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CONSTRUCTION PROCUREMENT

BEST PRACTICE GUIDELINE # B2

Methods and procedures for implementing preferential procurement policies

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Note: This Best Practice Guideline provides a range of uniform methods and procedures for implementing a wide range of policy themes in a consistent manner. The guide presupposes that a preferential procurement policy is in place and focuses on the capturing of preferencing requirements in procurement documents. (Best Practice Practice Guide # A3, *Evaluating tender offers*, provides guidance on the evaluation of preferences in tenders)

Best Practice Guideline # B1, *Formulating Preferential Procurement Policies*, presents a range of policy options and implementation methodologies that may be pursued in the formulation of preferential procurement policies that are consistent with the provisions of the South African regulatory regime. This Best Practice Guideline introduces the thinking behind preferential procurement policies, the manner in which such policies are implemented internationally and the constraints to implementation within South Africa. It furthermore interprets the Preferential Procurement Policy Framework Act and related regulations, identifies the methods by which preferences may be applied and provides guidelines as to how preferential procurement policies may be formulated to satisfy legislative requirements.

This Best Practice Guideline is intended for those responsible for implementing preferential procurement policies in a uniform manner. Best Practice Guideline # B1 is intended for those responsible for formulating preferential procurement policies and those wishing to implement preferential procurement policies outside of the provisions of this Best Practice Guideline.

1. Introduction

Section 217 of the Constitution of the Republic of South Africa (Act 108 of 1996) establishes the primary and broad secondary procurement objectives in South Africa as indicated in Table 1.

Table 1: Public procurement objectives in South Africa

| Objective | Reference |
|---|-----------------|
| Primary Procurement system is to be fair, equitable, transparent, competitive and cost effective. | Section 217 (1) |
| Secondary Procurement policy may provide for: categories of preference in the allocation of contracts; and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination. | Section 217 (2) |

Section 217 (3) of the Second of the Constitution requires that national legislation must prescribe a framework within which the preferential procurement policy must be implemented. The Preferential Procurement Policy Framework Act (Act 5 of 2000) was promulgated in response to this constitutional imperative.

The Preferential Procurement Policy Framework Act requires institutions (organs of state) to determine their preferential procurement policy and to implement it within the framework provided by the Act. The Act

requires that a preference point system must be followed, provides examples of specific goals that may be pursued and requires that:

- any specific goal for which a point maybe awarded, must be clearly specified in the invitation to submit a tender; and
- any goals contemplated must be measurable, quantifiable and monitored for compliance.

(See Best Practice Guideline # A2, *Applying the procurement prescripts of the CIDB in the Public Sector.*)

The Act suggests that specific goals should focus on the engagement of targeted enterprises and targeted labour (natural and juristic persons), historically disadvantaged by unfair discrimination on the basis of race, gender or disability, and on the attainment of programmes of the White Paper on Reconstruction and Development.

The most commonly encountered policy objectives relate to the following themes (see Table 1):

- business empowerment;
- job creation;
- development of the small, medium and micro enterprise sector;
- poverty alleviation;
- community-based developments; and
- local economic development.

The preferential procurement policy of an institution frequently includes more than one policy theme. Programmes, particularly those relating to poverty alleviation and job creation, are more focused in their objectives and may have a single policy theme.

2. Implementing a preferential procurement policy in a specific procurement

2.1 Identifying an appropriate targeting strategy

Figure 1 indicates the recommended manner in which a preferential procurement policy should be formulated and implemented. (See Best Practice Guideline # B1, *Formulating and implementing preferential procurement policies*).

The starting point when implementing a preferential procurement policy within a specific procurement is to establish the preferential procurement policy that is applicable to the procurement. In most instances, it will be that of the institution. Where the procurement forms part of a national or provincial programme, the preferential procurement policy pertaining to the programme should be adopted. The next step is to identify an appropriate theme and a specific goal within such a scheme which is to be pursued. This should be undertaken by considering the procurement in the light of the objectives, targets and target groups contained in the preferential procurement policy and the desirable policy outcomes (See Table 2) and factors such as past experience, knowledge of the potential tenderers and an understanding of the nature of the procurement. The contracting and pricing strategy also has a bearing on the selection of the specific goal. This should be done in order to arrive at the optimum preferencing arrangements for the procurement.

Thereafter, an appropriate implementation procedures which is consistent with the framework provided in the Act needs to be identified, or if it is not outlined in the preferential procurement policy, developed, e.g. direct preference or direct participation (see SANS 10396, *Implementing Preferential Procurement Policies using Targeted Construction Procurement Procedures* and Annexure 1 of Best Practice Guideline # B1, *Formulating and implementing preferential procurement policies*).

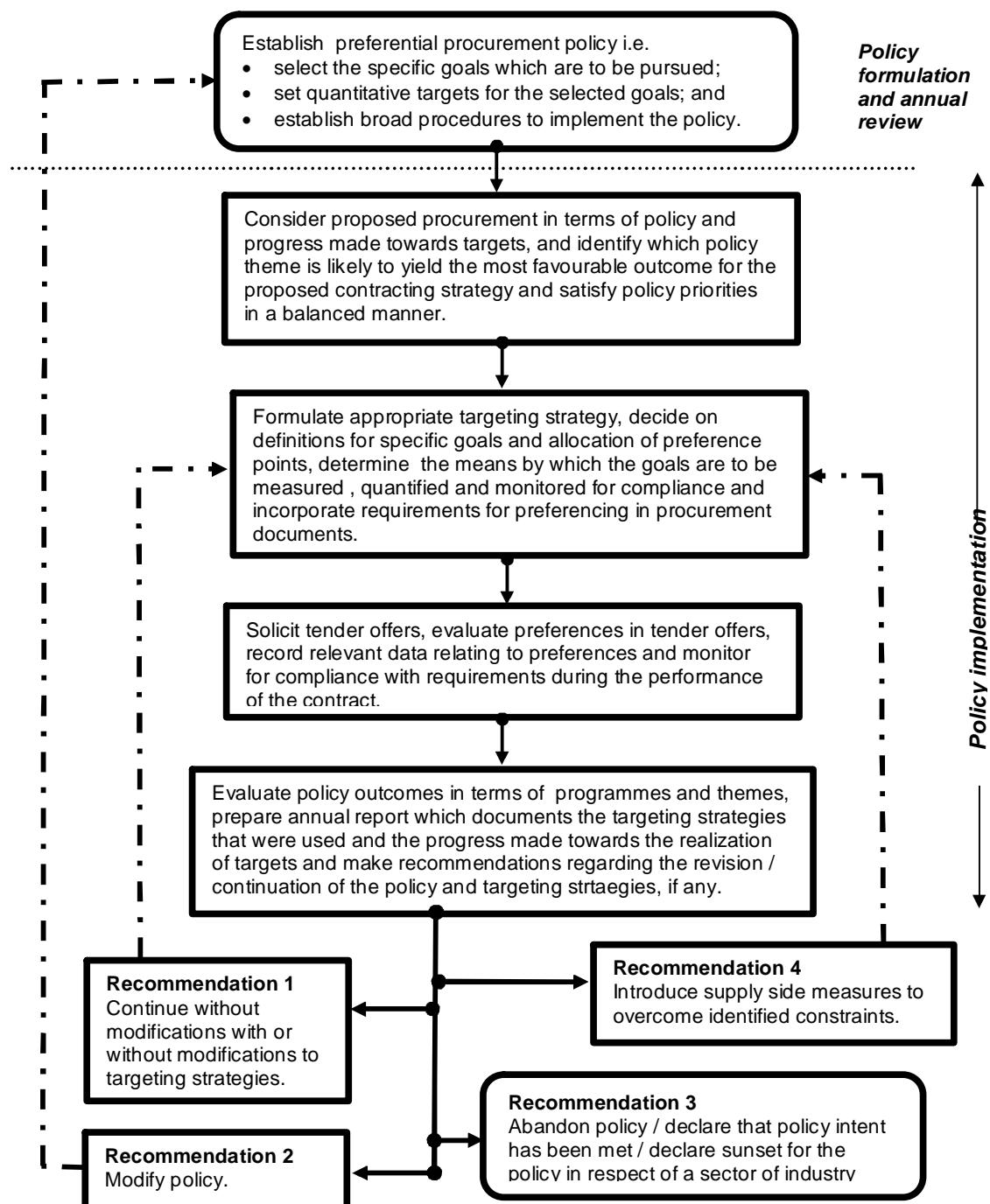


Figure 1: Recommended approach to formulating and implementing preferential procurement policies

