



the dti

**Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA**

LOCAL CONTENT WORKSHOP

OUTLINE:

Section 1 : Introduction to Local Content In Public Procurement Environment

Unit 1 : Policies and Legislation

Unit 2 : Introduction to Local Content

Section 2 : LC Calculations

Unit 1 : Relevant Documentation

Unit 2 : Examples

Section 3 : Verification Process

Unit 1 : Evaluation and Comparison of Bids

Unit 2 : After Award

Addendums:

- 1 : Preferential Procurement Policy Framework Act (PPPFA)
- 2 : Preferential Procurement Regulations, 2011
- 3 : Instruction Note for the Bus Sector
- 4 : Instruction Note for Furniture Products
- 5 : Instruction Note for textiles, Clothing, and Footwear

OUTCOMES OF THE WORKSHOP:

- ✦ By the end of this workshop you should have a clear understanding of the designation policy and the local content requirements in the public procurement environment.
- ✦ You should be able to incorporate the local content requirements as part of the tender/bid.
- ✦ You need to work out the examples provided in the manual to know how to calculate LC.
- ✦ You should be able to assist bidders to complete the SBD/MBD 6.2 and the annexes for local content declaration.
- ✦ You should be able to verify local content claims by bidders during the evaluation process.

UNIT 1: POLICIES AND LEGISLATION

On June 2011, PPPFA regulations were promulgated by Minister of Finance and the revised regulations (Preferential Procurement Regulations, 2011) became effective on 7 December 2011.

- Section 9(1) of the Preferential Procurement Regulations, 2011 empowers the dti to designate sectors and products for local procurement.
- This policy strategy is intended to support our domestic market and revamp local manufacturing.
- AOs/AAs are obliged to implement the local content requirements for all the designated products in their tenders/bids as per the instruction notes published by the National Treasury.

UNIT 2: INTRODUCTION TO LOCAL CONTENT

Major objectives in the industrialization policy (designation)

- Using public procurement strategically to leverage industrial development
- Using public procurement to support industrial policy
- Stimulating and encouraging the growth and development of local industries through the optimal usage of local resources and materials
- Expanding and stimulating the local industrial sector by means of transfer of technology and expertise to suit the nation's needs
- Provide an instrument for increasing the purchase of domestic products
- Revamp the local manufacturing industry
- Promoting job creation and skills development in the country

Conditions of Bid

AOs/AAs are required to include a specific condition in their bid documents prescribing that only locally manufactured products/items with a specified minimum threshold for local content will be considered.

AOs/AAs must indicate in the local content declaration form (SBD/MBD 6.2) under paragraph 3 the stipulated minimum threshold for their specific requirements as per the instruction note for the particular sector/product.

**SECTION 2: LOCAL CONTENT
CALCULATIONS**

UNIT 1: THE RELEVANT DOCUMENTS

Local content documents are for uniformity purposes to promote consistency in the calculation of local content so as to avoid uncertainties and inefficiencies on the part of both bidders and procurement practitioners. The documents can be downloaded from the dti website:

(http://www.thedti.gov.za/industrial_development/ip.jsp)

1. SATS 1286:2011

- Formula

$$LC = \left(1 - \frac{X}{Y}\right) \times 100$$

Where:

X is the imported content in Rand (ZAR)

Y is the tender price in Rand (ZAR)

- Definitions

“Local Content” means that portion of the tender price which is not included in the imported content, provided that local manufacture does take place.

- Annex A: for purchasing institutions (the rate of exchange and minimum thresholds for various items)
- Annex B: declaration certificate for bidders

2. The dti's Guidance Document for Calculation of Local Content

- Guideline document on how to calculate local content
- Three declarations (Annex C,D & E)

3. Treasury Instruction Notes

National Treasury issued a practice notes to organs of state with detailed instructions on invitation and evaluation of bids based on a stipulated minimum threshold for local production and content for all the designated sectors/products.

4. Declaration Documents

The following documents are to be used for declaration purposes

- **SBD/MBD 6.2:** Declaration certificate for local content for designated sectors
 - AA/AO must indicate their local content requirements before publication
 - Bidders must provide the required information
- **Annex C:** Local content declaration (summary schedule)
- **Annex D:** Imported content declaration (supporting schedule to Annex C)
- **Annex E:** Local content declaration (supporting schedule to Annex C)

Examples

UNIT 2: EXAMPLES

- Bus Sector
- The designation is only applicable to the bus body
 - Note the exemption (chassis and engine)
 - Supporting documents from bidders suppliers
 - Annex D to include imported inputs/components and suppliers
 - Annex E to include local inputs/components and local suppliers
- Vegetables

Example 1

"Populated by Procuring Entity"

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GAUTENG PURCHASING DEPARTMENT

SBD 6.2

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2011, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

- 1.1. Preferential Procurement Regulations, 2011 (Regulation 9) makes provision for the promotion of local production and content.
- 1.2. Regulation 9.(1) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the 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.
- 1.3. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on http://www.thedti.gov.za/industrial_development/ip.jsp at no cost.

1.6 A bid may be disqualified if –

- (a) this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation; and
- (b) the bidder fails to declare that the Local Content Declaration Templates (Annex C, D and E) have been audited and certified as correct.

2. Definitions

- 2.1. **"bid"** includes written price quotations, advertised competitive bids or proposals;
 - 2.2. **"bid price"** price offered by the bidder, excluding value added tax (VAT);
 - 2.3. **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;
 - 2.4. **"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;
 - 2.5. **"duly sign"** means a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility (close corporation, partnership or individual).
 - 2.6. **"imported content"** means that portion of the bid 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 (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;
 - 2.7. **"local content"** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
 - 2.8. **"stipulated minimum threshold"** means that portion of local production and content as determined by the Department of Trade and Industry; and
 - 2.9. **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.
3. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
30 Seater Commuter Bus	80%
60 Seater Commuter Bus	80%

4. Does any portion of the services, works or goods offered have any imported content?
(Tick applicable box)

YES		NO	
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- 4.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on www.reservebank.co.za.

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

<u>Currency</u>	<u>Rates of exchange</u>
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

5. Were the Local Content Declaration Templates (Annex C, D and E) audited and certified as correct?
(Tick applicable box)

YES		NO	
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- 5.1. If yes, provide the following particulars:

- (a) Full name of auditor:
- (b) Practice number:
- (c) Telephone and cell number:
- (d) Email address:

Documentary proof regarding the declaration will, when required, be submitted to the satisfaction of the Accounting Officer / Accounting Authority

6. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

LOCAL CONTENT DECLARATION
(REFER TO ANNEX B OF SATS 1286:2011)

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO.

ISSUED BY: (Procurement Authority / Name of Institution):

NB

1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.

2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on <http://www.thdti.gov.za/industrialdevelopment/ip.jsp>. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, (full names),
 do hereby declare, in my capacity as
 of (name of bidder
 entity), the following:

(a) The facts contained herein are within my own personal knowledge.

(b) I have satisfied myself that:

- (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (ii) the declaration templates have been audited and certified to be correct.

(c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above. The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

(d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.

(e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2011 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: _____

DATE: _____

WITNESS No. 1 _____

DATE: _____

WITNESS No. 2 _____

DATE: _____

" Completed by bidder "

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GAUTENG PURCHASING DEPARTMENT

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- 1.3. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on http://www.thedti.gov.za/industrial_development/ip.jsp at no cost.

1.6 A bid may be disqualified if –

- (a) this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation; and
- (b) the bidder fails to declare that the Local Content Declaration Templates (Annex C, D and E) have been audited and certified as correct.

2. Definitions

- 2.1. **"bid"** includes written price quotations, advertised competitive bids or proposals;
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 - 2.3. **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;
 - 2.4. **"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;
 - 2.5. **"duly sign"** means a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility (close corporation, partnership or individual).
 - 2.6. **"imported content"** means that portion of the bid 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 (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;
 - 2.7. **"local content"** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
 - 2.8. **"stipulated minimum threshold"** means that portion of local production and content as determined by the Department of Trade and Industry; and
 - 2.9. **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.
3. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

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<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
30 Seater Commuter Bus	80%
60 Seater Commuter Bus	80%

4. Does any portion of the services, works or goods offered have any imported content?

(Tick applicable box)

YES	☒	NO	☐
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- 4.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on www.reservebank.co.za.

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

<u>Currency</u>	<u>Rates of exchange</u>
US Dollar	7.00
Pound Sterling	12.00
Euro	9.00
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

5. Were the Local Content Declaration Templates (Annex C, D and E) audited and certified as correct?

(Tick applicable box)

YES	☐	NO	☐
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- 5.1. If yes, provide the following particulars:

- (a) Full name of auditor:.....
 (b) Practice number:
 (c) Telephone and cell number:.....
 (d) Email address:

(Documentary proof regarding the declaration will, when required, be submitted to the satisfaction of the Accounting Officer / Accounting Authority)

6. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

LOCAL CONTENT DECLARATION
(REFER TO ANNEX B OF SATS 1286:2011)

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO. GP 00111

ISSUED BY: (Procurement Authority / Name of Institution):

Gauteng Purchasing Department

NB

1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.

2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on <http://www.thdti.gov.za/industrialdevelopment/ip.jsp>. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, Prudence X Solo (full names),
do hereby declare, in my capacity as Managing Director
of Unity Bus Builders (Pty) Ltd (name of bidder
entity), the following:

(a) The facts contained herein are within my own personal knowledge.

(b) I have satisfied myself that:

- (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (ii) the declaration templates have been audited and certified to be correct.

(c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R154 000
Imported content (x), as calculated in terms of SATS 1286:2011	R25 000
Stipulated minimum threshold for local content (paragraph 3 above)	80%
Local content %, as calculated in terms of SATS 1286:2011	84%

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above. The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

(d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.

(e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2011 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: R/Solo

DATE: 12/09/2012

WITNESS No. 1 [Signature]

DATE: 13/09/2012

WITNESS No. 2 [Signature]

DATE: 13-09-2012

EXAMPLE

Annex D

SATS 1286-2011

Imported Content Declaration - Supporting Schedule to Annex C

(D1) Tender No. GP 00111
 (D2) Tender description: 30 and 60 seater commuter bus
 (D3) Designated Products: Buses
 (D4) Tender Authority: Gauteng Purchasing Department
 (D5) Tendering Entity name: Unibody Bus Builders (Pty) Ltd
 (D6) Tender Exchange Rate: USD R 7.00

Notes: VAT to be excluded from all calculations.

