

NEW Preferential procurement regulations RELEASED

After much anticipation and a lengthy process of review, the new regulations under the Preferential Procurement Policy Framework Act of 2000 (Procurement Act) have finally been released. The Preferential Procurement Regulations 2011 will only take effect on 7 December 2011, but clearly hold implications for the way in which municipalities procure goods and services. In this article, the most essential aspects of the regulations are highlighted.

Scope of application of the Act and new regulations

The new 2011 regulations make clear in no uncertain terms that municipal entities, in addition to all public entities listed in Schedules 2 and 3 to the Public Finance Management Act (PFMA), are included in the scope of application of the Procurement Act and regulations.

Calculation of preference points

Under the 2001 regulations, municipalities have discretion in the awarding of preference points relating to black ownership and for promoting specified goals of the Reconstruction and Development Programme. The 2011 regulations create a set number of preference points based on a contractor's broad-based black economic empowerment (B-BBEE) status level. The awarding of preference points is further determined by the specific points system used. Under the 80/20 and 90/10 points systems, preference points are awarded as set out in the table.

All bidders will be required to submit B-BBEE rating certificates, issued either by verification agencies accredited to the South African National Accreditation System or by registered auditors approved by the Independent Regulatory Board of Auditors.

Table 1: Contributor levels and points awarded

Contributor level	80/20 points system No. of points	90/10 points system No. of points
1	20	10
2	18	9
3	16	8
4	12	5
5	8	4
6	6	3
7	4	2
8	2	1
0	non/compliant contributor	

Threshold values for the 80/20 and 90/10 preference point system

The threshold value between the 80/20 and 90/10 preference point system has been increased from R500 000 to R1m. In other words, the 80/20 point system applies to contracts below R1m and the 90/10 point system to ones above R1m.

Local production and content

The regulations make provision for the procurement of locally produced goods, services or works and locally manufactured goods within designated sectors. The National Treasury in consultation with the Department of Trade and Industry will designate specific sectors for local production and content.

Sale and letting of contracts

Unlike the 2001 regulations, the 2011 regulations make no provision for the use of preference with respect to the sale and letting of assets.

Provision is only made for preference point systems in the case of the acquisition of goods and services.

This is unfortunate as, certainly in this author's view, preference has an important role to play in the conclusion of contracts that involve the sale and letting of assets.



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