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Parliament: Following up on our commitments to the people

Preferential Procurement Policy

APPROVED BY

**Secretary to Parliament in line with Section 40(e)
of the FMPPLA**

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Acronyms

B-BBEE – Broad-Based Black Economic Empowerment

B-BBEE Act – Broad-Based Black Economic Empowerment Act, 53 of 2003

EME – Exempted Micro Enterprise

1. Introduction and background

Parliament, as the Legislative Arm of the state, has its own set of Procurement /Supply Chain Management Regulations, issued on 15 March 2015 by the Executive Authority. Section 40 of the FMPPLA stipulates that (i) *Parliament must comply with National legislation, specifically the Preferential Procurement Policy Framework Act and its Regulations.*

Section 217(1) of the Constitution states: "*When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective*"

Section 217(2) reads: "*Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for-*

- (a) categories of preference in the allocation of contracts; and*
- (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination."*

Section 217(3) states: "*National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented."*

The Minister of Finance has subsequently in terms of section 5, read with section 2(1)(b)(i) and (ii) and 2(1)(c), of the Preferential Procurement Policy Framework Act, 2000, made Regulations effective from 16 January 2023 which Organs of State, including Parliament and Legislatures must comply with.

In terms of these regulations, the Minister of Finance has prescribed the threshold amounts in which the 80/20 and 90/10 preference point systems must be utilised, as well as the formula to be applied.

2. Definitions

In the context of this Policy:

- (a) **“All applicable taxes”** means value-added tax, pay as you earn income tax, unemployment insurance fund contributions and skills development levies.
- (b) **“highest acceptable tender”** means a tender that complies with all specifications and conditions of tender that has the highest price compared to other tenders;
- (c) **“lowest acceptable tender”** means a tender that complies with all specifications and conditions of tender that has lowest price compared to other tenders;
- (d) **“price”** means an amount of money tendered for goods and services, and includes all applicable taxes less all unconditional discounts;
- (e) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of tender invitation;
- (f) **“specific goals”** means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No.16085 dated 23 November 1994.
- (g) **“tender”** means a written offer in a form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (h) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession of contracts, excluding direct sales and disposal of assets through public auctions; and
- (i) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
- (j) **“Historically Disadvantaged Individual (HDI)”** means a South African citizen (1) who, due to the apartheid policy that had been in place, had no franchise in national

elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) (“the Interim Constitution”); and / or who is a female; and / or who has a disability: Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI;

3. Policy statement

Parliament of RSA commits to ensure that goods, services and works are procured in a manner and practice that is fair, equitable, transparent, competitive, cost-effective, efficient and logical while ensuring compliance with applicable laws, regulations, strategies, policies and procedures.

4. Purpose

To achieve the highest level of professional standards when awarding contracts, so as to maximise value for money and simultaneously achieving the objectives of the preferential procurement policy

5. Objective

- (a) To Provide clarity on Parliament’s approach to procurement, particularly with regards to the requirements of Preferential Procurement.
- (b) To Provide access to contracts for historical disadvantaged individuals;
- (c) To Promote participation by SMMES;
- (d) To Promote capacity development and skills transfer through sub-contracting opportunities for HDI owned enterprises;
- (e) To Promote local economic development and SMME support and development;

- (f) To Promote joint venture opportunities between HDI owned enterprises and SMMEs, and other business entities. These opportunities are encouraged to ensure that opportunity exist within the bid requirements for such entities to bid.
- (g) To prevent any irregularities in the procurement process.

6. Application

This policy applies to all employees of Parliament.

7. Legal Framework

This policy must be read in conjunction with the Constitution of the Republic of South Africa, 1996, and all relevant legislation and rules, which include the following:

- (h) Financial Management of Parliament and Provincial Legislatures Act No. 10 of 2009.
- (i) Supply Chain Management Regulations of Parliament, 17 March 2015, GG 38565.
- (j) Preferential Procurement Policy Framework, Act No. 5 of 2000 and Regulations
- (k) The Promotion of Administrative Justice Act No. 3 of 2000;
- (l) The Promotion of Access to Information Act No. 2 of 2000; and
- (m) The Protection of Personal Information Act No. 4 of 2013.

8. Policy Provisions

8.1. General Provisions

8.1. Identification of preference point system

8.1. The accounting officer of Parliament, or the responsible official, must use this policy -

- (a) to identify the preference point system applicable in the tender; and
- (b) identify the specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.

8.1.1.1 If it is unclear whether the 80/20 or 90/10 preference point system applies, the accounting officer of Parliament, or the responsible official, must, in the tender documents, stipulate in the case of-

- (a) An invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system, or
- (b) Any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and the lowest acceptable tender will be used to determine the applicable preference point system; and
- (c) Determine whether objective criteria are applicable to the tender as envisaged in section 8.9 below.

8.1.2 Ethical Standards and Unethical or Corrupt Behaviour

Parliament will promote an effective and efficient SCM system that will enable the procurement of the required quality and quantity of goods, services and works. Parliament must adopt measures to ensure that processes are transparent, ethical and open to scrutiny, and that Parliament officials are held accountable and that the following principles of corporate governance are achieved:

(a) Accountability

All officials and other role players shall be accountable for their decisions and actions relative to their procurement responsibilities, the SCM process as well as in the implementation of concluded contracts.

(b) Confidentiality

Any information that is the property of Parliament or its suppliers shall be protected at all times. Confidentiality agreements in the form of non-disclosure agreements shall, where appropriate, be entered into with agents and potential contractors to protect Parliament's confidential information and interests.

