



IMPLEMENTATION GUIDE

**PREFERENTIAL PROCUREMENT
REGULATIONS, 2011
PERTAINING TO THE
PREFERENTIAL PROCUREMENT
POLICY FRAMEWORK ACT, ACT
NO 5 OF 2000**

1 December 2011

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PART ONE**GENERAL****1. ACRONYMS AND ABBREVIATIONS**

AO /AA	Accounting Officer / Accounting Authority
B-BBEEA	Broad Based Black Economic Empowerment Act, Act No 53 of 2003
BVA	BEE Verification Agency
CCA	Closed Corporations Act, Act No 69 of 1984
EMEs	Exempted Micro Enterprises
IRBA	Independent Regulatory Board of Auditors
MFMA	Municipal Finance Management Act, Act No 56 of 2003
PFMA	Public Finance Management Act, Act No. 1 of 1999 (as amended by Act 29 of 1999)
PPPFA	Preferential Procurement Policy Framework Act, No 5 of 2000
QSE	Qualifying Small Enterprise
SANAS	South African National Accreditation System
SARB	South African Reserve Bank
SARS	South African Revenue Services
SASAE	South African Standard on Assurance Engagements
SCM	Supply Chain Management

2. PURPOSE

This Guide is intended to assist Accounting Officers and Accounting Authorities with the implementation of the Preferential Procurement Regulations, 2011 issued in terms of section 5 of the Preferential Procurement Policy Framework Act, Act Number 5 of 2000 (PPPFA).

The Guide should be read and utilized in conjunction with other relevant SCM related prescripts, instructions, circulars and guidelines.

3. APPLICABILITY

3.1 Institutions

3.1.1 The Preferential Procurement Regulations, 2011 are applicable to organs of state as contemplated in section 1 (iii) of the PPPFA and all public entities listed in Schedules 2, 3A, 3B, 3C and 3D to the PFMA and municipal entities.

3.1.2 These organs of state and entities are hereafter referred to as institutions in this Guide.

3.2 Preference point systems

3.2.1 The 80/20 preference point system is applicable to bids* with a Rand value equal to, or above R30 000 and up to a Rand value of R1 million (all applicable taxes included). Institutions may apply the 80/20 preference point system to price quotations with a value less than R30 000 if and when appropriate.

3.2.2 The 90/10 preference point system is applicable to bids with a Rand value above R1 million (all applicable taxes included).

3.2.3 The value referred to in paragraphs 3.2.1 and 3.2.2 distinguishing the 80/20 and 90/10 preference point systems has been increased from R500 000 to R1 million.

3.2.4 It must be pointed out that the prescribed threshold values within which AOs /AAs may procure services, works or goods by means of petty cash, verbal / written price quotations or advertised competitive bids are not affected by the Preferential Procurement Regulations, 2011.

* which is referred to as tenders in the PPPFA and the Preferential Procurement Regulations, 2011 include advertised competitive bids, written price quotations or proposals.

4. BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) STATUS LEVEL CERTIFICATES

- 4.1 Bidders are required to submit original and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims.
- 4.2 Bidders who do not submit B-BBEE Status Level Verification Certificates or are non-compliant contributors to B-BBEE do not qualify for preference points for B-BBEE but should not be disqualified from the bidding process. They will score points out of 90 or 80 for price only and zero (0) points out of 10 or 20 for B-BBEE.
- 4.3 A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid.
- 4.4 Public entities and tertiary institutions must also submit B-BBEE Status Level Verification Certificates together with their bids.
- 4.5 If an institution is already in possession of a valid and original or certified copy of a bidder's B-BBEE Status Level Verification Certificate that was obtained for the purpose of establishing the database of possible suppliers for price quotations or that was submitted together with another bid, it is not necessary to obtain a new B-BBEE Status Level Verification Certificate each time a bid is submitted from the specific bidder.

