



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

# **IMPLEMENTATION GUIDE:**

# **PREFERENTIAL PROCUREMENT**

# **REGULATIONS, 2022**

## TABLE OF CONTENTS

1. ACRONYMS AND ABBREVIATIONS
2. PURPOSE
3. APPLICABILITY
4. WHAT IS THE DIFFERENCE BETWEEN PPR 2017 AND PPR 2022
5. DETERMINING A PREFERENTIAL PROCUREMENT POLICY
6. SPECIFIC GOALS
7. INVITATION TO TENDER
8. SPECIFICATIONS AND EVALUATION OF TENDERS
9. EVALUATION IN TERMS OF PRICE AND PREFERENCE POINT SYSTEMS
10. EVALUATION IN TERMS OF PRICE AND PREFERENCE POINT SYSTEMS FOR TENDERS FOR INCOME-GENERATING CONTRACTS
11. CRITERIA FOR BREAKING DEADLOCK IN SCORING
12. REMEDIES
13. BIDDING DOCUMENTS
14. TRANSITIONAL ARRANGEMENTS
15. ANNEXURE A – COMMON ERRORS

**1. ACRONYMS AND ABBREVIATIONS**

AO /AA	Accounting Officer / Accounting Authority
CIPC	Companies and Intellectual Property Commission
MFMA	Municipal Finance Management Act, Act No 56 of 2003
OCPO	Office of the Chief Procurement Officer
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
PPR 2017	Preferential Procurement Regulations, 2017
PPR 2022	Preferential Procurement Regulations, 2022
RDP	Reconstruction and Development Programme
SCM	Supply Chain Management

## 2. PURPOSE AND CONTEXT OF THIS GUIDE

- 2.1. This Guide is a living document and is intended to assist procurement practitioners and Accounting Officers / Accounting Authorities with the implementation of the Preferential Procurement Regulations, 2022 issued in terms of section 5 of the Preferential Procurement Policy Framework Act, Act Number 5 of 2000 (PPPFA).
- 2.2. The Guide should be read and utilised in conjunction with other relevant SCM prescripts, instructions, circulars and guidelines as they may be applicable to the institution. Information provided in this Guide is non-binding and therefore may not be used for audit purposes unless included as part of the preferential procurement policy of the institution.
- 2.3. This guidance aims to offer practical assistance to procurement practitioners, it will also help them avoid some of the most common errors done by institutions in implementing the PPR 2022. Where examples are provided, they are for illustrative purposes only and are not meant to be prescriptive.
- 2.4. Consistent with the definition of “this Act” in the PPPFA it is advisable to read the Regulations together with the PPPFA (the Act) to gain better understanding.

## 3. APPLICABILITY

### 3.1. Institutions

- 3.1.1. The Preferential Procurement Regulations, 2022 apply 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, municipalities and municipal entities. A footnote is provided in the regulations which indicates various notices which include various institutions which were not initially included in the Act.
- 3.1.2. These organs of state and entities referred to in 3.1.1 above are hereafter referred to as institutions in this Guide. The terms institution and organs of state may be used interchangeably in this guide.

#### 4. THE DIFFERENCE BETWEEN PPR 2017 AND PPR 2022

4.1. PPR 2017 were regarded by the Constitutional Court (ConCourt) judgment as determining preferential procurement policy for organs of state and were consequently declared invalid. Section 2(1) of the Act states that an organ of state must determine its preferential procurement policy and implement it within the following framework. The framework is contained in Section 2(1)(a) – (g) of the Act. Organs of state should therefore be allowed to determine their preferential procurement policy in line with the dictates of the Act. The Minister must prescribe what is necessary or expedient as required by Section 5 of the Act. As a result, PPR 2022 seek to align with the decision and reasoning of the judgment in its entirety.

#### 4.2. The following have been omitted from PPR 2022:

Regulation	Reason for omission
<b>a) Regulation 4 – prequalification criteria.</b>	The ConCourt found that prequalification criteria for preferential procurement as was provided in regulation 4 of PPR 2017 amounted to determining preferential procurement policy, which should have been left to organs of state in line with Section 2(1) of the Act.
<b>b) Regulation 5 - Tenders to be evaluated on functionality.</b>	Considering the entire reasoning of the ConCourt Judgment, regulation 5 on functionality was deemed to be outside the Minister’s regulation-making powers in terms of the Act and was omitted. However, in order to provide uniformity on how to apply functionality, norms and standards would be prescribed through an instruction issued in terms of Section 76 of the PFMA or a Circular in terms of the MFMA for MFMA-compliant institutions.
<b>c) Regulation 6 - The application of the 80/20 preference point system from the value of R30 000.</b>	The minimum threshold of R30 000 has been omitted from the PPR, 2022 since the Act, in section 2(1)(b)(ii), does not provide for a minimum threshold amount, but instead refers to a Rand value “equal to or below a prescribed amount”, therefore the regulations have been aligned accordingly.
<b>d) Regulation 6 and 7- Use of B-BBEE status level of contributor to allocate preference points.</b>	Section 2(1) requires an organ of state to determine its own preferential procurement policy and implement it within a framework prescribed in the Act.