EU R 9.00

GBP R 12.00

A. Exempted imported content

Tender item no's	Description of imported content	Local supplier	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Exchange Rate	Local value of imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT
(D7)	(D8)	(D9)	(D10)	(D11)	(D12)	(D13)	(D14)	(D15)	(D16)
GP 00010	Drive Train	MBSA	MB - Germany	\$17,000	R 7.00	R 119,000	R 4,000	R 4,000	R 127,000
GP 00011	Drive Train	MBSA	MB - Germany	€18,000	R 9.00	R 162,000	R 30,000	R 8,000	R 200,000

Summary	
Tender Qty	Exempted Imported value
(D17)	(D18)
400	R 38,400,000
200	R 36,000,000
	R 74,400,000

B. Imported directly by the Tenderer

Tender item no's	Description of imported content	Unit of measure	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Rate of Exchange	Local value of imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT
(D20)	(D21)	(D22)	(D23)	(D24)	(D25)	(D26)	(D27)	(D28)	(D29)
GP 00010	Instrumentation	Each	Gearemax USA	\$3,000	R 7.00	R 21,000.00	R 1,500	R 750	R 23,250.00
GP 00010	Air conditioner	Each	Benteler Ger	€500	R 9.00	R 4,500.00	R 1,000	R 500	R 6,000.00
GP 00011	Instrumentation	Each	Gearemax USA	\$3,100	R 7.00	R 21,700.00	R 1,750	R 800	R 24,250.00
GP 00011	Air conditioner	Each	Benteler Ger	€550	R 9.00	R 4,950.00	R 1,250	R 600	R 6,800.00

Summary	
Tender Qty	Total Imported value
(D30)	(D31)
400	R 6,500,000
400	R 2,400,000
200	R 4,850,000
200	R 1,960,000
	R 15,710,000

C. Imported by a 3rd party and supplied to the Tenderer

Description of imported content	Unit of measure	Local supplier	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Rate of Exchange	Local value of imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT
(D38)	(D39)	(D40)	(D41)	(D42)	(D43)	(D44)	(D45)	(D46)	(D47)
Sheet steel	tonne	ArcelorSA	Arcelor Belgium	€500	R 9.00	R 4,500.00	R 250.00	R 50.00	R 4,800.00
Hinges	each	Ramsay SA	Hingus GB	£5.00	R 12.00	R 60.00	R 10.00	R 5.00	R 75.00
Steel tubing	tonne	Mac Steel	TTC - UK	£500	R 12.00	R 6,000.00	R 300	R 45	R 6,345.00
Other - nuts and bolts	each	Mac Steel	TTC - UK	(value too small to itemize)					

Summary	
Quantity Imported	Total Imported value
(D48)	(D49)
100	R 480,000
1,200	R 80,000
1	R 15,345
	R 1,620
	R 597,000

D. Other foreign currency payments

Type of payment	Local supplier making the payment	Overseas beneficiary	Foreign currency value paid	Tender Rate of Exchange
(D45)	(D46)	(D47)	(D48)	(D49)
Royalty payment for use of patent	Unibody	Oban USA	\$30,000	R 7.00
Annual licence fees - pro-rated	Unibody	MB - Germany	€25,000	R 9.00
Engineering support	MBSA	MB - Germany	€12,000	R 9.00

Summary of payments

Local value of payments
(D51)
R 70,000
R 515,000
R 108,000
R 0
R 493,000

Signature of tenderer from Annex B

Date:

(D52) Total of foreign currency payments declared by tenderer and/or 3rd party

(D53) Total of imported content & foreign currency payments - (D32), (D49) & (D52) above

This total must correspond with Annex C - C21

EXAMPLE

SAT 1286.2011

Annex E

Local Content Declaration - Supporting Schedule to Annex C

(E1)	Tender No.:	GP 00111
(E2)	Tender description:	30 and 60 seater commuter bus
(E3)	Designated products:	Buses
(E4)	Tender Authority:	Gauteng Purchasing Department
(E5)	Tendering Entity name:	Unibody Bus Builders (Pty) Ltd

Note: VAT to be excluded from all calculations

Local Products (Goods, Services and Works)	Description of items purchased	Local suppliers	Value
	(E6)	(E7)	(E8)
	Sheet Steel	Arcelor	R 34,000,000
	Fabric for seats	Galvenor Textiles	R 7,750,000
	Fabric for headlinings	Galvenor Textiles	R 1,250,000
	Welding consumables	ABR Supplies	R 250,000
	Tyres and wheels	Dunlop	R 1,000,000
	Hardware items (nuts, bolts, rivets etc.)	Various local suppliers	R 500,000
	Laser cutting services	Red Hot Cutting	R 245,000
	Other goods & services (small items)	Various	R 5,000
	(E9) Total local products (Goods, Services and Works)		R 45,000,000

(E9) Total local products (Goods, Services and Works)	R 45,000,000	50%
---	--------------	-----

(E10)	Manpower costs (Tenderer's manpower cost)	R 20,000,000	22%
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(F11)	Factory overheads (Rental, depreciation & amortisation, utility costs, consumables etc.)	R 15,000,000	17%
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(E12)	Administration overheads and mark-up	(Marketing, insurance, financing, interest etc.)	R 9 400 000	11%
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(E13)	Total local content	R 89,400,000	100%
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This total must correspond with Annex C - C24

Signature of tenderer from Annex 8

Date: _____

Annex C

Local Content Declaration - Summary Schedule

(C1)	Tender No.	GP 00111
(C2)	Tender description:	30 and 60 seater commuter bus
(C3)	Designated product(s)	Buses
(C4)	Tender Authority:	Gauteng Purchasing Department
(C5)	Tendering Entity name:	Unibody Bus Builders (Pty) Ltd
(C6)	Tender Exchange Rate:	USD R 7.00
(C7)	Specified local content %	80%

EUR	R 9.00
GBP	R 12.00

ਦਸਤ

2.00

[illegible]

Signature of tenderer from Annex B

Date:

70 13.09.2017

013 1.02 1-10011

Example 2

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2011, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

- 1.1. Preferential Procurement Regulations, 2011 (Regulation 9) makes provision for the promotion of local production and content.
- 1.2. Regulation 9.(1) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the 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.
- 1.3. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/Industrial development/ip.jsp](http://www.thedti.gov.za/Industrial%20development/ip.jsp) at no cost.

1.6 A bid may be disqualified if –

- (a) this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation; and
- (b) the bidder fails to declare that the Local Content Declaration Templates (Annex C, D and E) have been audited and certified as correct.

2. Definitions

2.1. **“bid”** includes written price quotations, advertised competitive bids or proposals;

2.2. **“bid price”** price offered by the bidder, excluding value added tax (VAT);

2.3. **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;

2.4. **“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;

2.5. **“duly sign”** means a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility (close corporation, partnership or individual).

2.6. **“imported content”** means that portion of the bid 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 (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;

2.7. **“local content”** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;

2.8. **“stipulated minimum threshold”** means that portion of local production and content as determined by the Department of Trade and Industry; and

2.9. **“sub-contract”** means the primary contractor's assigning, leasing, making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.

3. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
18m Articulated Bus Fleet (EURO V)	80%
12m Standard Bus Fleet (EURO V)	80%
CNG 12m Standard Bus Fleet	80%

4. Does any portion of the services, works or goods offered have any imported content?
(Tick applicable box)

YES		NO	
-----	--	----	--

- 4.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on www.reservebank.co.za.

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

<u>Currency</u>	<u>Rates of exchange</u>
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

5. Were the Local Content Declaration Templates (Annex C, D and E) audited and certified as correct?
(Tick applicable box)

YES		NO	
-----	--	----	--

- 5.1. If yes, provide the following particulars:

- (a) Full name of auditor:
- (b) Practice number:
- (c) Telephone and cell number:
- (d) Email address:

(Documentary proof regarding the declaration will, when required, be submitted to the satisfaction of the Accounting Officer / Accounting Authority)

6. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

LOCAL CONTENT DECLARATION
(REFER TO ANNEX B OF SATS 1286:2011)

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO.

ISSUED BY: (Procurement Authority / Name of Institution):

NB

1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.

2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on <http://www.thdti.gov.za/industrialdevelopment/ip.jsp>. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, (full names),
do hereby declare, in my capacity as
of (name of bidder
entity), the following:

(a) The facts contained herein are within my own personal knowledge.

(b) I have satisfied myself that:

- (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (ii) the declaration templates have been audited and certified to be correct.

(c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.

The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

(d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.

(e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2011 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: _____	DATE: _____
WITNESS No. 1 _____	DATE: _____
WITNESS No. 2 _____	DATE: _____

Annex D

Imported Content Declaration - Supporting Schedule to Annex C

(D1)	Tender No.	
(D2)	Tender description:	
(D3)	Designated Products:	
(D4)	Tender Authority:	
(D5)	Tendering Entity name:	
(D6)	Tender Exchange Rate:	Pula

NOTE: VAT to be excluded from all calculations

EU	R 9.00
----	--------

GBP R 12.00

A. Exempted imported content

Exempted or imported content					Calculation of imported content					Summary	
Tender item no's	Description of imported content	Local supplier	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Exchange Rate	Local value of imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost and VAT	Tender City	Exempted imported value
(D7)	(D8)	(D9)	(D10)	(D11)	(D12)	(D13)	(D14)	(D15)	(D16)	(D17)	(D18)
(D19) Total exempt imported value											

(D19) Total exempt imported value	B 0
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The total must correspond with
Annex C: C21

B. Imported directly by the Tenderer

[illegible]

(D32) Total imported value by tenderer	R 0
--	-----

C. Imported by a 3rd party and supplied to the Tenderer

[illegible]

(D45) Total imported value by 3rd party	B 0
---	-----

D. Other foreign currency payments

[illegible]

Signature of tenderer from Annex B

(D52) Total of foreign currency payments declared by tenderer and/or 3rd party

(D53) Total of imported content & foreign currency payments - (D32), (D45) & (D52) above

RD

Date: _____

This total must correspond with
Annex E - C23

Annex E

Local Content Declaration - Supporting Schedule to Annex C

(E1)	Tender No.	
(E2)	Tender description:	
(E3)	Designated products:	
(E4)	Tender Authority:	
(E5)	Tendering Entity name:	

Note: VAT to be excluded from all calculations

Local Products (Goods, Services and Works)	Description of items purchased	Local suppliers	Value
	(E6)	(E7)	(E8)
(E9) Total local products (Goods, Services and Works)			R O

(E10) Manpower costs (Tenderer's manpower cost)

R O

(E11) Factory overheads (Rental, depreciation & amortisation, utility costs, consumables etc.)

