STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			requirements as indicated in section 217 1 of the Constitution, 1996 in whole. It allow an organ of state to for example declare in their SCM policy and or in the Bid documents that only " **suppliers with a B-BBEE rating of level one may will be qualify for a certain bid**" which will have the effect that only such suppliers that adhere to that stipulation will qualify as per new regulation 10(2). That will ensure that competitiveness is totally ignored and it further means that even Black owned level 2 and EME, QSE and small and large companies will not be able to compete. This opens the door for serious manipulation by any official and the state effectively eradicate the functionality regulations and the point system regulations, as it is a **method of set aside** before any supplier can compete fairly for any procurement. The words, **"but are not limited to"** Regulation 10(1) be an open invitation to make **anything a pre-qualification**		**level however it is agreed that there should be a limit to what can be used as pre-qualification criteria and mechanisms to prevent abuse of the system.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			criteria, so it is quite possible that a municipality dictate **"that only suppliers that belongs to a certain political party and speak a particular language"** will qualify. If this sound ridiculous think what will prohibited an organ of state to set that as a pre-qualification?		
			Regarding the criteria set in 10(1)b the QSE ownership is not defined and open for manipulation see comments above on same issues.		**Noted and accepted: NT and the dti should define ownership in line with the B-BBEE Act and codes of good practice.**
		Regulation 13(1)(a)	The category in (b) automatically include what is set in (a) so (a) could be taken out What will happen with construction related services? Include the **25%** rule as dictated in the old regulations8 and 9 it will ensure that fronting is excluded ….satisfactory reason??? vague	Regulation 13.(1) For contracts above R 30 million ……. (a) One or more EMEs or QSE,s Regulation 13(3) A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 30% of	**Noted, partly accepted especially bringing back regulation 11(8) and (9) of the 2011 Regulations.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract. Regulation 13(4) A person awarded a contract may not sub-contract more than 30% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.	
		Regulation 14(1)(a)		Regulation 14(1) (a) inform the tenderer within 7 working days accordingly (b) give the tenderer 14 days	**Noted: The team must consider including time frames on this regulation taking into consideration the provisions of PAJA.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				to make submissions as to why….. Regulation 14(2)(a)An organ of state….., in writing within seven working days of any actions……	
		Regulation 14(3)	The database of restricted bidders declares at the bottom that NT will not be held responsible for listing the supplier or any person; this should be taken into account…. The policy change that NT will decide on the restriction of the bidder must be compared with the information set in the GCC and the SBD9 form and Treasury regulations, as this regulation will change all the present stipulations.	As is	**Noted and rejected: The OCPO has GMC Chief Directorate which carries out investigations and can make recommendations for restrictions.**
		General	Particular attention should be afforded to regulation 10 regarding pre-qualifications. If this regulation is approve as is the PPFA Act and regulations will be non-avoided and it give decision making power to organs of state to do as they like in any procurement activity as long as they declare it a pre-qualification it must be accepted.		**Noted: better controls must be added in the regulation to mitigate abuse**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			You are welcome to engage us in discussion, free of charge, we are positive to support preferential procurement efforts of Government but not if it exclude fair and transparent competitiveness of even black businesses.		