Table 2: Common policy objectives, target groups, desirable policy outcomes and considerations associated with preferential procurement policies

| Socio-economic policy objective | Basis for target group definitions | Desirable policy outcomes | Specific considerations |
|---|---|--|---|
| Business empowerment | Targeted enterprises defined in terms of equity / control / operational responsibilities of specified persons with and without restrictions on the scale of an enterprise. | <p>Business empowerment should result in some or all of the following:</p> <ul style="list-style-type: none"> - the ability to influence income generation; - the creation of wealth; - independence; - operational control; - decision making/risk taking; - sustainability of businesses; - successful businesses; - ability to eventually compete effectively with non-targeted businesses; and - creation of marketable assets. | <p>Cognizance should be taken of equity; control; and operational responsibilities in the formulation of policies, target group definitions and targeting strategies.</p> <p>Business empowerment can take place through ownership (equity and control); small and medium enterprises (equity, control and operational responsibilities); corporate transformation (operational responsibilities and control); and "green field"/new enterprise development.</p> |
| Job creation | Targeted labour defined on the basis of wage or skills levels. Targeted enterprises defined on the basis of scale of enterprise or local manufacture. | Growth in the small, medium and micro enterprise sectors, increase in consumption of locally manufactured products and an increase in employment generated per unit of expenditure. | Cost effective labour-based methods of production and technologies which are designed and managed to promote the creation of employment, as well as appropriate specifications and performance specifications, are critical elements of programmes of this nature. |
| The development of the small and medium enterprise sector | Targeted enterprises defined on the basis of scale. | Growth in the small and medium enterprise sector | The creation of an enabling environment is an essential component of a small and medium enterprise development programme. |
| Poverty alleviation | Targeted labour defined on the basis of wage levels and / or periods of unemployment with or without distinctions being made on the basis of gender, age, or disability. Targeted enterprises defined on the basis of labour teams. | Increasing the volume of work available to the poor/increasing household incomes/providing short term employment. | Technologies and methods of production/construction which are able to provide employment for relatively unskilled labour are essential for successful policy outcomes. |
| Community based developments | Targeted enterprises and Targeted labour defined on the basis of community parameters | Community based developments should create employment opportunities; promote community involvement; impart technical skills to the unskilled and semi-skilled members of the community; transfer administrative, commercial and managerial skills to the community; retain, as far as possible, the funds expended on the project within the community; and develop contractors and entrepreneurs from amongst the community. | A sustainable community development approach should be based on beliefs such as that the process of 'development' should be self -sustaining in the long term; the process of 'development' must be initiated by the 'people' themselves; the roles of 'outsiders' must be time-bound and the scope of their assistance limited to the pro-vision of alternatives and, if necessary, the provision of 'seed capital', including human capital and ; dependence on 'outside' resources must be minimized as far as possible. |
| Local economic development | Targeted enterprises and Targeted labour defined on the basis of geographical areas | To stimulate and develop local economic growth in a targeted and focused manner/create employment and business opportunities for Targeted labour in order to reduce inequalities in income distribution/improve living standards of residents in a sustainable way/ promote the competitiveness of local businesses. | Policies of this nature are driven by encouraging the substitution of labour for capital / promoting the use of "labour friendly" technologies/ stimulating and developing small scale local enterprises/ targeting of local resources/ promoting social development. |

An appropriate targeting strategy, based on the decisions made in the foregoing needs to be formulated and documented. Table 3 provides a useful point of departure for the documenting of the targeting strategy.

Table 3: Commonly encountered strategies

| Type | | Obligation placed on tenderer / successful contractor | Targeting strategy | | |
|------------|--|---|---|------------------------------------|--|
| # | Descriptor | | Nature of specific goal | Method of preferencing (1,2 or 3)* | Method by which goals are to be measured, quantified and monitored for compliance |
| I | Structure of the contracting entity | Satisfy nominated requirements to be eligible for the award of a contract or a preference. | Satisfying a particular enterprise definition | Method 1 | Preference schedule and declaration affidavits |
| | | | Having a particular enterprise characteristic | Method 1, 2 or 3 | Preference schedule with well defined enterprise characteristics |
| | | | Joint ventures between non-targeted and targeted enterprises | Method 1, 2 or 3 | Preference schedule, declaration affidavits, SANS 1914-2 and annex H of SANS 10396 |
| II | Internal workings of the contracting entity | Satisfy nominated requirements or undertake to implement certain work place actions during the performance of a particular contract . | Actions relating to the manner in which the contract is to be performed | Method 1, 2 or 3 | Preference schedule which incorporates a performance specification which establishes requirements. |
| III | Outsourcing | Provide business and / or employment opportunities to target groups through activities directly related to a particular contract. | Participation of targeted enterprises | Method 1, 2 or 3 | Preference schedule, declaration affidavits, SANS 1914-1 and annex H of SANS 10396 |
| | | | Participation of targeted partners and targeted enterprises | Method 1, 2 or 3 | Preference schedule, declaration affidavits, SANS 1914-3 and annex H of SANS 10396 |
| | | | Participation of targeted enterprises and targeted labour (local resources) | Method 1, 2 or 3 | Preference schedule, declaration affidavits, SANS 1914-4 and annex H of SANS 10396 |
| | | | Participation of targeted labour | Method 1, 2 or 3 Method 1, 2 or 3 | Preference schedule, SANS 1914-5 and annex H of SANS 10396 |
| IV | Nominated deliverables | Undertake to provide specific deliverables | - | Method 1,2 or 3 | Preference schedule which incorporates a performance specification which establishes requirements. |

- * Method 1 = fixed number of evaluation points
- Method 2 = variable number of points in accordance with a formula
- Method 3 = variable number of points on a comparative basis

The documented targeting strategy should include:

- a) the method of preferencing and the number of preference points that will be provided in respect of each specific goal and the manner in which the goal is to be measured, quantified and monitored for contract compliance.
- b) the exact definition of the goal (see section 3.2 of Best Practice Guideline # B1)

The definitions contained in Annexure 1 may be adopted for goals relating to targeted enterprises and targeted labour.

The documented targeting strategy must include any weightings or definitions of target areas required in terms of the SANS 1914 targeted construction resource specifications (see clause 6 of SANS 10396 and SAICE's Practice Manual #1, *The use of South African National Standards in Construction Procurement*).¹

2.2 Incorporating preferencing requirements in procurement documents

Preferencing requirements can best be incorporated in procurement documents by means of preferencing schedules which establish all the requirements and undertakings to claim a preference. Such schedules form part of the tender returnables and must be incorporated in the scope of work in contracts. (Refer to SANS 10403: Formatting and compilation of procurement documents and the Best Practice Guideline # C1, *Preparing Procurement Documentation* and SANS 294, *Construction Procurement Processes, Procedures and Methods*.)

