



*Limpopo*

**LIMPOPO  
PREFERENTIAL PROCUREMENT  
POLICY**

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## 1. DEFINITIONS

In this policy, unless the context indicates otherwise □

**“assignment”** means the transference of a right or interest with obligations subject to the provisions in clause 14 ;

**“Cession”** means an agreement whereby the cedent transfers his right of payment to the cessionary, the latter taking the place of the former as creditor. Cession may be regarded as a substitution of a new creditor (the cessionary) for the original creditor (the cedent), the debtor remaining the same;

**“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;

**“Historically Disadvantaged Individual”** means a South African Citizen who □

- (a) due to the apartheid policy, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No.110 of 1983) or the Interim Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);
- (b) is a female; or
- (c) has a disability,

Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an Historically Disadvantaged Individual;

**“local partner”** means a business partner operating within the boundaries of Limpopo in the following order of preference □

- (i) a local municipality;
  - (ii) a district municipality;
  - (iii) any other municipality closest to the municipalities referred to in (i) or (ii),
- where the contract is to be executed.

**“Public Entity”** refers to public entities listed in Schedule 3C and 3D of the Public Finance Management Act, 1999 (Act No.1 of 1999);

**“Small, Medium and Micro Enterprise”** means a small enterprise as defined in the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

**“sub-contractor”** means a person remunerated by the contractor to do some of the work the contractor has been given to do, subject to the provisions of clause 15;

**“the Constitution”** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

**“Youth”** refers to persons aged between 18 and 35 years;

**“80/20 point scoring system”** refers to the point system prescribed in regulations 3 and 5 of the regulations issued in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

**“90/10 point scoring system”** refers to the point system prescribed in regulations 4 and 6 of the regulations issued in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

## **2. ACRONYMS AND ABBREVIATIONS**

The following acronyms and abbreviations are used throughout this document:

<b>“AO”</b>	Accounting Officers
<b>“AA”</b>	Accounting Authorities
<b>“BEE”</b>	Black Economic Empowerment
<b>“PFMA”</b>	Public Finance Management Act, 1999 (Act No. 1 of 1999)
<b>“PGDS”</b>	Provincial Growth and Development Strategy
<b>“PPPFA”</b>	Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)

<b>“RDP”</b>	Reconstruction and Development Programme
<b>“SARS”</b>	South African Revenue Services
<b>“SMMEs”</b>	Small, Medium and Micro Enterprises

### **3. PROVINCIAL HISTORICAL BACKGROUND**

- 3.1 The PPPFA provides the framework for a procurement policy as contemplated in section 217(3) of the Constitution. On 5 December 2003, regulations were issued in terms of section 76(4) (c) of the PFMA, which provides the framework for Supply Chain Management.
- 3.2 In terms of Section 2(1) of the PPPFA, an organ of state must determine its Preferential Procurement Policy and implement it within the framework provided for in the Act.
- 3.3 The PPPFA and the regulations provides for procurement preferences to be based on a variety of factors, such as race, gender, disability, training programmes, labour conditions, environmental impact, enterprise size and location.
- 3.4 The Provincial Treasury report on procurement<sup>1</sup> indicates that from the year 2002 up to March 2005, 2106 contracts were awarded in Limpopo. The report found that □
  - (a) 80% of the contracts were awarded to Historically Disadvantaged Individuals;
  - (b) 76% of contracts were awarded to contractors within Limpopo; and
  - (c) contracts were not awarded equally to the geographical areas of Limpopo.
- 3.5 A study was conducted by the Provincial Treasury during September 2005 to assess the degree of sustainability of businesses to which contracts above R300, 000 (three hundred thousand rand) were awarded between the period April 2002 to March 2005. The findings of the study reflect that □
  - (a) 75% of businesses depend on government contracts for survival;
  - (b) employment is generated during the implementation of projects and the employment rate declined after completion of the project.

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<sup>1</sup> Provincial Treasury Report dated 24<sup>th</sup> August 2005

- 3.6 The following challenges were raised by SMMEs in Limpopo:
- (a) the lack of finances and capacity to execute contracts, forced contractors to surrender the contracts to established businesses;
  - (b) late payments by departments have serious implications;
  - (c) late distribution of letters of acceptance (acceptance letters issued between two and five days before the commencement of the project);
  - (d) monitoring of projects is not done;
  - (e) bid specifications are ambiguous; and
  - (f) contracts are awarded to contractors outside specific districts where the project is implemented.

