- b) be required to invite competitive tenders from amongst targeted enterprises in terms of a specified procedure and specific forms of subcontract and upon the award of the contract become domestic subcontractors i.e. the contractor remains responsible for providing the subcontracted portion of the works as if the work had not been subcontracted.

The advantage of the approach whereby contractors are required to call for tenders is that targeted enterprises tender for the work in the same manner as the prime contractor does. It also allows the employer to determine the terms and conditions under which targeted enterprises are subcontracted.

Financial penalties relating to the failure to attain a contract participation goal should be included in the contract data.

## ***B.2 Deliverable A1: Provide employment opportunities to targeted labour***

### **B.2.1 General**

SANS 1914-5 standardizes the manner in which targets (contract participation goals) are set and measured relating to the participation of targeted labour in construction works contracts. These targets (contract participation goals) may be used, in addition to measuring and reporting on a key performance indicator which reflects the quantum of employment generated in respect of targeted labour through the performance of the contract, to:

- a) reserve a portion of the contract work for specified target groups through the setting of minimum contract participation goals;
- b) establish the basis for the awarding of preferences in proportion to the quantum of the CPG that is tendered; or
- c) establish performance targets for the payment of financial incentives relating to the attainment of key performance indicators.

It should be noted that a) and b) above may be used in combination with each other should preferences be granted for tendering a contract participation goal which exceeds a minimum value.

Targeting strategy A bases the contract participation goal on the tendered amount less allowances i.e. on the expenditure which the contractor can commit to at tender stage. This strategy allows the employer to adjust the contract participation goal to take account of any failure to achieve such goal in the performance of the contract due to factors which are beyond the contractor's control or are unforeseen at tender stage. Targeting strategy B measures the contract participation goal based on the final contract value. Targeting strategy A accordingly measures the performance of contractors in the engagement of targeted labour in relation to what can be committed to at tender stage, whereas Targeting strategy B does so in relation to what is finally achieved.

### **B.2.2 Sanctions**

Sanctions should be provided for in the contract if targeting strategy A is pursued in the event that the contractor fails to substantiate that any failure to achieve the contract participation goal was due to quantitative under runs, the elimination of items, or any other reason beyond the contractor's control which may be acceptable to the employer. This clause is designed to limit a contractor's risk exposure in failing to achieve contractual obligations beyond his or her control. (In targeting strategy B, the provisions of this clause are not applicable as there is no need to minimize a contractor's risk exposure).

Appropriate action should be taken by procuring entities against tenderers who are awarded contracts in preference to others on a fraudulent basis or against contractors who fail to achieve their contractual obligations relating to the engagement of targeted labour. Procuring entities should have a number of penalties and contractual remedies available to address such situations, including:

- a) recovering all costs, losses or damages incurred or suffered;
- b) cancelling the contract/tender and claiming any damages suffered as a result of having to make less favourable arrangements for the award of the contract;
- c) the rejection of payment certificates as being incomplete should the appropriate supporting documentation not be provided;
- d) the withholding of the issuing of completion certificates until such time that the contractor has satisfactorily demonstrated that targeted labour has been engaged in accordance with the contract participation goal implementation plan;
- e) imposing a financial penalty more severe than the financial preference calculated at the time when tenders were evaluated or more severe than complying with contractual obligations; or
- f) restricting the contractor and its shareholders and directors from being awarded further contracts by the procuring entity for a specified period of time.

Sanctions should be sufficiently punitive to encourage compliance. Care should be taken when offering preferences that the sanction is not more attractive than compliance e.g. the quantum of the penalty for non-compliance is less than the preference offered.

### **B.2.3 Monitoring for compliance**

Monitoring for contract compliance necessitates that records of all documents and contracts which the contractor is required in terms of the specifications, to furnish the employer with, are recorded in a systematic manner. The summary schedules contained in annex H of SANS 10396, *Implementing preferential construction procurement policies using targeted procurement procedures*, facilitates this.

### **B.2.4 Methods to increase of employment opportunities generated per unit of expenditure**

Annex G of SANS 10396, *Implementing preferential construction procurement policies using targeted procurement procedures*, provides guidance on how to increase employment opportunities generated per unit of expenditure.

