REPUBLIC OF SOUTH AFRICA

PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT

REPUBLIEK VAN SUID-AFRIKA

WET OP DIE RAAMWERK VIR VOORKEURVERKRYGINGSBELEID

ACT

To give effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—

(i) ''acceptable tender'' means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document; (i)

(ii) ''Minister'' means the Minister of Finance; (iii)

(iii) ''organ of state'' means—

(a) a national or provincial department as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(b) a municipality as contemplated in the Constitution;

(c) a constitutional institution defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(d) Parliament;

(e) a provincial legislature;

(f) any other institution or category of institutions included in the definition of ''organ of state'' in section 239 of the Constitution and recognised by the Minister by notice in the *Government Gazette* as an institution or category of institutions to which this Act applies; (iv)

(iv) ''preferential procurement policy'' means a procurement policy contemplated in section 217(2) of the Constitution; (vi)

(v) ''prescribed'' means prescribed by regulation made under section 5; (v)

(vi) ''this Act'' includes any regulations made under section 5. (ii)

Framework for implementation of preferential procurement policy

2. (1) An organ of state must determine its preferential procurement policy and implement it within the following framework:

(a) A preference point system must be followed;

(b) (i) for contracts with a Rand value above a prescribed amount a maximum of 10 points may be allocated for specific goals as contemplated in paragraph *(d)* provided that the lowest acceptable tender scores 90 points for price;

(ii) for contracts with a Rand value equal to or below a prescribed amount a maximum of 20 points may be allocated for specific goals as contemplated in paragraph *(d)* provided that the lowest acceptable tender scores 80 points for price;

(c) any other acceptable tenders which are higher in price must score fewer

points, on a *pro rata* basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with a prescribed formula;

(d) the specific goals may include—

(i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;

(ii) implementing the programmes of the Reconstruction and Development Programme as published in *Government Gazette* No. 16085 dated 23 November 1994;

(e) any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender;

(f) the contract must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in paragraphs *(d)* and *(e)* justify the award to another tenderer; and

(g) any contract awarded on account of false information furnished by the tenderer in order to secure preference in terms of this Act, may be cancelled at the sole discretion of the organ of state without prejudice to any other remedies the organ of state may have.

(2) Any goals contemplated in subsection 1*(e)* must be measurable, quantifiable and monitored for compliance.

Exemption

3. The Minister may, on request, exempt an organ of state from any or all the provisions of this Act if—

(a) it is in the interests of national security;

(b) the likely tenderers are international suppliers; or

(c) it is in the public interest.

Transitional provision

4. Any procurement process implemented under a preferential procurement policy where the invitation to tender was advertised before the commencement of this Act, must be finalised as if this Act had not come into operation.

Regulations

5. (1) The Minister may make regulations regarding any matter that may be necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) Draft regulations must be published for public comment in the *Government Gazette* and every *Provincial Gazette* before promulgation.

Short title

6. This Act is called the Preferential Procurement Policy Framework Act, 2000.