Such a certificate may be used to substantiate B-BBEE rating claims provided that the closing date of the bid falls within the expiry date of the certificate that is in the institution's possession.

Each time this provision is applied, cross-reference must be made to the B-BBEE Status Level Verification Certificate already in possession for audit purposes.

- 4.6 AOs / AAs must ensure that the B-BBEE Status Level Verification Certificates submitted are issued by the following agencies:
- 4.6.1 **Bidders other than EMEs**
- (a) Verification agencies accredited by SANAS; or
 - (b) Registered auditors approved by IRBA.
- 4.6.2 **Bidders who qualify as EMEs**
- (a) Accounting officers as contemplated in the CCA; or
 - (b) Verification agencies accredited by SANAS; or
 - (c) Registered auditors. (Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates).

4.7 VALIDITY OF B-BBEE STATUS LEVEL VERIFICATION CERTIFICATES

4.7.1 Verification agencies accredited by SANAS

4.7.1.1 These certificates are identifiable by a SANAS logo and a unique BVA number.

4.7.1.2 Confirmation of the validity of a B-BBEE Status Level Verification Certificate can be done by tracing the name of the issuing Verification Agency to the list of all SANAS accredited agencies. The list is accessible on http://www.sanas.co.za/directory/bbee_default.php.

The relevant BVA may be contacted to confirm whether such a certificate was issued.

4.7.1.3 As a minimum requirement, all valid B-BBEE Status Level Verification Certificates should have the following information detailed on the face of the certificate:

- The name and physical location of the measured entity;
- The registration number and, where applicable, the VAT number of the measured entity;
- The date of issue and date of expiry;
- The certificate number for identification and reference;
- The scorecard that was used (for example EME, QSE or Generic);
- The name and / or logo of the Verification Agency;
- The SANAS logo;
- The certificate must be signed by the authorized person from the Verification Agency; and
- The B-BBEE Status Level of Contribution obtained by the measured entity.

4.7.2 Registered auditors approved by IRBA

4.7.2.1 The format and content of B-BBEE Status Level Verification Certificates issued by registered auditors approved by IRBA must -

- Clearly identify the B-BBEE approved registered auditor by the auditor's individual registration number with IRBA and the auditor's logo;
- Clearly record an approved B-BBEE Verification Certificate identification reference in the format required by the SASAE;
- Reflect relevant information regarding the identity and location of the measured entity;
- Identify the Codes of Good Practice or relevant Sector Codes applied in the determination of the scores;

- Record the weighting points (scores) attained by the measured entity for each scorecard element, where applicable, and the measured entity's overall B-BBEE Status Level of Contribution; and
- Reflect that the B-BBEE Verification Certificate and accompanying assurance report issued to the measured entity is valid for 12 months from the date of issuance and reflect both the issuance and expiry date.

4.7.2.2 Confirmation of the validity of a B-BBEE Status Level Verification Certificate can be done by tracing the name of the issuing B-BBEE approved registered auditor to the list of all approved registered auditors. The list is accessible on <http://www.thedti.gov.za> and / <http://www.irba.co.za>.

The relevant approved registered auditor may be contacted to confirm whether such a certificate was issued.

4.7.3 Accounting officers as contemplated in section 60(4) of the CCA:

4.7.3.1 These certificates will be issued in the accounting officer's letterhead with the accounting officer's practice number and contact number clearly specified on the face of the certificates.

4.7.3.2 The content of B-BBEE Status Level Verification Certificates issued by accounting officers as contemplated in the CCA is detailed in paragraph 4.8.5 below.

4.8 VERIFICATION CERTIFICATES IN RESPECT OF EMEs

4.8.1 In terms of the Generic Codes of Good Practice, an enterprise including a sole propriety with an annual total revenue of R5 million or less qualifies as an EME.

