



Reference: RCS/C.6

TREASURY CIRCULAR NO. 12/2017

THE PREMIER
THE MINISTER OF ECONOMIC OPPORTUNITIES
THE MINISTER OF COMMUNITY SAFETY
THE MINISTER OF CULTURAL AFFAIRS AND SPORT
THE MINISTER OF EDUCATION
THE MINISTER OF FINANCE
THE MINISTER OF HEALTH
THE MINISTER OF HUMAN SETTLEMENTS
THE MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING
THE MINISTER OF SOCIAL DEVELOPMENT
THE MINISTER OF TRANSPORT AND PUBLIC WORKS
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THE DEPUTY SPEAKER: PROVINCIAL PARLIAMENT
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IMPLEMENTATION OF THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017

1. PURPOSE

- 1.1 The purpose of this Circular is to inform accounting officers and accounting authorities of the interim strategy to deal with the requirements of the Preferential Procurement Regulations, 2017 (PPR) as well as 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. 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.
- 2.2 The revised PPR, was issued via Government Gazette 40553 on 20 January 2017 taking effect 1 April 2017 with a primary objective to provide a uniform legal instrument to direct government procurement towards black owned SMMEs, cooperatives, townships and rural enterprises.
- 2.3 The following are the key changes compared to the 2011 Preferential Procurement Regulations:
- a) The raising of the threshold for the application of the 80/20 points 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 entities to deal with potential distortion of market related prices as a result of the introduction of pre-qualification criteria.
 - d) The compulsory subcontracting of at least 30 per cent of the value of contracts above R30 million to black owned SMMEs, cooperatives, townships and rural enterprises.
- 2.4 The Provincial Treasury (PT) in conjunction with legal services and the SCM Policy focus group (which included various departments) reviewed the PPRs and identified certain implementation challenges. Based on these challenges (which are contained in the attached Annexure A) Cabinet on 22 March 2017 was advised on implementation risks and impact of the PPRs and a way forward was proposed.

3. CABINET MINUTE 87/2017

- 3.1 Cabinet noted the progress made by the WCG in respect of the PPRs since the implementation of the 2011 Regulations.

3.2 Cabinet approved:

The issuance of an interim strategy to deal with the requirements of the PPRs, as well as supply chain management governance requirements via Provincial Treasury Instructions (PTIs) that makes provision for the WCG to:

- a) Apply its discretion **not** to implement the pre-qualification criteria (i.e. Regulation 4);
- b) Apply its discretion **not** to implement Regulation 6(9)(a)–(c) and 7(9)(a)–(c);
- c) Conduct empowerment assessments for all procurement above R10 million (EME threshold), and further enabling institutions to lower the threshold should its analysis so dictate; and
- d) Implement regional indicators to target local suppliers using the e-procurement system and simultaneously consider the rotation of suppliers.

3.3 Cabinet further approved:

- a) The development and implementation of an economic procurement policy, in partnership with the Departments of Economic Development and Tourism and the Department of the Premier, that is aligned to Provincial Strategic Goal 1 (which covers job creation and infrastructure development) and is aligned to the Medium Term Budget Policy Statement; and
- b) The development and implementation of a broader economic transformation policy that seeks to:
 - (i) Promote private sector procurement towards targeted provincial economic growth areas; and
 - (ii) Further strengthen the partnership with the private sector by enabling access to the WCG supplier database.

4. THE FOLLOWING FURTHER INITIATIVES WERE IDENTIFIED FOR IMPLEMENTATION

- 4.1 Specific commodity focused strategies that target economic transformation e.g. security and catering strategies (move by PT to look at transversal strategies and transversal contracts) will be a key focus to implement strategic procurement initiatives.
- 4.2 Leveraging the economies of scale principle by packaging projects into longer term contracts, longer than 3 years based on criteria such as a corporate social responsibility plan, quality of service, etc.

4.3 The roll-out of the framework agreement model for goods and services and investigate contractor development in the context of goods and services.

5. INTERIM STRATEGY

5.1 **Institutions are required to implement the PPRs as it currently stands except for:**

- 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.