R O

(E12) Administration overheads and mark-up (Marketing, insurance, financing, interest etc.)

R O

(E13) Total local content R O

This total must correspond with Annex C - C24

Signature of tenderer from Annex B

Date:

Local Content Declaration - Summary Schedule

(C2)	Tender description:
(C3)	Designated product(s)
(C4)	Tender Authority:
(C5)	Tendering Entity name:
(C6)	Tender Exchange Rate:
(C7)	Specified local content %

Note: VAT to be excluded from all calculations

GBP

[illegible][illegible]

(C20). Total tender value

	R O
total tender value	
(C21) Total Exempt imported content	

Signature of tenderer from Annex B

Date: _____

(C23) Total Imported content	R 0
(C24) Total local content	R 0
(C25) Average local content % of tender	

Example 3

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2011, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

- 1.1. Preferential Procurement Regulations, 2011 (Regulation 9) makes provision for the promotion of local production and content.
- 1.2. Regulation 9.(1) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the 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.
- 1.3. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on <http://www.thedti.gov.za/industrial development/ip.jsp> at no cost.

1.6 A bid may be disqualified if –

- (a) this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation; and
- (b) the bidder fails to declare that the Local Content Declaration Templates (Annex C, D and E) have been audited and certified as correct.

2. Definitions

- 2.1. **"bid"** includes written price quotations, advertised competitive bids or proposals;
 - 2.2. **"bid price"** price offered by the bidder, excluding value added tax (VAT);
 - 2.3. **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;
 - 2.4. **"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;
 - 2.5. **"duly sign"** means a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility (close corporation, partnership or individual).
 - 2.6. **"imported content"** means that portion of the bid 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 (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;
 - 2.7. **"local content"** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
 - 2.8. **"stipulated minimum threshold"** means that portion of local production and content as determined by the Department of Trade and Industry; and
 - 2.9. **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.
3. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

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Description of Product(s)	Stipulated Minimum Threshold
Commuter bus: 12 m rigid diesel powered high floor (Type 1)	80 %
Commuter bus: 12 m rigid diesel powered high floor (Type 2)	80 %
Commuter bus: 18 m articulated diesel powered high floor commuter	80 %

Note: Delete 12 m Type 2 bus if not applicable.

3.1 Specific requirements in respect of bus chassis

3.1.1 Bus chassis shall be assembled completely knocked down (CKD) in South Africa. The CKD assemblies must comply with the CKD definition of the amended Note 5 as stipulated in Chapter 98 of the Customs and Excise Act of 1964. Bus chassis will include the chassis frame, engine, transmission, drive shaft, axles and suspension as well as other running gear components. Individual components such as engines and transmissions are not required to be assembled locally but are required to be fitted to the chassis frame in South Africa.

3.1.2 The following hang-on parts must be locally manufactured:

- Fuel tank
- Wheels including tyres and wheel rims
- Batteries

4. Does any portion of the services, works or goods offered have any imported content?

(Tick applicable box)

YES		NO	
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4.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on www.reservebank.co.za.

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	Rates of exchange
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

5. Were the Local Content Declaration Templates (Annex C, D and E) audited and certified as correct?

(Tick applicable box)

YES		NO	
-----	--	----	--

5.1. If yes, provide the following particulars:

- (a) Full name of auditor:
- (b) Practice number:
- (c) Telephone and cell number:
- (d) Email address:

Documentary proof regarding the declaration will, when required, be submitted to the satisfaction of the Accounting Officer / Accounting Authority)

6. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

LOCAL CONTENT DECLARATION
(REFER TO ANNEX B OF SATS 1286:2011)

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO.

ISSUED BY: (Procurement Authority / Name of Institution):

.....
NB

1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.

2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on <http://www.thdti.gov.za/industrialdevelopment/ip.jsp>. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below. Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, (full names),
do hereby declare, in my capacity as
of (name of bidder
entity), the following:

(a) The facts contained herein are within my own personal knowledge.

(b) I have satisfied myself that:

- (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid,

- (ii) and as measured in terms of SATS 1286:2011; and the declaration templates have been audited and certified to be correct.

(c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Commuter bus: 12 m rigid diesel powered high floor (Type 1)

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

Commuter bus: 12 m rigid diesel powered high floor (Type 2)

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

Commuter bus: 18 m articulated diesel powered high floor commuter

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above. The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

(d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.

(e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2011 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

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SIGNATURE: _____

DATE: _____

WITNESS No. 1 _____

DATE: _____

WITNESS No. 2 _____

DATE: _____

Local Content Declaration - Summary Schedule

(C1)	Tender No.
(C2)	Tender description:
(C3)	Designated product(s)
(C4)	Tender Authority:
(C5)	Tendering Entity name:
(C6)	Tender Exchange Rate:
(C7)	Specified local content %

	Pula	EU	GBP
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[illegible]

Signature of tenderer from Annex 8

Date: _____

(C20) Total tender value	R 0
(C21) Total Exempt Imported content	R 0
(C22) Total Tender value net of exempt Imported content	R 0
(C23) Total Imported content	
(C24) Total local content	
(C25) Average local content % of tender	

RG

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SATS 1286.2011

Annex E

Local Content Declaration - Supporting Schedule to Annex C

(E1)	Tender No.	
(E2)	Tender description:	
(E3)	Designated products:	
(E4)	Tender Authority:	
(E5)	Tendering Entity name:	

Note: VAT to be excluded from all calculations

Local Products (Goods, Services and Works)	Description of items purchased	Local suppliers	Value
	(E6)	(E7)	(E8)
(E9) Total local products (Goods, Services and Works)			R 0

(E10) Manpower costs (Tenderer's manpower cost) R 0

(E11) Factory overheads (Rental, depreciation & amortisation, utility costs, consumables etc.) R 0

(E12) Administration overheads and mark-up (Marketing, insurance, financing, interest etc.) R 0

(E13) Total local content R 0

This total must correspond with Annex C - C24

Signature of tenderer from Annex B

Date: _____

EXAMPLE 4

" Populated by bidder

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EASTERN CAPE PURCHASING DEPARTMENT

SBD 6.2

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2011, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

- 1.1. Preferential Procurement Regulations, 2011 (Regulation 9) makes provision for the promotion of local production and content.
- 1.2. Regulation 9.(1) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the 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.
- 1.3. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial development/ip.jsp](http://www.thedti.gov.za/industrial%20development/ip.jsp) at no cost.

6. A bid may be disqualified if:

- (a) this Declaration Certificate and the Annex C (Local Content Declaration Summary Schedule) are not submitted as part of the bid documentation; and
- (b) the bidder fails to declare that the Local Content Declaration Templates (Annex C, D and E) have been audited and certified as correct.

2. Definitions

- 2.1. **"bid"** includes written price quotations, advertised competitive bids or proposals;
 - 2.2. **"bid price"** price offered by the bidder, excluding value added tax (VAT);
 - 2.3. **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;
 - 2.4. **"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;
 - 2.5. **"duly sign"** means a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility (close corporation, partnership or individual).
 - 2.6. **"imported content"** means that portion of the bid 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 (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;
 - 2.7. **"local content"** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
 - 2.8. **"stipulated minimum threshold"** means that portion of local production and content as determined by the Department of Trade and Industry; and
 - 2.9. **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.
3. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

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<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
Canned Beans	80%
Canned Carrots	80%
Canned Potatoes	80%
Canned Brussels sprouts	80%
Canned Cabbage	80%
Canned Lentils	80%
Canned Tomatoes	80%
Canned Radish	80%

4. Does any portion of the services, works or goods offered have any imported content?

(Tick applicable box)

YES	☒	NO	☐
-----	-------------------------------------	----	--------------------------

- 4.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on www.reservebank.co.za.

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

<u>Currency</u>	<u>Rates of exchange</u>
US Dollar	
Pound Sterling	R12.00
Euro	R 9.00
Pula	R 15.00
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

5. Were the Local Content Declaration Templates (Annex C, D and E) audited and certified as correct?

(Tick applicable box)

YES	☒	NO	☐
-----	-------------------------------------	----	--------------------------

- 5.1. If yes, provide the following particulars:

- (a) Full name of auditor: Ms Zodwa Mthimkhulu.....
- (b) Practice number: 560047.....
- (c) Telephone and cell number: ... (015) 805 9963/087 566 3696.....
- (d) Email address: zodwa.mthimkhulu@legitaudits.co.za

(Documentary proof regarding the declaration will, when required, be submitted to the satisfaction of the Accounting Officer / Accounting Authority)

6. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

**LOCAL CONTENT DECLARATION
(REFER TO ANNEX B OF SATS 1286:2011)**

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO.EC 011.....

ISSUED BY: (Procurement Authority / Name of Institution): Eastern Cape Purchasing Department
NB

1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.

2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on <http://www.thdti.gov.za/industrialdevelopment/ip.isp>. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below. Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, Themba Simeon Mlilo..... (full names),
do hereby declare, in my capacity as Managing Director.....
ofWe CAN.....(name of bidder entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
- (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
 - (ii) the declaration templates have been audited and certified to be correct.
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been

consolidated in Declaration C:

Bid price, excluding VAT (y)	R 10.00
Imported content (x), as calculated in terms of SATS 1286:2011	R 1.50
Stipulated minimum threshold for local content (paragraph 3 above)	80%
Local content %, as calculated in terms of SATS 1286:2011	85%

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.

The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

(d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.