19	**Mthuthuzeli Gqokoma**	**Regulation 3**	The point system is still too biased towards price. Treasury should consider putting minimum thresholds for compliance. Furthermore consider adopting only one preference point system. BBBEE should be emphasised through the whole procurement value chain of government and nothing will communicate that more than adopting one preference point system that is biased towards BBBEE.		**Noted and rejected: The draft regulations increased the threshold for 80/20 and 90/10 in order to give advantage to enterprises with improved BEE status level. The PPPFA prescribes two preference point systems therefore the regulations cannot reduce it to one system.**
		Regulation 4	• The functionality criteria should be fair, reasonable and equitable. In some instances some organisations have insisted on 20 years' experience for		**Noted and rejected: Regulation 4 (4) intends to address unfair functionality criteria,**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			tendering entities, forgetting that even our democracy is barely just over twenty years. This has been viewed as discriminatory by black professionals. • Functionality should also make allowance for emerging enterprises or any business to be scored on the experience of its staff members as opposed to just company experience. This will assist in a case where the company has just been recently started by people with experience.		**other aspects must be addressed through training on how to draw a fair specification.**
		Regulation 5	The point scoring is still too biased towards price. However, this is a bit of an improvement and should be applauded. Furthermore, there should be a minimum threshold below which tenderers are disqualified if they score below that threshold similar to how functionality is scored. This will eliminate the scenario where very expensive Tenderers are awarded contracts on spurious grounds.		**Noted and rejected: tenders cannot be rejected for scoring certain points however organs of state should not award contracts to tenderers who exceed the 25.5% for the 80/20 and 11.1% for the 90/10 compared with the tenderer who scored the highest points for price.**[1]

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		Regulation 6	Why decrease the importance of BBBEE when projects get bigger? We should consider going for one preference point system that communicates the value of BBBEE in the whole procurement system.		**The regulations give more credence to BEE than in the previous Regulations it brings EMEs, QSEs, and Designated Enterprises into mainstream preferential public procurement.**
		Regulation 7	The objective criteria should not be subjective, it should be compulsory for public tenders. However, consideration should be given to setting a minimum threshold above which it becomes applicable. The recommended threshold should be R5 million.		**Noted and rejected: Objective criteria can be used to empower SMMEs, Cooperatives, Youth owned enterprises, rural and township enterprises to cab them within a certain threshold can defeat the intention of the regulation.**
		Regulation 8	I like the fact that BEE is the first consideration in breaking a deadlock and not price. Leave it as it is no need for changes and no doubt there will be opposition to it.		**Appreciation Noted**
		Regulation 10	The EME's or QSE's should just be owned		**Noted: the premise is**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			by black people without emphasising gender and disability. This is due to the fact that black males hold no advantage over females in many of the industries which this policy is presumably trying to unlock as all were excluded by the previous government from participating.		**that women suffered a double oppression under apartheid and can be looked at as a separate sector to be empowered.**
		Regulation 13	• The policy needs to address the potential for some officials to try manoeuvre around this by splitting projects into small portions to avoid compliance; • This will encourage aspirant black entrepreneurs who up until now have been hesitant to start their own enterprise due to the stiff competition that has come about as a result of tendering in the industry.		**Noted: This provision must be linked with procurement plans of organs of state; we can only rely on the good citizenship of organs of state to use this regulation for the empowerment of designated enterprises.**
		Regulation 16	Yes existing regulations should be repealed and replaced with the proposed regulations.		**Noted**
		Regulation 17	The policy should commence with immediate effect.		**Noted**
20	**Nokulunga Nene**	**Regulation 5 and 6**	The 80/20 and or 90/10 rule regarding the weight of B-BBEE score should be relooked at.	I would suggest that the PPPFA should increase the weighting of B-BBEE score by 10 to 20	**Noted and rejected: the regulations seek to compliment the aims of**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			If there is a National Act to try and create transformational development within business, and then there is another document that does not speak to supporting that Act creates confusion. The PPPFA document comes across communicating that the Treasury only cares for costs and not the racial transformation that needs to occur in big business, therefore those organizations do not need address their transformation issues and Government will still do business with them.	points respectively. Big business will then take transformation seriously. Furthermore, transformation does not mean that costing or pricing offered will be threatened in any way.	**the BEE Act and streamline enterprise development into public preferential procurement.**
21	**National DPW –Izak De Villiers**		Dear National Treasury, allow me to submit my contention regarding the proposed document, seen from a very experienced professional engineer's point of view. (I have been a qualified civil engineer for the past 56 years – last 31 years specialising in water/sanitation management.) The overwhelming message sent out to the world by the proposed regulations is: "White man, Investor, tax payer and Job-creator – you chaps with your skills and your know-how, you are no-longer welcome to do business in South-Africa anymore".		**Comment does not require response.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			Only a couple of years back, in June 2011, the distinguishing threshold between the 20/80 and 10/90 preferential rand value was raised from R 500 000 to R 1 mil. (That was after the R 500 000 had been in force for quite a long time.). Now suddenly, after only 5 years, the R 1 mil. is raised to a staggering (loud sounding message) R 100 mil. !!!!!!!		
			This preferential principle was originally intended and applied to assist and advance previously disadvantaged persons (which included blacks, coloureds, Asians, white women, disabled persons, etc.) and was further meant to be diminishing through the years, in line with the 'emancipation' of the previously disadvantaged persons and should have been scrapped by now. But the new proposals now are favouring, in particular, the black race (and those classified by the SA government as "black") and exclude all other races. This is a blatant discrimination against the other races in SA and in particular against the white race.		**Comment does not require response.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			Quite remarkably, the government has officially classified Chinese residents as "black" people to enable them to participate in the preferences and privileges offered by this procurement policy. This will be regarded as a racist discrimination against the white race in SA. Nowhere in the world is such discrimination lodged, based on race.		
