

# Deciphering the new rules for the evaluation of Government Tenders

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## Introduction

On 7 December 2011 the rules changed. Amendments to the current regulations, which have been long awaited, have clarified and simplified BBBEE requirements and introduced more effective ways of measuring and assessing suppliers' overall contributions to our economic development. This is good news for SMME suppliers wishing to submit bids to obtain work in the public sector.

Some of the provisions are new, some of the rules have changed so it is important that suppliers understand the way tender evaluations will be done in future. There are some checks and balances that have been introduced to reduce the incidence of fraud and corruption.

The National Treasury has defined the amended [regulations](#) in a document which was published in the Government Gazette No 9544 on 8 June 2011. However, this document must be read in conjunction with the Preferential Procurement Policy Framework Act of 2000 for complete clarity. There are still some grey areas that have to be addressed and clarified by National Treasury. This will get a fair bit of attention in the press – make sure you are ready. In this Special Report, we have interpreted the rules to make it easier for you. Read on to get the full story.

## **What are the main changes?**

1. The introduction of a two-step process, evaluation of functionality first, and then price/BBBEE.
2. These regulations apply to all organs of state including Government Departments, Municipal entities and State Owned Enterprises (which were previously excluded).
3. There is a move away from the emphasis on ownership towards a broad-based view of BEE. Evaluation will be based on your formal BBBEE scorecard issued by an approved verification agency.
4. Falsified certificates and incorrect scorecards will cause you to be removed from the tender process.
5. Improvements have been made to the way preference points are calculated. Low value tenders under R1m will apply 20/80 rule, tenders over R1m will apply 10/90 rule. More on that in the next section.
6. New rules for special entities such as other organs of state and tertiary institutions
7. New rules to control subcontracting and fronting.
8. The inclusion of a requirement for locally produced goods and services for tenders for certain industry sectors designated by the DTI.
9. There are some other changes that you need to be aware of relating to the cancellation and re-invitation of tenders, how joint venture submissions will be handled.
10. There is a provision for instances where the winning tender may be one that did not score the most points.
11. The SARS Tax Clearance Certificate process has also been eased.

## **Implications of the amendments for suppliers**

Let's take the important changes and explain further.

### **1. Functionality and Price**

The introduction of the use of a two-step process, evaluation of functionality first, and then price. The tenderer must indicate if the tender will be evaluated on functionality. If so, you will be given the objective criteria, the weighting and the minimum qualifying score that you will be measured on. If you do not achieve this score, your tender will not be considered further. If you pass this hurdle, your tender will go on to be evaluated using the preference points system.

### **2. The Public Sector - the Organs of State**

National Treasury has included all organs of state into the regulations. This includes government departments, provincial departments, municipalities and State Owned Enterprises (SOEs) such as Eskom, Transnet, SAA etc which were previously excluded. Details of all public entities covered by these regulations can be found in the PFMA Act of 1999.

