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DRAFT PROCUREMENT REGULATIONS

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

The first Procurement Regulations split procurement into the following:

- 80 points for price, 20 points for B-BBEE contribution
 - Value between R30 000 and R1 million (including all applicable taxes)
 - Can apply if value is less than R30 000 where applicable.
 - Points scored for price and BEE contribution added together to get score
- 90 points for price and 10 points for B-BBEE contribution
 - Value in excess of R1 million (including all applicable taxes)

In July 2015 new draft codes were issued for comment giving the following bands for tender purposes:

- 80 points for price, 20 points for B-BBEE contribution
 - Value between R10 million and R50 million (including all applicable taxes)
 - Points scored for price and BEE contribution added together to get score
- 90 points for price and 10 points for B-BBEE contribution
 - Value in excess of R50 million (including all applicable taxes)
 - Points scored for price and BEE contribution added together to get score
- 50 points for price and 50 points for specific goals
 - 50% - price
 - 12% - individuals with no vote before 1983 and 1993 constitutions
 - 12% - 51% or more owned by women. If <51% score 0
 - 12% - 51% or more owned by disabled people
 - 6% - SMME
 - 8% - Local Economic Development

These proposals were not well received.

Subsequently in June 2016 new draft regulations were gazetted for comment. Key points are:

- 80 points for price, 20 points for B-BBEE contribution for acquisitions of goods and services up to R100 million
- 90 points for price, 10 points for B-BBEE contribution for acquisitions of goods and services in excess of R100 million
- bidders who do not submit B-BBEE certificates or who are non-compliant will score 0, but should not be excluded. In other words, the price at which the goods and services are sold may still be sufficient to win the tender.
- trust, consortia or Joint Ventures will qualify for B-BBEE points if they submit proof of their status





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- These new draft regulations stipulate:
 - contracts must be awarded to the tenderer with the highest points. If the tender is awarded to tenderers who do not have the highest points, the criteria on which the tender may be judged must be disclosed in the tender documents. Treasury must be notified within 30 days of award if the tender is awarded to a tenderer who did not score the highest points, giving reasons why the highest points scored did not win the tender, the criteria used when determining who won the tender, the prices of the successful tenderer and that of the tenderer with the highest points score, the duration of the contract and the goods or services procured;
 - tenders to be evaluated on functionality. The tender document must disclose the criteria to be used, the points to be used to score functionality and the minimum qualifying score;
 - specified local content for sectors designated by Treasury. Tenders must include the condition that only goods meeting the specified local content will be considered;
 - prequalifying criteria to be set such as minimum B-BBEE levels or requiring subcontracting of 30% of the tender to be subcontracted to qualifying QSE or EME. Tenders failing these prequalifying criteria cannot be accepted. Tenders are already being issued with such prequalifying criteria especially with construction tenders where the tender specify the B-BBEE certificate requirements in great detail. Failure to meet such criteria would mean disqualification.
- Regulation 13 deals with subcontracting. It requires tenderers on contracts of greater than R30 million to subcontract a minimum of 30% of the contract to black owned EME or QSE, black female owned EME or QSE, black youth owned EME or QSE, EME or QSE owned by disabled black people, one or more EME or QSE, or one or more small businesses as defined by the National Small Business Act 102 Of 1996. Successful tenderers failing to subcontract as required will be penalised 10% of the contract value unless a satisfactory reason is given as to why they should not be so penalised.

Many large contracts include the use of subcontractors for large parts of the contract. The main change now is the requirement for a designated percentage of the contract value to be subbed out, and this percentage may be higher than existing subcontracts. This may require large companies to use small business in their contracts, thereby serving to develop small business which may increase employment.

Smaller companies may also be forced to look at their black ownership. The subcontracting requirements include one or more QSE or EME, or small business, which includes white owned business. We anticipate that many state tenders will come out with prequalifying criteria requiring the qualifying subcontractors to include 30% black owned EME or QSE.

If you need assistance with questions on any B-BBEE related matter, including training courses and strategic sessions on the amended codes, please feel free to contact me on 083 440 2130 or by email on richard@globalbusiness.co.za.

Regards

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