## **B.3 Deliverable A2: Utilise local resources**

### **B.3.1 General**

SANS 1914-4 standardizes the manner in which targets (contract participation goals) are set and measured relating to the participation of targeted enterprises and targeted labour in construction works contracts. These targets (contract participation goals) may be used, in addition to measuring and reporting on a key performance indicator which reflects the quantum of employment generated in respect of targeted labour through the performance of the contract, to:

- d) reserve a portion of the contract work for specified target groups through the setting of minimum contract participation goals;
- e) establish the basis for the awarding of preferences in proportion to the quantum of the CPG that is tendered; or
- f) establish performance targets for the payment of financial incentives relating to the attainment of key performance indicators.



It should be noted that a) and b) above may be used in combination with each other should preferences be granted for tendering a contract participation goal which exceeds a minimum value.

Targeting strategy A bases the contract participation goal on the tendered amount less allowances i.e. on the expenditure which the contractor can commit to at tender stage. This strategy allows the employer to adjust the contract participation goal to take account of any failure to achieve such goal in the performance of the contract due to factors which are beyond the contractor's control or are unforeseen at tender stage. Targeting strategy B measures the contract participation goal based on the final contract value. Targeting strategy A accordingly measures the performance of contractors in the engagement of targeted labour in relation to what can be committed to at tender stage, whereas Targeting strategy B does so in relation to what is finally achieved.

### **B.3.2 Sanctions**

Sanctions should be provided for in the contract if targeting strategy A is pursued in the event that the contractor fails to substantiate that any failure to achieve the contract participation goal was due to quantitative under runs, the elimination of items, or any other reason beyond the contractor's control which may be acceptable to the employer. This clause is designed to limit a contractor's risk exposure in failing to achieve contractual obligations beyond his or her control. (In targeting strategy B, the provisions of this clause are not applicable as there is no need to minimize a contractor's risk exposure).

Appropriate action should be taken by procuring entities against tenderers who are awarded contracts in preference to others on a fraudulent basis or against contractors who fail to achieve their contractual obligations relating to the engagement of targeted labour. Procuring entities should have a number of penalties and contractual remedies available to address such situations, including:

- a) recovering all costs, losses or damages incurred or suffered;
- b) cancelling the contract/tender and claiming any damages suffered as a result of having to make less favourable arrangements for the award of the contract;
- c) the rejection of payment certificates as being incomplete should the appropriate supporting documentation not be provided;
- d) the withholding of the issuing of completion certificates until such time that the contractor has satisfactorily demonstrated that targeted labour has been engaged in accordance with the contract participation goal implementation plan;
- e) imposing a financial penalty more severe than the financial preference calculated at the time when tenders were evaluated or more severe than complying with contractual obligations; or
- f) restricting the contractor and its shareholders and directors from being awarded further contracts by the procuring entity for a specified period of time.

Sanctions should be sufficiently punitive to encourage compliance. Care should be taken when offering preferences that the sanction is not more attractive than compliance e.g. the quantum of the penalty for non-compliance is less than the preference offered.

### **B.3.3 Monitoring for compliance**

Monitoring for contract compliance necessitates that records of all documents and contracts which the contractor is required in terms of the specifications, to furnish the employer with, are recorded in a systematic manner. The summary schedules contained in annex H of SANS 10396, *Implementing preferential construction procurement policies using targeted procurement procedures*, facilitates this.

### **B.3.4 Methods to increase of employment opportunities generated per unit of expenditure**

Annex G of SANS 10396, *Implementing preferential construction procurement policies using targeted procurement procedures*, provides guidance on how to increase

### **B.3 Deliverable B1: Provide employment and skills development opportunities to targeted labour**

This deliverable is framed around the *Guidelines for the Implementation of Labour-Intensive Infrastructure Projects under the Expanded Public Works Programme (EPWP) (Second edition 2005)*, obtainable from [www.epwp.gov.za](http://www.epwp.gov.za).

Labour-intensive infrastructure projects under the Expanded Public Works Programme include:

- using labour intensive construction methods to provide employment opportunities to local unemployed people;
- providing training or skills development to those locally employed workers
- building cost-effective quality assets.

The following types of civil engineering projects are required to be implemented in terms of the aforementioned guidelines:

- low-volume roads (typically less than 500 vehicles per day);
- sidewalks and non-motorised transport infrastructure
- stormwater drainage; and
- trenching

where such projects contain a significant amount of earthworks activities which may be performed by hand in accordance with the requirements of SANS 1921-5 i.e. below, i.e. excavation, loading, short-distance hauling, offloading and spreading.

Further guidance may be obtained from the aforementioned guideline document on the identification of suitable projects and appropriate design for labour-intensive works.

