

A generic and systemic approach to procurement: the case for an international standard

RB Watermeyer

PrEng, CEng, PrCM, PrCPM, BScEng, FSAICE, FStructE

Director, Soderlund and Schutte, Consulting Engineers, South Africa
Chairperson, Technical Committee for Construction Works, Standards South Africa

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1 INTRODUCTION

All levels of government, public utilities, donor agencies and international agencies invariably regulate procurement. Several public companies also regulate procurement. This is done in the interests of good governance and public or shareholder accountability. There is, however, no uniformity in approach. At one end of the scale, narrow procurement procedures are prescribed, while at the other end, flexible regulatory frameworks are provided. The practice of developing separate procedures, guidelines and drafting styles for procurement documentation for different categories of procurement, e.g. supplies, services, works, disposals and public private and public partnerships further complicates matters.

It may be argued that this fragmented approach to the regulation of procurement by these institutions and corporations presents a significant barrier to trade and is not necessarily in the best interest of an organization. Those wishing to do business with an organization have to understand an organization's procurement culture in order to successfully access business opportunities and to price risks associated with their procurement. This fragmented approach also works against the development of a procurement skills base within an organization and staff mobility between organizations.

Procurement may be defined as the process which creates, manages and fulfils contracts relating to the provision of supplies, services or engineering and construction works, the hiring of anything, disposals and the acquisition or granting of any rights and concessions. If procurement is indeed a process, it can be documented as a succession of logically related actions occurring or performed in a definite manner which culminates in the completion of a major deliverable or the attainment of a milestone. Processes in turn are underpinned by methods (i.e. a documented, systematically-ordered collection of rules or approaches) and procedures (i.e. the formal steps to be taken in the performance of a specific task, which may be evoked in the course of a process) which are informed and shaped by the policy of an organisation. Methods and procedures can likewise be documented and linked to processes.

ISO/IEC Guide 2 (Standardization and related activities – general vocabulary (1996) defines a standard as a “*document, established by consensus and approved by a recognized body, that provides for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context*”. Given that procurement is a process comprising methods and procedures, it is surprising that there are no international or national standards for procurement other than the very recently published SANS 294: 2004, *Construction Procurement Processes, Procedures and Methods*¹, despite the demand being expressed by ISO members and partners in a recent survey for standards relating to management systems in fields such as governance².

1 This South African standard was approved by National Committee STANSA TC 5120.61, *Construction standards*, in accordance with the procedures of Standards South Africa, in compliance with annex 3 of the WTO/TBT agreement.

2 Demand expressed in responses from 40 member bodies, one corresponding member and 13 international partners to the question “*Are there new fields of activity or new work items within fields currently or potentially covered by ISO of interest and high priority for your organization that ISO should address in the future?*” ISO Central Secretariat. ISO Strategic Planning Process: Results of the Consultation and Analysis of the Responses. Letter to ISO Member Bodies and Correspondent Members. International Standards Organization, 10 February 2004.

2 A FIRST PRINCIPLE APPROACH TO PROCUREMENT

Procurement activities commence once the need for procurement is identified and end when the transaction is completed. There are six principal procurement activities and a number of generic steps that need to be taken to proceed from one activity to another³. These generic steps may be categorized as either inputs towards the attainment of a milestone within the procurement process or procedural milestones which require decisions or approvals in order to proceed to the next step. (See Figure 1.) Not all these steps will necessarily be required in a particular procurement.

A procurement system⁴ comprises processes (see Figure 1) which are underpinned by methods⁵ and procedures,⁶ which in turn are informed and shaped by the policy⁷ of an organization (see Figure 2)⁸. There are a finite range of methods and procedures associated with the various procurement sub-processes. Many aspects of procurement documents which are required to solicit tender offers and to conclude contracts can at the same time be rationalized and standardized.

The starting point in the development of any procurement system is to determine the primary objectives for the system.

The World Bank, according to recent policy statements published on its web (July 2001), has four basic guiding principles, namely:

- i) ensuring economy and efficiency in the procurement of goods, works, and services;
- ii) giving eligible tenderers from developed and developing countries a fair opportunity to compete in providing goods, works, and services;
- iii) encouraging the development of domestic industries—contracting, manufacturing, and consulting industries—in borrowing countries; and
- iv) providing for transparency in the procurement process.

The Bank views competition as the basis for economic and efficient procurement. As a general principle, the Bank prefers the method of procurement that maximizes competition over methods that are less competitive.

The World Trade Organization's point of departure, as stated in its website in its approach to procurement, is that best value for money is secured through an open and non-discriminatory procurement regime. Discrimination in government procurement procedures and practices is considered to lead to distortions in international trade.

The United Nations Commission on International Trade Law (UNCITRAL) developed and published a Model Law on the Procurement of Goods, Construction and Services complete with a guide to enactment. (1994). The Model Law was developed "*to be of assistance to countries which are in the process of reforming their public procurement systems to increase the market orientation of the economy or which are considering to introduce a legislation on procurement or to update their current procurement legislation to enhance the dismantling of obstacles to international trade.*" The objectives of the Model Law, which include maximising competition, according fair treatment to suppliers and contractors bidding to do government work, and enhancing transparency and objectivity, are considered to be essential for fostering economy and efficiency in procurement and for curbing abuses.

3 Pautz M, Watermeyer R, and Jacquet A. 2003. Public construction procurement: a model delivery system. Knowledge Construction. Joint International Symposium of CIB Working Commissions. October, Singapore.

4 A system is an organized scheme or plan of action or an orderly or regular procedure or method.

5 A method is a documented systematically-ordered collection of rules or approaches.

6 A procedure contains the formal steps to be taken in the performance of a specific task, which may be evoked in the course of a process.

7 An organisation's policy establishes the manner in which choices within a system are to be exercised by that organization

8 Watermeyer, R and Jacquet, A. Practice Manual 1: The use of South African National Standards in Construction Procurement. South African Institution of Civil Engineering, 2004.