3.7 This Policy seeks to address the above-mentioned imbalances and challenges.

#### **4. PURPOSE OF THE POLICY**

4.1 The purpose of this Policy is to provide a framework within which the principles of preferential procurement should be implemented in the Limpopo Provincial Administration and Public Entities. The development of this preferential procurement policy marks the consolidation of a number of Provincial Treasury initiatives as well as objectives encapsulated in the Limpopo PGDS, to ensure stimulation of the local economy in Limpopo through the procurement process.

4.2 The major objectives of this preferential procurement policy are to ☐

- (a) give effect to the provisions of the Constitution;
- (b) give effect to the provisions of the PFMA;
- (c) promote equity and create economic growth and employment in Limpopo, by ☐
  - (i) increasing participation of Historically Disadvantaged Individuals in the provincial procurement opportunities;
  - (ii) increasing participation by SMMEs;
  - (iii) creating new jobs for local labour; and
  - (iv) supporting local products;

- (d) encourage connection between small and large enterprises (promote Consortiums and Joint Ventures);
- (e) promote skills transfer and training of the Historically Disadvantaged Individuals; and
- (f) promote a uniform procurement approach in the Provincial Administration and public entities in Limpopo.

## **5. SCOPE OF APPLICATION**

This policy applies to the procurement of all goods and services and sale and letting of assets by the Provincial Administration and public entities in Limpopo.

## **6. LEGAL FRAMEWORK**

The legislative framework which guides the implementation of this Policy is as follows:

- (a) Constitution of the Republic of South Africa (Act No.108 of 1996);
- (b) Public Finance Management Act, 1999 (Act No.1 of 1999);
- (c) Treasury Regulations issued in terms of the Public Finance Management Act, 1999;
- (d) Preferential Procurement Policy Framework Act, 2000 (Act No.5 of 2000);
- (e) Regulations issued in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000;
- (f) Regulatory Framework on Supply Chain Management issued in terms of section 76(4) (c) of the Public Finance Management Act, 1999;
- (g) Broad Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003);
- (h) Construction Industry Development Board Act, 2000 (Act No.38 of 2000);
- (i) Private Security Industry Regulation Act, 2001 (Act No.56 of 2001);
- (j) State Information Technology Agency Act, 1998 (Act No.88 of 1998); and
- (k) National Small Business Act, 1996 (Act No.102 of 1996).

## **7. CORE PRINCIPLES**

This policy is founded upon the following core principles:

### **7.1 VALUE FOR MONEY**

Price alone is often not a reliable indicator and the AO / AA will not necessarily obtain the best value for money by accepting the lowest price offer that meets mandatory requirements. Best value for money means the best available outcome when all relevant costs and benefits over the procurement cycle are considered.

### **7.2 OPEN AND EFFECTIVE COMPETITION**

All procurement laws, policies, practices and procedures must be readily accessible to all parties involved in the procurement process. The procurement process must be open and transparent and reasons must be provided for decisions in terms of current legislation.

### **7.3 ETHICS AND FAIR DEALING**

All government officials dealing with procurement, particularly with suppliers or potential suppliers, must comply with ethical standards to promote mutual trust and respect and an environment where business can be conducted in a fair and reasonable manner<sup>2</sup>. The following standard of behaviour is expected in relation to procurement:

- (a) open, honest and co-operative business relations with colleagues and suppliers;
- (b) confidentiality of both government and commercial information;
- (c) avoidance of conflict of interest or a perception of bias;
- (d) disclosure of possible conflicts of interest to the AO / AA, as soon as they arise, whether real or capable of being perceived;
- (e) fair dealing and impartiality in the conduct of tender evaluations; and
- (f) the highest possible standard of professional competence and the encouragement of similar standards among all officials;

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<sup>2</sup> Code of Conduct for Supply Chain Management National Treasury Practice Note SCM 4 of 2003 and Provincial Treasury Practice Note SCM 4 of 2004



- (g) advantage must not be taken of the previous position in government and after leaving their official position in government, officials must at all times avoid combative practices<sup>3</sup>.

#### **7.4 ACCOUNTABILITY AND REPORTING**

Procurement practitioners and any other official dealing with procurement must be answerable for their decisions and actions to the public.

#### **7.5 EQUITY**

The AO / AA must at all times strive to advance the development of SMMEs and Historically Disadvantaged Individuals to allow them to contribute meaningfully in the economy of Limpopo.

### **8. DEMAND MANAGEMENT**

#### **8.1 PROGRAMMES AND BUDGETS**

8.1.1 Each AO / AA must estimate and analyze the departmental or public entities expenditure during the strategic planning process. The AO / AA should develop a departmental / institutional strategic purchasing plan as part of the departmental / institutional management plan.

