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|  | <b>PROCUREMENT<br/>INSTRUCTION NUMBER: 01 of<br/>2023</b> | <b>Template Identifier</b> | 240-43921804    | <b>Rev</b> | 6 |  |
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|   |   | <b>Effective Date</b>      | 16 January 2023 |            |   |  |
|   |   | <b>Review Date</b>         | 15 January 2023 |            |   |  |

**TO: P&SCM GENERAL AND SENIOR MANAGERS, ALL PROCUREMENT PRACTITIONERS AND SD&L**

**Date:  
12 January 2022**

**Enquiries:**

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**FROM: P&SCM - RISK, GOVERNANCE AND COMPLIANCE**

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**PROCUREMENT INSTRUCTION NOTE NUMBER: 01 OF 2023 –EVALUATION OF TENDERS AS PER PREFERENTIAL PROCUREMENT REGULATION 2022 (PPR 2022)**

## **1. INTRODUCTION**

- 1.1 The purpose of this Procurement Instruction Note is to communicate amendments to certain provisions in the Eskom Procurement & Supply Chain Management Procedure (32-1034) regarding the evaluation of Tenders in order to align with the PPR 2022.
- 1.2 In the event of a conflict between this Procurement Instruction Note and the Procurement Procedure (32-1034), this Procurement Instruction Note will take precedence.

## **2. BACKGROUND**

- 2.1 On 04 November 2022, National treasury gazetted Preferential Procurement Regulation 2022 which is due to become effective on the 16 January 2023. The new regulations have a considerable impact on the PSCM Procedure and related Procurement templates that requires interrogation and alignment going forward.
- 2.2 It is on this backdrop that Eskom must revise provisions in the current Procurement Procedure to align with the PPR 2022.

## **3. EVALUATION OF TENDERS AS PER PPR 2022**

### **3.1 Checking Tender Acceptability and Responsiveness**

This means any tender which, in all respects, complies with specification and conditions of the tender as set out in the tender document. Paragraph 14.7.9.2, paragraph 1-15 of P&SCM Procedure (Rev 4) details the process to be followed and remain in force.

### **3.2 Evaluation of Tenders on functionality /Technical capability**

- In the event of “functionality” introduced as part of evaluation criteria, such requirement must be stated in the tender documents.
- The evaluation criteria for measuring functionality must be objective.

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- In order to eliminate subjectivity when setting evaluation criteria, the tender documents must specify the evaluation criteria for measuring functionality, the points for each criterion and if any, each sub-criterion, and the minimum qualifying score for functionality

### 3.2.1 **Setting of minimum qualifying score for Functionality (Threshold)**

- Setting of the Threshold must be determined separately for each tender, and
- May not be so low that it may jeopardize the quality of the required good, works or services or too high that is unreasonable restrictive.
- Points scored for functionality must be rounded off to the nearest two decimal places.
- A tender that fails to obtain minimum qualifying score for functionality, as indicated in the tender documents is not an acceptable tender.
- All tenderers obtained the minimum qualifying score for functionality qualifies to be evaluated further for price and specific goal, however, where the CFT intends to rank Suppliers for purpose of determining the highest ranked tender and for further evaluation, this must be communicated in the enquiry.
- Paragraph 14.7.9.7 of P&SCM Procedure (Rev 4) outlines the process to be adhered to and remains in effect.

### 3.3 **Evaluation of Price**

- A preference point system must be followed when evaluating price
- For Contracts with rand value above R50 million, a maximum of 10 points may be allocated to specific goal with 90 points allocated for price.
- For Contracts with rand value equal or below R50 million, a maximum of 20 points must be allocated to specific goals with 80 points allocated for price.
- 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.
- The contract must be awarded to the tenderer scoring the highest points unless objective criteria if any justify the award to another tenderer.
- Notwithstanding the above, a tenderer recommended for award, must still meet Contractual requirements as set out in the enquiry before recommending same to the relevant DAA.
- Paragraph 14.7.9.9 of P&SCM Procedure (Rev 4) outlines the process to be followed and remains in force.

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### 3.4 Specific goal may include:

- Contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination based on race, gender or disability.
- Any specific goal for which a point maybe awarded, must be clearly specified in the Enquiry.
- Specific goals as listed in the attached SDL&I Annexure A are Mandatory for all Procurements of goods, works and services.

### 3.5 Objective criteria may include:

- SDL&I designed a non-exhaustive list of categories to be developed per enquiry which are project/procurement specific, where applicable, aligning same with Eskom shareholders compact. Refer to SDL&I Annexure A
- SDL&I must form part of the CFT to pre-define objective criteria to be met in the Procurement strategy and ultimately in the enquiry.
- SDL&I section is responsible for monitoring compliance of all goals set post contract award up until contract expiry.