Annexures 2, 3 and 4 provide examples of preferencing schedules for a range of different targeting strategies.

Clause 6 of SANS 10396 (Implementing preferential procurement policy using targeted procurement procedures) provides comprehensive guidance where targeted procurement procedures are used to secure the participation of targeted enterprises and targeted labour. Annex C of SANS 10396 provides an example of a Targeted Enterprise Declaration Affidavit. Annexure 5 provides an example of a Black Person Declaration Affidavit.

Where use is made of the standard conditions of tender contained in Annex F of SANS 294, *Construction Procurement Processes, Procedures and Methods*, tender data along the lines presented in Annexure 6 is required, depending upon the selected targeting strategy. (The exact wording will depend upon the wording and structure of the preferencing schedule. See also SANS 294, *Construction Procurement Processes, Procedures and Methods*)

Note: It is important to capture the quantum of the preference in the preferencing schedule, particularly where a preferencing schedule is to be incorporated into the scope of works, as such data is commonly used in the formulation of financial penalties.

2.3 Data capture

In order to evaluate programmes and progress towards the attainment of targets established in preferential procurement policies, it is necessary to gather and capture data. Annexure 6 provided three proforma data capture forms which should be completed whenever a contract is awarded and completed / terminated.

Data capture forms should be designed to capture data that is required to evaluate the outcomes of policies. Section 5.5 of SANS 10396 provides guidance on the interpretation of policy outcomes.

¹ Targeting strategies which involve the targeting of enterprises and / or labour can typically be described as being direct preferences or direct participation (see SANS 10396). Typically, where a direct preference strategy is used, points are awarded for the attainment of an enterprise status or satisfying requirements which can be evaluated prior to the award of the contract. On the other hand, where the direct participation strategy is used, tenderers offer to attain a contract participation goal, typically in accordance with the provisions of one of the parts of SANS 1914, relating to the engagement of targeted enterprises or targeted labour as stated in the procurement documents in the performance of the contract.

It should be noted that where enterprises are targeted, the use of the SANS 1914-1 specification with the maximum tender evaluation points granted in respect of 100% contract participation goal can yield significant levels of participation. The reason for this is that this targeting strategy captures participation in the full supply chain and can be satisfied through participation at prime contract level, through joint ventures and through outsourcing, and as a consequence is more likely to secure some level of participation. In contrast, where direct preferences are used, participation can be low or non-existent should the successful tenderer not enjoy targeted enterprise status. This latter targeting strategy is best suited where there is a large supply of targeted enterprises.

In empowerment programmes where procurement is used as one of the tools to bring about change, it may be necessary to capture additional data relating to the profile of the successful tenderers in order to establish a benchmark against which progress can be made / measure the success of the preferential procurement policy. (See Form 1 in Annexure 7)

Annexure 1: Examples of definitions for targeted enterprises and targeted labour.

1 Broad based black economic empowerment

Black Business Enterprise (BBE)

| Consideration | Definition |
|--|---|
| <i>Primary definition</i> | |
| Adherence to legislation Independence | A sole trader, partnership or legal entity which adheres to statutory labour practices, is registered with the South African Revenue Services and is a continuing and Independent Enterprise, providing a Commercially Useful Function: |
| Control Equity | <ul style="list-style-type: none"> a) whose management and daily business operations are in the Control of one or more Black Persons, and b) which is at least 50,1 percent Owned by one or more Black Persons who are Principals |

Black Woman Enterprise (BWE)

| Consideration | Definition |
|----------------------------------|---|
| <i>Primary definition</i> | |
| Woman Equity and Control | <p>A Black Business Enterprise :</p> <ul style="list-style-type: none"> 1) which has at least half of its Principals who are Women; and 2) which is at least 25,1 % Owned by one or more Women. |

Black-empowered enterprise (BE)

| Consideration | Definition |
|--|---|
| <i>Primary definition</i> | |
| Adherence to legislation Independence | a partnership or legal entity which adheres to statutory labour practices, is registered with the South African Revenue Service and is a continuing and Independent Enterprise, providing a Commercially Useful Function and: |
| Control Equity | <ul style="list-style-type: none"> 1) which has at least one third of its Principals who are Black Persons; and 2) which is at least 25,1% percent Owned by one or more Black Persons who are Principals. |

| <i>Secondary definitions</i> | |
|-------------------------------------|--|
| Black Person | An individual who, being a South African citizen falls into a population group that had no franchise in national elections prior to the introduction of the 1984 constitution and the tricameral parliamentary system, subject to persons who obtained South African citizenship after 27 April 1994 demonstrating traceable South African lineage. Note: It is incumbent on individuals to demonstrate their claims to fall into such population groups on the basis of identification and association with and recognition by the members of such groups. |
| Commercially Useful Function | The performance of real and actual work, or the provision of services, in the discharge of any contractual obligation which shall include but not be limited to the performance of a distinct element of work which the business has the skill and expertise to undertake and the responsibility for management and supervision. |
| Control | The possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial and financial authority and power in determining the policies and directing the operations of the business. |
| Independent Enterprise | An enterprise which is free of any significant degree of direct or indirect Ownership, or Control, by any business which engages in the same business activities. Indicators of control shall, without limitation, include interlocking management or Ownership, common Principals, identity of interests among family members, shared facilities and equipment, or common use of employees. NOTE: A business will not be considered to be an Independent Enterprise should another business or a Principal of another business which engages in the same business activities own more than 20 % of the equity in that business. |

| Secondary definitions | |
|-------------------------------|---|
| Owned | Having all the customary incidents of ownership, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest or shareholding as demonstrated by an examination of the substance, rather than the form of ownership arrangements. |
| Person with disability | A South African citizen who has a permanent, or prolonged impairment of physical, intellectual, or sensory structure, or function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being, and as a result suffers from loss, or limitation, of opportunity to take part equally with others in the workplace. |
| Principal | A natural person in a business who is a partner in a partnership, a sole proprietor, a director in a company established in terms of the Companies Act, or a member of a close corporation registered in terms of the Close Corporation Act. |
| Woman | A female person who is a South African citizen, subject to persons who obtained South African citizenship after 27 April 1994 demonstrating traceable South African lineage. |

Note: Ownership by a Black Person refers to an individual. Ownership by Black Business does not contribute to the ownership requirements and must be ignored.

2 Woman Business Enterprises

| Consideration | Definition |
|-------------------------------------|--|
| Primary definition | |
| Woman Equity and Control | A sole trader, partnership or legal entity which adheres to statutory labour practices, is registered with the South African Revenue Services and is a continuing and Independent Enterprise, providing a Commercially Useful Function: <ol style="list-style-type: none"> 1) which has at least a quarter of its Principals who are Women; and 2) which is at least 25,1 % Owned by one or more Women who are Principals. |
| Secondary definitions | |
| Commercially Useful Function | The performance of real and actual work, or the provision of services, in the discharge of any contractual obligation which shall include but not be limited to the performance of a distinct element of work which the business has the skill and expertise to undertake and the responsibility for management and supervision. |
| Control | The possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial and financial authority and power in determining the policies and directing the operations of the business. |
| Independent Enterprise | An enterprise which is free of any significant degree of direct or indirect Ownership, or Control, by any business which engages in the same business activities. Indicators of control shall, without limitation, include interlocking management or Ownership, common Principals, identity of interests among family members, shared facilities and equipment, or common use of employees. <p>NOTE: A business will not be considered to be an Independent Enterprise should another business or a Principal of another business which engages in the same business activities own more than 20 % of the equity in that business.</p> |
| Owned | Having all the customary incidents of ownership, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest or shareholding as demonstrated by an examination of the substance, rather than the form of ownership arrangements. |
| Principal | A natural person in a business who is a partner in a partnership, a sole proprietor, a director in a company established in terms of the Companies Act, or a member of a close corporation registered in terms of the Close Corporation Act. |
| Woman | A female person who is a South African citizen, subject to persons who obtained South African citizenship after 27 April 1994 demonstrating traceable South African lineage. |