8.1.2 The purchasing plan of the department or public entity must deal with the empowerment of local and black business with regard to the budget allocated for the procurement of goods, services and capital assets and must have clear targets that reflect the ☐

- (a) targeted percentage of Historically Disadvantaged Individuals owning local enterprises or SMMEs; and
- (c) actual support of Historically Disadvantaged Individuals and SMMEs.

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<sup>3</sup> Combative practices are unethical and illegal and should be avoided at all cost. They include but not limited to: Suggestions to fictitious lower quotations, reference to non existent competition, exploiting errors in bids, soliciting bid from bidders whose names appear on the list of restricted bidders/ suppliers/ persons.

## **8.2 BID SPECIFICATIONS**

- 8.2.1 Standards and technical specifications quoted in bid documents should promote the broadest possible competition, while ensuring that critical elements of performance or other requirements for the goods and services procured are achieved.
- 8.2.2 In order to ensure that PGDS objectives as linked to the departmental programme are achieved, bid specifications must be approved by the AO / AA after consultation with the Executive Authority.
- 8.2.3 When developing bid specifications, an AO / AA should ensure that the specifications comply with the requirements prescribed by regulatory bodies and are not in conflict with legal or statutory requirements.
- 8.2.4 (a) Where practical, projects should be divided to allow for broad local participation.
- (b) The division of projects must not be done with the purpose to avoid compliance with the prescribed threshold values.
- (c) All projects referred to in clause (a) must be approved by the AO / AA.
- 8.2.5 Specifications should promote use of locally manufactured products (Proudly South African). The department or public entity may in the adjudication of bids, give particular consideration to procuring locally manufactured products. Preferences in this regard may be accommodated within the ambit of regulation 12(1) of the Preferential Procurement Regulations, 2001.
- 8.2.6 Bid specifications must be reviewed regularly in accordance with the needs of the department or public entity and market changes.

## **8.3 SPECIAL CONDITIONS OF CONTRACT**

- 8.3.1 Special conditions of contracts ☐
- (a) must be approved by the AO / AA and clearly specified in the bid document;

- (b) takes precedence over general conditions of the contract;
- (c) must be referred to legal services to ensure that they are legally sound and enforceable; and
- (d) must form part of the contract and be linked to the delivery and payment schedule of the contract.

8.3.2 For contracts above R3m (three million rand), the following special conditions apply:

- (a)
  - (i) Subject to clause (b), all bidders must enter into a Consortium or Joint Ventures with local SMMEs or suppliers; and
  - (ii) the percentage of the contract value managed or executed by the local partner must not be less than 40% of the project value;
- (b) The AO / AA may, after consultation with the departmental or public entities demand management unit, grant exemption, in the bid documentation to bidders from complying with the provisions of clause (a), if there are no SMMEs or suppliers in Limpopo with the skills or knowledge to execute the project.
- (c)
  - (i) The Consortiums or Joint Ventures that benefit from the preference system, must within 30 days of receipt of the notification of contract award, organize themselves into a legal business entity or provide the department or public entity with a working agreement between the members of the Joint Venture or Consortium.
  - (ii) The responsibilities and liabilities of all parties in the Consortium or Joint Ventures must be clearly defined.
- (d) The members of the Consortium or Joint Venture, formed in response to preferential procurement conditions, must share in the control and management of such Consortium or Joint Venture.
- (e) When completing bid documentation, each party to a Consortium or Joint Venture must ☐

- (i) complete a separate set of forms containing information regarding the preference points; and
  - (ii) submit an original tax clearance certificate.
  
- (f) A successful bidder, both from in and outside the province, must upon implementation of the project, establish a plant or office, or a plant and office, within the time period determined by the AO / AA.
  
- (g)
  - (i) The AO / AA must retain a percentage of the contract value to ensure that the following conditions of the contract have been complied with:
    - (aa) existence of a fully fledged office, branch or plant, excluding agents or commission warehouses;
    - (bb) employment of a percentage of people from the Province or District where the project is implemented; and
    - (cc) achievement of any other special condition.
  
  - (ii) The retained fee must be paid to the supplier or service provider on termination of the contract.
  
  - (iii) Failure to comply with the above conditions, shall lead to forfeiture of the retained percentage by the supplier or service provider.
  
  - (iv) Notwithstanding the forfeiture of the retained percentage of the contract value, if the failure to comply with conditions in clause (i) amounts to breach of the contract, the department or public entity may invoke any remedy available to them in law.
  
- (h) The AO / AA must, as far as practically possible, promote skills transfer in the bid documentation.
  