5.2 Revised bid documents 6.1 and 6.2 for utilisation attached herewith as Annexure “B” and “C” respectively.

5.3 **Regulation 9(1): Sub-contracting as a condition of tender:**

- a) Regulation 9(1) stipulates that “if feasible [own emphasis], to subcontract above R30 million, an organ of state must apply subcontracting to advance designated groups”.
- b) It is therefore evident that the requirement for making a decision whether/not to sub-contract/not is the question of “feasibility.” It is therefore important that institutions 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 institution preparing the tender. In order to arrive at the decision for feasibility, institutions are required to conduct empowerment assessments for procurement above R10 million to determine the feasibility of subcontracting as well as other empowerment objectives such as local 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 an institution this must be included in the specification requirements of the bid as well as the evaluation criteria against which the requirements will be evaluated.

- e) Should the institutions' 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 institution 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 and WCSD for the required goods or 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.
- g) Institutions may lower but not increase the R10 million threshold for empowerment impact assessments.

5.4 **Implementation of Municipal Regional Indicators on the Integrated Procurement Solution:**

- a) The Integrated Procurement Solution (IPS) has the functionality to target suppliers in the municipal region where the goods/services are required (see attached process flow marked “Annexure D”).
- b) The implementation of municipal regional indicators is a policy decision that must be approved by the accounting officer or accounting authority and must be documented in the institution's SCM system (Accounting Officer's System and/SCM Strategy).
- c) The purpose of implementing municipal regional indicators are:
- (i) To empower local Small Medium and Micro Enterprises' (SMMEs): this process will provide SMMEs an opportunity to respond to quotations which stimulates localised competition, thereby encouraging the growth of small and start-up enterprises.
 - (ii) To ensure value for money and improve contract management and supplier performance: institutions may be able to acquire goods/services at a lower price and it may be easier to manage contracts and supplier performance.

- d) Accounting officers or accounting authorities must identify for which commodities municipal regional indicators will be applied and under what circumstances. This must also be documented in the institution's SCM system.
- e) Control mechanisms must be implemented to mitigate abuse of utilising municipal regional indicators for commodities that have not been identified. This may be done by:
 - (i) Including a compliance check in the institution's procurement template; and
 - (ii) Drawing reports from the IPS to monitor implementation.

6. WAY FORWARD

6.1 The following further initiatives will be explored and implemented in the long term:

- a) Specific commodity focused strategies that target economic transformation, e.g. security and catering strategies (move by PT to look at transversal strategies and transversal contracts) will be a key focus to implement strategic procurement initiatives;
- b) Leveraging the economies of scale principle by packaging projects into longer term contracts, longer than 3 years based on criteria such as a corporate social responsibility plan, quality of service, etc.;
- c) Roll-out of the framework agreement model for goods and services and investigate contractor development in the context of goods and services;
- d) Model for the rotation of suppliers;
- e) Development of an Economic Procurement Policy in liaison with the Department of Economic Development and Tourism and Department of the Premier; and
- f) Development of a broader transformation policy.

7. TRANSITIONAL ARRANGEMENTS

- 7.1 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.

7.2 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.

8. REQUEST

8.1 Accounting officers and accounting authorities are hereby advised to note and adhere to the contents of this circular.

8.2 Any enquiries relating to this circular may be directed to: SCM Helpdesk: SupplyChainManagement.HDPFMA@westerncape.gov.za.



ISAAC G SMITH

CHIEF DIRECTOR: ASSET MANAGEMENT

DATE: 5 April 2017

IMPLEMENTATION OF THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK REGULATIONS, 2017 (PPRs) ISSUED VIA GOVERNMENT GAZETTE 40553 ON 20 JANUARY 2017 AND APPLICABLE FROM 1 APRIL 2017

1. BACKGROUND

- 1.1 The first draft PPRs were received by Accounting Officers in July 2015 and the consolidated comments of Provincial Treasury, departments and legal services were submitted to the National Treasury on 14 August 2015.
- 1.2 A legal opinion was solicited via Legal Services within the Department of the Premier and a summarised legal context was provided to PT on 07 August 2015.
- 1.3 A subsequent draft of the regulations was made available to Provincial Treasury at the national modernisation committee meeting of all treasury supply chain management heads on 18 May 2016. Not all Western Cape comments submitted on the first draft were taken up in the second draft.
- 1.4 On 14 June 2016, National Treasury then gazetted the draft regulations for comment via Government Gazette number 40067. Provincial Treasury made a presentation to Cabinet on 22 June 2016 that inter alia included a synopsis of the draft regulations and highlighted the potential financial/budgetary and economic impact of the revised regulations published for public comment. It was at this Cabinet meeting, where Cabinet directed that the Provincial Treasury approaches Cabinet for policy guidance on the regulations.
- 1.5 The Provincial Treasury concluded a technical and financial impact assessment on the draft PPRs and provided formal comments to NT on 15 July 2016 via the MEC for Finance. Additional comments on the legal and constitutional inconsistencies were provided to NT on 29 July 2016.
- 1.6 The PPRs, taking effect 1 April 2017, was issued via Government Gazette 40553 on 20 January 2017.

