



CONSTRUCTION PROCUREMENT

BEST PRACTICE GUIDELINE # C1

Preparing procurement documents

September 2005

Second edition of CIDB document 1009

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1 Introduction

1.1 Types of procurement documents

Procurement documents comprise those documents required to:

- a) prequalify tenderers so that they may be invited to tender;
- b) solicit tender offers; and
- c) establish the terms and conditions of the contract.

1.2 The structure of ideal procurement documents

Procurement documents should in general:

- i) require tenderers to submit particulars sufficient for the employer to evaluate submissions and to shortlist tenders, or to award a contract in a fair, equitable, transparent and competitive manner ;
- ii) set out in a clear and unambiguous manner criteria by which submissions are to be evaluated;
- iii) define the liabilities, rights and obligations of the parties to the contract;
- iv) define the nature, quality and quantity of supplies, services or works to be provided in the performance of the contract;
- v) contain provisions that do not unreasonably prejudice the interests of either party; and
- vi) use clear and unambiguous language.

Uniformity in procurement documentation permits the documentation process to be simplified and computerised; contractors to more accurately price the risks, which they are to assume, and the effectiveness and efficiency of procurement to be improved (Refer to Annexure 1).

The SANS 10403¹ standard for the *Formatting and Compilation of Construction Procurement Documents* establishes:

- a uniform format for the compilation of procurement documents for supplies, services and engineering and construction works contracts; and

¹ The Standards Division of the South African Bureau of Standards has undergone a name change. It is now referred to as Standards South Africa. All national standards have been redesignated as SANS (South African National Standard) as opposed to SABS standards. Old standard numbers will not fall away immediately, but will run in parallel for a period of 5 years, ie to 2008.

- the general principles for compiling procurement documents in respect of supplies, services and engineering and construction works.

SANS 10403 was prepared to establish procedures for the compilation of procurement documentation for supplies, services and engineering and construction works in a standard format. As such it provides an outline of headings within which procurement documents may be compiled in a uniform manner and is based on the notion that there should be a complete separation in procurement documentation between conditions of tender, conditions of contract, specifications and methods of measurement and payment. (See Annexure 1)

2 Standard format for the compilation of procurement documents

2.1 Introduction

The structuring of procurement documents around the uniform outline of headings contained in SANS 10403 and the dealing with topics in a standard manner:

- facilitates uniformity / standardisation in procurement documents;
- simplifies the compilation of documentation and the administration of contracts;
- minimises ambiguity and errors in and between the documents which make up a contract;
- allows contractors to more accurately price the risks that they are to assume; and
- improves the effectiveness and efficiency of procurement.

As a result of this uniformity / standardisation, contractors who are familiar with the standardised procurement documents will only need to read the tender / contract specific sections for any specific project in order to know what the institution is looking for. On the other hand, contractors who are not familiar with standardised documents can quickly locate information that they may require should they have a working knowledge of the framework for the compilation of procurement documents provided in SANS 10403.

2.2 Contents of standardised procurement documents

2.2.1 General

Procurement documents comprise several component documents dealing with different topics bound together in a logical sequence. The first cluster of documents contains only those documents that are relevant to the tender enquiry (see Table 1) and the second cluster those documents that relate to the contract that will be created upon the acceptance of the tender (see Table 2).

Table 1: Documents that relate solely to the Tender (See SANS 10403)

Contents		Function and broad outline of contents
Number	Heading	
Part T1: Tendering procedures		
T1.1	Tender Notice and Invitation to Tender	Alerts tenderers to the nature of the supplies, services and engineering and construction works required by the employer and should contain sufficient information to enable them to respond appropriately.
T1.2	Tender Data	States what the applicable conditions of tender are and where they may be found. Tender Data also provides the variables for standardised conditions of tender.
Part T2: Returnable documents		
T2.1	List of Returnable Documents	Ensures that everything the employer requires a tenderer to submit with his tender is included in, or returned with, his tender submission.
T2.2	Returnable Schedules	Contains documents that the tenderer is required to complete for the purpose of evaluating tenders and other schedules which upon acceptance become part of the subsequent contract.

Table 2: Documents that relate solely to the Contract (See SANS 10403)

Contents		Broad outline of contents
Number	Heading	
Part C1: Agreements and contract data		
C1.1	Form of Offer and Acceptance	Formalises the legal process of offer and acceptance
C1.2	Contract Data	States the applicable conditions of contract and associated contract specific data that collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract.
Part C2: Pricing data		
C2.1	Pricing Instructions	Provides the criteria and assumptions which it will be assumed (in the contract) that the tenderer has taken into account when developing his prices, or target in the case of target and cost reimbursable contracts.
C2.2	Activity Schedule / Bill of Quantities	Records the contractor's prices for providing supplies / services / engineering and construction works which are described elsewhere in a specification within the Scope of Work section of the contract.
Part C3: Scope of Work		
C3	Scope of Work	Specifies and describes the supplies, services, or engineering and construction works which are to be provided and any other requirements and constraints relating to the manner in which the contract work is to be performed
Part C4: Site information (engineering and construction works contracts only)		
C4	Site Information	Describes the site as at the time of tender to enable the tenderer to price his tender and to decide upon his method of working and programming

Note: Not all the components listed in Parts 2 and 3 of the Contract will be required in all categories and type of contracts.

