STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Services (Pty) Ltd	qualification criteria for preferential procurement	This regulation does not take the approach of regulation 5(4) [and subsequently Regulation 6(4)] which read as follows: "If a tenderer fails to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE, the tenderer is not to be disqualified but may only score points out of 80 for price and scores 0 points out of 20 for B-BBEE." This proposed regulation, by allowing this pre-qualification criterion, is a set-aside. Any tenderer who does not have the minimum B-BBEE score is excluded from being evaluated on functionality and price, in contravention of the provisions of the PPPF Act and the Constitution.	refer to Par 1.2 under General Comments below.	**additional empowerment to designated groups. Regulation 5 and 6 must be better aligned with this regulation. National Treasury to noted the required alignment.**
	Bigen Africa Services (Pty) Ltd	10. Pre-qualification criteria for preferential procurement	Regulation 10(1)(b) This pre-qualifying criterion already forms an element of B-BBEE. If included again, it is best placed as a functionality requirement.	Refer to comment(s) and amend the regulation accordingly.	**There is difference between functionality and BEE, this provision is intended for BEE.**
	Bigen Africa Services (Pty) Ltd	11. Disposal, Sale and letting of property or assets.	Regulation 11(2) This proposed regulation would fall foul of Section 217 of the Constitution in that no fair,	Refer to comment(s) and amend the regulation accordingly.	**Noted: It would be appreciated if the stakeholder could provide reasons why the regulation will fall foul of Section 217**

609

NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016		
			equitable, transparent, competitive, or cost effective procurement process is followed. Regulation 11(3)(a)&(b) The formula in this regulation is calculated on 80 and 90 points respectively, based on the transaction value. There is thus no provision for a procurement preference to be awarded to currently disadvantaged persons.	Refer to comment(s) and amend the regulation accordingly.	of the constitution. We accept that the regulations cannot use 80 or 90 for points and still refer to fair market price. It must be clear how market price and preference point system will be used in one tender.
	Bigen Africa Services (Pty) Ltd	12. Cancellation of tender	Regulation 12(1) In principle we agree with the inclusion of this regulation. However, the regulation should place a burden of evidence on the organ of state to prove that there was an initial need and budget for the goods or service and that the 'tender' was not reckless administration or speculative market research. Re-advertising should not be possible within the same financial year.	Refer to comment(s) and amend the regulation accordingly.	Cancellation of a tender should not be looked outside the requirements of service delivery and impact on society at large.
	Bigen Africa Services (Pty) Ltd	13. Sub-contracting	Regulation 13(1) It will be more efficient to provide for sub-contracting as a functionality requirement. Regulation 13(2)	Refer to comment(s) and amend the regulation accordingly.	Subcontracting can be regulated in SCM Regulations or the GCC however it is provided for in these regulations in order to provide a

019

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			The purpose of this regulation is unclear. Sub-contracting should rather be approved and regulated under the general and special conditions of contract.		preference scheme to suppliers who are willing to work with designated groups so that a non-racial non-sexist inclusive economy is created.
	Bigen Africa Services (Pty) Ltd	14. Remedies	Regulation 14(1)(c) This sub-regulation might have to be reworded, as it does not 'flow' if read from the beginning of the regulation. Regulation 14(c)(ii) The procuring organ of state can claim damages; however, it is unclear whose damages (organ of state or other bidding parties) and how will the damages be proved? Regulation 14(3) Prior to restricting the tenderer from doing business with other organs of state, the tenderer must be granted an opportunity to defend itself. The potential sanction is large.	Refer to comment(s) and amend the regulation accordingly.	Noted: Wording of the regulation will be improved. Damages refer to those suffered by the organ of state. A fair and just process must be followed before a supplier is restricted. This must come out clear in the final set of regulations.
74.	FirstRand Bank	1. Definitions	"Consortium" or "Joint Venture" should be	"Joint Venture" as defined in the	Noted: will amend

611 AD

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Limited		defined separately	Codes of Good Practice "Code 000 clause 1.25 which reads – Unincorporated Joint Venture means a Joint Venture between two or more measured entities which is not constituted in the form of an incorporated juristic person" … for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.	**accordingly.**
	FirstRand Bank Limited	1. Definitions	"Infrastructure" requires clarity as it only refers to the building industry. Was this the intention of the legislature to exclude all other industries from the regulations? The word "infrastructure" appears in the definition of both "Goods" and "services"	Our recommendation will depend on what the answer to our query. It would be premature to comment.	**Noted: Although the definition currently refers to building industry, it is important that it becomes all inclusive e.g. IT infrastructure.**
	FirstRand Bank Limited	1. Definitions	"Local content" and "production" should be defined both "inclusions" and "exclusions" are to be expressly defined. Consideration: reference to General Conditions of Contract clause 1.17 which reads "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place	In term of procurement guidelines (1 December 2011) works or goods for which an invitation is to be made has been designated for local production and content in terms of Regulation 9 of the Preferential Procurement Regulations. This will entail the inclusion of a specific condition in the bid documents that only locally produced services,	**The threshold for local production and content is specified in respective instructions and suppliers can approach the dti in case of any challenges with the threshold for local production and content.**

612

PUBLIC COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				works or goods or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered. This will subsequently have a direct impact on the evaluation of the bid	
	FirstRand Bank Limited	1. Definitions	"firm Prices" are to be defined	"firm price" means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or Regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;	**Noted: the 2011 definition will be brought back.**
	FirstRand Bank Limited	1. Definitions	"person"; "contract"; "sub-contract" and "tender" are defined in the regulations published on 8 June 2011, (GNR 502) but are not included in the new draft regulations	Suggest that these definitions are incorporated in the new definitions	**Noted: the 2011 definition will be brought back.**
	FirstRand Bank Limited	2. Application	No comment	No recommendation	**Noted**
	FirstRand Bank	4. Evaluation of		It is recommended that elements	**Noted: this is a**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Limited	tenders on functionality		associated with the State's obligation to properly plan for and as far as possible accurately estimate the costs of goods or services be added to the proposed regulation as it is a matter of public interest that an organ of state be obligated to diligently plan and estimate the costs of a tender. This was omitted from the previous regulations	requirement from the PFMA and these regulations should not repeat what is already provided for under the PFMA rules although estimates will always be estimated and are not accurate.
	FirstRand Bank Limited	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	No comment	No Recommendation	No resolution required.
	FirstRand Bank Limited	6. 90/10 preference point system for acquisition of goods or services with Rand value above R 100 Million	No comment	No Recommendation	Noted
	FirstRand Bank Limited	7. Award of contracts to tenderers not	With reference to 7 (3) a) (ii), the age of 14 years is a concern	Consider the legal age of emancipation	Accepted: regulation will be revised accordingly.

NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		scoring highest points			
	FirstRand Bank Limited	8. Criteria for breaking deadlock in scoring	With regard to breaking deadlock in scoring, instead of "Drawing lots and or tossing a coin" the organ of state should short list potential service providers and call for the short listed services to present their proposal and enter into a best and final offer negotiations. This process will give service providers the opportunity to demonstrate their ability to provide the required services that meet Functional, Financial and BBBEE objectives as contemplated in the tender. The process would be more "Free and Fair"	• Call for presentations • Negotiate best and final offer • Ensure transparency and legitimacy of the process • Re-Evaluate based on the 90/10 or 80/20 principle	**Noted: the regulations must avoid providing a long list of how a tender may be awarded where tenderers are equal on points. Secondly regulations should not provide for instances where a criteria that was not part of the advertised tender is introduced during evaluation in order to award a tender. NT should consider the option to negotiating as part of the final award in the final set of regulations**
	FirstRand Bank Limited	9. Local production and content	See comment above under "Definitions"	See comment above under "Definitions"	Noted
	FirstRand Bank Limited	9. Local production and content	Section 9(4) of the 2011 regulations include the following provision: - "every tender issued in terms of regulation 9 must be measured and audited" It is suggested that tenders should be audited.	It is proposed that the provision from the 2011 regulations is included in the new regulations	Accepted
	FirstRand Bank	10. Pre-	10 (2) Pre-qualifying criteria for Preferential	A tenderer that fails to obtain the	Noted: Regulation 11 of

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Limited	qualification criteria for preferential procurement	Procurement Section 10(3) in the 2011 regulations provided for the submission of Broad-Based Black Economic Empowerment Status Level Certificates. It would be helpful to understand the reason why this has been excluded from the new regulations	minimum score set for pre-qualification will be deemed non-responsive	PPR 2011 will be retained.
	FirstRand Bank Limited	11. Disposal, Sale and letting of property or assets.	No comment	No recommendation	Noted.
	FirstRand Bank Limited	12. Cancellation of tender	There is no mention of for notice period / time frame of cancellation	It is suggested that a notice period / time frame should be included in the clause	Accepted
	FirstRand Bank Limited	13. Sub-contracting	Where tenderers disclose an enterprise development plan as part the initiative undertaken to fulfill the State's expectation to sub-contract 30% of bids above R30 million up to R100 million, sub-contracting may take place after a tender has been awarded. In Addition This section makes the 30% rule mandatory for contracts above R 30m and is therefore a concern. Again, it is highly unlikely to find a financial institution falling into the categories listed which can add 30% of the financial requirements to tender between R30m and R100m as smaller financiers may not have access to such capital?	We recommend that this percentage be reconsidered, as well as the possibility of exceptions within certain industries where the 30% rule will not apply.	Subcontracting will be revisited so that it is not a one size fits all. It will also place discretion on organs of state to determine subcontracting based on sector and value of contract. The subcontracting value and threshold will be revisited so that it is not too restrictive even where it could be applied to tenders below R 30 Million. This

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
					regulation must be aligned with the provisions to form joint ventures and consortiums.
	FirstRand Bank Limited	14. Remedies	No Comment	No Recommendation	Noted.
	FirstRand Bank Limited	15. Circulars and guidelines	15 (b) Guidelines for the implementation of all the regulations must be provide by National Treasury	15 (b) a guideline to assist organs of state with the implementation of all provisions of these regulations.	Noted: National Treasury developed guidelines for the 2011 Regulations and is looking at same on these regulations.
	FirstRand Bank Limited	16. Repeal of Regulations	This would mean that any subsequent practice notes would be repealed as well.	16 The preferential procurement regulations, 2011, as published in Government Gazette No. R 502 of 8 June 2011 and all subsequent practice notes are hereby repealed with effect from the date referred to in regulation 17.	Accepted: National Treasury must discuss this as it has major implications for Instructions and Circulars issued under PPR 2011.
	FirstRand Bank Limited	17. Short title and commencement	No Comment	No Recommendation	Noted.
75	Johnson & Johnson Medical (Pty) Ltd Janssen Pharmaceutical (Pty) Ltd - Kirti Narsai	1. Definitions	"Designated sector" should also include "designated tender" or "designated products", the IPAP document refers to a designated tender, and not a designated sector or sub-sector.	"Designated sector" means a sector, sub-sector, industry, tender or goods designated by the National Treasury, after consultation with relevant stakeholders, the Department of Trade and Industry, and affected line Ministries or	Within the context for the regulations only sector or products can be designated, designation of products or sector can also be extended to be done per tender.

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				Departments, taking into account- a) national development and industrial policies for local production and content as it pertains to those specified tenders and/or products, when applicable; and b) competition and other economic factors, and to which a stipulated minimum threshold applies;	
	Johnson & Johnson Medical (Pty) Ltd Janssen Pharmaceutical (Pty) Ltd - Kirti Narsai	1. Definitions	Functionality to be re-defined based on proposal contained herein in commentary on regulation 4.	"functionality" means the ability of a tenderer to provide goods or services in accordance with specifications as set within the framework of regulation 4(2) and as included in the tender documents;	**Noted: however functionality criteria are prescribed per tender.**
	Johnson & Johnson Medical (Pty) Ltd Janssen Pharmaceutical (Pty) Ltd - Kirti Narsai	4. Evaluation of tenders on functionality	Will National Treasury be giving guidance to the minimum qualifying score for functionality? Will this be consistent across other organs of state? In our view, consideration must be given to the specific sector, including the importance of ensuring access to not only the basic level of healthcare, but care that ensures benefits for the patient and the system over the long term.	4(2) The evaluation criteria for measuring functionality must be objective. These criteria must be set with due consideration of – a) the specific sector within which the goods or services would be used; b) the ability of the bidder to provide the goods with the requisite	**National Treasury will issue guidelines on how to apply functionality on evaluation of tenders. However National Treasury cannot issue guidance for minimum qualifying score for functionality as it will differ**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			Consideration must also be had for the services that accompany health goods that are necessary to ensure that the goods are used in a manner that complies with the standards set by the Office of Health Standards Compliance (domain 3.4) (www.ohsc.org,za): • Quality: 3.4.1 'Medical equipment for safe and effective patient care is available and functional' • Training: 3.4.2 'Staff are trained in the correct use of medical equipment'; • Maintenance: 3.4.3 'Medical devices are maintained to ensure safety and functionality'. This is over and above the registration and licensing criteria set by the MCC, Pharmacy Council and others. These services include maintenance, ensuring that the appropriate support products and services are there (e.g. a sustained power supply, clean water, associated technologies, etc. For our products, the following apply:	support and other services to enable the goods to be meaningfully used in the specific organ of state; c) the wider implications of the use of particular goods on other budget lines items and longer term impact of the use of the goods or services; d) required infrastructure, human resources and training so as to ensure that appropriate and safe use of the goods or services; e) if applicable, with due consideration to public interest matters, such as health outcomes, public health, public safety and risk, legal liability to the organ of state and national and global priorities; f) whether the goods delivered would require maintenance, support or revision for periods after that of the tender, and whether the supplier would be able to make longer-term commitments; and g) the longer term impact of the availability or not, of certain goods and services on the market and the country as a whole.	**from tender to tender.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Johnson & Johnson Medical (Pty) Ltd Janssen Pharmaceutical (Pty) Ltd - Kirti Narsai	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	The 100-fold increase in the monetary limit for which the 80 – 20 points system would apply, will have a significant impact on the competitiveness and product ranges that would be placed into the device tender market in particular (which, unlike medicines, are largely provincial and in some cases hospital-based). The negative impact will be felt mostly by multinational companies, who are struggling on the ownership and procurement pieces of the scorecard, and for whom the requirements on local content in procurement and the exclusion of imports (as per the DTI's BEE Codes) present a significant hurdle, which will take time to overcome. The only possibility is for companies to provide products at significantly reduced prices, which may not be possible in instances where local subsidiaries already achieved significant discounts for the local market, and where the exchange rate has had a severe impact of the profitability of certain product ranges. To make up, for example, 12 points through price would be extremely onerous and one might see instances where companies would rather than tender, which would have a negative impact on both competitiveness, as well as access to healthcare.	(2) The following table must be used to calculate the points out of 20 for B- BBEE, unless market research undertaken by the organ of state shows that the points system must be adjusted for reason of increasing competition and/or in the public interest, including but not limited to ensure that public health needs are met.	**It would be problematic to change evaluation method after closing date and time of bid hence it is important to do market research prior to advertising.**

620

PUBLIC COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			Innovative products, which are by their very nature more expensive, could be totally crowded out by this points system.		
	Johnson & Johnson Medical (Pty) Ltd Janssen Pharmaceutical (Pty) Ltd - Kirti Narsai	6. 90/10 preference point system for acquisition of goods or services with Rand value above R 100 Million	See comments above on regulation 5	(2) The following table must be used to calculate the points out of 10 for B- BBEE, unless market research undertaken by the organ of state shows that the points system must be adjusted for reason of increasing competition and/or in the public interest, including but not limited to ensure that public health needs are met.	**Please refer to similar resolution in regulation 5.**
	Johnson & Johnson Medical (Pty) Ltd Janssen Pharmaceutical (Pty) Ltd - Kirti Narsai	9. Local production and content	The IPAP 2014/5 – 2016/7 stated in pg. 95 that less than 10% of the medical device market is supplied by domestic production and is limited to only certain types of products. To designate this sector will therefore not be meaningful, until it is possible to have adequate supply of entities that are licensed and produce registered products, to do so. The IPAP envisages the development of a strategy for the medical devices sector, which has not yet been finalized, and has not been seen by stakeholders in a draft format. It is therefore unlikely that the definition of "designated sector" could be complied with.	(2) When a determination is made in accordance with the definition of "designated sector" in regulation 1, the National Treasury must, after publication of the intention to do so and subsequent consultation with the DTI, bodies representing potential bidders / suppliers and the relevant line Department or organ of state, issue a circular, in terms of regulation 14, to inform organs of state of the determination.	**There is no requirement for organs of state to issue circulars however they must make sure that their client base or suppliers are made aware of all prescripts issued that affect them, this may be through publishing same on their website.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			It would also be imperative that the diversity of the medical devices sector be taken into consideration. Insofar as medicines are concerned, the IPAP states that, in spite of no designation in the TB tender (worth R850m), 70% has been won by local suppliers. These are all large companies, and all of them, even where manufacturing locally, import the active ingredients used to manufacture the products.		
	Johnson & Johnson Medical (Pty) Ltd Janssen Pharmaceutical (Pty) Ltd - Kirti Narsai	12. Cancellation of tender	The implementation of a tender is as important as its award, and cancellation. J&J wish to inform the NT and the Chief Procurement Office that where orders numbers are not provided by an organ of state, the supplier are unable to provide an invoice, and therefore are not being paid. As there are no unpaid invoice, only the provision of goods (in the case of orthopaedic devices, such are often supplied on an emergency basis, e.g. when there were car accidents and implants are required) without the order number, which then is difficult or impossible to obtain in order to be able to issue an invoice.	12.(1) An organ of state may, before the award of a tender, only cancel a tender invitation if- (a) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation; or (b) funds are no longer available to cover the total envisaged expenditure; or (c) no acceptable tenders are received. (2) The decision to cancel a tender invitation in terms of sub-regulation	**It was decided that if a tender is cancel once and information published the accounting officer should deal with such but for the second time its where problems might be and such must be reported to the Treasury.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			In terms of cancellations, the cancellation and subsequent extension of a previous tender, is hugely problematic. In J&J's experience, this happens quite frequently, and it can, off the cuff, mention no less than 13 tenders that have thus been cancelled over the past year, and that only pertains to the fields in which J&J have products to offer. If similar concern is not issuing of a tender, which then also leads to the continuation of the existing (although technically ended) successful bidders, with no hope for a new tender and other suppliers to bid. The above scenario's not only create an unfair playing field in terms of competition, it also means that there may decreased access to such products for patients, and the successful bidders might not have planned on supply for continuously extended times.	(1) and the reasons for such cancellation must be published in the same manner in which the original tender invitation was advertised. (3) An organ of state may only with the prior approval of the treasury cancel a tender invitation.	
76	KWAZULU-NATAL DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENT	3. Identification of preference point system	• The current preferential point system does not support transformation as companies can opt not to submit the B-BBEE Certificate and still benefit from government procurement without effecting any transformation. Therefore there is a need to elevate the status of B-BBEE. • There is a need to ensure alignment between the PPPFA and B-BBEE Act & Codes.	(c) determine its preferential point system in line with the B-BBEE Specialised Scorecard as stipulated under section 10(1b) of the B-BBEE Act and ensure compulsory submission of B-BBEE certificates as required under section 3 of the codes of good practice on	It should be noted that in this case B-BBEE certificates submitted for allocation of points and tenderers cannot be disqualified for failure to comply with B-BBEE and they only score zero for points. A provision is made