- (i) The AO / AA must develop a report format in order to monitor the extent of skills transfer to Historically Disadvantaged Individuals and SMMEs.

8.3.3 On all labour intensive projects, at least 70% of the labourers must be employed from the local community where the project will be executed.

8.3.4 When the AO / AA requires performance security that serves as penalty for any loss resulting from the bidder's failure to complete the obligations under the contract, the AO / AA may be guided, amongst others, by the following principles:

- (a) performance security must be provided prior to the conclusion of the contract with the department or public entity;
- (b) when determining the amount required as performance security, the AO/ AA may be guided by the risks involved for the department or public entity;
- (c) the AO / AA must cancel the award of the bid when the bidder fails to present the required security as stipulated in the special conditions of the bid documents;
- (d) the performance security shall be dominated in the currency of the contract and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in South Africa; and
- (e) the performance security will be discharged by the department or public entity and returned to the supplier or service provider not later than 30 days following the date of completion of the supplier or service provider's performance obligations under the contract.

## **9. PROCUREMENT OF GOODS AND SERVICES**

9.1 Procurement of goods and services, either by way of quotations or through a bidding process must be within the threshold values as determined by National Treasury.

9.2 Competitive bidding should at all times be given preference, except in cases of provincial developmental programmes, where appropriate exemption has been granted by ☐

- (a) National or Provincial Treasury; or
- (b) any enabling legislation.

In such cases, the suppliers or service providers must be sourced from the existing supplier database on a rotational basis, while taking into consideration fair geographical spread in Limpopo.

9.3 AO / AA must, in the case of procurement through a bidding process, provide for the—

- (a) adjudication of bids through a bid adjudication committee;
- (b) establishment, composition and functioning of bid specification, evaluation and adjudication committees;
- (c) appointment of bid adjudication committee members;
- (d) bidding procedures; and
- (e) approval of bid evaluation or adjudication committee recommendations.

9.4 If in a specific case, it is impractical to invite competitive bids, the required goods or services may be procured by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the AO / AA.

9.5 The AO / AA must ensure that –

- (a) bid documentation and the general conditions<sup>4</sup> of a contract are in accordance with –
  - (i) the instructions of Provincial and National Treasury; or
  - (ii) the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;
- (b) bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the PPPFA;

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<sup>4</sup> National Treasury Practice Note SCM 1 of 2003

- (c) bids are advertised in the Provincial Tender Bulletin for a minimum period of four weeks (30 working days) before closure, except in urgent<sup>5</sup> or emergency cases<sup>6</sup> when bids may be advertised for such shorter period as the AO / AA may determine;
  - (d) the letter of award contains the provisions that the contract is awarded subject to the signing of the principal contract concurrently with the service level agreement within seven days of the award;
  - (e) the successful bidder signs the principal contract concurrently with the service level agreement within seven days of the award;
  - (f) bid results are published in the Provincial Tender Bulletin and other media by means of which the bids were advertised, within seven days after the award;
  - (g) Treasury Regulation 16 is complied with when goods or services are procured through public private partnerships or as part of a public private partnership; and
  - (h) instructions issued by the National Treasury in respect of the appointment of consultants are complied with.
- 9.6 (a) Where a department or public entity has entered into a business agreement and concomitant service level agreements with the State Information Technology Agency, for the procurement of information technology goods and services, then the procurement of information technology goods and services must be done through the State Information Technology Agency (SITA), as required by the State Information Technology Act, 1998 (Act No. 88 of 1998).

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<sup>5</sup> Urgent cases are cases where early delivery is of critical importance and invitation of competitive bids are either impossible or impractical.

<sup>6</sup> Emergency cases are cases where immediate action is necessary in order to avoid a dangerous or risky situation or misery

- (b) Where a department or public entity has not entered into an agreement referred to in paragraph (a) above, such department or public entity may procure information technology goods and services from any other source.

- 9.7 Bids must be awarded for a period of not more than three years.
- 9.8 The AO / AA may participate in transversal term contracts facilitated by Provincial or National Treasury. Should the AO / AA choose to participate in a transversal contract facilitated by the relevant Treasury, the AO / AA must not solicit bids or quotations for the same or similar product or service during the tenure of the transversal term contract.
- 9.9 The AO / AA must, where appropriate, make use of quotation based procurement to promote local SMMEs and or co-operatives.
- 9.10 Where practical, preference must be given to suppliers within the relevant district or municipal area where the goods must be delivered or the services rendered.
- 9.11 No preference must be given to a business which does not comply with the Sectoral Black Economic Empowerment Charters<sup>7</sup>.