When tenders are invited, it is, however, necessary to issue three volumes, viz, Volume 1 comprising the Tendering Procedures (Part T1 of the Tender), Volume 2 comprising the Returnable Documents (Part T2 of the Tender and documents C1.1 and C1.2 of Part 1 of the Contract and documents C2.1 and C2.2 of Part 2 of the Contract, if relevant, i.e. all the documents in which the tenderer is required to insert data to complete his tender) and Volume 3 which contains the draft contract (i.e. all components of the Contract which are not included in Volume 2).

Tenderers will complete and return Volume 2 as their tender submission. Institutions will compile the contract (see Table 3) from the tender submission (Volume 2). In this manner, the final contract will contain all the provisions agreed to by the parties during the tender process and will not include redundant information relating to the process that led to the conclusion of the contract.

NOTE: It is possible to compile documents in a single volume using the sequence of documents listed in Tables 1 and 2. The documents listed in Table 1 would be headed "Tender" and the documents listed in Table 2, "Contract". The List of Returnable Documents identifies which of the documents a tenderer must complete when submitting its tender offers. The tenderer submits his tender offer by completing those forms, signing the "Offer" document in the Forms of Offer and Acceptance and delivering it back to the employer bound up in the same volume that it was in when it was received. If the tender offer is accepted, the employer simply signs the 'Acceptance' document in the Forms of Offer and Acceptance and a Contract is formed, i.e., the tender document becomes the contract document. This approach is, however, only suited to contracts and situations where small variances, if any, are anticipated between the draft contract and the final contract.

The calling for expressions of interest is required where the following procurement procedures are used (see SANS 294, *Construction procurement processes, methods and procedures*) :

- nominated procedure (applications to be placed on a data base); or
- qualified procedure (prequalify or be short listed to submit tender offers).

The recommended format for the calling for expressions of interest is outlined in Table 4.

Table 3: Standard Headings and Sequencing of Documents when soliciting tenders (see SANS 10403)

Volumes		Contents	
Number	Description	Number	Heading
Volume 1	Tendering procedures	Part T1: Tendering procedures	
		T1.1	Tender Notice and Invitation to Tender
		T1.2	Tender Data
Volume 2	Returnable documents	Part T2: Returnable documents	
		T2.1	List of Returnable Documents
		C1.1	Form of Offer and Acceptance
		C1.2	Contract Data
		C2.2	Activity Schedule / Bill of Quantities
		T2.2	Returnable Schedules
Volume 3	Contract	Part C1: Agreement and Contract Data	
		C1.1	Form of Offer and Acceptance
		C1.2	Contract Data(if not included in volume 2)
		Part C2: Pricing data	
		C2.1	Pricing Instructions
		Part C3: Scope of Work	
		C3	Scope of Work
		Part C4: Site information (engineering and construction works contracts only)	
		C4	Site Information

Table 4: Recommended format for documents associated with the calling for expressions of interest (see Annex G of SANS 294)

Contents		Function and broad outline of contents
Number	Heading	
Tendering procedures		
E1.1	Call for Expressions of Interest	Alerts tenderers to submit their credentials in order to be invited to submit tenders should they satisfy stated criteria. The document should contain sufficient information to enable them to respond appropriately.
E1.2	Submission Data	States what the applicable conditions for the calling for expressions of interest are and where they may be found. Submission Data also provides the variables for standardised conditions of tender.
Returnable documents		
E2.1	List of Returnable Documents	Ensures that everything the employer requires a tenderer to include in his submission is included in, or returned with, such a submission.
E2.2	Returnable Schedules	Contains documents that the tenderer is required to complete for the purpose of evaluating submissions.

2.2.2 Descriptions of component documents

The contents of each document in the standardised documents are broadly described in Tables 1 and 2. SANS 10403 provides a more comprehensive outline of the content of each of these component documents.

SAICE's Practice Manual #1, *The use of South African National Standards in Construction Procurement*, provides comprehensive guidance on the formulation of all the component documents.

Annex D of SANS 10403 provides comprehensive guidance on the topics that should be covered in the scope of work section of a procurement document. Table 5 outlines the topics that SANS 10403 recommends should be addressed in the scope of work in supplies, services and engineering and construction works contracts. This tables provides a comprehensive checklist for those responsible for preparing procurement documents.

Table 5 Topics which SANS 10403 recommend should be addresses in the scope of works in engineering and construction works, services and supplies and contracts