	<p>According to section 2 (1)(e) of the Act an organ of state must, in the invitation to submit a tender, clearly specify the specific goals for which a point may be awarded. Using the B-BBEE status level of contributor does not provide the opportunity to choose specific goals in terms of section 2(1)(d). It must be noted that a B-BBEE status level of contributor is allocated once an enterprise has been evaluated in terms of the B-BBEE elements.</p> <p>Therefore, sub-regulations connected to the use of the B-BBEE Act and Codes of Good Practice as they relate to claiming preference points or as part of the evaluation of tenders have been omitted from PPR 2022.</p>
<p><b>e) Regulation 8 - Local production and content.</b></p>	<p>The framework, in section 2 (1) of the Act, does not provide for local production and content per se but refers to implementing the programmes of the RDP and provides for points to be awarded for specific goals.</p> <p>Institutions are therefore advised to consult the RDP document to identify specific goals related to local content/ industrialization for which points may be allocated in the invitation of tenders. Unlike in the PPR 2017, the PPR 2022 have omitted provisions relating to designation of sectors for local production and content since the power to determine specific goals related to local content and production now vests with individual institutions and not the Minister, in aligning with the rationale of the Constitutional Court judgment and the provisions of the PPPFA.</p>
<p><b>f) Regulation 9 - Subcontracting as a condition of tender.</b></p>	<p>The ConCourt found that using subcontracting as prequalification criteria and as a condition of tender (the impugned regulations) as prescribed in regulations 4 and 9 of PPR 2017 amounted to determining preferential procurement policy, which should be the responsibility of the organs of state, in line with Section 2(1) of the Act.</p> <p>Furthermore, since the specific goals that will be used by institutions to allocate points for preference, are goals that will be determined by the organs of state in terms of their preferential procurement policies, it thus follows that the organs of state can determine in their preferential procurement policies how</p>

	subcontracting as a prequalification criterion or as a condition of tender will be managed if deemed to be in line with Section 2(1) of the Act.
<b>g) Regulation 11 - Award of contracts to tenders not scoring highest points.</b>	Section 2(1) of the Act already requires organs of state to determine their preferential procurement policy and implement the policy within the framework provided for in section 2(1)(a) – (g). This regulation was omitted in the PPR, 2022 to allow organs of state to determine the terms and conditions on when to apply Section 2(1)(f) of the Act as part of determining their preferential procurement policies. Therefore, it is the responsibility of each organ of state to determine those circumstances where objective criteria will be applied, in accordance with the institution’s preferential procurement policy.
<b>h) Regulation 12 - Subcontracting after award of tender.</b>	This was viewed as determining policy for organs of state. It was further decided that since it was mainly linked to B-BBEE it may not be necessary or expedient for the Minister to prescribe this in the regulations since specific goals will be used to allocate preference points. Organs of state can determine subcontracting after award of tender in their policies if deemed necessary for their operations and to manage preferential procurement risks, especially if there is a risk that subcontracting after award will diminish the specific goals sought to be achieved in the tender.
<b>i) Regulation 13 - Cancellation of tender.</b>	It was determined that this regulation falls within the category of regulations that National Treasury may prescribe under PFMA or MFMA and not under Preferential Procurement Regulations.
<b>j) Regulation 15 - Circulars and guidelines.</b>	It was decided that National Treasury does not need to prescribe this regulation in order to issue circulars and guidelines. Circulars and guidelines may be issued to organs of state without this being prescribed in the regulations.

**4.3. The following have been added to PPR 2022:**

Regulation	Reason for addition
<b>a) Allocation of preference points based on specific goals chosen by an organ of state.</b>	Section 2(1)(b)(i) and (ii) state that 10 or 20 points may be allocated for specific goals as contemplated in paragraph (d). Therefore, in aligning the regulations with the Act, preference points must be allocated in terms of the specific goals as required by the Act.

