	<b>Work Instructions</b>	<b>Procurement &amp; Supply Chain Management</b>
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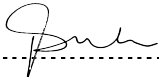
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<b>Content</b>	<b>Page</b>
1. Introduction.....	3
2. Supporting Clauses .....	3
2.1 Scope .....	3
2.1.1 Purpose.....	4
2.1.2 Applicability .....	4
2.1.3 Effective date.....	4
2.2 Normative/Informative References .....	5
2.2.1 Normative.....	5
2.2.2 Informative.....	5
2.3 Definitions .....	5
2.3.1 Black Person .....	5
2.3.2 51% Black Owned .....	5
2.3.3 51% Black Women Owned .....	6
2.3.4 Designated Sector .....	6
2.3.5 Proof of B-BBEE status level of contributor .....	6
Means: 6	
2.4 Abbreviations .....	6
2.5 Roles and Responsibility .....	6
2.6 Process for Monitoring.....	7
2.7 Related/Supporting Documents.....	7
3. Procurement (Acquisition) .....	7
3.1 80/20 preference point system for acquisition of goods or services for Rand value equal to or below R50 million .....	7
3.2 90/10 preference point system for acquisition of goods or services for Rand value above R50 million.....	8
3.3 Allocation of preference points (20/10) .....	9
3.4 Procurement (Income-generating transactions) .....	10
a) 80/20 preference point system for income-generating contracts with a Rand value equal to or below R50 million .....	10
b) 90/10 preference point system for income-generating contracts with a Rand value above R50 million .....	11
3.5 Allocation of preference points (20/10) .....	12
3.5.1 Objective Criteria.....	12
3.6 Other offences and penalties.....	17
4. Acceptance.....	18
5. Revisions.....	18
6. Development Team .....	18
7. Acknowledgements .....	18

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## **1. Introduction**

The Constitutional Court impugned the Preferential Procurement Regulations 2017 as they were “not necessary or expedient” to be prescribed by the Minister. In setting aside, the Preferential Procurement Regulations, the Constitutional Court ruled that it should have been left to the organs of state to determine their preferential procurement policies in line with the framework prescribed in the Procurement Act.

Section 2(1)(b) and (c) of the Procurement Act, requires that the Minister prescribes by regulation only the threshold amounts in which the 80/20 and 90/10 preference point systems must be utilised, as well as the formula to be applied, leaving the rest to the state-owned organs. The Preferential Procurement Regulations 2022 have since been published in line with sections 2(2)(b) and (c) of the Procurement Act.

Eskom is mandated to revise its preferential procurement policy which was derived in the main from the impugned PPR 2017 in compliance to the Constitutional Court judgement and based on the framework prescribed in Section 2 of the Procurement Act.

Section 217 of the Constitution allows state owned organs to implement procurement policies providing for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination if they are formulated within the framework prescribed in the national legislation. To this end, Eskom as an organ of state has chosen B-BBEE as its specific goal.

## **2. Supporting Clauses**

### **2.1 Scope**

Section 2 of the Preferential Procurement Act: Framework for implementation of preferential procurement policy gives effect to the Preferential Procurement as required by Section 217(3) of the Constitution. An organ of state must determine its preferential procurement policy and implement it within the following framework:

A preference point system must be followed;

- 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.
- 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.

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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.

This document is meant to provide guidelines on the implementation of Section 217 (2) of the Constitution, Section 2 (d) (i) (ii), (e) and (f) of the Preferential Procurement Policy Framework Act, 5 of 2000 and its new Regulations of 2022 as well as Eskom Procurement and Supply Chain Management Procedure Revision 5 of 2023.

As a State-Owned Company, Eskom must align with the government's development and growth initiatives. It has committed itself to local development initiatives with the aim of increasing the competitiveness, capacity, and capability of its local supply base as well as support government's goals of shared growth, employment creation, poverty reduction and skills development. Although managed by various Government departments, all local development programs have the following overlapping objectives:

- Skills Development,
- Supplier/Enterprise Development,
- Job Creation and Employment, Localisation (procurement spend on local manufacturers),
- Industrialisation (investment in manufacturing plant) National Industrial Participation Programme (NIPP), and
- Transformation through Broad-Based Black Economic Empowerment.