TOPIC	SUBTOPICS
ENGINEERING AND CONSTRUCTION WORKS CONTRACTS	
DESCRIPTION OF THE WORKS	
Employer's objectives	-
Overview of the works	-
Extent of the works	-
Location of the works	-
Temporary works	-
ENGINEERING	
Design services and activity matrix	-
Employer's design	-
Design brief	-
Drawings	-
Design procedures	-
PROCUREMENT	
Preferential procurement procedures	Requirements; resource standard pertaining to targeted procurement
Subcontracting	Scope of mandatory subcontract works; preferred subcontractors / suppliers; subcontracting procedures; attendance on subcontractors
CONSTRUCTION	
Works specifications	Applicable SANS 2001 standards; applicable national and international standards; particular/generic specifications; certification by recognized bodies; and Agrément certificates
Plant and materials	Plant and materials supplied by the employer; materials, samples and shop drawings
Construction Equipment	Requirements for equipment; equipment provided by the employer
Existing services	Known services; treatment of existing services; use of detection equipment for the location of underground services; damage to services; reinstatement of services and structures damaged during construction
Site establishment	Services and facilities provided by the employer; facilities provided by the contractor; storage and laboratory facilities; other facilities and services; vehicles and equipment; advertising rights and notice boards.
Site usage	-
Permits and way leaves	-
Alterations, additions, extensions and modifications to existing works	-
Inspection of adjoining properties	-
Water for construction purposes	-
Survey control and setting out of the works	-
MANAGEMENT	
Management of the works	Applicable SANS 1921 standards; particular /Generic specifications; planning and programming; sequence of the works; software application for programming; methods and procedures; quality plans and control; environment; accommodation of traffic on public roads occupied by the contractor; other contractors on site; testing, completion, commissioning and correction of defects; recording of weather; format of communications; key personnel; management meetings; forms for contract administration; electronic payments; daily records; bonds and guarantees; payment certificates; permits; proof of compliance with the law; insurance provided by the employer
Health and safety	Health and safety requirements and procedures; protection of the public; barricades and lighting; traffic control on roads; measures against disease and epidemics and aids awareness
SERVICES CONTRACTS	
Client's / employer's objectives	-
Description of the services	-
Extent of the services	-
Use of reasonable skill and care	-
Co-operation with other services providers	-
Brief	-
Reference Data	-
Applicable national and international standards	-
Particular/Generic specifications	-
Approvals	-
Procurement	-
Access to land / buildings / sites	-
Planning and programming	-

TOPIC	SUBTOPICS
Software application for programming	-
Quality management	-
Format of communications	-
Key personnel	-
Management meetings	-
Forms for contract administration	-
Electronic payments	-
Daily records	-
Professional indemnity insurances	-
Payment certificates	-
Use of documents by the employer	-
Property provided for the Consultant's use	-
Proof of compliance with the law	-
SUPPLIES CONTRACT	
Employer's / purchaser's objectives	-
Overview of the required supplies	-
Extent of the supplies	-
Applicable national and international standards	-
Particular/Generic specifications	-
Specific requirements	-
Delivery	-
Certification by recognized bodies	-
Quality plans and control	-
Procurement	-
Format of communications	-
Forms for contract administration	-
Electronic payments	-
Bonds and guarantees	-
Payment certificates	-
Insurance provided by the Employer / Supplier	-
Health and safety requirements and procedures	-

SANS 1921 standards for construction and management requirements deals with many of the topics outlined in Table 5 in respect of engineering and construction contracts and can be readily made contract specific. (See SAICE's Practice Manual #1, *The use of South African National Standards in Construction Procurement*)

3 Standard procurement packages

3.1 An approach to uniformity and standardisation

Institutions can develop standard (or uniform) procurement (or bidding) packages for their procurement needs should they format and compile their procurement documents in accordance with the provisions of SANS 10403 and follow the guidance provided in this section.

The starting point in the development of a standard procurement package is to consider the range of contract types that are likely to be encountered. Table 6 lists the most commonly encountered categories and subcategories of contract and their associated contracting and pricing strategies. (See Annexure 2 for definitions of the terms commonly used to describe contracting and pricing strategies). The risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract (i.e. contract data), the criteria and assumptions which it will be assumed in the contract that the tenderer has taken into account when developing his prices (i.e the pricing instructions) and returnable schedules and pricing data cannot be standardised for all procurements, but can at best be standardised in respect of a subcategory of procurement. It is therefore not possible to provide a single standard procurement package that is applicable to all procurements.

Table 6 Range of commonly encountered procurements

Category and subcategory	Brief description	Contracting strategy *	Pricing strategy*
ENGINEERING AND CONSTRUCTION WORKS			
Minor / low risk contracts	<ul style="list-style-type: none"> ▪ Straightforward or repetitive work, for short duration; ▪ Almost no requirement for sophisticated management techniques; ▪ Imposes only low risks on both the procuring institution and the contractor; and the ▪ Design of the works is almost complete when construction starts. 	Design by Employer Management Contract Develop and Construct	Activity schedules Bill of Quantities Cost Reimbursable
Major / high risk contracts	<p>The scope of work:</p> <ul style="list-style-type: none"> • does not satisfy the description for minor / low risk contracts; or • is such that risk exposure is higher than that for minor / low risk contracts. 	Construction Management Design by Employer Management Contract Design and Build Develop and Construct	Activity schedules Bill of Quantities Cost Reimbursable Target Cost
SERVICES			
Professional	Knowledge-based expertise provided on the basis of trust		Activity based Fee percentage Time and expenses Term with price list
Facilities	Operation and / or maintenance of an existing facility, structure or system.		
Miscellaneous	Not as that described for professional of facilities		
SUPPLIES			
Local / simple purchases	<ul style="list-style-type: none"> ▪ Simple, regional purchase of readily available materials or commodities; ▪ Requires almost no management of the buying and delivery process and may only need simple cross border formalities; ▪ Minimal testing, installation and commissioning on delivery. 	Single purchase(s) Term purchase with price list	
International / complex	Not as that described for local / simple purchases.		

