



Reference number: RCS/C.5

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TREASURY CIRCULAR MUN NO. 13/2022

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WESTERN CAPE GOVERNMENT WAY FORWARD IN RESPONSE TO THE CLARIFICATION PROVIDED BY THE CONSTITUTIONAL COURT ON 16 FEBRUARY 2022, AS IT RELATES TO THE SUSPENSION OF INVALIDITY OF THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017

1. PURPOSE

- 1.1 The purpose of this circular is to notify accounting officers on the clarification provided by the Constitutional Court as sought by the National Treasury in respect of the suspension of invalidity of the Preferential Procurement Regulations, 2017.

2. BACKGROUND

- 2.1 On Wednesday, 16 February 2022, the Constitutional Court handed down judgment in the application for leave to appeal against a judgment and order of the Supreme Court of Appeal (SCA). This application was brought by the national Minister of Finance ("the Minister") against Afribusiness NPC, and concerns the validity of the Preferential Procurement Regulations, 2017 ("Procurement Regulations" as referred to in the judgment) promulgated by the Minister on 20 January 2017, in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 ("Procurement Act" as referred to in the judgment).
- 2.2 The SCA declared the entire Procurement Regulations invalid on the basis that the content of the Regulations exceeded the Minister's power on what could permissibly be regulated on in terms of section 5 of the Procurement Act and section 217 of the Constitution.
- 2.3 In view of the above the Western Cape Government (WCG) issued Treasury Mun Circular 06/2022 to provide guidance on the interim arrangements, in response municipalities took a varied approach which included the following:
- a) municipalities and municipal entities should maintain the status quo and apply the Preferential Procurement Policy Framework Regulations, 2017 (PPPFR) up until such time as the Constitutional Court clarifies the applicable date of the invalidity of said Regulations, or new Procurement Regulations come into effect;
 - b) use the pre-existing points system with thresholds and associated formulas as per the PPPFR, 2017 i.e., 80/20 preference point system for procurement with a rand value equal to or above R30 000 up to R50million and the 90/10 preference point system for procurement above R50million (all applicable taxes included);
 - c) use the pre-existing mechanism to address the evidence requirements as it relates to the allocation of points for preference i.e., B-BBEE certificates and affidavits given that these matters were not in dispute and will be covered by the new National Treasury regulations;
 - d) sub-contracting requirements as contemplated in the 2017 Procurement Regulations have also been declared as invalid. However, the cidb prescripts/regulations in terms of empowerment impact assessments may still be concluded and sub-contracting as per the cidb prescripts/regulations in terms of the different cidb contracts may still be used in terms of the different contracting models for construction-related bids;
 - e) the status quo in terms of the advertisement and evaluation and awarding of quotations below R30 000 to be maintained; and
 - f) request for exemption from the Act in terms of section 2 of the PPPFA Act.

- 2.4 The judgement handed down by the Constitutional Court on 30 May 2022 in respect of the clarification sought by the National Treasury, (**hereto attached as Annexure A**), confirms that the suspension of the declaration of the order of invalidity of the **2017 Regulations is still valid for the remainder of the 12-month period, hence the 2017 Regulations are still in forceable.**
- 2.5 In response to the Constitutional Court Judgment handed down on 30 May 2022, the National Treasury (NT) issued a media statement (**hereto attached as Annexure B**) indicating that:
- a) The **2017 Regulations in their entirety remains valid;**
 - b) **All exemptions granted to deal with the period of uncertainty following the Court's judgment of 16 February 2022, lapse** (according to the condition in the letters of exemptions);
 - c) From **31 May 2022, all new quotations must be requested, and tenders must be advertised, and dealt with, in accordance with the 2017 Regulations;**
 - d) A quotation requested or a tender advertised before 30 May 2022 must be dealt with in terms of **the exemption and the internal procurement policy in place for the duration of the exemption.** An organ of state may however decide to withdraw such a request for a quotation or an advert for a tender and request a new quotation or advertise a new tender that will be subject to the 2017 Regulations; and
 - e) The 2017 Regulations will remain in place until **15 February 2023** unless new regulations are promulgated before that date (this date was however incorrectly calculated by the NT and should be **26 January 2023**).