<p><b>b) Application of preference point system for tenders to generate income or to dispose of or lease assets.</b></p>	<p>It is now prescribed that the preference point system is applicable to tenders for income-generating contracts and that the prescribed thresholds and formulae must be applied in tenders for income-generating contracts, including disposal and leasing of assets.</p>
<p><b>c) The regulations pertaining to remedies have been limited to what is in line with Section 2(1)(g) of the Act.</b></p>	<p>It was decided that the remedies provided in terms of the PPR 2017 may have exceeded what the Minister may prescribe in terms of Section 5 of the Act. Consequently, the process of restricting suppliers should be dealt with in terms of the norms and standards issued under the PFMA or a Circular in terms of the MFMA for MFMA-compliant institutions.</p>

## 5. DETERMINING A PREFERENTIAL PROCUREMENT POLICY

- 5.1. The Act is clear that an organ of state must determine its preferential procurement policy and implement it according to the framework contained in the Act. Therefore, determination of preferential procurement policy is the prerequisite for the implementation of the framework.
- 5.1.1. The power conferred on organs of state to implement preferential procurement policies is constrained by section 217(3) of the Constitution, which states that national legislation must prescribe a framework within which those preferential procurement policies must be implemented. It follows that preferential procurement policies may only be implemented within a framework prescribed by national legislation. That national legislation is the PPPFA.
- 5.2. From the afore-mentioned paragraphs, and to re-iterate the point made, the power to determine the preferential procurement policy is vested with each organ of state only. Neither National Treasury nor any other organ of state or person has the power to determine preferential procurement policy on behalf of another organ of state. Organs of state are advised to read the ConCourt judgement in the matter between Minister of Finance v Afribusines on this aspect.
- 5.3. Institutions may consult other legislation or documents which may assist them in understanding government's intention regarding preferential procurement; this may assist in developing policies that are in line with government's intentions and objectives on using public procurement as a lever to achieve government's broad



policy objectives (socio-economic and transformation policy objectives). A few of these are provided as examples below:

### 5.3.1 The Constitution

Section 217(2) of the Constitution states:

(2) Subsection (1) does not prevent the organ of state or institutions referred to in that subsection from implementing a procurement policy providing for-

- (a) categories of preference in the allocation of contracts; and
- (b) the protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination.

According to Section 217(3), national legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.

### 5.3.2 Preferential Procurement Policy Framework Act (PPPFA)

The objects of the Act are to give effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution and to provide for matters connected therewith.

### 5.3.3 The Green Paper on Public Sector Procurement Reform in South Africa: Notice 691 of 1997

Under “achieving socio-economic objectives through procurement”, the green paper discussed, in relevant parts, the development of an Affirmative Procurement Policy and states that “*what is required is an Affirmative Procurement Policy which sets out to enact the vision for the Procurement Reform Process. Such a policy would need to set out clear statements of intent and address issues raised by questions such as:*

- (a) *How can previously disadvantaged enterprises be given preferential*

*consideration for award of contracts?*

- (b) *How does one ensure the performance of emergent, previously disadvantaged firms?*
- (c) *How will interventions be monitored and, if necessary, redirected to achieve predetermined goals?*
- (d) *How can previously disadvantaged enterprises be financially assisted to establish themselves?*
- (e) *What cost premium is government prepared to bear on contracts in order to correct skewed apartheid influences?"*

**5.3.4. Policy Strategy to Guide Uniformity in Procurement Reforms Processes issued on 10 September 2003**

The purpose of the policy strategy document was to, amongst others, indicate the link between preferential procurement aimed at addressing certain socio-economic objectives and the intention to promote good governance within public procurement.

- 5.4. The above-mentioned documents are meant to give an organ of state an idea of government's legislated policies and other policy discussion documents relating to using public procurement as a lever to advance historically disadvantaged persons and other categories in the allocation of contracts.
- 5.5. Other considerations for an institution in determining its preferential procurement policy include the following:
  - (a) What are they buying?
  - (b) Who are their suppliers?
  - (c) What is the level of transformation of their suppliers?
  - (d) What is the desired level of transformation in the sector from government?
  - (e) Which goals will help in transformation?
  - (f) Is the policy aligned with the institution's strategic objectives and government objectives?
- 5.6. Subject to how the institution develops its policies, a preferential procurement

policy may include all details necessary to implement preferential procurement, alternatively, it may contain broad statements with details covered in Standard Operating Procedures (SOP) or any other document used by an institution in implementing its policies. It is, however, important that an institution has a standardized procedure and process for implementing its preferential procurement policy since the institution may be audited in terms of its preferential procurement policy.