* See Annexure 2 for definition of terms.

What is, however, possible is to develop standard component documents at different levels of uniformity / standardisation as indicated in Table 7 with the following hierarchy:

- i) Level 0: All component documents are drafted in accordance with the provisions of SANS 10403. Procurement documents are formatted and compiled in accordance with the provisions of SANS 10403.
- ii) Level 1A: Use is made of stand alone component documents that are generic to all procurements irrespective of the category or sub-category of procurement.
- iii) Level 1B: Use is made of standard documents which are commonly encountered in procurements within the various categories and subcategories on a contract specific basis.
- iv) Level 2: Use is made of proforma component documents that are generic to a specific subcategory of procurement and standard forms of contract.
- v) Level 3: Use is made of proforma component documents that are generic to specific projects within a programme for a given subcategory of procurement.

Table 7: Possible levels of standardisation in component documents

Contents		Comments	Level
#	Heading		
Part T1: Tendering procedures			
T1.1	Tender Notice and Invitation to Tender	Can develop a generic, standard proforma, eg the CIDB proforma Tender Notice and Invitation to Tender (see Annexure 3)	1A
T1.2	Tender Data	Can develop a generic, standard proforma which links to a single set of conditions of contract that is generic to all categories of contract, eg the Standard Conditions of Tender contained in Annex F of SANS 294.	1A
Part T2: Returnable documents			
T2.1	List of Returnable Documents	Can develop a generic, standard proforma, eg the CIDB proforma List of Returnable Documents (see Annexure 4)	1A
T2.2	Returnable Schedules	Can develop a library of standard returnable schedules.	1B
Part C1: Agreements and contract data			
C1.1	Form of Offer and Acceptance	Can develop a standard form of offer and acceptance eg the the Form of Offer and Acceptance contained in Annex I of SANS 294	1A
C1.2	Contract Data	Can develop generic, standard proforma for a selected general conditions of contract for a particular subcategory of contract (see Annexure 5 and Table 3.8 of SAICE's Practice Manual #1, <i>The use of South African National Standards in Construction Procurement</i>)	2 (and 3)
Part C2: Pricing data			
C2.1	Pricing Instructions	Can develop standard proformas for a range of categories of contract and general conditions of contract	2 (and 3)
C2.2	Activity Schedule / Bill of Quantities	Contract specific, but can develop generic content for projects of a repetitive nature within a programme	3
Part C3: Scope of Work			
C3	Scope of Work	Contract specific, but can develop generic content for projects of a repetitive nature within a programme	3
Part C4: Site information (engineering and construction works contracts only)			
C4	Site Information	Contract specific, but can develop generic content for projects of a repetitive nature within a programme	3

Standardisation at level 2 relates primarily to the selection of forms of contract and methods of pricing. Table 8 identifies the forms of contract that the CIDB recommends for use in procurements in the public sector. The selection of an appropriate form of contract is dependent upon the identification of the appropriate subcategory of contract that is applicable to a particular procurement (see Figure 1).

The degree to which the level 3 component documents can be standardised for a given programme is dependent on the number of contracting and pricing strategies that are selected and the scope of the work associated with projects within the programme.

A practical approach to programmes of a repetitive nature which involve a mixture of service and engineering and construction works contracts is to work through the following steps:

- STEP 1 Identify the **primary activities** that need to be performed and the **objectives associated** with such activities in respect of each sub-phase of the project.
- STEP 2 Group these primary activities into **logical clusters of activities** so that single point accountability may be assigned to each cluster.
- STEP 3 Consider the **professional competence**, if any, required to perform each activity.
- STEP 4 Develop the **scope of work** associated with each activity required to satisfy the stated objectives, taking cognisance of any required professional competencies, and combine the scope of work, related objectives and required qualifications for performing a sequence of activities in a **specification**.
- STEP 5 Place the primary activities in each specification in **sequence** in relation to the project cycle to achieve **milestones linked** to the procedural guidelines so that the necessary authorisations can be obtained to proceed to the next milestone.

- STEP 6 Identify the **resources** required to perform each of the clusters of activities.
- STEP 7 Identify appropriate and flexible **contracting strategies**.
- STEP 8 Identify appropriate and flexible **pricing strategies**.
- STEP 9 Develop **procurement documents** around the **contracting** and **pricing** strategies linked to the scope of work associated with each activity as captured in a specification.
- STEP 10 **Allocate** internal resources to undertake clusters of activities and **procure** contractors to perform the outsourced activities.

Table 8: CIDB recommended forms of contract for use in the public sector

Subcategory of contract	Form of contract	Contract strategy
Supplies	CIDB The Supply contract*	Single purchase(s) Term purchase with price list
Supplies (short)	CIDB Supply of goods (short contract)* CIDB General conditions of purchase# CIDB Contract for the Supply and Delivery of Goods	Single purchase(s) Term purchase with price list
Services (professional)	NEC3 - Professional Services Contract or CIDB Standard Services Contract	Activity schedules Fee percentage Time and expenses Term with price list
Services (facilities)	NEC3 Term services contract	
Services (miscellaneous)	Non-standard	
Engineering and construction works	See Best Practice Guideline # C2: Choosing an appropriate Form of Contract for Engineering and Construction Works	
Engineering and construction works (short)		
Disposals	Non-standard	

* Based on the NEC family of documents.

