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GENERAL NOTICE

Notice 2520 of 1999

DEPARTMENT OF STATE EXPENDITURE

PUBLICATION FOR PUBLIC COMMENT: PREFERENTIAL PROCUREMENT POLICY FRAMEWORK BILL, 1999

The draft legislation set out in the Schedule hereto, which the Minister of Finance proposes to introduce in Parliament, is hereby published for public comment in compliance with section 154(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

Interested parties are invited to lodge written comments by not later than 6 December 1999 with:

Mr N K Mlamla
Department of State Expenditure
Office: Room 2705
Address: 240 Vermeulen Street
PRETORIA
Postal Address: Private Bag X845
PRETORIA
0001
Tel: (012) 315-5252
Fax: (012) 325-4533
Email: MlamlaN@DSE.pwv.gov.za

BILL

To give effect to section 217(3) of the Constitution by providing a framework for the implementation of a preferential procurement policy by any organ of state 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. "**Minister**" means the Minister of Finance;
 - ii. "**organ of state**" means an organ of state in the national, provincial or local sphere of government as contemplated in section 239 of the Constitution;
 - iii. "**preferential procurement policy**" means a procurement policy contemplated in section 217(2) of the Constitution;
 - iv. "**prescribed**" means prescribed by regulation;
 - v. "**regulation**" means a regulation made under section 4;
 - vi. "**this Act**" includes the regulations.

Framework for implementation of preferential procurement policy

2. (1) An organ of state implementing a preferential procurement policy must do so within the following framework -

- a. A 90\10 preference point system for acceptable tenders must be followed;
- b. the lowest acceptable tender must score a maximum of 90 points for price;
- c. any other acceptable tenders which are higher in price must score less points, on a *pro rata* basis, calculated on their tender prices in relation to the lowest acceptable tender in accordance with the following formula -

$$P_s = \frac{P_{min}}{P} \times \frac{90}{1}$$

Where P_s = points scored for price by tender under consideration;

P_{min} = tender price of lowest acceptable tender; and

P = tender price of acceptable tender under consideration;

- d. a maximum of 10 additional points may be awarded to tenders which comply fully with specific goals;
- e. the specific goals may include -
 - i. Reconstruction and Development Programme Principles; and
 - ii. contracting with persons, or categories of persons, disadvantaged by unfair discrimination;
- f. any specific goal for which a point may be awarded must be clearly specified in the invitation to submit a tender; and
- g. the tender must be awarded to the tenderer who scores the highest points, unless sound reasons justify the award to another tenderer.

(2) Any invitation to submit a tender as contemplated in subsection (1) must clearly define -

- a. the categories of preference;
- b. the persons, or categories of persons, disadvantaged by unfair discrimination to be protected or advanced.

(3) Any goals as contemplated in subsection 1(f) must be measurable, quantifiable and monitored for compliance.

(4) For the purposes of this section, the "lowest acceptable tender" means the lowest tender which complies with the prescribed requirements and "acceptable tender" means a tender which complies with the prescribed requirements.

Transitional provision

3. Any tender which was advertised before the date of commencement of this Act must be finalised as if this Act has not come into operation.

Regulations

4. 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.

Short title

5. This is the Preferential Procurement Policy Framework Act, 1999.

MEMORANDUM ON THE OBJECTS OF THE PREFERENTIAL PROCUREMENT

POLICY FRAMEWORK BILL, 1999

1. General

1.1 Section 217(1) of the Constitution requires all organs of state in the national, provincial or local sphere of government and any other institution identified in national legislation to have a procurement system which is fair, equitable, transparent, competitive and cost effective.

1.2 Section 217(2) states that the requirements of section 217(1) do not prevent an organ of state or the other institution from implementing a procurement policy providing for the following:

1.2.1 Categories of preference in the allocation of contracts; and

1.2.2 the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

1.3 Section 217(3) provides that national legislation must prescribe a framework within which the policy referred to in paragraph 1.2 may be implemented.

1.4 Paragraph 21(4) of Schedule 6 of the Constitution requires that this legislation must be enacted within 3 years of the date on which the Constitution took effect, i.e. 4 February 2000.

2. Content of the Bill

2.1 Clause 1 contains the definitions.

2.2 Clause 2 deals with the framework for the implementation of a preferential procurement policy:

2.2.1 A 90/10/ preference point system must be followed where the lowest acceptable tender will score the maximum of 90 points. Other offers which are higher in price will score less points, on a *pro rata* basis, calculated on their tender prices in relation to the tendered price of the lowest acceptable tender.

2.2.2 The formula to calculate the number of points awarded to tenderers based on the various prices offered will be:

$$P_s = \frac{P_{\min}}{P} \times \frac{90}{1}$$

Where P_s = points scored for price by tender under consideration;

P_{\min} = tender price of lowest acceptable tender; and

P = tender price of acceptable tender under consideration;

2.2.3 A maximum of 10 points will be scored by tenderers, depending on the achievement of specific goals clearly specified in the tendering conditions. These specific goals may include Reconstruction and Development Programme Principles as well as contracting with persons, or categories of persons, disadvantaged by unfair discrimination. The way in which the points in this category will be calculated and awarded to tenderers, must be clearly specked in the tendering conditions.

2.2.4 The tender must be awarded to the tenderer who scored the highest number of points, unless sound reasons justify the award to another

tenderer.

2.3 Clause 3 provides that any invitation to tender which was in process before the commencement of the Bill will be finalised as if the Bill did not come in operation.

2.4 Clause 4 empowers the Minister to make regulations regarding any matter required or permitted to be prescribed in terms of the Bill.

2.5 Clause 5 contains the short title of the Bill.