- 1.7 A further legal consultation took place with Senior Counsel on 27 February 2017 on the prequalification requirements and the 80/20 threshold change. As a result, Senior Counsel augmented its previous opinion in terms of the additional brief.
- 1.8 Many of the comments provided by the WCG were taken up in the PPRs. However, the comments raised on the prequalification, 30 per cent sub-contracting requirements and local content requirements were not sufficiently revised in the PPRs. The negotiation process as envisaged in Regulation 6 and 7 are new inclusions that have not been commented on by WCG, nor consulted on by NT.
- 1.9 The Provincial Treasury (PT) and the SCM Policy focus group reviewed the PPRs and identified certain implementation challenges. Based on the previous resolution taken by Cabinet the PT approached Cabinet on 22 March 2017 advising Cabinet of the implementation challenges, risk and impact, the current initiatives and further initiatives that can be implemented within the province as well as providing proposals to Cabinet on the way forward.
- 1.10 **Table 1** below highlights the key changes to the Preferential Procurement Regulations, 2011:

Table 1: Key changes to Preferential Procurement Regulations, 2011

REQUIREMENT	2011 REGULATIONS	2017 REGULATIONS
Raising of 80/20 threshold from R1 million to R50 million	80/20 points system applicable up to a threshold of R1 million.	80/20 points system applicable up to a threshold of R50 million.
Prequalification criteria focusing on black SMMEs	None.	Pre-qualification criteria based on B-BBEE status level and promotion of EMEs and QSEs, co-operatives, township and rural enterprises that are owned by black people, women, youth, people living with disabilities, people from rural areas and military veterans.

REQUIREMENT	2011 REGULATIONS	2017 REGULATIONS
30% sub-contracting > R30 million contracts	Subcontracting more than 25%; awarding of points to main contractor only if sub-contractor's B-BBEE status is equal or more or an EME.	Compulsory sub-contracting where feasible, to black owned EMEs & QSEs, co-operatives, townships and rural enterprises 30% of every contract above R30million to advance designated groups.
Negotiation Process with suppliers	None.	Passing over of a tenderer (preferred in terms of highest points scorer) if prices are not market related and if the supplier is not willing to negotiate its price down or cancel the tender, then the procuring authority needs to approach the second highest point scorer and if second supplier is not willing to negotiate to approach the 3 rd highest points scorer and negotiate its price or cancel the tender.
Local Content	Designated sectors to be advertised with a specific tendering condition that only locally produced goods, services or works or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered.	Wording "Services and works" have been removed.

2. IMPLEMENTATION CHALLENGES TABLED AT CABINET

2.1 The following implementation challenges were tabled at Cabinet that will potentially affect the WCG in its implementation of the 2017 PPR:

- (a) The raising of the threshold of the 80/20 point scoring system from a threshold of R1 million to R50 million will result in a “premium” increase for preferencing from 7.71 per cent (R832 million), applicable under the 2011 Regulations to a projected 10.13 per cent (R1.094 billion) under the 2017 Regulations. This amounts to an estimated increase of R262 million when calculated against contracts awarded for the 2015/16 financial year. This premium excludes the premium that would be paid when applying prequalification, sub-contracting and local content implementation which cannot be measured at this stage as we do not have a comparable baseline against which to compute the potential premium.
- (b) Bearing in mind that notwithstanding the fact that the Preferential Procurement Policy Framework Act, 2000 does not allow for prequalification criteria, Regulation 4 introduces pre-qualification criteria. This allows the procuring authority a level of discretion to target socio-economic objectives which provides that the pre-selection criteria operate as a threshold preference to the exclusion of any other factors such as price, competitiveness and cost-efficiency. Preference is therefore the sole criterion being employed to narrow the field in this fashion, which operates again in a second stage evaluation, through the prescribed preference point system required by the PPPFA. This has the effect of allowing “double dipping”/preferencing and gives rise to the increased risk of encouraging fronting, collusion by tenderers and inflated pricing which inadvertently affects value for money.
- (c) Regulation 6(9)(a)-(c) and 7(9)(a)-(c) introduces a negotiation process and a passing over provision as a corrective measure for procuring entities to deal with the potential distortion of market related prices as a result of the introduction of prequalification criteria. This further confounds the application of the requirement that awards may only be made to the highest points scorer as per the Act unless objective criteria are used to decide otherwise. The regulation not only creates confusion in its applicability but opens the administrative process to potential legal challenge as it allows excessive discretionary power to procurement practitioners.