"Order form" purchase type contract.

Note: Annex C of SANS 294, *Construction Procurement Processes, Procedures and Methods*, provides guidance on the selection of an appropriate form of contract.

3.2 Electronic libraries of documents

Standard procurement packages are most effective when issued in electronic format, preferable from the internet or an intranet, where the updating and revision of documents can be controlled. The process flow associated with the compilation of procurement documents from an electronic library located on an intranet or internet is illustrated in Figure 2. The identification of the appropriate component documents for a particular procurement is outlined in Table 9.

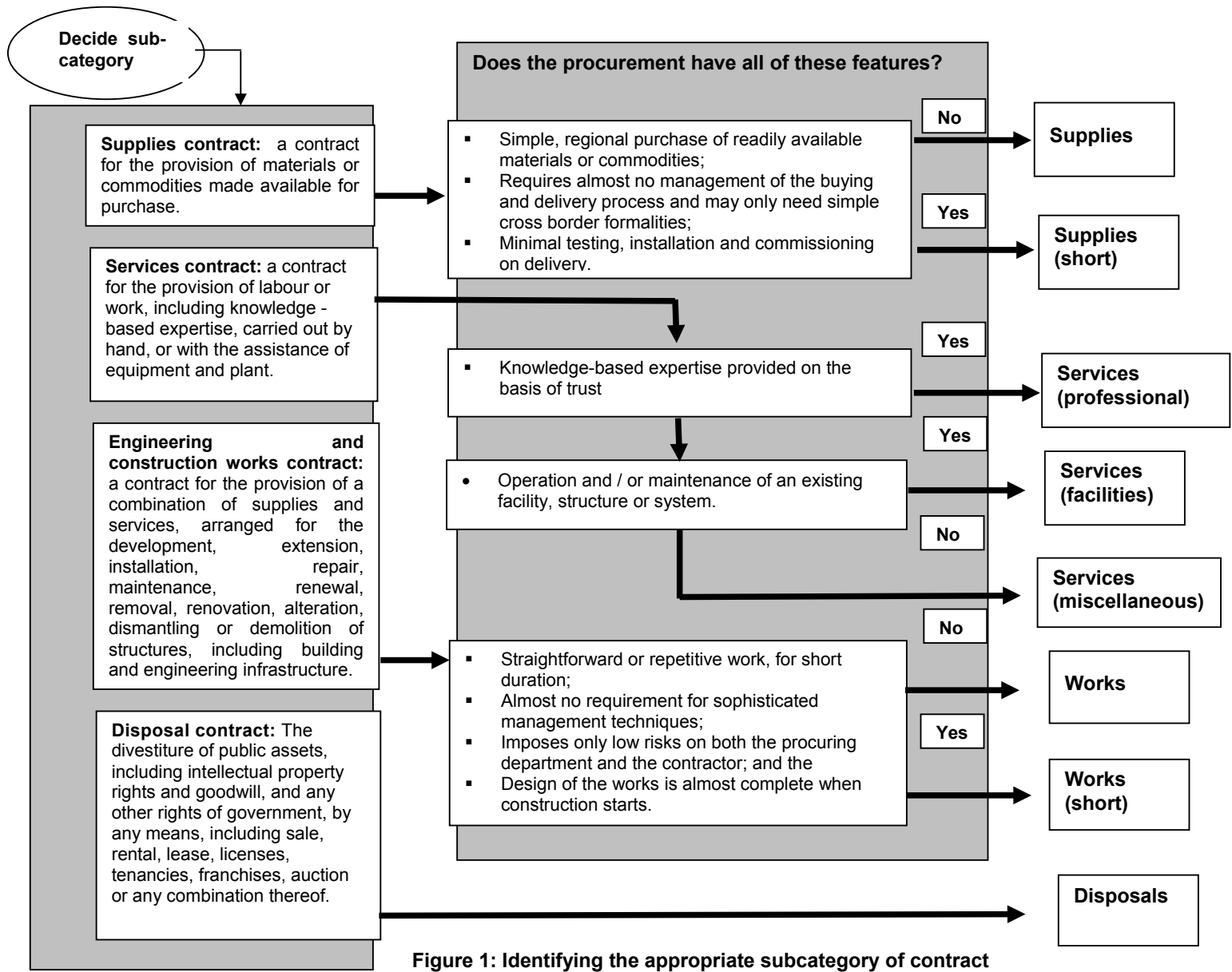


Figure 1: Identifying the appropriate subcategory of contract

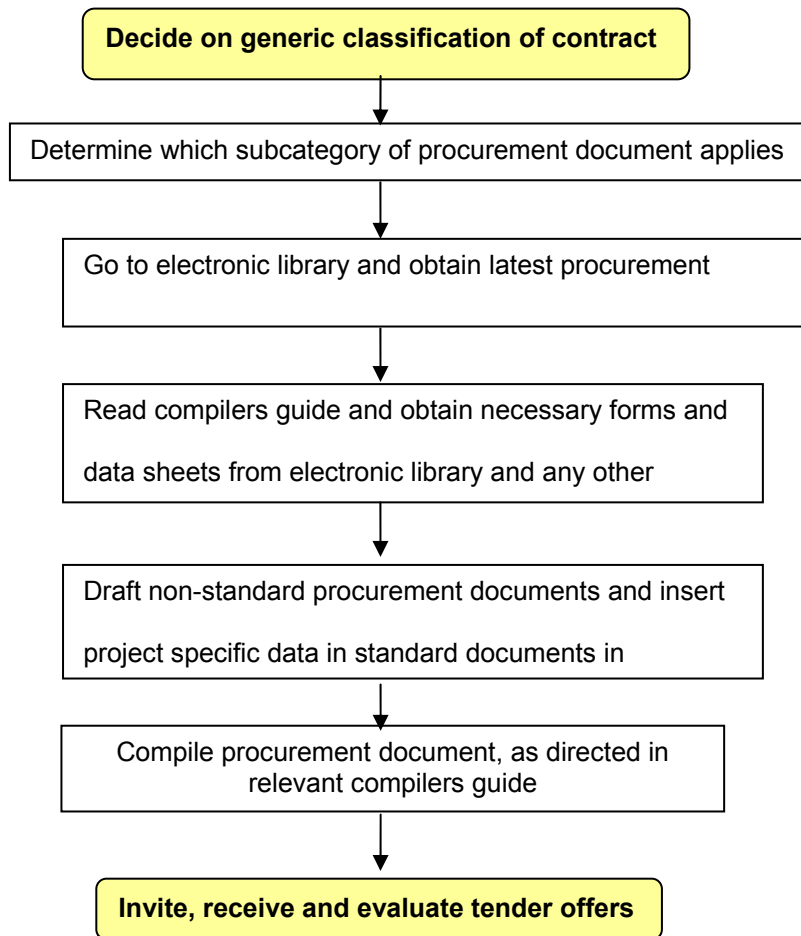


Figure 2: Process flow chart for the compilation of procurement documentation from an electronic library

Table 9: Compiler's actions where an employer has developed a standardized procurement package

Volumes		Standard Heading	Compiler's actions
Number	Description		
Volume 1	Tendering procedures	Part T1: Tendering procedures	
		Tender Notice and Invitation to Tender	Insert tender specific data in pro forma document
		Tender Data	Insert tender specific data in pro forma document
Volume 2	Returnable Documents	Part T2: Returnable documents	
		List of Returnable Documents	Modify list in proforma document
		Forms of Offer and Acceptance	Insert standard documents with or without minor project specific data.
		Contract Data (if relevant)	Insert contract specific data in pro forma document
		Activity Schedule / Bill of Quantities	Develop purpose written document using standard templates
		Tender Schedules	Select from library the required schedules and insert into volume.
Volume 3	Contract	Part C1: Agreement and Contract Data	
		Contract Data	Insert contract specific data in proforma document
		Forms of Securities	Select from library the required form and insert into volume
		Forms for Adjudicators Appointment	Insert standard document, if required.
		Part C2: Pricing data	
		Pricing Instructions	Develop purpose written instructions using the standard template or select standard instructions from library and insert into volume.
		Part C3: Scope of Work	
		Scope of Work	Develop purpose written instructions using the standard template
		Part C4: Site information	
		Site Information	Develop purpose written instructions using the standard template

Annexure 1: Uniformity in procurement documents