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	AL AFFAIRS (KZN EDTEA) - Ms Cebile Khanyile		• Section 10(1b) of the B-BBEE Act requires every organ of the state and public entities to apply relevant codes of good practice when developing and implementing a preferential procurement policy. • The current B-BBEE Codes of good practice have a Preferential Procurement target of 80%. • Organs of the state are measured based on the specialised scorecard where the ESD element is worth 50 points/ 100 points. • The allocated points for PP are 32 points. • Due to the current PPPFA government entities are unable to achieve the PP targets which then render the B-BBEE legislation Symbolic Policies due to lack of implementation. • Submission of B-BBEE certificates must be compulsory as required under section 3 of the B-BBEE codes of good practice. • Companies doing business with the state whether it is direct or indirect are required to comply with B-BBEE.	application of the codes.	for prequalification where an identified BEE level is a requirement.
	KWAZULU-NATAL DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM	4. Evaluation of tenders on functionality	• Section 10(1b) of the B-BBEE Act requires every organ of the state and public entities to apply relevant codes of good practice when developing and implementing a preferential procurement policy. • Section 13(G) of the B-BBEE act requires	4. (1) An organ of state must indicate that tenders that do not comply with B-BBEE will be disqualified immediately and will not be evaluated on functionality.	The proposal is not practical for public procurement however regulation 10 seeks to ensure that organs of state can use prequalification

624

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	AND ENVIRONMENTAL AFFAIRS (KZN EDTEA) - Ms Cebile Khanyile		organs of state to report on their compliance with B-BBEE in their audited annual financial statements and annual reports as required under the PFMA. • Section 3 of the Codes of Good Practice requires compulsory compliance to B-BBEE from any entity that does any economic activities with the state or public entities whether it is direct or indirect.		**criteria in selected tenders to promote designated groups.**
	KWAZULU-NATAL DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS (KZN EDTEA) - Ms Cebile Khanyile	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	• Section 3 of the Codes of Good Practice requires compulsory compliance to B-BBEE from any entity that does any economic activities with the state or public entities whether it is direct or indirect.	5. (4) If a tenderer fails to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE, the tenderer will be automatically disqualified. 5. (9) Despite 5. (8) if procurement is targeted at EME's, QSE's, 51% Black owned or 30% Black women owned companies they will get preference.	**Noted: although we are not in disagreement with provisions of the B-BBEE Act, we were advised that public procurement should be open to all and non-compliant suppliers should score zero for BEE points, prequalification on the basis of BEE status level and designated groups can be done in selected procurement not as a blanket approach.**
	KWAZULU-NATAL DEPARTMENT OF ECONOMIC	6. 90/10 preference point system for acquisition of goods or services	• Section 3 of the Codes of Good Practice requires compulsory compliance to B-BBEE from any entity that does any economic activities with the state or public entities whether	6. (4) If a tenderer fails to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE, the	**Please refer to similar resolution in regulation 5.**

625

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS (KZN EDTEA) - Ms Cebile Khanyile	with Rand value above R 100 Million	it is direct or indirect.	tenderer will be automatically disqualified. 6. (9) Despite 5. (8) if procurement is targeted at EME's, QSE's, 51% Black owned or 30% Black women owned companies they will get preference.	
	KWAZULU-NATAL DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS (KZN EDTEA) - Ms Cebile Khanyile	7. Award of contracts to tenderers not scoring highest points	• Ownership has been identified as one of the priority element under the B-BBEE act and it enhances the recognition levels for 51% black owned EMEs and QSEs under section 4.3.2 and 5.3.2 of the codes of good practice on the recognition of EMEs and QSEs.	7. (3) (a) (i) EMEs or QSEs that are 51% black women owned. 7. (3) (a) (ii) EMEs or QSEs that are 51% black youth owned. 7. (3) (a) (iii) EMEs or QSEs that are 51% black owned. 7. (3) (a) (i) EMEs or QSEs that are 51% black owned by people with disabilities.	**Accepted the regulations will be revised accordingly.**
	KWAZULU-NATAL DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND	8. Criteria for breaking deadlock in scoring	• Ownership has been identified as one of the priority element under the B-BBEE act and EMEs, QSEs and Large enterprises have to comply with the element (section 3.3 of the codes of good practice).	8. (1) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for B-BBEE giving preference to companies with a higher percentage of black	**This is exactly the intention of the regulation per regulation 8(1) and 8(2).**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	ENVIRONMENTAL AFFAIRS (KZN EDTEA) - Ms Cebile Khanyile			ownership. 8. (2) If functionality is part of the evaluation process and two or more tenderers score equal total points for B-BBEE and have the same percentage of black ownership, the contract must be awarded to the tenderer that scored the highest points for functionality.	
	KWAZULU-NATAL DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS (KZN EDTEA) - Ms Cebile Khanyile	10. Pre-qualification criteria for preferential procurement	• The current preferential point system does not support transformation as companies can opt not to submit the B-BBEE Certificate and still benefit from government procurement without effecting any transformation. Therefore there is a need to elevate the status of B-BBEE. • There is a need to ensure alignment between the PPPFA and B-BBEE Act & Codes. • Section 10(1b) of the B-BBEE Act requires every organ of the state and public entities to apply relevant codes of good practice when developing and implementing a preferential procurement policy. • The current B-BBEE Codes of good practice have a Preferential Procurement target of 80%. • Organs of the state are measured based on the specialised scorecard where the ESD element is worth 50 points/ 100 points.	10.1 (a) For all tenders the submission of a B-BBEE certificate must be compulsory and the tenderer can stipulate a minimum B-BBEE status level of contributor. 10. (1) (c) determine a set aside policy where particular goods and services will be targeted for procurement based on the provincial demographics as published by the Statistics SA and indicate in the tender document. 10.1(d) All construction work that require grade 3 and below must be procured from local 51% black owned or 51% Black women owned EMEs or QSEs. 10.1(e) At all times plant hire	**Submission of BEE Status Level of contribution is still a requirement as provided for by the B-BBEE Act and Codes of good practice, all that these regulations must provide for is reference to supporting documentation as prescribed in the BEE Act and codes. It is not yet clear if set-asides can be provided for within the PPPFA. The Public Procurement Bill will come up with flexible approach which may include preferential procurement based on a sector.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			• The allocated points for PP are 32 points. • Due to the current PPPFA government entities are unable to achieve the PP targets which then render the B-BBEE legislation Symbolic Policies due to lack of implementation. • Submission of B-BBEE certificates must be compulsory as required under section 3 of the B-BBEE codes of good practice. • Companies doing business with the state whether it is direct or indirect are required to comply with B-BBEE.	equipment and low skilled or unspecialised jobs or labour must be sourced from within that local municipality.	
	KWAZULU-NATAL DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS (KZN EDTEA) - Ms Cebile Khanyile	13. Sub-contracting	• The B-BBEE Codes of Good Practice determine the criteria for qualifying Supplier Development and Enterprise Development beneficiaries as EMEs or QSEs that are atleast 51% black owned or 51% black women owned. Therefore the targeted beneficiaries for sub-contracting must be aligned to the B-BBEE Codes of Good Practice. • Part 6, section 19 of the B-BBEE Regulations makes provision for exceeding the qualification criteria where entities can apply to the Minister Trade and Industry for the purposes of accelerating transformation.	13(1) (a) one or more of the categories referred to in regulation 10(1)(b)who are 51% black owned or 51% black women owned and from within that particular local municipality where the contract is awarded. 13.(1)(b) one or more EMEs or QSEs who are 51% black owned or 51% black women owned and from within that particular local municipality where the contract is awarded; or 13. (3) All government entities and public entities are required to develop supplier development	**Noted, the list of enterprises to subcontract with will be aligned to the provisions of the BEE Act where possible as specially as they relate to designated groups.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				programmes and establish databases for business matching in support of sub-contacting. 13.(4) According to the provisions of the B-BBEE regulations 13. (5) Organs of state or public entities may set higher targets in line with their transformation targets.	
	KWAZULU-NATAL DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS (KZN EDTEA) - Ms Cebile Khanyile	14. Remedies	The B-BBEE Act makes provisions for the establishment of the B-BBEE Commission and introduces offences and penalties and prohibitions under section 13(O) & 13 (P) of the B-BBEE Act	14. (4) Despite the above in the case of false B-BBEE information the provisions of the B-BBEE Act and the B-BBEE Regulations will apply. Therefore the matter must be reported to the B-BBEE Commission.	**Noted: the regulations must create a clear synergy between roles of the BEE Commission and the National Treasury.**
77	Abbott Laboratories (Pty) Ltd - Elsa Moroney	1. Definitions	It is proposed that, apart from designated sectors or sub-sectors, with medicines, medical devices and in vitro diagnostics, particular products or product classes or groups should be designated, and not the whole sector or a sub-sector. This as health needs and public health priorities may in	"designated sector" means a sector, sub-sector, industry or goods or category of goods designated by the National Treasury, after consultation with the Department of Trade and Industry, taking into	**Noted: in practice a product is also designated for local production and content. The definition will be revisited tp include a product. Subject to further**

629

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			some cases not allow for a whole sector or sub-sector to be designated. A third criterion can be added under (c), i.e. impact on government departments and/or national priorities such as public health, public interest, public safety, etc. Functionality , which in effect relates to the objective criteria referred to regulation 4(2), and is different to the objective criteria referred to regulation 7(2) and (3) should be defined. These criteria may be different for the various types of products marketed by Abbott, and Abbott will gladly engage with the Chief Procurement Office in relation to the varying impacts and requirements on these categories of products, viz. • Medicines • Medical Devices and In vitro diagnostics (IVDs) • Nutritional products These categories are subject to different regulatory frameworks and supply into different organs of state (a part of the IVD market for example supply to NHLS, for example).	account- (a) national development and industrial policies for local production and content; and (b) competition and other economic factors, and (c) the impact on affected government departments and/or national priorities such as public health, public interest, or public safety and to which a stipulated minimum threshold applies It is recommended that, for healthcare, NT consults with stakeholders from various categories of products used in the health sector, as the requirements of, for example, functionality, differ from these. In some instances merely setting price and effectiveness is adequate, in other, specifications must include issues such as training and maintenance. This will allow NT to be able to assess compliance and create frameworks and guidance that would be better suited to ensure	discussion with the dti.

630

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				that procurement and BEE objectives are fulfilled.	
	Abbott Laboratories (Pty) Ltd - Elsa Moroney	4. Evaluation of tenders on functionality.	Comments made above in relation to functionality on reg 1 apply here as well. Functionality in the health sector is critical, it must be seen not in relation to whether a product can, at its minimum, do what it should be doing (as is envisaged in reg 4(4)(c)(i)), but must consider value for money. This means that health goods can have an impact far beyond just whether it is doing what it should be doing. For example, using a cheaper nutritional supplement in the public health sector may fulfill the basic needs, and may be cheaper, but patients may take longer to recover, and would have an impact on their hospital stay or mean that other or further products or greater quantities of products are needed.	(c) may not be so- (i) low that it may jeopardise the quality of the required goods or services; or (ii) high that it is unreasonably restrictive, bearing in mind the overall budgetary impact, outcomes, and/or technology assessments of the specific goods or services within the context within which the goods or services will be used.	**The regulation seeks to ensure fair criteria for functionality should be used in evaluation of tenders.**
	Abbott Laboratories (Pty) Ltd - Elsa Moroney	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	Increasing the ceiling Rand value for this point system opens the process to unscrupulous tenderers who benefit from high B-BBEE points and charge inflated prices to the state tenders. This further exacerbates the financial strain to supply medicine and nutrition and reduces the overall number of patients that can be correctly treated, potentially leading to missing millennium goals or other adopted resolutions	Leave the ceiling limit at the current R1 million – if there is a wish to expand this group, only increase the ceiling to a maximum of R10 million. It is recommended that an impact assessment be undertaken in relation to the effect of the new split in terms of availability of suppliers and entities	**Noted: National Treasury will consider putting measures in place to curb the maximum premium paid whilst ensuring that designated groups have access to state tenders.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			for the Department of Health. Achieving a substantial BEE score, e.g. to become an empowering supplier and to achieve or implement an equity equivalent offset, will take significant time, in particular for multinationals. Due to the limitations in the BEE system, companies would have to provide significant price reductions in an already constrained environment, in order to make up for shortfalls in the BEE part of the score. It is estimated that even with best efforts, no multinational would be able to achieve more than a level 6 score, and, if they do an approved EEP, no more than a level 5.	winning tenders It is proposed that should the tender have a direct bearing on reaching a developmental goal, such as the Sustainable Development Goals (SDGs) only the 90/10 system would be used, as the achievement of such goals necessitate an emphasis on the goal as a first priority.	
	Abbott Laboratories (Pty) Ltd - Elsa Moroney	7. Award of contracts to tenderers not scoring highest points	It is not clear what is meant by "ownership" in reg 7(3)(a) – does it mean 100% owned by black persons from these categories? In the DTI Codes recognition is given to all EME's and some advantage is provided to those that are black-owned, but those who are in part owned by whiter persons are not excluded from BEE benefits. Objective criteria mentions age groups 14 – 35 In the context of providing scientifically sound nutritional and medical solutions, this age group seems very low. It also implies children of school going age	7(3) The objective criteria stipulated in terms of sub-regulation (2), must be specific to the context of the required goods or services, must be objective and subject to an availability and sustainability analysis, and may include, but are not limited to- (4) If an organ of state intends to award a contract to a tenderer that did not score the highest points, in terms of section 2(1)(f) of the Act, read with this regulation, that organ	**Organs of state will be required to know the sector where objective criteria will be objective and whether there are competent suppliers in the sector, using objective criteria must not result in disruption of service delivery.**

632

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			engaged primarily in the workforce or being economically active? What would happen to this already vulnerable group if a tender is not totally realized, or it is the main or only source of income for that entity (also due to DTI turnover thresholds for these entities? One of the qualifying criteria to operate as a health goods provider is registration of products, licensing of facilities and/or compliance with various legislative and quality regimes, many of which apply locally and globally. These entities should be available in the market to actually allow for these criteria to be possible, and it is recommended that assessments are undertaken as to the availability of these entities, their financial sustainability and possible dependency on a particular tender. This also goes hand in hand with the general NT Regulations on procurement, supply chain management and payment. The ex post facto report of this override regulation to the NT may be too late to allow intervention in situations where the implication of this override may be detrimental to the designated entity and/or to the organ of state procuring the health goods.	of state must, within 30 days before announcing the award….	
	Abbott	9. Local production	The exclusion of goods not produced or	Remove this aspect altogether –	There is research

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Laboratories (Pty) Ltd - Elsa Moroney	and content	manufactured locally potentially excludes access to critical healthcare solutions as there is no locally available or produced alternative.	locally produced and manufactured goods will already have a cost and BEE advantage due to minimal to no import costs, taxes and transportation and also the built-in criteria in the BEE Codes that relate to local production, the exclusion of imported goods only under a narrow set of circumstances, etc. which should allow them to score well on both points system or alternatively, whereas direct imported goods to be heavily discounted to be competitive.	**conducted which indicates the level of local manufacturing in the country in that sector and designations are done according to capacity in the country. South Africans come first.**
	Abbott Laboratories (Pty) Ltd - Elsa Moroney	10. Pre-qualification criteria for preferential procurement	By creating pre-qualification criteria, the state is potentially opening the system to unscrupulous bidders that artificially inflate pricing and causing an additional burden on the state resources and access to healthcare The setting of any specific BEE level must be preceded by an analysis of how the market looks, setting this level too high might lead to fewer companies being able to complete, and may exclude goods that may produce better outcomes and longer-term cost savings	Pre-qualification criteria should be limited to Good Manufacturing processes or ISO -certification related qualifications that help drive a higher standard of product being tendered for, reducing the risk of faulty products entering the system and maintaining a high level of overall care (a) the tenderer having a stipulated minimum B-BBEE status level of contributor, subject to a market analysis which should set the level	**Application of prequalification does not take away the ability or capability of suppliers to do work awarded. It would be negligent of the organ of state to award a tender to an incompetent supplier or a supplier that does not have capability to fulfil contractual obligations.**

9314

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				at one that ensures adequate competition between bidders.	
	Abbott Laboratories (Pty) Ltd - Elsa Moroney	12. Cancellation of tender	Given the importance in these regulations on smaller, black-owned suppliers, the cancellation of tenders could have a disastrous impact on such businesses. It could also have a contractual impact on the entity that have had to sub-contract part of the tender. The indefinite extension of tenders, the non-calling of tenders which should have already have been done and the cancellation is a huge problem, and Abbott will be happy to engage with the NT / CPO on this matter	12.(1) Having regard to the impact of such a decision in national health, security and public interest, as well as relevant stakeholders, an organ of state may, before the award of a tender, cancel a tender invitation if- …	**Noted: however all sectors and suppliers must be considered in this regulation and treated equally.**
	Abbott Laboratories (Pty) Ltd - Elsa Moroney	13. Sub-contracting	It does not make sense to have a blanket approach for sub-contracting, especially when dealing with medicines / nutritional products and medical devices where handling is kept to a minimum to avoid damage and impacting product performance. It also potentially increases costs as there are scientific criteria that need to be maintained throughout the logistics chain which would need to be doubled to ensure consistency and product conformity before reaching patients.	Rather than making this a standard process, allow additional award points if companies can show that they are sub-contracting a portion of the tender to 1 of the designated categories. A table similar to the B-BBEE point scorecard could be used for additional point awards. 13.(1) When specifically designated as such an appropriate in particular circumstances, such as where an adequate number of suppliers are available and meet functionality criteria, for contracts above R30	**Subcontracting will be revisited so that it is not a one size fits all. It will also place discretion on organs of state to determine subcontracting based on sector and value of contract. The subcontracting value and threshold will be revisited so that it is not too restrictive even where it could be applied to tenders below below R 30 Million.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				million, the tenderer must sub-contract a minimum of 30% of the value of the contract to- … New sub-regulation: The following point system will apply to bidders who voluntarily sub-contract a portion of between x% and x% to an entity as set by regulation10(1)(b).	**This regulation must be aligned with the provisions to form joint ventures and consortiums.**
78	South African Bureau of Standards SOC LTD - Boitumelo Mosako	1. Definitions	The definition does not clearly define local content except that it indicates what local production and content is not. It is very critical to define the value add of what local content is.	We recommend the SATS1286 definition as the following to be added. "that portion of the tender price that is not included in the imported content, provided that any kind of working or processing, including assembly or specific operations takes place locally"	**Noted: it seems like this definition is similar to the one in the regulations except for terminology.**
	South African Bureau of Standards SOC LTD - Boitumelo Mosako	9. Local production and content	The suggested revision seeks to remove paragraph 9.3 of the current PPPFA. This provision has enabled procuring organs of state to encourage suppliers to set up manufacturing facilities in the country for non-designated sectors with the assistance of the dti.	We recommend that previous paragraph 9.3 be retained.	**Accepted**
	South African Bureau of	9. Local production and content	The suggested revision seeks to eliminate paragraph 9.4 of the current PPPFA.	Retain section 9.4 and include that South African Bureau of Standards	**Noted: the proposal is valid but will be addressed**

936

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Standards SOC LTD - Boitumelo Mosako		In line with paragraph 3.3 of the National Treasury Instruction 04 of 2015/2016, the revised PPPFA needs to clarify the post award verification of local content declarations made.	will conduct post award local content audits to ensure that declaration made by bidders is true and correct i.e. valid , accurate and complete. In addition we require to clarify who bears the cost of verification as emphasised by Portfolio Committee on trade and industry Points to consider for the cost of the audits are as follows; a) In all tenders of values between 100 million to be funded by the procuring organ state b) In all tenders of values above 100 million to be funded by the winning bidder.	**through other directives as there is more work that needs to be done and to clarify other issues like who will bear the costs of verification.**
	South African Bureau of Standards SOC LTD - Boitumelo Mosako	9. Local production and content	Paragraph 9(3) as per the revised PPPFA should remain paragraph 9(5) and include reference to sub-regulation (3) as requested above.	9.3 Should change to 9.5 and now read "An invitation to tender referred to in sub-paragraph (1) and (3) may follow a two stage process whereby the first stage involves functionality and minimum threshold for local production and content and the second stage	**9.3 of PPR 2011 will be retained. Draft regulations 9.3 will be redrafted to read better.**