(e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2011 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: _____

DATE: 02/01/2013

WITNESS No. 1 _____

DATE: 02/01/2013

WITNESS No. 2 _____

DATE: 02.01.2013

EXAMPLE

Annex D

SATS 1286.2011

Imported Content Declaration - Supporting Schedule to Annex C

(D1) Tender No: GP 00030
(D2) Tender description: Supply of canned vegetables to Schools
(D3) Designated Products: Canned vegetables
(D4) Tender Authority: Gauteng Purchasing Department
(D5) Tendering Entity name: Good Vegetable Supplier (Pty) Ltd
(D6) Tender Exchange Rate: Pula R 13.00

(D11) VAT to be excluded from all calculations.

SU R 9.00

GBP R 12.00

A. Exempted imported content

Tender item no's	Description of imported content	Local supplier	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Exchange Rate	Calculation of imported content			
						Local value of Imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT
(D7)	(D8)	(D9)	(D10)	(D11)	(D12)	(D13)	(D14)	(D15)	(D16)
	Not applicable					R 0			R 0
						R 0			R 0

Summary	
Tender Qty	Exempted Imported value
(D17)	(D28)
	R 0
	R 0

(D29) Total exempt imported value

R 0

This total must correspond with Annex C - C 21

B. Imported directly by the Tenderer

Tender item no's	Description of imported content	Unit of measure	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Rate of Exchange	Calculation of imported content			
						Local value of Imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT
(D20)	(D21)	(D22)	(D23)	(D24)	(D25)	(D26)	(D27)	(D28)	(D29)
GP 0006	Lentils	Kg	Vegro - Botswana	\$0.80	R 15.00	R 12.00	R 0.25	R 0.20	R 12.45

Summary	
Tender Qty	Total Imported value
(D30)	(D31)
2,000	R 87,340

(D32) Total imported value by tenderer

R 87,340

C. Imported by a 3rd party and supplied to the Tenderer

Description of imported content	Unit of measure	Local supplier	Overseas Supplier	Foreign currency value as per Commercial Invoice	Tender Rate of Exchange	Calculation of imported content			
						Local value of Imports	Freight costs to port of entry	All locally incurred landing costs & duties	Total landed cost excl VAT
(D33)	(D34)	(D35)	(D36)	(D37)	(D38)	(D39)	(D40)	(D41)	(D42)
Coated tin sheets for cars	tonne	Arcelor SA	Arcelor Belgium	€ 570	R 9.00	R 5,130.00	R 250.00	R 50.00	R 5,430.00

Summary	
Quantity Imported	Total Imported value
(D43)	(D44)
12	R 65,160

(D45) Total imported value by 3rd party

R 65,160

D. Other foreign currency payments

Type of payment	Local supplier making the payment	Overseas beneficiary	Calculation of foreign currency payments	
			Foreign currency value paid	Tender Rate of Exchange
(D46)	(D47)	(D48)	(D49)	(D50)
Nothing to declare				

Summary of payments	
Local value of payments	
(D51)	
	R 0
	R 0
	R 0
	R 0

(D52) Total of foreign currency payments declared by tenderer and/or 3rd party

(D53) Total of imported content & foreign currency payments - (D32), (D45) & (D52) above

R 102,500

This total must correspond with Annex C - C 23

Signature of tenderer from Annex B

Date:

EXAMPLE

SATS 1286.2011

Annex E

Local Content Declaration - Supporting Schedule to Annex C

(E1)	Tender No.	GP 00010
(E2)	Tender description:	Supply of canned vegetables to Schools
(E3)	Designated products:	Canned vegetables
(E4)	Tender Authority:	Gauteng Purchasing Department
(E5)	Tendering Entity name:	Good Vegetable Suppliers (Pty) Ltd

Note: VAT to be excluded from all calculations

Local Products (Goods, Services and Works)	Description of items purchased (E6)	Local suppliers (E7)	Value (E8)
	Beans	Growmor veg (Pty) Ltd	R 80,000
	Carrots	Growmor veg (Pty) Ltd	R 35,000
	Potato's	Growmor veg (Pty) Ltd	R 55,000
	Brussels sprout	Growmor veg (Pty) Ltd	R 22,500
	Cabbage	Growmor veg (Pty) Ltd	R 45,000
	Tomato's	Growmor veg (Pty) Ltd	R 39,000
	Radish	Growmor veg (Pty) Ltd	R 39,000
	Labels	Tag-a-long CC	R 10,000
	Design work on labels	Drew by numbers Ltd	R 5,000
	Packing materials	Corecraft (Pty) Ltd	R 12,000
	Other goods & services (small items)	Various	R 5,000
(E9) Total local products (Goods, Services and Works)			R 347,500 81%

(E10) Manpower costs (Tenderer's manpower cost)

R 30,000 7%

(E11) Factory overheads (Rental, depreciation & amortisation, utility costs, consumables etc.)

R 15,000 4%

(E12) Administration overheads and mark-up (Marketing, insurance, financing, interest etc.)

R 35,000 8%

(E13) Total local content R 427,500 100%

This total must correspond with Annex C - C24

Signature of tenderer from Annex B

Date:

EXAMPLE

SATS 1286.2011

Annex C

Local Content Declaration - Summary Schedule

(C1) Tender No. GP 00010
 (C2) Tender description: Supply of canned vegetables to Schools
 (C3) Designated product(s): Canned vegetables
 (C4) Tender Authority: Gauteng Purchasing Department
 (C5) Tendering Entity name: Good Vegetable Suppliers (Pty) Ltd
 (C6) Tender Exchange Rate: Pula R 15.00
 (C7) Specified local content % 80%
 EU R 9.00 GBP R 12.00

NOTE: VAT to be excluded from all calculations

Tender item no's	List of Items	Calculation of local content				Tender summary		
		Tender price - each (excl VAT)	Exempted Imported value	Tender value net of exempted Imported content	Imported value	Local value	Local content % (per item)	Tender Qty
(C8)	(C9)	(C10)	(C11)	(C12)	(C13)	(C14)	(C15)	(C16)
GP 0001	Canned beans	R 10.00	R 0.00	R 10.00	R 1.50	R 8.50	85%	10,000
GP 0002	Canned carrots	R 5.00	R 0.00	R 5.00	R 1.00	R 4.00	80%	10,000
GP 0003	Canned potato's	R 7.50	R 0.00	R 7.50	R 1.50	R 6.00	80%	10,000
GP 0004	Canned brussels sprouts	R 2.50	R 0.00	R 2.50	R 0.25	R 2.25	90%	10,000
GP 0005	Canned cabbage	R 6.00	R 0.00	R 6.00	R 1.00	R 5.00	83%	10,000
GP 0006	Canned lentils	R 12.00	R 0.00	R 12.00	R 4.00	R 8.00	67%	10,000
GP 0007	Canned tomato's	R 5.00	R 0.00	R 5.00	R 0.50	R 4.50	90%	10,000
GP 0008	Canned radish	R 5.00	R 0.00	R 5.00	R 0.50	R 4.50	90%	10,000
				(C20) Total tender value				
				R 530,000				
				(C21) Total Exempt Imported content				
				R 530,000				
				(C22) Total tender value net of exempt Imported content				
				R 0				
				(C23) Total Imported content				
				R 102,500				
				(C24) Total local content				
				R 427,500				
				(C25) Average local content % of tender				
				80.66%				

Signature of tenderer from Annex B

Date: 13.04.2012

**SECTION 3: VERIFICATION OF LOCAL
CONTENT BY SUPPLY CHAIN
PRACTITIONERS**

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UNIT1: EVALUATION AND COMPARISON OF BIDS

The two stage evaluation criteria must be applied, evaluation in terms of local content requirements and the preference point system. The first phase of evaluation should be on local content to check if bidders meet the required minimum threshold for the various items, and to eliminate those who do not meet the requirements. For the purpose of this stage of evaluation, the following should be submitted as part of the bid documentation at the closing date and time of the bid:

- A completed and duly signed SBD/MBD 6.2
- A completed and signed Annex C
- Annex D & E (only if required by institution)

Bid(s) will be disqualified if these documents are not included in the bid

Important aspects to note

No points are to be allocated for local content; this is just an evaluation criterion to allow bidders to proceed to the next stage of evaluation. The minimum threshold for local content published by the National Treasury cannot be changed.

If all bids do not meet the required minimum threshold, the institution will have to reject the bids and inform the dti for further investigations before inviting new bids.

UNIT 2: AFTER AWARD

Once bids are awarded, the dti must be:

- notified of all the successful bidders and the value of the contracts;
and
- provided with copies of the SBD/MBD 6.2 together with the Declaration C (Annex C) and or Annex D & E submitted by successful bidders at the closing date and time of the bid.

The purpose of this is for the dti together with SABS to conduct local content verification with a view to monitor the implementation of the industrial development strategies.

Contractors 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.

Addendums

Addendum1:

PPPFA

**Acts / Constitutional Law / PREFERENTIAL PROCUREMENT POLICY
FRAMEWORK ACT NO. 5 OF 2000**

**PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT
NO. 5 OF 2000**

[ASSENTED TO 2 FEBRUARY, 2000]
[DATE OF COMMENCEMENT: 3 FEBRUARY, 2000]

(English text signed by the President)

ACT

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.

ARRANGEMENT OF SECTIONS

1. Definitions
2. Framework for implementation of preferential procurement policy
3. Exemption
4. Transitional provision
5. Regulations
6. Short title

**Acts / Constitutional Law / PREFERENTIAL PROCUREMENT POLICY
FRAMEWORK ACT NO. 5 OF 2000 / 1. Definitions.-In this Act, unless the context
indicates otherwise-**

1. Definitions.-In this Act, unless the context indicates otherwise-

**Acts / Constitutional Law / PREFERENTIAL PROCUREMENT POLICY FRAMEWORK
ACT NO. 5 OF 2000 / 1. Definitions.-In this Act, unless the context indicates
otherwise- / "acceptable tender" means any tender which, in all respects, complies
with the specifications and conditions of tender as set out in the tender document;**

"acceptable tender" means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document;



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Definitions

1. In these Regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act must bear the meaning so assigned-

"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 of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

"black designated groups" has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

"black people" has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;

"Broad-Based Black Economic Empowerment Act" means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

"co-operative" means a co-operative registered in terms of section 7 of the Co-operatives Act, 2005 (Act No. 14 of 2005);

"designated group" means-

- (a) black designated groups;
- (b) black people;
- (c) women;
- (d) people with disabilities; or
- (e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

"designated sector" means a sector, sub-sector or industry or product designated in terms of regulation 8(1)(a);

"EME" means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

"functionality" means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents;

"military veteran" has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);

"National Treasury" has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"people with disabilities" has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);

"price" includes all applicable taxes less all unconditional discounts;

"proof of B-BBEE status level of contributor" means-

- (a) the B-BBEE status level certificate issued by an authorised body or person;
- (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- (c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;

“QSE” means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

“Rand value” means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;

“rural area” means-

- (a) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or
- (b) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system;

“stipulated minimum threshold” means the minimum threshold stipulated in terms of regulation 8(1)(b);

“the Act” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

“township” means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;

“treasury” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and

“youth” has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

Application

2. These Regulations apply to organs of state as envisaged in the definition of organ of state in section 1 of the Act.¹

Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and subcontracting

3. An organ of state must-
- (a) determine and stipulate in the tender documents-
 - (i) the preference point system applicable to the tender as envisaged in regulation 6 or 7; or

¹ The definition of “organ of state” in section 1 of the Act in paragraph (a) to (e) includes-

- a national or provincial department as defined in the Public Finance Management Act, 1999;
- a municipality as contemplated in the Constitution;
- a constitutional institution as defined in the Public Finance Management Act;
- Parliament;
- a provincial legislature.