## **10. EVALUATION CRITERIA**

- 10.1 Evaluation criteria must be fair, objective and acceptable to both government and bidders and must correspond with the defined scope of work, terms of reference and deliverables.
- 10.2 A bid must, subject to clause 10.3, be regarded as acceptable if ☐
  - (a) all the specifications and conditions of the bid are complied with;
  - (b) the bidder completed and signed all the prescribed bid forms;
  - (c) original tax clearance certificate is included in the bid document; and
  - (d) any other clearance or registration form required by the bid document or legislation is included in the bid.

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<sup>7</sup> Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)



10.3.1 The evaluation committee must, before disqualifying a recommended bidder for the non submission of the original tax clearance certificate or any other clearance or registration form required by the bid document ☐

- (a) contact the bidder to submit the original tax clearance certificate or any other clearance or registration form required by the bid document within two working days; and
- (b) verify that ☐
  - (i) the taxes of the bidder are in order or that suitable arrangements have been made with SARS regarding the original tax clearance certificate;
  - (ii) any other clearance or registration form required by the bid document exists.

10.3.2 No contract may be awarded to a bidder who has failed to submit an original tax clearance certificate from SARS or any other clearance or registration form as required in terms of clauses 10.2 and 10.3.1.

10.4 Bidders must indicate ☐

- (a) the extent of resources under their control and resources available to enable them to execute the contract;
- (b) that they will be able to adhere to generally accepted levels of quality in the provision of the product or service and explain the mechanism for quality assurance and review;
- (c) the number and value of other contracts being undertaken by them at the date of the bid to enable the AO / AA to ascertain their ability to execute the contract;
- (d)
  - (i) the number of full-time employees employed by the company, business or enterprise at the time of bidding; and
  - (ii) a breakdown in terms of race and gender at top and middle management levels;

- (e) the level of control that Historically Disadvantaged Individuals possess in the bidding enterprise as well as their involvement in the operational and management levels;
  - (f) the extent of black ownership at equity level; and
  - (g) the extent to which the company or enterprise has invested a percentage of its turnover on projects that have an economic value on any community in the province.
- 10.5 The AO / AA must give preference to local enterprises in the relevant local or district municipal area where projects will be implemented.
- 10.6 The AO/ AA may request prospective bidders to indicate the revenue generated by their enterprise or business in the previous financial year.
- 10.7 Bids may only be evaluated in accordance with the evaluation criteria stipulated in the bid documentation.
- 10.8 The 80/20 preference points system must be used to calculate the points in respect of bids or procurement based quotations with a rand value equal to, or above R30 000 and up to a rand value of R500 000. Departments and public entities may, however, apply this formula for procurement with a rand value less than R30 000, if and when appropriate. This formula must be used to determine points for price.

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where □

$P_s$	=	Points scored for price for the bid under consideration.
$P_t$	=	Rand value of bid under consideration.
$P_{\min}$	=	Rand value of the lowest acceptable bid.

- (a) A maximum of 20 points may be awarded to a bidder for being a Historically Disadvantaged Individual or subcontracting with Historically Disadvantaged Individuals or achieving any of the goals as specified in the bid;
- (b) The points scored by a bidder in respect of (a) above should be added to the points scored for price; and
- (c) The successful bidder will be the one with the highest number of points scored.

10.9 The 90/10 preference point system must be used to calculate the points in respect of bids or procurement based quotations with a Rand value above R500 000 (five hundred thousand Rand). This formula should be used to determine points for price:

$$P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where □

- $P_s$  = Point scored for price for the bid under consideration.
- $P_t$  = Rand value of bid under consideration.
- $P_{\min}$  = Rand value of the lowest acceptable bid.

- (a) A maximum of 10 points may be awarded to a bidder for being Historically Disadvantaged Individual or subcontracting with Historically Disadvantaged Individual and or achieving any of the goals as specified in the bid;
- (b) The points scored by a bidder in respect of (a) above should be added to the points scored for price; and
- (c) The successful bidder will be the one with the highest number of points scored.

10.10 When evaluating bids for Consortiums or Joint Ventures, cognisance must be taken of the provisions of **regulation 13** of the PPPFA, which provides that □

“**13(8)** A Consortium or Joint Venture may, based on the percentage of the contract value managed or executed by their HDI members, be entitled to equity ownership in respect of an HDI.

**13(9)** The number of points scored for a Consortium or Joint Venture must be added to the number of points scored for achieving specified goals.

**13(10)** The points contemplated in sub-regulation (9) must be added to the points scored for price, in order to establish the total number of points scored.