1.1 Introduction

The Green Paper on Public Sector Procurement Reform in South Africa (Ministries of Finance and Public Works, 1997) identified procurement documentation as being one of the areas that prevent small and medium enterprises and emerging businesses from competing freely for public sector contracts. This paper highlights the following in this regard:

- a) the use of highly technical language, jargon and 'legalese' makes documentation incomprehensible to many businesses;
- b) documents are often poorly written and difficult to understand;
- c) the layout and packaging of tender documentation is generally not methodical, and is therefore confusing. Frequently, conditions of tender are mixed with conditions of contract and are interspersed with technical specifications. This lack of discipline in the drafting of documents is very confusing to those who have not had considerable exposure to such documents;
- d) frequently, the standard conditions of tender and conditions of contract are drafted to cater for every conceivable eventuality and no attempt is made to present conditions appropriate to relatively simple and straightforward contracts;
- e) various public sector procurement units use different tender documentation which requires contractors to invest time in order to familiarise themselves with differing documents;
- f) standard forms of contract or specifications, particularly in the case of engineering and construction works contracts, are often extensively amended by public sector employers. Invariably, the list of amendments grows over a period of time as amendments are rarely withdrawn. These documents are extremely confusing and difficult to comprehend.

Currently each industry sector and different organs of the State have their own ideas and practices for the format and nomenclature used within a tender and contract document. Each industry sector has also tailor made its format and specification practices to suit its own general conditions of contract. This is fine until work of another sector is included within a contract scope, or other conditions of contract, such as international conditions required by funding agencies, are used. Frequently those responsible for preparing procurement documents randomly mix conditions of tender, conditions of contract, specifications and measurement and payment terms. This has resulted in documentation being complex and ambiguous in the allocation of ill-defined and unacceptable risks to contractors and increased tendering costs.