Paragraph (f) of the definition of organ of state in section 1 of the Act includes any other institution or category of institutions included in the definition of “organ of state” in section 239 of the Constitution and recognised by the Minister by notice in the *Government Gazette* as an institution or category of institutions to which the Act applies. Government Notice R. 501 of 8 June 2011 recognises, with effect from 7 December 2011, all public entities listed in Schedules 2 and 3 to the Public Finance Management Act, 1999, as institutions to which the Act applies. Note should be taken of notices issued from time to time in terms of paragraph (f) of this definition. The application of these Regulations is also subject to applicable exemptions approved in terms of section 3 of the Act.

- (ii) if it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system;
- (b) determine whether pre-qualification criteria are applicable to the tender as envisaged in regulation 4;
- (c) determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in regulation 8;
- (d) determine whether compulsory subcontracting is applicable to the tender as envisaged in regulation 9; and
- (e) determine whether objective criteria are applicable to the tender as envisaged in regulation 11.

Pre-qualification criteria for preferential procurement

4.(1) If an organ of state decides to apply pre-qualifying criteria to advance certain designated groups, that organ of state must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond-

- (a) a tenderer having a stipulated minimum B-BBEE status level of contributor;
- (b) an EME or QSE;
- (c) a tenderer subcontracting a minimum of 30% to-
 - (i) an EME or QSE which is at least 51% owned by black people;
 - (ii) an EME or QSE which is at least 51% owned by black people who are youth;
 - (iii) an EME or QSE which is at least 51% owned by black people who are women;
 - (iv) an EME or QSE which is at least 51% owned by black people with disabilities;
 - (v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
 - (vi) a cooperative which is at least 51% owned by black people;
 - (vii) an EME or QSE which is at least 51% owned by black people who are military veterans;
 - (viii) an EME or QSE.

(2) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

Tenders to be evaluated on functionality

5.(1) An organ of state must state in the tender documents if the tender will be evaluated on functionality.

- (2) The evaluation criteria for measuring functionality must be objective.
- (3) The tender documents must specify-
 - (a) the evaluation criteria for measuring functionality;
 - (b) the points for each criteria and, if any, each sub-criterion; and

- (c) the minimum qualifying score for functionality.
- (4) The minimum qualifying score for functionality for a tender to be considered further-
- (a) must be determined separately for each tender; and
- (b) may not be so-
- (i) low that it may jeopardise the quality of the required goods or services; or
- (ii) high that it is unreasonably restrictive.
- (5) Points scored for functionality must be rounded off to the nearest two decimal places.
- (6) A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.
- (7) Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in regulation 11.

80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million

6.(1) The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

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

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

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

(2) The following table must be used to calculate the score out of 20 for B-BBEE:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6

7	4
8	2
Non-compliant contributor	0

(3) A tenderer must submit proof of its B-BBEE status level of contributor.

(4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-

- (a) may only score points out of 80 for price; and
- (b) scores 0 points out of 20 for B-BBEE.

(5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

(6) The points scored by a tenderer for B-BBEE in terms of subregulation (2) must be added to the points scored for price under subregulation (1).

(7) The points scored must be rounded off to the nearest two decimal places.

(8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.

(9)(a) If the price offered by a tenderer scoring the highest points is not market-related, the organ of state may not award the contract to that tenderer.

(b) The organs of state may-

- (i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
- (ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
- (iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.

(c) If a market-related price is not agreed as envisaged in paragraph (b)(iii), the organ of state must cancel the tender.

90/10 preference point system for acquisition of goods or services with Rand value above R50 million

7.(1) The following formula must be used to calculate the points out of 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

Where-

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

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

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

(2) The following table must be used to calculate the points out of 10 for B-BBEE:

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

(3) A tenderer must submit proof of its B-BBEE status level of contributor.

(4) A tenderer failing to submit proof of B-BBEE status level of contribution or is a non-compliant contributor to B-BBEE may not be disqualified, but-

(a) may only score points out of 90 for price; and

(b) scores 0 points out of 10 for B-BBEE.

(5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

(6) The points scored by a tenderer for B-BBEE contribution in terms of subregulation (2) must be added to the points scored for price under subregulation (1).

(7) The points scored must be rounded off to the nearest two decimal places.

(8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.

(9)(a) If the price offered by a tenderer scoring the highest points is not market-related, the organ of state may not award the contract to that tenderer.

(b) The organs of state may-

- (b) an EME or QSE which is at least 51% owned by black people;
- (c) an EME or QSE which is at least 51% owned by black people who are youth;
- (d) an EME or QSE which is at least 51% owned by black people who are women;
- (e) an EME or QSE which is at least 51% owned by black people with disabilities;
- (f) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- (g) a cooperative which is at least 51% owned by black people;
- (h) an EME or QSE which is at least 51% owned by black people who are military veterans; or
- (i) more than one of the categories referred to in paragraphs (a) to (h).

(3) The organ of state must make available the list of all suppliers registered on a database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in subregulation (2) from which the tenderer must select a supplier.

Criteria for breaking deadlock in scoring

10.(1) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for B-BBEE.

(2) If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preference points for B-BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.

(3) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

Award of contracts to tenderers not scoring highest points

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

(2) If an organ of state intends to apply objective criteria in terms of section 2(1)(f) of the Act, the organ of state must stipulate the objective criteria in the tender documents.

Subcontracting after award of tender

12.(1) A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.

(2) A person awarded a contract in relation to a designated sector, may not subcontract 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.

(3) A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

Cancellation of tender

13. (1) An organ of state may, before the award of a tender, cancel a tender invitation if-

- (a) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
- (b) funds are no longer available to cover the total envisaged expenditure;
- (c) no acceptable tender is received; or
- (d) there is a material irregularity in the tender process.

(2) The decision to cancel a tender invitation in terms of subregulation (1) must be published in the same manner in which the original tender invitation was advertised.

(3) An organ of state may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

Remedies

14. (1) Upon detecting that a tenderer submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the organ of state must-

- (a) inform the tenderer accordingly;
 - (b) give the tenderer an opportunity to make representations within 14 days as to why-
 - (i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
 - (ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
 - (iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and
 - (c) if it concludes, after considering the representations referred to in subregulation (1)(b), that-
 - (i) such false information was submitted by the tenderer-
 - (aa) disqualify the tenderer or terminate the contract in whole or in part; and
 - (bb) if applicable, claim damages from the tenderer; or
 - (ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.
- (2)(a) An organ of state must-
- (i) inform the National Treasury, in writing, of any actions taken in terms of subregulation (1);

- (ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
- (iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.
 - (b) The National Treasury may request an organ of state to submit further information pertaining to subregulation (1) within a specified period.
 - (3) The National Treasury must-
 - (a) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and
 - (b) maintain and publish on its official website a list of restricted suppliers.

Circulars and guidelines

15. The National Treasury may issue-

- (a) a circular to inform organs of state of any matter pertaining to these Regulations; or
- (b) a guideline to assist organs of state with the implementation of any provision of these Regulations.

Repeal of Regulations and saving

16.(1) Subject to this regulation, the Preferential Procurement Regulations, 2011, published in Government Notice No R. 502 of 8 June 2011 (herein called "the 2011 Regulations), are hereby repealed with effect from the date referred to in regulation 17.

(2) Any sector designated and minimum threshold determined for local production and content for purposes of regulation 9 of the 2011 Regulations and in force immediately before the repeal of the 2011 Regulations, are regarded as having been done under regulation 8(1) of these Regulations.

(3) Any tender advertised before the date referred to in regulation 17 must be dealt with in terms of the 2011 Regulations.

Short title and commencement

17. These Regulations are called the Preferential Procurement Regulations, 2017 and take effect on 1 April 2017.



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

IMPLEMENTATION GUIDE

PREFERENTIAL PROCUREMENT REGULATIONS, 2017 PERTAINING TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, ACT NO 5 OF 2000

March 2017

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GENERAL

1. ACRONYMS AND ABBREVIATIONS

AO /AA	Accounting Officer / Accounting Authority
B-BBEEA	Broad Based Black Economic Empowerment Act, Act No 53 of 2003 as amended.
BVA	BEE Verification Agency
CIPC	Companies and Intellectual Property Commission
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
SCM	Supply Chain Management

****For the purposes of this Implementation Guide the term “bid” has the same meaning assigned to the term “tender”. Furthermore, the term “tender”/ “bid” also includes price quotations, unless specifically excluded.***

2. PURPOSE

This Guide is intended to assist Accounting Officers and Accounting Authorities with the implementation of the Preferential Procurement Regulations, 2017 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, 2017 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, municipalities and municipal entities.

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.

4. INVITATION TO TENDER/ REQUESTS FOR QUOTATION

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

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

- 4.1.1. 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.
- 4.1.2. As far as possible, accurately 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 to be utilized in the evaluation and adjudication of the tenders and to also ensure that the prices paid for the services, works and goods are market related.
- 4.1.3. Estimated costs can be determined by conducting an industry and commodity analysis to obtain indicative market related prices that may be utilized for benchmarking purposes. Based on the findings, the relevant preference point system (80/20 or 90/10) to be utilized for the evaluation of the tender must be stipulated in the tender documents;
- 4.1.4. Determine whether the sector, sub-sector, industry or products for which an invitation is to be made have been designated for local production and content in terms of Regulation 8 of the Preferential Procurement Regulations. If designated, institutions must include a specific condition in the tender documents that only locally produced 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 tender.