- (d) With regards to the sub-contracting: firstly, the regulations are a contradiction in terms of where it speaks to "if feasible [own emphasis] to sub-contract for a contract above R30 million, an organ of state must [own emphasis] apply subcontracting to advance designated groups."
- (e) Generally sub-contracting is used to target local suppliers, local labour and/or community involvement. This is an acceptable practice particularly within the construction industry. This is however, in the Western Cape, currently subject to an empowerment assessment study to ensure that the sub-contracting is targeted, focussed and offers the best value proposition.

The intent of this regulation is to ensure that a minimum of 30 per cent of large contracts are directed to black business. The concern however is that if this is done without a market/empowerment assessment it might be counterproductive to stimulate economic development in the areas where the services or procurement spend is taking place. There is also a risk that procurement authorities will set higher targets than 30 per cent without taking into account the capacity of small suppliers to deliver and that the supplier base is inadvertently eroded, which can lead to uncompetitive behaviour.

- (f) Where more than 25 per cent of a contract is subcontracted to designated groups, a main contractor will only be able to claim and be awarded preference points should the sub-contractor be at an equal or higher B-BBEE contributor level than the main contractor unless the contractor is an EME. Thus for all intents and purposes, an EME (having a turnover of R10 million per annum), may be sub-contracted up to 99.99 per cent of a contract compromising such business enterprise's ability to deliver despite the fact that the regulation qualifies this by stating that the EME must have the capability and ability to deliver especially when considering contracts for the value of R30 million and above.
- (g) With regards to local content and production, again the regulations prescribe local manufacture and production to a "stipulated minimum threshold" in terms of the designated sectors. The 2011 Regulations already posed implementation, red tape and costing challenges in this regard as the stipulated thresholds do not allow for entrants in the market as well as allowing accounting officers the discretion to implement as practically possible. It is an "all or nothing" approach that does not necessarily benefit the transformation agenda. Secondly the

cost of certification for each tender process gets factored into the prices tendered by tenders.

3. THE FOLLOWING UNINTENDED CONSEQUENCES WILL IN ALL PROBABILITY MATERIALISE AS A RESULT OF THE KEY RISKS AND CHALLENGES HIGHLIGHTED IN PARAGRAPH 2 ABOVE:

- 3.1 Distortion of the market: some private sector companies will automatically be precluded from competing for government contracts where a minimum B-BBEE status level or other pre-qualification criteria is imposed as a barrier to participation;
- 3.2 Uncompetitive behaviour, fronting by suppliers, collusion and double dipping in order to meet the pre-qualification/sub-contracting criteria;
- 3.3 Possible risk of litigation;
- 3.4 Lack of uniformity in the application across the country for pre-qualifying criteria and sub-contracting given that it is discretionary;
- 3.5 Possible reduction of budgets in real terms in respect of expenditure targets relative to budget allocations that will impact on performance targets; and
- 3.6 Expectations of the market to create job opportunities through procurement will be compromised as a result of constrained budgets with less tender opportunities.

4. CURRENT CONTEXT

- 4.1 The WCG in terms of its current procurement process and application of the 2011 PPRs already demonstrates a strong footprint in terms of the value of its tender awards that are awarded to B-BBEE contributor companies in that 96 per cent of tender awards for the 2015/16 financial year were awarded to companies with a B-BBEE contributor level 1 to 4.
- 4.2 77 per cent of the suppliers registered on the Western Cape Supplier Database (WCSD) are SMMEs, of which 75 per cent are black owned companies. 67 per cent of these companies are 100 per cent black owned.