2 Small Medium and Micro Enterprise (SMME) definition

| Consideration | Definition |
|---------------------------------------|---|
| Primary definition | |
| Adherence to legislation | A sole trader, partnership or legal entity which adheres to statutory labour practices, is registered with the South African Revenue Services and is a Separate and Distinct Business Entity, including co-operative enterprises and non-governmental organizations, Managed by one Owner or more which, including its branches or subsidiaries, if any, is predominantly carried out in any sector or sub sector of the economy mentioned in column 1 of the Schedule to the Small Business Act (Act 102 Of 1996) and which can be classified as a micro - a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of the Schedule opposite the smallest relevant size or class as mentioned in column 2 of the Schedule |
| Independence | |
| Control | |
| Size of business | |
| Secondary definition | |
| Managed (Control) | The possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial and financial authority and power in determining the policies and directing the operations of the business. |
| Separate and Distinct Business Entity | An enterprise which is free of any significant degree of direct or indirect Ownership, or Control, by any business which engages in similar business activities. Indicators of control shall, without limitation, include interlocking management or Ownership, common Principals, identity of interests among family members, shared facilities and equipment, or common use of employees. Note: A business will not be considered to be a Separate and Distinct Business Entity should another business or a Principal of another business which engages in similar business activities owns more than 20% of the equity in that business. |
| Owner | A person who has all the customary incidents of ownership, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest as demonstrated by an examination of the substance, rather than the form of ownership arrangements. |

Note: 1 A Small Business Enterprise can be defined along the lines of the primary definition for an SMME, using the same secondary definitions:

A sole trader, partnership or legal entity which adheres to statutory labour practices, is registered with the South African Revenue Services and is a Separate and Distinct Business Entity, including co-operative enterprises and non-governmental organizations, Managed by one Owner or more which, including its branches or subsidiaries, if any, is predominantly carried out in any sector or sub sector of the economy mentioned in column 1 of the Schedule to the Small Business Act (Act 102 Of 1996) and which can be classified as a micro - a very small or a small enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of the Schedule opposite the smallest relevant size or class as mentioned in column 2 of the Schedule

2 The National Small Business Act (Act 102 of 1996) provides the following tabulation in the Schedule to the Act:

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
|---|------------------------------|--|----------------------------------|---|
| SECTOR OR SUB-SECTORS IN ACCORDANCE WITH THE STANDARD INDUSTRIAL CLASSIFICATION | SIZE OR CLASS | TOTAL FULL-TIME EQUIVALENT OF PAID EMPLOYEES LESS THAN | TOTAL ANNUAL TURNOVER LESS THAN | TOTAL GROSS ASSET VALUE (FIXED PROPERTY EXCLUDED) LESS THAN |
| Mining and Quarrying | Small Very small Micro | 50 20 5 | R 7,50 m R 3,00 m R 0,15 m | R 4,50 m R 1,80 m R 0,10 m |
| Manufacturing | Small Very small Micro | 50 20 5 | R10,00 m R 4,00 m R 0,15 m | R 3,75 m R 1,50 m R 0,10 m |
| Construction | Small Very small Micro | 50 20 5 | R 5,00 m R 2,00 m R 0,15 m | R1,00 m R0,40 m R0,10 m |
| Wholesale Trade, Commercial Agents and Allied Services | Small Very small Micro | 50 10 5 | R25,00 m R 5,00 m R 0,15 m | R4,00 m R0,50 m R0,10 m |
| Transport, Storage and Communications | Small Very small Micro | 50 10 5 | R10,00 m R 2,00 m R 0,15 m | R2,50 m R0,50 m R0,10 m |

3 Local enterprise definition

| | |
|------------------|---|
| Local Enterprise | An enterprise which has its sole office or head office located within the Target Area. It is incumbent on such enterprises to demonstrate their claims to such area bound status on the basis of occupancy of and the conducting of business operations from such offices. Indicators of compliance shall include payment of rentals for premises and payments of service charges, levies, rates and taxes to the local authority located within the Target Area. |
|------------------|---|

4 Poverty relief definition for targeted labour

| | |
|-----------------|---|
| Targeted labour | South African citizens who: have not been employed for more than 100 days during the year preceding their engagement on the Contract; and reside within the boundaries of; and are acknowledged as such by the Project Steering Committee established in terms of the Programme to oversee aspects of the project. |
|-----------------|---|

5 Job creation

| | |
|-----------------|---|
| Targeted labour | South African citizens who permanently reside within the Target Area and earn wages and allowances amounting to less than per hour. It is incumbent on individuals to demonstrate their claims to such residency on the basis of identification and association with and recognition by members of the community residing within the Target Area. |
|-----------------|---|

6 Person with disability

| |
|---|
| A South African citizen who has a permanent, or prolonged impairment of physical, intellectual, or sensory structure, or function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being, and as a result suffers from loss, or limitation, of opportunity to take part equally with others in the workplace. |
|---|

Annexure 2: Sample preferencing schedule where direct preferences are granted in respect of targeted enterprise status

| PREFERENCING SCHEDULE (Direct preference) | | |
|---|---|--|
| 1 Definitions | | |
| The following definitions shall apply to this schedule: | | |
| <i>Insert definitions for Targeted Enterprises in here</i> | | |
| 2 CONDITIONS ASSOCIATED WITH THE GRANTING OF PREFERENCES | | |
| The tenderer, who being a Targeted Enterprise undertakes to: | | |
| <ol style="list-style-type: none">1) not subcontract more than 25% of the Net Amount of the Contract to non-Targeted Enterprises;2) remain a Targeted Enterprise for the duration of the Contract;3) accept the sanctions set out in Section 3 below should conditions 1 or 2 be breached;4) complete the Tender Preference Claim Form contained in Section 4 below; and5) complete a Targeted Declaration Affidavit and submit this with the tender. | | |
| 3 SANCTIONS RELATING TO BREACHES OF PREFERENCING CONDITIONS | | |
| Termination of the Contract or a financial penalty payable to the Employer equal to 1,25 times the number of tender evaluation points awarded in respect of the preference claimed. | | |
| 4 TENDER PREFERENCE CLAIM IN RESPECT OF ENTERPRISE STATUS OR STRUCTURE OF THE TENDERING ENTITY | | |
| I/we apply on behalf of my/our firm for the following preference: | | |
| <i>Insert category description and percentage of maximum tender evaluation points</i> | | |
| Category of Targeted Enterprise | Percentage of maximum tender evaluation points provided for in the Preferential Procurement Policy Framework Act (Act 5 of 2000) | Preference claimed for Targeted Enterprise status (Y=yes) |
| | | |
| | | |
| | | |
| The undersigned, who warrants that he / she is duly authorised to do so on behalf of the firm confirms that he / she understands the conditions under which such preferences are granted and confirms that the tenderer satisfies the conditions pertaining to the granting of tender preferences. | | |
| Signature : | | |
| Name : | | |
| Duly authorised to sign on behalf of : | | |
| Telephone : | | |
| Fax : | | |
| Date : | | |