## 6. SPECIFIC GOALS

- 6.1. Specific goals are defined in the regulations to *mean specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994.*
- 6.2. On reading Section 2(1)(b)(i) and (ii), the specific goals for which an organ of state may allocate points for preference are those contemplated in Section 2(1)(d) of the Act. Consequently, the specific goals which an organ of state may adopt in its procurement policy are limited to those articulated in Section 2(1)(d)(i) and (ii). An organ of state is not presently permitted to pursue other specific goals outside the provisions of the Act.

The goals in Section 2(1)(d)(i) may be broken down in the following:

- (a) Contracting with persons or categories of persons historically disadvantaged on the basis of race (black people);
  - (b) Contracting with persons or categories of persons historically disadvantaged on the basis of gender (women);
  - (c) Contracting with persons or categories of persons historically disadvantaged on the basis of disability (persons living with disabilities).
- 6.3. The goals in Section 2(1)(d)(ii) must be derived from the RDP document which has

a number of programmes from which an institution may select. It is important that the institution selects those RDP programmes as specific goals that align with its objectives, including preferential procurement objectives.

6.4. Examples of specific goals from the RDP document include, among others, the following:

- (a) Creating jobs that are sustainable, and increasing the ability of the economy to absorb new job-seekers in both the formal and less formal sectors; and
- (b) Developing the human resource capacity of all South Africans so the economy achieves high skills and wages.

6.5. Specific goals should, as far as possible, adhere to SMART principles:

<b>Acronym</b>	<b>Acronym meaning</b>	<b>Acronym definition</b>
<b>S</b>	<b>Specific</b>	The focus of the specific goal must be clearly defined and identifiable
<b>M</b>	<b>Measurable</b>	The specific goal must be stated in a manner that is measurable; in other words, the institution and the tenderer would be able to measure the points that can be allocated and claimed for that specific goal.
<b>A</b>	<b>Achievable</b>	The specific goal must be attainable.
<b>R</b>	<b>Realistic</b>	The specific goal must be feasible.
<b>T</b>	<b>Timely</b>	The specific goal should be time bound, meaning it must be linked to the duration of the contract period.

6.6. Specific goals selected from the RDP document may either be based on what the tenderer has achieved (current status) or may be future oriented, in other words, what the tenderer must achieve at the end of the contract. Allocation and claiming of points based on future deliverables or undertakings must form part of the contract to ensure that the points claimed for the undertakings made under the specific goals are included in the contract deliverables.

## 6.7. Proof to claim specific goals.

Proof to claim specific goals is vested with each organ of state in line with their policy and specific goals chosen to be advanced in a specific tender. Proof will vary from specific goal to specific goal.

6.7.1. Example on proof or documentation that may be considered to claim points for specific goal related to persons or categories of persons historically disadvantaged by unfair discrimination may include, amongst others-

- (a) A sworn affidavit by the person or person acting on behalf of an enterprise indicating the level of ownership in the enterprise by persons historically disadvantaged by unfair discrimination on the basis of race; or
- (b) Ownership Certificate issued by the Companies and Intellectual Property Commission (CIPC)

6.7.2. Examples of proof or documentation to claim points for human resource development (skills development):

- (a) Plan on skills development in a specific project (the organ of state must then ensure that the plan will form part of the contract if the tenderer is successful).  
***(NB Although some organs of state may have used the criterion to evaluate tenderers in terms of testing experience of an enterprise in skills development. It must be noted that in this instance it will be used as a specific goal for preferential procurement and allocated preference points.)***

6.7.3. An institution must anticipate that tenderers will be at different levels of achieving the specific goals and must develop a clear methodology or matrix on how points for specific goal will be allocated and claimed for a particular level achieved by a tenderer.

6.7.4. Example of methodology to claim points for specific goals related to persons or categories of persons historically disadvantaged by unfair discrimination as well

specific goals relating to the RDP can be found in the following tables:

<b>SPECIFIC GOAL</b>	<b>ACHIEVEMENT LEVEL</b>	<b>TOTAL NUMBER OF POINTS THAT MAY BE CLAIMED</b>
Persons historically disadvantaged on the basis of race	100% black ownership	10
	75% - 99% black ownership	8
	60% - 74% black ownership	6
	51% - 59% black ownership	3
	0 – 50% black ownership	0
<p>The example above shows where percentages are used to allocate and claim points for specific goals for persons historically disadvantaged on the basis of race. The tenderer will know how many points they can claim based on the level of ownership in their enterprise. The example is meant to show organs of state how they can use the matrix or methodology to allocate points. It is not meant to give an example of how they should put specific goals in the tender. There are SBD and MBD 6.1 which indicate how they should specify the specific goals and how tenderers must claim points.</p>		