- 4.3 The following are generally in place across all 13 departments:
- (a) Cleaning Equipment and Supplies (100% contracts reported on are awarded to BEE).
 - (b) Furniture and Furnishings (100% contracts reported on are awarded to BEE).
 - (c) Industrial Cleaning Services (100% contracts reported on are awarded to BEE).
- 4.4 The three larger procurement spend departments initiatives are depicted hereunder in Table 2:

Table 2: Initiatives for Education, Health and Transport & Public Works

EDUCATION	HEALTH	TRANSPORT & PUBLIC WORKS
<ul style="list-style-type: none"> • Learner Transport Schemes are procured utilising the 2011 PPR and such contracts are awarded mostly to BEE companies. • NSNP (nutritional programme): the current service provider is a Non-Profit Organisation and funding is allocated via DoRA. • The EPWP Programme is also applicable to Education Infrastructure projects undertaken by DTPW. 	<p>FURTHER INITIATIVES:</p> <ul style="list-style-type: none"> • Focus on 48% of addressable spend within goods and services budget (inclusive of medical supplies) for transformation within the SMME sector. • An additional 3% of the G&S budget which falls under the category of addressable spend, requires further analysis. 	<p>Construction:</p> <ul style="list-style-type: none"> • Empowerment assessments are undertaken for all contracts above R5m, the outcome of which is then captured as requirements in the bid documents, including elements such job opportunities as a target in respect of man-hours, employment of local labour targets, skills development plans, the appointment of a Community liaison officer, and the establishment of a community forum to discuss the opportunities through the delivery of infrastructure. • 32 Framework agreements for all classes of work, focussing on the small and medium contractors in the lower (CIDB) grades were put in place. • The Department has and implements a contractor development framework.

5. CABINET MINUTE 87/2017

5.1 On the 22 March 2017 the Provincial Treasury presented to Cabinet the implementation challenges articulated above and sought Cabinet's direction of the way forward and implementation of 2017 PPR.

5.2 Cabinet noted the progress made by the WCG in respect the PPR since the implementation of the 2011 Regulations.

5.3 Cabinet approved:

The issuance of an interim strategy to deal with the requirements of the PPRs, as well as supply chain management governance requirements via Provincial Treasury Instructions (PTIs) that makes provision for the WCG to:

- (i) Apply its discretion **not** to implement the pre-qualification criteria (i.e. Regulation 4);
- (ii) Apply its discretion **not** to implement Regulation 6(9)(a)-(c) and 7(9)(a)-(c);
- (iii) Conduct empowerment assessments for all procurement above R10 million (EME threshold), and further enabling departments to lower the threshold should its analysis so dictate; and
- (iv) Implement regional indicators to target local suppliers using the e-procurement system and simultaneously consider the rotation of suppliers.

5.4 Cabinet further approved:

- a) The development and implementation of an economic procurement policy, in partnership with the Departments of Economic Development and Tourism and the Department of the Premier, that is aligned to Provincial Strategic Goal 1 (which covers job creation and infrastructure development) and is aligned to the Medium Term Budget Policy Statement; and

- b) The development and implementation of a broader economic transformation policy that seeks to:
 - (i) Promote private sector procurement towards targeted provincial economic growth areas; and
 - (ii) Further strengthen the partnership with the private sector by enabling access to the WCG supplier database.

6. THE FOLLOWING FURTHER INITIATIVES WERE IDENTIFIED FOR IMPLEMENTATION

- 6.1 Specific commodity focused strategies that target economic transformation e.g. security and catering strategies (move by PT to look at transversal strategies and transversal contracts) will be a key focus to implement strategic procurement initiatives.
- 6.2 Leveraging the economies of scale principle by packaging projects into longer term contracts, longer than 3 years based on criteria such as a corporate social responsibility plan, quality of service, etc.
- 6.3 The roll-out of the framework agreement model for goods and services and investigate contractor development in the context of goods and services.

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017 AND CODES OF GOOD PRACTICE

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 (TENDERERS) MUST STUDY THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT AND THE CODES OF GOOD PRACTICE

1. DEFINITIONS

- 1.1 **“acceptable tender”** means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document.
- 1.2 **“affidavit”** is a type of verified statement or showing, or in other words, it contains a verification, meaning it is under oath or penalty of perjury, and this serves as evidence to its veracity and is required for court proceedings.
- 1.3 **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 1.4 **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 1.5 **“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;
- 1.6 **“bid”** means a written offer on the official bid documents or invitation of price quotations and “tender” is the act of bidding /tendering; ***(Therefore in the context of the 2017 regulations “bidder” and “tenderer” have the same meaning***
- 1.7 **“Code of Good Practice”** means the generic codes or the sector codes as the case may be;
- 1.8 **“consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 1.9 **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- 1.10 **“EME”** is an Exempted Micro Enterprise with an annual total revenue of R10 million or less.