Annexure 3: Sample preferencing schedule where preferences are granted in respect of the direct participation of targeted enterprises and / or labour

| <p style="text-align: center;">PREFERENCING SCHEDULE (Direct participation) <i>(See clause 5.2.5 of SANS 10396 for particulars relating to resource specifications)</i></p> | | | | | | | | | | | | | |
|---|---|---|---|--|----|---|---|----------------|---|------------|---|---|-------------------------------|
| <p>1 Definitions</p> <p>The following definitions shall apply to this schedule:</p> <p><i>Insert definition for Targeted Enterprises and / or Targeted Labour in here.</i></p> | | | | | | | | | | | | | |
| <p>2 CONDITIONS ASSOCIATED WITH THE GRANTING OF PREFERENCES</p> <p>The Tenderer, undertakes to:</p> <ol style="list-style-type: none">1) engage one or more Targeted Enterprises / Targeted Labour (adjust as necessary) in accordance with the provisions of the SANS 1914- (<i>insert part number and title as relevant</i>) as varied in Section 3 hereunder;2) deliver to the Employer, within 5 working days of being requested in writing to do so, a completed Joint Venture Disclosure Form (Annex D of SANS 1914-1) and a Joint Venture Agreement, should a joint venture be proposed at prime contract level with Targeted Partners to satisfy Contract Participation Goal undertakings (<i>adjust wording to reflect documentation that is required or delete</i>);3) deliver to the Employer, within 5 working days of being requested in writing to do so, a Targeted Enterprise Declaration Affidavit in respect of all Targeted Enterprises engaged at prime contract level to satisfy Contract Participation Goal undertakings (<i>delete if not required</i>);4) accept the sanctions set out in Section 4 below should such conditions be breached;5) complete the Tender Preference Claim Form contained in Section 5 below; and6) complete the Supporting Contract Participation Goal Calculation contained in this schedule. | | | | | | | | | | | | | |
| <p>3 VARIATIONS TO THE TARGETED CONSTRUCTION PROCUREMENT SPECIFICATION SANS 1914- (<i>insert part number</i>)</p> <p>The variations to SANS 1914- (<i>insert part number</i>) are set out below. Should any requirements of the variations conflict with requirements of SANS 1914- (<i>insert part number and title as relevant</i>), the requirements of the variations shall prevail.</p> <p><i>Insert variations if any. If none, insert "There are no variations".</i></p> | | | | | | | | | | | | | |
| <p>4 SANCTIONS</p> <p>In the event that the Tenderer fails to substantiate that any failure to achieve the Contract Participation Goal relating to the granting of a preference was due to quantitative under runs, the elimination of items, or any other reason beyond the Contractor's control which may be acceptable to the Employer, it shall be liable to pay to the Employer a financial penalty calculated in the following manner:</p> $P = 0,15 \times \frac{(D - Do)}{100} \times N_A$ <p>where</p> <table><tr><td>D</td><td>=</td><td>tendered Contract Participation Goal percentage.</td></tr><tr><td>Do</td><td>=</td><td>the Contract Participation Goal which the Employer's representative based on the credits passed, certifies as being achieved upon completion of the Contract.</td></tr><tr><td>N_A</td><td>=</td><td>Net Amount</td></tr><tr><td>P</td><td>=</td><td>Rand value of penalty payable</td></tr></table> | | D | = | tendered Contract Participation Goal percentage. | Do | = | the Contract Participation Goal which the Employer's representative based on the credits passed, certifies as being achieved upon completion of the Contract. | N _A | = | Net Amount | P | = | Rand value of penalty payable |
| D | = | tendered Contract Participation Goal percentage. | | | | | | | | | | | |
| Do | = | the Contract Participation Goal which the Employer's representative based on the credits passed, certifies as being achieved upon completion of the Contract. | | | | | | | | | | | |
| N _A | = | Net Amount | | | | | | | | | | | |
| P | = | Rand value of penalty payable | | | | | | | | | | | |
| <p>5 TENDER PREFERENCE CLAIM IN RESPECT OF ENTERPRISE STATUS OR STRUCTURE OF THE TENDERING ENTITY</p> <p>I / we hereby tender a Contract Participation Goal of% in order to claim a preference.</p> | | | | | | | | | | | | | |

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the firm confirms that he / she understands the conditions under which such preferences are granted and confirms that the tenderer satisfies the conditions pertaining to the granting of tender preferences.

Signature :

Name :

Duly authorised to sign on behalf of :

Telephone :

Fax : Date :

SUPPORTING CONTRACT PARTICIPATION GOAL CALCULATION

Insert Annex A: Tendered goal calculation from relevant document

Annexure 4: Sample preferencing schedule in Public Private Partnerships

| PREFERENCING SCHEDULE (First stage (Expressions of interest) / Request for qualifications) | |
|---|---|
| 1 DEFINITIONS AND INTERPRETATION | |
| The following definitions and interpretations shall apply to this schedule: | |
| Assessment Date: a recurring date in the month following the month in which the Operational Phase began, agreed upon by the contracting entity and the department. | |
| Black Business Enterprise (BBE): a sole trader, partnership or any legal entity, which adheres to statutory labour practices and is registered with the South African Revenue Services and is a continuing and Independent Enterprise operating for profit, providing a Commercially Useful Function which is in the Control of one or more Black Persons who are Principals and | |
| <ul style="list-style-type: none">• <u>if a public company</u>, then at least fifty percent of the Senior Managers shall be Black Persons; or• <u>if an enterprise other than a public company</u>, then at least fifty one percent shall be Owned by one or more Black Persons. | |
| Black Person : an individual who, being a South African citizen, falls into a population group that was disadvantaged by the legacy of apartheid, subject to persons who obtained South African citizenship after 27 April 1994 demonstrating traceable South African lineage. It is incumbent on individuals to demonstrate their claims to fall into such population groups on the basis of identification and association with and recognition by the members of such groups. | |
| Commercially Useful Function: the performance of real and actual work, or the provision of services, in the discharge of any contractual obligation which shall include but not be limited to the performance of a distinct element of work which the business has the skill and expertise to undertake and the responsibility for management and supervision. | |
| Control: the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial and financial authority and power in determining the policies and directing the operations of the business. | |
| Design and Build Phase: the period beginning on the date upon which the Contract comes into effect and expiring on the Actual Completion Date as provided in the Contract. | |
| Independent Enterprise: an enterprise that is free of any significant degree of direct or indirect Ownership, or Control, by any business which engages in the same business activities. Indicators of control shall, without limitation, include interlocking management or Ownership, common Principals, identity of interests among family members, shared facilities and equipment, or common use of employees. | |
| Note: | A business will not be considered to be an Independent Enterprise should another business or a Principal of another business which engages in the same business activities owns more than 20% of the equity in that business. |
| Manufacturer: a firm that operates or maintains a factory or establishment that produces on its premises materials or goods required by the Prime Contractor for the performance of the Contract. | |
| Operational Phase means the period beginning on the Contractual Opening Date as defined in the Contract and terminating on the earlier of the termination of the Contract, or the expiry of the Contract as provided in the Contract. | |
| Owned: having all the customary incidents of ownership, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest or shareholding as demonstrated by an examination of the substance, rather than the form of ownership arrangements. | |
| Principal: a person in a business who is a partner in a partnership, a sole proprietor, a director in a company established in terms of the Companies Act, or a member of a close corporation registered in terms of the Close Corporation Act. | |

Senior Manager: a full-time employee who is responsible for planning, organising, leading and controlling operations within an organisation and who reports directly to a Principal.