**13(11)** Subject to regulation 9 and 10, the contract must be awarded to the tender which score the highest points.”

10.11 RDP goals used must be measurable, quantifiable and monitored for compliance.

10.12 In order to enforce the implementation of RDP goals and to ensure local economic development for procurement above R30 000 (thirty thousand rand), departments or public entities must allocate preference points to the following selected categories:

- (a) Historically Disadvantaged Individuals;
- (b) SMMEs;
- (c) Enterprises located in Limpopo; and
- (d) Youth

Preferential goals Historically Disadvantaged Individuals	Allocation of points	
a) Persons who had no franchise in national elections prior to 1983 and 1993.	<b>80/20 preference point system</b>  80= price 20= preference points to be allocated as follows	<b>90/10 preference point system</b>  90= price 10= preference points to be allocated as follows
	6	3
b) Women	3	1
c) Disabled persons	2	1
<b>Specific Goals</b>		
a) Promotion of SMMEs	2	1
b) Enterprises located in Limpopo Province and or District.	4  (The 4 points may be divided between enterprises located in the province and district or municipality)	2
c) Promotion of Youth	1	1
d) Any other RDP Goal or preference points in favour of Historically Disadvantaged Individuals, may be added to this allocated points	2	1

10.13 Regulation 17(3)(e) of the Preferential Procurement Regulations makes provision for the **promotion of enterprises located in a specific province** for work to be done or services to be rendered in that province. The promotion of this goal can be achieved by acquiring goods and services from enterprises located within Limpopo. This includes an enterprise whose head office may be situated in another province, but has established a fully-fledged branch within the Province. Enterprises located outside the borders of the Province and who only appoint agents and/or commission

warehouses in the Province are expressly excluded from claiming points for this goal.

- 10.14 Regulation 17(3)(g) of the Preferential Procurement Regulations makes provision for the **promotion of enterprises located in a specific municipal area** for work to be done or services to be rendered in that municipal area. The promotion of this goal can be achieved by acquiring goods and services from enterprises located within the relevant district or municipal area. This includes an enterprise whose head office may be situated in another municipal area, but has established a fully-fledged branch within that municipal area. Enterprises located outside the borders of the municipal area and who only appoint agents and/or commission warehouses in this municipal area are expressly excluded from claiming points for this goal.
- 10.15 Preference points allocated for **promotion of youth** may only be claimed if there is sufficient evidence that such youth owns the enterprise and is actively involved in the control and management of such enterprise.
- 10.16 Preference points for **promotion of SMMEs** may be claimed by SMMEs or by established enterprises that are actively involved in the promotion of SMMEs.
- 10.17 In addition to the above mentioned preference points, points may be allocated to **other RDP goals** as prescribed in Regulation 17 of the Preferential Procurement Regulations, 2001. These goals are the □
- (a) promotion of South African owned enterprises;
  - (b) promotion of export orientated production to create jobs;
  - (c) creation of new jobs or the intensification of labour absorption;
  - (d) promotion of enterprises located in rural areas;
  - (e) upliftment of communities through, but not limited to housing, transport, schools, resources, donations and charity organizations;
  - (f) development of human resources, including assisting in tertiary and other advanced training programmes; and
  - (g) promotion of enterprises located in a specific municipal area for work to be done or services to be rendered in that municipal area.

- 10.18 An additional percentage in price may be paid to companies owned by Historically Disadvantaged Individuals and for the promotion of RDP goals. The maximum premium for the application of 80/20 preference point system amounts to 25%, while the maximum premium for the 90/10 preference points system amounts to 11.11%.

## **11. PROFESSIONAL SERVICES**

- 11.1 Preference must be given to competitive bidding in appointing consultants, however different selective methods as prescribed<sup>8</sup>, must be applied depending on the complexity of the project.

- 11.2 Bids must be evaluated by calculation of points for functionality and price.

- 11.2.1 The percentage scored for functionality should be calculated as follows:

- (a) Each panel member should award values for each individual criterion on a score sheet. The value scored for each criterion should be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for the various criteria. These marks should be added to obtain the total score. The following formula should then be used to convert the total score to a percentage for functionality:

$$P_s = \frac{S_o}{M_s} \times A_p$$

Where □

Ps = percentage scored for functionality by bid/proposal under consideration

So = total score of bid/proposal under consideration

Ms = maximum possible score

Ap = percentage allocated for functionality

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<sup>8</sup> National Treasury Practice Note SCM 3 OF 2003 5 December 2003

- (b) The percentages of each panel member should be added together and divided by the number of panel members to establish the average percentage obtained by each individual bidder for functionality.
- (c) After calculation of the percentage for functionality, the prices of all bids that obtained the minimum score for functionality should be taken into consideration.
- (d) Bids that do not score a certain specified minimum percentage for functionality should be disqualified and not be considered further.