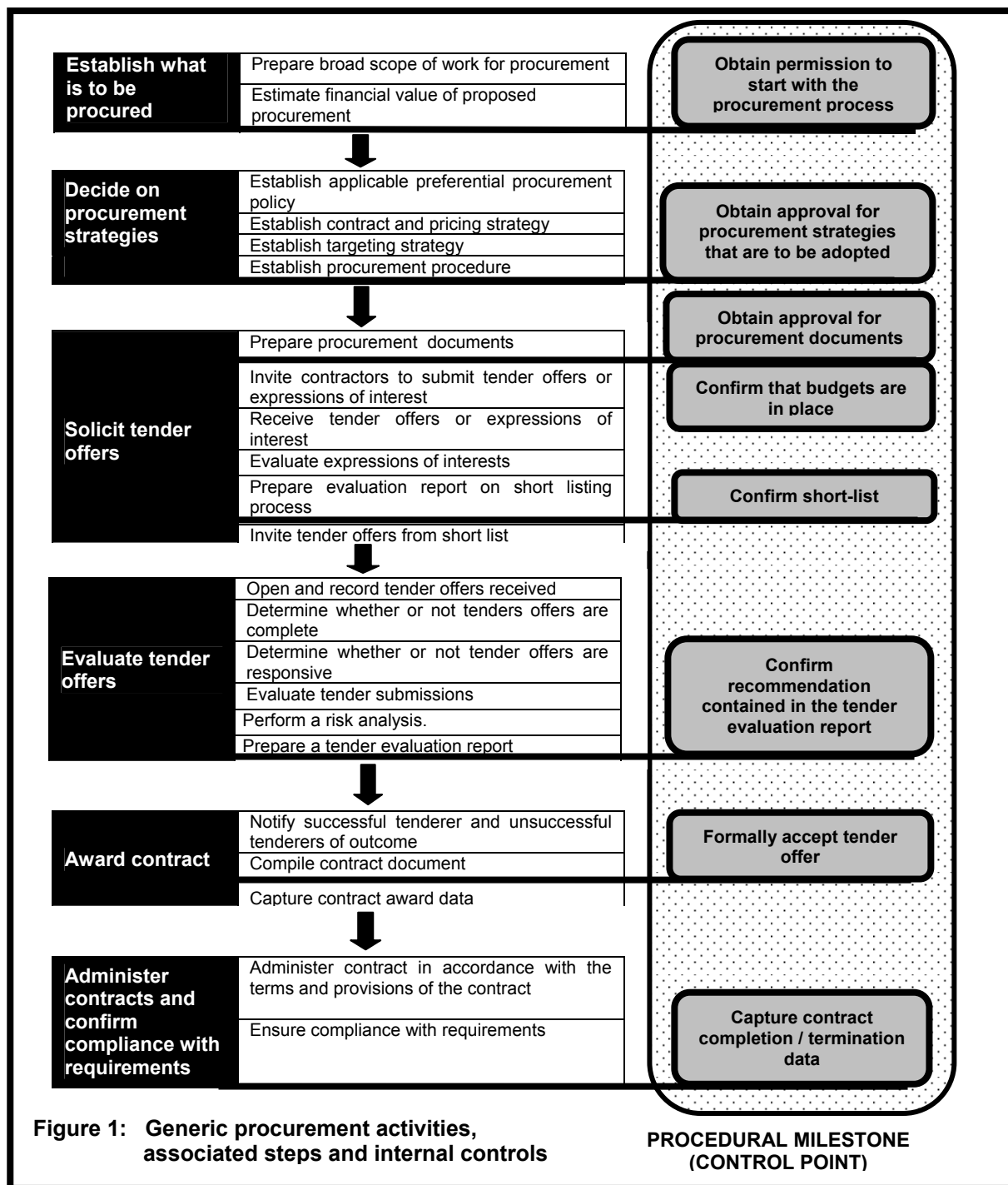
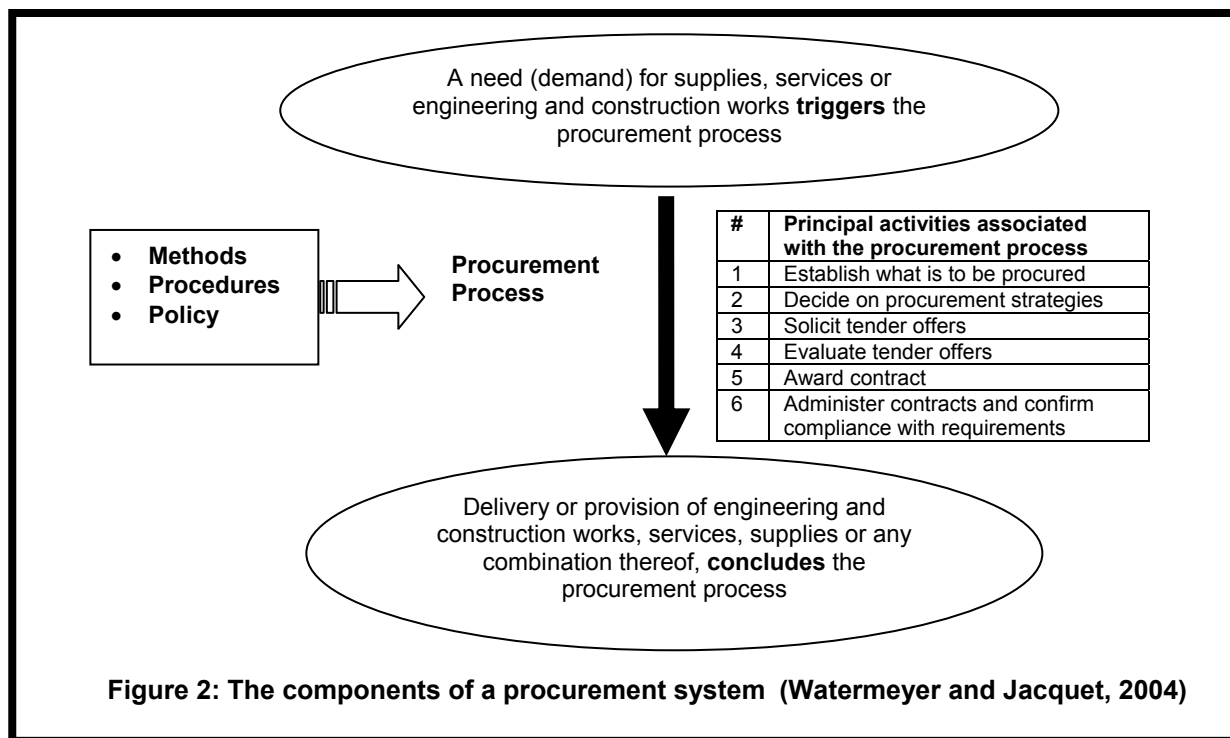


Figure 1: Generic procurement activities, associated steps and internal controls

The aforementioned objectives are widely supported amongst many international organizations, corporations and governments. They may be summarized by requiring the procurement system to be fair, equitable, transparent, competitive and cost effective⁹.

⁹ These objectives are framed as requirements for public sector procurement systems in South Africa's constitution. (See Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996)



2 STANDARDISING THE APPROACH TO SECONDARY PROCUREMENT OBJECTIVES

Concerns regarding the undermining of the aforementioned primary procurement objectives are invariably expressed whenever procurement is used as an instrument of socio-economic policy. Typically the concerns raised revolve around the risk of the following occurring when implementing a preferential procurement policy:

- i) loss of economy and inefficiency in procurement;
- ii) the exclusion of certain eligible tenderers from competing for contracts;
- iii) the reduction in competition;
- iv) unfair and inequitable treatment of contractors;
- v) lack of integrity or fairness;
- vi) lack of transparency in procurement procedures; and
- vii) failure to achieve secondary procurement objectives through the procurement itself.

It should be noted that these risks relate to the compromising of the procurement system objectives, namely that the system is to be fair, equitable, transparent, competitive and cost effective.

Watermeyer (2004)¹⁰ conducted a risk assessment based on AS/NZS 4360:1999 (Risk Management) on the implementation of a preferential procurement policy which has objectives that can be realised by creating a demand for services and supplies from, or to secure the participation of, targeted enterprises and targeted labour, using a range of methods identified by Arrowsmith *et al* (2000)¹¹ to implement policies relating to secondary objectives. His analysis indicated that the methods which relate to preferencing at the short listing stage and award (tender evaluation) criteria, whilst not guaranteeing that socio-economic objectives will be met, are the methods that are most likely not to compromise

¹⁰ Watermeyer, RB. Tools and techniques to facilitate the alignment of public and donor procurement systems to promote sustainable development objectives. Public Procurement Law Review, Pgs 30 to 55, Issue 1, 2004.

¹¹ Arrowsmith S, Meyer G and Trybus M . Non-commercial factors in public procurement. The Public Procurement Research Group, School of Law, Nottingham University 2000.

requirements for the system to be fair, equitable, transparent, competitive and cost effective, if appropriately managed.

Targeted procurement procedures can be used to implement preferential procurement policies relating to the targeting of enterprises and labour using preferencing at the short listing stage or award criteria.¹² Standards South Africa, based on the work by the Procurement Reform Task Team in South Africa, has standardized the methods associated with these procedures and has published the following national standards:^{13,14}

- SANS 1914 (2002), *Targeted construction procurement*
 - Part 1: Participation of targeted enterprises.
 - Part 2: Participation of targeted partners in joint ventures.
 - Part 3: Participation of targeted enterprises and targeted partners in joint ventures.
 - Part 4: Participation of targeted enterprises and targeted labour (local resources).
 - Part 5: Participation of targeted labour.
 - Part 6: Participation of targeted enterprises in concession contracts.
- SANS 10396 (2003), *Implementing preferential procurement policies using targeted construction procurement procedures.*

It should be noted that the SANS 1914 family of standards are performance based standards as illustrated in Figure 3. SANS 10396, on the other hand, provides guidance on the effective use of targeted procurement procedures.

3 STANDARDIZING THE APPROACH TO PROCUREMENT DOCUMENTATION

Procurement documents are required primarily to:

- a) solicit tender offers; and
- b) form the basis for a contract.