### **2.1.1 Purpose**

The Supplier Development, Localisation and Industrialisation (SDL&I)'s mandate is to achieve maximum and sustainable local development impact through leveraging Eskom's procurement spend in a flexible manner within the business to accommodate Eskom's business imperatives and government's local development initiatives and policies.

All these should be achieved within the context of Eskom's Procurement and Supply Chain Management Procedure which is based on the Preferential Procurement Policy Framework

### **2.1.2 Applicability**

This document shall apply throughout Eskom Holdings Limited Divisions and its Subsidiaries.

### **2.1.3 Effective date**

This document is effective from the 16 January 2023

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## **2.2 Normative/Informative References**

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

Preferential Procurement Policy Framework Act 5 of 2000

Preferential Procurement Regulations 2022

Broad-Based Black Economic Empowerment Act 46 of 2013

### **2.2.1 Normative**

[1] Preferential Procurement Policy Framework Act 5 of 2000

[2] Preferential Procurement Regulations 2022

[3] Broad-Based Black Economic Empowerment Act 46 of 2013

### **2.2.2 Informative**

[1] 32-1034 Eskom Procurement Procedure

## **2.3 Definitions**

### **2.3.1 Black Person**

Means Africans, Coloureds, Indians & Chinese:

- Who are citizens of the Republic of South Africa by birth or decent; or
- Who became citizens of the Republic of South Africa by naturalisation-
- Before 27 April 1994; or
- On or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date

### **2.3.2 51% Black Women Owned**

Means entity in which:

- a) Black women hold at least 51% of the exercisable voting rights as determined under Codes series 100 of the Dtic Codes of Good Practice as amended;
- b) Black women hold at least 51% of the economic interest as determined under Codes series 100 of the Dtic Codes of Good Practice as amended; and
- c) Has earned all the points for Net Value under statement 100 of the Dtic Codes of Good Practice as amended

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### **2.3.3 51% Black Owned**

Means entity in which:

- d) Black people hold at least 51% of the exercisable voting rights as determined under Codes series 100 of the Dtic Codes of Good Practice as amended;
- e) Black people hold at least 51% of the economic interest as determined under Codes series 100 of the Dtic Codes of Good Practice as amended; and
- f) Has earned all the points for Net Value under statement 100 of the Dtic Codes of Good Practice as amended

### **2.3.4 Designated Sector**

Is a Designated Sector/ Subsector/Industry/Product in accordance with National Development and Industrial Policies for Local Production and Content, where only locally produced services/goods or locally manufactured goods meet the stipulated minimum threshold for local production and content taking into account economic and other relevant factors.

### **2.3.5 Proof of B-BBEE status level of contributor**

Means:

- a) the B-BBEE status level certificate issued by an authorised body or person; or
- b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- c) any other requirement prescribed in terms of the B-BBEE Act

## **2.4 Abbreviations**

<b>Abbreviation</b>	<b>Explanation</b>
B-BBEE	Broad-Based Black Economic Empowerment
PPR	Preferential Procurement Regulations
PPPFA	Preferential Procurement Policy Framework Act

## **2.5 Roles and Responsibility**

[1] Chief Procurement Officer (CPO)

The CPO, appointed by the Eskom Board of Directors to lead Group Commercial with its departments, including SDL&I (incorporating the Preferential Procurement function), implements and manages all commercial transactions and development interventions related thereto. The CPO is therefore the custodian of Preferential Procurement and is responsible for the approval of all Preferential Procurement related policies, procedures and processes.

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[2] Senior Manager SDL&I

The Senior Manager of SDL&I is mandated by Group Commercial Division of Eskom Holdings Limited to develop policies and procedures, design and implement processes and activities, and manage all supplier development, localisation and industrialisation processes, and activities relevant to commercial transactions within Eskom, including Preferential Procurement.

## **2.6 Process for Monitoring**

The monitoring process will be conducted by SDL&I and Contracts Management.

## **2.7 Related/Supporting Documents**

- [1] Preferential Procurement Policy Framework Act
- [2] Preferential Procurement Regulations 2022
- [3] Broad-Based Black Economic Empowerment Act (As amended)
- [4] B-BBEE Codes of Good Practice (As amended)

## **3. Procurement (Acquisition)**

### **3.1 80/20 preference point system for acquisition of goods or services for Rand value equal to or below R50 million**

The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for price of tender under consideration

$P_t$  = Price of tender under consideration

$P_{\min}$  = Price of lowest acceptable tender

Prices will be evaluated as follows:

- Inclusive of VAT
- Making the specified correction for arithmetical errors
- Excluding contingencies in any bill of quantities or activity schedule.
- Making an appropriate adjustment for any other acceptable variations, deviations, or alternative tenders submitted.