3. WAY FORWARD FOR THE MUNICIPALITIES UP UNTIL THE NEW REGULATIONS COMES INTO EFFECT

- 3.1 Given that the Constitutional Court judgment confirmed that the suspension of the declaration of the order of the invalidity of the **2017 Regulations is still valid for the remainder of the 12-month period, i.e until 26 January 2023**, municipalities must revert to the application of the 2017 Regulations.
- 3.2 In preparation of the promulgation of the new PPPFA Regulations, 2022, of which the date to be determined by the National Treasury, municipalities are requested to ensure that there's a process under way to finalise its preferential procurement policies in line with the PPPFA Act in terms of Section 2.(1) which states that "*An organ of state must determine its preferential procurement policy and implement it within the following framework*".
- 3.3 In the interim, **municipalities must apply the local content and production requirements for designated sectors when advertising bids including quotations** together with all the applicable National Treasury MFMA Circulars until such time that the NT and dtic have determined a legal and viable modality for implementation.
- 3.4 The Provincial Treasury will be working together with municipalities and municipal entities to assist in drafting the preferential procurement policies in consultation with the broader SCM cadre, CFO Forum, and Municipal Managers Forum to seek consensus and buy-in for approval to their respective Municipal Councils.
- 3.5 The Provincial Treasury will re-engage the Department of Trade and Industry and Competition (DTIC) and National Treasury to suspend the local content and production designated sectors and/or retract the instruction notes as well as to determine an alternative way of implementing local content and production in liaison with the province by utilising the Joint Working Group (JWG) established in the Province prior to the Constitutional Court judgment.

3.6 The Provincial Treasury will approach and engage the Auditor-General (AG) on the approach applied within the province for audit purposes.

4. REQUEST

4.1 Accounting officers and accounting authorities must note the content of this Provincial Treasury Circular and communicate these requirements to officials under their control and responsible for the functions depicted in this Circular.

4.2 Municipalities and municipal entities should record all risks, impacts on service delivery and budgetary implications as part of their record of decision and keep this as evidence for audit purposes.

4.3 Municipalities and municipal entities must ensure that all policy decisions taken during the interim period is retracted and ensure all SCM Policies are aligned to the 2017 Regulations and adopted by Council to ensure compliance with the Constitutional Court Judgment handed down on 30 May 2022.

5. ENQUIRIES

5.1 All enquiries in respect of this circular or any other enquiries in respect of procurement planning must be directed to: SupplyChainManagement.HDMFMA@westerncape.gov.za

RODNEY MOOLMAN

DIRECTOR: LOCAL GOVERNMENT SUPPLY CHAIN MANAGEMENT



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 62/22

In the matter between:

MINISTER OF FINANCE

Applicant

and

**SAKELIGA NPC
(PREVIOUSLY KNOWN AS AFRIBUSINESS NPC)**

First Respondent

RULE OF LAW PROJECT

Second Respondent

ECONOMIC FREEDOM FIGHTERS

Third Respondent

Neutral citation: *Minister of Finance v Sakeliga NPC (previously known as Afribusiness NPC) and Others* [2022] ZACC 17

Coram: Jafta J, Khampepe J, Madlanga J, Majiedt J, Mhlantla J, Pillay AJ, Theron J, Tlaletsi AJ, Tshiqi J.

Judgment: Madlanga J (unanimous)

Decided on: 30 May 2022

ORDER

On application for direct access to the Constitutional Court of South Africa on an urgent basis:

The application is dismissed with costs, including costs of two counsel.

JUDGMENT

MADLANGA J (Jafta J, Khampepe J, Majiedt J, Mhlantla J, Pillay AJ, Theron J, Tlaletsi AJ and Tshiqi J concurring):

[1] This matter was decided without an oral hearing. The crisp question for determination is whether an order given by this Court in *Afribusiness*¹ is susceptible to variation; does the order in any way lack clarity? By a majority decision, this Court – in *Afribusiness* – dismissed an appeal by the present applicant, the Minister of Finance (Minister), against a judgment of the Supreme Court of Appeal. In its judgment, the Supreme Court of Appeal had declared invalid the Preferential Procurement Regulations.² These are Regulations that were made by the Minister in terms of the Preferential Procurement Policy Framework Act.³ The Supreme Court of Appeal suspended the declaration of invalidity for 12 months to enable corrective action.

