



**Western Cape  
Government**

Provincial Treasury

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Reference: RCS/C.5

## **TREASURY CIRCULAR MUN NO.18//2017**

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THE MAYOR, MATZIKAMA MUNICIPALITY: MS G STEPHAN  
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THE MAYOR, BERGRIVIER MUNICIPALITY: MR EB MANUEL  
THE MAYOR, SALDANHA BAY MUNICIPALITY: MR M KOEN  
THE MAYOR, SWARTLAND MUNICIPALITY: MR T VAN ESSEN  
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THE MAYOR, KANNALAND MUNICIPALITY: MS M BARRY  
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THE MUNICIPAL MANAGER, OUDTSHOORN MUNICIPALITY: MR R SMIT (ACTING)  
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 THE CHIEF DIRECTOR: MFMA IMPLEMENTATION – NATIONAL TREASURY (MR TV PILLAY)

## **RE: IMPLEMENTATION OF THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017**

### **1. PURPOSE**

- 1.1 The purpose of this Provincial Treasury MFMA Circular is to inform all accounting officers of municipalities and municipal entities of the interim strategy to deal with the requirements of the Preferential Procurement Regulations, 2017 as well as the supply chain management governance requirements.

### **2. BACKGROUND**

- 2.1 Section 217 of the constitution stipulates that national legislation must prescribe a framework within which a Preferential Procurement Policy may be implemented.
- 2.2 The Preferential Procurement Policy Framework Act (PPPFA) No. 5 of 2000, enacts the constitutional provisions for a national framework for Preferential Procurement, it is the objective of the PPPFA to provide for categories of preferences in the allocation of contracts and the protection or advancement of persons disadvantaged by unfair discrimination.
- 2.3 The revised PPPFA Regulations, 2017 came into effect as from 1 April 2017 with a primary objective to provide a uniform legal instrument to direct government procurement towards black owned SMME's cooperatives, townships and rural enterprises.

**2.4 The following are key changes compared to the 2011 PPPFA Regulations:**

- a) The raising of the threshold for the application of the 80/20-point system from R1 million to R50 million;
- b) The introduction of pre-qualification criteria that targets black owned SMMEs cooperatives, townships and rural enterprises;
- c) The introduction of a negotiation process and a passing over provision as a corrective measure for procuring institutions to deal with potential distortion of market related prices as a result of the introduction of pre-qualification criteria; and
- d) The compulsory sub-contracting of at least 30 per cent of the value of contracts above R30 million to black owned SMMEs cooperatives, townships and rural enterprises.

2.5 The Provincial Treasury in conjunction with legal services and the Provincial and Local Municipal SCM focus group reviewed the PPPFA Regulations, 2017 and identified certain implementation challenges. These challenges were brought forward to Cabinet and were advised on implementation risks and the impact of the PPPFA Regulations, 2017 and a way forward was proposed.

**3. INTERIM STRATEGY**

3.1 Given the lack of guidance and clarity regarding the implementation of the below mentioned regulations, municipalities are advised if deemed necessary to implement the below mentioned inclusions:

- a) Regulation 4 – (prequalification criteria);
- b) Regulation 6(9)(a) – (c) and 7(9)(a) – (c) – (negotiation process); and
- c) Regulation 9(1): see paragraph 5.3 below.

3.2 Revised bid documents 6.1 for utilisation attached herewith as Annexure “B” and “C” respectively.

**3.3 Regulations 9(1) sub-contracting as a condition of tender:**

- a) Regulation 9 1 stipulates that “If feasible to sub-contract for a contract above R30 million, an organ of state must apply sub-contracting to advance designated groups.”

- b) It is therefore evident that the requirement for making a decision whether or not to sub-contract/not is the question of "feasibility". It is therefore important that municipalities question whether or not sub-contracting is a feasible option within the intended procurement process and that feasibility testing must be done before the market has been engaged.
- c) The responsibility to determine whether it is feasible or not rests with the municipality preparing the tender. In order to arrive at the decision for feasibility, municipalities should conduct an assessment/feasibility study for procurement above R30 million or whichever amount is deemed appropriate, to determine the feasibility of sub-contracting as well as other empowerment objectives such as labour usage, skills identification and training and local supplier development, etc. as applicable.
- d) Should other empowerment objectives such as local labour usage, skills identification, training and local supplier development be targeted by a municipality this must be included in the specification requirements of the bid as well as evaluation criteria against which requirements will be evaluated.
- e) Should a municipality's own analysis indicate a feasibility for sub-contracting then the institution must include the following clause under 5.11 of its 6.1 bid document:

***In terms of the institutions own empowerment impact assessment the institutions requires that ....% of the contract MUST be sub-contracted to ..... (cite the category of designated grouping that the institution wishes to sub-contract to).***

***The tenderer must select a supplier/s from the list of suppliers registered on the CSD, the Municipality's own supplier database and or the WCSD for the required goods and services in respect of the applicable designated groups mentioned in 5.11 above.***

- f) Should institutions have not conducted a feasibility empowerment impact assessment then the sub-contracting requirements should not be applied in order to mitigate the risk of not attaining service delivery needs and value for money.

#### **4. WAY FORWARD**

##### **4.1 The following further initiatives will be explored and implemented in the long-term:**

- a) Roll-out of the framework agreement model for goods and services and investigate contractor development in the context of goods and services;
- b) Model for the rotation of suppliers;

- c) Development of an Economic Procurement Policy; and
- d) Development of a broader transformation policy.