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- Making a comparison of the Net Present Value of each adjusted tender based on the tendered programme (if provided) and prices, on the estimated effect of Price Adjustment Factors and rate of exchange fluctuations (if applicable) and on other evaluation parameters relating to uncertainty and risk, where applicable.
- Unconditional discounts must be taken into account for evaluation purposes.
- Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is effected.

A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender. The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places. Subject to section 2(1)(f) of the Preferential Procurement Policy Framework Act, the contract must be awarded to the tenderer scoring the highest points.

### **3.2 90/10 preference point system for acquisition of goods or services for Rand value above R50 million**

The following formula must be used to calculate the points out of 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

$$P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for price of bid under consideration

$P_t$  = Price of bid under consideration

$P_{\min}$  = Price of lowest acceptable bid

Prices will be evaluated as follows:

- Inclusive of VAT
- Making the specified correction for arithmetical errors
- Excluding contingencies in any bill of quantities or activity schedule.
- Making an appropriate adjustment for any other acceptable variations, deviations, or alternative tenders submitted.
- Making a comparison of the Net Present Value of each adjusted tender based on the tendered programme (if provided) and prices, on the estimated effect of Price Adjustment Factors and rate of exchange fluctuations (if applicable) and on other evaluation parameters relating to uncertainty and risk, where applicable.
- Unconditional discounts must be taken into account for evaluation purposes.
- Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is affected.

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A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender. The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places. Subject to section 2(1)(f) of the Preferential Procurement Policy Framework Act, the contract must be awarded to the tenderer scoring the highest points.

### **3.3 Allocation of preference points (20/10)**

Preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points (90/10 system)</b>	<b>Number of points (80/20 system)</b>
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

To claim preference points, a tenderer must submit the proof of B-BBEE status level of contributor (e.g. a valid B-BBEE certificate issued by a SANAS accredited verification agency / sworn affidavit / CIPC affidavit)

Failure on the part of a supplier to submit “proof of B-BBEE status level of contributor” for purposes of evaluation and scoring by the tender closing will not result in disqualification (if tenderer is otherwise deemed to be responsive/acceptable in all other aspects). The tenderer will, however, be scored zero on B-BBEE for purposes of PPPFA scoring and ranking.

A tenderer may not be awarded points for B-BBEE status level if the tender documents indicate that the tenderer intends to subcontract more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

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### **3.4 Procurement (Income-generating transactions)**

#### **a) 80/20 preference point system for income-generating contracts with a Rand value equal to or below R50 million**

The following formula must be used to calculate the points for price in respect of a tender for income-generating contracts with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

$$Ps = 80 \left( 1 + \frac{Pt - Pmax}{Pmax} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

Prices will be evaluated as follows:

- Inclusive of VAT
- Making the specified correction for arithmetical errors
- Excluding contingencies in any bill of quantities or activity schedule.
- Making an appropriate adjustment for any other acceptable variations, deviations, or alternative tenders submitted.
- Making a comparison of the Net Present Value of each adjusted tender based on the tendered programme (if provided) and prices, on the estimated effect of Price Adjustment Factors and rate of exchange fluctuations (if applicable) and on other evaluation parameters relating to uncertainty and risk, where applicable.
- Unconditional discounts must be considered for evaluation purposes.
- Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is effected.

A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender. The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places. Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

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**b) 90/10 preference point system for income-generating contracts with a  
Rand value above R50 million**

The following formula must be used to calculate the points out of 90 for price in respect of an income generating tender with a Rand value above R50 million, inclusive of all applicable taxes:

$$Ps = 90 \left( 1 + \frac{Pt - Pmax}{Pmax} \right)$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmax = Price of highest acceptable bid

Prices will be evaluated as follows:

- Inclusive of VAT
- Making the specified correction for arithmetical errors
- Excluding contingencies in any bill of quantities or activity schedule.
- Making an appropriate adjustment for any other acceptable variations, deviations, or alternative tenders submitted.
- Making a comparison of the Net Present Value of each adjusted tender based on the tendered programme (if provided) and prices, on the estimated effect of Price Adjustment Factors and rate of exchange fluctuations (if applicable) and on other evaluation parameters relating to uncertainty and risk, where applicable.
- Unconditional discounts must be taken into account for evaluation purposes.
- Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is affected.