**Note:** The guidelines require that:

- 1) The following be included in the **tender notice and invitation to tender**:

*Only tenderers who employ staff which satisfy EPWP requirements are eligible to submit tenders.*

- 2) The following be included in the **tender data**:

F.2.1	Only those tenderers who have in their employ management and supervisory staff satisfying the requirements of the scope of work for labour intensive competencies for supervisory and management staff are eligible to submit tenders.
F.2.18	The tenderer shall, when requested by the Employer to do so, submit the names of all management and supervisory staff that will be employed to supervise the labour-intensive portion of the works together with satisfactory evidence that such staff members satisfy the eligibility requirements.

- 3) The following be included in the **contract data**:

#### **Payment for the labour-intensive component of the works**

Payment for works identified in the scope of work as being labour-intensive shall only be made in accordance with the provisions of the Contract if the works are constructed strictly in accordance with the provisions of the scope of work. Any non-payment for such works shall not relieve the contractor in any way from his obligations either in contract or in delict.

- 4) The following be included in the **pricing instructions**, as appropriate:

1. Those parts of the contract to be constructed using labour-intensive methods have been marked in the bill of quantities with the letters LI in a separate column filled in against every item so designated. The works, or parts of the works so designated are to be constructed using labour-intensive methods only. The use of plant to provide such works, other than plant specifically provided for in the scope of work, is a variation to the contract. The items marked with the letters LI are not necessarily an exhaustive list of all the activities which must be done by hand, and this clause does not over-ride any of the requirements in the generic labour intensive specification in the scope of works.
  2. Payment for items which are designated to be constructed labour-intensively (either in this schedule or in the scope of works) will not be made unless they are constructed using labour-intensive methods. Any unauthorised use of plant to carry out work which was to be done labour-intensively will not be condoned and any works so constructed will not be certified for payment.
- 5) Add into the **bills of quantities** the following, as appropriate:

Description	Unit	Quantity	Rate Amount
Training allowance paid to targeted labour in terms of formal	Person days		
Extra over for the administration of payment of training allowances to days targeted labour	Person days		
Transport and accommodation of workers for training where it is not possible to undertake the training in close proximity to the site. (Provisional sum)	Sum		

## ***B.4 Deliverable C1: Provide business opportunities for targeted enterprises***

### **B.4.1 General**

SANS 1914- standardizes the manner in which targets (contract participation goals) are set and measured relating to the participation of targeted enterprises in construction works contracts. These targets (contract participation goals) may be used, in addition to measuring and reporting on a key performance indicator which reflects the quantum of employment generated in respect of targeted labour through the performance of the contract, to:

- a) reserve a portion of the contract work for specified target groups through the setting of minimum contract participation goals;
- b) establish the basis for the awarding of preferences in proportion to the quantum of the CPG that is tendered; or
- c) establish performance targets for the payment of financial incentives relating to the attainment of key performance indicators.

It should be noted that a) and b) above may be used in combination with each other should preferences be granted for tendering a contract participation goal which exceeds a minimum value.

Targeting strategy A bases the contract participation goal on the tendered amount less allowances i.e. on the expenditure which the contractor can commit to at tender stage. This strategy allows the employer to adjust the contract participation goal to take account of any failure to achieve such goal in the performance of the contract due to factors which are beyond the contractor's control or are unforeseen at tender stage. Targeting strategy B measures the contract participation goal based on the final contract value. Targeting strategy A accordingly measures the performance of contractors in the engagement of targeted labour in relation to what can be committed to at tender stage, whereas Targeting strategy B does so in relation to what is finally achieved.

### **B.4.2 Sanctions**

Sanctions should be provided for in the contract if targeting strategy A is pursued in the event that the contractor fails to substantiate that any failure to achieve the contract participation goal was due to quantitative under runs, the elimination of items, or any other reason beyond the contractor's control which may be acceptable to the employer. This clause is designed to limit a contractor's risk exposure in failing to achieve contractual obligations beyond his or her control. (In targeting strategy B, the provisions of this clause are not applicable as there is no need to minimize a contractor's risk exposure).

