

MBD 6.1

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2011

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011.

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value equal to or above R30 000 and up to a Rand value of R50 million (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R50 million (all applicable taxes included).
- 1.2 The value of this bid is estimated to not exceed R50 million (all applicable taxes included) and therefore the **80/20** preference point system shall be applicable.
- 1.3 Preference points for this bid shall be awarded for:
- (a) Price; and
 - (b) B-BBEE Status Level of Contribution.
- 1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTION	20
Total points for Price and B-BBEE must not exceed	100

- 1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **“B-BBEE”** means broad-based black economic empowerment as defined in

section 1 of the Broad-Based Black Economic Empowerment Act;

- (c) **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **“black designated groups”** has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (e) **“black people”** has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;
- (f) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (g) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended by Act No 46 of 2013;
- (h) **“co-operative”** means a co-operative registered in terms of section 7 of the operatives Act, 2005 (Act No. 14 of 2005);
- (i) **“designated group”** means-
 - (a) black designated groups;
 - (b) black people;
 - (c) women;
 - (d) people with disabilities; or
 - (e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);
- (j) **“designated sector”** means a sector, sub-sector or industry or product designated in terms of regulation 8 (1)(a);
- (k) **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (l) **“consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (m) **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- (n) **“EME”** means an Exempted Micro Enterprise as defines by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (o) **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

- (p) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents;
- (q) **“military veteran”** has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);
- (r) **“National Treasury”** has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (s) **“people with disabilities”** has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);
- (t) **“price”** includes all applicable taxes less all unconditional discounts;
- (u) **“proof of B-BBEE status level of contributor”** means-
 - (a) the B-BBEE status level certificate issued by an authorised body or person;
 - (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
 - (c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;
- (v) **“non-firm prices”** means all prices other than “firm” prices;
- (w) **“person”** includes a juristic person;
- (x) **“QSE”** means a Qualifying Small Enterprise as defines by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (y) **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- (z) **“rural area”** means-
 - (a) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or
 - (b) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system;
- (aa) **“stipulated minimum threshold”** means the minimum threshold stipulated in terms of regulation 8(1)(b);
- (bb) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No.5 of 2000);
- (cc) **“township”** means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;
- (dd) **“treasury”** has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- (ee) **“youth”** has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).
- (ff) **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;

- (gg) “**total revenue**” bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (hh) “**trust**” means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (ii) “**trustee**” means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20

or

90/10

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for price of tender under consideration;

P_t = Price for tender under consideration; and

P_{min} = Price of lowest acceptable tender.

5. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 5.1 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 or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

Where-

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

- Ps = Points scored for price of tender under consideration
 Pt = Price of tender under consideration; and
 Pmin = Price of lowest acceptable tender.

5.2 The following table must be used to calculate the score out of 20 for B-BBEE:

B-BBEE Status Level of Contributor	Number of points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- 5.3 A tenderer must submit proof of its B-BBEE status level of contributor.
- 5.4 A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-
- (a) may only score points out of 90 for price; and
- (b) scores 0 points out of 10 for B-BBEE.
- 5.5 A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- 5.6 The points scored by a tenderer for B-BBEE contribution in terms of subregulation (2) must be added to the points scored for price under subregulation (1).
- 5.7 The points scored must be rounded off to the nearest two decimal places.
- 5.8 Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.
- 5.9 (a) If the price offered by a tenderer scoring the highest points is not market-related, the organ of state may not award the contract to that tenderer.
- (b) The organs of state may-
- i. negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
 - ii. if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;

iii. if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.

(c) If a market-related price is not agreed as envisaged in paragraph (b)(iii) the organ of state must cancel the tender.

6. BID DECLARATION

6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 5.1

7.1 B-BBEE Status Level of **Contribution**:..... =.....(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit.

8. SUB-CONTRACTING

8.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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8.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....%

ii) The name of the sub-contractor.....

iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME.

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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9. DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/firm:.....

9.2 VAT registration number:.....

9.3 Company registration number:.....

9.4 TYPE OF COMPANY/ FIRM

Partnership/Joint Venture / Consortium
One person business/sole propriety
Close corporation
Company
(Pty) Limited

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....
.....
.....
.....
.....

9.6 COMPANY CLASSIFICATION

Manufacturer
Supplier
Professional service provider
Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

9.7 MUNICIPAL INFORMATION

Municipality where business is situated:
.....

Registered Account Number:

Stand Number:.....

9.8 Total number of years the company/firm has been in business:.....

9.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as

a result of that person's conduct;

- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

<p>WITNESSES</p> <p>1.</p> <p>2.</p>
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<p>..... SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE:</p> <p>ADDRESS</p> <p>.....</p> <p>.....</p>