4.8.2 In instances where Sector Charters are developed to address the transformation challenges of specific sectors or industries, the threshold for qualification as an EME may be different from the generic threshold of R5 million. The relevant Sector Charter thresholds will therefore be used as a basis for a potential bidder to qualify as an EME. For example the approved thresholds for EMEs for the Tourism and Construction Sector Charters are R2.5 million and R1.5 million respectively.

4.8.3 EMEs are deemed to have a B-BBEE status of "level four (4) contributor". In instances where EMEs are more than 50% owned by black people, such EMEs qualify as "B-BBEE status level three (3) contributors".

4.8.4 Sufficient evidence to confirm a qualifying EME is a certificate issued by an Accounting Officer (as contemplated in the CCA), a similar certificate issued by a Registered Auditor or a Verification Agency.

4.8.5 When confirming the validity of a certificate in respect of an EME, the following should be detailed on the face of the certificate:

- The Accounting Officer's or Registered Auditor's letter head with full contact details;
- The Accounting Officer's or Registered Auditor's practice numbers;
- The name and the physical location of the measured entity;
- The registration number and, where applicable, the VAT number of the measured entity;
- The date of issue and date of expiry;
- The B-BBEE Status Level of Contribution obtained by the measured entity; and
- The total black shareholding and total black female shareholding.

4.9 Any enquiries in respect of B-BBEE Status Level Verification Certificates may be directed to the Department of Trade and Industry (dti) as follows:

Ms Makhosazana Seate
Director: Empowerment and Enterprise Development Division (EEDD)
Tel: (012) 394 1694
Fax: (012) 394 2694
E-mail: MSeate@thedti.gov.za

PART TWO

INVITATION OF BIDS

5. PLANNING, STIPULATION OF PREFERENCE POINT SYSTEM TO BE UTILISED AND THE DETERMINATION OF DESIGNATED SECTORS

Prior to the invitation of bids, AOs/AAs are required to:

- 5.1. Properly plan for the provision of services, works or goods in order to ensure that the resources that are required to fulfil the needs identified in the strategic plan of the institution are delivered at the correct time, price, place and that the quantity and quality will satisfy those needs.
- 5.2. As far as possible, accurately estimate the costs for the provision of the required services, works or goods. This is in order to determine and stipulate the appropriate preference point system to be utilised in the evaluation and adjudication of the bids and to ensure that the prices paid for the services, works and goods are market related.

Estimated costs can be determined by conducting an industry and commodity analysis whereby prospective suppliers may be approached to obtain indicative market related prices that may be utilised for benchmarking purposes. Based on the findings, the relevant preference point system (80/20 or 90/10) to be utilised for the evaluation of the bid must be stipulated in the bid documents; and

- 5.3. Determine whether the services, works or goods for which an invitation is to be made has been designated for local production and content in terms of Regulation 9 of the Preferential Procurement Regulations. This will entail the inclusion of a specific condition in the bid documents that only locally produced services, works or goods or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered. This will subsequently have a direct impact on the evaluation of the bid.

6. BIDS BASED ON FUNCTIONALITY AS A CRITERION

- 6.1 In general, not all bids should be invited on the basis of functionality as a criterion. The need to invite bids on the basis of functionality as a criterion depends on the nature of the required commodity or service taking into account quality, reliability, viability and durability of a service and the bidders technical capacity and ability to execute a contract.

- 6.2 When an institution invites a bid that will also be evaluated on the basis of functionality as a criterion, the AO/ AA must clearly specify the following aspects in the bid documents:

(a) *Evaluation criteria for measuring functionality*

The evaluation criteria may include criteria such as the consultant's relevant experience for the assignment, the quality of the methodology; the qualifications of key personnel; transfer of knowledge etc.

(b) *Weight of each criterion*

The weight that is allocated to each criterion should not be generic but should be determined separately for each bid on a case by case basis.

(c) *Applicable value*

The applicable values that will be utilised when scoring each criterion should be objective. As a guide, values ranging from 1 being poor, 2 being average, 3 being good, 4 being very good and 5 being excellent, may be utilised.