Appropriate action should be taken by procuring entities against tenderers who are awarded contracts in preference to others on a fraudulent basis or against contractors who fail to achieve their contractual obligations relating to the engagement of targeted labour. Procuring entities should have a number of penalties and contractual remedies available to address such situations, including:

- a) recovering all costs, losses or damages incurred or suffered;
- b) canceling the contract/tender and claiming any damages suffered as a result of having to make less favourable arrangements for the award of the contract;
- c) the rejection of payment certificates as being incomplete should the appropriate supporting documentation not be provided;
- d) the withholding of the issuing of completion certificates until such time that the contractor has satisfactorily demonstrated that targeted labour has been engaged in accordance with the contract participation goal implementation plan;
- e) imposing a financial penalty more severe than the financial preference calculated at the time when tenders were evaluated or more severe than complying with contractual obligations; or
- f) restricting the contractor and its shareholders and directors from being awarded further contracts by the procuring entity for a specified period of time.

Sanctions should be sufficiently punitive to encourage compliance. Care should be taken when offering preferences that the sanction is not more attractive than compliance e.g. the quantum of the penalty for non-compliance is less than the preference offered.

### **B.4.3 Monitoring for compliance**

Monitoring for contract compliance necessitates that records of all documents and contracts which the contractor is required in terms of the specifications, to furnish the employer with, are recorded in a systematic manner. The summary schedules contained in annex H of SANS 10396, *Implementing preferential construction procurement policies using targeted procurement procedures*, facilitates this.

### **B.4.4 Subcontracting work to targeted enterprises**

Clause 3.2.1 permits contractors to satisfy their contract participation goal obligations by any of the following methods in any combination:

- by virtue of their targeted enterprise status
- by entering into joint venture with targeted enterprises
- by subcontracting work to or to procuring services or supplies from targeted enterprises
- by subcontracting work to or to procuring services or supplies from non-targeted enterprises who contract with targeted enterprise to provide works, services or supplies
- by subcontracting work to or to procuring services or supplies from non-targeted enterprises who enter into joint venture with targeted enterprises partiaion goal t

This clause may be replaced with the following should the main contractor be required to subcontract work to targeted enterprises.

*A contractor shall achieve the contract participation goal by subcontracting work to targeted enterprises.*

## ***B.5 Deliverable C2: Procure subcontractors for defined portions of the contract in terms of specified procedures***

Contractors may be required as a contractual obligation to subcontract either a percentage of the works to targeted enterprises or to subcontract specified portion of the works to others.

Contractors may:

- a) be free to negotiate the prices and terms for subcontracting; or
- b) be required to invite competitive tenders from amongst targeted enterprises in terms of a specified procedure and specific forms of subcontract and upon the award of the contract become domestic subcontractors i.e. the contractor remains responsible for providing the subcontracted portion of the works as if the work had not been subcontracted.

Where contractors are required to invite tenders they may be required to do so in terms of the CIDB Standard for Uniformity in Construction Procurement. They will as such be required to evaluate tenders in terms of the CIDB Standard Conditions of Tender.

The advantage of the approach whereby contractors are required to call for tenders is that targeted enterprises tender for the work in the same manner as the contractor does. It also allows the employer to determine the terms and conditions under which targeted enterprises are procured and subcontracted.

## ***B.6 Deliverable D1: Provide third party management support services to targeted contractors***

Organisations may provide third-party management support in the form of service providers who supply specific management services which typically relate to construction and materials management, or the management of the manufacture of materials. They also advise, assist and train fledgling contractors, embryonic enterprises or aspirant entrepreneurs (targeted enterprises) in the execution of contracts as prime contractors and ensure that work progresses satisfactorily.

The organisation can directly contract a third-party to render any necessary support, either on a competitively tendered, or a cost-reimbursable basis. In such circumstances, the procuring entity has a direct contract with both the third-party management support service provider and the targeted enterprise. There is, however, no contract between the service provider and the targeted enterprise; nor should there be. In this arrangement, the procuring entity's risk of the targeted enterprise not executing the contract satisfactorily can be minimized by requiring the service provider to provide on-site support and monitoring. The service provider cannot be held responsible for the performance of the targeted enterprise but only for the support services provided, for example, timeous supply of plant and the monitoring of the targeted enterprises to ensure that they make satisfactory progress, show technical competence and generally fulfil their other contractual obligations. The service provider is, in short, only at risk for its own negligence, a risk which is normally insurable in terms of professional indemnity insurance.

Service providers are, typically, required to provide or arrange for some, or all, of the following services (see SANS 1921-4):

- a) construction management;
- b) materials management;
- c) facility management;
- d) materials supply;

- e) services of a specialist nature e.g. blasting, horizontal boring, etc.; and
- f) plant hire or supply.