## **5. TRANSITIONAL ARRANGEMENTS**

- 5.1 If a tender was advertised/invited in terms of the evaluation criteria prescribed in the Preferential Procurement Regulations, 2011 (prior to the date of coming into effect of the Preferential Procurement Regulations, 2017) but will only be evaluated and awarded after the date of coming into effect of the Preferential Procurement Regulations, 2017, the tender must be evaluated and awarded in terms of the evaluation criteria prescribed in the Preferential Procurement Regulations, 2011 and in terms of the conditions contained in the bid documents.
- 5.2 Such a tender must be evaluated and awarded as soon as possible but not later than the initial expiry of the validity period of the tender. The extension of the validity period of such a bid must not be allowed.

## **6. REQUEST**

- 6.1 The Accounting Officers of municipalities and municipal entities are hereby requested to disseminate the content of this Provincial Treasury Circular Mun to the attention of all relevant officials within their institutions.

## **7. NOTIFICATION TO THE AUDITOR-GENERAL**

- 7.1 A copy of this Provincial Treasury Circular Mun will be forwarded to the Auditor-General for notification.

## **8. CONTACT INFORMATION**

- 8.1 Any further enquiries may also be directed to the Provincial Treasury SCM Helpdesk:  
**E-mail: [SupplyChainManagement.HDMFMA@westerncape.gov.za](mailto:SupplyChainManagement.HDMFMA@westerncape.gov.za).**

Your co-operation will be highly appreciated.



**MR SAKHUMZI MAYEKISO**

**ACTING DIRECTOR: LOCAL GOVERNMENT SUPPLY CHAIN MANAGEMENT**

**DATE:** 14 July 2017

## PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2

- a) The value of this bid is estimated to **exceed/not exceed** R50 000 000 (all applicable taxes included) and therefore the ..... preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	
B-BBEE STATUS LEVEL OF CONTRIBUTOR	
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
  - 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

### 3. POINTS AWARDED FOR PRICE

### 3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

**80/20**

**or**

**90/10**

$$P_s = 80 \left( 1 - \frac{Pt - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{Pt - P_{\min}}{P_{\min}} \right)$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

$P_{min}$  = Price of lowest acceptable bid

#### 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:



B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

## 5. BID DECLARATION

- 5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

## 6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

- 6.1 B-BBEE Status Level of Contributor: . = .....(maximum of 10 or 20 points)  
(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

## 7. SUB-CONTRACTING

- 7.1 Will any portion of the contract be sub-contracted?

(***Tick applicable box***)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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- 7.1.1 If yes, indicate:

- What percentage of the contract will be subcontracted.....%
- The name of the sub-contractor.....
- The B-BBEE status level of the sub-contractor.....
- Whether the sub-contractor is an EME or QSE

(***Tick applicable box***)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at least 51% owned by:	EME √	QSE √
Black people	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are youth	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are women	<input type="checkbox"/>	<input type="checkbox"/>
Black people with disabilities	<input type="checkbox"/>	<input type="checkbox"/>
Black people living in rural or underdeveloped areas or townships	<input type="checkbox"/>	<input type="checkbox"/>
Cooperative owned by black people	<input type="checkbox"/>	<input type="checkbox"/>

Black people who are military veterans		
<b>OR</b>		
Any EME		
Any QSE		

**8. DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

**8.4 TYPE OF COMPANY/ FIRM**

- ☐ Partnership/Joint Venture / Consortium
  - ☐ One person business/sole propriety
  - ☐ Close corporation
  - ☐ Company
  - ☐ (Pty) Limited
- [TICK APPLICABLE BOX]

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

.....

.....

.....

.....

.....

**8.6 COMPANY CLASSIFICATION**

- ☐ Manufacturer
  - ☐ Supplier
  - ☐ Professional service provider
  - ☐ Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

**8.7 MUNICIPAL INFORMATION**

**Municipality where business is situated:**  
.....

**Registered Account Number:** .....

**Stand Number:**.....

8.8 Total number of years the company/firm has been in business:.....

8.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

## WITNESSES

1. ....

2. ....

.....  
SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....

.....

## **DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS**

This Municipal Bidding Document (MBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2017, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

### **1. General Conditions**

- 1.1. Preferential Procurement Regulations, 2017 (Regulation 8) make provision for the promotion of local production and content.
- 1.2. Regulation 8.(2) prescribes that in the case of designated sectors, organs of state must advertise such tenders with the specific bidding condition that only locally produced or manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. Where necessary, for tenders referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

**The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial development/ip.jsp](http://www.thedti.gov.za/industrial%20development/ip.jsp) at no cost.**

1.6. A bid may be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

**2. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:**

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
_____	_____ %
_____	_____ %
_____	_____ %

**3. Does any portion of the goods or services offered have any imported content?**

(Tick applicable box)

YES		NO	
-----	--	----	--

**3.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.**

The relevant rates of exchange information is accessible on [www.reservebank.co.za](http://www.reservebank.co.za)

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

<b>Currency</b>	<b>Rates of exchange</b>
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

**4. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.**

**LOCAL CONTENT DECLARATION**  
**(REFER TO ANNEX B OF SATS 1286:2011)**

**LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)**

**IN RESPECT OF BID NO. ....**

**ISSUED BY:** (Procurement Authority / Name of Institution):

.....  
NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on <http://www.thdti.gov.za/industrialdevelopment/ip.jsp>. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, ..... (full names),  
do hereby declare, in my capacity as .....  
of .....(name of bidder  
entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
  - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

**If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.**

**The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.**

- (d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- (e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 14 of the Preferential Procurement Regulations, 2017

promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 1** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 2** \_\_\_\_\_

**DATE:** \_\_\_\_\_