[2] The Minister now brings an urgent application for direct access seeking a variation of the order that dismissed his appeal. He claims that this Court’s order is ambiguous or lacks clarity and is thus susceptible to variation. According to the Minister, the only thing that gives rise to the perceived problem with the order is a footnote in the minority judgment.⁴ Here is how the problem is said to arise. With reference to the Supreme Court of Appeal’s 12-month suspension of the declaration of

¹ *Minister of Finance v Afribusiness* [2022] ZACC 4; [2022] JOL 52147 (CC) (*Afribusiness*).

² Preferential Procurement Regulations, GN R32 GG 40553, 20 January 2017.

³ 5 of 2000.

⁴ *Afribusiness* above n 1 at fn 28.

invalidity, the footnote says “[t]he period of suspension expired on 2 November 2021”. This date is the end of 12 months from the date of the Supreme Court of Appeal’s order. The Minister observes that the statement in the footnote was “very respectfully in conflict with section 18(1) of the Superior Courts Act”.⁵ The Minister correctly highlights the fact that this Court’s majority judgment does not respond to the content of the footnote. He says “the incorrect statement [in the footnote] is the only articulation of this . . . Court’s position on the suspension period granted by the [Supreme Court of Appeal]”. The Minister concludes that the majority’s omission to address the content of the footnote has resulted in lack of clarity. If I understand the Minister correctly, he suggests that this is exacerbated by the fact that this Court’s order simply says the appeal is dismissed⁶ and “does not purport to set aside, replace, substitute or in any way vary the order of the [Supreme Court of Appeal]”.

[3] The confusion gives rise to three possible interpretations of this Court’s order, so claims the Minister. First, the Minister submits that in terms of section 18(1) of the Superior Courts Act the operation of the order of the Supreme Court of Appeal was suspended from the date the Minister lodged an application for leave to appeal to this Court on 23 November 2020. And the operation of that order started running again when this Court dismissed the appeal on 16 February 2022. Second, the order may be interpreted to mean that the Regulations were invalidated with immediate effect and prospectively from the date of dismissal of the appeal and without any suspension. Third, and in accordance with the doctrine of objective constitutional invalidity, the order may be interpreted to mean that the invalidation is with effect from the date the Regulations were promulgated.

[4] The Minister avers that each of these interpretations has support from different interest groups. He submits that, as a result of these three possible interpretations, this Court’s order is a candidate for variation in terms of rule 42(1)(b) of the

⁵ 10 of 2013.

⁶ This Court’s order simply said: “The appeal is dismissed with costs, including the costs of two counsel.”

Uniform Rules of Court, which is made applicable to this Court by rule 29 of this Court's Rules. Rule 42(1)(b) provides that “[t]he court may . . . *mero motu* [of its own accord] or upon application of any party affected, rescind or vary . . . an order or judgment in which there is an ambiguity, or patent error or omission, but only to the extent of such ambiguity, error or omission”.

[5] The Minister submits that the patent error, patent omission, and ambiguity that render this Court's order liable to variation in terms of rule 42(1)(b) consist in the content of the footnote referred to earlier.

[6] The Minister submits that variation is the “cleanest and least burdensome” way to correct the lack of clarity in the order. Variation would require only minor clerical edits to the order of the majority judgment and a correction of the footnote in the minority judgment.