The foregoing contractual arrangement, by reducing the risk exposure of the service provider, providing materials and plant at cost and directly engaging targeted enterprises with low overhead structures, results in construction and manufacturing costs, or a combination thereof, which are comparable to those of conventional contracting. In effect, profit on materials and plant, risk pricing and the conventional contractor's overhead costs, are traded off against development support costs.

Third-party development support can also be provided by requiring prime contractors (well established contractors) to enter into joint ventures with targeted enterprises (developing contractors) in accordance with the requirements of ISO XXXX-6, upon award of the contract. In this manner, prime contractors are obliged to provide third-party management support to targeted enterprises which they engage as joint venture partners in order to achieve contract participation goals, without the organisation imposing the manner in which this is to be structured and achieved. Although the prime contractor is held accountable for the outcome of the project, ISO XXXX-6 make provision for the procuring entity to relieve the contractor of his contract participation goal obligations under certain circumstances in order to reduce his risk exposure. (See ISO XXXX-6)

NOTE 1 Third-party management support can be:

- a) used to develop new contracting capacity in the context of a contractor development programme. In such programmes, third-party development support is progressively reduced as developing contractors become more proficient and acquire the necessary skills; or
- b) utilized on poverty-alleviation projects where the objective is to maximize expenditure retained by the community. In such programmes, a requirement should be for the third-party management support staff to be recruited as far as possible from the targeted community.

NOTE 2 In some programmes it may be necessary to define groups of workers or labour teams as targeted enterprises.

NOTE 3 The following clauses are typically inserted in the contract between the organisation and the targeted enterprise:

#### **Duties and powers of construction manager**

1 The duties of the construction manager are to arrange, on behalf of the employer, for specialist work to be carried out, to supply the contractor, on behalf of the employer, with certain items of equipment for the construction of the works, to advise, assist and train the contractor in administering and executing the contract and, where required in terms of the scope of work, to deliver or arrange for the supply of certain materials to the place of work.

2 The construction manager has no authority to relieve the contractor or the employer of any of his obligations under the contract.

#### **Duties and powers of materials manager**

1 The duties of the materials manager are to procure, store and issue to the contractor, on behalf of the employer, materials for incorporation in both the temporary and permanent works and to account for the net quantities of materials drawn by, or on behalf of, the contractor for use in the construction of the works.

2 The materials manager has no authority to relieve the contractor or the employer of any obligations under the contract.

### ***B.7 Deliverable D2: Procure or manage (or both) mentoring services for targeted contractors***

## ***B.8 Deliverable D3: Execute the contract in joint venture with a targeted partner***

### **B.8.1 General**

SANS 1914-2 standardizes the manner in which targets (contract participation goals) are set and measured relating to the participation of targeted partners in construction works contracts. These targets (contract participation goals) may be used, in addition to measuring and reporting on a key performance indicator which reflects the quantum of employment generated in respect of targeted labour through the performance of the contract, to:

- a) reserve a portion of the contract work for specified target groups through the setting of minimum contract participation goals;
- b) establish the basis for the awarding of preferences in proportion to the quantum of the CPG that is tendered; or
- c) establish performance targets for the payment of financial incentives relating to the attainment of key performance indicators.

It should be noted that a) and b) above may be used in combination with each other should preferences be granted for tendering a contract participation goal which exceeds a minimum value.

Targeting strategy A bases the contract participation goal on the tendered amount less allowances i.e. on the expenditure which the contractor can commit to at tender stage. This strategy allows the employer to adjust the contract participation goal to take account of any failure to achieve such goal in the performance of the contract due to factors which are beyond the contractor's control or are unforeseen at tender stage. Targeting strategy B measures the contract participation goal based on the final contract value. Targeting strategy A accordingly measures the performance of contractors in the engagement of targeted labour in relation to what can be committed to at tender stage, whereas Targeting strategy B does so in relation to what is finally achieved.

Joint ventures may be formed prior to the award of a contract, with the objective of securing the contract, or as a condition for the award of a contract. In the latter case, the contract can be awarded either to a tendering entity which already satisfies the requirements for a joint venture, or to a single firm which undertakes to form a joint venture with targeted partners after the award of the contract. Awarding a contract to a single firm, which undertakes to form a joint venture after the award of the contract, has the following advantages:

- a) termination of the services of a targeted partner for a valid reason is relatively simple, as the contract was awarded to a single firm and not to the joint venture;
- b) shorter tender periods can be permitted as time need not be allowed for the formation of joint ventures prior to the submission of tenders; and
- c) targeted enterprises can negotiate with the successful tenderer to become joint venture partners instead of having, from the outset, to commit themselves to specific partners; a particularly useful in situations where the supply of targeted enterprises is limited.