2 CONDITIONS ASSOCIATED WITH THE GRANTING OF EVALUATION POINTS IN RESPECT OF EQUITY OWNERSHIP

The tendering entity undertakes to:

- a) claim the preference in section 3 and accept the sanctions provided in the Contract (See);
- b) ensure for the duration of the contract that not less than the nominated percentage equity of the contracting entity is owned by BBEs or Black Persons or both;
- c) ensure that BBEs and Black Persons in addition to owning equity in the contracting entity, participate in the strategic and managerial workings of the contracting entity;
- d) empower Black Persons in the performance of the contract;
- e) complete the Enterprise Declaration Affidavit as per the proforma attached to this schedule in respect of the tendering entity and each and every Black Business Enterprise having ownership in the tendering entity at the RFP stage;
- f) submit Black Person Declaration Affidavits as per the proforma included in this schedule in respect of each person claiming such status at the RFP stage; and
- g) furnish the Employer's representative with the following in order to demonstrate compliance at the commencement of the Design and Build Phase and each year of the Operational Phase:
 - I. a schedule of the equity ownership of all natural and juristic persons within the concessionaire prepared and certified by the concessionaire's auditors;
 - II. completed Black Business Enterprise Declaration Affidavits as per the proforma attached to this schedule in respect of each and every BBE owning equity within the concessionaire;
 - III. completed Black Person Affidavits as per the proforma included in this schedule in respect of each and every Black Person owning equity within the concessionaire or in a BBE;
 - IV. the managerial configuration of the concessionaire, which shall, *inter alia*, describe the strategic and managerial workings of the concessionaire;
 - V. a brief report which describes how BBEs and / or Black Persons in the contracting entity have been empowered in the period preceding the report; and
 - VI. an action plan which sets out the manner in which BBEs and / or Black Persons are to be empowered during the next year of operation.

3 TENDER EVALUATION POINTS CLAIMED

I/we apply on behalf of my/our tendering entity for the following evaluation points:

| Minimum nominated equity ownership by BBEs and Black Persons | Number of tender evaluation points that may be awarded | Preference claimed (Y= yes) |
|---|---|------------------------------------|
| 20% | 1 | |
| 30% | 4 | |
| 40% | 7 | |
| 50% | 10 | |

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the bidding entity confirms that he / she understands and accepts the conditions under which such evaluation point are granted.

Signature :

Name :

Duly authorised to sign on behalf of :

Telephone : Fax :

Date :

PREFERENCING SCHEDULE
(Second stage (Tender) / Request for proposals qualifications)

1 DEFINITIONS AND INTERPRETATIONS

The definitions contained in SANS 1914-6: Participation of targeted enterprises in concession contracts and the following definitions and interpretations shall apply to this schedule:

Assessment Date: a recurring date in the month following the month in which the Operational Phase began, agreed upon by the contracting entity and the department.

Black Business Enterprise (BBE): a sole trader, partnership or any legal entity, which adheres to statutory labour practices and is registered with the South African Revenue Services and is a continuing and Independent Enterprise operating for profit, providing a Commercially Useful Function which is in the Control of one or more Black Persons who are Principals and

- if a public company, then at least fifty percent of the Senior Managers shall be Black Persons; or
- if an enterprise other than a public company, then at least fifty one percent shall be Owned by one or more Black Persons.

Black Person : an individual who, being a South African citizen, falls into a population group that was disadvantaged by the legacy of apartheid, subject to persons who obtained South African citizenship after 27 April 1994 demonstrating traceable South African lineage. It is incumbent on individuals to demonstrate their claims to fall into such population groups on the basis of identification and association with and recognition by the members of such groups.

Commercially Useful Function: the performance of real and actual work, or the provision of services, in the discharge of any contractual obligation which shall include but not be limited to the performance of a distinct element of work which the business has the skill and expertise to undertake and the responsibility for management and supervision.

Control: the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial and financial authority and power in determining the policies and directing the operations of the business.

Design and Build Phase: the period beginning on the date upon which the Contract comes into effect and expiring on the Actual Completion Date as provided in the Contract.

Disability: a permanent, or prolonged impairment of physical, intellectual, or sensory structure, or function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.

Disabled Person: an individual who has a Disability and as a result suffers from loss, or limitation, of opportunity to take part equally with others in the context of any activity relating to the execution of a Contract.

Independent Enterprise: an enterprise that is free of any significant degree of direct or indirect Ownership, or Control, by any business which engages in the same business activities. Indicators of control shall, without limitation, include interlocking management or Ownership, common Principals, identity of interests among family members, shared facilities and equipment, or common use of employees.

Note: A business will not be considered to be an Independent Enterprise should another business or a Principal of another business which engages in the same business activities owns more than 20% of the equity in that business.

Managed : The possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial and financial authority and power in determining the policies and directing the operations of the business.

Owner: A person who has all the customary incidents of ownership, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest as demonstrated by an examination of

the substance, rather than the form of ownership arrangements.

Operational Phase means the period beginning on the Contractual Opening Date as defined in the Contract and terminating on the earlier of the termination of the Contract, or the expiry of the Contract as provided in the Contract.

Owned: having all the customary incidents of ownership, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest or shareholding as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

Principal: a person in a business who is a partner in a partnership, a sole proprietor, a director in a company established in terms of the Companies Act, or a member of a close corporation registered in terms of the Close Corporation Act.

Senior Manager: a full-time employee who is responsible for planning, organising, leading and controlling operations within an organisation and who reports directly to a Principal.

Small Business Enterprise (SBE): a sole trader, partnership or legal entity which adheres to statutory labour practices, is registered with the South African Revenue Services and is a Separate and Distinct Business Entity, including co-operative enterprises and non-governmental organisations, Managed by one Owner or more which, including its branches or subsidiaries, if any, is predominantly carried out in any sector or sub-sector of the economy mentioned in column 1 of the Schedule to the Small Business Act (Act 102 of 1996) and which can be classified as a micro - a very small - or a small enterprise by satisfying the criteria for full time paid employees, annual turnover and non-property asset value specified in columns 3, 4 and 5 of the Schedule opposite the smallest relevant size or class as mentioned in column 2 of the Schedule

Note: The National Small Business Act (Act 102 of 1996) provides the following tabulation in the Schedule to the Act:

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
|---|------------------------------|--|----------------------------------|---|
| SECTOR OR SUB-SECTORS IN ACCORDANCE WITH THE STANDARD INDUSTRIAL CLASSIFICATION | SIZE OR CLASS | TOTAL FULL-TIME EQUIVALENT OF PAID EMPLOYEES LESS THAN | TOTAL ANNUAL TURNOVER LESS THAN | TOTAL GROSS ASSET VALUE (FIXED PROPERTY EXCLUDED) LESS THAN |
| Mining and Quarrying | Small Very small Micro | 50 20 5 | R 7,50 m R 3,00 m R 0,15 m | R 4,50 m R 1,80 m R 0,10 m |
| Manufacturing | Small Very small Micro | 50 20 5 | R10,00 m R 4,00 m R 0,15 m | R 3,75 m R 1,50 m R 0,10 m |
| Construction | Small Very small Micro | 50 20 5 | R 5,00 m R 2,00 m R 0,15 m | R1,00 m R0,40 m R0,10 m |
| Wholesale Trade, Commercial Agents and Allied Services | Small Very small Micro | 50 10 5 | R25,00 m R 5,00 m R 0,15 m | R4,00 m R0,50 m R0,10 m |
| Transport, Storage and Communications | Small Very small Micro | 50 10 5 | R10,00 m R 2,00 m R 0,15 m | R2,50 m R0,50 m R0,10 m |

Separate and Distinct Business Entity : an enterprise which is free of any significant degree of direct or indirect Ownership, or Control, by any business which engages in similar business activities. Indicators of control shall, without limitation, include interlocking management or Ownership, common Principals, identity of interests among family members, shared facilities and equipment, or common use of employees.