			Another disheartening policy is our labour regulations. These regulations are overwhelmingly in favour of the labourer/employee and detrimental to the employer/job-crater – no wonder that big investors seriously doubt the potential in SA. The same goes for our land redistribution policy. Add to this the fact that all large institutions like mines, big corporations, large manufacturers, etc. will probably be expected to allocate 51% of their shares to "black" people, which will inevitably leads to the fact that those institutions will also have to apply the same		**Comment does not require response.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			discriminating procurement practices as the government. It is quite clear that SA follows the same route as Zimbabwe with one exception: Zimbabweans do not burn down their own schools. Therefore SA will end-up worse than Zimbabwe. The government is clearly unaware of the damage they are causing to the country and it is high time that this be brought to the attention of the government. My proposal is that this racist part of the Preferential Procurement Policy be scarped /terminated with immediate effect.		
22	**Robben Island Museum – Freddy Raseote**	**Regulation 5**	This will confuse the bidders as it will be difficult for them to know at which range they must give their quotations. the current system is great as suppliers know exactly that the tender amount start from R500 000 and up to R1M it will be 80/20 and is easy for them to quote		**Rejected: prices should not be based on the preference point system but must be fair based on market value.**
23	**NT Public**	**Regulation 5 and**	Most small and black-owned businesses do		**Noted: The regulations**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Finance – Misaveni Ngobeni	**6**	not have the capacity to bid nor handle contracts of R100 million and above. The current threshold of R30 000 suits these businesses well. Should we not look at a way to exempt bigger businesses from bidding for tenders of less than R100 million? There could be concerns with respect to the principle of discriminating against these businesses, however this will ensure that there is a like-for-like competition. Fairness is enhanced through the treatment of equals in the same manner (horizontal equity in tendering). Big businesses enjoy economies of scale they will almost without failure beat small businesses on the price aspect which is the elephant in the room, proposal 2 will address this conundrum.		**provide for additional preference scheme in addition to the 80/20 and 90/10 preference point system such objective criteria and subcontracting.**
		Regulation 13	Sub-contracting: Why is it compulsory to sub-contract, is it not about value for money? I agree with this approach where sub-contractors have the adequate capacity to do the job, just merely		**Noted: This regulation is not meant for incapable enterprises to benefit but capable enterprise. We disagree with the notion**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			sub-contracting for empowerment reasons have a potential to compromise service delivery and escalate the costs of public projects. It should be ensured that the positive benefits of sub-contracting due not yield negative unintended consequences.		**that small and medium enterprises are not capable of delivering high standard work when appointed. The point about appoint capable subcontractors will revisited to ensure fairness with the main contractor.**
24	**AfriCoast Consulting Engineers – WKN Emslie**	**Regulation 5**	It is noted with concern that clause 5(1) that the 80/20 preference point system the tender value has been increased from R 1 million to R 100 million. This is a radical departure from the status quo particularly with the view that very few tenderers for the procurement of professional services Providers will exceed R100 million. The Engineering industry is already under immense pressure to meet the employment equity demands due to the scarcity of skills in this sector.		**Concern noted**
		Regulation 6(1)	Similarly this applies to clause 6(1) for the 90/10 preference point system which will		**Noted: the need to empower the previously**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			apply to assignments in excess of R 100 million. This will be an absolute rarity for our sector. Whilst in clause 5 and 6 it is stated that contracts must be awarded to the highest point scoring, it makes allowance in clause 7 and 10 for organs of state to stipulate "objective" criteria or pre-qualification criteria in tenders which require sub-contracting at least 30% of a tender to EME's and QSE's will in all likelihood preclude most professional service providers from tendering. The new B-BBEE requirements are increasingly onerous and these requirements have already been included under the functionality criteria of all tenders. The compounded effect of this requirement together with above requirement that 30 % of all tenders being let to EMEs and QSEs will in all likelihood preclude most professional service providers from tendering.		**disenfranchised and marginalised cannot be overemphasized.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			The above my have disastrous consequences for the Engineering Profession where existing firms who have willingly committed to transformation and empowerment will be unable to do so. This will primarily impact negatively on the development of the disadvantaged sector. We are of the opinion that these amendments will impact negatively on the Consulting Engineering Industry and recommend that various Engineering bodies be consulted before implementing the Policy Framework.		