- 1.11 **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 1.12 **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specification as set out in the tender documents;
- 1.13 **“Large Enterprise”** is any enterprise with an annual total revenue above R50 million;
- 1.14 **“non-firm prices”** means all prices other than “firm” prices;
- 1.15 **“person”** includes a juristic person;
- 1.16 **“price”** includes all applicable taxes less all unconditional discounts;
- 1.17 **“proof of B-BBEE status level contributor”** means-
- (a) The B-BBEE status level certificate issued by an authorized body or person;
 - (b) A sworn affidavit as prescribed in terms of the B-BBEE Codes of Good Practice; or
 - (c) Any other requirement prescribed in terms of the Broad- Based Black Economic Empowerment Act.
- 1.18 **QSE** is a Qualifying Small Enterprise with an annual total revenue between R10 million and R50 million;
- 1.19 **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;
- 1.20 **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 1.21 **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- 1.22 **“the Regulations”** means the Preferential Procurement Regulations, 2017;
- 1.23 **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette on 11 October 2013*;
- 1.24 **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and

1.25 “**trustee**” means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

2. GENERAL CONDITIONS

2.1 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).

2.2 Preference point system for this bid:

- (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*).

2.3 Preference points for this bid shall be awarded for:

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

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

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

2.5 Failure on the part of a bidder to fill in, sign this form and submit in the circumstances prescribed in the Codes of Good Practice either a B-BBEE Verification Certificate issued by a Verification Agency accredited by the South African Accreditation System (SANAS) or an affidavit confirming annual total revenue and level of black ownership together with the bid or an affidavit issued by Companies Intellectual Property Commission, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

2.6 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.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 Subject to Regulation 11 of the Regulations, the bidder obtaining **the highest number of total points** will be awarded the contract.
- 3.2 A tenderer must submit proof of its B-BBEE status level of contributor in order to claim points for B-BBEE.
- 3.3 A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE will not be disqualified but will only score:
- (a) points out of 80 for price; and
 - (b) 0 points out of 20 for B-BBEE
- 3.4 Points scored must be rounded off to the nearest 2 decimal places.
- 3.5 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.6 When functionality is part of the evaluation process and two or more bids have scored equal total points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest points for functionality.
- 3.7 Should two or more bids be equal in all respects; the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEM

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

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) & \text{or} & P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)
 \end{array}$$

Where

- P_s = Points scored for price of bid under consideration
- P_t = Price of tender under consideration
- P_{min} = Price of lowest acceptable tender

5. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 5.1 In terms of Regulation 6(2) and 7(2) of the 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

- 5.2 An **EME** must submit a valid, originally certified affidavit confirming annual turnover and level of black ownership or an affidavit issued by Companies Intellectual Property Commission
- 5.3 A **QSE that is less than 51% (50% or less) black owned** must be verified in terms of the QSE scorecard issued via Government Gazette and submit a valid, original or a legible certified copy of a B-BBEE Verification Certificate issued by SANAS.
- 5.4 A **QSE that is at least 51% black owned (51% or higher)** must submit a valid, originally certified affidavit confirming turnover and level of black ownership as well as declare its empowering status or an affidavit issued by Companies Intellectual Property Commission.
- 5.5 A **large enterprise** must submit a valid, original or originally certified copy of a B-BBEE Verification Certificate issued by a verification agency accredited by SANAS.
- 5.6 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.7 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE status level verification certificate for every separate tender.
- 5.8 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

- 5.9 A tenderer may not be awarded points for B-BBEE status level of contributor if the bid documents indicate that the tenderer intends sub-contracting more than 25% of the value of the contract to any other person not qualifying for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.10 A tenderer awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.
- 5.11 [see paragraph 5.3 (e) PT Circular

6. BID DECLARATION

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

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPH 5

7.1 B-BBEE Status Level of Contribution..... = (*maximum of 20 points*)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or an affidavit confirming annual total revenue and level of black ownership in terms of the relevant sector code applicable to the tender.