Figure 4 illustrates the concept of offer and acceptance that results in a contract being entered into. Procurement documents provide tenderers with the necessary inputs to allow them to compile their tender submissions. Their tender submissions are in turn inputs into the contract that may be concluded following the acceptance of their tender offer.

In order to have a fair, transparent and equitable solicitation process, employers should provide tenderers with clear instructions as to how they are to submit their tender offers and inform them as to how their tenders are to be processed following their receipt.

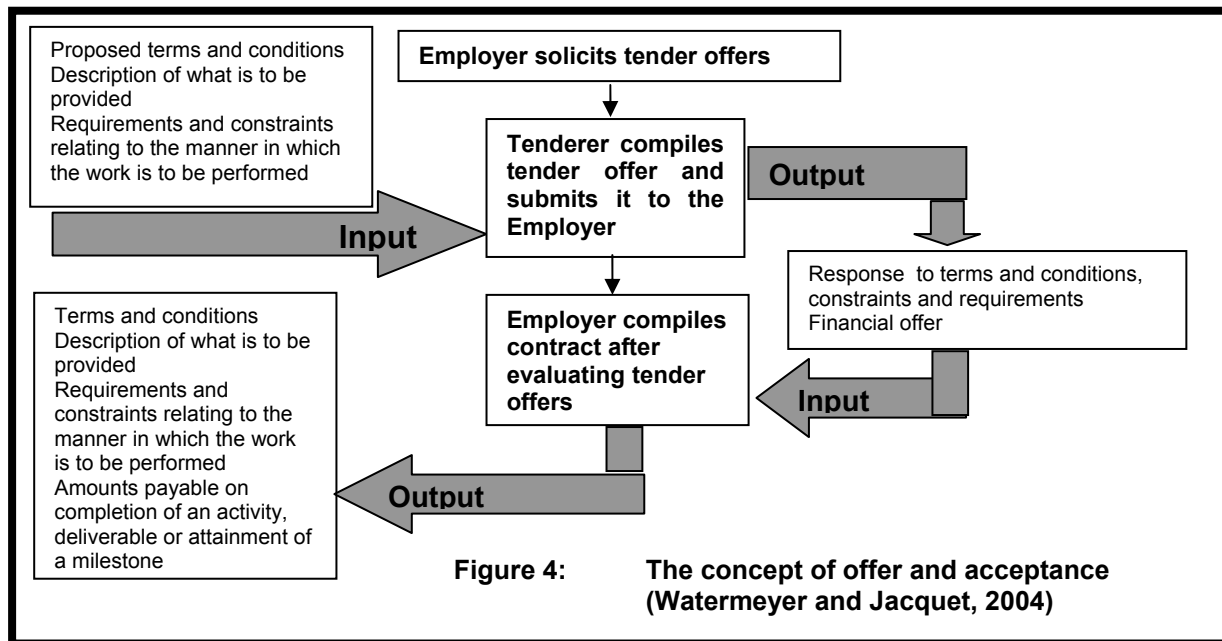
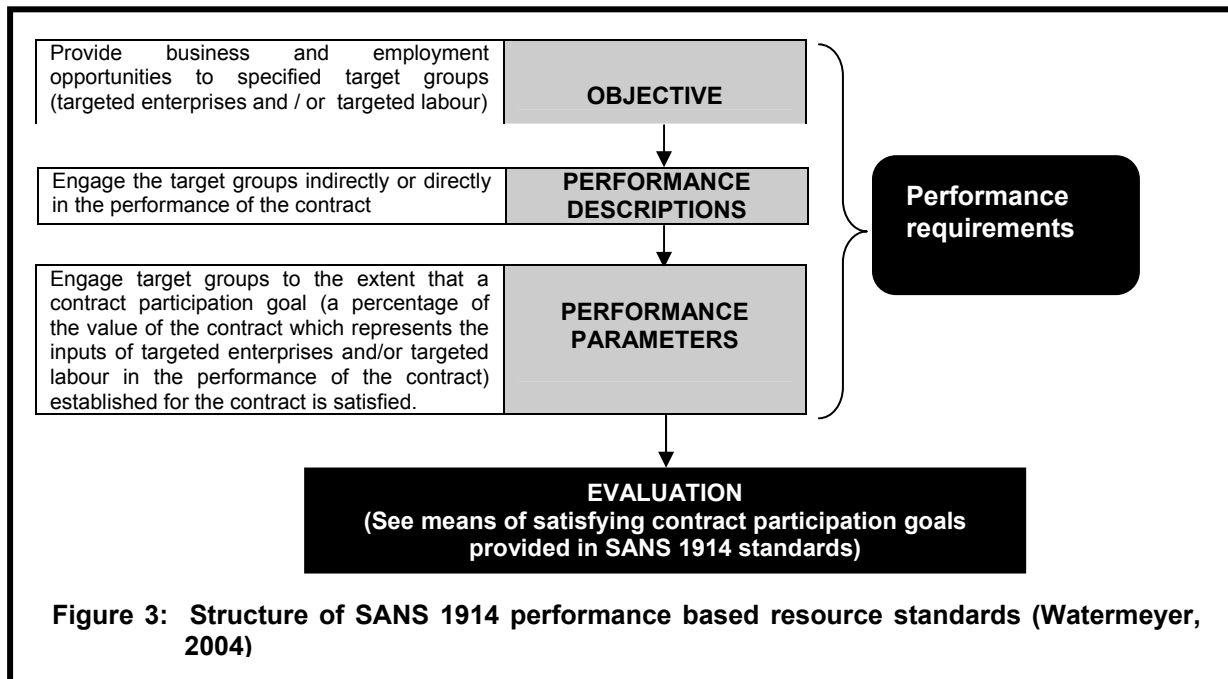
Uniformity in procurement documentation can be achieved provided there is a complete separation in the component documents (i.e. the conditions of tender, the conditions of contract, the specifications and methods of measurement and payment) that make up a procurement document between the conditions of tender, the conditions of contract, the specifications and methods of measurement and payment.¹⁵ Should this be done, different conditions of contract, or for that matter, payment systems can be used without affecting the remaining component document.

12 Watermeyer R.B. The use of Targeted Procurement as an instrument of Poverty Alleviation and Job Creation in Infrastructure Projects. Public Procurement Law Review, Number 5 pages 201-266. 2000.

13 Watermeyer, RB. Tools and techniques to facilitate the alignment of public and donor procurement systems to promote sustainable development objectives. Public Procurement Law Review, Pgs 30 to 55, Issue 1. 2004.

14 SANS 1914 and SANS 10396 may also be applied to non-construction procurement. Standards South Africa has incorporated the word "construction" in all these standards to signify that these standards were approved by the Technical Committee for Construction Standards.

15 The Green Paper on Public Sector Procurement Reform in South Africa (Ministries of Finance and Public Works, 1997, first proposed this approach.



SANS 10403 (2003), *Formatting and Compilation of Procurement Documents*, provides a series of standard headings of component documents based on an “offer” and “acceptance” process illustrated in Figure 4 (see Tables 1 and 2) and provides comprehensive guidance on the formulation of these component documents.

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 to the “Tender” (See SANS 10403, 2003)

Contents		Function and broad outline of contents
Number	Heading	
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.
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 to the “Contract” (See SANS 10403, 2003)

Contents		Broad outline of contents
Number	Heading	
Part 1: 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 2: 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 3: 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 4: 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 and risks.

When tenders are invited, it is advisable, however, that three volumes be issued, viz, Volume I comprising the Tendering Procedures (Part 1 of the Tender), Volume 2 comprising the Returnable Documents (Part 2 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. Organizations will compile the contract (see Table 2) 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 formation and signing of the contract.¹⁶ (See Figure 5)

¹⁶ 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 those in Table 2, “Contract”. The List of Returnable Documents identifies which of the documents a tenderer must complete when submitting its tender offers. 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.

