

PART ONE: DEFINITIONS AND APPLICATION

1 Definitions

- 1) In this policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

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| "Act" | means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000); |
| "all applicable taxes" | includes Value-Added Tax, Pay-as-you-Earn, Income Tax, Unemployment Insurance Fund Contributions and Skills Development Levies; |
| "B-BBEE" | means Broad-Based Black Economic Empowerment as defined in Section 1 of the Broad-Based Black Economic Empowerment Act; |
| "B-BBEE status level of contributor" | means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act; |
| "Broad-Based Black Economic Empowerment Act" (B-BBEEA) | means the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003); |
| "Comparative price" | means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration; |
| "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; |
| "Contract" | means the agreement that results from the acceptance of a tender by the Overstrand Municipality; |
| "designated sector" | means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content; |
| "Firm price" | is the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of a law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract; |
| "Functionality" | means the measurement according to predetermined norms, as set out in the tender documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer; |
| "imported content" | means that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry; |
| "local content" | means that portion of the tender price which is not included in the imported content, provided that local manufacture does take place; |
| "Non-firm prices" | means all prices other than "firm" prices; |
| "Person" | includes reference to a juristic person; |
| "Rand value" | means the total estimated value of a contract in South African currency, calculated at the time of tender invitations and includes all applicable taxes and excise duties; |
| "stipulated minimum threshold" | means that portion of local production and content as determined by the Department of Trade and Industry; |
| "Sub-Contract" | means the primary contractor's assigning or leasing or making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract; |
| "Tender" | means a written offer in a prescribed or stipulated form in response to an invitation by the Overstrand Municipality for the provision of services, works or goods, through price quotations, advertised competitive tender processes or proposals; |

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| "Total revenue" | bears the same meaning assigned to this expression as in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 and promulgated in the Government Gazette on 9 February 2007; |
| "Trust" | means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and |
| "Trustee" | means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person. |

2 Application, Objectives & General Requirements

1) Application

- a) An organ of state contemplated in sub-regulation (1) must, unless the Minister of Finance has directed otherwise, only apply a preferential procurement system which is in accordance with the Act and these Regulations.

PART TWO: PREFERENCE POINT SYSTEM AND BROAD-BASED BLACK ECONOMIC EMPOWERMENT STATUS, EVALUATION OF TENDERS ON FUNCTIONALITY, AWARD OF CONTRACTS TO TENDERERS NOT SCORING THE HIGHEST NUMBER OF POINTS AND THE CANCELLATION AND RE-INVITATION OF TENDERS

3 Planning and stipulation of preference point system to be utilized

- 1) The Municipality must, prior to making an invitation for tenders -
 - a) properly plan for, and, as far as possible, accurately estimate the costs of the provision of services, works or goods for which an invitation for tenders is to be made;
 - b) determine and stipulate the appropriate preference point system to be utilized in the evaluation and adjudication of the tenders; and
 - c) 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 paragraph 9.

4 Evaluation of tenders based on functionality

- 1) The Municipality must indicate in the invitation to submit a tender, if that tender will be evaluated on functionality;
- 2) The evaluation criteria for measuring functionality must be objective.
- 3) When evaluating tenders on functionality, the-
 - a) evaluation criteria for measuring functionality,
 - b) weight of each criterion,
 - c) applicable values; as well as
 - d) minimum qualifying score for functionality,
- 4) No tender must be regarded as an acceptable tender, if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation; and
- 5) Tenders that have achieved the minimum qualification score for functionality must be evaluated further in terms of the preference point systems prescribed in paragraphs 5 and 6.

5 The 80/20 preference point system for acquisition of services, works or goods up to a Rand value of R1,0 million

- 1) The following formula must be used to calculate the points for price in respect of tenders (including price quotations) with a Rand value equal to, or above R 30 000 and up to a Rand value of R1 000 000 (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 tender / offer under consideration

P_t = Comparative price of tender / offer under consideration

P_{min} = Comparative price of lowest acceptable tender / offer.

- a) The Municipality may apply this formula for price quotations with a value less than R30 000, if and when appropriate.
- 2) Subject to sub-paragraph (3), points must be awarded to a tenderer for attaining the B-BBEE status level of contributor in accordance with the table below:

| B-BBEE Status Level of Contributor | Number of Points |
|------------------------------------|------------------|
| 1 | 20 |
| 2 | 18 |
| 3 | 16 |
| 4 | 12 |
| 5 | 8 |
| 6 | 6 |
| 7 | 4 |
| 8 | 2 |
| Non-compliant contributor | 0 |

- 3) A maximum of 20 points may be allocated in accordance with sub-paragraph (2).
- 4) The points scored by a tenderer in respect of B-BBEE contribution contemplated in sub-paragraph (2) must be added to the points scored for price as calculated in accordance with sub-paragraph (1).
- 5) Subject to paragraph 7, the contract must be awarded to the tenderer who scores the highest total number of points.

6 The 90/10 preference point system for acquisition of goods, works and / or services with a Rand value above R1,0 million.