A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender. The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places. Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

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### **3.5 Allocation of preference points (20/10)**

Preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points (90/10 system)</b>	<b>Number of points (80/20 system)</b>
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

To claim preference points, a tenderer must submit the proof of B-BBEE status level of contributor (e.g., a valid B-BBEE certificate issued by a SANAS accredited verification agency / sworn affidavit / CIPC affidavit)

Failure on the part of a supplier to submit “proof of B-BBEE status level of contributor” for purposes of evaluation and scoring by the tender closing will not result in disqualification (if tenderer is otherwise deemed to be responsive/acceptable in all other aspects). The tenderer will, however, be scored zero on B-BBEE for purposes of PPPFA scoring and ranking.

A tenderer may not be awarded points for B-BBEE status level if the tender documents indicate that the tenderer intends to subcontract more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

#### **3.5.1 Objective Criteria**

The inclusion of objective criteria in an enquiry is not mandatory but a condition for contract award, and if included, this must align with the requirements of the PPPFA [clause 2(1)(f)] and be clearly stated in the enquiry together with the consequence of such objective criteria (i.e., if the tenderer does not meet objective criteria; it may lead to the second-ranked tenderer being recommended for award).

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### **3.5.1.1 SDL&I Objectives in line with implementing RDP Goals**

The procurement practitioner, together with SDL&I, may request tenderers to make further proposals to advance designated groups. If this is the case, then Eskom's proposed targets must be specified in the tenderer's SDL&I Bidder Template/ Annexure and included in the strategy as well as in the enquiry as a tender returnable to be submitted before contract award to allow for negotiation and agreement on the targets, where applicable.

### **3.5.1.2 Local Content and Production**

- **Designated sectors**

As part of the government's industrialisation policy, the government adopted the designation of sectors and products for local production and content to be supported through public procurement. Procurement of locally manufactured products applies to all procurement irrespective of the value and method of procurement where suppliers are invited.

Tenders in respect of goods or services that have been designated for local production and content, **must** contain a specific bidding condition (treated as an objective criterion) that only locally produced goods or services with a stipulated minimum threshold for local production and content will be considered as a condition for contract award, unless there is a particular reason from the division responsible for the transaction why those designated goods cannot be stipulated in the tender as objective criteria.

The exemption not to advertise the designated goods must be obtained from the Executive Committee for the division or subsidiary, any request for exemption from advertising a tender for designated goods must be supported by market intelligence, engagements with local manufacturers and suppliers for the goods who can attest to procurement requesting the goods external to the local environment.

The procurement practitioner must stipulate in tender invitations that the exchange rate to be used for the calculation of local content (local content and local production are used interchangeably) must be the exchange rate published by the SARB on the date of the advertisement of the tender.

Only the technical specification number SATS 1286:201x approved by South African Bureau of Standards (SABS) must be used to calculate local content (LC). The formula to calculate LC must be disclosed in the bid/ tender documentation.

The LC as a percentage of the bid/ tender price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 201x as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

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y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the SARB on the date of advertisement of the tender. The SBD 6.2 (Declaration Certificate for Local Content) must form part of the bid/ tender documentation.

The Declaration Certificate for Local Content (SBD 6.2) and corresponding annexures C, D and E must be completed and duly signed. The procurement practitioner, in consultation with nominated forex coordinators must verify the accuracy of the rates of exchange quoted by the tenderer.

In relation to a designated sector, a supplier must not be allowed to sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

- **NIPP Requirements**

Eskom will implement the NIPP requirement, which determines that the contractor/supplier has to contact the Department of Trade, Industry and Competition (DTIC) to arrange for support and development of local businesses. Eskom is required to inform the tenderers of this requirement. NIPP will only be applicable for contracts with an FGN component or content of USD 5 million or more.

The following narrative must be captured in all tenders that have import/foreign content equal to or in excess of USD 5 million:

“NIPP is a programme that seeks to leverage economic benefits and support the development of South African industry by effectively utilising the instrument of government procurement. The NIPP programme is mandatory for all government and parastatal purchases or lease contracts (goods and services) with an imported content equal to or exceeding USD 5 million.