[7] The first respondent, Sakeliga NPC (Sakeliga), which was cited by its previous name, Afribusiness NPC, in the application for leave to appeal to this Court, opposes the present application. The Rule of Law Project and the Economic Freedom Fighters, the second and third respondents, respectively, have opted not to enter the fray. Sakeliga contends that the application is an exercise in futility, an abuse of the process of this Court and a waste of judicial resources. It argues that there is no need for the relief sought by the Minister as the period of suspension is regulated by the Superior Courts Act. That is so because, when the order is looked at in the light of the Superior Courts Act, there is no ambiguity, error or omission. The argument continues that this is a matter of arithmetical calculation. According to Sakeliga, this entails a simple calculation in accordance with the provisions of section 18(1) of the Superior Courts Act. What the Minister is seeking to achieve is an amendment of the order of the Supreme Court of Appeal, which stands as a result of this Court's dismissal of the appeal. The Minister cannot get that outcome using rule 42, submits Sakeliga.

[8] Sakeliga also argues that footnote 28 of the minority judgment is of no consequence and cannot affect the majority judgment.

[9] What must I make of these submissions?

[10] The application does warrant direct access. *Zuma* tells us that it would be inappropriate for any other court to entertain an application in terms of rule 42 pertaining to an order made by this Court.⁷

[11] Coming to the merits, the springboard of this application is the perceived confusion caused by the content of footnote 28 of the minority judgment. The majority judgment opens by clearly stating what it agrees with in the minority judgment.⁸ That does not include the content of footnote 28. In any event, a minority judgment is just that. Unless parts of it have been adopted either expressly or impliedly, I do not understand how it can affect the meaning of an order granted by the majority. The footnote has certainly not been adopted expressly. Nor do I see a basis for an argument that it has been adopted impliedly. It is worth noting that the Minister says the majority judgment is “silent” on the content of the footnote. There is no basis whatsoever for suggesting that the majority judgment adopted the content of footnote 28 of the minority judgment. Therefore, the footnote could not have given rise to any confusion in this Court’s order.

[12] Crucially, the Minister is aware of the import of section 18(1) of the Superior Courts Act. He says in terms of this section the operation of the order of the Supreme Court of Appeal was suspended from the date the Minister lodged an application for leave to appeal to this Court on 23 November 2020. The law is, and has always been, clear on the issue. In *Ntlemeza* the Supreme Court of Appeal traces the

⁷ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State (Council for the Advancement of the South African Constitution and Democracy in Action as Amicus Curiae)* [2021] ZACC 28; 2021 JDR 2069 (CC); 2021 (11) BCLR 1263 (CC) at para 49.

⁸ *Afribusines* above n 1 at para 96.

law from the common law position before any statutory intervention.⁹ It quotes *South Cape Corporation*, which held:

“Whatever the true position may have been in the Dutch Courts, and more particularly the Court of Holland . . . it is today the accepted common law rule of practice . . . that generally the execution of a judgment is automatically suspended upon the noting of an appeal, with the result that, pending the appeal, the judgment cannot be carried out and no effect can be given thereto, except with the leave of the court which granted the judgment. To obtain such leave the party in whose favour the judgment was given must make special application The purpose of this rule as to the suspension of a judgment on the noting of an appeal is to prevent irreparable damage from being done to the intending appellant, either by levy under a writ of execution or by execution of the judgment in any other manner appropriate to the nature of the judgment appealed from.”¹⁰

[13] Plainly, execution of a judgment means giving effect to the judgment. And reference to “execution of the judgment in any other manner *appropriate to the nature of the judgment* appealed from”¹¹ gives a wide meaning to the word “execution”. We should not be led to think it relates only to execution under a writ of execution. Put simply, it means giving effect to the order, whatever its nature. So, the suspension of the execution of a judgment means “the judgment cannot be carried out and no effect can be given thereto”.¹² And that applies to whatever it is that is required to be done or has to take place in terms of the judgment.

[14] In what effectively amounted to “a restatement of the common law”, rule 49(11) of the Uniform Rules of Court provided:

“Where an appeal has been noted or an application for leave to appeal against or to rescind, correct, review or vary an order of a court has been made, the operation and

⁹ *Ntlemeza v Helen Suzman Foundation* [2017] ZASCA 93; 2017 (5) SA 402 (SCA) at para 19.

¹⁰ *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 544H-545B.

¹¹ Emphasis added.

¹² *South Cape Corporation* above n 10 at 544H.

execution of the order in question shall be suspended, pending the decision of such appeal or application, unless the court which gave such order, on the application of a party, otherwise directs.”