<b>SPECIFIC GOAL</b>	<b>OWNERSHIP LEVEL</b>	<b>POINTS</b>
Persons historically disadvantaged on the basis of disability	100% owned by persons living with disabilities	5
	75% - 99% owned by persons living with disabilities	3
	60% - 74% owned by persons living with disabilities	2
	51% - 59% owned by persons living with disabilities	1
	0 – 50% owned by persons living with disabilities	0
<p>The example above shows where percentages are used to allocate and claim points for specific goals for persons historically disadvantaged on the basis of disability. The tenderer will know how many points they can claim based on the level of ownership of persons living with disability in their enterprise. The example is meant to show organs of state how they can use the matrix or methodology to allocate points. It is not meant to give an example of how they should put specific goals in the tender. There are SBD and MBD 6.1 which indicate how they should specify the specific goals and how tenderers must claim points.</p>		

<b>SPECIFIC GOAL</b>	<b>NUMBER OF JOBS TO BE CREATED</b>	<b>POINTS</b>
----------------------	-------------------------------------	---------------

Creating jobs / absorbing new job-seekers from a specific project ( <i>organ of state to name that project</i> )	50 or more jobs created	5
	30 or more jobs created	3
	20 or more jobs created	2
	10 or more jobs created	1
	Less than 10 jobs created	0

The example above shows where quantum/ numbers are used to allocate and claim points for the specific goal “creating jobs/ absorbing new job seekers from a specific project”. The tenderer will know how many points they can claim based on the number of jobs they can create/ or job seekers they can absorb. The example is meant to show organs of state how they can use the matrix or methodology to allocate points. It is not meant to give an example of how they should put specific goals in the tender. There are SBD and MBD 6.1 which indicate how they should specify the specific goals and how tenderers must claim points.

6.7.5. The information provided in paragraph 6.7.4 above may be provided by an organ of state in the tender document explaining how points for specific goals will be allocated and may be claimed by tenderers. Organs of state are not limited to the examples provided in the guide; they can use any matrix or methodology provided they are not in conflict with the Act.

6.7.6. Any combination of specific goals in Section 2(1)(d)(i) and (ii) may be used and the points must either add up to 10 points (for the 90/10 preference point system) or 20 points (for the 80/20 preference point system).

## **7. INVITATION TO TENDER**

### **7.1. Planning, Stipulation of Preference Point System to be Utilised**

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

7.1.1. Determine a preferential procurement policy in line with the institution’s mandate and strategic objective.

7.1.2. Properly plan for the provision of goods and services, to ensure that the procurement plan is aligned to the needs identified in the strategic plan of the institution and that goods and services are delivered at the right time, right price, right place and that the quantity and quality will satisfy those needs.

7.1.3. As far as possible, estimate the costs for the provision of the required goods or services. This is in order to determine and stipulate the appropriate preference

point system, the specific goals applicable and the proof to claim points and to be utilised in the evaluation and adjudication of the tenders and to also ensure that the prices paid for the goods and services are market-related.

7.1.4. Estimated costs can be determined by conducting an industry and commodity analysis 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 tender must be stipulated in the tender documents. Where the estimate is determined to be somewhere between the 80/20 or 90/20 preference points system, and thus it is not certain which preference points system the tender should be invited under, then consider utilising the provisions of regulation 3(2) of the PPR 2022 to avoid unnecessary cancellation of tenders should the tenders received not be within the preference points system that was advertised with the tender.

## **7.2. Application of Preference Point Systems<sup>1</sup>**

7.2.1. The 80/20 preference point system applies to tenders with a Rand value equal to, or below a Rand value of R50 million (all applicable taxes included).

7.2.2. It is not expected that institutions will be able to use the preference point system in petty cash purchases, however, those institutions that can apply the preference point system on petty cash purchases may do so.

7.2.3. The 90/10 preference point system applies to bids with a Rand value above R50 million (all applicable taxes included).

## **7.3. Identification of Applicable Preference Point System (Regulation 3)**

7.3.1. In terms of Regulation 3, institutions must stipulate the preference point system applicable to a tender (which, in terms of the definition of tender in the PPR, 2022, includes price quotation). There are, however, instances where the

---

<sup>1</sup> The thresholds for preferential procurement do not affect the threshold values for procurement issued in terms of PFMA SCM Instruction No. 02 of 2021/22 or threshold values for procurement in terms of MFMA Supply Chain Management prescripts or threshold values for procurement issued by accounting authorities of schedule 2, 3B and 3D public entities.



applicable preference point system is uncertain during the preparation of invitation to tender.