### **B.8.2 Sanctions**

Sanctions should be provided for in the contract if targeting strategy A is pursued in the event that the contractor fails to substantiate that any failure to achieve the contract participation goal was due to quantitative under runs, the elimination of items, or any other reason beyond the contractor's control which

may be acceptable to the employer. This clause is designed to limit a contractor's risk exposure in failing to achieve contractual obligations beyond his or her control. (In targeting strategy B, the provisions of this clause are not applicable as there is no need to minimize a contractor's risk exposure).

Appropriate action should be taken by procuring entities against tenderers who are awarded contracts in preference to others on a fraudulent basis or against contractors who fail to achieve their contractual obligations relating to the engagement of targeted labour. Procuring entities should have a number of penalties and contractual remedies available to address such situations, including:

- a) recovering all costs, losses or damages incurred or suffered;
- b) cancelling the contract/tender and claiming any damages suffered as a result of having to make less favourable arrangements for the award of the contract;
- c) the rejection of payment certificates as being incomplete should the appropriate supporting documentation not be provided;
- d) the withholding of the issuing of completion certificates until such time that the contractor has satisfactorily demonstrated that targeted labour has been engaged in accordance with the contract participation goal implementation plan;
- e) imposing a financial penalty more severe than the financial preference calculated at the time when tenders were evaluated or more severe than complying with contractual obligations; or
- f) restricting the contractor and its shareholders and directors from being awarded further contracts by the procuring entity for a specified period of time.

Sanctions should be sufficiently punitive to encourage compliance. Care should be taken when offering preferences that the sanction is not more attractive than compliance e.g. the quantum of the penalty for non-compliance is less than the preference offered.

### **B.8.3 Monitoring for compliance**

Monitoring for contract compliance necessitates that records of all documents and contracts which the contractor is required in terms of the specifications, to furnish the employer with, are recorded in a systematic manner. The summary schedules contained in annex H of SANS 10396, *Implementing preferential construction procurement policies using targeted procurement procedures*, facilitates this.

### **B.8.4 Using SANS 1914-2 to provide third party management support**

Third-party development support can also be provided by requiring prime contractors (well established contractors) to enter into joint ventures with targeted enterprises (developing contractors) in accordance with the requirements of SANS 1914-2, upon award of the contract. In this manner, prime contractors are obliged to provide third-party management support to targeted enterprises which they engage as joint venture partners in order to achieve contract participation goals, without the contracting authority imposing the manner in which this is to be structured and achieved. Although the prime contractor is held accountable for the outcome of the project, SANS 1914-2 make provision for the procuring entity to relieve the contractor of his contract participation goal obligations under certain circumstances in order to reduce his risk exposure.

The major advantage in using SANS 1914-2 to secure third-party management support is that the employer does not have to structure the relationships between the parties and transfers the risk and costs associated with any failure to perform to an established contractor. There is, however, the potential for price premiums to creep in due to the higher risk exposure for the party which provides the management support. However, where plant requirements are relatively high, there is an incentive for the contractor to minimise plant costs and greater efficiency in plant utilization is more than likely to offset any costs associated with the acceptance of increased risks.



The disadvantages of the use of SANS 1914-2 is that since the targeted enterprises only co-own the contract with their joint venture partner, the employer exercises less control over the development of the targeted partners, who require some previous experience or training to enable them to engage and interact with established contractors. (SANS 1914-2 does, however, cover situations where prime contractors could significantly exploit the targeted enterprises.) There is nevertheless a possibility that targeted enterprises might be offered fixed-rate contracts and not be exposed to competitive tendering, thereby failing to gain the necessary experience in pricing contracts.

This approach to third party management support has the potential to expose targeted enterprises to a wider range of management activities than if they had been engaged as subcontractors. It does not, however, necessarily overcome the problems inherent in the use of fixed rate contracts.

***B.9 Deliverable E1: Provide work opportunities towards professional registration for designated persons***

***B.10 Deliverable E2: Provide experiential work opportunities towards a technical qualification for designated persons***

***B.11 Deliverable E3: Provide experiential work opportunities and training towards trade competencies for designated persons***

***B.12 Deliverable E4: Procure and manage a training provider to provide specific training for designated persons***

***B.13 Deliverable F1: Promote HIV/AIDS awareness***