This rule has since been repealed.¹³

[15] The position is now governed by section 18(1) of the Superior Courts Act. This section provides:

“Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.”¹⁴

This too is in line with the common law position which has already been explained. And “operation” which the section couples with “execution” (“operation and execution”) does not alter the legal position stated above.

[16] Based on this clear statutory position, the operation and execution of the order of the Supreme Court of Appeal was halted. In practical terms, what happened immediately after that order was granted was that the countdown on the 12-month period of suspension began. But the countdown was halted on the 21st day by the lodgment of the application for leave to appeal in this Court.¹⁵ Because section 18(1) suspends the operation and execution of a judgment “pending the decision of the

¹³ Rule 49(11) was repealed by means of GN R317 GG 38694, 17 April 2015.

¹⁴ Section 18(2) and (3) provides:

“(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.”

¹⁵ The Supreme Court of Appeal made the order of invalidation on 2 November 2020, and the application for leave to appeal to this Court was lodged on 23 November 2020.

application [for leave to appeal] or appeal”, the countdown resumed after this Court dismissed the appeal on 16 February 2022. Unsurprisingly, the Minister does realise that this is how the order ought to be interpreted. He says he is seeking confirmation that—

“the [Supreme Court of Appeal’s] order as a whole was suspended when the Minister applied for leave to appeal to this Court; that the order of suspension by the [Supreme Court of Appeal], once suspended by the application for leave to appeal, did not take effect until this Court dismissed the Minister’s appeal; and that the declaration of invalidity as ordered by the [Supreme Court of Appeal] remains suspended and the period of suspension commenced running again after this Court dismissed the Minister’s appeal on 16 February 2022.”

For the reasons I have given, there is no need for this clear legal position to be confirmed.

[17] As at 16 February 2022, of the 12-month period of suspension, less than a month had elapsed.

[18] With the legal position as plain as it is, I do not understand how the confusion we hear about from the Minister could have arisen. It could have arisen only if the Minister and the interest groups to which he refers interpreted the order without due regard to the law; that is, the provisions of section 18(1). Of course, there is no justification for interpreting the order in a vacuum.

[19] In sum, there is no substance in the Minister’s submissions.

[20] The Director-General of the National Treasury, who is the deponent to the Minister’s founding affidavit, informs this Court that subsequent to the dismissal of the appeal and as a result of the perceived problem with the order, he sent out a communication, the effect of which was to halt government procurement pending the

outcome of the present application. Obviously, this decision was the result of a misunderstanding of the law. It has nothing to do with the order of this Court.

[21] The Minister sought several alternative remedies in the event of the variation order prayed for not being granted.¹⁶ The springboard for all the relief sought – main and alternative – is the idea that there is something wrong with this Court’s order. Well, there is not. That must mean the alternative relief must also fail.

¹⁶ The notice of motion reads:

“Take notice that the applicant (the Minister) hereby applies in terms of rules 12(1), 18 and 29 of the Rules of the Constitutional Court, read with rule 42 of the Uniform Rules of Court and (to the extent necessary) section 167(6)(a) of the Constitution, for an order:

1. Enrolling this application as an urgent application and, insofar as may be necessary, dispensing with the procedures prescribed by the Rules of the Constitutional Court, and directing that the application be heard as one of urgency under rule 12(1) thereof;
2. Granting the Minister direct access to the Constitutional Court in terms of section 167(6)(a) of the Constitution.
3. Varying the order of the Constitutional Court in the matter CCT 279/20 (main case) to make clear:
 - 3.1. that the operation of the period of suspension in paragraph 2(a) of the order of the Supreme Court of Appeal was suspended pending the Constitutional Court’s decision of the appeal in the main case, and recommenced from 16 February 2022, being the date of the Constitutional Court’s order; and
 - 3.2. that tender processes conducted by organs of state under the Preferential Procurement Regulations, 2017, are not affected until the expiration of the suspension period,