25	**Peter Fischer**	**Regulation 1**	"Non-firm price" – the definition should be expanded to allow for 1) escalation 2) re-measurable items in Bills of Quantities / Pricing Schedules 3) "percentage based" professional fees		**Noted: the 2011 definition will be brought back to avoid confusion.**
		Regulation 4	Regarding quality and functionality being used as a threshold only: Simplistic thresholds are not acceptable in		**Rejected. To include functionality in the points for price would be a violation of the**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			light of - The high capex values for civil engineering infrastructure, - The long service life and the total operating costs over the whole working life of the infrastructure, - The need for reliable operation, - The high risk of injury and loss due to the physical size and complexity of the infrastructure. Infrastructure procurement should be evaluated on "most economically advantageous submissions" that looks at o life cycle costs o innovation o value engineering o benefit to greater communities o risk identification and management o specific experience of the practitioners - etc It should be a requirement that any PSP tender above R1 000 000 (i.e. where the Price and Preference changes from 80/20 to 90/10) must include points calculated on		**provision of the Act (which was also restated in the *Sizabonke* case)**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			FUNCTIONALITY under the current new Method 2 – and certainly not the R100 million limit as proposed in Paragraph 5.		
		Regulation 5	If the (unrealistic) R100 million requirement is retained, then it must be mandatory that - All PSP tenders shall be based on Method 2, and - Functionality must count for a minimum of 50% of the total adjudication score, and - Functionality must score up to 90% on a sliding scale, increasing with the construction value (capex), complexity and life cycle costing (opex) that will be determined by the professional service provided. PLEASE NOTE: The capital costs of infrastructure are determined at the design stage.		**Rejected: see comment above.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			The design (consulting) engineer has the biggest influence on - the capital costs of infrastructure - the operating costs for the lifetime of the infrastructure The design engineer's fee is usually only between 1% and 2% of the lifetime cost of the infrastructure, but - if the design engineer's fee is insufficient, the cost of a scheme can easily be 10% to 20% higher than it could have been if the "right" design engineer / consultant had been appointed and he was paid enough to optimise the costs of the scheme.		
			False economy results when a design engineer's fee is too low because of tendering practices that do not take proper account of FUNCTIONALITY in the evaluation of tenders.		**Noted: See comment above.**
		Regulation 5	1) The amount of R 100 million is not realistic, especially for consulting		1

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			engineering services – this includes the vast majority of all consulting engineering appointments. 2) The simplistic calculation of points on "Price and Preference" is a recipe for false economy, especially for consulting engineering services. The quantum of money spent on civil engineering infrastructure needs high degree of skill in the planning and design phases to - minimise capital costs - minimise operational costs (for lifetimes of 80+ years) - maximise reliability - maximise safety and operability - avoid premature failure		**Rejected. This is not for consulting engineers only – these regulations need to be applied widely. The law, as indicated above, is clear that the points system for 80/20 and 90/10 is for price and preference only. Functionality, where relevant, is used as a threshold only, as confirmed by case law.**
		Regulation 6	See 5. above		**Refer to resolution on regulation 5 above.**
		Regulation 7	Para 7(1) implies that the highest scoring tenderer has (i) passed the functionality threshold and one or more sub-minimum requirements, but (ii) one or more reasons have been		**Comments are noted; however, the issues raised are management and training issues and do not appear to be proposing any particular**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			found to not award a contract. Comment 1: The 'objective criteria' as described in 7.(3)(a)to(d) are seldom – if ever – stipulated adequately by SCM (BSC) in tender documents. This is usually because personnel in SCM do not have the requisite experience and / or skills to deal with the complex factors that are critical when procuring services for infrastructure related projects (consulting engineering or construction). Comment 2: As a result of the missing objective criteria in tender documents, vast numbers of tenders are awarded by SCM (BAC) where - the highest scoring tenderer's price is too low to provide value for money / provide adequate levels of service / provide innovative solutions / etc - the tenderer (being a person or a firm) cannot actually perform the task or service, or - the tenderer has a poor track record (eg		**change to the draft regulations.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			history of excessive claims, late completion, poor quality control, etc), or - its resources are too few to complete a contract within the delivery period.		
