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PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS**PROVINCIAL NOTICE 149 OF 2022****PUBLICATION OF DRAFT PREFERENTIAL PROCUREMENT REGULATIONS,
2022 FOR PUBLIC COMMENT**

In accordance with section 5(2) of the Preferential Procurement Policy Framework Act, 2000 (the Act), the draft Preferential Procurement Regulations, 2022 (the draft Regulations), in the Schedule are published for public comment. These Regulations are intended to be made by the Minister of Finance in terms of section 5(1), read with section 2(1)(b) and (c) and the definition of “prescribed” in section 1, of the Act.

The draft Regulations propose to prescribe—

- the threshold amounts in which the 80/20 and 90/10 preference point systems must be used, together with the formula to be applied; and
- other matters necessary or expedient in order to achieve the objects of the Act.

Written comments on the draft Regulations submitted by **11 April 2022** to CommentDraftLegislation@treasury.gov.za will be considered. By making a submission, the commentator agrees that the name of the commentator and the submission may be made public by the National Treasury and the submission will be disclosed if requested in terms of the Promotion of Access to Information Act, 2000.

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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—

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

“**price**” includes all applicable taxes less all unconditional discounts;

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

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

Application

2. These Regulations apply to organs of state as defined in section 1¹ of the Act.

Identification of preference point system

3.(1) An organ of state must, in the tender documents, stipulate—

(a) the preference point system applicable to the tender as envisaged in regulations 4, 5, 6 or 7; and

(b) any specific goal as envisaged in section 2(1)(d) and (e) of the Act.

(2) If it is unclear whether the 80/20 or 90/10 preference point system applies—

(a) in the case of a tender to generate income or to dispose of or lease assets, the highest acceptable tender; or

(b) in the case of any other tender, the lowest acceptable tender, must be used to determine the applicable preference point system.

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

4.(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-

¹ 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 Notices—

(a) 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; and

(b) R. 571 of 15 June 2017 recognises, with effect from 17 June 2017, national and provincial government components listed in Schedule 3 to the Public Service Act, 1994 and municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000, 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.

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) A maximum of 20 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

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

(4) Subject to regulation 9, the contract must be awarded to the tenderer scoring the highest points.

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

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

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

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{min} = Price of lowest acceptable tender.

(2) A maximum of 10 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

(3) The points scored must be rounded off to the nearest 2 decimal places.

(4) Subject to regulation 9, the contract must be awarded to the tenderer scoring the highest points.

80/20 preference points system for tenders to generate income or to dispose of or lease assets with Rand value equal to or above R30 000 and up to Rand value of R50 million

6.(1) The following formula must be used to calculate the points for price in respect of a tender to generate income or to dispose of or lease assets, with a Rand value equal to, or above R 30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

(2) A maximum of 20 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

(3) The points scored must be rounded off to the nearest 2 decimal places.

(4) Subject to regulation 9, the contract must be awarded to the tenderer scoring the highest points.

90/10 preference point system for tenders to generate income or to dispose of or lease assets with Rand value equal to or above R50 million

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

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

(2) A maximum of 10 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

(3) The points scored must be rounded off to the nearest 2 decimal places.

(4) Subject to regulation 9, the contract must be awarded to the tenderer scoring the highest points.

Criteria for breaking deadlock in scoring

8.(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 specific goals.

(2) 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

9. 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.

Remedies

10.(1) Upon detecting that a tenderer submitted false information regarding specific goals or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, the organ of state must—

- (a) inform the tenderer accordingly; and
 - (b) give the tenderer an opportunity to make representations within 14 days as to why—
 - (i) the tender submitted may 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; and
 - (ii) the organ of state should not restrict the tenderer from conducting any business for a period not exceeding 10 years with any organ of state.
- (2) After considering the representations referred to in subregulation (1)(b),

the organ of state may—

- (a) if it concludes that such false information was submitted by the tenderer—
 - (i) disqualify the tenderer or terminate the contract in whole or in part; and
 - (ii) if applicable, claim damages from the tenderer;
 - (b) if it concludes that the tenderer must be restricted, restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years.
- (3) An organ of state must, within five working days—
- (a) inform the National Treasury, in writing, of any action taken in terms of subregulation (2); and
 - (b) if it decides to restrict a tenderer, request the National Treasury to publish the name of the tenderer in its list of restricted suppliers.

(4) The National Treasury must, within three working days after receiving a request in terms of subregulation (3)(b), publish the name of the tenderer in its list of restricted suppliers.

Repeal of regulations

11. Any regulations made under section 5 of the Act are repealed.

Short title and commencement

12. These Regulations are called the Preferential Procurement Regulations, 2022 and take effect on the date of promulgation of these Regulations.

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