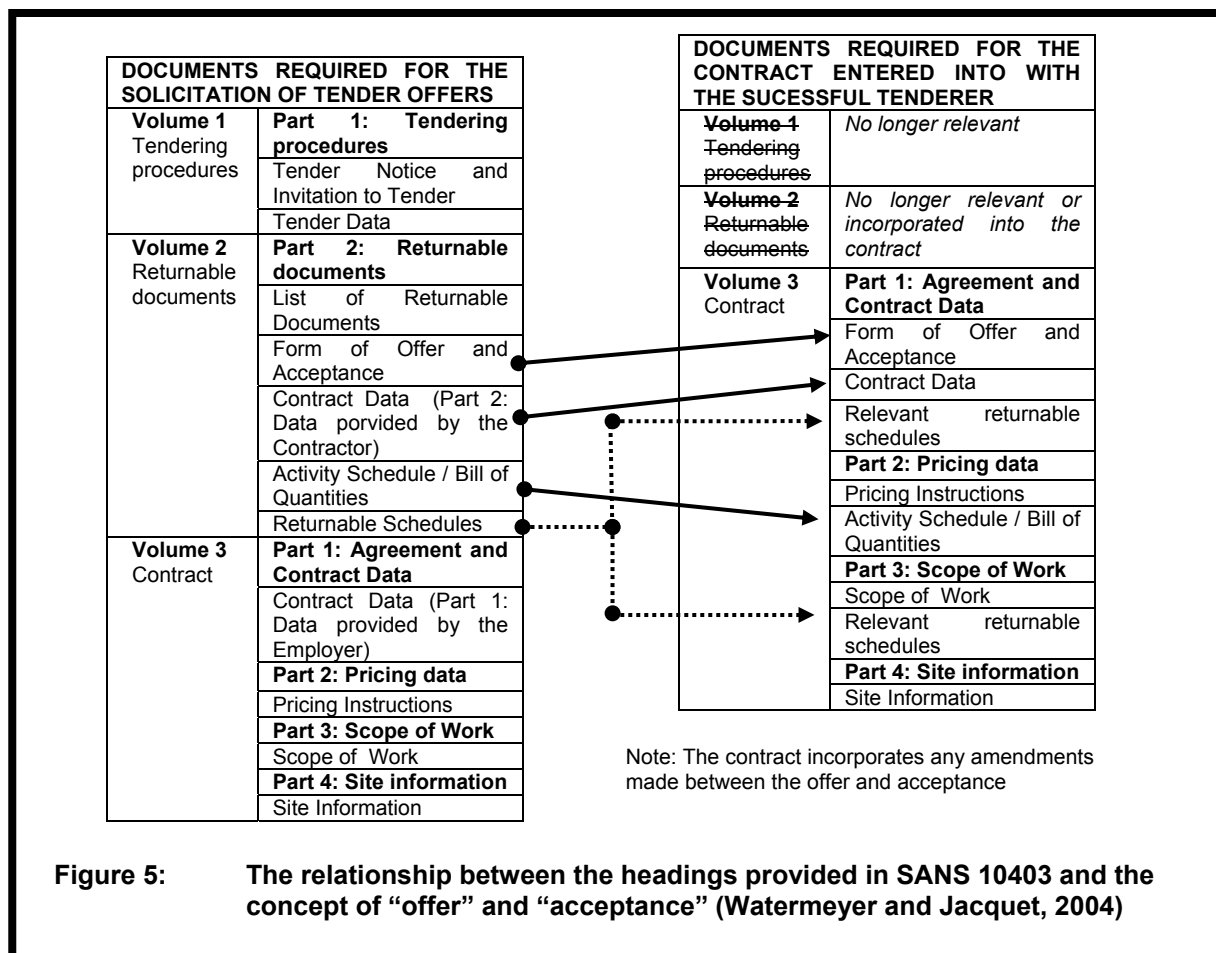


Figure 5: The relationship between the headings provided in SANS 10403 and the concept of “offer” and “acceptance” (Watermeyer and Jacquet, 2004)

Users of this system who are familiar with the standardized procurement documents of an organization will only need to read the project specific sections for any specific project in order to know what the procurement entails. On the other hand, users who are not familiar with an organization’s standardized 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.

4 STANDARDIZING THE APPROACH TO PROCUREMENT METHODS AND PROCEDURES

Procurement can be broadly categorized in accordance with the provisions of Table 3. In many procurement systems, e.g. the World Bank and the European Union, each category of procurement is dealt with separately and separate implementation guidelines / regulations are provided. This compartmentalized approach to procurement causes much confusion and makes procurement unnecessarily complex. An alternative approach is to develop a generic procurement system and to then identify which methods and procedures are best suited to particular categories of procurement.

The author analyzed the World Bank procurement procedures, WTO’s Government Procurement Agreement, the UNICTRAL Model Law on the Procurement of Goods, Construction and Services complete with a guide to enactment, and a number of South African procurement procedures. The analysis indicated that:

- i) there are eight generic procurement procedures associated with procurements other than those relating to disposals (see Table 4);
- ii) there are four generic evaluation methods (see Table 5); and
- iii) eligibility criteria can form part of a procurement procedure.

Table 3: Broad categories of contract (SANS 294, 2004)

Category of procurement	Description
Supplies contract	A contract for the provision of materials or commodities made available for purchase.
Services contract	A contract for the provision of labour or work, including knowledge -based expertise, carried out by hand, or with the assistance of equipment and plant.
Engineering and Construction Works contract	a contract for the provision of a combination of supplies and services, arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of structures, including building and engineering infrastructures.
Disposal contract	A contract for the divestiture of assets, including intellectual property and other rights and goodwill by any means, including sale, rental, lease, license, tenancy, franchise, auction or any combination thereof.

Table 4: Standard procurement procedures (SANS 294, 2004)

Procedure	Description
Negotiated procedure	Tender offers are solicited from a single tenderer.
Nominated procedure	Tenderers that satisfy prescribed criteria are admitted to an electronic data base. Tenderers are invited to submit tender offers based on search criteria and their position on the data base. Tenderers are repositioned on the data base upon appointment or upon the submission of a tender offer.
Open procedure	Tenderers may submit tender offers in response to an advertisement by the organization to do so.
Qualified procedure	A call for expressions of interest is advertised and thereafter only those tenderers who have expressed interest, satisfy objective criteria and who are selected to submit tender offers, are invited to do so.
Quotation procedure	Tender offers are solicited from not less than three tenders in any manner the organization chooses, subject to the procedures being fair, equitable, transparent, competitive and cost-effective.
Proposal procedure using the two-envelope system	Tenderers submit technical and financial proposals in two envelopes. The financial proposal is only opened should the technical proposal be found to be acceptable.
Proposal procedure using the two-stage system	Non-financial proposal are called for. Tender offers are then invited from those tenderers that submit acceptable proposals based on revised procurement documents. Alternatively, a contract is negotiated with the tenderer scoring the highest number of evaluation points.
Shopping procedure	Written or verbal offers are solicited in respect of readily available supplies obtained from three sources. The supplies are purchased from the source providing the lowest price once it is confirmed in writing.

Not all these procurement procedures are necessarily appropriate to the procurement of all categories of procurement, viz, supplies, services and engineering and construction works. These procedures facilitate the solicitation of tender offers i.e. the activities and sub-activities associated with “solicit tender offers” activity shown in Figure 1.

Disposals, on the other hand, may be undertaken using one of following procedures:

- i) the negotiated procedure as described in Table 4;
- ii) the open procedure as described in Table 4;
- iii) the qualified procedure as described in Table 4; or
- iv) public auction i.e. the advertising and displaying of items and assets that are to be auctioned prior to their auction sale.