			Comment 3: Even if SCM (BAC) is aware of such shortcomings, they are usually powerless to award a tender to a lower scoring tenderer because the objective criteria are missing in the first place. Comment 4: Para 7.(4): A copy of the report to National Treasury should be sent to all tenderers for the sake of transparency. Comment 5: There is no mention of dealing with blacklisted firms or persons.		**Noted. This information, together with other relevant information, will be considered for publishing on a quarterly basis.** **Regulation 14, dealing with remedies, speaks to this issue. These regulations deal with the issues of preference, and thus do not extend to dealing with general SCM matters.**
		Regulation 8	The criteria in 8.(1) and 8.(2) should be swopped – functionality should be more		**Rejected: The regulations are about**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			important than B-BBEE		**preferential procurement hence preference is given to BEE points first.**
		Regulation 9	No comment It is worth mentioning that, in the case of the valve manufacturing and supply industry, this requirement is costing the State an enormous amount of money because many work-arounds are being used by suppliers and contractors to comply with the rules.		**Noted: the dti must properly do research to identify sectors and thresholds for designation.**
		Regulation 10	This whole section is overcomplicated, restrictive and unnecessary. The B BBEE Status Level already factors in advancement of Black persons. These additional requirements may appear to be admirable in their intent, but in reality it serves as a mechanism to distribute money with little added real value. Employment and training and mentoring of young staff (and emerging firms) should be valued more highly than simplistic 'preferential procurement'.		**Noted: On the contrary, however, this section is necessary against the backdrop of SA's unpleasant history, and is incorporated in alignment with the B-BBEE legislation (in particular the trumping provision and the various sector codes).**
			PLEASE NOTE With regard to high value professional (PSP)		**Noted: especially the challenge of managing a**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			appointments: Managing and coordinating a large number of sub-consultants can have severely negative effects on the consultant firm and its sub-consultants. This is due to the complicated management and communication structures needed on large projects, where scarce senior engineers must use their limited time to manage scientific and technical work between persons who work in various organizations and at different locations. In addition, when awards are made on the basis of lowest tendered costs, the first "casualty" is training and mentoring. Much of this can be overcome if sufficient work were to be made available by the State, but that is not the case at present nor in the foreseeable future. If sufficient State expenditure were available, realistic rates could be tendered		**lot of subcontractors in various projects.** **The provision relating to sub-contracting will be revisited since it is acknowledged that the issue of sub-contracting cannot be a "one size fits all" approach.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			for the management and coordination of many sub-consultants provided that the contractual conditions are fair, transparent and genuinely equitable.		
		Regulation 12	The risk of "changed circumstances" and "funds no longer available" rests with a Client. Consulting Engineers have no influence on the circumstances in this regard.		**Concern noted.**
			The Client should therefore reimburse the tenderers for the total costs of preparing tenders when tenders are cancelled due to no fault of the tenderers. "Testing the market" should be outlawed and any Client bodies exposed and charged for such unethical practices.		**Noted: However a tenderer can launch a civil claim against the organ of state individually where required.**
		Regulation 13	This is also called "CPG" – Contract Participation Goal This section is unclear. There is overlap and with section 10. Pre-qualification criteria for preferential procurement.		**Noted and accepted the regulation will be improved to read better and to align with the intention of the regulation.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			The 10% penalty for not disclosing a subcontract does not make sense, unless over 70% (or some rationally determined percentage) of the value of the contract is subcontracted. It is not clear whether a tenderer must – at tender stage – nominate an EME or QSE in order to not be penalised. The clause is both confusing and poorly drafted. A tenderer needs to know at tender stage who his sub-contractor(s) will be or even if he will be using any. Clients must NOT be allowed to provide a list of "approved subcontractors" from which consultants must choose once a tender has been awarded - this leads to corrupt practice, poor value received, etc		
		Regulation 15	Must be published in draft form for public comment by giving notice in the Government Gazette prior to adoption		**Rejected: These are operational matters that National Treasury can deal with, in compliance with the legislative prescripts.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
26	**Aryx Consulting – Renay Heynes**	**Regulation 5 and 6**	The increment rise from a R 1 million to R 100 million threshold for the 80/20 bracket is significant and will have a major impact on all industry in the country. It places a substantial financial burden on companies to achieve a decent B-BBEE level in order to compete with competitors within the consulting engineering environment as most engineering consultants will likely almost always fall in the 80/20 bracket. This burden is not offset in the value of tenders awarded as either extremely low prices are offered (mostly resulting in inferior services or products) or the rules are "bent" by the employers, awarding contracts to bidders not necessarily meeting the functional requirements. This means that the additional 10% "premium" will actually not be paid by government, but mostly by the private sector. It becomes an additional "tax" to smaller companies that increases the cost of business and makes it even more difficult to be profitable in this tough economic climate. The question is whether		**Comment noted no changes required from the comment.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			our fragile economy can weather this additional burden. It is our opinion that this can be successfully implemented only once significant and meaningful progress has been made to curb corruption. The net effect of this is that the cost of achieving the best B-BBEE level thus becomes too high to sustain, especially for QSE's.		