637

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				involves price and B-BBEE.	
	South African Bureau of Standards SOC LTD - Boitumelo Mosako	14. Remedies	The regulations are silent about failure to meet the minimum local production and content requirements or submitting false declarations.	Paragraph 14 "The remedies" must include where the tenderer fails to meet the local production and content as was declared in the tender submission and as required in the National Treasury Instruction Note	**Noted: provisions related to local content will be included in the final set of regulations.**
79	Black Pharmaceutical Manufacturers Association (BPMA)	4. Evaluation of tenders on functionality	4(1) An organ of state must indicate in the tender documents if the tender will be evaluated on functionality	There should be limited discretion with regards to deciding whether or not tenders should be evaluated on functionality. Most tenders should be evaluated on functionality. An organ of state should be required to motivate why a tender is NOT being evaluated on functionality.	**Functionality is not the only criteria that can be used for evaluation of tenders; therefore it cannot be prescribed as the only evaluation criteria.**
	Black Pharmaceutical Manufacturers Association (BPMA)	4. Evaluation of tenders on functionality	4.(2) The evaluation criteria for measuring functionality must be objective.	A higher percentage must be allocated to Implementation of RDP programmes Tenderers must submit potential additional jobs the tender is likely to create or add to their current complement. The latter must be supported by motivation.	**This proposal is not linked to functionality. Allocation of percentage linked to RDP programme cannot be linked to capability or capacity to do a particular job or work.**
	Black Pharmaceutical Manufacturers	5. 80/20 preference point system for acquisition of	5.(1) The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value of	1. There does not seem to be any clear reason why the 80/20--point system should not be	**Noted: however the 80/20 and 90/10 are prescribed in primary legislation**

533

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Association (BPMA)	goods or services for Rand value of up to R 100 Million	up to R100 million	applied to all state tenders. If the criteria for functionality are properly applied and only qualifying bidders proceed to the next phase of the evaluation (B--BBEE and price) then the presumably all bidders meet the requirements of the tender. The amended PPPFA should therefore do away with the 90/10 split on tenders and apply the 80/20 rule to all tenders. 2. The increase from the R500 000 limit is a real improvement and should be commended, but we are of the view that there is nothing that prevents the threshold from being increased further to R500 million, should it not be possible to do away with the 80/20 preference rules.	**therefore the regulations cannot elaborate on one and leave the other out.**
	Black Pharmaceutical Manufacturers Association (BPMA)	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	5.(2) The following table must be used to calculate the score out of 20 for B--BBEE:	1. We propose that 50% of the points should be allocated in a manner that will address the targeted groups as contemplated in section 217 subsection (2) of the	**Noted: however this cannot be done due to limitations in the primary legislation which prescribes the 80/20 and 90/10 point system.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				Constitution.	
	Black Pharmaceutical Manufacturers Association (BPMA)	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	5.(4) If a tenderer fails to submit proof of B--BBEE status of contributor or is non--compliant contributor to B--BBEE, the tenderer is not to be disqualified but may only score points out of 80 for price and scores 0 points out of 20 for B--BBEE	2. If a Level 1 and 2 B_BBEE contributor fails to submit due to verification delay there must be a grace period to be provided if there is no other qualifying tenderer especially in specialised industries where Skill's sets are still high in the non--compliant contributors. 3. In a second instance whereby there is no skill's set available for the B--BBEE contributor tenderer the non--compliant contributor needs to sign an SLA commitment so transfer at least 30% of the value of the contract in terms of skills transfer to a Level 1 B--BBEE contributor.	**Noted: tender procedures still need to comply with procurement process in order to be fair and seen to be fair. Waiting for one supplier to submit a certificate that is still generated may be regarded as unfair to other suppliers. Regulation 13 deals with subcontracting to designated groups where the value of the contract is above R 30 Million.**
	Black Pharmaceutical Manufacturers Association (BPMA)	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	5.(5) A trust, consortium or joint venture qualifies for points for B--BBEE status level of contributor as if it is a legal entity, if it submits proof of its B--BBEE status level of contributor.	Does this mean that for each tender a consortium or joint venture needs to get a SANAS accredited company to conduct a B--BBEE evaluation, or can the companies make use of their individual B--BBEE certificates and calculate a joint B--BBEE status level of contributor based on their relative	**Yes a BEE status level of the consortium will be required. Practitioners will not know what points to award to a consortium if individual certificates are submitted.**

640

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				shareholding in the consortium or JV?	
	Black Pharmaceutical Manufacturers Association (BPMA)	6. 90/10 preference point system for acquisition of goods or services with Rand value above R 100 Million	6.(2) The following table must be used to calculate the score out of 20 for B–BBEE:	The maximum of 10% for B–BBEE has not produced the desired effect intended of stimulating entry of SMME's into the second and main stream of the economy. Hence our comment in 5(2) above. With this formula SMME's cannot compete against established large companies on price and this has not been sufficiently taken into account in the proposed amendments.	**Please refer to similar resolution in regulation 5.**
	Black Pharmaceutical Manufacturers Association (BPMA)	7. Award of contracts to tenderers not scoring highest points	7.(3) The objective criteria stipulated in terms of sub-regulation (2), must be specific to the context of the required goods or services, must be objective and may include, but are not limited to-- (a) s tenderer sub–contracting a minimum of 30% of the value of the resulting contract to one or more:	1. Skills and technology transfer, Mentoring and Incubation, Enterprise Development with measurable deliverables, these must be monitored and inspection done and results published at agreed intervals of the tender period 2. There should be a measure of transformation in order to consider penalties on corporate boards that appoint individuals for BEE purpose and yet does not transform those companies. It is now a growing practice for our fellow	**Treasury needs to decide whether to keep objective criteria open ended or definitive bearing in mind limitation and possible abuse. The BEE Commission will be best suited to deal with the second part of the comment.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				brothers and sisters to legitimise racism and exclusion SMME'S in corporations they serve.	
	Black Pharmaceutical Manufacturers Association (BPMA)	8. Criteria for breaking deadlock in scoring	8.(1) If two or more tenderers score equal total points in all respects, the award must be decided by: (i) In the case of two equal tenders; the tossing of a coin; or In the case of more than two equal tenders, the drawing of lots.	These two proposed methods of breaking deadlock are not recommended. In the event of two or more tenderers having scored equal points in all respects, we propose that the evaluation panel reconsider the tenderers contribution in respect of section 7(3)(a), namely the use of the following companies in the delivery of the service: (i) EMEs or QSEs owned by black people who are females; (ii) EMEs or QSEs owned by black people who are from the ages of 14 to 35 years; (iii) EMEs or QSEs owned by black people; (iv) EMEs or QSEs owned by black people with disabilities; (v) Cooperatives conducting business in the municipal area or province where the goods or services are required;	**Noted: the regulations must avoid providing a long list of how a tender may be awarded where tenderers are equal on points. Secondly regulations should not provide for instances where a criteria that was not part of the advertised tender is introduced during evaluation in order to award a tender.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				(vi) Enterprises conducting business in a township or rural area in the municipal area or province where the goods or services are required. The tenderer making greatest use of as many of the entities listed above as is feasible, should then be awarded the tender.	
	Black Pharmaceutical Manufacturers Association (BPMA)	9. Local production and content	9.(3) An invitation to tender referred to in sub--regulation (1) may follow a two stage process whereby the first stage involves functionality and minimum threshold for local production and content and the second stage involves price and B--BBEE	1. What resource is there for companies who have local production capability but are not awarded a tender in favour of foreign manufacturers, largely based on price? 2. Most large pharmaceutical companies claim local manufacturing and get awarded multibillion tenders on this basis, and then they import the same product from a cheaper overseas manufacturing partner/subsidiary. 3. We suggest therefore that random checks of products awarded on the basis of local manufacturing be monitored with Ports Health. 4. Again in terms of s9(3) a foreign	**Noted: National Treasury and the dti are working on a compliance monitoring framework for local production and content which will be issued in a separate directive.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				pharmaceutical manufacturer will not even qualify to proceed to the second stage of the process. If this is followed by the Department of Health, then local manufacturers will finally benefit from designation. 5. However, if it is not followed, as has been the case in the past, what process will the local companies follow to register a complaint? 6. Tenders subject to comfort being received on performance and price should not be split up so it gives EME's or QSE's suppliers economies of scale to build local manufacturing capacity	
	Black Pharmaceutical Manufacturers Association (BPMA)	11. Disposal, Sale and letting of property or assets.	11.(3) The following formula must be used to calculate the points for price in respect of letting of property with the Rand value of up to a R100 million.	We recommend that the rand value should be increased again to R500 million in the event that the 80/20 preference rules cannot be done away with, given that most properties would be more than R100 million.	**Noted: Treasury to decide as a matter of policy whether the threshold values for application of the 80/20, 90/10 as per regulation 5 and 6 and on disposal, sale and letting of property or assets.**
	Black Pharmaceutical	13. Sub-contracting	For contract above R30 million, the tenderer must sub contract a minimum of 30% of the	Once again we are of the view that the sub contract minimum should	**The regulations only prescribe a minimum**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Manufacturers Association (BPMA)		value of the contract to – (a) One or more of the categories referred to in regulation 10(1)(b); (b) One or more EMEs or QSEs; or (c) One or more small businesses, as defined in the National Small Business act, 1996 (act No. 1–2 of 1996).	be set at 40% as this will encourage the growth and development of small enterprises in large projects.	threshold for subcontracting; organs of state can increase this percentage. Due to comments received considerations are looking at even looking away from the threshold value and percentage for subcontracting to a more flexible approach that organs of state can implement to support designated groups.
80	South African Local Government Association (SALGA) - Charles Parkerson	1. Definitions	1."Rural area" –the definition is extracted from Stats SA. Stats SA definitions are designed to meet the a different objective (e.g. statistical purposes). Therefore they are not relevant to the context, objectives and operationalization of the PPPFA. §The definition contradicts the conceptualization of the rural-urban interdependency as stated in the COGTA IUDF, 2016 2. "Township" –The current definition because it is time based, excludes de facto "townships" that were developed post 1994. 3. Local government SCM Practitioners and	Each organ of state should objectively define targetedgeographical areas as Ruralor Townships based on	The proposal is not on the definition but on how preferential procurement should be carried out geographically. This proposal will best suited in the content of the regulations other than the definitions.

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			bidders for local government tenders would be faced with a pragmatic challenge of deciding and proving whether a firm is including in a rural area or not. In many municipalities the division between urban and rural is not clear.		
	South African Local Government Association (SALGA) - Charles Parkerson	4. Evaluation of tenders on functionality	1.4(4)(a) the meaning of word "generic" is not clear	1.The Section 4(4)(a) should reference section 7(3)(a), in order to provide more clarity on the word "generic"	**These are two different concepts regulation 7(3) is in terms of section 2(1)(f) of the Act whereas objective functionality criteria relates a fair evaluation criteria.**
	South African Local Government Association (SALGA) - Charles Parkerson	8. Criteria for breaking deadlock in scoring	1.8(1)There is no reference to functionality as part of the evaluation process, therefore it is assumed that functionality is not connoted. (when read in conjunction with 8(2) then it is clear that a further category is required. 2.In 8 (2) there is a further category that needs to be included.	1.Shouldread: 8 (2), if functionality is part of the evaluation process and two or more tenderers score equal in the total number of points but different preference points for BBBEE status and different for functionality, the contract must be awarded to the tender that scored the highest points for BBBEE	**BEE is the first consideration which means the supplier those scores highest on BEE points is awarded the contract, only move to the second option if they are equal on BEE points as well.**
81	MSD (Pty) Ltd South Africa - Neren Rau	1. Definitions	"Designated sector" may be too wide a definition to adequately delineate pharmaceutical products, that may be designated for local procurement. Specific medicines have to treat specific conditions, and sector or even sub-sector wide designations would not make	"designated products or designated sector means a sector, sub-sector, industry or product or product class designated after consultation with the DTI, the affected government Department or organ of state and	**Noted: however the process to designate is left outside the definition, the drafters did not see it fit to include designation process in the definition.**

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646

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			sense in the healthcare sector. Due to the unique nature of the health sector, it is also proposed that consultation with the representative bodies of the sector be included in the definition. It is also important to consult the affected government Department, in this case the National- and Provincial Departments of Health, as ensuring that the right of access to healthcare and the healthcare needs of specific populations are adequately addressed, is of paramount importance. Any designation must therefore also align with health policy and health programmes. "Functionality" in the health sector also includes the ability of the specific facilities who will be receiving the products to be able to correct store and use the products, and the ability of the successful bidder to render the requisite training and support in certain instances. Because the definition is limited to the specifications, inadequate specifications mean that functionality becomes problematic.	bodies representing stakeholders within the designated product(s) or sector. 'Functionality" means the ability …. in accordance with specifications, set with reference to verifiable needs of the specific entity issuing the tender, taking into consideration operational, public interest and implementation requirements associated with the supply of the goods and/or services and as set out in the tender documents; 'stipulated minimum threshold' means the portion of local product and content as determined by the National Treasury after consultation with the DTI, the relevant government Department or organ of state and affected stakeholders, including representative industry state and bodies representing the affected industry and affected consumer groups.	

647

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			"Local production and content" in medicines, even generics and those manufactured locally, rely close to totally on component imports ("active pharmaceutical ingredients" – API's), which constitutes the bulk of the manufacturing costs. This in turn will affect the applic-ac ation of the definition of "stipulated minimum threshold". As this requirement could potentially exclude important medicines from the market, these have to be set in consultation with the NDoH and affected stakeholders, such as the industry and patient groups. There is no definition as to what "objective" criteria are. This phrase is used in many places in the draft regulations. It must be noted that even an irrelevant, or absence of a criterion, could still render the criteria as "objective". Tenders are awarded and then considerations such as the number of dosages, strength, etc. needed are not considered – whilst evaluating the product on a unit by unit basis, the one appears cheaper than the other. Or, a product that requires infusion, as opposed to an oral agent, comes with additional costs relating to the infusion, or certain products require specific	'Objective evaluation criteria' means criteria set in relation to the explicit and stated needs and capacity of the specific organ of state, its resources and the population it aims to serve through the tender, and which should consider the public interest and any constitutional rights that are affected by the tender and its successful implementation post its award.	**Noted: the definition for objective evaluation criteria in line with the objective of the regulations and whether it will have different meaning than the its ordinary meaning.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			training of staff, the existence of certain infrastructure, etc. which must be considered.		
	MSD (Pty) Ltd South Africa - Neren Rau	4. Evaluation of tenders on functionality	See comment above under definitions on the objective evaluation criteria. The fact that the minimum qualifying score must not be generic and must be separate for each tender, needs to be specified in more detail for medicines and other health products; and cannot be set "per tender". Health sector tenders often include whole classes or more than one class of medicines, and each may have the unique features and requirements referred to above. Regulation 4(4)(c) would require clarification, and possibly a definition – (i) what would be too low minimum qualification criteria that comprise the quality of the goods? And (ii) what would be too high to be deemed to be unreasonably restrictive?	4(4)(b) must be determined separately for each tender or, where appropriate, each specific product or product category where the specifics of such product makes the setting of functionality per tender inappropriate. 4(4)(c)(i) low so that it may jeopardise the quality, as is established by appropriate, recognized regulatory bodies locally, or if not available locally, internationally, and/or are such that it jeopardise the health, safety or efficacy of the required goods or services. (ii) high that it is unreasonably restrictive, which requires an up front assessment by the organ of state of the impact of the objective evaluation criteria proposed to determine functionality, on the ability of potential bidders to supply goods or services in a competitive environment.	**Functionality is not the only criteria that can be used for evaluation of tenders; therefore it cannot be prescribed as the only evaluation criteria and cannot be standardised or generic for all tenders.**

649

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	MSD (Pty) Ltd South Africa - Neren Rau	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	The increase of the monetary value of tenders where the 80 – 20 principle is to be applied, is significant from what is contained in the existing Regulations (R1m to R100m). This means that the impact of a less favourable BBBEE score will magnified and expanded. It is understood that this is the intention, however, the impact on business will be sudden, whereas the implementation of the now-much-stricter BEE Codes cannot be achieved in a year or two (e.g. it requires specific supplier development programmes, and increases in local product content, all of which would take time. The impact of the new BEE Codes on multinational companies are, for example -: - It is virtually impossible for a multinational to obtain a score higher than 75 points, which translates into a level 6 contributor, after the 1 level drop due to not achieving the sub-minimum on ownership	It is recommended that a regulatory impact assessment be undertaken so as to assess the feasibility of obtaining a "favourable" BEE score in the pharmaceutical industry. Patients may need medicines, irrespective of the BEE level of the supplier, and it is submitted that the right of access to healthcare may, in this instance, have to override the imperative of section 9 of the SA Constitution. It is proposed that, for such instances, an override system of incremental compliance be committed to, which ensures the achievement of BB BEE objectives, without excluding industry players whose products are necessary for patient care.	**Noted: we hope that organs of state will be able to balance empowerment requirements with the right of citizen to medical healthcare.**
	MSD (Pty) Ltd South Africa - Neren Rau	7. Award of contracts to tenderers not scoring highest points	Reg 7(3) does not make clear what level of black ownership in an EME or QSE is required in sub-regulations (i) to (iv), i.e. 100%, 51% or …? Any entity in the pharmaceutical supply chain is	It is recommended that a regulatory impact assessment be undertaken to evaluate the availability of the stipulated level of black ownership in the pharmaceutical industry, and	**A definition of ownership will be clarified in relation to objective criteria where the aim is to empower designated groups.**

959

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			required to possess section 22C licences from the Medicines Control Council (MCC), and a manufacturing or distribution licence from the DoH and Pharmacy Council (SAPC). If there are not enough of such suppliers of pharmaceutical goods, regulation 7, and the other regulations (10 and 12), where this stipulation appear. Sub-contracting up to the level of 30% of the value of the tender could also be problematic in terms of section 22H of the Medicines Act, which says that a manufacturer / importer can only sell to a distributor, who in turn cannot only sell into the retail (in this case the public health-) sector. One distributor can thustherefore not sell to another, to whom it has therefore not sell to another distributor, or subcontract to another distributor under this section in the Medicines Act.	how many of those are licenced by the MCC and SAPC. The ranges and types of products they are authorized to handle, should also be considered, as well as capacity and compliance with regulatory criteria stipulated by those bodies, must be considered. It is also recommended that NT consults with the MCC and SAPC on this matter.	**Subcontracting will be revisited so that it does not become a one size fits all approach and can be used as another means to empower designated groups. These regulations cannot be drafted for one sector but must consider all sectors and challenges in all sectors.**
	MSD (Pty) Ltd South Africa - Neren Rau	7. Award of contracts to tenderers not scoring highest points	Regulation 7(4) stipulates that tenders where the override over best points scored apply, must be reported to the NT. It is unclear what the purpose of this sub-regulation is, as NT would not be able to intervene if the reasons provided under this provision, are found to be wanting. It could also attract costly litigation as the contract	7(4) If an organ of state intends to award a contract to …. that organ of state must, within 30 days of the award 30 days before it intends to announce the successful bidder(s), report to the National Treasury….	**Noted: The regulations will include reporting, which will consider amongst other the type of information that will be made public.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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			would then have already been awarded. It is proposed that this report should precede the awarding of such an override tender to allow for intervention if needed, and avoid possible litigation		
	MSD (Pty) Ltd South Africa - Neren Rau	9. Local production and content	An SABS standard has been released previously in relation to the measurement of local content. The status of that standard is not clear now within the context of this draft regulation. The matter of consultation to ensure that designations, which should be per product, or product category for pharmaceuticals, and not per "sector", is feasible and possible in the local environment, and consider the impact on, for example, health sector stakeholders, or which the most important are patients.	9(2) When a determination is made …., the National Treasury, after consultation with the DTI and the relevant organ of state who issues the tender, as well as the affected industry as represented by organized industry groups, and other relevant stakeholders, must issue a circular …	**A framework for designating sectors, although under review caters for consultation of all relevant stakeholders including industry role players.**
	MSD (Pty) Ltd South Africa - Neren Rau	13. Sub-contracting	Apart from the recommended regulatory impact assessment so as to ensure that there are adequate numbers of licensed- and s22H-compliant EME and QSE players in pharmaceuticals in the market, the following concerns are raised: - In BEE, having an exclusive contract with a contractor is frowned upon, as one makes that contractor depending on the contract-giver entity. It is therefore not deemed to be true	It is respectfully requested that the R30m mandatory subcontracting criterion be re-evaluated and possibly scrapped (or be limited in its application) on the basis of features on pharmaceutical procurement and the pharmaceutical sector described in this submission.	**The subcontracting value and threshold will be revisited so that it is not too restrictive.** **Competitiveness, competency and cost effectiveness will not be thrown out due to subcontracting.**

