

Preferential Procurement Regulations are effective from 7 December 2011

A new era for economic transformation in South Africa

Introduction

The new Preferential Procurement Regulations, 2011 are effective from 7 December 2011. This will get a fair bit of attention in press and from suppliers – make sure you are ready. On 8 June 2011 the amended Supply Chain Regulations were published in the [Government Gazette No 9544](#). The changes are designed to promote best-practice in tender evaluation and will go far to reduce the incidence of fraud and corruption. The amendments also assist small and medium size enterprises to compete therefore promoting economic growth. In this paper we have summarized the most important issues for you.

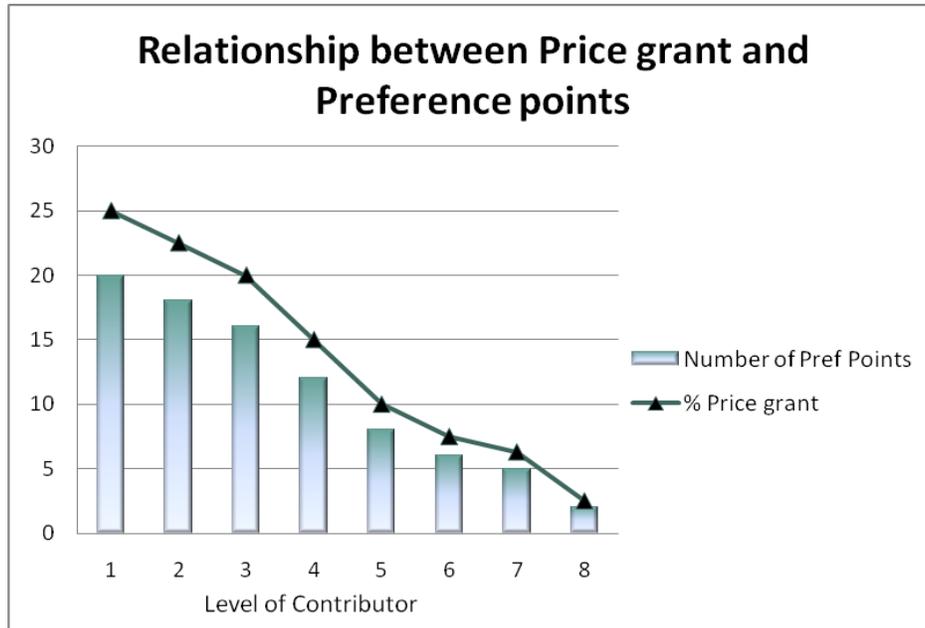
Implications of the amendments

1. There will be a positive and broader influence on economic transformation rather than focusing only on company ownership and shareholding.
2. Suppliers will be assessed on functionality, including sub-contracting, first, where it has been decided that these are applicable, then on price. Only tenders that comply with the functional requirements will be eligible for the price evaluation process. The tender document must state where a tender will be evaluated on functionality.
3. Data management requirements for SCM units will be easier. There will be no need to collect and store Company ownership and shareholder information separately. The information that you need will be included in the suppliers' BBBEE certificate that he must submit with his bid.
4. Improvements have been made to the way preference points are calculated. Low value tenders under R1m (VAT included) will apply 20/80 rule where 80 points are allocated for price and 20 points available based on the BBBEE level of contributor. For tenders over R1m the 10/90 rule

will apply. This effectively means that lower value tenders will favour those with a better BBBEE score. It is important that the scoring method to be used is clearly explained in each tender.

5. As an example, a supplier with Level 1 BBBEE contribution can be 25% more expensive than a non-compliant supplier and still win a tender under R1m (on 80/20). See the dark line in Diagram 1 below.

Diagram 1



6. These new regulations apply to all organs of state including Government Departments, Municipal entities and State Owned Enterprises (which were previously excluded).
7. A bidder must have SARS clearance to confirm that his tax matters are in order. A simplified process is being put in place to manage Tax Clearance Certificates so that an original SARS certificate is not needed for each tender if you have access to SARS directly.
8. The Department of Trade and Industry (DTI) or National Treasury may specify a minimum threshold for local production of goods, services or works in specified industry sectors where it considers this to be of critical importance. Where you include this requirement in a tender, local content must be assessed along with functionality. If the supplier does not achieve the required level the tender can be rejected due to non-compliance before the price analysis stage.
9. Every bid received must be signed by a duly authorized person from the bidder and must declare that the information provided is true and correct.