- 1) The following formula must be used to calculate the points for price in respect of tenders with a Rand value above R1,000,000 (all applicable taxes included):

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

Where

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

P_t = Comparative price of tender or offer under consideration; and

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

- 2) Subject to sub-paragraph (3), points must be awarded to a tenderer for attaining their B-BBEE status level of contributor in accordance with the table below:

| B-BBEE Status Level of Contributor | Number of Points |
|------------------------------------|------------------|
| 1 | 10 |
| 2 | 9 |
| 3 | 8 |
| 4 | 5 |
| 5 | 4 |
| 6 | 3 |
| 7 | 2 |
| 8 | 1 |
| Non-compliant contributor | 0 |

- 3) A maximum of 10 points be allocated in accordance with sub-paragraph (2).

- 4) The points scored by a tenderer in respect of the level of B-BBEE contribution contemplated in sub-paragraph (2) must be added to the points scored for price as calculated in accordance with sub-paragraph (1).
- 5) Subject to paragraph 7, the contract must be awarded to the tenderer who scores the highest total number of points.

7 Award of contracts to tenders not scoring the highest number of points

A contract may be awarded to a tenderer that did not score the highest total number of points, only in accordance with paragraph 2(1)(f) of the Act.

8 Cancellation and re-invitation of tenders

- 1) In the event that, in the application of the 80/20 preference point system as stipulated in the tender documents
 - a) all tenders received exceed the estimated Rand value of R1,000,000, the tender invitation must be cancelled.
 - b) If one or more of the acceptable tenders received are within the prescribed threshold of R1,000,000, all tenders received must be evaluated on the 80/20 preference point system.
- 2) In the event that, in the application of the 90/10 preference point system as stipulated in the tender documents,
 - a) all tenders received are equal to, or below R1,000,000 the tender must be cancelled.
 - b) If one or more of the acceptable tenders received are above the prescribed threshold of R1,000,000 all tenders received must be evaluated on the 90/10 preference point system.
- 3) In the event that the Municipality has cancelled a tender invitation as contemplated in sub-paragraph (1)(a) and 2(a), tenders must be re-invited and the tender documents must stipulate the correct preference point system to be applied.
- 4) The Municipality may, prior to the award of a tender, cancel a tender if:
 - a) due to changed circumstances, there is no longer a need for the services, works or goods requested, or
 - b) funds are no longer available to cover the total envisaged expenditure; or
 - c) no acceptable tenders are received.
- 5) The decision to cancel a tender in terms of sub-paragraph (4) must be published in the media in which the original tender invitation was advertised.

PART THREE: LOCAL PRODUCTION AND CONTENT, B-BBEE STATUS LEVEL CERTIFICATES, CONDITIONS, DECLARATIONS, REMEDIES, TAX CLEARANCE, MECHANISMS TO SUPPORT PREFERENTIAL PROCUREMENT, SHORT TITLE AND COMMENCEMENT

9 Local Production and Content

- 1) The Municipality must, in the case of designated sectors, where in the award of tenders local production and content is of critical importance, advertise such tenders with a specific tendering condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 2) The National Treasury will issue instructions, circulars and guidelines to all organs of state, with specific report mechanisms to ensure compliance with sub-paragraph (1).
- 3) Where there is no designated sector, the Municipality may include, as a specific tendering condition, 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, on condition that such pre-script and threshold(s) are in accordance with the specific directives issued for this purpose by the National Treasury in consultation with the Department of Trade and Industry.
- 4) Every tender issued in terms of paragraph 9 must be measurable and audited.

- 5) Where necessary, tenders referred to in sub-paragraph (1) and (3), a two-stage tendering process may be followed, where the first stage involves functionality and minimum threshold for local production and content and the second price and B-BBEE with the possibility of price negotiations only with the short listed tenderer/s.

10 Broad –Based Black Economic Empowerment Status Level Certificates

- 1) Tenders with annual total revenue of R5 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the Broad-Based Black Economic Empowerment Act, and must submit a certificate issued by a registered auditor, Accounting Officer (as contemplated in section 60(4) of the Close Corporation Act, 1984 (Act No.69 of 1984) or an accredited verification agency.
- 2) Tenders other than exempted Micro-Enterprises (EMEs) must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating.
- 3) The submission of such certificates must comply with the requirements of instructions and guidelines issued by the National Treasury and be in accordance with notices published by the Department of Trade and Industry in the Government Gazette.
- 4) B-BBEE status level verification certificates may be issued by SANAS accredited agencies or approved auditors registered with IRBA.
- 5) The B-BBEE status level attained by the tenderer must be used to determine the number of points contemplated in regulations 5(2) and 6(2).

11 Conditions

- 1) Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered.
- 2) The Municipality must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.
- 3) A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is processed.
- 4) Points scored must be rounded off to the nearest 2 decimal places.
- 5) In the event that two or more tenders have scored equal total points, the successful tender must
 - a) be the one scoring the highest number of preference points for B-BBEE.
 - b) However, when functionality is part of the evaluation process and two or more tenders have scored equal points including equal preference points for B-BBEE, the successful tender must be the one scoring the highest score for functionality.
 - c) Should two or more tenders be equal in all respects, the award shall be decided by the drawing of lots.
- 6) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 7) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.
- 8) A person must not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.
- 9) A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an exempted micro enterprise that has the capability and ability to execute the sub-contract.
- 10) A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.