652

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			empowerment. To subcontract a R30m contract to an EME, whose turnover may not be more than R10m, means that it would have to be an exclusive arrangement. This in turn leaves the EME financially vulnerable, as they could not take on any other work which would lead to them exceeding the R10m threshold of the BEE Codes. - The above would also mean that an EME could not provide services for more than one successful bi successful bidder ever, as it would by definition take them over their turnover limit. - Given the experience in the health sector in terms of ordering of stock from successful bidders, being reliant on a sub-contract which in turn is reliant on public health sector budgets in public health facilities, could place EME's and even QSE's at financial risk.		
	MSD (Pty) Ltd South Africa - Neren Rau	15. Circulars and guidelines	The National Industrial Policy Programme (NIPP) is a condition of all tenders, but have never been included in the legislative framework, and appears to not be consistently applied or enforced by the DTI and the specific organ of State. It is important that legal certainty be obtained on this. Most importantly, it adds to the cost of doing business and could, in	If the policy decision is that NIPP should stay, it is recommended that one insert a specific regulation as to when and how NIPP requirements will apply to a tender.	**The dti is best placed to deal with this comment. NT to ensure that same is passed to the dti.**

253

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			conjunction with the sub-contracting requirement, have an impact on the availability of bidders in the pharmaceutical market. It is strongly recommended that an industry survey be embarked upon, so as to ensure that the right of access to healthcare is not inadvertently impacted.		
82	South African Electrotechnical Export Council (SAEEC) - Chiboni Evans	1. Definitions	ROLE OF THE DEPARTMENT OF TRADE AND INDUSTRY AND NATIONAL TREASURY: Under definitions "designated sector" states that this means- a sector, sub sector or industry to which a stipulated minimum threshold applies as designated by the National Treasury, after consultation with the Department of Trade and Industry. The definitions further state that a. stipulated minimum threshold – means that portion of local production and content as determined by National Treasury after consultation with the Department of Trade and Industry. COMMENT: Currently the Department of Trade and Industry determines the level of local content and production following consultation with industry and the private sector and then submits proposals for designation to National Treasury. The revised PPPA as issued for	INPUT: To avoid confusion with regards the roles of the two Government entities (i.e. the dti and National Treasury) ,clarification is required within the definition as follows: " stipulated minimum threshold – means that portion of local production and content as determined by the Department of Trade and Industry after consultation with Industry and submitted to National Treasury.	**Noted: the 2011 definition will be brought back to avoid confusion.**

651

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			comments, appears to have reversed this process in this definition in that, the portion of local content will now be determined by National Treasury after consultation with the dti. This apparent reversal of process will represent a fundamental shift in the methodology to be used in arriving at the designation of products, mainly because the level of engagement that National Treasury has with the private sector and industry is not as extensive as that of the dti.		
	South African Electrotechnical Export Council (SAEEC) - Chiboni Evans	1. Definitions	' LOCAL PRODUCTION AND CONTENT" The current definition excludes in (c). freight and other direct importation costs, including landing costs, dock dues and any applicable taxes payable at the South African port of entry. The exclusion of these costs represents an inconsistency in the manner in which local content is calculated/ determined by the various South African Government Departments and State Owned Enterprises. Specifically, the Export Credit Insurance Corporation (ECIC) the official Export Credit Agency of the South African Government, which also reports through National Treasury in their calculation for 50% local (South African) content will include the cost of freight and other import/export related costs.	There should be consistency and/or clarification in the inclusion of freight costs as part of the calculation of local content by the various government departments. These costs are often paid to companies that sustain jobs in companies that are registered and operate in South Africa. These costs are local value add and should be considered as part of local content. They should therefore not be excluded.	**Noted: this definition relates to local production and content for the purposes of public procurement. Should there be inconsistency in the application of local procurement by other organs of state, there should be discussions to allay any inconsistencies**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	South African Electrotechnical Export Council (SAEEC) - Chiboni Evans	9. Local production and content	Section 9.(1) states that "An organ of state must, in the case of a designated sector , advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered. This is a welcome inclusion as currently there is nothing in the law to oblige organs of state and State Owned Enterprises to procure designated products. More importantly there is currently no legislative instrument to ensure compliance. A further point should be made that Organs of State and State Owned Enterprises should be persuaded and not mandated to procure locally manufactured/produced goods that are not designated. Perhaps included in clause 9.(1) should be a statement that says " An Organ of State may advertise the invitation to tender with a specific condition that "goods and services produced in South Africa by South African registered companies will be considered".	There is a need for local manufacturers and service providers to get a higher recognition in procurement by organs of state and state owned companies when compared to foreign based/ owned suppliers.	**National Treasury will provide a directive on application of current regulation 9.3 after promulgation of these regulations which provides other means of encouraging local procurement.**
83	Commission for Gender Equality (CGE) - Adv K Anirudhra	1. Definitions	The CGE does not support the proposed definition of "designated group " as proposed and recommends the following :	The deletion of the word Black people and insertion of the following words : (i) Black people	**Noted, However the definition will be aligned to the B-BBEE Act to avoid any confusion.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				with the following (a) African, Coloured or Indian person ,	
	Commission for Gender Equality (CGE) - Adv K Anirudhra	1. Definitions	Rural Area The CGE recommends and expansion of the term rural area by way of an insertion as follows :	"Rural area" means (a) A sparsely populated area in which people farm or depend on natural resources including villages and small towns that are dispersed through the area which is usually characterised by a rustic lifestyle.	**Noted: the term will be revisited to align with the intentions of the regulations other prescripts.**
	Commission for Gender Equality (CGE) - Adv K Anirudhra	1. Definitions	" Verification" The CGE recommends the inclusion of new definition as follows :.	"verification" – means any investigation, check or information gathering exercise that is necessary and which may be undertaken to assess functionality, B-BBEE status or any other fact that is necessary by any organ of state during any stage of the tender process.	**Noted: subject to discussion on whether the term is relevant for the regulations and if it has different meaning than its ordinary meaning.**
	Commission for Gender Equality (CGE) - Adv K Anirudhra	1. Definitions	" Goods" The CGE recommends a revision of the meaning of goods by way of an insertion as follows :	"Goods" - means an inherently useful item which includes any material, commodity, merchandise or article and includes infrastructure.	**Noted: subject to discussion on whether the term is relevant for the regulations and if it has different meaning than its ordinary meaning.**

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	Commission for Gender Equality (CGE) - Adv K Anirudhra	4. Evaluation of tenders on functionality	The CGE recommends an amendment to Regulation 6(3) by way of the following insertion :	A tenderer must submit proof of its B-BBEE status level of contributor. This status must be verified by the Department or organ of state calling for a tender.	**Verification of BEE certificates remains the responsibility of the dti organs of state cannot be burdened with verification of BEE certificates.**
	Commission for Gender Equality (CGE) - Adv K Anirudhra	8. Criteria for breaking deadlock in scoring	The CGE proposes an amendment to Regulation 8(3) by way of an insertion as follows :	A new sub regulation (3) (c) which reads as follows : (c) in the case where two tenders are equal the one with a greater representation of women must be chosen.	**BEE is the first consideration which means the supplier those scores highest on BEE points is awarded the contract. To split BEE points at this stage may result in unfair award. Questions may be asked about other designated groups.**
	Commission for Gender Equality (CGE) - Adv K Anirudhra	13. Sub-contracting	The CGE proposes an amendment to regulation 13 by way of the following insertion which reads as follows :	13 (1) For contracts above R30 million , the tenderer must sub – contract a minimum of 30% of the value of the contract to – (a) One or more of the categories referred to in regulation 10(1)(b) provided that at least EME or QSE in terms of Regulation 10(1)(b) (i) is included.	**Noted: cross referencing to designated groups can be considered.**
84	WESTERN CAPE MEDICAL	1. Definitions	We are in favour of localisation and the objectives of the Minister of Trade and Industry	Designated Sector; Certain sectors of the medical	**This request should be addressed separately from**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	DEVICES CLUSTER (WCMDC) - Debbie Katz		IPAP 1 and 2 Policy. We propose that sectors of the medical devices be designated.	devices have been designated by the National Treasury, after consultation with the Department of Trade and Industry, taking into account- a) national development and industrial policies b) competition and other economic factors c) sectors designated for local manufacturing	**the regulations.**
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	2. Application	As local manufacturers of Medical Devices in SA we reject that the proposal that 30% of the value of a contract should be sub-contracted to one or more of the categories referred to in regulation 10(1)(b) or one or more EME's or QSE's or one or more small businesses as defined in the National Small Business Act 1996 etc.	The members of the Western Cape Medical Devices Cluster collaborate with each other and other local engineering facilities as part of our manufacturing capability. We therefore do not believe that it is necessary to impose a sub-contracting clause to local manufacturers as we are already contributing to the local economy, creating jobs and reducing the reliance on imports. RECOMMENDATION: Local manufacturers that are registered with an industry association in SA are exempted	**Noted: Subcontracting will be revisited so that it accords with the aims of the regulations and is not a one size fits all approach. Organs of state must be able to identify tenders where it will be practical to implement subcontracting and promote designated groups.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				from mandatory sub-contracting.	
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	3. Identification of preference point system	The proposed revision of the 80/20 preference point system is welcomed.	Local medical device manufacturers are the backbone of localisation of medical devices in SA and should benefit from their local investment. Perhaps appropriate high volume, low value devices should be identified by category as per the DoH essential medical products list and then be designated. This will create manufacturing opportunities etc.	**The proposal does not seem to relate to regulation under consideration. However will be revisited when dealing with regulation 9 on local production and content.**
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	4. Evaluation of tenders on functionality	Specifications have often been devised to exclude local products so we MUST have accurate specifications that are in line with SABS specification, where these exist. it must be complied with. We propose that ISO 13485 certification be a basic requirement of the supplier.	We propose additions to the policy; a) Approved specification by WCMDC b) SABS test reports c) Sterility reports d) ISO 13485 e) Proof of local manufacturer in the RSA	**Determining specifications per tender is the responsibility of the organ of state. The regulations cannot prescribe generic specifications as requirements will differ from tender to tender from organ of state to organ of state.**
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) -	5. 80/20 preference point system for acquisition of goods or services for Rand value of	We welcome the 80:20 proposed change to the Preferential Procurement Policy Framework Act 2000	WCMDC will secure more contracts which will result in more investment, more employment, more partners, more exports and a more competitive environment.	Noted

660

PUBLIC COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Debbie Katz	up to R 100 Million		RECOMMENDATIONS: Retain paragraph	
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	6. 90/10 preference point system for acquisition of goods or services with Rand value above R 100 Million	WCMDC is currently not in this sector	RECOMMENDATIONS: Retain paragraph	Noted.
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	7. Award of contracts to tenderers not scoring highest points	WCMDC welcomes this subject to suitability of the supplier.	RECOMMENDATIONS: Retain paragraph	Noted
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	8. Criteria for breaking deadlock in scoring	WCMDC welcomes this	RECOMMENDATIONS: Retain paragraph	Noted
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	9. Local production and content	IPAP 1 and IPAP 2 have identified medical devices as an industry for development. The challenge is to attract black investors to the industry.	RECOMMENDATIONS: Retain paragraph Add a paragraph in medical device tenders and indicate which specific products are designated. These items are to be listed and all state	A separate Instruction is issued once a sector is designated with detailed information related to the sector.

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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				tenders for these items to be subject to the 80:20 Points system and also the stipulated minimum threshold.	
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	10. Pre-qualification criteria for preferential procurement	WCMDC supports this	RECOMMENDATIONS: Retain paragraph	**Noted**
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	11. Disposal, Sale and letting of property or assets.	WCMDC supports this	RECOMMENDATIONS: Retain paragraph	**Noted.**
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	12. Cancellation of tender	WCMDC does not support this condition as we are the local manufacturers of medical devices in SA. If we were to sub-contract to somebody else to manufacture our devices then it would not serve the need of adding value to the market, it would just add cost. In reality, we already sub-contract some of our raw material needs to other local vendors.	RECOMMENDATIONS: Retain paragraph BUT sub – contracting should ONLY apply to non manufacturers of medical devices in SA.	**Subcontracting will be revisited so that it does not become a one size fits all approach and can be used as another means to empower designated groups.**
	WESTERN CAPE MEDICAL DEVICES CLUSTER	13. Sub-contracting	No Comment	RECOMMENDATIONS: Retain paragraph	**Noted.**

299

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	(WCMDC) - Debbie Katz				
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	14. Remedies	No Comment	RECOMMENDATIONS: Retain paragraph	**Noted.**
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	15. Circulars and guidelines	No Comment	RECOMMENDATIONS: Retain paragraph	**Noted.**
	WESTERN CAPE MEDICAL DEVICES CLUSTER (WCMDC) - Debbie Katz	16. Repeal of Regulations	No Comment	RECOMMENDATIONS: Retain paragraph Suggest: PPPFramework Act 2000 Medical Devices	**Noted.**
85	TOBAKA ARCHITECTS AND URBAN DESIGNERS - Sandile K. Ngcobo	1. Definitions	1 (c), (d) and (e) B-BBEE I believe this is not catering for people of African origin enough as Black still refers to other races in South Africa yet even excluding in some instances Africans from outside South Africa. We need to be specific in order to address the inequalities since the so called Black status incorporates	These processes must be initiated and a suitable policy needs to be implemented to suite the affected and the continued to be disadvantaged race of South Africa. We need to address this issue by changing the processes on which B-	**The definition will be aligned with the B-BBEE Act as amended.**

663

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			individuals of Indian and Asian origin who also benefit from the policy. It is my belief that, as much as Indian and Asians were marginalised by the previous government their situation was never as grave as that of the indigenous people. In-fact I am always concerned about the description BLACK when referring to the African race, we have Caucasian, Asian, Indian and Black (which also incorporates the latter when it is convenient) but this could be a discussions for the African Historians on another Act in another day. For the empowerment of our African people we need a suitable process and definition that will specifically target the empowerment of African people of South Africa without being apologetic.	BBEE points are awarded. We need to identify who really must verify their B-BBEE status annually. Some of the Level 1 allocations must be revisited to make them automatic if they have the 100% right ownership. The issue of renewal and costs for B-BBEE certification processes is exorbitant and must be revisited as it a burden to emerging companies without work. Exempted Micro Enterprises in terms B-BBEE is good but could be increased to more with the right ownership	
	TOBAKA ARCHITECTS AND URBAN DESIGNERS - Sandile K. Ngcobo	2. Application	It is not enough that the regulation only applies to the Organs of States' work, private companies must be regulated making sure that this policy is implemented across the board.	It should be possible for the regulation to apply to private companies. In the built environment local municipalities can be mandated to request for correct certification and documentation for the application of the policy when submitting project plans. This is just one of the many examples Treasury may adopt.	**Noted, however the regulations are issued to organs of state as government's means of empowering designated groups. Private Business can use Codes of good practice to promote transformation.**
	TOBAKA	3. Identification of	I do not see any relevance on identification of	Make 90/10 system redundant and	Government procurement

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	ARCHITECTS AND URBAN DESIGNERS - Sandile K. Ngcobo	preference point system	preference point system as we just need one system 80/20 to applied on all projects but project assessment for budgeting and adjudication purposes is still relevant.	obsolete	extends beyond R100 Million so the identification of the preference point system is still relevant.
	TOBAKA ARCHITECTS AND URBAN DESIGNERS - Sandile K. Ngcobo	4. Evaluation of tenders on functionality	I am generally happy with this process and I believe that this should form the 80 points in the preference point system rather than the price since the price would have been identified by the relevant department anyway prior to inviting tenders. In the built environment this is duplication of the works in my view and the source of all problems when 80 points is allocated to price.	Should the price be anyway critical to the State for some reason, maybe we should consider something similar to a 60/20/20 system where 60 (functionality) + 20 (price) = 80 and 20 [African (Black) ownership]	Evaluation on functionality precedes evaluation on price and B-BBEE points. Organs of state can set any fair and objective threshold for functionality.
	TOBAKA ARCHITECTS AND URBAN DESIGNERS - Sandile K. Ngcobo	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	This initiative is welcomed, as it will really open the market for and uplift the previously disadvantaged companies and individuals.	But I still believe that the Act needs to be amended to an 80/20 as proposed above obviously after all necessary consultations have taken place.	Noted.
	TOBAKA ARCHITECTS AND URBAN DESIGNERS - Sandile K. Ngcobo	6. 90/10 preference point system for acquisition of goods or services with Rand value above R 100 Million	I think this system is not robust enough in trying to address the wrongs of the past and I believe that after 20 years we now have African (Black) companies with capacity to do works above R100 million therefore I no longer see the relevance of this system	The Government must use at all times the 80/20 system	Noted.