Note: A business will not be considered to be a Separate and Distinct Business Entity should another business or a Principal of another business which engages in similar business activities own more than 20% of the equity in that business.

Women Business Enterprise (WBE): a sole trader, partnership or any legal entity, which adheres to statutory labour practices and is registered with the South African Revenue Services and is a continuing and Independent Enterprise

Principals and

- if a public company, then at least fifty percent of the Senior Managers shall be Women or
- if an enterprise other than a public company, then at least fifty one percent shall be Owned by one or more Women.

Woman: a female person who is a South African citizen, subject to persons who obtained South African citizenship after 27 April 1994 demonstrating traceable South African lineage.

2 CONDITIONS ASSOCIATED WITH THE GRANTING OF PREFERENCES

2.1 General

The tendering entity by claiming a preference accepts the sanctions provided in the Contract (See in respect of any breach of the conditions associated with the granting of preferences.

2.2 Conditions associated with preferences pertaining to contract participation goals

The tendering entity, undertakes to:

- 1) claim the preference in section 4;
- 2) complete the Contract Sum Analysis (see Annex A of SANS 1914-6)
- 3) engage Targeted Enterprises in accordance with the provisions of the SANS 1914-6: Participation of Targeted Enterprises in Concession Contracts in accordance with the provisions of 3 below; and
- 4) ensure that the nominated minimum contract participation goal is achieved in the performance of the contract.

2.3 Conditions associated with percentage of payroll set aside for the training of employees who are Black Persons, Women and Disabled Persons

The tendering entity undertakes to:

- 1) claim the preference in section 4;
- 2) detail proposals relating to the percentage of the payroll that will be set aside for the training of employees who are Black Persons, Women and Disabled Persons and the manner in which such training will take place in a separate schedule and attach such schedule to this preference schedule; and
- 3) ensure that the undertakings made in the schedule are adhered to in the performance of the contract.

2.4 Conditions associated with the preference relating to the employment of disabled persons

The tendering entity undertakes to:

- a) claim the preference in section 4;
- b) employ Disabled Persons for the duration of the contract commencing from the third year of operation; and
- c) ensure that the wages and allowances paid to Disabled Persons, expressed as a percentage of the total wages and allowances paid to all employees engaged in activities in relation to the contract is not less than the nominated percentage.

3 TARGETED CONSTRUCTION PROCUREMENT SPECIFICATION SANS 1914-6

The parameters and variations to SANS 1914-6: Participation of targeted enterprises in concession contracts are set out below. Should any requirements of any variations conflict with requirements of SANS 1914-6, the requirements of the variations shall prevail.

- 1) The following subcategories of Targeted Enterprises shall apply to the Contract:
 - i) Black Business Enterprise (BBE)
 - ii) Small Business Enterprise (SBE)
 - iii) Women Business Enterprise (WBE)
- 2) The minimum Contract Participation Goal in the first three years of the Operational Phase shall not be less than fifty percent of the Contract Participation Goal for the forth and subsequent years.

3) The Contractor shall in satisfying the Contract Participation Goal requirements of subclause 3.1.2 of the SANS 1914-6 secure the participation of Targeted Enterprises which meet the requirements for BBE's, SBEs and WBEs such that their minimum participation levels are not less than:

Design and Build Phase

| | | |
|------|---|-------------------------------------|
| BBEs | : | no minimum requirement |
| SBEs | : | 50% of Contract Participation Goal |
| WBEs | : | 7,5% of Contract Participation Goal |

Operational Phase

| YEAR OF OPERATION | MINIMUM PERCENTAGE OF CONTRACT PARTICIPATION GOAL FOR A YEAR OF OPERATION | | |
|-----------------------|---|------|-------|
| | BBEs | SBEs | WBE |
| 1 to 3 | No minimum requirement | 75% | 5% |
| 4 | No minimum requirement | 60% | 10% |
| 5,6,7,8and 9 | No minimum requirement | 50% | 12,5% |
| 10 & subsequent years | No minimum requirement | 30% | 15% |

Example : A Contractor is awarded a contract where the Net Amount for the Design and Build Phase amounts to R100 m. The Contractor is required to engage Targeted Enterprises in the due performance of the contract to the extent that their total Rand value of their engagements amounts to 25% of R100 m = R25m. The Contractor in the fifth year of operation must ensure that at least $0,50 \times R25m = R12,50m$ of the R25m is spent on the engagement of SBEs and at least $0,125 \times R25m = R3,125m$ is spent on the engagement of WBEs.

4) Targeted Enterprise Declaration Affidavits shall be in accordance with that attached to this schedule. Contractors shall in addition complete Black Person Declaration Affidavits in respect of Black Persons who need in terms of the Contract to be recognised as such.

5) Credit towards the Contract Participation Goal granted in terms of Clause 3.3 in respect of a Woman Business Enterprise will be reduced by 25 (twenty five) percent where the enterprise is not solely or wholly owned by Black Persons.

4 TENDER PREFERENCE CLAIM

I/we apply on behalf of my/our tendering entity the following preferences:

| Category of preference | Nominated parameter | Number of tender evaluation points that may be awarded | Preference claimed (Y= yes) |
|---|---|---|-----------------------------|
| Minimum Contract participation goal (design and build phase) | 10% | 1 | |
| | 20% | 2 | |
| | 30% | 3 | |
| | 40% | 4 | |
| | 50% | 5 | |
| Minimum Contract participation goals (operational phase) in the forth and subsequent years of operation | 5% | 1 | |
| | 10% | 2 | |
| | 15% | 3 | |
| | 20% | 4 | |
| | 25% | 5 | |
| Percentage of payroll set aside for the training of employees who are Black Persons, Women and Disabled Persons | As submitted by tenderer in separate schedule | 2 points being awarded for the most favourable proposal; 0 points being awarded to the least favourable proposal, and others in between in proportion to their ranking. | |

| | | | |
|--|------|---|--|
| | 2,5% | 2 | |
|--|------|---|--|

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the firm confirms that he / she understands the conditions under which such preferences are granted and confirms that the tenderer satisfies the conditions pertaining to the granting of tender preferences.

Signature :

Name :

Duly authorised to sign on behalf of :

Telephone : Fax :

Date :

Annexure 5: Black Person Declaration Affidavit

BLACK PERSON DECLARATION AFFIDAVIT

(to be signed in the presence of a Commissioner of Oaths)

The undersigned confirms that he/she is:

- a Black Person as defined, and
- the contents of this Affidavit are to the best of his/her belief both true and correct.

Signature.....

Name.....

Identity number:.....

Address.....

.....

.....

Telephone

Signed and sworn to before me at.....
on this the day of by the Deponent, who has
acknowledged that he/she knows and understands the contents of this Affidavit, that it is true and correct
to the best of his/her knowledge and that he/she has no objection to taking the prescribed oath, and that
the prescribed oath will be binding on his/her conscience.

Commissioner of Oaths.....

Annexure 6: Sample clauses required to activate preferencing in the Tender Data where use is made of the Standard conditions of Tender contained in Annex F of SANS 294.