“The programme targets South African and foreign industries, enterprises, and suppliers of goods and services to government/parastatals, where the imported content of such goods and services equals to or exceeds USD 5 million. The first customer of NIPP is the South African industry that benefits through the NIPP business plans, which, when implemented, generate new or additional business activities through one or more of the following: investment, export opportunities, job creation, increased local sales, SMME and BEE promotion, R&D, and technology transfer.

“Companies with an NIPP obligation must sign this obligation agreement with the Department of Trade, Industry and Competition (dtic) before the contract with Eskom Holdings SOC Ltd, as a purchasing entity, is signed. The obligation agreement governs the relationship between the dtic and the supplier. It defines the NIPP obligation value(s), requirements to fulfil the NIPP obligation, performance milestones, performance monitoring processes, and the NIPP credit allocation criteria.

“All tenders with an import content that is equal to or exceeds the threshold of USD 5 million compels the winning bidder to negotiate and enter into a NIPP obligation agreement with the dtic before signing the contract with Eskom.”

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- **NIPP Reporting requirements**

For all contracts equal to or in excess of USD 5 million, PSCM must engage with SDL&I and furnish the following information to the dtic five working days after the award of the tender (note that if a contract is not subsequently concluded, the dtic must be informed accordingly):

Bid number; description of the goods or services; date on the letter of intent to award the contract; name, address and contact details of the contractor; value of the contract; and imported content of the contract, if possible.

The dtic and Eskom are required to provide the DPE with a quarterly report on all contracts awarded with imported content equal to or more than USD 5 million during that quarter. For this purpose, Eskom's Procurement/SDL&I must report to the dtic on the last business day of the quarter for the purposes of consolidation and reporting to the DPE.

### **3.5.1.3 Mandatory subcontracting on contracts above R30 million as a condition for contract award**

**If feasible to subcontract for a contract above R30 million, Eskom:**

- a) must apply subcontracting to previously designated groups.
- b) must advertise the tender with a specific condition for contract award that the successful tenderer must subcontract a minimum of 30% of the value of the contract to:
  - an EME or QSE;
  - an EME or QSE, which is at least 51% owned by black people;
  - an EME or QSE, which is at least 51% owned by black people who are youth;
  - an EME or QSE, which is at least 51% owned by black people who are women;
  - an EME or QSE, which is at least 51% owned by black people with disabilities;
  - an EME or QSE, which is 51% owned by black people living in rural or underdeveloped areas or townships;
  - a cooperative, which is at least 51% owned by black people;
  - an EME or QSE, which is at least 51% owned by black people who are military veterans;
  - or
  - more than one of the categories referred to in paragraphs (a) to (h).

Subcontracting, in this instance, will be treated as a condition for contract award. A supplier awarded a contract may not subcontract more than 25% of the value of the contract to any other entity that does not have an equal or higher B-BBEE status level of a contributor than the supplier concerned unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

### **3.5.1.4 Enterprise development**

If enterprise development has been identified as a vehicle to support black business (through market research establishing that there are sufficient and capable suppliers in the relevant sector that can be developed), then this must be populated accordingly in the SDL&I undertaking.

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SDL&I may further embark on an initiative (e.g. SHEQ workshops, etc.) to ensure the readiness of identified suppliers to participate in future procurement opportunities.

Reasonable care must be taken to be fair towards all tenderers in that sector, not only those belonging to a specific organisation/group/forum. Therefore, tenderers must be sourced from the CSD. A random list of suppliers will be obtained with each search for potential tenderers on the CSD.

Enterprise development can be used to support and develop EMEs/QSEs that are more than 50% black owned.

If SDL&I identifies enterprise development as a mechanism to support EMEs/QSEs in a specific enquiry, an enterprise and supplier development agreement must be included in the enquiry and be completed by the tenderer and the EME/QSE beneficiary.

The tenderer will then submit the enterprise and supplier development agreement between it and the EME/QSE beneficiary to Eskom within the specified agreed period after the contract award. Tenderers may undertake to develop suppliers in specific areas such as financial, technical, and/or contractual development.

Development points can also be scored by Eskom when paying EMEs/QSEs in a shorter payment cycle than the norm (currently, payments are done within 15 days instead of 30 days).

An enterprise and supplier development agreement must be entered into between Eskom and the EME/QSE beneficiary when planning to pay within 15 days.