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	TOBAKA ARCHITECTS AND URBAN DESIGNERS - Sandile K. Ngcobo	7. Award of contracts to tenderers not scoring highest points	Section 7 (1) is not clear on this but I am sure it is on the Act. I am however of the opinion that, with my proposed 60+20/20 (functionality + price/black ownership) system highlighted above this will not be necessary.	Not ideal but obviously we need such clauses for any eventualities.	**Regulations cannot prescribe new preference point system.**
	TOBAKA ARCHITECTS AND URBAN DESIGNERS - Sandile K. Ngcobo	9. Local production and content	This is still good and relevant	All tenders should subscribe to this process. What about private sector?	**They have signed a local procurement accord and on their own although not prescribed must ensure that they support local manufacturers.**
	TOBAKA ARCHITECTS AND URBAN DESIGNERS - Sandile K. Ngcobo	10. Pre-qualification criteria for preferential procurement	Great initiative we welcome this process it will really improve the allocation of work to the previously disadvantaged companies. As much as this is great it is not enough, we cannot continue to have a situation where previously disadvantaged companies rely on government tenders therefore this regulation should also affect the private sector as well. This should be a condition for doing any work in South Africa to avoid this burden on the state that they have to provide for PDIs.	There is enough work in the private sector for a similar regulation to be implemented by a relevant state organ. The status level should be based mostly on ownership more than anything else when these levels are allocated. I also think that the EMEs must be up to less than R10million black owned companies from all sectors.	**Unfortunately Preferential Procurement Regulations apply to organs of state.**
	TOBAKA ARCHITECTS AND URBAN DESIGNERS -	13. Sub-contracting	Good	Retain	**Noted.**

999

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Sandile K. Ngcobo				
	TOBAKA ARCHITECTS AND URBAN DESIGNERS - Sandile K. Ngcobo	14. Remedies	Good	Retain I hope that the implementation of the centralised system will take care of the SARS certificate printing nightmare for tender submission	**Noted.**
86	Consultium Architects and Urban Deisgners	6. 90/10 preference point system for acquisition of goods or services with Rand value above R 100 Million	Is there still a reason to have both the 90/10 and the 80/20 valuation system at all. Or is it more beneficial to look at one system – especially if targeting SMMEs. We understand that a possible intention is that by the time an entity bids for a 90/10 service, they should be large enough to play in the same league as previously advantaged and established entities. In reality however, even if one looks at the current state of play for instance many large PDI-owned (CIDB Grade 9) Building contractors still rely on public sector support and opportunities. Most of them never get the opportunity to play a role in the private sector. This sector is still dominated by previously established entities. As such the fact remains that they are still pretty much disadvantaged, even if they have grown into large companies.	Consideration should be given in future to dispose of the 90/10 system if the current status quo does not change.	**Government would be looking at more flexible approaches to empowerment which may also consider sector specific approaches to empowerment in line with the provisions of the constitution.**
87	GOEILOCATE -	13. Sub-contracting	I think these to be industry specific. This is	For contracts above as per industry	**Subcontracting will be**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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	Sindile Bidla		because in the services industry a lot of contracts are below the current threshold of R30 million.	category, the tenderer must sub-contract a minimum of 30% of the value of the contract to-	**revisited so that it is not a one size fits all. It will also place discretion on organs of state to determine subcontracting based on sector and value of contract.**
88	IDMS Consultant to the office of the CPO - Gysbert Cronje	1. Definitions	The proposed definition for "comparative price" deals with two different concepts. It deals with the reasonableness of the tender price and the comparing of tenders on a common basis. The reasonableness of the tender offer is tested in the term "acceptable tender" which is defined in the Preferential Procurement Policy Framework Act as "any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document". The conditions of tender need to deal with the fairness and reasonableness (acceptability) of the tender. SANS 10845-3 (Standards Conditions of Tender), which has almost the identical provisions as the CIDB Standard for Uniformity in Construction Procurement and forms an integral part of the National Treasury Standard	It is recommended that the term comparative price be deleted and replaced with comparative offer and the references in the text to comparative price be amended as follows **"comparative offer"** means the tenderer's financial offer after all tendered parameters that can affect the value of the financial offer have been taken into consideration to enable comparisons to be made on a comparable basis Amend the following in Regulation 5(1) and 6(1) Ps = points scored for comparative price or tender offer under	**Agreed that these are different concepts and the regulations do not use comparative offer but comparative price hence we define comparative price not comparative offer.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			for Infrastructure Procurement and Delivery Management, deals with the reasonableness of the tender offer through the assessment of commercial risk i.e. unduly low tendered sums, unduly low or high rates, contract or pricing data provided by the tenderer or the contents of any of the tender returnables which should be included in the contract. SANS 10845-3 deals with the comparability of tender offers through "comparative offer" which is defined as "the tenderer's financial offer after all tendered parameters that will affect the value of the financial offer have been taken into consideration in order to enable comparisons to be made between offers on a comparative basis." This enables an equitable and fair comparison to be made. This is particularly important in infrastructure procurement where cost based pricing strategies are increasingly being used and the effect of an event for which the contractor is not at risk is assessed on the basis of cost as defined in the contract uplifted by a fee percentage which includes profit and overheads.	consideration Pt = comparative price of tender or offer under consideration Pmin = comparative offer price of lowest acceptable offer	
	IDMS Consultant to the office of the	2. Application	These Regulations apply to organs of state as envisaged in the definition of "organ of state" in	The Regulations apply to the organs of state identified in section 1(a) to	**Noted: The PPR 2011 Application will be retained**

699

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	CPO - Gysbert Cronje		section 1 of the Preferential Procurement Policy Framework Act which defines an organ of state as: (a) a national or provincial department as defined in the Public Finance Management Act, 1999 (Ac; No. 1 of 1999); (b) a municipality as contemplated in the Constitution; (c) a constitutional institution defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999); (d) Parliament; (e) a provincial legislature; (f) any other institution or category of institutions included in the definition of "organ of state" in section 239 of the Constitution and recognised by the Minister by notice in the Government Gazette as an institution or category of institutions to which this Act applies; The regulations should clarify Section 1(f) of the Preferential Procurement Policy Framework Act as it is not known if the Minister has pronounced on its applicability to categories of institutions other than (a) to (e)	(e) and the following: (a) public entities listed in Schedules 2 and 3 to the Public Finance Management Act, 1999 (Act No 1 of 1999); (b) municipal entities as contemplated in the Municipal Systems Act, 2000 (Act No 32 of 2000); (c) any organ of state, as defined in section 239 of the Constitution, which implements infrastructure projects on behalf of an organ of state to which these Regulations apply	**to include Municipalities and Municipal Entities. Paragraph c of the proposal is not clear, verify with IDMS Consultant if there are other organs of state not listed in schedules to the PFMA that carry out Infrastructure procurement on behalf of organs of state?**

670

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	IDMS Consultant to the office of the CPO - Gysbert Cronje	3. Identification of preference point system	Transversal contracts, framework agreements and cost based pricing strategies do not necessarily have a price at the time that tenders are invited. The organ of state needs to indicate which preference points system applies i.e. 90 / 10 or 80 /20 based on an estimated value of the transaction over the term of such contracts.	An organ of state must: (a) determine and stipulate in the tender documents, the applicable preference points system which may be determined on the basis of: (i) the price tendered by the lowest acceptable tenderer; (ii) the estimated Rand value of the contract over the term of the contract; and	**There is no need to specify a preference point system at this stage if setting up a framework contract. The system will apply when setting up a transversal contract as it is the basis for awarding a tender in transversal contracts.**
	IDMS Consultant to the office of the CPO - Gysbert Cronje	4. Evaluation of tenders on functionality	The Preferential Procurement Policy Framework Act gives effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution. The Preferential Procurement Policy Framework Act is clear that the preference points system is based on the lowest acceptable tender and defines an acceptable tender as "any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document." Put differently, an acceptable tender is a tender which conforms to all the terms, conditions, and scope of work of	Determining the acceptability of a tender prior to the application of the preference points system Any criteria which is used to make a determination of a tenderer's ability to provide goods or services in accordance with a proposed contract prior to the application of the preference points system must be stipulated in the tender documents.	**Accepted: functionality should not be part of the Preferential Procurement Regulations; it is merely included here to complete the evaluation process.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			the tender documents, without material deviation or qualification The question that arises is why one detailed procurement procedure is embedded in the framework for the implementation of the procurement policy. In particular, it is questioned as to why one approach is singled out and the Regulations remains silent on other methods. Such procedures should be issued in terms of the PFMA and MFMA alongside other procurement procedures. Currently this is not covered in the PFMA or MFMA Regulations but can be covered through instructions issued in terms of the PFMA and circulars issued in terms of the MFMA.		
	IDMS Consultant to the office of the CPO - Gysbert Cronje	4. Evaluation of tenders on functionality	The definition for functionality should be deleted as it would no longer appear in the text. The following texts will also have to be amended to remove the term functionality.	Delete definition for functionality 8 (2) If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preference points for B -BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.	**The terms functionality is used in Regulation 4 of the regulations.**

672

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				9(3) invitation to tender referred to sub –regulation may follow two - stage process whereby the first stage involves functionality and a minimum threshold for local production and content and the second stage involves price and B - BBEE.	
	IDMS Consultant to the office of the CPO - Gysbert Cronje	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	**See submission for further comments - they speak to the impact of the proposed increase from R1 million to R100 million** Limiting the specific goals to B-BBEE only The Preferential Procurement Policy Framework Act states the following: 2. (1) An organ of state must determine its preferential procurement policy and implement it within the following framework: (d) the specific goals may include— (i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability; (ii) implementing the programmes of the Reconstruction and Development Programme as	It is recommended that Regulation 5 (6) to 5(8) be replaced with the following to make provision for a maximum of 50 % of the points being allocated to specific goals other than B-BBEE in the case of infrastructure projects: (6) Notwithstanding the provisions of subregulation (2), points may in the case of infrastructure procurement be allocated to work opportunities for target groups and national development goals such as those identified by the Presidential Infrastructure Co-ordinating Committee, provided that not less than 10 points are allocated to B-BBEE Status Level of Contribution in the proportions indicated in	**There will be difficulty in separating points between specific goals and BEE points. In our information BEE status level is incorporates specific goals stated in the PPPFA.**

673

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			published in Government Gazette No. 16085 dated 23 November 1994; The CIDB BEST PRACTICE GUIDELINE # B1 Formulating and implementing 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. – see http://www.cidb.org.za/publications/Documents/Formulating%20and%20Implementing%20Preferential%20Procurement%20Policies.pdf This Best Practice Guide offers the following explanation in this regard: "The White Paper on Reconstruction and Development in chapter three (The Economic Policy Framework) states that "the Government's central goal for reconstruction and development is to meet the social and economic needs of the people and to create a strong, dynamic and balanced economy." An analysis of this document indicates that: • employment creation is a central priority;	subregulation (2) (7) The points scored by a tenderer under sub-regulations (2) and (6) terms must be added to the points scored for price under sub - regulation (1). (8) The total number of points scored must be rounded off to the nearest 2 decimal places (9) Subject to Regulation 7, the contract must be awarded to the tenderer scoring the highest number of points determined in accordance with the preference points system	

674

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			• greater participation in the economy and less concentrated, more racially and gender inclusive ownership patterns are essential; • poverty alleviation and the redressing of uneven regional development is crucial; and • small, medium and micro enterprises need to play a substantially larger part in economic activity. Accordingly, the law makers envisaged that specific goals would primarily relate to the participation of targeted enterprises and targeted labour in support of these programme objectives." Infrastructure projects involve the manufacturing or maintaining of a product on a site. Such projects create opportunities for addressing poverty, uneven regional development and involvement of SMMEs in projects. It is essential that organs of state are permitted to formulate specific goals to address these issues through the preferencing system. The preference points system permits the setting of stretch targets and the rewarding of those tenderers who are best able to meet such targets with a modest price premium if any.		

675

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			It is noted that all the points for preference are allocated to B-BBEE. The regulations do not provide an organ of state with any latitude to establish any other specific goals such as the redressing of uneven regional development and poverty alleviation, specific goals which are particularly important in the provision of infrastructure. This contradicts section 2(1) of the Preferential Procurement Policy Framework Act as the Regulations determine the policy and not the organ of state as required by the Act..		
	IDMS Consultant to the office of the CPO - Gysbert Cronje	6. 90/10 preference point system for acquisition of goods or services with Rand value above R 100 Million		It is recommended that Regulation 6 (6) to 6(8) be replaced with the following to make provision for a maximum of 50 % of the points being allocated to specific goals other than B-BBEE in the case of infrastructure projects: (6) Notwithstanding the provisions of subregulation (2), points may in the case of infrastructure procurement be allocated to work opportunities for target groups and national development goals such as those identified by the Presidential Infrastructure Co-ordinating Committee, provided that not less	**Rejected: the regulations should not introduce another system not provided for in primary legislation.**

676

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				than 5 points are allocated to B-BBEE Status Level of Contribution in the proportions indicated in subregulation (2) (7) The points scored by a tenderer under sub-regulations (2) and (6) terms must be added to the points scored for price under sub - regulation (1). (8) The total number of points scored must be rounded off to the nearest 2 decimal places (9) Subject to Regulation 7, the contract must be awarded to the tenderer scoring the highest number of points determined in accordance with the preference points system	
	IDMS Consultant to the office of the CPO - Gysbert Cronje	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	Unincorporated joint ventures (consortiums) are frequently formed in the construction industry for a number of reasons, the most common being that: • the project is too large, or complex, for a single company to undertake with its available resources; • the project requires specialist skills, or abilities, which a company is unable, itself, to	It is recommended that sub-regulation 5(5) and 6(5) be amended to read as follows: (5) A trust, consortium or joint venture qualifies for points for level of contributor as if it is a legal entity, if it submits proof of its B-BBEE status level of contributor. Alternatively, the B-BBEE status level may be determined on the	**Noted: Regulation 11 of PPR 2011 will be retained.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			provide; or • there is a need to spread project risk between companies. The B-BBEE status of the joint venture In the generic score card is established by a verification agency as a group structure is in accordance with the Guidelines on Complex Structures and Transactions, and Fronting (Previously Statement 002) issued by the Department of Trade and Industry. In the construction sector code, the B-BBEE status of an unincorporated joint venture was determined by a verification agency based on a weighting of the shareholder agreement relevant to the specific joint venture prior to the withdrawal of the Construction Sector Code. The difficulty with the current requirement for obtaining a B-BBEE rating as if it were a legal entity is that it takes time to do so prior to the closing date for tenders is usually insufficient. This can be remedied should a simple rule be introduced to facilitate the granting of preference points.	basis of the member of a consortium or joint venture which obtains the lowest score in terms of sub-regulation 2.	
	IDMS Consultant to the office of the	7. Award of contracts to	The objective criteria stipulated in sub-regulation 7(3)(a) relate to what the Act refers to	It is recommended that Regulation 7 be replaced with the following	The proposal is similar to what is already provided

679

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	CPO - Gysbert Cronje	tenderers not scoring highest points	as "specific goals" as contemplated in section 2(1)d as they do not relate to the determination of cost effectiveness of the procurement system or commercial risk associated with a contract (other objective criteria). According to the Preferential Procurement Policy Framework Act they need to be taken into account in the preferencing points system as they are "specific goals" and not "other objective criteria." The draft regulations are silent on how the examples of other objective criteria in sub-regulation 7(3)(b) to (d) are to be assessed and how a decision is made to overlook the highest scoring tenderer in the preference points system. For example, how will a quantity surveyor's projection as to the time that is likely to take to complete an infrastructure project be taken into account? This is wide open to abuse, hence the reporting requirements set out in sub-regulation 7(4). The National Treasury Standard for Infrastructure Procurement and Delivery Management deals with this issue comprehensively by scoring points for quality in the evaluation of tender offers, the disclosure of not only the quality criteria but also the prompts	and that the issue of other objective criteria be dealt with in instructions and circulars: 7(1) A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Act. (2) If an organ of state intends to apply objective criteria in terms of section 2(1)(f) of the Act, the organ of state must stipulate the objective criteria in the tender documents.	**for in the regulations except that it does not elaborate further than the regulations do. However the whole of regulation 7 will be revisited and redrafted to read better in accordance with the aims of supporting designated groups.**

679

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			for judgement and the combining of the preference points system points with the points for quality. Comprehensive rules for the formulation of such criteria and the scoring of quality are set out in the standard and the associated SANS 10845 national standards. The question that arises is why detailed procurement procedures are embedded in the framework for the implementation of the procurement policy. Such procedures should be issued in terms of the PFMA and MFMA alongside other procurement procedures. Currently this is not covered in the PFMA and MFMA Regulations but can be covered through instructions issued in terms of the PFMA and circulars issued in terms of the MFMA. The selection of a contractor on the basis of price adjusted for a preference is most appropriate in the case where the goods and services are well-defined standard services, off-the-shelf items and readily available commodities. This is not the case when procuring infrastructure related works and services. Cost effectiveness is required in order to determine which tenderer is most likely to deliver value for money. This requires that the		

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			points scoring system be extended to include quality as other objective criteria. As a result, most infrastructure procurement transactions will include quality in the evaluation of tenders. Since it is well defined in the SIPDM, it is not considered necessary to report the reasons for doing so.		
	IDMS Consultant to the office of the CPO - Gysbert Cronje	8. Criteria for breaking deadlock in scoring	Regulation 8 only applies where there is other objective criteria do not come into play. The current formulation of Regulation 8 does not consider this possibility. The prominence of one procurement method, namely functionality should be removed from this Regulations. The tossing of a coin or drawing of lots is unlikely to occur when sores are to two decimal places.	It is recommended that Regulation 8 be redrafted as follows: 8.(1) If two or more tenderers score an equal total number of points and the award of the contract is not in accordance with the provisions of Regulation 7, the contract must be awarded to the tenderer that scored the highest points in the preference points system. 8(2) If two or more tenderers score equal total points in all respects, the award must be decided by- in the case of two equal tenders, the tossing of a coin; or in the case of more than two equal tenders, the drawing of lots.	**Noted: this provision applies on the normal tender if regulation 7 is not part of the tender.**
	IDMS Consultant to the office of the CPO - Gysbert	9. Local production and content	Detailed procurement procedures should not be embedded in the framework for the implementation of the procurement policy. Such	The following is recommended: Delete subregulation 9(3)	**Noted: the subregulation will be revised.**

68

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Cronje		procedures should be issued in terms of the PFMA and MFMA alongside other procurement procedures. It is not understood why one method is singled out in regulation 9(3).		
	IDMS Consultant to the office of the CPO - Gysbert Cronje	10. Pre-qualification criteria for preferential procurement	The prequalification criteria stipulated in sub-regulation 10(1)(a) relates to what the Act refers to as "specific goals" as contemplated in section 2(1)d. According to the Preferential Procurement Policy Framework Act they need to be taken into account in the preferencing points system as they are "specific goals". The stipulation of a minimum B-BBEE status level as the basis to exclude tenderers from consideration conflicts with Regulation 5(4) and 6(4) and is likely to lead to court challenges in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (Act No 4 of 2000) which prohibits the state from unfairly discriminating against any person on the grounds of race including the denial of access to contractual opportunities or failing to take steps to reasonably accommodate the needs of such persons. The inclusion of "specific goals" in the prequalification criteria and in the preference points system can be seen as double accounting.	Delete Regulation 10	**This regulation will not include specific goals but will include designated groups and EMEs and QSEs as provided for by the B-BBEE Act. This procurement process only deals with prequalification only as it relates to preferential procurement.**

AD-98

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			Detailed procurement procedures such as those relating to joint venture should not be embedded in the framework for the implementation of the procurement policy. Such procedures should be issued in terms of the PFMA and MFMA alongside other procurement procedures such as the provisions for joint ventures. The SIPDM already deals with tenders received from joint ventures.		
	IDMS Consultant to the office of the CPO - Gysbert Cronje	11. Disposal, Sale and letting of property or assets.	The intent of this Regulation is not clear from a reading of the Regulation. Regulation 11(1) simply makes a statement regarding what Regulation 5 and 6 does omits to deal with. It is not clear as to how Regulation 11(2) will be implemented. How is a lessee selected? Presumably the intent is that the formula provided in sub-regulation 11(3) and 11(4) are applied in place of sub-Regulation 5(1) and 6(1), respectively.	Revise 11 to reflect what is intended	**Accepted: Regulation will be revised accordingly.**
	IDMS Consultant to the office of the CPO - Gysbert Cronje	12. Cancellation of tender	The cancellation of tenders is unrelated to the framework for the implementation of the procurement policy. In particular, it is questioned as to why one approach is singled out and the Regulations remains silent on other methods. Such procedures should be issued in	The following is recommended: Delete subregulation 12	**Noted: this is just added to complete the process as this is not covered in SCM Regulations. It is accepted that this is not a preferential procurement**