(d) *Minimum qualifying score for functionality.*

The minimum qualifying score that must be obtained for functionality in order for a bid to be considered further should not be generic. It should be determined separately for each bid on a case by case basis. The minimum qualifying score must not be prescribed so low that it may jeopardise the quality of the service required nor so high that it may be restrictive to the extent that it jeopardizes the fairness of the SCM system.

7. LOCAL PRODUCTION AND CONTENT

7.1 Designated Sectors

- 7.1.1 Bids in respect of services, works or goods that have been designated for local production and content, **must** contain a specific bidding 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.
- 7.1.2 AOs / AAs must stipulate in bid invitations that the exchange rate to be used for the calculation of local content (local content and local production are used interchangeably) must be the exchange rate published by the SARB at 12:00 on the date, one week (7 calendar days) prior to the closing date of the bid.
- 7.1.3 Only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:201x must be used to calculate local content. The following formula to calculate local content must be disclosed in the bid documentation:

The local content (LC) as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286:201x as follows:

$$LC = 1 - \left(\frac{x}{y} \right) \times 100$$

Where

- x imported content
y bid price 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 the SARB at 12:00 on the date, one week (7 calendar days) prior to the closing date of the bid.

- 7.1.4 For the purpose of paragraphs 7.1.1, 7.1.2 and 7.1.3 above, the SBD / MBD 6.2 (Declaration Certificate for Local Content) must form part of the bid documentation.

7.1.5 The Declaration Certificate for Local Content (SBD / MBD 6.2) must be completed and duly signed. AOs / AAs are required to verify the accuracy of the rates of exchange quoted by the bidder in paragraph 4.1 of this Certificate.

7.2 Non-Designated Sectors

7.2.1 Where there is no designated sector, AOs / AAs **may** decide to include a specific bidding 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, on condition that such prescript and threshold(s) are in accordance with the specific directives issued for this purpose by the National Treasury in consultation with the dti.

7.2.2 AOs / AAs must stipulate in bid invitations that the exchange rate to be used for the calculation of local content must be the exchange rate published by the SARB at 12:00 on the date, one week (7 calendar days) prior to the date of closure of the bid.

7.2.3 Only the South African Bureau of Standards approved technical specification number SATS 1286:201x as indicated in paragraph 7.1.3 above must be used to calculate local content.

7.2.4 For the purpose of paragraphs 7.2.1, 7.2.2 and 7.2.3 above, the SBD / MBD 6.2 (Declaration Certificate for Local Content) must form part of the bid documentation.

7.2.5 The Declaration Certificate for Local Content (SBD / MBD 6.2) must be completed and duly signed. AOs / AAs are required to verify the accuracy of the rate(s) of exchange quoted by the bidder in paragraph 4.1 of this Certificate.

7.2.6 Any enquiries in respect of Local Production and Content may be directed to the Department of Trade and Industry (dti) as follows:

Ms Basani Baloyi
Director: Industrial Development Division (IDD)
Tel: (012) 394 3851
Fax: (012) 394 2851
E-mail: BBaloyi@thedti.gov.za

8. SERVICES RENDERED BY TERTIARY INSTITUTIONS AND PUBLIC ENTITIES

8.1 Based on thorough analysis of the market, institutions may invite written price quotations for services that can only be provided by tertiary institutions from the identified tertiary institutions.

- 8.2 Where the required service can be provided by tertiary institutions, public entities and enterprises from the private sector, institutions must invite competitive bids.

PART THREE

EVALUATION OF BIDS

9. DISCOUNTS

- 9.1 When calculating comparative prices:
- 9.2 Unconditional discounts must be taken into account for evaluation purposes; and
- 9.3 Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is effected.

10 SUB-CONTRACTING

- 10.1. A bidder must not be awarded the points claimed for B-BBEE status level of contribution if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 10.2 A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 10.3 In relation to a designated sector, a contractor must not be allowed to 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.

