

November 2, 2016

## **Broad-Based Black Economic Empowerment and government tenders**



***Is your business heavily dependent on government tenders?***

***If yes, read the below overview of the draft Preferential Procurement Regulations 2016 and the impact Broad-Based Black Economic Empowerment (B-BBEE) or BEE has on government tenders.***

BEE compliance have become a prerequisite for government tenders and is critically important for suppliers to be successful in tender bids. Many entities that wish to attain an acceptable BEE level take on black ownership and consider restructuring to qualify as suppliers of products or goods to government institutions.

When enacted this draft Regulations will replace the current Preferential Procurement Regulations 2011 and will govern all procedures of how government entities should acquire goods and services from businesses as well as all processes involved with procurement.



## **Pre-qualification criteria in the tendering process**

The most significant change proposed in the draft Regulations is the introduction of new ***pre-qualification criteria*** in the tender procedure. This will allow governmental bodies to include very specific pre-qualification criteria in the assessment of a tender. Some of these criteria may include the prerequisite of the tendering entity having a required minimum ***Broad-Based Black Economic Empowerment (B-BBEE or BEE)*** status level as well as having to out-sourced a minimum of 30% of the tender contract value to black-owned, black youth-owned and black female owned QSEs and EMEs.



## **Contract thresholds**

Different rules apply depending on the monetary value of a tender. Another major change relates to the contract thresholds applicable to the preference points system. The draft Regulations have mainly altered the threshold of the BEE scoring system (***BEE Scorecard***) when assessing bids as well as other BEE benchmarks such as mandatory subcontracting in tenders for all contracts exceeding R 30 million.

A differentiation will be made between tenders exceeding R 100 million and those below or equal to R 100 million. This is a significant increase from the present threshold of R 1 million, as set by the Procurement Regulations of 2011.



## **Contract value up to R1 million**

In the present Regulations, the 80/20 preference point system applies to tenders with a contract value up to R1 million, whereas the draft Regulations propose that this threshold be augmented to R100 million. This means, that tenders with a contract value up to R100 million will be evaluated by allocating 80 points towards the pricing of goods and services and 20 points towards the B-BBEE status level of the tendering entity - *placing a substantial emphasis on a tenderer's B-BBEE status level* in the tender appraisal process.



## **Contract value exceeding R100 million**

The 90/10 preference point system, where 90 points are awarded for pricing and 10 points for B-BBEE status level, will apply to tenders with a contract value exceeding R100 million, also different to the current threshold of R1 million. The draft Regulations provide the sub-contracting of at least 30% of the tender contract value to emerging suppliers in all tenders exceeding a total contract value of R30 million. Emerging suppliers may include one or more black-owned, black youth-owned, black female-owned and black disabled-owned EMEs and QSEs as well as Smaller Businesses as defined in the *Small Business Act of 1996*.

*The importance of an entity's BEE status is emphasized throughout the draft Regulations.* Entities depending on government tenders would be well advised to note the importance of BEE status at all levels and to tender and structure their affairs accordingly in order to avoid being disqualified from doing business with the government in future.

**SERR Synergy** is the industry leader in BEE compliance with a variety of ownership solutions that differentiate us from the rest.

©SERR Synergy, [www.serr.co.za](http://www.serr.co.za)