Table 5: Standard tender evaluation methods (SANS 294, 2004)

Method	Procedure
Method 1: Financial offer	1) Rank tender offers from the most favourable to the least favourable comparative offer. 2) Recommend highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 2: Financial offer and preferences	1) Score tender evaluation points for financial offer. 2) Confirm that tenderers are eligible for the preferences claimed and if so, score tender evaluation points for preferencing 3) Calculate total tender evaluation points. 4) Rank tender offers from the highest number of tender evaluation points to the lowest. 5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 3: Financial offer and quality	1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data, if any. 2) Score tender evaluation points for financial offer. 3) Calculate total tender evaluation points. 4) Rank tender offers from the highest number of tender evaluation points to the lowest. 5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 4: Financial offer, quality and preferences	1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data, if any. 2) Score tender evaluation points for financial offer. 3) Confirm that tenderers are eligible for the preferences claimed, and if so, score tender evaluation points for preferencing. 4) Calculate total tender evaluation points. 5) Rank tender offers from the highest number of tender evaluation points to the lowest. 6) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Eligibility criteria in the form of attaining a minimum quality score can provide a simple and cost-effective alternative to the scoring of quality in tender submissions in professional service contracts. In this procedure, the scoring of quality is merely to establish that the tenderer is capable of providing the service and to reject the tender submissions of those who fail to attain the threshold score. Thereafter the tender offers can be evaluated on the basis of price or price and preference.

Combinations of the generic procedures and methods outlined in Table 4 and 5, with or without eligibility criteria, can be used to simulate most international procurement procedures and methods applicable to supplies, services and works. (See Figure 6). Table 6 illustrates this relationship with the World Bank's Guidelines for the Selection and Employment of Consultants by World Bank Borrowers and these generic procedures.¹⁷

Quality (i.e. totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs) can be addressed in procurement using one of the methods outlined in Table 7 under the circumstances that are indicated therein.

There are a number of other procedures that may be standardized. These include:

- i) Requirements for the preparation of specifications.
- ii) Conditions of tender should they be framed around the obligations of the tenderer and the undertakings of the employer. (see Table 8).
- iii) Conditions for the calling for expressions of interest should they be framed around the obligations of the respondent and the undertakings of the employer.
- iv) Advertisements.

¹⁷ Annex B of SANS 294 outlines combinations of the generic methods and procedures that can be used to simulate those described in the WTO Government Agreement, the UNCITRAL Model Laws and World Bank.

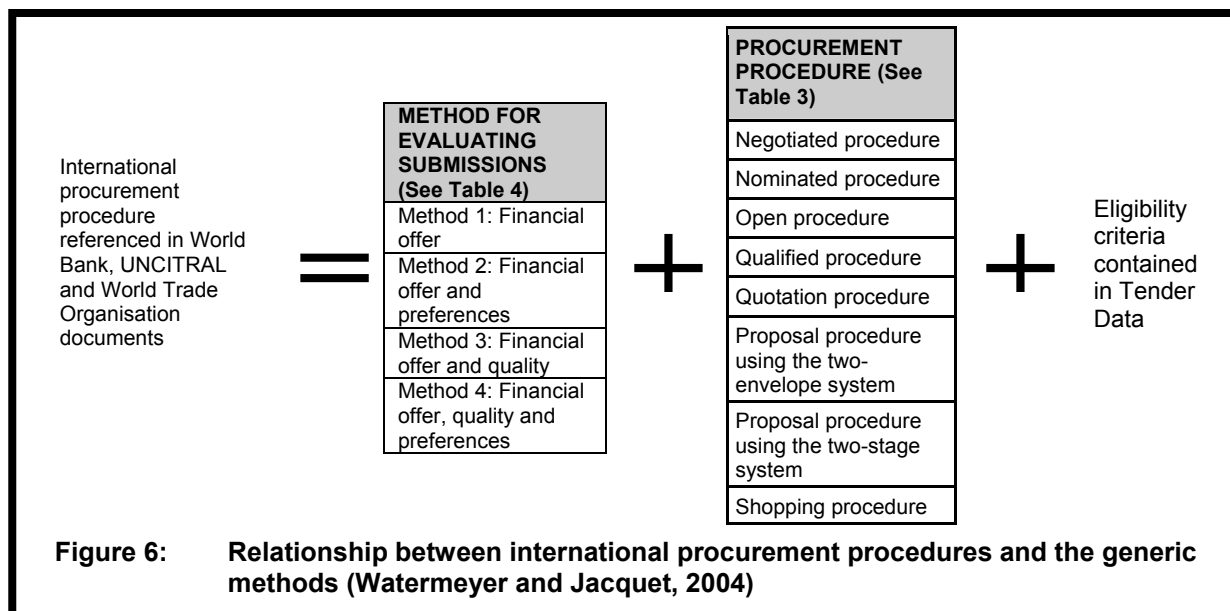


Table 5: The relationship between The World Bank’s Guidelines for Consultants and the generic methods and procedures (Watermeyer and Jacquet, 2004)

Methods and procedure provided for in the World Bank Guidelines		Equivalent approach using generic methods and procedures		
Descriptor	Description	Procurement procedure	Evaluation method	Tender data
Quality and cost based selection (QCBS)	This procedure provides a competitive process amongst short-listed tenderers that takes into account the quality of the proposal and the cost of the services in the selection of the successful tenderer. Tenderers are provided with an indication of the expected input of key professionals (staff time).	Nominated or qualified procedure	Methods 3 or 4.	Tender data must state which method is to be used.
Quality based selection (QBS)	This procedure requires the submission of either a technical proposal only (without the financial proposal), or both technical and financial proposals at the same time, but in separate envelopes. The tenderer submitting the highest ranked proposal, where only technical proposals are requested, is invited to negotiate the financial proposal. If the two envelope system is used, the financial proposals of only those respondents that provide acceptable proposals are opened and evaluated on the basis of a balance between quality and financial offer. The final contract is thereafter negotiated. Tenderers are provided with an indication of the expected input of key professionals (staff time).	Proposal procedure either using the two stage tendering system or the two envelope system	Methods 3 or 4	Tender data must state which method is to be used.

Selection under a fixed budget	In this procedure, tenderers are provided with a scope of work and the available budget and are invited to provide their best technical and financial proposals in separate envelopes, within the budget. The quality of the technical offer is evaluated before opening the financial offer. Financial offers within budget are evaluated. A contract is negotiated with the tenderer submitting the highest ranked technical offer.	Proposal procedure using the two envelope system.	Methods 3 or 4	Tender data must state which method is to be used and make it an obligation for tenderers to submit tenders that do not exceed the budget.
Least cost selection	In this procedure, a "minimum" qualifying mark for the "quality" is established. Proposals are invited in two in two envelopes from a short list. Technical envelopes are opened first and evaluated. Those securing less than the minimum are rejected, and the financial envelopes of the rest are opened in public. The tenderer with the lowest price is selected.	Nominated or qualified procedure	Methods 1 or 2	The tender data must, state which method is to be used and that all the tenders that fail to achieve the threshold score for quality will be rejected.
Selection based on consultants' qualifications	In this procedure, a call for expressions of interest and information on the consultants' experience and competence relevant to the assignment is made in order to establish a short list and to select the tenderer with the most appropriate qualifications and references. A contract is negotiated with a selected tenderer.	Select tenderer from electronic data base or call for expressions of interest		The tender/ submission data must state that a contract will be entered into with the tenderer who has the most appropriate qualifications
Single source selection	In this procedure, a suitable tenderer is identified and a contract is negotiated.	Negotiation procedure		

Table 7: Methods for addressing quality in procurement (Watermeyer and Jacquet, 2004)

Method	Description of method	Recommended usage
Specifications	Specify the full and unambiguous requirements in the scope of work of a procurement document.	In all procurements where the scope of work can be precisely documented.
Life cycle costing	Take cognizance of whole-life costing in the financial evaluation of tender offers.	In procurements where life cycle costs determine the cost of the procurement
Qualified procedure	Make use of the qualified procurement procedure (see Table 2.2) and ensure that respondents who are invited to submit tender offers are suitably qualified to do so.	Complex work characterized by requirements for higher levels of skills, greater resources or not well defined inputs and outputs.
Eligibility criteria	Introduce quality into the eligibility criteria for the submission of tender offers or for the attainment of a minimum score in terms of specified quality criteria for tender offers to be evaluated.	
Undertakings at tender stage	Require tenderers to submit plans for monitoring and applying quality management principles in the performance of their contracts.	In procurements where it is not desirable or inappropriate to specify quality management requirements
Preference	Establish a category of preference for quality in the evaluation of tenders.	Simple/straightforward/routine work where the tasks/activities are of a straightforward nature in terms of which inputs are relatively well known and outputs can be readily defined.
Evaluation criteria	Evaluate specified quality criteria as an integral part of the tender offer.	Specialist work requiring considerable innovation, creativity, expertise and/or skill or work that has a high downstream impact. Partnering approaches where the scope of work is ill defined when the partners are selected.