and by—

 - 3.2.1 inserting appropriate sub-paragraphs to the order of the majority judgment of Madlanga J; and
 - 3.2.2 to the extent necessary, excising the second sentence of footnote 28 from the minority judgment of Mhlantla J.
4. In the *alternative* to, or together with, the relief sought in paragraph 3 and 4 above, granting declaratory relief to the effect that the import of the judgment and order of the Constitutional Court in the main case is what is set out in 3.1 and 3.2 above.
5. In the *further alternative* to the relief sought in paragraphs 3 and 4 above, granting declaratory relief to the effect that the import of the judgment and order of the Constitutional Court in the main case is what is set out in 3.1 and 3.2 above.
6. In the *further alternative* to paragraphs 3, 4 and 5 above, by declaring that the declaration of invalidity shall operate prospectively only from the date of this Court’s judgment.
7. Ordering any of the respondents who oppose the application to pay the Minister’s costs, including the costs of two counsel, on a joint and several basis with any other respondent who opposed the application.
8. Granting further and/or alternative relief.”

Order

[22] Consequently, the following order is made:

The application is dismissed with costs, including costs of two counsel.

For the Applicant:

N Maenetje SC and M Stubbs instructed
by the State Attorney, Pretoria

For the First Respondent:

T Strydom SC and J P Slabbert
instructed by Kriek Wassenaar and
Venter Incorporated



MEDIA STATEMENT

FURTHER COMMUNICATION ON CONSTITUTIONAL COURT JUDGMENT REGARDING PREFERENTIAL PROCUREMENT REGULATIONS, 2017

Following the Constitutional Court's judgment of 16 February 2022 on the matter between the Minister of Finance and Afribusines regarding the 2017 Preferential Procurement Regulations (the 2017 Regulations), the Minister of Finance launched an application to the Constitutional Court seeking clarity on its judgement of 16 February 2022. Judgment was handed down by the Constitutional Court today, 30 May 2022.

According to the Constitutional Court's judgment of today-

- section 18(1) of the Superior Courts Act suspended the operation of the Supreme Court of Appeal's 12-month suspension of the invalidation of the 2017 Regulations;
- in practical terms, the countdown on the 12-month period of suspension commenced immediately after the date of suspension. The countdown, however, was halted by the lodgement of the application for leave to appeal in the Constitutional Court; and
- the countdown resumed on 16 February 2022, when the Constitutional Court dismissed the Minister's appeal against the Supreme Court of Appeal's order.

Therefore, the Constitutional Court confirmed that the suspension of the declaration of the order of invalidity of the 2017 Regulations is still valid for the remainder of the 12-month period, namely until 15 February 2023. This means that-

- the 2017 Regulations in their entirety are still valid.
- from today all exemptions granted to deal with the period of uncertainty following the Court's judgment of 16 February 2022, lapse (according to the condition in the letters of exemptions);
- from today all new quotations must be requested and tenders must be advertised, and dealt with, in accordance with the 2017 Regulations;
- a quotation requested or a tenders advertised before today must be dealt with in terms of the exemption and the internal procurement policy in place for the duration of the exemption. An organ of state may however decide to withdraw such a request for a quotation or an advert for a tender and request a new quotation or advertise a new tender that will be subject to 2017 Regulations; and
- the 2017 Regulations will remain in place until 15 February 2023 unless new regulations are promulgated before that date.

National Treasury is currently considering the public comments on the draft Preferential Procurement Regulations published on 10 March 2022 and will prepare final regulations that accord with the Constitutional Court's judgment of 16 February 2016.

Organs of state should by 16 February 2023, ensure that procurement policies in line with the Constitutional Court's judgment of 16 February 2022 are in place or, if new Preferential Procurement Regulations are promulgated, when these Regulations take effect.