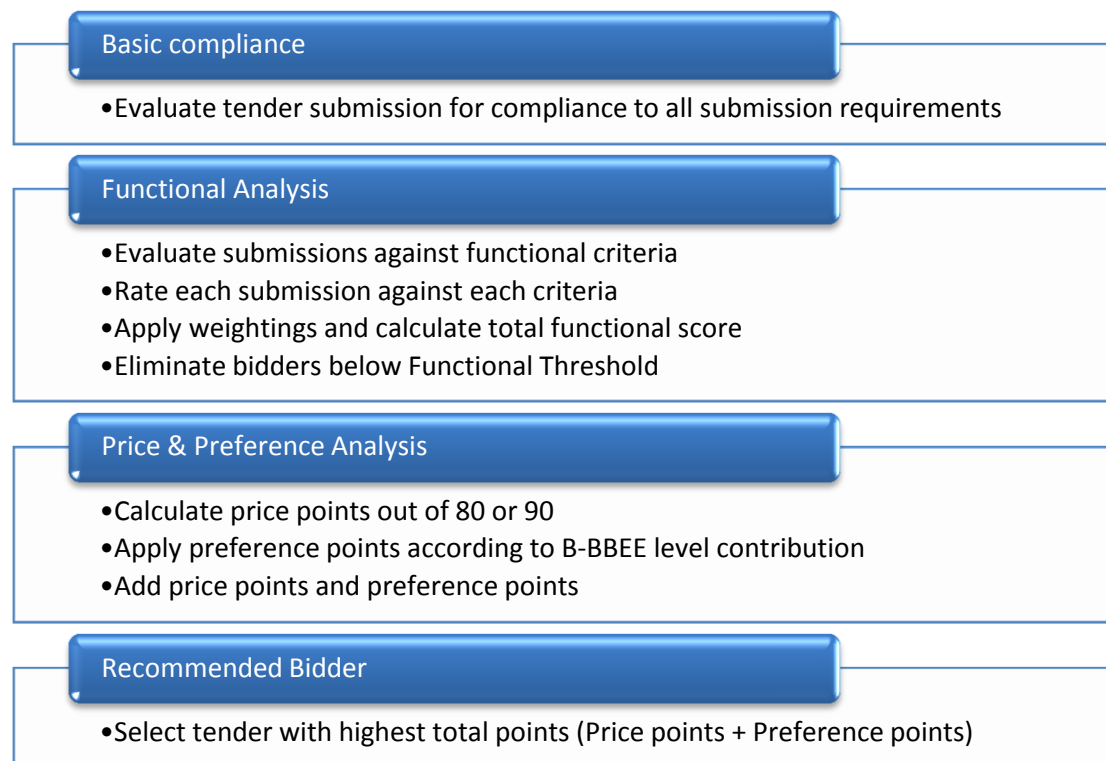
### **3. Preference Points**

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. In tenders over R1m (VAT included) the 10/90 rule will apply. This effectively means that lower value tenders will favour those with a better BBBEE score.

BBBEE Evaluation will be based on your formal scorecard issued by an approved verification agency. Any attempt to bypass this requirement or falsify a scorecard will be dealt with severely by the tenderer and will not advance your cause. Best practice is to ensure that you have a correct and unexpired scorecard.

Suppliers will now have to show what they are actually doing in terms of transformation in all pillars of the scorecard, e.g. employment equity, their preferential procurement, skills development and supporting emerging companies.

## The Tender Evaluation Process



## **4. Functional evaluation**

Tenders may be 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. Functionality means the ability of the bidder to fulfill the requirements including quality, reliability, viability and durability of the service. This is where technical capacity is assessed.

### **Subcontracting**

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. In this case, subcontractors must have at least the same BBBEE rating as the main tenderer unless it is a Micro Enterprise that has the right capability. These requirements form part of the functionality evaluation stage.

### **Local content**

The tendering government entity, working with the Department of Trade and Industry (DTI) may specify a minimum threshold for local production of goods, services or works in its tender where it considers this to be of critical importance. Stipulated minimum thresholds must be explained to you in the tender document. Where this is asked for, local content will be assessed as part of functionality. The impact of this is that your tender may be rejected due to non-compliance if you do not meet the local content requirements. Definitions of "local content" and "imported content" are given in [the Regulations](#). These requirements form part of the functionality evaluation stage.

## Passing the Functional evaluation

This table shows an example of functional evaluation where the supplier scores 72 points out of 100.

- Criteria – This is a list of the buyer’s requirements for the goods and/or services or works to be provided
- Weighting – The relative importance of the various criteria to the entity issuing the tender
- Bid Score - given on the supplier’s ability to provide the service as stated in the tender
- Weighted score – the Bid Score multiplied by the Weighting

Table 1

	<b>Criteria</b>	<b>Weighting</b>	<b>Bid score (0-4)</b>	<b>Weighted score</b>
<b>1</b>	Can the supplier integrate his system into our existing processes?	3	2	6
<b>2</b>	Does the supplier have a Quality management programme in place?	8	3	24
<b>3</b>	Does the supplier have an existing installation that we can visit?	3	2	6
:	:	:	:	:
:	:	:	:	:
<b>12</b>	Does the supplier have maintenance support capacity in each region?	4	3	12
<b>13</b>		5	1	5
	<b>TOTAL points scored</b>			<b>72</b>

If the threshold (pass) has been set at 60 points, this bid above would pass the test. Bids that did not reach the acceptable level of 60 points (fail) will be **eliminated** from the process at this stage and will not progress to the next step.

Where a functional evaluation has been performed and you have been accepted to move to the next level of evaluation, points for price and for preference are calculated.

## 5. Preference points evaluation

For tenders under R1m, a maximum of 20 points can be allocated whilst for tenders over R1m. 10 points can be the most you can get as a Level 1 contributor. See Table 2 below.

**Table 2**

Tenders under a R1 million (80/20)		Tenders over a R1 million (90/10)	
B-BBEE Status Level of Contributor	Number of Points	B-BBEE Status Level of Contributor	Number of Points
1	20	1	10
2	18	2	9
3	16	3	8
4	12	4	5
5	8	5	4
6	6	6	3
7	5	7	2
8	2	8	1
Non Compliant	0	Non Compliant	0

## **6. Price Evaluation**

So that leaves 80 points for price for tenders under R1m or 90 points for tenders over R1m. The points for BBBEE and the points for price are added together and the bidder that scores the total number of points is awarded the tender, if there are no exceptional circumstances.

## **7. Declaration**

The bidder is required to certify that all the information supplied is true and correct. The signatory to the tender document must be duly authorized by the organization bidding. Make sure that the bid document is signed before submitting it.

## **8. Other considerations**

Definitions are given in the regulations so that there should be no misunderstandings. "Imported content" and "local content" are explained as well as "consortium or joint venture". It is in the supplier's favour is that there is no administrative need to prove ownership and shareholding and the SARS Tax Clearance process has been made easier.

### **What do I as a supplier need to do?**

Be prepared for the new tender requirements from December 7<sup>th</sup> 2011. Make sure that you have a valid BBBEE verification certificate from an accredited agency ahead of time. There is always a last minute rush to complete and submit a bid so we suggest that you assemble the statutory documents that will be asked for right now.

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