389

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			terms of the PFMA and MFMA alongside other procurement procedures. Currently this is not covered in the PFMA or MFMA Regulations but can be covered through instructions issued in terms of the PFMA and circulars issued in terms of the MFMA.		**policy matter.**
	IDMS Consultant to the office of the CPO - Gysbert Cronje	13. Sub-contracting	The term "subcontracting" is not defined. The Oxford dictionary defines a subcontract as "employ a firm or person outside one's company to do (work) as part of a larger project". It is not clear how this would be applied to all types of procurement, particular those relating to the supply of goods. Does this mean that suppliers must obtain prices for 30 % of the contract from such suppliers and let them supply this portion of the contract? This can result in price premiums as subcontractors from the target group may not have the same favorable terms as the main contractor or get the same bulk discounts. In infrastructure projects targeted procurement procedures have been developed to establish key performance indicators which can be used to engage targeted enterprises within the contractor's supply chain (see parts 1, 5 and 7 of South African national standards SANS 10845).	Delete subregulation 13 and permit contract participation goals to be included as other objective criteria	**This is a further preference method separate from objective criteria to empower designated groups. It can be used separately from objective criteria where the two companies work together in a project. The final set of regulations will look at flexibility and practicality of implementing this regulation.**

489

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			These KPIs or contract participation goals (KPIs) measure the flow of money to targeted enterprises and are expressed as a percentage of the total amount paid to a contractor in the supply chain i.e. to targeted enterprises who are manufacturers, suppliers, service providers and subcontractors who in turn engaged such enterprises. This allows a main contractor to marshal his resources to satisfy goals. **Also see the submission for an analaysis of the quantums**		
89	KZN Black IT Forum - Mr. Sanele Gcumisa	4. Evaluation of tenders on functionality	It is common for individuals who visit the organ of state to sell a certain product or service to influence the specification document. When we are invited into briefings and we identify shortfalls we are often told that the specs are final and we can't make any recommendations.	The regulation must empower interest parties on the bid to make additional recommendation for consideration during a briefing session. it is then important that when interested and affected bidders who attend the compulsory briefing give recommendations they are taken into consideration in order to be consider as final requirements for the bid provided the majority of individuals who attended the briefing agreed for such	**It is unfair to tenderers to have a specification that favours particular product or supplier, at the same time organs of state should be firm on an objective specification so that they are not given a run around by suppliers who want a spec that suit their product.**

685

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				recommendation to be considered through a show of hand vote.	
	KZN Black IT Forum - Mr. Sanele Gcumisa	4. Evaluation of tenders on functionality	Companies that do not comply with BEE must be forced to work with SMME's in their sector in order to improve black participation in the sector no company should be awarded the work if it doesn't want to improve the status of BEE suppliers in the sector.	A company that scores below12 point or is below level 4 in the 80/20 and have 5 points or is level4 in the 90/10 must be forced to adopt SMME at 30%. in an increasing sliding scale	**Regulation 13 tries to introduce compulsory subcontracting for contracts above R 30 Million to empower designated groups.**
	KZN Black IT Forum - Mr. Sanele Gcumisa	13. Sub-contracting	Subcontracting should also include work that will be performed over a period longer than 12 months	So the act should read as such "Any work that will run for more than 12 months or has many facet in it or is above 30 million the tenderer must subcontract a minimum of 30% of the value of the contract to-….."	**Subcontracting will be revisited so that it is not a one size fits all. It will also place discretion on organs of state to determine subcontracting based on sector, duration and value of contract.**
90	Johannesburg Roads Agency - Bayanda Dyani	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	("The draft regulations propose that this threshold for the application of the 80/20 system be increased to R100 million to accommodate to further stimulate the development of small business") The above proposal may not end up achieving	The 80/20 system should be increased to R100 million. The threshold should be ring fenced for the SMME group only in order to facilitate their development and meaningful participation in the	**Noted: Although set-asides are not permissible in the PPPFA, the regulations introduce mechaniams such as prequalification, using objective criteria and**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			the desired outcomes whereby the SMMEs development gets stimulated by stretching the threshold to R100m. Big businesses are currently not interested in the 80/20 system due to the fact the threshold is up to R1million. This value is small and it does not attract them to submit bids for this category of tenders. When the 80/20 system gets increased up to R100 million, big business will be interested to acquire such tenders in order to sustain or increase their order books. Big business can become the most compliant companies with a BBBEE level 1 and by implication, they gain 20 points for BBBEE like Black SMMEs would do. The contest would be on price which is an element where big business can outperform the SMMEs.	economy.	**subcontracting to ensure that designated groups get preference in government business.**
91	NORTHERN CAPE DEPARTMENT OF EDUCATION - RO ENELE-DIRECTOR :SCM	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million		Regulation 5(1) on page 4 should read as follows (unless the formula is going to be applied on all procurement from R1 up to R100 million):The following formula must be used to calculate the points for price in respect of tenders with a rand value equal to or above R30 000 and up to a rand value of up to R100million (all applicable taxes	**Noted: Although in terms of the Act the preference point system must be applied to 1c this is not practical hence its between R 30K to any determined upper threshold for 80/20 preference point system. This is only meant for practical purposes only.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				included)	
	NORTHERN CAPE DEPARTMENT OF EDUCATION - RO ENELE-DIRECTOR :SCM	12. Cancellation of tender		It is save to retain the following as per PP Regulations 2011 unless it is anticipated that the situation will never arise wherein the application of 80/20 there will never be tenders received above R100million or in the application of 90/10 no tenders will be received which are below R100million or could it be that in terms of the Proposed Regulations all tenders below R100million in the application of 80/20 will be disqualified and all tenders above R100million in the application of 90/10 will be disqualified. In the event that, in the application of the 80/20 preference point system as stipulated in the tender documents, all tenders received exceed the estimated Rand value of R100million, the tender invitation must be cancelled. If one or more of the acceptable tenders received are within the prescribed threshold of R100million, all tenders received	**Noted: cancellation and reinvitation of tenders will be revisited to ensure that tenderers are not punished for the institution's failure to determine appropriate estimates which cost suppliers a lot of money to compile tenders.**

683

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				must be evaluated on the 80/20 preference point system. In the event that, in the application of the 90/10 preference point system as stipulated in the tender documents, all tenders received are equal to or below R100million, the tender invitation must be cancelled. If one or more of the acceptable tenders received are above the prescribed threshold of R100million, all tenders received must be evaluated on the 90/10 preference point system	
92	BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) ADVISORY COUNCIL - Ms Koko Khumalo	1. Definitions	(a) Insert to define B-BBEE Commission (b) The definition of "designated group" must be aligned with the definition stated in the 2013 Amended B-BBEE Codes of Good Practice if that is the intention (c) The definition of "township" is not defined in the B-BBEE Act as amended or Amended Codes of Good Practice	(a) "B-BBEE Commission" means the Broad-Based Black Economic Empowerment Commission established by Section 13B of the Broad-Based Black Economic Empowerment Act (b) Black Designated Groups" within the 2013 Amended Codes of Good Practice as defined as follows: • unemployed black people not attending and not required by law to attend an educational institution	**The terms B-BBEE Commision is not used in the regulations and there is no suggestion to use it therefore regulations cannot define a term that is not used in the content of the regulations. All other definitions related to B-BBEE Act will be aligned accordingly.**

689

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				and not awaiting admission to an educational institution; • Black people who are youth as defined in the National Youth Commission Act of 1996; • Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; • Black people living in rural and underdeveloped areas; • Black military veterans who qualifies to be called a military veteran in terms of the Military Veteran Act 18 of 2011. (c) If the intention of National Treasury was to align to the B-BBEE Act and transformation objectives, key definitions and principles embedded in the Regulations would have been aligned to the 2013 Amended B-BBEE Codes of Good Practice.	
	BROAD-BASED BLACK	4. Evaluation of tenders on	a) PPPFA framing of the problem it seeks to resolve as mainly a "Price Problem" is flawed	b) Introduce 50/50 preference system for both thresholds or	**The regulations cannot introduce a new preference**

069

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	ECONOMIC EMPOWERMENT (B-BBEE) ADVISORY COUNCIL - Ms Koko Khumalo	functionality	and the 80/20 and 90/10 categories are illogical;	remove price reference all together. The 50/50 preference system will remove the default automatic qualification emended in the 80 and 90 percentages which favour big business due to economies of scales.	point system other than whan is prescribed by the primary legislation.
	BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) ADVISORY COUNCIL - Ms Koko Khumalo	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	(a) Paragraph 5 (2)	(a) Link the minimum qualification criteria to B-BBEE priority elements; (b) Tendering entities to meet and/or exceed the minimum points for B-BBEE priority elements; (c) Tenders without and/or below B-BBEE status level required must be disqualified; (d) Invoke the B-BBEE Trumping Clause instead and call for the ESD element to be used here.	Noted: although we are not in disagreement with provisions of the B-BBEE Act, we were advised that public procurement should be open to all and non-compliant suppliers should score zero for BEE points, prequalification on the basis of BEE status level and designated groups can be done in selected procurement not as ablanket approach.
	BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) ADVISORY	6. 90/10 preference point system for acquisition of goods or services with Rand value above R 100	(a) Paragraph 6 (2)	(a) Link the minimum qualification criteria to B-BBEE priority elements; (b) Tendering entities to meet and/or exceed the minimum points for B-BBEE priority elements;	Noted: although we are not in disagreement with provisions of the B-BBEE Act, we were advised that public procurement should be open to all and non-

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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	COUNCIL - Ms Koko Khumalo	Million		(c) Tenders without and/or below B-BBEE status level required must be disqualified; (d) Invoke the B-BBEE Trumping Clause instead and call for the ESD element to be used here.	compliant suppliers should score zero for BEE points, prequalification on the basis of BEE status level and designated groups can be done in selected procurement not as ablanket approach.
	BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) ADVISORY COUNCIL - Ms Koko Khumalo	7. Award of contracts to tenderers not scoring highest points	(a) Paragraph 7	a) Introduce direct Set-Asides for the tendering Black entities that do not meet the Highest Score due to the 'Price Preference' but do meet the minimum appropriate criteria for functionality. b) Instead of relying on the discretionary dispensation completed in Section 2(1)(f) to support entities contemplated by point 3 (a) of Section 6 of the Regulations, all state tenders must carry a 30% built in Set-Asides for Black businesses. The categories of qualifying businesses must be established through the B-BBEE Act of 2013 as amended.	Noted: there is no clear consesus amongst stakeholders on whether set-asides can be implemented within the PPPFA Framework. The regulations introduce it as discretionary dispensation for the same reasons. Regulations related to towhship and rural enterprises will be aligned to refer to Black Township enterprises and Cooperatives.

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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				c) Sub-points (v) and (vi) under 3(a) of Section 6 of the Regulations assumes that Co-operatives and Small Businesses operating in rural areas are Black. This could open up loopholes for fronting on a mass scale. The Regulations must confine their terms and definitions to those used in B-BBEE Act of 2013 as amended.	
	BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) ADVISORY COUNCIL - Ms Koko Khumalo	13. Sub-contracting	(a) Paragraph 13	a) This seeks to entrench sub-contracting as the only way to enforce Transformation. This is not and cannot be the only way as this indicates that Black and Small Businesses have perpetual junior status. Additionally, it creates the notion that Black Businesses are "not competent" in large transactions. Thereby a forced sub-contracting requirement is the only way for Black Businesses to become sustainable. From a long term perspective, how are Black Businesses expected to substantially grow into large-scale, industrial entities with this lucrative	**Regulation 7, 10 and 13 are all additions to 80/20 and 90/10 preference point system. Subcontracting is not the only way introduced to uplift designated groups.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				crutch? b) The 30% must only apply to designated groups. This way to make sure it empowers small business which, like it or not, empowers more people on the ground.	
93	Black Chartered Accountants Practitioners - Lindani Dhlamini	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	Ad Regulation 5(4) ("If a tenderer fails to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE, the tenderer is not be disqualified, but may only score points out of 80 for price and scores 0 points out of 20 for B-BBEE"): BCAP comments: The sanction for failing tenderers is not appropriate and is a glaring injustice to the furtherance of compliance to the Act. This meagre sanction creates an opportunity for abuse or misuse by non-compliant tenderers or companies when they deliberately either (a) fail to produce B-BBEE certificate that are compliant with the codes; or (b) fail to produce B-BBEE certificates at all, knowing they will not be disqualified.	BCAP therefore proposes that such failing tenderers be disqualified as envisaged in Regulation 4.	**Noted: although we are not in disagreement with provisions of the B-BBEE Act, we were advised that public procurement should be open to all and non-compliant suppliers should score zero for BEE points, prequalification on the basis of BEE status level and designated groups can be done in selected procurement not as ablanket approach.**
	Black Chartered Accountants	5. 80/20 preference point system for	Ad Regulation 5 ("80/20 preference point system for acquisition of goods or services with	BCAP proposes that the 80/20 principle be amended to 50/50 and	**Noted: however this cannot be done due to primary**

694

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Practitioners - Lindani Dhlamini	acquisition of goods or services for Rand value of up to R 100 Million	Rand value up to R100 million"), read with Regulation 6 ("90/10 preference point system for acquisition of goods or services with Rand value above R100 million"): BCAP comments: The preference point system for the acquisition of goods and services should not discriminate on the basis of rand value of the transaction, as this is, again, not in the interest of the furtherance of compliance to the Act and does not create a level playing field for all tenderers. In addition, for the same reason the preference point value for price and B-BBEE compliance should be equal.	applied to all acquisitions of goods and services, irrespective of the value thereof, alternatively, that failing tenderers be disqualified as envisaged by Regulation 4 and our proposed amendment of Regulation 5.	**legislation which prescribes the 80/20 and 90/10 point system.**
	Black Chartered Accountants Practitioners - Lindani Dhlamini	6. 90/10 preference point system for acquisition of goods or services with Rand value above R 100 Million	Ad Regulation 6 ("90/10 preference point system for acquisition of goods or services with Rand value above R100 million"):	BCAP comments: For the reasons set out in the BCAP comments under 2.2 it is proposed that Regulation 6 be deleted in its entirety.	**Noted: however this cannot be done due to primary legislation which prescribes the 80/20 and 90/10 point system.**
	Black Chartered Accountants Practitioners - Lindani Dhlamini	7. Award of contracts to tenderers not scoring highest points	Ad Regulation 7 ("Award of contracts to tenderers not scoring highest points"): BCAP comments: The focus of Regulation 7 is with the current wording only on EMEs or QSEs that only finds applicability with smaller	BCAP therefore proposes that Regulation 7(3) be supplemented by the addition of (v) Black owned Companies or wording to give effect to our above concern.	**Noted, however the regulations concentrate on empowering SMMEs and Black Owned other than established companies.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			business. It does not provide for established black and fully compliant businesses and consequently these businesses are not able to benefit from the provisions of the draft Regulations.		
	Black Chartered Accountants Practitioners - Lindani Dhlamini	10. Pre-qualification criteria for preferential procurement	BCAP comments: The application of the non-limitation of the pre-qualification criteria in the current formulation of regulation 10(1) ("… the criteria stated in the tender documents may include, but are not limited to...") (hereinafter referred to as the "Non-limitation Clause") provides for an opportunity to inappropriately import pre-requisites that are irrelevant to the matter of B-BBEE and that may frustrate compliance to this legislation. In addition, the use of the word "may" in the Non-limitation Clause increases this level of discretion even further.	BCAP therefore proposes that the wording of Regulation 10(1) be amended by deleting the Non-limitation Clause in its totality and thereby restrict the pre-qualifying criteria to B-BBEE related matters. Alternatively, if it is decided that the Non-limitation Clause is retained, then it is again argued that the focus of Regulation 10(1) is, with the current wording, only on EMEs or QSEs and loses sight of established black and fully compliant businesses and consequently these businesses are not able to benefit from the provisions of this draft Regulation. Therefore then, in the alternative it is proposed that Regulation 10(1)(b) be supplemented by the	**Prequalification will not be applicable to all tenders, the discretion will be up to the organ of state to determine in which tenders to apply it. National Treasury to decide whether the list should be limited or open ended as a policy decision.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				addition of (v) Black owned Companies or wording to give effect to our above concern.	
	Black Chartered Accountants Practitioners - Lindani Dhlamini	13. Sub-contracting	BCAP comments: The focus of Regulation 13(1) is, with its current wording, only on EMEs or QSEs and loses sight of established black and fully compliant businesses and consequently these businesses are not able to benefit from the provisions of this draft Regulation.	BCAP therefore proposes that Regulation 13(1) be supplemented by (d) Black owned Companies or wording to give effect to our above concern.	**The final set of regulations must be clear with reference to designated groups.**
94	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	1. Definitions	• The definition of "comparative price" in the definition section is inadequate. The definition should enable bidders to compare apples with apples in respect of pricing. • Definition of tender is omitted • Definition of rural area is too broad • Definition of infrastructure does not possess the same meaning as the standard for infrastructure procurement	• NT to provide guidance on the best approach to ensuring that the pricing of all bidders is reduced to a common basis to ensure like for like comparison. • The definition of "tender" must be outlined • The definition of rural area must be more specific and defined more clearly • The definition must be revised in order to eliminate the conflict between the regulations and the standards for infrastructure	**Noted: the 2011 definition for comparative price and tender will be retained. Definition for infrastracture will be aligned with the infrastructure standards definition. There is not suggestion provided other than to say that the definition for rural area is too broad.**

259 697

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				procurement	
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	2. Application	• Applicability of Regulations • Exemptions	• The Regulations have to be cognizant of the fact that public institutions are not homogenous. Therefore there may be a need to critically assess regulations in light of the State Owned Companies that also operate on a commercial basis and have to be responsive to market forces e.g. schedule 2 public entities. • Will the rules apply in another country (extra territorial application, need clarity) • Section 3 of the Act allows the Minister of Finance to exempt an organ of state from the provisions of the Act. NT must include in the regulations the manner in which exemption may be sought as well as the framework to be used when requests for exemption are considered.	**Noted: the framework for submitting requests for exemption to the Minister can be addressed in a separate directive like circular as it does not regulate further what is contained in the act.**
	Department of Public Enterprises - Mr Mogokare	3. Identification of preference point system	• Identification of preference point system	• The preference point systems must be considered against the need to foster cost effective procurement	**The Regulations assume that the organ of state's cost estimates for the**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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	Richard Seleke (Director General)		• Reasonable cost estimates are not made compulsory, which could compromise proper demand management planning	of goods and services. • There is a need for clarity on whether if all bids are above a R100 million, it should be clear if the 90/10 or 80/20 rule applies	**project will be used as the basis for determining the point system to be used. Noted: Regulation 8 of PPR 2011 will be retained.**
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	4. Evaluation of tenders on functionality	• Evaluation of Tenders	• The regulations must make it compulsory to outline the weighting for each criterion in the RFP (Previously outlined in the 2011 regulations) • Consistency of sec 217 of the Constitution and sec 51(1)(1)(iii) • Better Guidance on scoring is essential as it will enable prospective bidders to respond accordingly in line with the weight of each specification.	**The guidelines will elaborate on scoring and how to use weightings.**
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million	• Reg 5(1): The formula uses lowest price as benchmark. No differentiation between bidders who meet threshold for functionality. Lowest bidder gets full 80 points for price. This doesn't promote value for money or cost effectiveness. Encourages "low-balling". Might even result in bidders obtaining a negative score for price. • Reg 5(1): The full 20 points are based on	• Amend PPPFA to allow for 100 points to be allocated to price, preference and quality e.g. on a 70:20:10 basis. • Alternatively, allow for functionality to be used as "objective criteria", as in the SIPDM.	**The regulations must still be within the confines of the Act which only prescribe 80/20 and 90/10 preference point system. It would be an administrative burden to separate specific goals points and BEE points in one tender. There**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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			BBBEE scorecard. This is not aligned to the Act that allocates preference points to a broad range of "specific goals". SOCs should be given the flexibility to allocate preference points based on scorecard and other criteria e.g. geographical location, disability, green economy etc. • Reg 5(1): 80/20 only applies to contracts above R30 000. Below R30 000, a more robust preference system could be applied e.g. 70/30 or 60/40. • Reg 5(4): B-BBEE Certificate • Reg 5(5) does not explain how to assess the BBBEE of unincorporated JVs. • Reg 5(5). Rounding off to the nearest 2 decimal points applies only to points out of 100 for price and preference. What about functionality?	• The regulations should make provision for range of "specific goals" allowed for in the Act. • Retain the principle of a minimum threshold for 80/20 but increase it to R500 000,00. Regulations should allow a more robust preference point system to be applied below this threshold. • There is a need to compel suppliers to contribute towards transformation or the advancement of B-BBEE e.g. forcing foreign companies to partner with local companies in target groupings (youth owned, women owned Companies). • The importance of transformation must take precedence else some sectors may remain untransformed if not forced to induce advancement of B-BBEE. • The conflict between Reg 5(4), 6(4) and 10 must be addressed.	**is lots of procurement conducted below R 500 000.00 so empowerment opportunities may be lost if the minimum for application of preference point system is increased to this figure.**
	Department of	5. 80/20 preference			