#### 11.2.2 Calculation of percentage for price should be as follows:

The lowest acceptable bid will obtain the maximum percentage allocated for price. The other bids with higher prices will proportionately obtain lower percentages based on the following formula:

$$P_s = \frac{P_{\min}}{P_t} \times A_p$$

where □

$P_s$  = percentage scored for price by bid/proposal under consideration

$P_{\min}$  = lowest acceptable bid/proposal

$P_t$  = price of bid/proposal under consideration

$A_p$  = percentage allocated for price.

#### 11.2.3 Calculation of points for functionality and price should be as follows:

The percentage obtained for functionality should be added to the percentage obtained for price to obtain a percentage out of 100 which in turn should be converted to points out of 80 or 90 in terms of regulation 8 of the Preferential Procurement Regulations.

The points scored out of 80 or 90 should be calculated according to the following formula:



- (i) The 80/20 preference point system:

$$P_s = 80(1 - \frac{H_s - R_s}{R_s})$$

- (ii) The 90/10 preference point system:

$$P_s = 90(1 - \frac{H_s - R_s}{R_s})$$

Where □

$P_s$  = points scored for functionality and price of the bid/proposal under consideration.

$H_s$  = highest percentage scored by any acceptable bidder for functionality and price.

$R_s$  = percentage scored for functionality and price by bid/proposal under consideration.

11.2.4 Points scored for specified goals as contemplated by the PPPFA and the Regulations are then calculated separately and added to the points scored for price and functionality in order to obtain a final point. The contract should be awarded to the bidder who scored the highest number of points.

11.3 The AO / AA must always include as part of the adjudication criteria for professional services the following recommended terms of reference:

- (i) relevant experience of company and key staff; and
- (ii) financial status.

## 12. EVALUATION OF BIDS FOR SALE AND LETTING OF ASSETS

12.1 **The 80/20 preference point system** for sale and letting of assets must be used to calculate the points for price in respect of bids with rand value equal to, or above R30 000 and up to a rand value of R500 000.

$$P_s = 80 \left( 1 + \frac{P_t - P_h}{P_h} \right)$$

Where:      $P_s$         =        Point scored for price of bid under consideration.

$P_t$         =        Rand value of bid under consideration.

$P_h$         =        Rand value of the highest acceptable bid.

- (a) A maximum of 20 points may be awarded to a bidder for being a Historically Disadvantaged Individual or subcontracting with a Historically Disadvantaged Individual or achieving any of the goals as specified in the bid.
- (b) The points scored by a bidder in respect of the goals in (a) above must be added to the points scored for price.
- (c) The successful bidder will be the one with the highest number of points scored.

12.2 **The 90/10 preference point system** for the sale and letting of assets must be used to calculate the points for price in respect of bids with rand value above R500 000.

$$P_s = 90 \left( 1 + \frac{P_t - P_h}{P_h} \right)$$

Where:      $P_s$         =        Point scored for price of bid under consideration.

$P_t$         =        Rand value of bid under consideration.

$P_h$         =        Rand value of the highest acceptable bid.

- (a) A maximum of 10 points may be awarded to a bidder for being a Historically Disadvantaged Individual or subcontracting with a Historically Disadvantaged Individual or achieving any of the goals as specified in the bid.
- (b) The points scored by a bidder in respect of the goals in (a) above must be added to the points scored for price.
- (c) The successful bidder will be the one with the highest number of points scored.

**13. ESTABLISHMENT OF A DATABASE OF SUPPLIERS FOR QUOTATIONS**

The AO / AA must ☐

- (a) in order to stimulate the promotion of BEE, the development of Historically Disadvantaged Individuals and SMMEs, in the local media invite businesses to register at any time as potential suppliers of goods and services;
- (b) update the database promptly in accordance with the registration of new suppliers;
- (c) categorize the suppliers according to the goods or services they are capable of supplying;
- (d) when selecting service providers, consult the database of the following institutions;
  - (i) Construction Industry Development Board;
  - (ii) National Home Builders Registration Council;
  - (iii) State Information Technology Agency; and
  - (iv) Security Industry Regulation Agency;

and
- (e) obtain quotations for the required goods or services from potential suppliers in the specific category or on a rotation basis from various suppliers.

#### **14. ASSIGNMENT**

14.1 The supplier or service provider may not assign, in whole or in part, any of its obligations to perform in terms of the contract to any third party, unless the AO / AA have prior to the assignment and subject to clauses 14.2 and 14.3, consented in writing to the assignment.