11 EVALUATION OF BIDS BASED ON FUNCTIONALITY AS A CRITERION

Bids invited on the basis of functionality as a criterion must be evaluated in two stages – first functionality must be assessed and then in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations 5 and 6. The evaluation must be done as follows:

11.1 First stage – Evaluation of functionality

- 11.1.1 Bids must be evaluated in terms of the evaluation criteria embodied in the bid documents. The amendment of evaluation criteria, weights, applicable values

- and/or the minimum qualifying score for functionality after the closure of bids is not allowed as this may jeopardise the fairness of the process.
- 11.1.2 A bid will be considered further if it achieves the prescribed minimum qualifying score for functionality.
- 11.1.3 Bids that fail to achieve the minimum qualifying score for functionality must be disqualified.
- 11.1.4 Score sheets should be prepared and provided to panel members to evaluate the bids.
- 11.1.5 The score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation as indicated in the bid documents.
- 11.1.6 Each panel member should after thorough evaluation independently award his / her own value to each individual criterion.
- 11.1.7 Score sheets should be signed by panel members and if necessary, written motivation may be requested from panel members where vast discrepancies in the values awarded for each criterion exist.
- 11.1.8 If the minimum qualifying score for functionality is indicated as a percentage in the bid documents, the percentage scored for functionality may be calculated as follows:
- The value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria;
 - The scores for each criterion should be added to obtain the total score; and
 - The following formula should be used to convert the total score to percentage for functionality:

$$Ps = \frac{So}{Ms} \times 100$$

where:

Ps = percentage scored for functionality by bid under consideration

So = total score of bid under consideration

Ms = maximum possible score

11.1.9 The percentage of each panel member should be added and divided by the number of panel members to establish the average percentage obtained by each bidder for functionality.

11.2 Second stage – Evaluation in terms of the 80/20 or 90/10 preference point systems

11.2.1 Only bids that achieve the minimum qualifying score / percentage for functionality must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations 5 and 6. [Guidance on the evaluation of bids in terms of the 80/20 or 90/10 preference points systems is provided in paragraph 13 of this Guide].

12. EVALUATION OF BIDS BASED ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT

Bids that were invited on the basis of local production and content should be evaluated by following a two-stage bidding process:

12.1 First stage – Evaluation in terms of the stipulated minimum threshold for local production and content

12.1.1 Bids must be evaluated in terms of the evaluation criteria stipulated in the bid documents. The amendment of the stipulated minimum threshold for local production and content after the closure of bids is not allowed as this may jeopardise the fairness of the process.

12.1.2 A bid will be disqualified if:

- the bidder fails to achieve the stipulated minimum threshold for local production and content; and.
- the Declaration Certificate for Local Content (SBD / MBD 6.2) referred to in paragraphs 7.1.4 and 7.2.4 is not submitted as part of the bid documentation.

12.1.3. Calculation of Local Content

12.1.3.1 The local content (LC) as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 201x as indicated in paragraph 7.1.3 above.

12.1.3.2 AOs / AAs must verify the accuracy of the rates of exchange quoted by the bidder in paragraph 4.1 of the Declaration Certificate for Local Content (SBD / MBD 6.2)

12.2 Second stage - Evaluation in terms of the 80/20 or 90/10 preference point systems

12.2.1 Only bids that achieve the minimum stipulated threshold for local production and content must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations 5 and 6. [Guidance on the evaluation of bids in terms of the 80/20 or 90/10 preference points systems is provided in paragraph 13 of this Guide].

12.2.2 Where appropriate, prices may be negotiated only with short listed or preferred bidders. Such negotiations must not prejudice any other bidders.

13. THE PREFERENCE POINT SYSTEMS

13.1 Step 1: Calculation of points for price

13.1.1 The PPPFA prescribes that the lowest acceptable bid will score 80 or 90 points for price. Bidders that quoted higher prices will score lower points for price on a pro-rata basis.