Issued by National Treasury

Date: 30 May 2022





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
THE SPEAKER: PROVINCIAL PARLIAMENT
THE DEPUTY SPEAKER: PROVINCIAL PARLIAMENT
THE EXECUTIVE AUTHORITY: WESTERN CAPE GAMBLING AND RACING BOARD (MINISTER IH MEYER)
THE EXECUTIVE AUTHORITY: WESTERN CAPE NATURE CONSERVATION BOARD (MINISTER A BREDELL)
THE EXECUTIVE AUTHORITY: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MINISTER A WINDE)
THE EXECUTIVE AUTHORITY: SALDANHA BAY IDZ LICENCING COMPANY (MINISTER A WINDE)
THE EXECUTIVE AUTHORITY: WESTERN CAPE CULTURAL COMMISSION (MINISTER A MARAIS)
THE EXECUTIVE AUTHORITY: WESTERN CAPE LANGUAGE COMMITTEE (MINISTER A MARAIS)
THE EXECUTIVE AUTHORITY: WESTERN CAPE HERITAGE (MINISTER A MARAIS)
THE EXECUTIVE AUTHORITY: CASIDRA (MINISTER A WINDE)
THE EXECUTIVE AUTHORITY: WESTERN CAPE LIQUOR AUTHORITY (MINISTER D PLATO)
THE ACCOUNTING OFFICER: VOTE 1: PREMIER (ADV B GERBER)
THE ACCOUNTING OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (DR G LAWRENCE)
THE ACCOUNTING OFFICER: VOTE 3: PROVINCIAL TREASURY (MR Z HOOSAIN)
THE ACCOUNTING OFFICER: VOTE 4: COMMUNITY SAFETY (MR G MORRIS)
THE ACCOUNTING OFFICER: VOTE 5: EDUCATION (MR BK SCHREUDER)
THE ACCOUNTING OFFICER: VOTE 6: HEALTH (DR B ENGELBRECHT)
THE ACCOUNTING OFFICER: VOTE 7: SOCIAL DEVELOPMENT (DR R MACDONALD)
THE ACCOUNTING OFFICER: VOTE 8: HUMAN SETTLEMENTS (MR T MGULI)
THE ACCOUNTING OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR P VAN ZYL)
THE ACCOUNTING OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (MS J GOOCH)
THE ACCOUNTING OFFICER: VOTE 11: AGRICULTURE (MS J ISAACS)
THE ACCOUNTING OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MR S FOURIE)
THE ACCOUNTING OFFICER: VOTE 13: CULTURAL AFFAIRS AND SPORT (MR B WALTERS)
THE ACCOUNTING OFFICER: VOTE 14: LOCAL GOVERNMENT (MR G PAULSE)
THE CHIEF FINANCIAL OFFICER: VOTE 1: PREMIER (MR D BASSON)
THE CHIEF FINANCIAL OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (MS N PETERSEN)
THE CHIEF FINANCIAL OFFICER: VOTE 3: PROVINCIAL TREASURY (MR A GILDENHUYS)
THE CHIEF FINANCIAL OFFICER: VOTE 4: COMMUNITY SAFETY (MR M FRIZLAR)
THE CHIEF FINANCIAL OFFICER: VOTE 5: EDUCATION (MR L ELY)
THE CHIEF FINANCIAL OFFICER: VOTE 6: HEALTH (MR A VAN NIEKERK)
THE CHIEF FINANCIAL OFFICER: VOTE 7: SOCIAL DEVELOPMENT (MR JO SMITH)
THE CHIEF FINANCIAL OFFICER: VOTE 8: HUMAN SETTLEMENTS (MR F DE WET)
THE CHIEF FINANCIAL OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR T GILDENHUYS)
THE CHIEF FINANCIAL OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (MR CR ISMAY)
THE CHIEF FINANCIAL OFFICER: VOTE 11: AGRICULTURE (MR F HUYSAMER)
THE CHIEF FINANCIAL OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MS M ABRAHAMS)
THE CHIEF FINANCIAL OFFICER: VOTE 13: CULTURAL AFFAIRS AND SPORT (MS BG RUTGERS)
THE CHIEF FINANCIAL OFFICER: VOTE 14: LOCAL GOVERNMENT (MS B SEWLALL-SINGH)