- 4.1.5. Must identify procurement opportunities where pre-qualification criteria as provided for in Regulation 4 must be applied by following the process specified in paragraph 5 below.
- 4.1.6. Must identify procurement opportunities where subcontracting as condition of tender for procurement above R 30 million must be applied by following the process specified in paragraph 14 below.

5. APPLICATION OF PRE-QUALIFICATION CRITERIA (Regulation 4)

- 5.1. Institutions must at procurement and tender planning stage identify procurement opportunities to advance designated groups and apply the pre-qualification criteria stipulated in Regulation 4 for this purpose.
- 5.2. Institutions must conduct market research or industry analysis to identify procurement opportunities, level of transformation in a particular sector or commodity, supply market, their B-BBEE status level and availability of EMEs or QSEs who may be eligible to tender.
- 5.3. The market research and Industry analysis must identify sectors and industries that are not transformed where pre-qualification provisions could be applied to transform such sectors and industries for the benefit and advancement of designated groups.
- 5.4. Prequalification must be used in identified tenders to advance designated groups on the basis of B-BBEE Status Level of contributor, EME or QSE or on the basis of subcontracting with EMEs or QSEs which are 51% owned by either of the following: Blacks; Black Youth; Black Women; Black people with disabilities; Black people living in rural or underdeveloped areas or townships; cooperatives owned by Black people; Black people who are Military Veterans.
- 5.5. Where procurement opportunities for designated groups have been identified, tenders must be advertised with a clear tendering condition that tenderers will be prequalified on the basis of one or more of the criteria mentioned in paragraph 4.4.above.
- 5.6. Tenderers that do not meet the pre-qualification criteria stipulated in the tender document should be disqualified from further evaluation.
- 5.7. Tenderers who meet the prequalification criteria are evaluated further in terms of any evaluation criteria stipulated in the tender including any technical specification, functionality and preference point system in terms of regulation 6 and 7 of the Preferential Procurement Regulations 2017.
- 5.8. Where a tender is advertised with a specific condition that only locally produced services or goods or locally manufactured goods may be procured, such tender must first be evaluated in terms of pre-qualification criteria, the local content and production requirements for that tender before being evaluated further in terms

of other specified criteria.

- 5.9. Tenderers must, where subcontracting is a prequalification requirement, submit proof of subcontracting arrangement between the main tenderer and the subcontractor. Proof of subcontracting arrangement may include a subcontracting agreement between main tenderer and subcontractor.
- 5.10. Where no tenderer meets prequalification criteria, the institution must cancel the tender; and must investigate the reasons for tenderers failing to meet prequalification criteria.
- 5.11. Where an Institution elects to use prequalification criteria for preferential procurement to advance or protect categories of enterprises as a condition of tender or price quotations, the following procedure must be followed:
 - 5.11.1. An industry and commodity analysis to determine availability of the category of enterprises that the organ of state seeks to advance and level of transformation in the sector, sector charter and codes may be considered.
 - 5.11.2. Verify the number of enterprises in the sector to determine if there will be sufficient competition.
 - 5.11.3. Determine which category of enterprises will be advanced in terms of Regulation 4
 - 5.11.4. When an organ of state decides to apply the sub-contracting provision as specified in Regulation 4(c) all tenders above the prescribed maximum threshold for quotations must be advertised through an open competitive bidding process subject to potential tenderers meeting the 30% minimum subcontracting requirement to EMEs or QSEs that are 51% owned by the following enterprises:
 - (i) Black people
 - (ii) Black people who are youth
 - (iii) Black people who are women
 - (iv) Black people with disabilities
 - (v) Black people living in rural or underdeveloped areas or townships
 - (vi) Cooperatives which are 51% owned by Black people
 - (vii) Black people who are military veterans
- 5.12. Any combination of designated groups stipulated in Regulation 4 (c) may be applied in a tender or request for quotation.
- 5.13. Where an organ of state elects to apply subcontracting as a prequalification, tenders or requests for quotation must be advertised with a clear condition that potential tenderers would be prequalified based on meeting subcontracting condition of tender or request for quotation. A tender must be advertised with a clear condition for prequalification.
- 5.14. Conditions of tender must clearly specify that it is the responsibility of the tenderer to select competent subcontractors that meet all requirements of the

tender so that their tender is not jeopardized by the subcontractor when evaluated. Tenderers are responsible for all due diligence on their subcontractors.

- 5.15. Tenders or requests for quotation must be evaluated in terms of the evaluation criteria stipulated in the tender or request for quotation documentation:

- (a) Prequalification criteria
- (b) Evaluation for mandatory criteria
- (c) Evaluation in terms of local production and content if part of the tender
- (d) Evaluation for Prequalification criteria
- (e) Evaluation in terms of Functionality if part of the tender
- (f) Evaluation in terms of 80/20 or 90/10 preference point system.

- 5.16. Note that all tender evaluations must form part of the report of the Bid Evaluation Committee to Bid Adjudication Committee and Accounting Officer/ Accounting Authority. (Whichever is applicable)

- 5.17. Institutions may not subcontract in such a way that there is no incentive for contractors and subcontractors to conduct business.

6. TENDERS BASED ON FUNCTIONALITY AS A CRITERION

- 6.1. Not all tenders should necessarily be invited on the basis of functionality as a criterion. The need to invite tenders on the basis of functionality as a criterion depends on the nature of specific commodity or service taking into account quality, reliability, viability and durability of a service and the tenderer's technical capacity and capability to execute a contract.

- 6.2. When an institution invites a tender or request for quotation that will also be evaluated on functionality as a criterion, the AO/ AA must clearly specify the following aspects in the tender documents:

Evaluation criteria for measuring functionality

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

Points for each criterion

- 6.4. The points allocated to each criterion should not be generic but should be determined separately for each tender on a case by case basis.

Points for each sub-criterion

- 6.5. The applicable points that will be utilized when scoring each sub-criterion should be objective.

Minimum qualifying score for functionality

- 6.6. The minimum qualifying score that must be obtained for functionality in order for a tender to be considered further should not be generic. It should be determined separately for each tender on a case by case basis. The minimum qualifying score must not be prescribed so low that it may jeopardize 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. APPLICATION OF PREFERENCE POINT SYSTEMS¹

- 7.1. The 80/20 preference point system is applicable to price quotations and tenders with a Rand value equal to, or above R30 000 and up to a Rand value of R50 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.

- 7.2. The 90/10 preference point system is applicable to bids with a Rand value above R50 million (all applicable taxes included).
- 7.3. The threshold value referred to in paragraphs 6.1 and 6.2 distinguishing the 80/20 and 90/10 preference point systems has been increased in the Preferential Procurement Regulations, 2017 from maximum R1 million to R50 million.

8. IDENTIFICATION OF APPLICABLE PREFERENCE POINT SYSTEM (Regulation 3)

- 8.1. In terms of Regulation 3 Institutions must stipulate the preference point system applicable to a tender or price quotation. There are, however, instances where it is uncertain to determine the preference point system applicable during preparation of invitation of a tender.
- 8.2. If there is uncertainty on the preference point system to be applied, institutions must advertise the tender indicating that the tender will be evaluated on either the 80/20 or 90/10 preference point system. Once a tender is received, the lowest acceptable tender must be used to determine the preference point system to be used for the evaluation of tenders.
- 8.3. Where the lowest acceptable tender is below R50 million, the 80/20 preference point system must be used.
- 8.4. If the lowest acceptable tender is above R50 million, the 90/10 preference point system must be used.
- 8.5. If pre-qualification criteria are applicable to the tender or price quotation as envisaged in regulation 4; the institution must state this clearly in the invitation to tender.

¹ The thresholds for preferential procurement do not affect the threshold values for procurement issued in terms of Instruction Note 7 of 2007/2008 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.

- 8.6. Institutions must state clearly in the tender documents:-
- 8.6.1. If goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in regulation 8;
- 8.6.2. If compulsory subcontracting is applicable to the tender as envisaged in regulation 9; and
- 8.6.3. If objective criteria are applicable to the tender as envisaged in regulation 11.
- 8.7. It must be pointed out that the prescribed threshold values within which AOs /AAs may procure services, or goods by means of petty cash, verbal / written price quotations or advertised competitive bids are not affected by the Preferential Procurement Regulations, 2017.
- 9. BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) STATUS LEVEL CERTIFICATES**
- 9.1. Tenderers² are required to submit proof of B-BBEE Status Level of contributor. Proof includes original and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their tenders or price quotations, to substantiate their B-BBEE rating claims.
- 9.2. Tenderers who do not submit B-BBEE Status Level Verification Certificates or who are non-compliant contributors to B-BBEE do not qualify for preference points for B-BBEE but should not be disqualified from the tendering 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.
- 9.3. However, should institutions stipulate a specific B-BBEE Status Level as prequalification criteria in terms of Regulation 4 and the tenderer does not meet this requirement; institutions must disqualify such tenderer as having submitted an unacceptable tender.
- 9.4. A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level Verification Certificate for every separate tender.
- 9.5. Public entities and tertiary institutions must also submit B-BBEE Status Level Verification Certificates together with their tenders.
- 9.6. If an institution is already in possession of a valid and original or certified copy of a tenderer'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 tender, it is not necessary to obtain a new B-BBEE Status Level Verification Certificate each time a tender is submitted from the specific tenderer.

²With the exception of EMEs and QSEs who are required to submit sworn affidavit in terms of Codes of good practice. Institutions must acquaint themselves with proof of B-BBEE as may be issued by the DTI from time to time

- 9.7. Such a certificate may be used to substantiate B-BBEE rating claims provided that the closing date of the tender falls within the expiry date of the certificate that is in the institution's possession.
- 9.8. 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.
- 9.9. AOs / AAs must ensure that the B-BBEE Status Level Verification Certificates submitted are issued by the following agencies³:
- 9.9.1. **Tenderers other than EMEs**
(i) Verification agencies accredited by SANAS; or
- 9.9.2. **Tenderers who qualify as EMEs**
(i) Sworn affidavit signed by the EME representative and attested by a Commissioner of oaths.