700

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Public Enterprises - Mr Mogokare Richard Seleke (Director General)	point system for acquisition of goods or services for Rand value of up to R 100 Million		• The rule in reg11(7) of the 2011 regs must be retained i.e. unincorporated JVs must submit their BBBEE scorecard as if they were a group structure and a consolidated scorecard must be prepared for every separate tender. • Score for functionality should be rounded off to nearest 2 decimal places as well.	
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	6. 90/10 preference point system for acquisition of goods or services with Rand value above R 100 Million	• Tax Implications	• The threshold outlined must clearly indicate if the amounts are vat inclusive or exclusive. • Amount of R100m should be exclusive of taxes. Inclusion of taxes such as VAT reduces the true threshold by 14%.	**Definition of Rand value is clear that it includes all applicable taxes however inclusion of all applicable taxes as PPR 2011 will be retained.**
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	7. Award of contracts to tenderers not scoring highest points	• Reg 7(1): states that contract may be awarded to bidder who did not score highest points based on "objective criteria". • But how should winning bidder is selected? Is there an order of preference? Must you go to next highest bidder or can you go to third or fourth ranked bidder.	• 7(1) read with 7(3) must allow objective criteria to be applied even in instances where it was not specified at the time the tender was issued. Objective criteria may be circumstantial and therefore, it may not always be possible to predetermine it.	**Noted, regulation will be revisited to provide a clear process on how the award can be made using objective criteria. Accepted that 30% per cent subcontracting cannot be one size fits all approach therfore regulation will be**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			• Awarding of contracts • 7(3)(a) • Reg 7(2): Situations could arise where it is impossible to identify risk factors as "objective criteria" upfront in the RFP e.g. a strike at the supplier's plant or directors convicted of a serious offence. • Reg 7(3): the regulation is not aligned to s2(1)(f) of the PPPFA, which states that objective criteria should not include contracting with HDIs or RDP considerations i.e. you can't double count. • Reg 7(3): Objective criteria "may include but are not limited to" the criteria listed in reg 7(3)(a) to (d). Can other factors be considered as objective criteria e.g. awarding to BO entities or use of local labour? • Reg 7(4): Reporting to NT versus reporting to Executive Authority responsible for public entities.	• Regs should be clear whether organs of state have discretion to award to next ranked bidder or whether organs of state have discretion to award to any short-listed bidder. • Objective criteria exclude " specific context of the required Goods and & Services" • Omit 30% minimum threshold as it may be impractical at times to implement given the nature of goods or services required i.e. there may not be a B-BBEE company or a company in the designated sector. • It must be clear that the objective criteria is a guide not prescriptive • Objective criteria must allow for a risk assessment and due diligence over and above the criteria outlined	revisited.
	Department of Public Enterprises - Mr Mogokare	7. Award of contracts to tenderers not		• Regulations should provide for some flexibility to consider "objective criteria" that were not	**Noted: this comment is contradictory on one hand NT must consider legality**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Richard Seleke (Director General)	scoring highest points		stated upfront in the RFP. • NT should reconsider the legality of this regulation in light of 2(1)(f) of the Act. • NT to give guidelines on when objective criteria may be used to overlook highest scoring bidder. Is there a margin of tolerance for the price difference between top scoring bidder and next ranked bidder? • Schedule 2 SOCs should report the information to their Minister. • NT may obtain the information required directly from the Ministry. • Multiple reporting lines should be eliminated as they could create confusion and blur lines of authority.	**of this provision on the other it must provide for a different regime for SOCs without providing grounds why separate them from the rest of other organs of state. Guidelines will be considered for all provisions of the regulations which may require further clarity.**
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	8. Criteria for breaking deadlock in scoring	• Criteria for breaking deadlock in scoring	• Ownership and other categories of BBBEE must be included to address deadlocks e.g. youth ownership, wholly black owned, etc	**This is already included in the BEE score card which is considered when applying 8(1).**

703

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	9. Local production and content	• The reference to non-designated sectors in reg 9(3) of the 2011 regulations has been deleted from the draft 2016 regulations. • The manner in which the Regs deal with Local Content may not be aligned to the PPPFA. Localization is a goal of the RDP. PPPFA states that you must give preference points for such "specific goals" and not deal with it as a threshold. • The reference in 2011 regulations that price negotiation may be conducted with shortlisted bidders at the end of second stage (price and preference) has been removed from 2016 regs. Some SOCs use price negotiations to ensure bid prices are market-related.	• Ownership and other categories of BBBEE must be included to address deadlocks e.g. youth ownership, wholly black owned, etc • Some schedule 2 SOCs have a significant spend in non-designated sectors and would therefore like to promote localization in non-designated sectors as well. NT must issue long-awaited directives on non-designated sectors. • Reconsider legality of dealing with Local Content by way of a threshold. • Regs should make provision for negotiations with preferred bidder or shortlist of bidders. • Regs must also give guidance on what may be negotiated e.g. price only or functionality, price and preference and how to ensure fairness.	**Regulation 9.3 of PPR 2011 will be retained and the directive will be issued on how it can be implemented. Negotiation is not part of preferential procurement but should be dealt with under procurement procedures.**
	Department of Public Enterprises	10. Pre-qualification	• Reg 10(1): The use of prequalification criteria (B-BBEE level and subcontracting 30% of cv to	• Omit 30% threshold as may be impractical to implement.	Accepted

704

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	- Mr Mogokare Richard Seleke (Director General)	criteria for preferential procurement	designated groups) is to be welcomed.	• Alternatively the regulation should indicate where possible, a state organ may compel 30% subcontracting.	
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	11. Disposal, Sale and letting of property or assets.	• Disposal and letting of assets	• Disposal and sale of property must be omitted as they are not part of procurement. • The regulations should be limited to instances where state organs are lessees not lessors (limit to acquisition of procurement of property by SOCs). • There should not be prescription on the rate of the square meter as that could be influenced by many factors.	**Noted: this is a policy issue and intepretation on whether procurement also refers to disposal. If it is accepted that procurement also refers to disposal as in treasury regulations then it is important for the state to regulate how preferential disposal can be applied.**
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	12. Cancellation of tender	The right to cancel is limited to 3 circumstances (due to changed circumstances there is no longer a need, funds are no longer available and no acceptable tenders were received). There may be other reasons that justify the cancellation of a tender e.g. a change in strategic priorities, material irregularity or if goods or services no longer meet the needs of the SOC e.g. Sita Regs. The regulation also limits the right of organs of state to cancel a tender "before the award of	The right to cancel should not be limited to the 3 scenarios only. The provisions should allow for cancellation of a tender after it is awarded. Regulations should give SOCs greater flexibility to cancel when there are justifiable grounds for cancellation.	**Cancellation of a tender after award has been made is not regarded as cancellation of a tender but cancellation of a contract. We accept cancellation of tender due to material irregularity including fraud or corrupt practices of those involved in the process.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			tender" However, there may be circumstances in which organs of state may wish to cancel a tender process after the tender is awarded e.g. if the goods/services are no longer needed. Reg 12(3): The cancellation should not be subjected to approval of NT. Schedule 2 entities have Accounting Authorities that can determine circumstances under which a tender may be cancelled a second time i.e. commercial viability of a company.	The regulation should be amended to allow NT to be informed when a tender is cancelled a second time. The regulations must allow for cancellation of the award even after the tender is awarded	
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	13. Sub-contracting	• Reg 13(1): It may be impractical at times to subcontract a 30% or above R30m to designated groups. It must first be determined whether there is sufficient empowered capacity in the market to justify subcontracting. • Reg 13(2): Why should a contractor be penalized 10% of contract value if he/she subcontracts without having disclosed it in the tender documents? The rule is impractical and unnecessary. • It is important to retain Reg 11(8) and (9) of 2011 regulations i.e. contractors are prohibited of subcontracting more than 25% of value of contract to an entity that doesn't have the same	• The regulation should be deleted. Alternatively, the regulation should allow flexibility which should cater for situations where it may be impractical to subcontract at the proposed values. • The regulation should be deleted and replaced with a provision that a contractor may only subcontract with the prior written consent of the organ of state. • Furthermore, penalties should not be limited to failure to disclose if the tenderer is subcontracting to	**The final set of regulation must consider flexibility in terms of threshold value, percentage and sector. Regulations must be clear at which stage of the tender can main contractors choose subcontractors. Regulation 11 of PPR 2011 will be retained.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			B-BBEE level as main contractor.	another company as there may be other compelling reasons to effect a penalty. • Reg 11(8) and (9) of 2011 regulations must be retained.	
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	14. Remedies	• Reg 14(1) allows organ of state to take remedial steps against a tenderer only if false information is supplied which "will affect or has affected the evaluation of the tender." Suppliers should be blacklisted irrespective of whether false information relates to the evaluation of the tender or the execution of the contract e.g. submitting false invoices. • The regs remove the right of SOCs to place suppliers on their own list of restricted suppliers. NT will decide whether to restrict the supplier from doing business with all organs of state for up to 10 years. • The regs allow NT to only place the "tenderer" on the list of restricted suppliers. What about subcontractors, directors, associated companies, prospective suppliers, dismissed employees etc. • Remedial action	• State organs including SOCs should be able to take remedial steps whenever they are victims of misrepresentation, not limited to evaluation of tenders. • SOCs should be allowed to place defaulting suppliers on their own list of restricted suppliers. • Penalties must be commensurate with the offence. • The list of restricted suppliers should not be limited only to "the tenderer". • Reg is prescriptive. • Remedial action must not be limited to falsified information	**Accounting Officers/ Authorities can debar tenderers from doing business with their own Institutions especially where there has been consistent poor performance. However cases will be dealt with on own merits and different penalties imposed based on seriousness of the case.**

707

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				relating to a tender. • The regulations must allow for other objective assessments to be applied.	
	Department of Public Enterprises - Mr Mogokare Richard Seleke (Director General)	General Comments	• Most provisions in PPPFA regulations are welcomed. • Policy- wise, the draft regulations are aligned to empowerment objectives • Regulation gives greater impetus to promoting empowerment. • Many of the challenges relating to promoting empowerment have their origin in the Act (PPPFA) itself. Can't fix the problems by changing the regulations alone. • Regulations can't go beyond what the PPPFA permits. • Creates risk of legal challenge.	• NT must proceed with complete overhaul of PPPFA, not just regulations • NT must seek legal advice on whether the regulations are aligned to the Act. • Certain provisions in the 2011 regulations must be retained. • The PPPFA should be reviewed through the recognition of the principle of separation of powers • The regulations may not be enforceable as they are subordinate to the Act itself. Therefore, the precursor to the regulations must be the amendment of the Act itself	**Accepted, some of the proposals are just a process that will be followed and PPPFA review is underway. The regulations will try to an extent possible to align the aims of the B-BBEE Act and PPPFA. However it must be noted that these are two pieces of legislation passed at different times and alignment cannot be 100%.**
95	Free State Office of the Premier -	1. Definitions	co-operative	"co-operative means a business as defined in section 1 of the Co-	**Accepted: definition on Small Business will be**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Director General		small enterprise	operatives Act, 2005 (Act no 14 of 2005) and 'co-operatives' has a similar meaning small enterprise means a business as defined in section 1 of the National Small Enterprise Act, 1996 (Act no 102 of 1996) and 'enterprises' has a similar meaning	**considered. The definition on cooperatives is already defined in the regulations.**
	Free State Office of the Premier - Director General	9. Local production and content		The insertion of the following after regulation 9 **9A Procurement form co-operative and small enterpises** (1) An organ of state may advertise tenders with a specific tendering condition that only co-operatives and/ or small enterprises may submit tendersregarding such products and services as identified by the Minister and the Minister of Trade and Industry, in the gazette (2) Where necessary for tenders referred to in sub-regulation (1), a two-stage tendering process may be followed, where the first stage involves functionality and proof	**Noted, however cooperatives can only be included as part of the list of subcontractors. There is currently no B-BBEE score card for cooperatives only, so they will be included just like youth, women etc.. The tendering process will not be a two stage process but the evaluation stage may be phased to eliminate those who do not meet the evaluation criteria.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				that it qualifies as a co-operative and/ or small enterprise, while the second stage involves price and B-BBEE	
	Free State Office of the Premier - Director General	11. Disposal, Sale and letting of property or assets.		The insertion of a sub regulation after sub regulation 11(10) as follows: "10(A) A co-operative and/ or small enterprise awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that is not s co-operative and/ or small enterprise."	**Noted, however due to the resolution on the inclusion of cooperatives as subcontractors than primary contractors this proposal falls off.**
96	Pharmisa: Stavros Nicolaou	2: Application	There is reference to the following two clauses but they are not included in the document (Government Gazette Vol.612 of 14 June 2016 No. 40067). These are shown below for ease of reference. Please see attached copy. Act no. 5 of 2000 Section 1 (iii) (f) reads: "organ of state – any other institution or category of institutions included in the definition of "organ of state" in section 239 of the Constitution and recognized by the Minister by notice in the Government Gazette as an institution to which this Act applies;" Act no. 5 of 2000 Section 2 (1) (f) reads: "the contract must be awarded to the tenderer who scores the highest points, unless		**Objective criteria are provided for in regulation 7 of the draft Regulations.**

710

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to another tenderer; and"		
		5: 80/20 preference point system	Comment: The 80/20 principal will apply to tenders with an estimated value of less than R100m. Previously this was for tenders between R 30,000 and R1m. The extent of this upward adjustment should be considered carefully as it gives far more power to any state organ to administer tenders, which would previously have rested with National Treasury. A level of say up to R30m might be a level to be recommended		**The upper threshold for the application of the 80/20 preference point system will be revisited in line with other comments received and Government's intention to advance SMMEs. Points have been identified to assist SMMEs in getting contracts.**
		6: 90/10 Preference point system	The 90/10 principal previously applied to tenders above R1m and the suggested change now is that it would apply to tenders above R100m.	Comment: If the above suggestion to raise the level to only R30m is promoted, this limit should be adjusted accordingly.	**Noted: refer to comment above, should it be necessary to adjust the upper threshold for the 80/20, the 90/10 threshold will be adjusted accordingly.**
		6. Objective criteria	A tender may be awarded to the tenderer that did not score the highest points only in accordance with Section 2(1) (f) of the Act. Comment: This section refers to the following regulation. which is not included in the notice and is shown below for ease of reference: Act no. 5 of 2000 Section 2 (1) (f) reads: "the contract must be awarded to		**Agreed, objective criteria will be revisited to align with the act and the intentions of the Regulations.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to another tenderer; and.." Comment: Concerns could be raised as to how Reg. 7(3) is going to be guaranteed / policed This regulations refers to awards where specific goals have been set contracting people historically disadvantaged by unfair discrimination or implementing the programs of the Reconstruction and Development Program, to justify the award.		
		7(3)	The objective criteria stipulated in terms of sub-regulation (2) (for sub-regulation 2 see paragraph above under Reg. 7) must be specific to the context of the required goods or services, must be objective and may include, but are not limited to- A tenderer sub-contracting a minimum of 30% of the value of the resulting contract to EME's or QSE's Co-operatives conducting business in a township, rural- or municipal area or province where the goods or services are required; Economic or financial projections regarding the capacity of the tenderer to deliver the required goods or service; Quantity surveyor's projection as to the time required to complete an infrastructure project;	Summary: An organ of state who awards a contract to a tenderer who did not score the highest points in terms of section 2 (1) (f) that organ of state must report to National Treasury the reasons, objective criteria, price and the price of the tenderer with the highest points, duration of the contract and the type of goods or services procured.	**Noted: all reporting requirements should be revisited to ensure properly and consolidated reporting requirements.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			Anticipated lead-time to deliver the required goods or service; goods or services procured		
		10. Prequalification criteria for preferential procurement	10. (1) If an organ of state intends to apply pre-qualifying criteria in the evaluation of a tender the criteria may include but are not limited to: The tenderer having a stipulated minimum B-BBEE status; The tenderer to sub-contract at a minimum of 30% of the value of the contract to one or more EME's or QSE's……; A tender that fails to obtain any pre-qualification criteria stipulated in the tender is not an acceptable tender; Comment: Concern should be raised regarding the ability of the pharmaceutical industry to comply with this provision. It would appear that the PPPF Act was designed to address construction and civil engineering contracts specifically but other goods and services could be equally covered. There is no provision, exclusion or exception for types of businesses where the Act could not be logically applied like in the Pharmaceutical business for instance where specific Acts and Regulations apply and have to be adhered to i.e. Act 101 0f 1996, Good Pharmaceutical Manufacturing Practice, Good Pharmaceutical Practice, Good Warehousing Practice etc. that will restrict sub-contracting. This may have as an effect that		**Noted, subcontracting will be revisited to ensure that it is not a one size fits all approach, that it can be used to advance designated groups and SMMEs in selected tenders.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			pharmaceutical manufacturers/suppliers would not be able to tender because they could not match/attain the required qualification. This condition may have further consequences when a pharmaceutical manufacturer is compelled to sub-contract a portion (30%) of the contract and still be liable for the actions (non-performance) of said sub-contractor. The stipulation may also have as a result (probably) that numerous one-man businesses will be knocking on the doors of the established suppliers of goods and services offering their "services" under cover of this Act/stipulation every time a tender is advertised as was the experience when Black-partnerships were a new and popular option.		
		13. Subcontracting as a condition of tender	13. (1) For contracts above R30m, the tenderer must sub-contract a minimum of 30% of the value of the contract to-; One or more EME's or QSE's as indicated in regulation 10 (1) (b); One or more EME's or QSE's or; One or more small businesses as defined in Act no.102 of 1996; Comment: This Reg. absolutely defines that any tenderer will have to sub-contract 30% of the business to people as indicated above with no protection to their business and the terms and conditions that will be applied by the state organ who is supplied the service/goods; See		**Noted: this is one area identified for advancement for SMMEs and designated groups, other comments indicate that it will not be possible to subcontract in all tenders above R 30 million, therefore the regulation will be revisited to ensure that it provides a level of flexibility ,than a one size fits all.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			comments in 10 above which apply equally to this regulation.		
		14. Remedies	Comment: The "Remedies" are important and must be noted. Failure to adhere or submitting false information in this regard will result in disqualification from the tender or termination where a contract has been awarded. Restriction from conducting business with the state for a period not exceeding 10 years and or claim for damages.		**Noted: the regulations are in line with this thinking but may be revisited to ensure proper alignment with the provisions of PAJA so that organs of state do not take arbitrary decisions**
97	South African National Roads Agency	1. Definitions	Regulation 1: "comparative price"	We propose the definition be amended to read as follows "comparative price" be amended to read as follows: comparative price means a price which is determined to be fair and reasonable after conducting market analysis utilising applicable price analysis techniques and taking into account the factors of a non-firm price and all unconditional discounts that may be utilised and excluding any prime cost & provisional sums allowed by the employer. In this regard we attach for your use the Gamma Distribution statistical method for inclusion in the regulations to allow	**Noted: all definitions will be revisited in line with the comments received.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				for such method to be used.	
		4. Evaluation of tenders on functionality.	Evaluation of tenders on functionality: From reading thereof it would appear that functionality can still only be used as pre-qualifying criteria. This is not consistent with the new SANS Standard conditions of Tender prescribed by the new SIPDM which allows for quality as part of the total scoring – see method 4. Ø We are of the view that score for functionality needs to be taken into account in the overall score for Consulting engineers and other related professionals operating in the built environment, thus to ensure that value for money is achieved. Evaluation based only on price and preference results in very low tender prices without the requisite expertise and experience being assessed and or offered by the bidder. This has a very negative impact on quality of professional services and the success of a project. 4(1): surely only in the tender invitation can we mention "Tenders will be evaluated on functionality, the details of which are in the tender document." Then in the tender document the extensive details of criteria/sub-criteria and points will be detailed. Through this stipulation,		**Noted: functionality is not part of preferential procurement but ordinary supply chain principle. The reason it is included in these regulations is because it is a necessary process that is not covered under SCM processes. Leaving out in these regulations will create a gap that will result in a lot of confusion amongst Practitioners. If the standard may not prescribe processes contrary to the regulations. The regulations cut across sectors therefore they only provide high level principles applicable to multiple industries. It is not clear where the specific criteria the commenter will want to put, if they have a challenge putting in in the tender**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			the functionality criteria for especially professional services can lead into many pages. This will not only be pricey to advertise but we also believe that your e-Tender system will not be able to handle so many characters. Ø Sub-regulation 4 (5) refers to the fact that an Organ of State can also determine specific goals for which points can be allocated. This must either be limited or connected to say for instance the industry charter. This will not only to curb abuse but also ensure that the correct goals are being used for the correct industry 4(6): include functionality as part of the evaluation criteria,` i.e. quality, price & preference based on argument above.		**document as prescribed by the regulations. the e-tender portal must be able to handle or upload documents of any tender size if there is a problem with the size of characters it can handle this must be resolved with the necessary speed required.**
		5. 80/20 preference point system	The reason for the proposed amendment and replacement thereof is that the QSE upper limit is R 50 million in terms of the B-BBEE Act,2003 (Act 53 of 2003) thus keeping it uniform. If amendment is not effected this means that excessive premiums of up to 25% could be payable; i.e. up to R25m premium for preference on a R100m contract. It is clearly not value for money, affordable or in the public interest. We therefore propose that a maximum premium must be introduced, say R5m		**Noted: The proposal will be revisited in consideration of other proposals received in this regulation. Should the need arise it will be adjusted based on the comments received and government's intention of advancing SMMEs and Designated groups.**
		6. 90/10 preference	90/10 preference points for acquisition of goods		**Noted: the regulation will**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		point system.	or services with the Rand value of above R 100 million The application of this formulae is problematic as this means that on a R1bn contract, a R100m premium extra for preference could be paid It is clearly not value for money, affordable or in the public interest A maximum premium must be introduced, say R10m.		**be revisited in line with the resolution in regulation 5 above.**
		7. award of contracts to tenderers not scoring highest points	7(3)(a) This is already a minimum requirement for contracts over R30m and can therefore not be 'other objective criteria". That being we propose its deletion.		**Accepted, the regulation will be revisited in line with the comments received. The aim of the regulation is broaden methods of advancing SMMEs and Designated groups.**
		8. criteria for breaking deadlock in scoring	The final deadlock breaking mechanism of tossing coins and drawing lots in in our view unacceptable surely the price should be factored in and the entity with the lowest price should win the bid.		**Noted, however this regulation has been there and used without any problem, that being said the 2011 provisions will be considered as it seems that the inclusion of the term "tossing a coin" has created all the havoc.**
		10. Prequalification criteria for		10(1) we propose that this must be applicable to any tender and not	**Noted, however the regulation seeks to provide**