1.2 Benefits of uniformity in procurement documents

The Green Paper argues that uniformity in contract documentation will promote and/ or result in:

- a) effective participation by new entrants or emerging enterprises to the business environment;
- b) cost effectiveness, both in financial and human resource terms;
- c) understanding and interpretation by new entrants or emerging contractors;
- d) the simplification of the documentation process;
- e) contractors being able to more easily determine the scope and extent of risk;
- f) the management of a contract becoming routine and administration procedures becoming mechanized; and
- g) savings in cost and improvement in quality.

1.3 Green Paper principles and proposals

The principles and proposals set out in the Green Paper in respect of uniformity in procurement documents were as follows:

- a) there should be complete separation in contract documentation between conditions of tender, conditions of contract, specifications and terms of payment (including methods of measurement);

- b) a generic categorisation of contracts should be developed in order to regulate and administer Public Sector Procurement activity in a uniform manner;
- c) a national standards body should publish and distribute both human resource and technical specifications;
- d) standard conditions of contract, based on the generic categorization and classification of contracts, should be used by all organs of the State with minimal project specific amendments;
- e) government should play a leading role in the standardization of contract documentation and contract options and set an example in this regard for the private sector;
- f) construction standards common to all disciplines should be developed for engineering and construction works contracts; and
- g) engineering and construction works contracts should be drafted in such a way that they cater for a “hierarchy” of projects in terms of complexity and needs.

1.4 Implications of Green Paper Proposals

The first proposal, namely that “there should be complete separation in contract documentation between conditions of tender, conditions of contract, specifications and terms of payment (including methods of measurement)”, *Section 2.4.6 Principles and Proposals of the Green Paper a Public Sector Procurement Reform in South Africa (April 1997)* sets the framework for procurement reform in the area of procurement documentation. The rest of the above mentioned proposals add substance to this framework.

The implications of this proposal are that:

- a) each subject within a tender and within the subsequent contract can only be addressed once and in a specific place;
- b) issues relating to the tender will fall away once the contract is in place;
- c) changes in conditions of contract should not affect other aspects of the contract such as specifications, measurement and payment;
- d) many of the current standardized specifications need to be extensively revised as they make reference to conditions of contract, methods of measurement and / or terms of payment;
- e) stand alone systems of measurement, independent of specifications are required;
- f) specifications need to be written independently from conditions of contract; and
- g) a standard format for all contracts can be developed.

The implications of the other proposals include:

- a) standard conditions of tender and contract, based on the generic categorisation and classification of contracts, should be used, with minimal project specific amendments;
- b) terms, words and documents that specify and describe the process of tendering should not be included in a contract;
- c) within the contract itself there must be a clear division of documents which address:
 - i) the overall agreement;
 - ii) conditions of contract and associated contract data (or variables);
 - iii) contract prices;
 - iv) specifications and drawings which describe the works, services, supplies and state any constraints on how the works, services, supplies are to be provided; and
 - v) information about the site, at the time of tender, upon which the contractor bases his price.

Observance of the foregoing is expected to:

- a) Minimize ambiguity and errors in and between the documents which make up a contract for the provision of the works, as component documents will perform singular functions, and the subject material contained in the documents is addressed, as far as possible, once only and in a specific place.
- b) Enable all contracts to be developed in the same format using any of the modern delivery systems coupled to national and international standard forms of contract.

Annexure 2: Definition of terms associated with Contracting and Pricing Strategies

The following tabulation defines the commonly encountered terms:

Descriptions of commonly encountered contracting strategies

Strategy	Description
Batch order	Orders for supplies are placed in batches.
Construction Management	Similar to a management contract, the main difference being that the trade contracts are between the Employer and the various trade contractors.
Design and Build	The Contractor undertakes most of the design and all construction in accordance with the Employer's brief and a his detailed tender submission, usually for a lump sum price.
Develop and Construct	Similar to design and build, except that the Employer issues a concept design on which tenders are based.
Design by Employer	The Contractor undertakes only construction on the basis of full designs issued by the Employer.
Management Contract	A management contractor is appointed to engage and manage a number of trade contractors to carry out construction on the basis of designs issued by the Employer, as and when they are completed. The trade contracts are between the management contractor and the various trade contractors.
Term	A framework agreement to order services or supplies as and when required during the agreed period (the term) is put in place.
Single purchase	One item is purchased at a time.

Descriptions of commonly encountered pricing strategies

Strategy	Description
Activity schedules	The Contractor undertakes to break the scope of work down into activities and price each activity as a lump sum, which he is paid on completion of the activity. The total of the activity prices is the lump sum price for the contract work.
Bill of quantities	The Contractor is paid an amount for the item of work in the bill which is the rate for the work multiplied by the quantity completed
Cost reimbursable	The Contractor is paid an agreed percentage fee to cover his overheads and profit and is reimbursed at market related rates for predefined cost items..
Indefinite Delivery Contract (Price agreement)	Unit rates are agreed. Payment based on time actually used.
Percentage fee	Based on the estimated or actual project construction cost or the cost of goods inspected or procured.
Price List	A list of prices are agreed. Payment is based on the agreed price.
Quantity discount	The price of the supplies reduces in accordance with the quantity that is purchased.
Retainer and / or contingency fee	The retainer fees are fixed and the success fee is usually based on a percentage of the sale price or the assets.
Target cost	The Contractor is paid for work done on a cost reimbursable basis and the difference between the final cost of the works and a target price agreed at the conclusion of the contract is shared between the Contractor and the Employer in accordance with a pre agreed formula.
Time-based	Payment is based on agreed hourly, weekly or monthly rates for staff named in the contract and on agreed rates and reimbursable items . Typically, a ceiling amount is provided for.