A summary of the Tender Evaluation process:

Basic compliance

- Evaluate tender submission for compliance to all submission requirements

Step 1: Functional Analysis

- Evaluate submissions against functional criteria
- Rate each submission against each criteria
- Apply weightings and calculate total functional score
- Eliminate bidders below Functional Threshold

Step 2: Price & Preference Analysis

- Calculate price points out of 80 or 90
- Apply preference points according to B-BBEE level contribution
- Add price points and preference points

Recommended Bidder

- Select tender with highest total points (Price points + Preference points)

Step 1: Functional evaluation

Tenders are evaluated in two stages, first on Functionality then secondly on Price and B-BBEE Status. Each invitation to tender is required to stipulate the criteria for which functionality will be determined.

The following is an example of how to evaluate functional ability:

- **Criteria** – This is a list of the your requirements in the areas where the supplier must deliver goods and/or services or works
- **Weight** – The relative importance of the various criteria you have selected.
- **Value** - the score given on the supplier's ability to provide the service compared to others (out of a maximum of 5)
- **Weighted value** – the Value allocated by the panel member multiplied by the Weight for the Criterium

Table 1: Example of the Functional Evaluation by one panel member

Functionality Assessment and Scoring						
		Panel Member's Name: <u>J.M. Mazibuko</u>				
		Signature: _____				
	Criteria	Weight	BID: A		Bid: H	
			Value (0-5)	Weighed Value	Value (0-5)	Weighed Value
1	Ability to integrate supplier system into our existing processes?	3	4	12	2	6
2	Is a sufficient quality management programme in place?	8	3	24	2	16
3	Proven installation base.	3	5	15	2	6
4	Maintenance and support capacity in each region.	4	2	8	3	12
5	Demonstrated compliance to maintenance requirements.	5	4	20	1	5
TOTAL SCORE		115		79		45
PERCENTAGE				68.70%		39.13%

Once each panel member has evaluated all bids (only two of the bids are shown here), the average percentage is calculated for each bid.

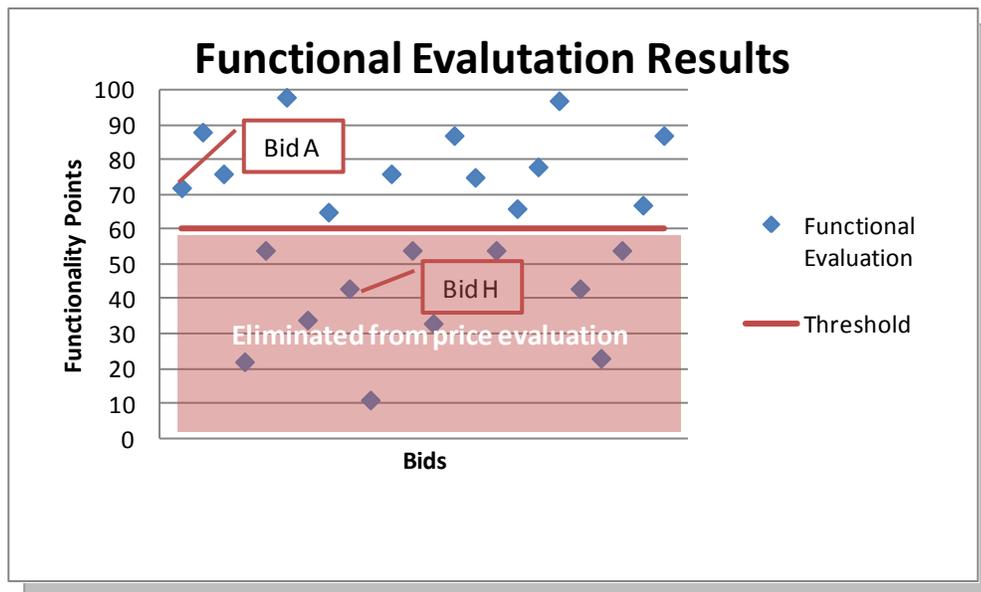
Table 2: Consolidation Functional Evaluation of all panel members

Panel Member	Bid A	Bid H
J.M. Mazibuko	68.70	39.13
E.C. Smith	74.32	42.41
J.K. Philander	65.20	37.56
M. Chiwayo	58.44	56.23
Total	266.66	175.33
Average percentage	66.67	43.83

If the threshold has been set at sixty points, Bid A above would pass the evaluation but Bid H will be eliminated from the process. Figure 1 below demonstrates that in this process eleven bids that did not reach the acceptable level will be **eliminated** from the process at this stage and will not progress to the price calculation. Thirteen bids will progress to price calculations.