		Regulation 13(1)	Clause 13.(1) of the Act stipulates that a 30% minimum of the contract should be sub-contracted for contracts above R 30 million. However, points 13.1 (a), (b) and (c) allow for vague criteria in the selection process, for a sizable percentage of the contract value. Not all EME's and QSE's have the resources to fulfill a 30 % portion of a contract.		**Noted and accepted: the regulation will be revised.**
		Regulation 14(1)	Clause 14.(1) has reference. We would like to propose that Treasury not have single onus to blacklist companies and enforce a 10		**The regulation will be aligned to: PAJA provisions**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			year ban on business activity with organs of state (even if companies can submit reasons for false information presented). Proper arbitration and legal procedures should be followed, thus giving onus to independent legal bodies.		
27	**S& W LIMPOPO – Danie Basson**	**General**	1. Tenderers / Contractors spent time and money to uphold functionality and present this in their tenders to qualify as acceptable tender. 2. Tenderers / Contractors also spent time and money to uphold their B-BEE status. 3. To find out that the organ of state has awarded the tender not to the tenderer with highest points, will discourage them from tendering in the future. 4. What happens to functionality? Does it mean that the tender can be awarded to one of the tenderers who failed on functionality? 5. We can testify about numerous projects where the contract was not awarded to the tenderer who scored the highest points. Functionality as criteria was ignored. Many of these projects are still not completed or were completed late. The communities are		**Noted: it is not the intention of the regulations to award tenders to bidders who have failed on functionality and who are not capable of performing the contract awarded.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			the only losers because they do not receive services. 6. If an organ of state intends to stipulate criteria without functionality, price and B-BEE, why go out on tender? 7. Pre-qualification will allow the organ of state to discriminate. 8. EME's and QSE's do not have to qualify for any functionality. We are of opinion that the draft PPPFA regulations will further open the door for corrupt officials to lower the standards of service delivery for personal gain. We all need to stand together and close the door on corruption.		
28	**NWPG – Thabo Atlholang**	**General**	I have gone through the PPPFA regulations of 2011 and the drafts and here are my inputs; 1. Please include regulations on what needs to happen when suppliers have miscalculated their prices and what procedure we must follow thereof, I am always puzzled on what to do when		**The point is noted however correction of arithmetic errors should properly addressed in the Treasury regulations, it is unfortunate that such is not provided for in the current SCM regulations.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			suppliers make this kinds of mistakes. Sometimes suppliers deliberately miscalculate so that they can get the business and only indulge on their miscalculations after they received the business.		
		Regulation 7(3)	3. Please expand on the concept of "additional objective criteria" and make scenarios under which we can utilize additional objective criteria. 4. Please include premium and why we should calculate it on the new regulations, I understand why it is essential to calculate it but many of our constituencies do not understand. 4. Bidders submission must be only considered when it complies with the minimum requirements and conditions of the bid, can you kindly expand on those and make examples.		**Noted and accepted: the regulation should be revised to cater for all objective criteria that can be used in a bid in order to prevent risk of abuse of objective criteria.** **It only means that only acceptable tenders can be considered for objective criteria.**
		General	Please indicate again which SBD forms are essential to be utilized all the times and		**This matter should be addressed as training on**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			when. Those are my inputs and I hope they will be considered		Treasury Regulations.
29	Impumelelo Consulting Engineers (PTY) Ltd – Ndumiso Ndlovu	General	Please note that after reading the Departments proposed amendments on the current Preferential Procurement Regulations, I am in agreement with the proposed changes as they will create more opportunities for us locally emerging firms to grow and create more desperately needed job opportunities for our fellow South Africans.		Appreciation noted
30	APG Logistics – Nosipho Gxumisa	General	I think this is a step in the right direction. I wish we could do away with 90/10 and rather have 80/20 and 60/40 but I guess we all need to start somewhere.		Appreciation noted. Unfortunately the current preference point system is still in existence.