14.2 The AO / AA must, before consenting to assignment in terms of clause 14.1, in consultation with the departmental adjudication committee, establish ☐

- (a) the reasons for assignment;
- (b) that not more than 25% of the contract is assigned to a party who is not a Historically Disadvantaged Individual;
- (c) that the assignee ☐
  - (i) complies with all the evaluation criteria as detailed in the bid specifications;
  - (ii) has the ability to perform in terms of the contract;
  - (iii) has in writing, entered into an agreement, whereby the assignee accepts the terms and conditions of the existing contract;
  - (iv) has provided the security required in terms of the special conditions of the contract; and
  - (v) has complied with conditions of the department or public entity.

14.3 The AO / AA must not consent to the assignment in terms of clause 14.1 if ☐

- (a) if there is a risk of loss for the province; or
- (b) the assignee does not meet the requirements of preferential procurement as allocated to the initial contractor.

#### **15. SUBCONTRACTING**

15.1 The supplier or service provider must, prior to subcontracting, in writing, notify the AO / AA of ☐

- (a) the subcontracts awarded under the contract, if not already specified in the bid;

- (b) the particulars of the subcontractors;
- (c) the value subcontracted;
- (d) in the case of construction, the grade of the subcontractor; and
- (e) the subcontractor's undertaking to perform its duties in terms of the prescribed standards of the principal contract.

15.2 The notice of subcontracts awarded in terms of paragraph 15.1, does not relieve the supplier or service provider of any liability or obligation under the principal contract.

## **16. CESSION OF PAYMENT**

16.1 A contractor may, subject to clause 16.2, only cede his right to payment in terms of a contract to a third party. A contractor may not by means of cession, cede any of his obligations to perform in terms of a contract to any third party.

16.2 (a) When a contractor chooses to cede his or her right to payment in terms of the contract to a third party, such contractor must request the AO / AA in writing.

- (b) The request referred to in clause (a) must be ☐
- (i) on the official letterhead of the contractor;
  - (ii) signed; and
  - (iii) dated.

16.3 When the department or public entity receives a request in terms of clause 16.2 from the contractor's bank or attorney, written confirmation must be obtained from the contractor to verify the details of the transfer of payment.

16.4 The AO / AA may, after consultation with the departmental adjudication committee, approve the cession of payment when there are no risks involved for the department or public entity.

16.5 The AO / AA must, within 14 days of receipt of a request in terms of clause 16.4, provide the contractor with a final decision.

- 16.6 The AO / AA must, within seven days after approval was granted in terms of clause 16.5, instruct the Chief Financial Officer, in writing to immediately effect the necessary changes to the payment.

## **17. PAYMENT OF SUPPLIERS**

- 17.1 The supplier or service provider must, upon fulfillment of obligations in terms of the contract, furnish the AO / AA with an invoice accompanied by a copy of the delivery note.
- 17.2 When the supplier or service provider has performed properly in terms of the contract, payments must be made promptly, but in no case later than 30 days after submission of an invoice or claim by the supplier or service provider<sup>9</sup>.
- 17.3 Reasons for non-payment of invoices within the 30 day period must be submitted in writing to the Executing Authority.
- 17.4 The AO / AA must inform the affected supplier or service provider of the reasons for non-payment of the account within the stipulated 30 day period.
- 17.5 When the supplier or service provider is not paid within the 30 day period due to the inefficiency of the responsible official in the department or public entity, the matter should be treated as financial misconduct in terms of section 81 (2) of the PFMA.

## **18. REPORTING AND MONITORING**

- 18.1 (a) In addition to the reporting requirements outlined in the Provincial SCM Practice Note 2 of 2004, the AO / AA must submit quarterly reports to the Executing Authority and the Executive Council on the extent to which their departments or public entities promote Historically Disadvantaged Individuals, support local business, SMMEs and contribute to BEE.
- (b) Similar reports must be submitted to the Provincial Treasury on a monthly basis.

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<sup>9</sup> National Treasury Practice Note SCM dated 5 October 2005

- 18.2 The premiums paid to promote RDP goals and Historically Disadvantaged Individuals must be factored in the reports.
- 18.3 Constant monitoring is imperative to ensure that contractors meet their contractual obligations.
- 18.4 Monitoring may be undertaken in the following ways:
- (a) conducting regular site inspections;
  - (b) in cases where service is rendered at a departmental site or contractor's own site, the AO / AA must visit the site regularly to ascertain whether the service is still being rendered in accordance with the contract; and
  - (c) regular meetings must be held with contractors to discuss progress, foreseeable contract problems, and price variations.

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