(c) Gratifications, hospitality and gifts

All procurement officials and other role players that are involved in the procurement process shall adhere to Parliament's Gift Policy.

(d) Conflict of Interest

All employees and agents of Parliament shall comply with the requirements of its Employees Policy on Conflicts of Interest.

8.2 Specific provisions

8.2.1 Tenders to be evaluated on functionality

- (i) The accounting officer of Parliament, or the responsible official, must state in the tender documents if the tender will be evaluated on functionality.
- (ii) The evaluation criteria for measuring functionality must be objective.
- (iii) The tender documents must specify-
 - (a) the evaluation criteria for measuring functionality;
 - (b) the points for each criterion and, if any, each sub-criterion; and
 - (c) the minimum qualifying score for functionality.
- (iv) 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-
 - low that it may jeopardise the quality of the required goods or services; or
 - so high that it is unreasonably restrictive.
- (v) Points scored for functionality must be rounded off to the nearest two decimal places.
- (vi) A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.
- (vii) 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 section 8.9.

8.3 80/20 Preference Points System

The following formula must be used in the 80/20 preference point system for the acquisition of goods or services for Rand value equal to or below 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 comparative price of tender under consideration

P_t = Comparative price of tender under consideration

P_{\min} = Comparative price of lowest acceptable tender

- (a) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender and as highlighted in paragraph 8.5 below.
- (b) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
- (c) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

8.4 90/10 preference point system for acquisition of goods or services with Rand Value above R50 million

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

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

Where-

- Ps = Points scored for comparative price of tender under consideration
- Pt = Comparative price of tender under consideration
- Pmin = Comparative price of lowest acceptable tender

- (2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender and as highlighted in par 8.6 below.
- (3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
- (4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

8.5 80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million

- (1) The following formula must be used to calculate the points for price in respect of an invitation for tender for income-generating contracts, with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

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

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 specific goal specified for the tender.
- (3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
- (4) Subject to section 2(1)(f) of the Act, the contract must awarded to the tenderer scoring the highest points.

- 8.6** (1) The tendering conditions may stipulate those specific goals, as contemplated in section 2(1)(d)(ii) of the Act, to be attained.
- (2) The stipulation contemplated in sub-section (1) must include the method to be used to calculate the points scored for achieving the specific goals.
- (3) The number of preference points to be allocated in favor of HDIs must be included in the tender.
- (4) Over and above the allocation of preference points to HDI', preference points for the below socio- economic objectives may be allocated to entities towards achieving the goals of the RDP:
- a) The promotion of South African owned enterprises;
 - b) The promotion of export orientated production to create jobs;
 - c) The promotion of SMMEs;
 - d) The creation of new jobs or the intensification of labour absorption;
 - e) The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;
 - f) The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region;
 - g) The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered in that municipal area;
 - h) The promotion of enterprises located in rural areas;
 - i) The empowerment of the work force by standardising the level of skill and knowledge of workers;
 - j) The development of human resources, including by assisting in tertiary and other advanced training programmes, in line with key indicators such as percentage of wage bill spent on education and training and improvement of management skills; and
 - k) The upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.
- (5) The number of points to be allocated towards the specific goals should be included in the tender document and may differ from each tender.
- (6) Specific goals must be measurable and quantifiable and the accounting officer of Parliament, or the responsible official, should monitor the execution of the contract for compliance with such goals.
- (7) The specific goals must be out of 20 points for the 80/20 preference system and out of 10 points for the 90/10 preference points system.
- (8) The specific goals can differ for each tender, depending on the objectives to be

achieved with a specific tender.

8.7 Criteria for breaking deadlock in scoring

- 8.7.1** 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.
- 8.7.2** If functionality is part of the evaluation process and two or more tenders score equal total points and equal points for specific goals, the contract must be awarded to the tenderer who scored highest points for functionality.
- 8.7.3** If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

8.8 Remedies

- 8.8.1** If the accounting officer of Parliament, or the responsible official, is of the view that a tenderer submitted false information regarding a specific goal, it must-
 - (a) inform the tenderer accordingly; and
 - (b) give the tenderer an opportunity to make representations within 14 days as to why the tender may not be disqualified or, if the tender has already been awarded to the tenderer, why the contract should not be terminated in whole or in part.
- 8.8.2** After considering the representations referred to in sub section 8.8.1(b), the accounting officer of Parliament, or the responsible official, may, if the person concludes that such information is false-
 - (a) Disqualify the tenderer or terminate the contract in whole or in part, and
 - (b) If applicable, claim damages from the tenderer.

8.9 Award of contracts to tenderers not scoring highest points

- 8.9.1** 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.
- 8.9.2** Should the accounting officer of Parliament, or the responsible official, intend to apply objective criteria in terms of section 2(1)(f) of the Act, the objective criteria must be stipulated in the tender documents.

9. Declarations

A tenderer must, in the manner stipulated in the document, declare that-

9.1 The information provided is true and correct;

9.2 The signatory to the tender document is duly authorized; and

9.3 Documentary proof regarding any issue relating to the tender will, when required, be submitted to the satisfaction of Parliament.

10. Local production and content

Parliament must, as far as possible, procure from local suppliers and from within the communities where events are held.

The list of designated sectors for local content on the DTI website should be used to determine the suitability of suppliers prior to award.

11. Communication

This policy must be made available on the website of Parliament.

12. Review of Policy

This policy must be reviewed every five years or when legislation or circumstances dictate.

13. Effective date

This policy as approved by the Secretary to Parliament will be effective from 16 January 2023.

MR X GEORGE
SECRETARY TO PARLIAMENT