- v) Tender procedures (receipt of tender submissions and opening of tender submissions).
- vi) Evaluation of tender submissions (disqualification of tenders, test for responsiveness, arithmetical errors, ranking and scoring of responsive tenderers, risk assessment, negotiations with tenderers, and tender evaluation reports).
- vii) Award of contracts.
- viii) Contract administration.
- ix) Resolution of disputes.

Table 8: Topics dealt with in generic conditions of tender

General	Tenderer's obligations	The employer's undertakings
Actions Tender Documents Interpretation Communication and employer's agent The employer's right to accept or reject any tender offer	Eligibility Cost of tendering Check documents Confidentiality and copyright of documents Reference documents Acknowledge addenda Site visit and clarification meeting Seek clarification Insurance Pricing the tender offer Alterations to documents Alternative tender offers Submitting a tender offer Information and data to be completed in all respects Closing time Tender offer validity Clarification of tender offer after submission Provide other material Inspections, tests and analysis Submit securities, bonds, policies, etc. Check final draft Return of other tender documents Certificates	Respond to clarification Issue Addenda Return late tender offers Opening of tender submissions Two-envelope system Non-disclosure Grounds for rejection and disqualification Test for responsiveness Arithmetical errors Clarification of a tender offer Evaluation of tender offers Insurance provided by the employer Acceptance of tender offer Notice to unsuccessful tenderers Prepare contract documents Issue final contract Complete adjudicator's contract Provide copies of the contracts

5 STANDARDIZING CONSTRUCTION PROCUREMENT PROCESSES, PROCEDURES AND METHODS

SANS 294, *Construction procurement processes, procedures and methods*, provides processes, methods and procedures for the establishment within an organization of a procurement system that is fair, equitable, transparent, competitive and cost effective¹⁸. SANS 294 accordingly:

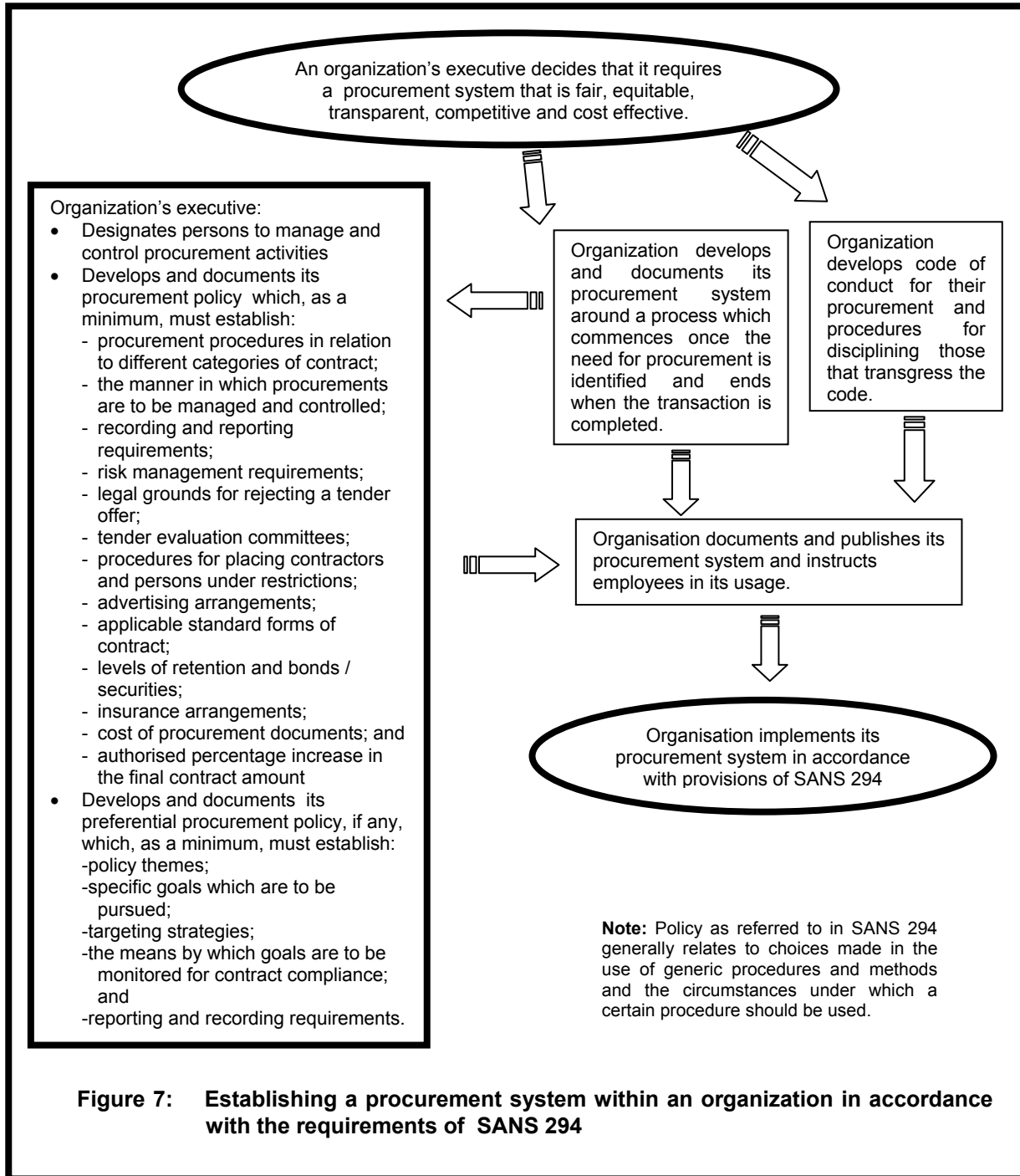
- a) describes generic procurement processes around which an organization may develop its procurement system;
- b) establishes minimum requirements for the conduct of an organization's employees, agents, board members and office bearers when engaging in procurement;
- c) establishes the framework for the development of an organization's procurement policy¹⁹ including any preferential procurement policy;
- d) establishes generic methods and procedures for procurements including those pertaining to disposals; and

¹⁸ SANS 294 which covers supplies, services, engineering and construction works and disposals, may also be applied to non-construction procurement. Standards South Africa has incorporated the word "construction" in the title of this standard to signify that this standard was approved by the Technical Committee for Construction Standards.

¹⁹ The New Shorter Oxford Dictionary defines policy as "any course of action adopted as advantageous or expedient". Policy as referred to in SANS 294 relates to choices made in the use of generic procedures and methods and the circumstances under which a certain procedure should be used.

e) provides standard conditions of tender and conditions for the calling for expressions of interest.

SANS 294 provides the generic processes around which an organization can develop its procurement system as illustrated in Figure 7. It provides standard generic methods and procedures which can by reference be adopted by organizations in their procurement system.



The processes, methods and procedures embodied in SANS 294 are based on an underlying requirement for the procurement system to be fair, equitable, transparent, competitive and cost effective. This necessitates that the following two important principles be adhered to:

- 1) All evaluation criteria must be made known to tenderers or respondents in the procurement documents.
- 2) The only grounds for not awarding a tender to a tenderer are:
 - a) The tenderer is under restrictions from participating in the organization's procurement for engaging in corrupt and fraudulent practice, or has principals who are under such restrictions.
 - b) The tenderer cannot demonstrate that he or she possesses the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience, and reputation, and the personnel, to perform the contract.
 - c) The tenderer does not have legal capacity to enter into the contract.
 - d) The tenderer is insolvent, in receivership, bankrupt or being wound up, has its affairs administered by a court or a judicial officer, has suspended its business activities, or is subject to legal proceedings in respect of any of the foregoing;
 - e) The tenderer does not satisfy the legal requirements, if any, stated in the organization's procurement policy.
 - f) The tenderer may not be able to perform the contract in the best interest of the organization owing to conflicts of interest.