- 7.3.2. If there is uncertainty on the preference point system to be applied, institutions must advertise the tender indicating that the tender will be evaluated using either the 80/20 or 90/10 preference point system. Once tenders are received, the lowest acceptable tender must be used to determine the preference point system to be applied for the evaluation of tenders.
- 7.3.3. Where the lowest acceptable tender is equal to or below R50 million, the 80/20 preference point system must be applied.
- 7.3.4. If the lowest acceptable tender is above R50 million, the 90/10 preference point system must be applied.
- 7.3.5. In the case of income generating contracts, if there is uncertainty regarding the preference point system to be applied, institutions must advertise the tender indicating that the tender will be evaluated using either the 80/20 or 90/10 preference point system. Once tenders are received, the highest acceptable tender must be used to determine the preference point system to be applied for the evaluation of tenders.
- 7.3.6. Where the highest acceptable tender is equal to or below R50 million, the 80/20 preference point system must be applied.
- 7.3.7. If the highest acceptable tender is above R 50 million the 90/10 preference point system must be applied.
- 7.3.8. Organs of state must ensure that where either the 80/20 or 90/10 preference point system will be applicable to evaluate the tender in terms of Regulation 3(2), specific goals that will be promoted for both the 80/20 or 90/10 preference point system must be stated in the tender document (Standard Bidding Document 6.1 or Municipal Bidding Document 6.1).
- 7.3.9. It must be pointed out that the prescribed threshold values within which AOs

/AAs may procure goods or services using petty cash, verbal / written price quotations or advertised competitive bids should not be confused with the threshold values prescribed for application of preference points in the Preferential Procurement Regulations, 2022.

## **8. EVALUATION IN TERMS OF THE CRITERIA SPECIFIED IN THE TENDER DOCUMENTS**

- 8.1. Tenders must be evaluated in terms of the criteria stated in the tender documents.
- 8.2. Subject to the decision of the institution, the evaluation may be divided into stages/ phases.
- 8.3. An institution must comply with norms and standards issued for evaluation of tenders as may be prescribed in terms of the PFMA and MFMA. The institutions which are not governed by the norms and standards issued under the PFMA and MFMA must comply with the provisions related to evaluation of tenders as determined in their own procurement policies.
- 8.4. Only acceptable tenders must be evaluated in terms of the preference point system.

## **9 EVALUATION IN TERMS OF PRICE AND PREFERENCE POINT SYSTEMS**

### **9.1. Step 1: Calculation of points for price**

- 9.1.1 The PPPFA prescribes that the lowest acceptable tender must score 80 or 90 points for price. Tenders that quoted higher prices will score lower points for price on a pro-rata basis.
- 9.1.2. When calculating prices:
  - (a) Unconditional discounts must be taken into account for evaluation purposes; and
  - (b) Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is effected.
- 9.1.3. The price used for calculation of points for price (80/90) must be inclusive of all applicable taxes as stated in Regulations 4(1) and 5(1). Applicable taxes include all types of taxes that the tenderer is required to pay in terms of any tax laws of

the country. It is therefore not expected that organs of state will interfere with the prices submitted by tenderers by subtracting or adding any type of tax to the prices submitted by tenderers.

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

*80/20 Preference point system [(for acquisition of goods or services for a Rand value equal to or below R50 million) (all applicable taxes included)]*

Where

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

$P_s$  = Points scored for price of tender under consideration

$P_t$  = Price of tender under consideration

$P_{\min}$  = Price of lowest acceptable tender.

*90/10 Preference point system [(for acquisition of goods or services with a Rand value above R50 million) (all applicable taxes included)]*

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

Where

$P_s$  = Points scored for price of tender under consideration

$P_t$  = Price of tender under consideration

$P_{\min}$  = Price of lowest acceptable tender.

9.1.5 A maximum of 20/ 10 points may be awarded to a tenderer for the specific goal(s) specified in the tender documents.