Clauses should be drafted along the following lines be included in the Tender Data:

| Clause | Guidance |
|--|---|
| F.3.11 The procedure for evaluation of responsive tender offers is Method | <p>Enter Method 1 or 2. <i>Method 1 may only be used if the value of the contract inclusive of VAT is estimated to be less than R30 000.</i></p> |
| F.3.11 The value of W_1 used in the formula for scoring financial offers is..... | <p>Enter the required information. <i>The evaluation points for preferences should be based on the estimated Rand Value of the contract inclusive of VAT:</i></p> <ul style="list-style-type: none"> • up to R 500 000 20 • >R 500 000 10 <p><i>The sum of the maximum evaluation points allocated for financial offer and preferences and quality, if any, must equal 100 (i.e.: $W_1 + W_P + W_Q = 100$).</i></p> |
| F.3.11 Up to tender evaluation points (W_P) will be awarded to tenderers who complete the Preferencing Schedule (Direct preference) and who are found to be eligible for the preference claimed. The number of tender evaluation points that will be assigned in respect of each targeted enterprise will be as follows: | <p>Omit if Method 1 is adopted or the Direct Participation preferencing option is adopted.</p> <p>Enter in the the maximum number of evaluation points for preferences – viz: <i>for estimated Rand Value of the contract inclusive of VAT</i></p> <ul style="list-style-type: none"> • up to R 500 000 20 • >R 500 000 10 |
| <p>F.3.11 Up to tender evaluation points (W_P) will be awarded to tenderers who complete the Preferencing Schedule (direct participation) and who are found to be eligible for the preference claimed in accordance with the following formula:</p> $W_P = (D_1 - D_s) / (D_H - D_s)$ <p>Where: D_1 is the tendered Contract Participation Goal D_H is the maximum Contract Participation Goal above which no further tender evaluation points are granted, namely</p> <p>D_s is the minimum Contract Participation Goal, below which no tender evaluation points are granted, namely</p> | <p>Delete row if preferences for Direct Preference are applicable.</p> <p>Enter in the form field the maximum number of evaluation points for preferences – viz: <i>for estimated Rand Value of the contract inclusive of VAT</i></p> <ul style="list-style-type: none"> • up to R 500 000 20 • >R 500 000 10 <p><i>and the maximum CPG above / below which no further tender evaluation points are granted.</i></p> |

Annexure 7: Proforma data capture forms

FORM 1 (To be completed upon award of contract)

1. GENERAL INFORMATION

Name of compiler _____ Telephone _____

Contract / Tender No. _____

Reference No. _____

Date of award _____ Contract period _____

Contract description _____

Procurement Activity Sector Code Number _____

(Refer to annex C of SANS 10403: Formatting and compilation of procurement documents)

2 TARGETING STRATEGY

(Tick appropriate box)

None
 Direct preference
 Direct participation
 Other (describe).....
.....

3. PARTICULARS OF THE SUCCESSFUL TENDERER/CONTRACTOR

3.1 GENERAL

Name of firm / joint venture.

a) Postal address:

.....

b) Physical address:

.....

c) Telephone No.:

d) Facsimile:

e) Name of contact person:

f) Company / enterprise income tax reference number:

g) VAT registration number

h) Type of company

- Privately owned
- Listed on Johannesburg Stock Exchange
- Other

3.2 EMPOWERMENT DATA (INCLUDE / FILL IN APPROPRIATE DATA)

3.3.1 Privately Owned companies (single firms and joint ventures)

a) Percentage Ownership by:

| | | |
|---------------------|-------|---|
| Black persons | | % |
| Women | | % |
| Other persons/firms | | % |
| Total | 100% | |

b) Number of Senior and executive managers (only in companies with more than 50 employees).

| | | |
|----------------|-------|---|
| Black managers | | % |
| Women managers | | % |
| Other managers | | % |
| Total | 100% | |

3.3.2 Company listed on the Johannesburg Stock Exchange

No of Executive Directors

| | | |
|---------------|-------|---|
| Black person | | % |
| Women | | % |
| Other persons | | % |
| Total | 100% | |

3.4 CONTRACT PARAMETERS

(Note: complete 3.4.1 and either 3.4.2 or 3.4.3 if response to question 2 is not "none" or "other")

3.4.1 Price

Value of contract upon award (i.e. Rand value including VAT and allowances : R.....)

3.4.2 Direct preference

Direct preference granted in respect of: (Tick appropriate box(es))

- Black Business Enterprise
- Women Business Enterprise
- Transforming Enterprise (Black Person) Type 1
- Transforming Enterprise (Black Person) Type 2
- Transforming Enterprise (Woman) Type 1
- Transforming Enterprise (Woman) Type2
- Local Enterprise
- SMME
- Small Business Enterprise

3.4.3 Direct participation

a) Type of enterprise targeted in terms of resource specification (tick one box only)

- Black Business Enterprise
- Women Business Enterprise
- Local Enterprise

- SMME
- Small Business Enterprise

Contract Participation Goal%
Value of contract excluding allowances and VAT R.

b) Resource specification used

- SANS 1914-1: Participation of targeted enterprises
- SANS 1914-2: Participation of targeted partners in joint ventures
- SANS 1914-3: Participation of targeted enterprises and partners in joint ventures
- SANS 1914-4: Participation of targeted enterprises and targeted labour (local resources)
- SANS 1914-5: Participation of targeted labour
- SANS 1914-6: Participation of targeted enterprises in concession contracts

3.5 PARTICULARS OF LOWEST RESPONSIVE TENDERER (I.E. TENDERER WHO MEETS ALL THE REQUIREMENTS AND WHOSE PRICE WAS USED TO EVALUATE THE ADJUDICATION POINTS FOR OTHER TENDERERS), IF APPLICABLE

3.5.1 GENERAL

Name of Firm:

- a) Postal address:
- b) Physical address

c) Telephone:

3.5.2 TENDER PRICE

Tender price including allowances and VAT R.

FORM 2:
(To be completed upon completion of contract)

1 GENERAL INFORMATION

Name of compiler Telephone

Contract / Tender No. Reference No.

Completion date

Contract description

.....

.....

2 COST AND TIME

2.1 Final contract value (including VAT and escalation, but excluding any penalties imposed)
R.....

2.2 Actual contract period (weeks)

2.3 Extension of time granted (weeks)

2.4 Was the contract completed within original contract period ? (YES / NO)
If no, were penalties applied for late completion (YES / NO)
If yes, state amount of penalty imposed R

2.5 If not completed within the contract period, give reason :
.....
.....

3. SOCIO ECONOMIC DATA (tick appropriate box/es)

Were penalties applied for non-compliance (YES / NO)

If yes, answer questions 3.1 or 3.2

3.1 Direct preferences

Were penalties applied for non-compliance (YES / NO)
If yes, state amount of penalty imposed R

3.2. Direct participation

If yes, complete the following :
Amount of penalty R.....
Contract Participation Goal achieved%
Goal Participation Goal required%

3.2 Other

If yes, provide particulars:

.....

State reason for non-compliance :

.....

.....

.....

FORM 3

(To be completed upon termination of the contract)

1 GENERAL INFORMATION

Name of compiler Telephone

Contract / Tender No. Reference No.

Completion date

Contract description

.....

.....

2. BASIC REASONS FOR CANCELLATION

(Tick appropriate box(es))

2.1 Circumstance within the contractor's control.
2.2 Circumstances beyond the contractor's control, specify

2.3 Reasons of the Employer
2.4 Failure to commence the contract
2.5 Failure to provide sureties / guarantees
2.6 Other, (specify)

3 SPECIFIC REASONS FOR CANCELLATION

3.1 If 2.1 is selected give reason for cancellation viz. :

(Tick one box)

a) Failure to perform
b) Failure to perform on time
c) Unable to produce acceptable goods
d) Unwilling to perform
e) Other (specify)

3.2 If 2.3 is selected, provide a reason for cancellation viz. :

(Tick one box)

a) Insufficient funding available
b) Goods, services or works no longer required
c) Other, specify

4. CONTRACT DATA

4.1 Total amount paid to contractor (including VAT) R.....

4.2 Credits granted towards the attainment of Contract Participation Goal, if applicable.