



# GLOBAL BUSINESS SOLUTIONS

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B-BBEE NEWSFLASH - EDITION 1/2017

## PROCUREMENT REGULATIONS

As the largest procurer of goods and services in South Africa, procurement is Government's transformation driver. Government wants suppliers to obtain B-BBEE certificates to enforce transformation requirements of the B-BBEE codes.

As such, the updated procurement regulations were gazetted on 20 January 2017 with an effective date of 01 April 2017. Key points are:

1. An organ of state must determine and stipulate in the tender documents the preference point system applicable to the tender. These are:
  - 80 points for price, 20 points for B-BBEE contribution for acquisitions of goods and services up to R50 million including all taxes. *In the draft this was R100 million.*
  - 90 points for price, 10 points for B-BBEE contribution for acquisitions of goods and services in excess of R50 million including all taxes.
2. In addition, the tender must state whether:
  - pre-qualification criteria are applicable to the tender;
  - the goods or services for which a tender is to be invited, are in a designated sector for local production and content;
  - compulsory subcontracting is applicable to the tender; and
  - any objective criteria are applicable to the tender, e.g. whether the tender may be awarded to tenderers who do not score the highest points.
3. If there is a requirement to advance certain groups, the tender must be advertised with a specific condition that only tenderers meeting the following requirements may tender. Tenders not complying are unacceptable:
  - tenderers with a stipulated minimum B-BBEE
  - EME or QSE
  - tenderers subcontracting a minimum of 30% to:

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- EME or QSE that are at least 51% owned by black people who are youth, women, black people with disabilities, living in rural or underdeveloped areas or townships or Military veterans
  - cooperatives which are at least 51% owned by black people;
  - EME or QSE.
4. The tender document must clearly state if the tender will be adjudicated on functionality. The evaluation criteria must be objective, the document must specify the evaluation criteria, the points for each criterion and the minimum qualifying points. The minimum qualifying score for functionality may not be so low as to impact the quality of the goods and services, or so high that it is too restrictive. Tenders failing to meet the minimum points will be unacceptable; all tenders obtaining the minimum qualifying score must go for further evaluation.
  5. Bidders who do not submit B-BBEE certificates or who are non-compliant will score 0 for B-BBEE, but should not be excluded.
  6. A tenderer may not be awarded points for B-BBEE status level of the contributor if the tender documents indicate the tenderer will subcontract more than 25% of the value of the contract to another person scoring lower points than the tenderer; unless the subcontractor is an EME which can execute the subcontract.
  7. The contract must be awarded to the tenderer scoring the highest points. If the price offered by the tenderer scoring the highest points is not market related, the contract may not be awarded to that tenderer. Market related prices must be negotiated with the successful tenderer, or the second or third highest point's scorers. Failing this, the tender must be cancelled.
  8. Sectors, industries or products may be designated so locally produced goods or services meeting the specified threshold will be considered. This must be stated in the tender documents. If there is no designated sector, it may be made a condition of the tender that only locally produced goods or services, meeting a specified local content threshold, will be considered. Any tender that failing to meet this threshold is unacceptable.

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9. Where it is feasible to subcontract in a contract above R30 million, then subcontracting must be applied to advance designated groups. In such cases the tender document must specify that the successful tenderer must subcontract a minimum of 30% of the value of the contract to any designated groups specified under 3 above. A 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 must be supplied from which the tenderer must select a supplier. *Note in the draft procurement regulations, subcontracting was required in contracts of greater than R30 million. In the final document subcontracting is only required when it is feasible. The selection from the list approved by National Treasury is a new requirement.*
10. A person awarded a contract may enter into a subcontracting arrangement with the required approval. If the contract relates to a designated sector, then subcontracting may not result in local production and content being reduced below the required threshold.
11. If two or more tenderers score the same points, the contract must be awarded to the tenderer that scored the highest B-BBEE points. If functionality is part of the evaluation process and two or more tenderers score equal points and equal B-BBEE points, the contract must be awarded to the tenderer that scored the highest points for functionality. If two or more tenderers score equal points in all respects, the contract will be awarded by drawing lots.
12. Tenders can be cancelled before the award, if there is no longer a need for the goods or services, or if funds are no longer available to cover the total expected contract cost, no acceptable tender is received or there is a material irregularity in the tender process. This must be published in the same way as the original tender invitation. Tenders can only be cancelled a second time with prior approval of the relevant treasury.
13. If it becomes apparent that a tenderer submitted false information, which will affect or has affected the tender evaluation; or where subcontracting has not been properly declared, the tenderer must be notified and given 14 days to make representations as to why the tender should not be disqualified; or, if the tender has been awarded, why the contract should not be terminated in whole or in part.

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- If the conclusion is made that false information was submitted the organ of state must:
  - disqualify the tenderer or terminate the contract in whole or in part, and
  - claim damages from the tenderer if applicable, or
  - if the tenderer subcontracted a portion of the tender without proper disclosure, penalise the tenderer up to 10% of the value of the contract.
- An organ of state must:
  - inform the National Treasury, in writing, of any actions taken,
  - provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
  - submit written representations from the tenderer as to why the tenderer should not be restricted from conducting business with government.
  - The National Treasury may request an organ of state to submit further information within a specified period.
- The National Treasury must:
  - decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years, after considering the representations of the tenderer and any other relevant information, and
  - maintain and publish on its official website a list of restricted suppliers

If you have any B-BBEE consulting needs, please contact either Charlene Skipp on [charlene@globalbusiness.co.za](mailto:charlene@globalbusiness.co.za) (083 780 7209) or me on [richard@globalbusiness.co.za](mailto:richard@globalbusiness.co.za) (083 440 2130).

Kind regards

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