9.1.6 Points scored for specific goal(s) must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

9.1.7 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

## **10. EVALUATION IN TERMS OF PRICE AND PREFERENCE POINT SYSTEMS FOR TENDERS FOR INCOME-GENERATING CONTRACTS**

- 10.1. The Preferential Procurement Regulations, 2022 are applicable to disposal, leasing of state assets and income generating procurement.
- 10.2. Institutions to which the Treasury Regulations 16A applies and Municipalities and Municipal Entities to which MFMA SCM Regulations apply, are required to follow the provisions of Treasury Regulation 16A.7 and MFMA SCM Regulation 40 respectively. The SCM system and Policies must be consistent with PPR 2022.
- 10.3. Institutions to which Treasury Regulation 16A7 and MFMA SCM Regulation 40 do not apply who are required to develop their own SCM Policies and Systems are required to use provisions of their SCM policies, which should ensure that disposal and leasing of state assets are conducted in a manner that is fair, equitable, transparent, competitive and cost-effective. The SCM system and Policies must be consistent with PPR 2022.
- 10.4. Institutions must assess whether the types of procurement that is being undertaken falls within the definition of “tender for income-generating contracts”. In other words, a contract may be entered into between the organ of state and a third party that results in income being generated, but the nature of the transaction does not fall within the definition of what constitutes a tender for income-generating contracts:
  - 10.4.1. Example 1: An organ of state that is mandated to operate trains may sell train tickets; this activity generates income, but it is excluded from the scope of a tender for income-generating contracts.
  - 10.4.2. Example 2: An organ of state transports goods from inland to harbour as part of the service they provide for their existence, this activity generates income when offered but does not include tender for income-generating contracts.
- 10.5. Organs of state must cater for these different types of income-generating contracts in their preferential policies and link them to the strategy of the organisation, so that the process is consistently applied.
- 10.6 Step 1: Calculation of points for price**

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

*80/20 preference points system for income contracts, disposal and leasing of state assets with Rand value equal to or below R50 million, inclusive of all applicable taxes.*

$$Ps = 80 \left( 1 + \frac{Pt - Pmax}{Pmax} \right)$$

Where

Ps = Points scored for price of tender under consideration;  
Pt = Price of tender under consideration; and  
Pmax = Price of highest acceptable tender.

*90/10 preference points system for income generating contracts, disposal and leasing of state assets with a Rand value above R 50 million, inclusive of all applicable taxes:*

$$Ps = 90 \left( 1 + \frac{Pt - Pmax}{Pmax} \right)$$

Where:

Ps = Points scored for price of tender under consideration;  
Pt = Price of tender under consideration; and  
Pmax = Price of highest acceptable tender.

10.6.2. A maximum of 20/ 10 points may be awarded to a tenderer for the specific goal(s) specified in the tender.

10.6.3. Points scored for specific goal(s) must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

10.6.4. Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

## 11. CRITERIA FOR BREAKING DEADLOCK IN SCORING

11.1. In the event that two or more tenderers have scored equal total points, the successful tenderer must be the one that scored the highest points in terms of specific goals.

11.2. In the event that two or more tenderers are equal in all respects, the award must

be decided by the drawing of lots (or any random selection method whether computerized or not). and the method selected should be documented for audit purposes. The policy of the institution must prescribe the manner in which the drawing of lots will be conducted by the institution.

## **12. REMEDIES**

12.1. If an organ of state is of the view that a tenderer submitted false information regarding a specific goal, it must—

- (a) inform the tenderer accordingly; and
- (b) give the tenderer an opportunity to make representations within 14 days as to why-
  - (i) the tender may not be disqualified; or
  - (ii) if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part.

12.2. After considering the representations referred to in sub-regulation (1)(b), the organ of state may, if it concludes that such information is false—

- (a) disqualify the tenderer or terminate the contract in whole or in part; and
- (b) if applicable, claim damages from the tenderer.

12.3. If the institution decides to restrict a tenderer after considering representations made, the institution must follow a process prescribed in terms of the PFMA Instruction or a Circular in terms of MFMA for MFMA compliant institutions.

## **13. BIDDING DOCUMENTS**

13.1. The Bidding Documents directly affected by the Preferential Procurement Regulations, 2022 are:

- a) SBD 6.1 and MBD 6.1.

13.2. The SBD 6.1 and MBD 6.1 documents have been revised to include the formulae for calculating points for disposal, leasing of state assets and tenders for income-generating contracts.