The amendment of the stipulated minimum threshold for local production and content after the closure of bids should not be allowed as this will jeopardise the fairness of the system.

Diagram 2: Plot of consolidated Functional Evaluations for all bids



Subcontracting and local content

Specific rules have been introduced to manage subcontracting. Limitations are placed on the subcontracting of services where the value of subcontracted services exceeds 25% of the contract. Stipulated minimum thresholds may be asked for local content and this requirement must be explained in the tender. These requirements form part of the functionality evaluations stage and must be included in this evaluation with weightings as other functional criteria.

Step 2A: Price evaluation

The result of the Functional Evaluation is a reduced list of bidders whose bids will be considered for price evaluation. They have made it through the threshold which means they will be able to perform the work or deliver the products or service to specification. Next is to calculate the points for price. This calculation provides the total number of points out of 80 (for tenders under R1m) or 90 (for tenders over R1m).

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

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

Where

P_s = Total Points scored for comparative prices of the tender or offer

P_t = Comparative Price for tender or offer under consideration

P_{min} = Comparative Price for lowest acceptable tender

Step 2B: Preference evaluation

For tenders under R1m, a maximum of 20 points can be allocated whilst for tenders over R1m, 10 points is the most you can get at Level 1.

Table 3: Preference Point Allocation

Tenders under a R1 million (80/20)	
B-BBEE Status Level of Contributor	Number of Pref Points
1	20
2	18
3	16
4	12
5	8
6	6
7	5
8	2
Non Compliant	0

Tenders over a R1 million (90/10)	
B-BBEE Status Level of Contributor	Number of Pref Points
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non Compliant	0

When adding up the Price points and Preference points for each bidder a total point count out of 100 is achieved. Price negotiations are permitted with the short-listed tenderers.

Transitional Arrangements

When deciding which regulations to apply in the transition process, the date that bids were invited (tender was published) must be considered.

All bids **invited prior to 7 December 2011** will be evaluated in terms of the evaluation criteria prescribed in the Preferential Procurement Regulations of **2001** (the old regulations) even though they may be evaluated and awarded after the date of coming into effect of the Preferential Procurement Regulations of 2011 (the new regulations). These bids must be evaluated and awarded in terms of the evaluation criteria prescribed in the old regulations and in terms of the conditions contained in the bid documents.

Such a bid must be evaluated and awarded as soon as possible but not later than the expiry of the validity date of the bid. **The extension of the validity date of such a bid must not be allowed.**

All bids invited (“tenders published”) after 7 December 2011 will be evaluated and awarded according to the criteria published in terms of the Preferential Procurement Regulations of 2011 (the new regulations).

What Preparation do I need to do?

1. You will need to have a method of collecting and storing a supplier’s valid tax Clearance Certificate and his valid B-BBEE certificate from a SANAS accredited agency.
2. All Supply Chain practitioners must be trained on the new regulations, data requirements and processes.
3. Evaluation criteria tools and templates for tenders must be designed in advance of issuing tenders taking into account the new regulations.
4. Communicate clearly with prospective suppliers on all these changes, providing them with guidelines on how to manage the new requirements. You have to provide suppliers with the evaluation criteria and weightings for each tender explaining the scoring process.
5. Prepare a list of Frequently Asked Questions (FAQ) and their answers so that suppliers can understand the changes easily. This will make your tender process more efficient if suppliers know what is expected of them.
6. Plan for queries by having a support desk available for a period after the implementation of the new regulations to address any queries.

Support provided by MarketSqr in this implementation

Use our [Preferential Procurement knowledge base](#) to educate yourself on the new requirements. You can find the [Government Gazette](#) here with all the details you need and you will also have access to our Frequently Asked Questions (FAQs) in the group.

Should you have any further questions you can post your question on the [forum](#) for this interest group on MarketSqr. Alternatively you can send an email to info@marketsqr.com

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Sources:

1. Government Gazette Number 34350, 8 June 2011
2. Preferential Procurement Regulations, 2011