10. VALIDITY OF B-BBEE STATUS LEVEL VERIFICATION CERTIFICATES

10.1 Verification agencies accredited by SANAS

- 10.1.1. These certificates are identifiable by a SANAS logo and a unique BVA number.
- 10.1.2. 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
- 10.1.3. The relevant BVA may be contacted to confirm whether such a certificate is valid.
- 10.1.4. 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 QSE, Specialized or Generic);
 - The name and / or logo of the Verification Agency;
 - The SANAS logo;
 - The certificate must be signed by the authorized person

³ Certificates issued by IRBA and Accounting Officers have been discontinued; however valid certificates already issued before 1 January 2017 may be used until they phase out completely by December 2017.

from the Verification Agency; and

- The B-BBEE Status Level of Contribution obtained by the measured entity.

11. VERIFICATION OF B-BBEE LEVELS IN RESPECT OF EMEs

- 11.1. In terms of the Generic Codes of Good Practice, an enterprise including a sole propriety with annual total revenue of R10 million or less qualifies as an EME.
- 11.2. 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 R10 million. In such instances, 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).
- 11.3. An EME automatically qualifies as a level 4 contributor with B-BBEE recognition level of 100% in terms of the Codes of Good Practice.
- 11.4. An EME with at least 51% black ownership qualifies as Level 2 Contributor with B-BBEE level of 125% in terms of the Codes of Good Practice.
- 11.5. An EME with 100% black ownership qualifies as a Level 1 contributor with B-BBEE level of 135% in terms of the Codes of Good Practice.
- 11.6. An EME that is regarded as a specialized enterprise with at least 75% black beneficiaries qualifies as Level 1 contributor with B-BBEE level of 135% in terms of Codes of Good Practice.
- 11.7. An EME that is regarded as a specialized enterprise with at least 51% black beneficiaries qualifies as a Level 2 contributor with B-BBEE level of 125% in terms of the Codes of Good Practice.
- 11.8. An EME is required to submit a sworn affidavit confirming their annual total revenue of R10 million or less and level of black ownership to claim points as prescribed by regulation 6 and 7 of the Preferential Procurement Regulations 2017.
- 11.9. An EME that is regarded as a Specialized Enterprise is required to submit a sworn affidavit confirming their annual turnover/ allocated budget/ gross receipt of R10 million or less and level of percentage of black beneficiaries to claim points as prescribed by regulation 6 and 7 of the Preferential Procurement Regulations 2017.
- 11.10. An EME may be measured in terms of the QSE scorecard should they wish to maximize their points and move to a higher B-BBEE recognition level. It is in this context that an EME may submit a B-BBEE verification certificate.

12. ELIGIBILITY AS QUALIFYING SMALL ENTERPRISES (QSE)

- 12.1. The Codes define a QSE as any enterprise with annual total revenue of between R10 million and R50 million.
- 12.2. A QSE with at least 51% black ownership qualifies as a Level 2 contributor.
- 12.3. A QSE with 100% black ownership qualifies as a Level 1 Contributor.
- 12.4. A QSE that is regarded as a specialized enterprise with at least 75% black beneficiaries qualifies as a Level 1 contributor with B-BBEE level of 135% in terms of the Codes of Good Practice.
- 12.5. A QSE that is regarded as a specialized enterprise with at least 51% black beneficiaries qualifies as a Level 2 contributor with B-BBEE level of 125% in terms of the Codes of Good Practice.
- 12.6. A QSE is required to submit a sworn affidavit confirming their annual total revenue of between R10 million and R50 million and level of black ownership or a B-BBEE level verification certificate to claim points as prescribed by regulation 6 and 7 of the Preferential Procurement Regulations 2017.
- 12.7. A QSE that is regarded as a specialized enterprise is required to submit a sworn affidavit confirming their annual turnover/ budget/ gross receipt of R50 million or less and level of percentage of black beneficiaries or a B-BBEE level verification certificate to claim points as prescribed by regulation 6 and 7 of the Preferential Procurement Regulations 2017.
- 12.8. 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 Lumka Kemele
Trade and Industry Advisor B-BBEE Unit
Department of Trade and Industry
Tel: (012) 394 5469
Fax: (012) 394 6469
E-mail: LKemele@thedti.gov.za

13. LOCAL PRODUCTION AND CONTENT

13.1. Designated Sectors

- 13.1.1. Tenders in respect of goods or services that have been designated for local production and content, **must** contain a specific bidding condition that only locally produced goods or services with a stipulated minimum threshold for local production and content will be considered.
- 13.1.2. AOs / AAs must stipulate in tender 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 on the date of the advertisement of the tender.
- 13.1.3. Only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:201x must be used to calculate local content.

The formula to calculate local content must be disclosed in the bid documentation

- 13.1.4. 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)

- 2.1.1. Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the SARB on the date of advertisement of the tender;
- 13.1.5. For the purpose of paragraphs 13.1.1, 13.1.2 and 13.1.3 above, the SBD / MBD 6.2 (Declaration Certificate for Local Content) must form part of the bid documentation.
- 13.1.6. 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 13.1.2 of this implementation guide.
- 13.1.7. 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.

13.2. Non-Designated Sectors

- 13.2.1. Where there is no designated sector, institutions **may** decide to include a specific bidding condition that only locally produced goods or services 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 standards determined by the dti in consultation with the National Treasury.
- 13.2.2. Institutions 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 on the date of advertisement of the tender.
- 13.2.3. Only the South African Bureau of Standards approved technical specification number SATS 1286:201x as indicated in paragraph 13.1.3 above must be used to calculate local content.
- 13.2.4. For the purpose of paragraphs 13.2.1, 13.2.2 and 13.2.3 above, the SBD / MBD 6.2 (Declaration Certificate for Local Content) must form part of the bid documentation.

- 13.2.5. The Declaration Certificate for Local Content (SBD / MBD 6.2) must be completed and duly signed. Institutions are required to verify the accuracy of the rate(s) of exchange quoted by the bidder in paragraph 13.2.2 of this implementation guide. .
- 13.2.6. Any enquiries in respect of Local Production and Content must be directed to the Department of Trade and Industry (dti) as follows:

Dr. Tebogo Makube
Chief Director: Industrial Procurement
Tel: (012) 394 3927
Fax: (012) 394 4927
E-mail: TMakube@thedti.gov.za

14. SUBCONTRACTING AS A CONDITION OF TENDER FOR PROCUREMENT ABOVE R 30 MILLION (Regulation 9)

- 14.1. "The regulation states that if feasible to contract above R 30 million, an organ of state must apply subcontracting to advance designated groups".
- 14.2. The term "feasible" is used in recognition of the fact that it may not always be possible to subcontract in all tenders due to the nature of some tenders. (For instance it may not be possible to sub-contract one piece of machinery that is above R 30 million)
- 14.3. Institutions must therefore identify procurement opportunities for designated groups where compulsory sub-contracting must be applied to all contracts/projects above R30 million.
- 14.4. The responsibility to determine whether it is feasible or not rests with the institution preparing the tender. Institutions must ensure participation of EMEs and QSEs in contracts or projects and not just dismiss this provision on the basis that it is not feasible without providing facts and objective analysis to substantiate their decision.
- 14.5. Notwithstanding the minimum 30% compulsory sub-contracting provision, institutions may identify procurement opportunities for participation of designated groups in contracts or projects below R30 million.
- 14.6. Tenders must be advertised with a condition that tenderers who fail to comply with this requirement would be disqualified.
- 14.7. Institutions must conduct market or industry research to identify level of transformation in the sector or commodity, role players and their B-BBEE status level and availability of EMEs or QSEs who may be eligible for subcontracting.
- 14.8. The Central Supplier Database (CSD) has been upgraded to allow bidders/contractors/ suppliers access to CSD for identification of potential sub-contractors from the pool of EMEs or QSEs to advance designated groups.
- 14.9. In the case of construction and built environment sectors, nothing prevents

bidders/ contractors/ suppliers to select sub-contractors from the CIDB database who are registered on the CSD for the purposes of compliance with the minimum 30% compulsory sub-contracting provisions.

- 14.10. Tenderers or contractors must submit proof of subcontracting arrangement between the main tenderer and the subcontractor. Proof of subcontracting arrangement may include a subcontracting agreement between main tenderer and the subcontractor.
- 14.11. The responsibility for inclusion of compulsory subcontracting clause in the tender rests with the institution.
- 14.12. The responsibility to sub-contract with competent and capable subcontractors rests with the main contractor/ supplier.
- 14.13. The contract will be concluded between the main contractor and the institution, therefore, the main contractor and not the sub-contractor would be held liable for performance in terms of its contractual obligations.
- 14.14. Main contractors/ suppliers are discouraged from subcontracting with their subsidiary companies as this may be interpreted as subcontracting with themselves and / or using their subsidiaries for fronting. Where primary contractor subcontracts with a subsidiary this must be declared in tender documents.
- 14.15. Tenders that do not meet subcontracting requirements are considered as being not acceptable tenders and must be disqualified and may not be considered for further evaluation or award.
- 14.16. The report containing the list of potential subcontractors may be drawn by accessing the following link: www.csd.gov.za
- 14.17. The Central Supplier Database (CSD) was enhanced to enable Institutions to search for suppliers based on the criteria as per Preferential Procurement Regulations, 2017. The following steps can be followed:
 - 14.17.1.1. Step 1: Complete the basic search elements. The Institution's CSD user will be required to complete basic search elements like supplier, commodity and B-BBEE status level. Once the institution's CSD user clicks on the Search button, the matching records for the search input provided will be displayed. The multiple matching records resulting from the search will enable the additional filters and Preferential Procurement Regulations, 2017 filters options to further refine the search.
 - 14.17.1.2. Step 2: Refine the search using additional filters. The additional filters will enable the Institution's CSD user to refine commodities and locations, if required. Once commodities and/or locations are selected from the filter results, the institution's CSD user may click on the "Apply" button. Results will be refined based on the additional criteria that were applied.