- 13.3. Other bidding documents have been reviewed for alignment with PPR 2022, where required. SBD 6.2 and MBD 6.2 are now repealed with the omission of designation of sectors for local production and content and will be removed from a list of active bidding documents to a folder containing repealed circulars.
- 13.4. AOs / AAs should customize and utilise the bidding documents (SBDs or MBDs) by incorporating the institution's name, logo and contact details.
- 13.5. The relevant SBDs or MBDs must be utilised for procurement by means of written price quotations, advertised competitive bids or proposals.
- 13.6. Although not all these SBDs have been formally issued to Public Entities listed in Schedules 2, 3B and 3D to the PFMA, nothing prohibits these institutions from customizing and utilising these bidding documents as well.
- 13.7. The bidding documents can be accessed on the OCPO website as follows:  
[http://ocpo.treasury.gov.za/Buyers\\_Area/Pages/Standard-Bidding-Forms.aspx](http://ocpo.treasury.gov.za/Buyers_Area/Pages/Standard-Bidding-Forms.aspx)

#### **14. TRANSITIONAL ARRANGEMENTS**

- 14.1. If a tender was advertised / invited in terms of the evaluation criteria prescribed in the Preferential Procurement Regulations, 2017 (prior to the date of coming into effect of the Preferential Procurement Regulations, 2022) but will only be evaluated and awarded after the date of coming into effect of the Preferential Procurement Regulations, 2022, the tender must be evaluated and awarded in terms of the evaluation criteria prescribed in the Preferential Procurement Regulations, 2017 and in terms of the conditions contained in the bid documents.
- 14.2. 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 is discouraged.

- 14.3. Institutions should note that Regulation 10 of the PPR 2022 repeals the PPR 2017 in their entirety, including any designation circulars or instructions that were saved under the PPR 2017 in terms of regulation 16, except where they are used to evaluate a tender advertised before the effective date of the PPR 2022. Therefore, there will be no formal communication relating to repeal of circulars on designation of sectors for local production and content as regulation 10 of the PPR 2022 is clear that it repeals the PPR 2017.
- 14.4. The PPR 2022 also apply when sourcing requirements from a panel of service providers or a list of prequalified service providers irrespective of when the requirements to establish the panel were advertised. However, it must be noted that the establishment, existence and duration of the panel is not affected by PPR 2022 as establishment of a panel should not be equated to invitation to tender (it remains an invitation to be listed in a panel from which tenders may be invited).

**END**

---



## ANNEXURE A

### EXAMPLES OF COMMON ERRORS

An exercise was undertaken to assess how organs of state were implementing the PPR 2022. A sample was done on the tenders advertised on the e-Tender Publication portal. The following were identified as some of the errors done by the organs of state:

**1. *Using the B-BBEE Status Level of contributor and table provided for in PPR 2017 to allocate points for specific goals:***

Organs of state using the B-BBEE Status Level of Contributor to allocate points for specific goals risk awarding tenders on the basis of repealed regulations and expenditure resulting from such tenders may be declared irregular for non-compliance with applicable legislation.

Please see below extracts copied directly from tenders advertised by organs of state on the e-Tender Portal:

#### **Extract 1.1**

3. Bidders are requested to submit quotation, attached SBD's together with proof of B-BEEE status level of contributor, shareholder certificate and certified copy of ID.
- 4.
5. The quotations will be evaluated on 80/20 preference point system. Failure to submit Valid BBBEE Certificate, ID copy and shareholder certificates will result in zero points being awarded for B-BBEE and specific goals.

**Extract 1.2.**

1.3 Preference points for this bid shall be awarded for:

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

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

	POINTS
<b>PRICE</b>	<b>80</b>
<b>B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	<b>20</b>
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

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

**2. Using the old SBD 6.1 for tenderers to claim points for specific goals:**

SBD and MBD 6.1 were revised to align with the PPR 2022, using the old bidding document 6.1 to claim points for specific goals is inconsistent with PPR 2022 and may result in expenditure declared irregular for non-compliance with applicable legislation.

Please see below an extract copied directly from one of a number of tenders with similar errors advertised by organs of state on the e-Tender Portal:

**Extract 2.1**

**4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION**

4.1 preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

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

**3. Allocating points for both B-BBEE Status Level of Contributor and Specific Goals:**

Points for specific goals may only be allocated in terms of Section 2(1)(d)(i) and (ii), therefore allocating points for both B-BBEE Status Level of Contributor and the specific goals is inconsistent with the afore-mentioned section and may result in an irregular tender and irregular expenditure.

Please see below an extract copied directly from a tender advertised by an organ of state on the e-Tender Portal where this error was observed:

**Extract 3.1**

Table 1: Specific goals for the tender and points claimed are indicated per the table below.  
(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.  
Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

The specific goals claim points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
B-BBEE Status level of Contributor		10		
1		10		
2		9		
3		8		
4		5		
5		4		
6		3		
7		2		
8		1		
Non-compliant contributor		0		
Specific goals		10		
Women		4		
Youth		4		
People living with Disabilities		2		