#### **3.5.1.5 Skills development**

Where applicable, SDL&I must determine the applicable skills development targets per contract. Care must be taken not to request unrealistic targets.

#### **3.5.1.6 Job creation**

Where applicable, SDL&I must determine the applicable job creation targets per contract. Care must be taken not to request unrealistic targets.

#### **3.5.1.7 Skills transfer**

Where applicable, SDL&I must determine the applicable skills transfer to Eskom or a JV partner per contract. Care must be taken not to request unrealistic targets.

#### **3.5.1.8 B-BBEE Improvement or Retention Plan**

Transformation remains an area of focus, where Eskom continuously strives to align itself with national transformation imperatives to unlock growth, drive industrialisation, create employment and contribute to skills development.

Eskom encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas suppliers will be allocated points in terms of a preference point system based on specific goals, Eskom may request that suppliers submit either the B-BBEE improvement or retention plan as part of the SDL&I contractual obligation implementation plan.

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The B-BBEE improvement or retention plan will indicate the extent to which the contracted supplier will maintain (only if the supplier has a B-BBEE Status of Level 1 contributor) or improve its B-BBEE status over the contract period.

Suppliers with a B-BBEE recognition status of Level 5 to Level 8 or non-compliant, will be expected to migrate to a milestone of B-BBEE status Level 4 contributor by the end of the first year of the contract and thereafter improve by at least one B-BBEE status Level higher from the second year of the contract.

#### **3.5.1.9 Remedies**

In line with Regulation 9(1) of the PPR 2022, if an organ of state is of the view that a tenderer submitted false information regarding a specific goal, it must (a) inform the tenderer accordingly; and (b) give the tenderer an opportunity to make representations within 14 days as to why the tender may not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part. (2) After considering the representations referred to in subregulation (1)(b), the organ of state may, if it concludes that such information is false (a) disqualify the tenderer or terminate the contract.

#### **3.5.1.10 B-BBEE compliance**

In terms of the B-BBEE framework, all businesses or entities that undertake any economic activity with Eskom and its subsidiaries, including any other business or entity that undertakes any economic activity, whether direct or indirect, with Eskom and its subsidiaries, are measurable under the dtic's codes of good practice (meaning as a **non-negotiable** they have to submit a valid B-BBEE certificate or proof of B-BBEE compliance derived from the relevant B-BBEE prescription).

Based on the above, a valid B-BBEE certificate or proof of B-BBEE compliance (e.g. valid affidavit, CIPC affidavit) is a mandatory requirement for contract award – as such, no contract or purchase order may be awarded to a supplier without providing status of B-BBEE compliance.

### **3.6 Other offences and penalties**

In terms of Section 13 of the B-BBEE Act, a person commits an offence if that person **knowingly**:

- a) misrepresents or attempts to misrepresent the broad-based black economic empowerment status of an enterprise;
- b) provides false information or misrepresents information to a B-BBEE verification professional to secure a particular broad-based black economic empowerment status or any benefit associated with the compliance with this Act;
- c) provides false information or misrepresents information relevant to assessing the broad-based black economic empowerment status of an enterprise to any organ of state or public entity; or
- d) engages in a fronting practice.

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A B-BBEE verification professional or any procurement officer or other official of an organ of state or public entity who becomes aware of the commission of, or any attempt to commit, any offence referred to above and failed to report it to an appropriate law enforcement agency, is guilty of an offence.

#### **4. Acceptance**

This document has been seen and accepted by:

<b>Name</b>	<b>Designation</b>
Gcobisa Mashegoana	Senior Manager P&SCM Generation
Ezekiel Thuntsane	Senior Manager P&SCM Transmission
Nokwanda Gambushe	Senior Manager P&SCM Distribution (Acting)
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#### **5. Revisions**

<b>Date</b>	<b>Rev.</b>	<b>Compiler</b>	<b>Remarks</b>
January 2023	1	B. Madlala	New PPR 2022 Work Instructions
January 2023	2	B. Madlala	Amendment of PPR 2022 Work Instructions

#### **6. Development Team**

The following people were involved in the development of this document:

- Bongani Madlala
- Thanduxolo Matshaya
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#### **7. Acknowledgements**

Contribution of the following is highly acknowledged:

- Paul Mbele
- Phuti Semenya

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