13.1.2 The formulae to be utilised in calculating points scored for price are as follows:

80/20 Preference point system [(for acquisition of services, works or goods up to a Rand value of R1million) (all applicable taxes included)]

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

Where

P_s = Points scored for comparative price of bid or offer under consideration

P_t = Comparative price of bid or offer under consideration

P_{min} = Comparative price of lowest acceptable bid or offer.

90/10 Preference point system [(for acquisition of services, works or goods with a Rand value above R1million) (all applicable taxes included)]

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

Where

P_s = Points scored for comparative price of bid or offer under consideration

P_t = Comparative price of bid or offer under consideration

P_{min} = Comparative price of lowest acceptable bid or offer.

13.1.3 Points scored must be rounded off to the nearest 2 decimal places.

13.2 Step 2: Calculation of points for B-BBEE status level of contributor

13.2.1 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	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

13.2.2 A bid must not be disqualified from the bidding process if the bidder does not submit a certificate substantiating the B-BBEE status level of contribution or is a non-compliant contributor. Such a bidder will score zero (0) out of a maximum of 10 or 20 points respectively for B-BBEE.

13.3 Calculation of total points scored for price and B-BBEE status level of contribution

13.3.1 The points scored for price must be added to the points scored for B-BBEE status level of contribution to obtain the bidder's total points scored out of 100.

14. EVALUATION OF BIDS THAT SCORED EQUAL POINTS

14.1 In the event that two or more bids have scored equal total points, the successful bid must be the one that scored the highest points for B-BBEE.

14.2 If two or more bids have equal points, including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality, if functionality is part of the evaluation process.

14.3 In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots.

15. CANCELLATION AND RE-INVITATION OF BIDS

15.1 In the application of the 80/20 preference point system, if **all** bids received exceed R1 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are within the R1 000 000 threshold, all bids received must be evaluated on the 80/20 preference point system.

15.2 In the application of the 90/10 preference point system, if **all** bids received are equal to or below R1 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are above the R1 000 000 threshold, all bids received must be evaluated on the 90/10 preference point system.

15.3 If a bid was cancelled in terms of paragraph 15.1 or 15.2, the correct preference point system must be stipulated in the bid documents of the re-invited bid.

15.4 An AO / AA may, prior to the award of a bid, cancel the bid if:

15.4.1 Due to changed circumstances, there is no longer a need for the services, works or goods requested. [AOs / AAs must ensure that only goods, services or works that are required to fulfil the needs of the institution are procured]; or

15.4.2 Funds are no longer available to cover the total envisaged expenditure. [AOs / AAs must ensure that the budgetary provisions exist]; or

15.4.3 No acceptable bids are received. [If all bids received are rejected, the institution must review the reasons justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids].

PART FOUR

AWARD OF CONTRACTS

16. AWARD OF CONTRACTS

- 16.1 A contract must be awarded to the bidder who scored the highest total number of points in terms of the preference point systems.
- 16.2 In exceptional circumstances a contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points. The reasons for such a decision must be approved and recorded for audit purposes and must be defensible in a court of law.

PART FIVE

REMEDIES, TAX CLEARANCE, BIDDING DOCUMENTS, SALE AND LETTING OF ASSETS AND TRANSITIONAL ARRANGEMENTS

17. REMEDIES

- 17.1 AOs / AAs must act against the bidder or person awarded the contract upon detecting that the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the contract conditions have not been fulfilled.
- 17.2 The institution may, in addition to any other remedy that it may have against the bidder or person:
- 17.2.1 Disqualify the bidder or person from the bidding process;
 - 17.2.2 Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - 17.2.3 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;
 - 17.2.4 Restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after applying the *audi alteram partem* (hear the other side) rule; and
 - 17.2.5 Forward the matter for criminal prosecution.