### 3.6 Contractual requirements /Responsiveness prior to Contract Award

- All tenderers recommended for award, including those justified on the bases of objective criteria, if applicable must still meet Contractual requirements as set out in the enquiry before recommending same to the relevant adjudication authority.

## 5. AUTHORITY FOR THIS INSTRUCTION NOTE AND EFFECTIVE DATE

This Procurement Instruction is effective from the date of the last signature herein and remains in effect until superseded by a new Procurement Instruction Note, a revision of Eskom Supply Chain Management Procedure 32-1034 or otherwise directed by National Treasury.

Compiled by:



Paul Mbele

**POLICY MANAGER: RISK, GOVERNANCE & COMPLIANCE**

Date: 12 January 2023

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Recommended by:

 \_\_\_\_\_

Maria Bowes

**SENIOR MANAGER: RISK, GOVERNANCE & COMPLIANCE**

Date: 12 January 2023

Approved By:

 \_\_\_\_\_

Jainthree Sankar

**CHIEF PROCUREMENT OFFICER**

Date: 12 January 2023

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## **SDL& I Annexure**

### **Allocation of preference points (20/10) on the basis of Section 2(1)(d)(i) –Specific Goals**

*contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability) as follows:*

| <b>Classification</b>              | <b>90/10</b> | <b>80/20</b> |
|------------------------------------|--------------|--------------|
| Black Disabled Female              | 10           | 20           |
| Black Women Owned / Black Disabled | 7            | 13           |
| Black Owned                        | 3            | 7            |

Under this approach, HDIs are given a head-start over other groups through preference. Also this approach seeks to address concerns that have been raised that some HDIs (particularly Black Males) are prioritised over other HDIs in the allocation of contracts as reflected by the statistics. Items classified as Implementing RDP goals may further be categorised as objective criteria.

To claim preference points as specific goals, a tenderer must submit the following documentation:

- Valid B-BBEE certificate issued by a SANAS accredited verification agency / sworn affidavit / CIPC affidavit
- Proof of ownership (CIPS documentation) and breakdown of Shareholding information
- Certified ID copies of shareholder(s)
- Proof of Disability (where applicable).

A tenderer failing to documentation for the allocation of preference points will not be disqualified, but-

- (a) may only score points out of 90/80 for price
- (b) scores 0 points out of 10/20 for specific goals.

A tenderer may not be awarded points for specific goals if the tender documents indicate that the tenderer intends subcontracting 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.

## **Objective Criteria.**

The inclusion of objective criteria in an enquiry must be as per PPPFA 2(1)(f).

It is not a mandatory requirement to have Objective criteria in the enquiry, however, should it be included, compliance to set Objective criteria requirements in the enquiry becomes Mandatory.

May change award from the highest ranked to another tenderer.

May not include elements of functionality.

## **Local Content and Production**

### **Designated sectors**

As part of government's industrialization policy, government adopted 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 criteria) 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.

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

The local content (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

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) must be completed and duly signed. The procurement practitioner is required to 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 requirement of National Industrial Participation Programme (NIPP), whereby the contractor / supplier has to contact 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 a FGN component or content of US\$5m 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 utilizing the instrument of government procurement. The NIPP programme is mandatory on all government and parastatal purchases or lease contracts (goods and services) with an imported content equal to or exceeding US\$5 million.

The programme is targeted at the 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 US\$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 a NIPP obligation are required to 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 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 US\$5 million, compels the winning bidder to negotiate and enter into a NIPP obligation agreement with the dtic before signing the contract with Eskom.”

### **NIPP Reporting requirements**

For all contracts equal to or in excess of US\$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 US\$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.

### **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:
  - c) an EME or QSE;
  - d) an EME or QSE, which is at least 51% owned by black people;
  - e) an EME or QSE, which is at least 51% owned by black people who are youth;
  - f) an EME or QSE, which is at least 51% owned by black people who are women;
  - g) an EME or QSE, which is at least 51% owned by black people with disabilities;
  - h) an EME or QSE, which is 51% owned by black people living in rural or underdeveloped areas or townships;

- i) a cooperative, which is at least 51% owned by black people;
  - j) an EME or QSE, which is at least 51% owned by black people who are military veterans;
- or
- k) 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.

### **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 Department of Trade, Industry and Competition's Codes of Good Practice (meaning as a **non-negotiable** element. Tenderes have to submit a valid B-BBEE certificate or proof of B-BBEE compliance derived from the B-BBEE verification professional.)

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

The only time that the requirement above will be relaxed, is only when the supplier has been granted an exemption by the Minister of the Dtic

### **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 in order 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.

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 fails to report it to an appropriate law enforcement agency, is guilty of an offence

### **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 sub regulation (1)(b), the organ of state may, if it concludes that such information is false— (a) disqualify the tenderer or terminate the contract in.