SANS 294 is based on the premise that, subject to prevailing legislation, preferential procurement policies are implemented using one of the following methods:

- a) preferences at the short-listing stage;
- b) accelerated rotation on an electronic data base²⁰ where the nominated procedure is used;
- c) tender evaluation criteria; and
- d) breaking down (unbundling) of projects into smaller contracts to facilitate the participation of targeted enterprises.

SANS 294 is a generic standard that can be applied to both the public and private sectors. As such, it contains the full range of methods and procedures that organizations may require in their procurements without prescribing when and under what circumstances such methods may be utilized or imposing the manner in which procurement is to be managed and controlled. Being generic in nature, it does not impose matters of policy on organizations. It rather establishes a rule based framework within which an organization may develop its procurement policy in order to implement the wide range of standard procurement methods and procedures outlined in Tables 4 and 5. Compliance with the requirements of SANS 294 will result in a procurement system that not only satisfies requirements for the procurement system to be fair, equitable, transparent, competitive and cost effective but also one that is predictable and ensures equal treatment of tenderers.

6 SATISFYING INTERNATIONAL CONCERNS RELATING TO TRANSPARENCY

WTO Members have been exploring a multilateral agreement on transparency in government procurement. A Working Group on Transparency in Government Procurement, established after the 1996 WTO Ministerial meeting in Singapore, has been gathering information on national practices and was charged with developing elements of an agreement on transparency in government procurement. At the Ministerial meeting in Doha, WTO Members agreed that *"Negotiations shall be limited to the transparency*

²⁰ In terms of this procedure, firms are registered on an electronic data base and are ranked according to their date of entry and targeted enterprise status. Firms are invited to submit tenders based on their rankings and their satisfying of procurement related search criteria. Tenderers (both successful and unsuccessful) are repositioned on the database at new positions dependent on their targeted enterprise status and record of previous tenders and contracts. (See SANS 10396 and SANS 294)

aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers.”²¹

OECD (2003) points out that “the conduct of government procurement involves a sequence of procedural steps that provide opportunities at different levels for transparency and open decision-making.”²² Evenett and Hoekman (2003) consider a procurement system to be transparent if:²³

- i) the terms upon which the procurement process are to be conducted and the criteria upon which any decisions are to be made are properly documented and made widely available;
- ii) the eventual procurement award decision, and where appropriate, any intermediate decisions, is made publicly available as are the reasons given for these decisions; and
- iii) it is possible to verify that the documented procedures and criteria were indeed applied.

A transparent procurement system is seen to:²⁴

- i) provide best value for money through increased competition and good economic governance;
- ii) improve the performance of industry and local markets;
- iii) improve the global competitiveness of local industries;
- iv) improve access to markets for small and medium enterprises;
- v) provide a means for combating bribery and corruption;
- vi) enhance accountability and public confidence;
- vii) minimize covert discrimination at the invitation, evaluation and execution stage;
- viii) assist conscientious officials to resist pressures from their political masters seeking to depart from their “own” policies for reasons of political expediency; and
- ix) minimize the concealing of not just discriminatory behaviour but also other illegitimate conduct, including corruption and patronage.

Transparency is maintained through (Schooner, 2002)²⁵ :

- i) the publishing of statutes, regulations, policies and rules that define the procurement process.
- ii) publicly announcing government’s requirements;
- iii) articulating in every solicitation how tenders will be evaluated;
- iv) notifying all of the unsuccessful tenderers (and members of the public who request the information) which tenderer received the award and for what amount;
- v) the debriefing of unsuccessful tenderers and explaining to them how all of the rules and regulations were followed;
- vi) the provision of protest procedures, where independent third parties can review all of the agency records; and
- vii) the employment of appropriate oversight to audit agency actions.

From the foregoing, it is clear that a transparent procurement system is characterized by the documentation of clear rules and the means to verify that those rules were followed. In this regard, SANS 294, apart from establishing the obligations of the employer and the undertakings of the tenderer and respondent in standard conditions of tender and conditions for the calling for expressions of interest, respectively, establishes requirements that are deemed to be fair, equitable, transparent, competitive and cost effective in respect of the following:

21 Organisation for Economic Co-operation and Development. Working Party of the Trade Committee. Transparency in government procurement: the benefits of efficient governance and orientations for achieving it. TD/TC/WP(2002)31/FINAL May, 2003.

22 Organisation for Economic Co-operation and Development. Working Party of the Trade Committee. Transparency in government procurement: the benefits of efficient governance and orientations for achieving it. TD/TC/WP(2002)31/FINAL May, 2003.

23 S. J. Evenett & B. M. Hoekman. “Transparency in Procurement Regimes: What can we expect from International Trade Agreements.” In Sue Arrowsmith and Martin Trybus (editors) *Public Procurement: The Continuing Revolution*, Kluwer Law International 2003.

24 Refer to OECD, 2003; Arrowsmith, S. Transparency in Government Procurement: The Objectives of Regulation and the Boundaries of the WTO. (Undated) and Fenster, G. Transparency and Discrimination: Multilateral Negotiations on Government Procurement and Developing Countries. (May 2002)

25 Schooner, SL. Desiderata: Objectives for a system of government contract law. *Public Procurement Law Review*, 2002

- i) the content and formulation of procurement documents including the framing of eligibility criteria, specifications, quality measures and evaluation criteria relating to the manner in which the submissions are to be evaluated;
- ii) the implementation methods associated with each of the eight procurement procedures (see Table 4) that are provided for the solicitation of tender offers;
- iii) the drafting and publishing requirements for advertisements;
- iv) tender procedures relating to the receipt and opening of tenders;
- v) the evaluation of tender submissions including the disqualification of tenders, the test for responsiveness, correction of arithmetical errors, ranking and scoring of responsive tenderers, risk assessment, negotiations with tenderers, and tender evaluation reports;
- vi) the award of contracts;
- vii) contract administration; and
- viii) resolution of disputes arising from a contract.

Minimum time frames associated with the various procedures and methods are provided. These are designed to ensure that the parties conduct their affairs within reasonable time frames.

It must be stressed that SANS 294 is not just designed to provide transparent procedures above a financial threshold. It includes procedures such as the quotation, nomination and shopping procedure to provide transparent procedures for low value procurements in the interest of accountability.

SANS 294 also provides transparent procedures to implement preferential procurement policies. In this regard it requires that tenderers and respondents be advised of all preferences offered by the employer, the conditions relating thereto and the manner in which the preferences will be evaluated. It establishes requirements for implementing preferential procurement policies that are, where appropriate, linked to the use of SANS 10396 and the SANS 1914 family of standards.

7 SATISFYING INTERNATIONAL GOVERNMENT PROCUREMENT SYSTEM REQUIREMENTS USING SANS 294

Schooner (2002) ²⁶ identified the nine most frequently identified goals for government procurement systems as described in Table 9 and contends that there is no universal agreement that a procurement system should be premised solely upon transparency, integrity, and competition.

SANS 294 is designed to maximize the systemic goals of competition and transparency. In satisfying these systemic goals, it also provides:

- i) a range of procurement and quality procedures which are sufficiently flexible to facilitate the satisfying of goals relating to best value and customer satisfaction;
- ii) generic procurement processes around which a procurement system can be developed and provides comprehensive and well documented procedures and requirements for the formatting and compilation of procurement documents in a standardized manner, all of which promote efficiency;
- iii) establishes requirements and procedures for addressing quality in a procurement and awarding contracts only to qualified contractors who do not present an unacceptable commercial risk;
- iv) guidance on the selection of a standard form of contract that allows an appropriate risk allocation between the parties; and
- v) comprehensive requirements for preferencing arrangements and guidance on appropriate targeting strategies which are aligned to the goal of wealth distribution in a manner that minimizes the negative impacts on other goals.

A code of conduct which regulates the behaviour of employees, agents, public office bearers and board members forms an integral part of SANS 294. This code of conduct establishes minimum requirements relating to the systemic goal of integrity, in that it requires these persons to:

²⁶ Schooner SL. Desiderata: Objectives for a system of government contract law. Public Procurement Law Review, 2002.