8. SUB-CONTRACTING

8.1 Will any portion of the contract be sub-contracted? **YES / NO** (*delete which is not applicable*)

8.1.1 If yes, indicate:

- (i) what percentage of the contract will be subcontracted?%
- (ii) the name of the sub-contractor?
- (iii) the B-BBEE status level of the sub-contractor?
- (iv) whether the sub-contractor is an EME or QSE? **YES / NO** (*delete which is not applicable*)

9. DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/ entity:

9.2 VAT registration number:

9.3 Company Registration number:

9.4 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-BBEE status level of contribution indicated in paragraph 7 above, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- (a) The Western Cape Government reserves the right to audit the B-BBEE status claim submitted by the bidder.**
- (b) As set out in Section 130 of the B-BBEE Act as amended, any misrepresentation constitutes a criminal offence. A person commits an offence if that person knowingly:**
 - (i) misrepresents or attempts to misrepresent the B-BBEE status of an enterprise;**
 - (ii) provides false information or misrepresents information to a B-BBEE Verification Professional in order to secure a particular B-BBEE status or any benefit associated with compliance to the B-BBEE Act;**
 - (iii) provides false information or misrepresents information relevant to assessing the B-BBEE status of an enterprise to any organ of state or public entity; or**
 - (iv) engages in a fronting practice.**
- (c) If a B-BBEE verification professional or any procurement officer or other official of an organ of state or public entity becomes aware of the commission of, or any attempt to commit any offence referred to in paragraph 9.1 (a) above will be reported to an appropriate law enforcement agency for investigation.**
- (d) Any person convicted of an offence by a court is liable in the case of contravention of 9.4 (b) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person to a fine not exceeding 10% of its annual turnover.**
- (e) The purchaser may, if it becomes aware that a bidder may have obtained its B-BBEE status level of contribution on a fraudulent basis, investigate the matter. Should the investigation warrant a restriction be imposed, this will be referred to the National Treasury for investigation, processing and imposing the restriction on the National Treasury's List of Restricted Suppliers. The bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, may be restricted 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.

- (f) The purchaser may, in addition to any other remedy it may have –**
 - (i) disqualify the person from the bidding process;**
 - (ii) recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;**
 - (iii) 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; and**
 - (iv) forward the matter for criminal prosecution.**

(g) The information furnished is true and correct.

(h) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 2 of this form.

SIGNATURE(S) OF THE BIDDER(S):

DATE:

ADDRESS:

.....

WITNESSES:

- 1.**
- 2.**

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Western Cape Bidding Document (WCBD) 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	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

- 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

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

Currency	Rates of exchange
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.dti.gov.za/industrial_development/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: _____

ANNEXURE D

Participant Search

OK Cancel

Search for participants to invite to this event. Enter values (including partial words) in multiple fields to narrow your search, or reset values and then search to retrieve the complete list of participants. You can select additional search fields from the options list. Wildcard characters are not needed for partial word searches.

Search by: Organization and Contact Information

Welcome to the new Search page. Watch the Tutorial (3 min) to learn more!

Search Filter

Search using Name, ID, or any other term

Organization Name

Postal Code

State/Province/Region

Commodities Supplied Printing and writing paper 141115 [select]

Approved Commodities [select]

Contact Name

CIDB Grading Designation Any Value

City George

Select the commodity

Select the City (region)

Create New Participant Reset Search

Search Results

14 result(s) found

Organization Name	City	Contact Name	Business Email Address
<input type="checkbox"/> BLAAUW PRODUCTS	GEORGE	JOHANNES BLAAUW	eagleenterprises887@gmail.com
<input type="checkbox"/> FLEETMARK PROCUREMENT	GEORGE	MARQUERITHE ROBINSON	fleetmark60@gmail.com
<input type="checkbox"/> INDUSTRO CLEAN	George		
<input type="checkbox"/> INDUSTRO CLEAN	George	COBUS VISAGIE	cobusv@industrocleanpe.co.za
<input type="checkbox"/> INDUSTRO CLEAN	George	Roxy Boshoff	office@cieangeorge.co.za
<input type="checkbox"/> LEBISANG SUPPLIERS PTY LTD	GEORGE	JUDITH SCHOEMAN	lebisang@telkomsa.net
<input type="checkbox"/> HANDA SAI FS	GEORGE	JUDITH SCHOEMAN	handa1@telkomsa.net

City or Region will be displayed

OK Cancel