



UNFRAMED

SHIFTING PERSPECTIVES

Opinion on The Preferential Procurement Policy Framework Act

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**B-BBEE compliance solution that makes sense to
your business**

SCOPE OF OPINION

Black Economic Empowerment Advisor

Unframed People Services (Pty) Ltd acts as a Black Economic Empowerment advisor to various companies. In our attempt to ensure all clients are up to date and understand changes within the legislation, we have studied various acts and opinions to arrive at the following summary and interpretation of the recent changes with The Preferential Procurement Policy Framework Act.

This document includes a comparison and summary of the following to acts:

- **Preferential Procurement Policy Framework Act, 2000:
Preferential Procurement Regulations, 2017**
- **Preferential Procurement Policy Framework Act, 2000:
Preferential Procurement Regulations, 2022**

We are of the opinion that the changes in the Procurement Act, that is effective as of 16 January 2023, will have a definite impact on the overall South African economy, however, might take up to 8 months for business to truly experience what the changes will look like for their specific industry and how their business will benefit or not benefit from the changes.

The table below provides a clear comparison of the two acts, but in summary, what does these changes mean? Organs of State now have the responsibility to determine their own 'specific goals' to each tender. These goals should be in relation to previously disadvantaged communities and should benefit the overall transformation policies of South Africa, however, nothing is specified in any way. All authority lies with the Organs of State, and each tender can have their own unique requirements and specifications.

Further to that, local production, and portioned sub-contracting, have been completely removed from the act, therefor not making it a requirement at all.

The main emphasis is now placed on price, specifically in most instances, lowest price. This is an attempt from government to increase competition in the market, whilst at the same time decreasing fiscal spend to ensure overall service delivery.

Below are the summaries, followed by additional notes and comments to the possible outcome of these regulatory changes.



COMPARISON TABLE

Table to represent the 2017 and 2022 act

AREA	2017 ACT	2022 ACT
Definitions		
HIGHEST ACCEPTABLE TENDER	-	Means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders.
LOWEST ACCEPTABLE TENDER	-	Means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders.
PRICE	Includes all applicable taxes less all unconditional discounts.	Means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts.
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.
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 a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions.

SUMMARY OF APPLICABLE ELEMENTS AND POSSIBLE POINTS

AREA	2017 ACT	2022 ACT
Identification of preference point system	Organ of state to determine if pre-qualification criteria is applicable, compulsory local production and sub-contracting.	Organ of state to specify if highest acceptable tender or lower acceptable tender will apply, as dictated whether it's an income-generating tender or not.
Pre- qualification criteria	3 pre-existing qualifying criteria stipulated that should be included in tender specification. Tenders failing the pre-qualification criteria cannot be considered for tender purposes.	No pre-qualification criteria listed, stipulated, or required.
Tender value	<p>80/20 points system will apply for price, if tender is below R50 million.</p> <p>90/10 points system will apply for price if tender is above R50 million.</p> <p>Dictated by LOWEST ACCEPTABLE TENDER.</p> <p>The score out of 20 and 10 for B-BBEE levels are stipulated within the act.</p>	<p>80/20 points system will apply for price, if tender is below R50 million.</p> <p>90/10 points system will apply for price if tender is above R50 million.</p> <p>Dictated by LOWEST ACCEPTABLE TENDER.</p> <p>No score for B-BBEE levels is stipulated within the act.</p>
Income generating tender value	No calculations specified and not dictated by highest acceptable tender.	<p>80/20 points system will apply for price, if tender is below R50 million.</p> <p>90/10 points system will apply for price if tender is above R50 million.</p> <p>Dictated by HIGHEST ACCEPTABLE TENDER.</p>
Local Production and Content	Specifications made regarding the expectation of including local production and that no foreign production may be used in certain tenders.	No mention of local production.



Subcontracting as a condition of tender	Certain tender projects had the requirements of subcontracting a portion of the contract to previously disadvantaged communities/groups. Specifying the conditions of subcontracting.	No mention of subcontracting requirements for any specific tender projects. Or the requirements being regulated.
Criteria for breaking deadlock	<p>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 B-BBEE.</p> <p>If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preference points for B-BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.</p> <p>If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.</p>	<p>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.</p> <p>If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.</p>



Additional notes and comments to consider

- The probability of many organisations immediately feeling the changes of the regulations are small, the ripple effect of tendering would need to be considered once new tenders are released from the 16th of January 2023.
- All industries would have to wait in order to understand how the Organ of State they are dealing with interpreted the changes and how they will amend their internal procurement policies.
- Each industry would most probably have unique 'specific goals' relating to the transformation challenges within the specific industry, and many companies would have to adjust their B-BBEE focus in order to align with what seems to be the industry focus.
- The expectation is that certain industries will feel a major relieve from the requirements, in order to increase overall service delivery at a reduced fiscal spend, where other industries may not experience a reduction of pressure at all.
- Transformation remains an overall focus of policy, with a shift towards alignment within industry.
- If there are any deadlocks, points scored towards 'specific goals' remains the determining factor, therefor cannot be a considered an unnecessary spend at this point in time.
- Once it becomes clear how the Organs of State will align themselves, our clients are encouraged to meet with us to discuss how to align their own internal transformation strategy with that of dictating tender awarder.

If you have any questions or would like to discuss any aspect of this document, please feel free to contact me.

Kind regards,

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