For information

THE ACCOUNTING AUTHORITY: WESTERN CAPE GAMBLING AND RACING BOARD (MR T ARENDSE)
 THE ACCOUNTING AUTHORITY: WESTERN CAPE NATURE CONSERVATION BOARD (PROF G MANEVELDT)
 THE ACCOUNTING AUTHORITY: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MR B FIGAJI)
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 THE CHIEF FINANCIAL OFFICER: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MS K ZAMA)
 THE CHIEF FINANCIAL OFFICER: SALDANHA BAY IDZ LICENCING COMPANY (MR H BONESCHANS)
 THE CHIEF FINANCIAL OFFICER: WESTERN CAPE CULTURAL COMMISSION (MS B RUTGERS)
 THE CHIEF FINANCIAL OFFICER: WESTERN CAPE LANGUAGE COMMITTEE (MS B RUTGERS)
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 THE SENIOR MANAGER: GOVERNMENT MOTOR TRANSPORT (MR J KOEGELEBERG)
 THE HEAD OFFICIAL: PROVINCIAL TREASURY (MR Z HOOSAIN)
 THE DEPUTY DIRECTOR GENERAL: FISCAL AND ECONOMIC SERVICES (MR H MALILA)
 THE DEPUTY DIRECTOR GENERAL: GOVERNANCE AND ASSET MANAGEMENT (MR A HARDIEN)
 THE CHIEF DIRECTOR: PUBLIC POLICY SERVICES (MS M KORSTEN)
 THE CHIEF DIRECTOR: PROVINCIAL GOVERNMENT PUBLIC FINANCE (MS JD GANTANA)
 THE CHIEF DIRECTOR: LOCAL GOVERNMENT PUBLIC FINANCE (MR M SIGABI) (ACTING)
 THE CHIEF DIRECTOR: ASSET MANAGEMENT (MR IG SMITH)
 THE CHIEF DIRECTOR: FINANCIAL GOVERNANCE AND ACCOUNTING (MR B VINK)
 THE CHIEF FINANCIAL OFFICER (MR A GILDENHUYS)
 THE HEAD: OFFICE OF THE FINANCE MINISTRY (ADV E PRETORIUS)
 THE DIRECTOR: BUSINESS INFORMATION AND DATA MANAGEMENT (MR PP PIENAAR)
 THE DIRECTOR: FINANCIAL GOVERNANCE (MR AD THOMAS) (ACTING)
 THE DIRECTOR: FISCAL POLICY (DR N NLEYA)
 THE DIRECTOR: INFRASTRUCTURE (MR R DANIELS) (ACTING)
 THE DIRECTOR: LOCAL GOVERNMENT ACCOUNTING (MR L BRINDERS)
 THE DIRECTOR: LOCAL GOVERNMENT BUDGET OFFICE (MR ML BOOYSEN)
 THE DIRECTOR: LOCAL GOVERNMENT REVENUE AND EXPENDITURE (GROUP ONE) (MR A DYAKALA)
 THE DIRECTOR: LOCAL GOVERNMENT REVENUE AND EXPENDITURE (GROUP TWO) (MR M SIGABI)
 THE DIRECTOR: LOCAL GOVERNMENT SUPPLY CHAIN MANAGEMENT (MR R MOOLMAN)
 THE DIRECTOR: PROVINCIAL GOVERNMENT ACCOUNTING (MR A REDDY)
 THE DIRECTOR: PROVINCIAL GOVERNMENT BUDGET OFFICE (MS RH SLINGER)
 THE DIRECTOR: PROVINCIAL GOVERNMENT FINANCE (EXPENDITURE MANAGEMENT) (MS A PICK)
 THE DIRECTOR: PROVINCIAL GOVERNMENT SUPPLY CHAIN MANAGEMENT (MS N EBRAHIM)
 THE DIRECTOR: STRATEGIC AND OPERATIONAL MANAGEMENT SUPPORT (MS A SMIT)
 THE DIRECTOR: SUPPORTING AND INTERLINKED FINANCIAL SYSTEMS (MR A MAZOMBA)
 THE PROVINCIAL AUDITOR
 MASTER RECORDS OFFICIAL: BUSINESS INFORMATION AND DATA MANAGEMENT
 THE DEPUTY DIRECTOR GENERAL: CORPORATE ASSURANCE, DEPARTMENT OF THE PREMIER (MS H ROBSON)

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.



ISAC 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