718

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		preferential procurement		just for pre-qualification part.	**flexibility for use by organ of state in selected tenders than in all tenders. This is to ensure that all sectors of business are able to be leveraged through state tenders.**
		13. Subcontracting as a condition of tender	13(1) The minimum of 30% to sub-contract could be difficult to achieve if the majority of the work needs to be done by a specialist. 13(2) Tenderers do not always know at tender stage who his sub-contractors will be. Will the Contractor be allowed to add further sub-contractors during construction to make up the 30%, if the subcontractor he tendered with is not suitable or available, or will he penalised with 10% for not disclosing their names? this is restrictive and does not promote the use of local SMMEs.	We propose the addition of the following sub regulation as sub regulation 13(3). The successful tenderer cannot form an agreement for sub-contracting with any subsidiary companies under his control	**Noted: since subcontracting will be a condition of tender this means that all contracting arrangements must form part of a tender document to enable the organ of state to do a proper evaluation of the tender without being surprised later by who is subcontracted. We acknowledge the point about primary contractors subcontracting their subsidiaries as this may be viewed as a form of fronting**
		14. Remedies	We seek clarity from the National Treasury whether one single Organ of State restrict or bar the tenderers without the National Treasury		**The accounting officer may restrict a supplier and register the supplier on the**

719

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			restricting the tenderer form doing business with any other Organ of State?		**list of restricted suppliers managed by the National Treasury. The accounting officer has a responsibility to protect other organs of state from unscrupulous suppliers.**
98	NTR Group: Mkhuseli Ciyo	General	1. I would like to understand as to understand as to why 30% to black and not 50% (after more than 20 years into our democracy without achieving any transformation); 2. Why an 80/20 and a 90/10 principle and not a 60:40 and 70/30 principle to promote major changes in the industry; 3. On the values, I would suggest that this applies to all tenders above R10m and not only above R30m; I suggest we can make an impact if these can be implemented		**Noted: We can start from somewhere 30% of the value of the contract is already a lot for some enterprises bearing in mind that some of the contracts are above R 1 Billion. Public procurement should benefit all South Africans irrespective of colour or creed and systematically advance the previously disadvantaged**
99	Amego Consulting: N. Mngomezulu	5and 6: 80/20 and 90/10 preference point system.	Where there is both mandatory and non mandatory requirements irrespective of value, the bid must be evaluated based on 70/30 principle. (by someone going through both mandatory and non mandatory requirements (technical with weights and a treshold), it means		**Rejected: the regulations may not introduce an additional preference point system other than the one already in the act which 80/10 and 90/10 point**

720

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			all service providers can do the right quality of work and thus giving more points on transformation will enhance radical transformation). In all other cases, we can keep the 80/20 principle as suggested in the draft bill		**system. Evaluation of tenders on functionality remains to be prescribed by an organ of state per tender.**
		13. subcontracting	The point 13..1 (c) defeats the whole purpose of sub contracting 30% to promote transformation as Whites who are against transformation may start opening small firms using their friends and family to avoid transformation which is the real reason for this bill and thus it must be removed as it offers a gateway	The sub contracting must be for all bids above R30m - here we apply the 30% sub contracting as a must. We should add that for all bids above R1m to R30m , we apply a 40% sub contracting arrangement. Also in point 4 and point 5 above - we must stipulate this as a minimum and not a maximum to allow those who wants to transform more to do so. .We also need to state clearly that where the is sole provider, the sole provider must ensure application of section 13.1.c and ensure adherence to the 30% and the 40% sub contracting to ensure transformation and growth. This will promote diversification of the market as soon the transformed SMME will start being a competitor and we can end old white mon0oplies	**Noted: We can start from somewhere 30% of the value of the contract is already a lot for some enterprises bearing in mind that some of the contracts are above R 1 Billion. Public procurement should bennefit all South Africans irrespective of colour or creed.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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		10. prequalification criteria for preferential procurement	On point 10 of the draft, why are we suggesting that an organ may or may not use pre qualification. This defeats the whole purpose of transformation and give gate for those who don't want transformation. The word must be used to ensure all bids above R30m have a mandatory pre qualification in them.		**Noted: The aim is not to eliminate other race groups altogether but ensure advancement of SMMEs and Designated groups. The view adopted is that R30 million and above is considered as high value contracts which leaves out SMMEs and Designated groups therefore this can be used in selected tenders but not all tenders as it will eliminate certain companies altogether if used.**
100	SAFCEC: Frederik Oosthuizen	General	Further to Notice 516 of 2016 extending the date of comments to 23 September 2016, please add the below comments received from our Emerging Contractors Forum to our previous submission. Our Emerging Contractors Forum wishes to submit further comments; we previously emphasized the importance of the PPPFA regulations promoting transformation. In this regard, the proposed PPPFA regulations should accordingly also assist emerging contractors, in particular in rural and outlying		**Rejected: the regulations may not introduce an additional preference point system other than the one already in the act which 80/10 and 90/10 point system.**

122

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			areas more aggressively. Support for, or even expanding the 80/20 principle, will clearly provide for such assistance – can there be consideration for a 70/30 evaluation basis for cidb grades 1 up to level 5?		
		4. Tenders to be evaluated on functionality	4(1)Tender evaluated on functionality: Despite its paramount importance in the delivery of services, it would be suicidal and meaningless if, functionality is not balanced with the principle of redressing the imbalance if the past. The best strategy would be to create an environment where even the most rural area and township is recognised through awarding an opportunity to develop through projects for empowerment utilising the BBBEE mechanism as a yardstick in order to do justice to the majority of SA citizens. The issue of making principle of functionality mandatory should be balanced with other favorable factors and to be categorised to suit the EME and the QSEs.		**Noted: The requirement that if functionality is the requirement, all tenderers must pass the required threshold before they are evaluated further on B-BBEE points and price because their ability to perform is important insuring service delivery takes place.**
		5. 80/20 preference point system.	5(1) 80/20 preference point system: the Government, with Safcec as a leading organisation in the industry in the country, should commit themselves by establishing and develop a transformation program to assist through capacity, experience and skills transfer; thus empowering smaller and emerging		**Noted: The regulations will not change the point system as prescribed in the principal act.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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			contractors in the process. Organs of state are run through the Public Finance Management Act,1999, which compels them to comply with relevant legislation, ensuring that state resources are spent within legal framework. As Emerging Contractors we support the 80/20 preferential point system as it addresses transformation that is indispensable for the participation in the economy and development of the marginalised emerging contractors.		
		5(2). 80/20 preference point system.	5(2)Emerging contractors prefer 80/20 system and the increase of threshold for the EMEs: Lastly, most emerging contractors in the country, stay not on their own making, stay in townships and rural areas, due to the dehumanizing system of the apartheid that deprived them ability to have better education system locations that are very far from urban industrial areas and lastly education that made people to be dependent rather than being generators of income; hence we are proud of being members of Safcec whose vision is boost our country into a developing country. As per the Bill of Rights, which is the cornerstone of democracy in S.A. the state must respect, protect, promote and fulfill the right in the Bill of Rights.		**Noted: regulation 10 and 13 seek to come up with means of ensuring that SMMEs and Designated groups are advanced through selected tenders.**

724

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		General	The proposed Regulations should make it clear that a "tick-box" approach to the Tender Adjudication Process could expose tender awards by organs of state to constitutional challenge. This view is supported by a long line of case law including the recent Constitutional Court decision. As per All Pay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others 2014 (1) SA 604, the court held that "the materiality of irregularities is determined primarily by assessing whether the purposes the tender requirements serve have been substantively achieved".		**Noted: the issues vented in this paragraph can be better clarified through SCM regulations or Instruction under the responsibilities of Tender Committees and the role of other officials other than the Preferential Procurement Regulations.**
		General	Further, the Construction Industry Development Board, Standards for Uniformity in Construction Procurement provide at clause F.3.10 that state organs should "obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer". In short what is not being disputed are organs of state's entitlement to prescribe formalities which, if not complied with, will render a tender invalid, but as the case law provides, organs of state should avoid elevating non-compliance with a requirement of		**Noted: the issue may be raised with CIDB taking into consideration the provisions of PAJA and the requirement to have a fair and competitive tendering process.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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			subsidiary importance to a level which determines the fate of a bid. Thus, the adoption of an overly strict approach would render the process unfair and irrational and subject, in SAFCEC's view, to constitutional challenges.		
		General	The proposed Regulations should also make the Tender Award Process more transparent i.e. disclosure / public opening and publication of the conducted tender review and selection process. Perhaps, a way of ensuring that there is transparency in the process, is to introduce a cap e.g. R50 million and state in the RFP that an award made to the value of the cap will be read out in public, with written reasons for the award being available in electronic form by, and on the organ of state's website, within 48 hours of the award.		**Noted: Whilst this is a noble idea, these regulations are concerned about preferential procurement issues than ordinary SCM issues. The regulations must not be clouded with SCM regulations issues. In any event the SCM reform has introduced a lot of mechanisms to ensure a transparent system like making available all procurement plans, and reporting awards.**
101	Master Builders South Africa: Pierre Fourie	General	The following pieces of legislation, associated regulations and various policies by regulatory bodies like the CIDB inform and are pertinent considerations to our response: 1. The Promotion of Equality and the Prevention of Unfair Discrimination Act (Act 4 of 2000).		**Noted.**

726

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			2. Best Practice Guidelines A2 and A3: Applying the procurement prescripts of the CIDB in the Public Sector. 3. CIDB Standard for Uniformity in Construction Procurement. 4. The CIDB's Framework for the National Contractor Development Programme (NCDP). 5. Contractor Management Guidelines published by the CIDB. 6. Allocating Sustainable Work Opportunities to Contractor Development Programmes (CIDB Practice Note #29 – July 2012). 7. Standard for Indirect Targeting for Enterprise Development through Construction Works Contracts (Government Gazette # 36190, 25 February 2013, Board Notice 21 of 2013. 8. Best Contractor Recognition Scheme. 9. Standard for Contract Participation Goals: 24 July 2016. 10. Broad-Based Black Economic Empowerment Act as Amended.		
		General	While MBSA accepts that the PPPFA or its envisaged revision is for ALL procurement; we are however concerned that there may be 'unintended consequences' with the lack of alignment to the CIDB's Contractor Grading System including provisions and guidelines contained in the documents mentioned above, amongst other things. It is therefore for this		**Note: However CIDB issues are sectorial issues which must be addressed in the correct platform than these regulations. We accept that the regulations may have unintended consequences hence we try to address**

727

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			reason that we argue that there should perhaps be a recognition of the existence of the above-mentioned which can then inform the provision of construction-sector-specific regulations in recognition of the peculiarities of the sector. The following excerpts from the CIDB's Strategic Plan: 2011/12 to 2015/16 are worth noting: "A key contributor to poor quality is often an inability to match the capabilities of a contractor to the requirements of a project – reinforcing the need for risk management systems that will recognise the capabilities and performance of contractors." "A key contributor to poor quality is often an inability to match the capabilities of a contractor to the requirements of a project – reinforcing the need for risk management systems that will recognise the capabilities and performance of contractors." "However, a huge challenge facing public sector agencies is the deficiencies in the skills of public sector officials and external stakeholders practicing construction procurement. The application of the appropriate level of discipline to the construction procurement process, and the consistent basis for managing the interface between government and the construction sector stakeholders with a fair allocation of risks, will contribute to improving better infrastructure delivery outcomes. "In		those that may be identified upfront.

3224

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			addition to the poor skills challenge in construction procurement, there are strong indications that corruption in the construction sector is increasing rapidly, with a view that South Africa is reaching the topping point beyond which it may be difficult to reverse the corruption." "Poorly managed tender processes are all too often abused to promote fraud and corrupt practices."		
		10. prequalification criteria for preferential procurement	While we welcome and support the intent behind the introduction of these measures; it is our considered opinion that this may have an unforeseen detrimental impact (unintended consequence) unless and until the CIDB Grading System is taken into account in mitigation thereof. Please see tables below for ease of reference: Enterprise Category Total Turnover (less than) Approximate CIDB Grade for Contractors Large Enterprise Greater than Grade 7 Qualifying Small Enterprise (QSE) R 50 Miilion per annum Grades 6 to 7 Exempt Micro Enterprise (EME) R 10 Million per annum Less than Grade 5 to 6. It is also recognised and widely accepted in the industry that Contractor Development Programmes as		**Noted: this regulation is intended to advance Designated groups, should there be reported matters of bypassing the regulations, the matters will have to be treated on own merits.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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			advocated by the CIDB seek to target the following categories for different reasons as outlined below: 1. Grades 2 to 6: Enterprise or Contractor Development. 2. Grades 4 to 7: Performance Improvement. We are concerned that the draft proposals in their current form will negate this developmental approach and increase the administrative and compliance burden on contractors at this level leaving to various negative consequences. For example: QSEs (Qualifying Small Enterprises) being between R10 Million and R50 Million and each of them has a different BBBEE Procurement Recognition Level based on varying percentages of Black Ownership (51% or higher) amongst other considerations. Another construction-sector specific discrepancy is the fact that the proposed R100 Million threshold for the 80/20 principle is not in line with the 9GB or 9CE CIDB Grading which is for projects of R130 Million and higher; whereas 8GB or 8CE is for projects of up to R130 Million and below. We foresee some 'unintended consequences' from this 'anomaly' since 9GB Companies can tender for projects below R100 Million (PPPFA Threshold) or R130 Million (CIDB Threshold) whilst CIDB 8GB Companies cannot but only under certain		

730

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			PE (Potentially Emerging) provisions/conditions? This can fuel or lead to fronting and window-dressing or cosmetic changes despite the severe consequences of doing so. At any given time tendering entities may be subject to one regime (90/10) in one instance and another (80/20) in another all with varying points for the calculation of BBBEE Points. We believe some of these Preferential Procurement Risks could be mitigated by tender requirements that are CIDB Grading-specific for a certain category or value of works within the proposed 90/10 and 80/20 regime to promote and support the advancement, progression and graduation of 'emerging contractors' through the CIDB's Grading System so that these entities can eventually be mainstreamed into the Construction Economy Value Chain. Please refer to the table above.		
		General	We believe some of these Preferential Procurement Risks could be mitigated by tender requirements that are CIDB Grading-specific for a certain category or value of works within the proposed 90/10 and 80/20 regime to promote and support the advancement, progression and graduation of 'emerging contractors' through the		**Noted: organs of state are required in terms of the PFMA to manage risks from each organ of state. Procurement risks should be treated as part of organizational risks.**

731

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			CIDB's Grading System so that these entities can eventually be mainstreamed into the Construction Economy Value Chain. Please refer to the table above.		
		General	We realise that a balance will need to be struck between the 30% 'set-aside' and the foregoing proposal. It is instructive to note the national spread of Contractors according to the most recent information from the CIDB's Register of Contractors. Please see Table below for ease of reference. Class of Works by Grading - All Provinces Designation Civil Engineering Works (CE) General Building Total (GB) 1 0 0% 0 0% 0 0% 2 1795 28% 2579 42% 4374 35% 3 1059 17% 722 12% 1781 14% 4 1120 18% 983 16% 2103 17% 5 704 11% 594 10% 1298 10% 6 860 14% 735 12% 1595 13% 7 519 8% 385 6% 904 7% 8 187 3% 155 2% 342 3% 9 86 1% 48 1% 134 1% Total 6330 100% 6201 100% 12531 100%		**Noted: We believe that CIDB will address these issues and contact National Treasury where issues of mutual interest arise. There is a standing relationship between the two organs of state to address procurement matters of mutual interest.**
		General	Grade Values 1 R 0 - R 200 000		**Noted in line with resolution above.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			2 R 200 000 - R 650 000 3 R 650 000 - R 2 000 000 4 R 2 000 000 - R 4 000 000 5 R 4 000 000 - R 6 500 000 6 R 6 500 000 - R 13 000 000 7 R 13 000 000 - R 40 000 000 8 R 40 000 000 - R130 000 000 9 R130 000 000 - No Limit		

733