Annexure 3: Example of a standard Notice and Invitation to Tender

The notice and invitation to tender should contain the following:

<p>..... invites tenders for</p> <p>Tenderers should have a CIDB contractor grading of . . . or higher.</p> <p>Tenderers should have a CIDB contractor grading of . . . or higher. potentially emerging enterprises who satisfy criteria stated in the Tender Data may submit tender offers.</p> <p><i>Tenderers must be registered with the CIDB in aclass of construction works.</i></p> <p>Preferences are offered to tenderers who</p> <p>Only tenderers who are eligible to submit tenders.</p> <p>The physical address for collection of tender documents is: Documents may be collected during working hours after 09:00 on</p> <p>A non-refundable tender deposit of R.....payable in cash or by bank guaranteed cheque made out in favour of the Employer is required on collection of the tender documents.</p> <p>Queries relating to the issues of these documents may be addressed to Mr/Ms, Tel No. , Fax No. e mail</p>	<p>Guidance Notes</p> <p><i>Enter the name of the employer and describe briefly what is to be procured, and if appropriate, over what time period.</i></p> <p><i>Omit where:</i> <i>i) the quotation procedure is used;</i> <i>ii) the contract involves supplies or services; or</i> <i>iii) the employer promotes potentially emerging enterprises in engineering and construction works.</i> <i>Insert best estimate of required contractor grading designation.</i></p> <p><i>Omit where:</i> <i>i) the quotation procedure is used;</i> <i>ii) the contract involves supplies or services; or</i> <i>iii) the employer does not promote potentially emerging enterprises in engineering and construction works.</i> <i>Insert best estimate of required contractor grading designation and one contractor grading designation lower before “potentially emerging”.</i></p> <p><i>Provide where quotation procedure is used.</i> <i>Insert class of construction works.</i></p> <p><i>Briefly indicate the nature of the preferences that are applicable, if so desired.</i></p> <p><i>Where applicable, state essence of eligibility criteria.</i></p> <p><i>Enter data</i></p> <p><i>Omit if not a requirement. Amend wording if cheques or cash are not acceptable.</i></p> <p><i>Enter data</i></p>
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<p>A compulsory clarification meeting with representatives of the Employer will take place at on starting at hrs.</p>	<p><i>Omit if not a requirement</i></p>
<p>The closing time for receipt of tenders is hrs on</p>	<p><i>Enter data and delete that which does not apply</i></p>
<p>Telegraphic, telephonic, telex, facsimile and late tenders will not be accepted.</p>	
<p>Tenders may only be submitted on the tender documentation that is issued.</p>	<p><i>Omit if procurement does not fall within the ambit of the Municipal Finance Management Act.</i></p>
<p>Requirements for sealing, addressing, delivery, opening and assessment of tenders are stated in the Tender Data.</p>	

Annexure 4: Example of a list of returnable documents

The list of returnable documents should contain the following:

<p>Returnable Schedules required for tender evaluation purposes</p> <p><i>Include under this heading Returnable Schedules such as the Certificate for Authority of Signatory, Certificate for Attendance at Compulsory Site / Clarification Meeting, Record of Addenda to Tender Document, Proposed Subcontractors etc.</i></p> <p>Other documents required for tender evaluation purposes</p> <p><i>Include under this heading, as relevant, tax clearance certificate or application for tax clearance certificate, Home Builders Registration Certificate etc</i></p> <p>Returnable Schedules that will be incorporated into the Contract</p> <p><i>Include under this heading, as relevant, Returnable Schedules such as the Proposed Subcontractors, Quality Plans, Curricula Vitae of Key Personnel, Basis of Design etc, Preferencing Schedules</i></p> <p>Other documents that will be incorporated into the Contract</p> <p><i>Include under this heading, as relevant:</i></p> <ul style="list-style-type: none">• <i>Form of Offer and Acceptance</i>• <i>Contract Data (Part 2: Data Provided by the Contractor</i>• <i>Activity Schedules / Bills of Quantities</i>	<p>Tenderers may use this column to confirm documents have been completed and returned by inserting a tick, thus ✓</p>
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Annexure 5: Example as to the manner in which standard forms of contract are referenced in the Contract Data

The Contract Data should contain a statement as to which form of contract is applicable, eg

The Conditions of Contract are the Short Form of Contract First Edition 1999, (the Green Book) available separately from the South African Institution of Civil Engineering (Tel 011- 805-5947/48/53) or the South African Association of Consulting Engineers (Tel 011-463- 2022)

Thereafter, data which needs to be inserted in appendices, tabulations or schedules, depending upon the standard form of contract that is used, needs to be inserted, preferably in a tabular form using the guidance notes provided in the form of contract selected.

The tabulation should make provision for clauses to be inserted to modify or amend standard clauses should this be necessary.

(See SAICE's Practice Manual #1, *The use of South African National Standards in Construction Procurement*, for comprehensive guidance on the drafting of Contract Data for a range of standard forms of contract.)