17.3 Institution's should involve their legal services when any of the remedies are applied.

17.4 The details of any restrictions imposed on bidders, persons or contractors must be forwarded to the National Treasury for inclusion on the central Database of Restricted Suppliers.

18 TAX CLEARANCE

No bid may be awarded to any bidder whose tax matters have not been declared by the SARS to be in order.

19 BIDDING DOCUMENTS

19.1 The following bidding documents, which have been amended where necessary in accordance with the prescripts of the Preferential Procurement Regulations, 2011, are attached for use:

- **Standard Bidding Documents (SBDs)** for use by all national and provincial departments, constitutional institutions and public entities listed in schedules 3A and 3C to the PFMA; and
- **Municipal Bidding Documents (MBDs)** for use by all municipalities and municipal entities to which the MFMA apply.

	SBD / MBD Description	Document Number
(i)	Invitation to Bid	SBD / MBD 1
(ii)	Application for Tax Clearance Certificate	SBD / MBD 2
(iii)	Pricing Schedules	SBD / MBD 3.1, 3.2 and 3.3
(iv)	Declaration of Interest	SBD / MBD 4
(v)	National Industrial Participation Programme	SBD 5
(vi)	Declaration for Procurement above R10 000 000	MBD 5
(vii)	Preference claims in terms of the Preferential Procurement Regulations, 2011	SBD / MBD 6.1
(v)	Declaration Certificate for Local Content	SBD / MBD 6.2
(ix)	Formal contracts	SBD / MBD 7.1, 7.2 and 7.3
(x)	Declaration of Bidder's past SCM practices	SBD / MBD 8
(xi)	Certificate of Independent Bid Determination	SBD / MBD 9

NB: (The above SBDs / MBDs replace those that were previously issued by the National Treasury)

- 19.2 AOs / AAs should customize and utilize the bidding documents (SBDs or MBDs) by incorporating the institutions name, logo and contact details.
- 19.3 Other changes to the SBDs or MBDs, such as variations necessary to address specific contract and project issues, should be kept to a minimum. The standard wording for the Application for Tax Clearance Certificates (SBD / MBD 2) and the National Industrial Participation Programme (SBD 5) should not be amended. The formal contract document (SBD / MBD 7.1 to 7.3) should not form part of the bidding documents issued to every prospective bidder, but should be made applicable only to the successful bidder after adjudication and award of the bid.
- 19.4 The relevant SBDs or MBDs must be utilized for procurement by means of written price quotations, advertised competitive bids or proposals.
- 19.5 Although these SBDs or MBDs have not been formally issued to Public Entities listed in Schedules 2, 3B and 3D to the PFMA, nothing prohibits these institutions from customizing and utilizing these bidding documents as well.

20 SALE AND LETTING OF ASSETS

- 20.1 The preference point systems prescribed in the PPPFA and the Preferential Procurement Regulations, 2011 are not applicable to the sale and letting of assets.
- 20.2.1 In instances where assets are sold or leased by means of advertised competitive bids or written price quotations or by auctions the award must be made to the highest bidder.
- 20.2.2 The tax clearance requirements referred to in paragraph 18 above applies to the sale and letting of assets as well.

21 TRANSITIONAL ARRANGEMENTS

- 21.1 If a bid was advertised / invited in terms of the evaluation criteria prescribed in the Preferential Procurement Regulations, 2001 (prior to the date of coming into effect of the Preferential Procurement Regulations, 2011) but will only be evaluated and awarded after the date of coming into effect of the Preferential Procurement Regulations, 2011, the bid must be evaluated and awarded in terms of the evaluation criteria prescribed in the Preferential Procurement Regulations, 2001 and in terms of the conditions contained in the bid documents.
- 21.2 Such a bid must be evaluated and awarded as soon as possible but not later than the initial expiry of the validity period of the bid. The extension of the validity period of such a bid must not be allowed.

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