- 14.17.1.3. Step 3: Refine the search using Preferential Procurement Regulations 2017 filters. The filters will enable the institution's CSD user to refine the search for potential suppliers based on:
- a) B-BBEE status level of contributor; or
 - b) Enterprise type (Exempted Micro Enterprise (EME) and/or Qualifying Small Enterprise (QSE)); and/or
 - c) Designated groups which are at least 51% owned by:
 - (i) black people
 - (ii) black people who are youth
 - (iii) black people who are women
 - (iv) black people with disabilities
 - (v) black people who are military veterans
 - (vi) black people that formed a cooperative (primary, secondary or tertiary cooperative)
 - (vii) black people living in rural areas or underdeveloped area or townships.
 - (viii) EME or QSE
- 14.18. The Institution must make available the list of suppliers registered on the CSD to provide the required goods or services in respect of the applicable designated groups mentioned in the relevant tender from which the tenderer must select a supplier.
- 14.19. Practitioners are encouraged to frequently visit the CSD website to familiarize themselves with developments on the steps mentioned in paragraph 14.17.1.1 to 14.17.1.3. as more information on developments around this provision will be shared through the CSD.
- 14.20. Where no tenderer meets sub-contracting criteria, institutions must cancel the tender and investigate reasons for tenderers failing to meet compulsory sub-contracting.
- 14.21. In the event of uncertainty with regard to information provided by the tenderer and the CSD is unable to verify such information at that stage, the institution may request necessary proof to substantiate the information provided.

EVALUATION OF TENDERS

15. EVALUATION OF TENDERS BASED ON FUNCTIONALITY AS A CRITERION

Tenders 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 6 and 7. The evaluation must be done according to Procurement Regulations 2017 as follows:

15.1. First stage – Evaluation of functionality

- 15.1.1. Tenders must be evaluated in terms of the provisions contained in paragraph 5 of this implementation guide.
- 15.1.2. A tender will be considered further if it achieves the prescribed minimum qualifying score for functionality.
- 15.1.3. 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 scores for each criterion (and, where relevant, each sub-criterion) should be added to obtain the total score; and
 - The following formula should be used to convert the total score converted to a percentage for functionality:

$$P_s = \frac{S_o}{M_s} \times 100$$

where:

P_s = percentage scored for functionality by bid under consideration

S_o = total score of bid under consideration M_s = maximum possible score

- 15.1.4. 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.
- 15.2. Second stage – Evaluation in terms of the 80/20 or 90/10 preference point systems**
- 15.2.1. 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 6 and 7. [Guidance on the evaluation of bids in terms of the 80/20 or 90/10 preference points systems is provided in paragraph 17 of this Guide].

16. EVALUATION OF TENDERS 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:

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

- 16.1.1. Tenders 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 compromise the fairness of the process.

16.1.2. A tender will be disqualified if:

The tender 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 13.1.6 and 13.2.5 is not submitted as part of the bid documentation.

16.1.3. Calculation of Local Content:

16.1.3.1. 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 13.1.4 above.

16.1.4. AOs / AAs must verify the accuracy of the rates of exchange quoted by the tenderer in the Declaration Certificate for Local Content (SBD / MBD 6.2) in terms of paragraph 13.1.6.

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

16.2.1. 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 6 and 7. [Guidance on the evaluation of bids in terms of the 80/20 or 90/10 preference points systems is provided in paragraph 15 of this Guide].

17. EVALUATION IN TERMS OF PRICE AND PREFERENCE POINT SYSTEMS

17.1. Step 1: Calculation of points for price

17.1.1. 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.

17.1.2. When calculating prices:

- 17.1.2.1. Unconditional discounts must be taken into account for evaluation purposes; and
- 17.1.2.2. Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is affected.

17.1.3. The formulae to be utilized 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 above R30 000 and up to 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.

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

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

17.2.1. Points must be awarded to a bidder for attaining the B-BBEE status level Points for B-BBEE Status level of contributor must be awarded in accordance with the table below:

B-BBEE STATUS LEVEL OF CONTRIBUTOR	NUMBER OF POINTS (90/10 SYSTEM)	NUMBER OF POINTS (80/20 SYSTEM)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant	0	0

17.3. Calculation of total points scored for price and B-BBEE status level of contributor

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

18. CRITERIA FOR BREAKING DEADLOCK IN SCORING

- 18.1. 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 for B-BBEE.
- 18.2. If two or more tenderers have equal points, including equal preference points for B-BBEE, the successful tenderer must be the one scoring the highest score for functionality, if functionality is part of the evaluation process.
- 18.3. In the event that two or more tenderers are equal in all respects, the award must be decided by the drawing of lots.

19. NEGOTIATING A FAIR MARKET RELATED PRICE

- 19.1. Institutions may include in their SCM policies a process for negotiating with preferred bidders after a competitive bidding process or price quotations. The policy may include amongst others the following principles:
 - (a) Delegations and threshold values for negotiating by the accounting officer
 - (b) Negotiating may not allow any preferred tenderer a second or unfair opportunity
 - (c) Is not to the detriment of any other tenderer
 - (d) Does not lead to higher price than the bid as submitted.
- 19.2. Institutions must include in the tender documents a condition stating clearly that the award of the tender may be subjected to price negotiation with the preferred tenderers.
- 19.3. The Bid Evaluation Committee may indicate in its report to the Bid Adjudication Committee that based on the evaluation the prices offered are above market related prices after factoring the premium to be paid in terms of the 80/20 or 90/10 preference point system and the findings of an objective market analysis conducted.
- 19.4. When the Bid Adjudication Committee considers the Evaluation report it must express itself on whether it agrees or disagrees with the Bid Evaluation Committee; if it disagrees, the decision must be recorded and reasons provided as part of the Bid Adjudication Committee report.
- 19.5. Where the Bid Adjudication Committee agrees with the BEC or on its own assessment is of the view that the tenderer is charging prices higher than the fair market price, the Bid Adjudication Committee may request from the AO/AA or delegated authority to subject the tender to price negotiations with the three preferred tenderers scoring the highest points (from first highest to third highest) before award is made.
- 19.6. Upon approval to negotiate, the AO/AA or delegated authority must appoint a

cross functional negotiation team, with one member appointed to be team leader.

- 19.7. The negotiating team leader must ensure that all members of the negotiating team are clear on the negotiation strategy and desired outcomes.
- 19.8. Negotiations must be fair and objective and may not be used to unfairly prejudice the highest scoring / preferred tenderer or any other tenderer.
- 19.9. Members of the negotiating team must behave ethically at all material times during and after negotiations, may not divulge any information related to negotiations to third parties without prior consent from the accounting officer/ authority.
- 19.10. All negotiations must be officially closed with a decision communicated and agreed between parties before moving to negotiate with the next preferred tenderer.

20. CANCELLATION OF TENDERS

- 20.1. An AO / AA may, prior to the award of a tender, cancel the tender if:
 - 20.1.1. Due to changed circumstances, there is no longer a need for the goods or services requested. [AOs / AAs must ensure that only goods or services that are required to fulfill the needs of the institution are procured]; or
 - 20.1.2. Funds are no longer available to cover the total envisaged expenditure. [AOs / AAs must ensure that the budgetary provisions exist]; or
 - 20.1.3. No acceptable tenders 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].
 - 20.1.4. Due to material irregularities in the tender process. If there are material irregularities that are committed during the tender process such that it renders the entire process unfair, the accounting officer or accounting authority may cancel the tender process and start afresh.
 - 20.1.5. Institutions may only with the prior approval of the relevant treasury cancel the tender for the second time. An organ of state must make representation to the relevant treasury stating reasons for cancellation for the second time.
 - 20.1.6. Cancellation mentioned in paragraph 20.1.5 does not refer to price quotations in terms of threshold for procurement but tenders that have been advertised for open competitive tendering process.

21. AWARD OF CONTRACTS TO TENDERER NOT SCORING THE HIGHEST TOTAL POINTS

- 21.1. A tender must be awarded to the tenderer who scored the highest total number

of points in terms of the preference point systems (price and B-BBEE points), unless objective criteria in terms of section 2(1)(f) of the Act justify the award of the tender to another tenderer.

- 21.2. If an institution intends to apply objective criteria in terms of section 2(1)(f) of the Act, the institution must state what those objective criteria are in the tender documents.
- 21.3. Functionality and any element of the B-BBEE scorecard may not be used as objective criteria.

22. REMEDIES

- 22.1. AOs / AAs must when acting against the tenderer or person awarded the contract on a fraudulent basis, consider the following over and above the provisions of Regulation 14:
 - 22.1.1. Report the tenderer to the B-BBEE Commission
 - 22.1.2. Forward the matter for criminal prosecution.
 - 22.1.3. Involve their legal services when any of the remedies are applied.
- 22.2. The remedies provided for in Preferential Procurement Regulations 2017 do not prevent an institution from instituting remedies arising from any other prescripts or contract.
- 22.3. Institutions will recommend the restriction of suppliers to the National Treasury, who after considering representation from all parties may impose a restriction or penalty and publish on its official website the list of restricted suppliers.

23. TAX CLEARANCE

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

24. BIDDING DOCUMENTS

- 24.1. The Bidding Documents affected by the Preferential Procurement Regulations, 2017 are:
 - a) SBD 6.1 and MBD 6.1.
 - b) SBD 6.2 and MBD 6.2.
- 24.2. AOs / AAs should customize and utilize the bidding documents (SBDs or MBDs) by incorporating the institutions name, logo and contact details.
- 24.3. The relevant SBDs or MBDs must be utilized for procurement by means of written price quotations, advertised competitive bids or proposals.
- 24.4. 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.

- 24.5. The bidding documents can be accessed on OCPO website as follows:
http://ocpo.treasury.gov.za/Buyers_Area/Pages/Standard-Bidding-Forms.aspx

25. TRANSITIONAL ARRANGEMENTS

- 25.1. If a tender was advertised / invited in terms of the evaluation criteria prescribed in the Preferential Procurement Regulations, 2011 (prior to the date of coming into effect of the Preferential Procurement Regulations, 2017) but will only be evaluated and awarded after the date of coming into effect of the Preferential Procurement Regulations, 2017, the tender must be evaluated and awarded in terms of the evaluation criteria prescribed in the Preferential Procurement Regulations, 2011 and in terms of the conditions contained in the bid documents.
- 25.2. 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.

END