Table 9: Most frequently encountered goals for government procurement systems (after Schooner, 2002)

Systemic goal	Thinking behind systemic goal
Competition	The government receives its best value in terms of price, quality and contract terms and conditions through competition
Integrity (rules of conduct for those engaged in procurement)	Bribery, favoritism or unethical behaviour have no place in a procurement system. Tenderers should compete solely upon the merits of their demonstrated capabilities and the quality and price of their offers rather than their influence on government officials.
Transparency	Business is conducted in an impartial and open manner.
Efficiency (administrative and transactional efficiency)	The least amount of resources is spent in the process of procuring what is needed. The ideal system is one that employs the fewest possible people to procure.
Customer satisfaction*	Please the end user.
Best value (value for money)	Getting the best deal or bargain for the public's money.
Wealth distribution	Use procurement as a leverage or a vehicle of wealth e.g. to support domestic firms and small businesses or target contractors located in specific geographical areas of high unemployment.
Risk avoidance	Avoid undue risk e.g. filter out undesirable or incompetent contractors, allocate risks to the party most able to manage the risk, make provision for termination in the event that the contracted item is no longer required.
Uniformity	Should all government entities procure in the same way, transactions become routine, officials are trained more easily and can readily move between departments during their careers, tenderers only have to learn one system in order to do business with government.

*Customer satisfaction is frequently linked to flexibility within the procurement system

- i) discharge their duties and obligations timeously and with integrity;
- ii) behave equitably, honestly and transparently;
- iii) avoid conflicts of interest; and
- iv) not maliciously or recklessly injure or attempt to injure the reputation of another party.

The generic conditions of tender and conditions for the calling for expressions of interest contained in SANS 294 include an obligation on the parties in dealing with each other to act in a manner consistent with this code of conduct.

SANS 294 can serve as the base document for the development of a uniform procurement system within a country, state or province as indicated in the model for harmonizing procurement that is described below, in order to attain the goal of uniformity,

8 A MODEL FOR HARMONIZING PUBLIC PROCUREMENT INTERNATIONALLY

Public procurement may be harmonized on an international basis if:

- 1) Agreement is reached on the systemic goals for the procurement system, namely that the procurement system must be fair, equitable, transparent, competitive and cost effective and that preferences at the short listing stage or through tender evaluation criteria may be used to promote wealth distribution²⁷.

²⁷ The use of these techniques to promote goals relating to wealth distribution without unduly compromising the primary systemic goals is comprehensively described by the author in the following two publications:

- Watermeyer R.B. The use of Targeted Procurement as an instrument of Poverty Alleviation and Job Creation in Infrastructure Projects. Public Procurement Law Review, Number 5 pages 201-266. 2000.
- Watermeyer, RB. Tools and techniques to facilitate the alignment of public and donor procurement systems to promote sustainable development objectives. Public Procurement Law Review, Pgs 30 to 55, Issue 1, 2004.

- 2) The International Standards Organization develops a standard for procurement processes, methods and procedures having a scope in accordance with that described in Table 10 along the lines of SANS 294.²⁸
- 3) Country or Regional Standards are developed to establish certain country specific / regional requirements and parameters having a scope in accordance with that described in Table 10.²⁹

Table 10: The scope of standards required to harmonize public procurement internationally

Document	Scope
Country / Regional Standard *	<p>Requires procurement to be in accordance with the International Standard subject to certain additional requirements / in accordance with specific parameters. This Country / Regional Standard may as such:</p> <ul style="list-style-type: none"> • establish thresholds associated with some of the procurement procedures listed in Table 4; • limit the range of procurement procedures (Table 4) and methods for evaluating tender offers (Table 5); • establish the conditions under which specific procurement procedures (see Table 4) may be used • establish the manner in which procurements, including disposals, will be managed and controlled; • establish requirements relating to preferencing arrangements, if permitted, relating to policy themes, specific goals, targeting strategies, the means by which goals are to be monitored for contract compliance and recording and reporting requirements; • establish requirements for recoding and reporting; • establish requirements for managing risks; • state the legal grounds for declining to enter into a contract, e.g. the tenderers failure to have a tax clearance certificate; • establish requirements relating to the functioning and composition of tender evaluation committees; • establish procedures for placing contractors and persons under restrictions to business; • establish advertising arrangements; • identify which standard forms of contract may be used and under what conditions; • establish norms for levels of retention and bonds / securities; • establish requirements relating to contract insurance; • establish requirements relating to charges for procurement documents; and • establish norms relating to the authorized percentage increase in the final contract amount. <p>Establish any variations or amendments to the International Standard subject to them being fair, equitable, transparent, competitive and cost effective.</p>
International Standard	<ul style="list-style-type: none"> • Describes generic procurement processes around which an organization may develop its procurement system; • Establishes minimum requirements for the conduct of an organization's employees, agents, board members and office bearers when engaging in procurement; • Establishes the framework for the development of an organization's procurement policy including any preferential procurement policy; • Establishes generic methods and procedures for procurements including those pertaining to disposals; and • Provides standard conditions of tender and conditions for the calling for expressions of interest.

* A Regional Standard may apply to either a block of countries e.g. SADC or European Union, or to a region within a country, eg a province.

Individual institutions within countries and regions would then be required to procure in accordance with the provisions of the Country / Regional Standard without amendment and would be required to outline their institution's procurement process together with procedural milestones (control points), assign

²⁸ SANS 294, *Construction procurement processes, methods and procedures*, could be adopted on an interim basis. This standard has been developed in accordance with the provisions of Annex 3 of the WTO's Technical Barriers to Trade Agreement.

²⁹ A Country or Regional Standard allows each government to decide how much discretion or flexibility within the confines of the International Standard it wishes to delegate to those responsible for procurement.

responsibilities to officials to perform the actions associated with the procedural milestones, and address any of the issues covered in the scope of the Country or Regional Standard outlined in Table 10, should they not be addressed in the Standard.

In this model, agreement must first be reached on the standardization of procurement processes, procedure and methods i.e. the international standard upon which the procurement system is based. Thereafter agreement needs to be reached on the conditions under which the standardized procurement processes, procedures and methods may be used. This could be captured in a framework document. Once this is done, Country and Regional Standards may be developed within the confines of this agreed framework. An international body can be assigned the task of certifying that the Country and Regional Standards are in accordance with the confines of the agreed framework.

The adoption of this model would result in a uniform international procurement system where the country or regional specific differences are readily understood. This approach would effectively remove the current barriers to trade erected by the existing non-harmonized procurement systems. Compliance with the standards can be readily audited.

It should be noted that the proposed system is rule based. Accordingly decisions made by officials can be disputed. Disputes could be resolved rapidly through adjudication, a means of resolving disputes that is increasingly being applied to contracts within very tight time frames.³⁰

9 CONCLUSIONS

The starting point for any procurement system is to establish what its goals are. A generic approach to procurement processes, methods and procedures can be developed from a first principle approach should it be required that the procurement system be fair, equitable, transparent, competitive and cost effective. It is possible to develop a national / international standard in accordance with the provisions of Annex C of the WTO's Technical Barriers to Trade Agreement, which allows both public and private organisations to standardise on their procurement processes, methods and procedures within a comprehensive and well defined framework and to develop their procurement implementation policies in a consistent manner without sacrificing flexibility.

Such a standard can address international requirements for transparency across the full spectrum of an organisation's procurement irrespective of the value of procurement and facilitate the attainment of other procurement goals relating to integrity, customer satisfaction, efficiency, best value, wealth distribution, risk avoidance and uniformity. This standard can also be used as the basis to harmonise public procurement internationally should Country or Regional Standards, which reference this standard, be developed around an international agreement on the systemic parameters for procurement and the conditions under which the standardized specific procurement processes, methods and procedures embodied in the international standard may be used.

³⁰ Adjudication is an accelerated and cost effective form of dispute resolution that, unlike other means of resolving disputes involving a third party intermediary, the outcome is a decision by a third party that is binding on the parties in the dispute and is final unless reviewed by arbitration or litigation. Annex J of SANS 294 establishes the principles for adjudication in contracts. These principles can be adapted for the purpose proposed.