31	Northern Cape Department of Education – Joseph Senakgomo				

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32	**Department of Trade and Industry – Tebogo Makube**	**Regulation 1. Definitions**	(a) Insert to define B-BBEE Commission (b) B-BBEE status level of contributor definition to include "as amended" (c) "black people" definition to include "as amended" (d) "Broad Based Black Economic Empowerment Act" definition to include "as amended" (e) The definition of "designated group" can be aligned with the definition stated in the 2013 Amended B-BBEE Codes of Good Practice if that is the intention	(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) B-BBEE status level of contributor means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9 (1) of the Broad Based Black Economic Empowerment Act **as amended** (c) "black people" means black people as defined in section 1 of the Broad Based Black Economic Act, 2003 **as amended** (d) "Broad Based Black Economic Empowerment"	**The comments have been addressed extensively in a separate document.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			(f) The definition of "township" is not defined in the B-BBEE Act as amended or Amended Codes of Good Practice (g) Definition of CIPC to be included (h) Definition of Black Industrialist to be included	means the Broad Based Black Economic Empowerment Act as **amended** (e) 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 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	

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				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. (f) Definition to be re-considered (g) "CIPC" means the Companies and Intellectual Property Commission (h) "Black Industrialist" The Black Industrialist means both natural and juristic	

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				persons, including co-operatives as defined in both the Co-operatives Act (Act No. 14 of 2005) and Companies Act (Act No. 71 of 2008), owned by Black South Africans as defined by the B-BBEE Act who creates and owns value-adding industrial capacity and provides long-term strategic and operational leadership to a business. A Black industrialist can also be a natural person. The following are characteristics of a Black industrialist: • provides strategic and operational leadership to the business; • has a high level of ownership (>50%) and/or exercises control over the business; • identifies opportunities	

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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				and develops business to take advantage of these opportunities (entrepreneurial); • takes personal risk in the business; • does business in the manufacturing sector, with particular reference to IPAP focus areas; and • Makes a long-term commitment to the business and is a medium to long-term investor. While there is a desire to support entities with significant and dominant black ownership and control, it is accepted that there may be a need to include other shareholders to attract relevant skills, finance and opportunities.	
		Regulation 2. Application	(a) Number of points allocated for Level 3 compliant suppliers to be lowered to 14	(a) 5(2) B-BBEE Status Level Contributor Level 3 14	**The comments have been addressed extensively in**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			for the 80/20 formula and 6 for the 90/10 formula. This is in line with the historic intention to give black-owned small business a substantial advantage in scoring as black-ownership for EMEs and QSE in terms of the Amended Codes of Good Practice ensure Level 2 or Level 1 recognition, as opposed to Level 3 recognition in terms of the 2007 Codes of Good Practice. (b) 5(4) and 6(4) a valid B-BBEE certificate or affidavit should be a prerequisite for all tenders, irrespective of status level. At the minimum it demonstrates a commitment to B-BBEE. (c) Application to organs of state to be subjected to sections 3 and (trumping clause) 10 of the B-BBEE Act	points 6(2) B-BBEE Status Level Contributor Level 3 6 points (b) 5(4) If a tenderer fails to submit proof of B-BBEE Status Level, i.e. a valid B-BBEE Certificate, CIPC certificate or affidavit it will be automatically disqualified from the tender. Non-compliant contributors with a valid B-BBEE certificate will not be disqualified but	**a separate document.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				may only score points out of 80 for price and scores 0 points out of 20 for B-BBEE. (c) 6(4) If a tenderer fails to submit proof of B-BBEE Status Level, i.e. a valid B-BBEE Certificate, CIPC certificate or affidavit it will be automatically disqualified from the tender. Non-compliant contributors with a valid B-BBEE certificate will not be disqualified but may only score points out of 90 for price and scores 0 points out of 10 for B-BBEE. (d) 2. These Regulations applies to organs of state as envisaged in the definition of "organ of state" in section 1 of the Act, subject to the B-BBEE Act 53 of 2003 as amended, specifically	

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				section 3 and section 10 thereof.	
		3. Identification of preference points system	Inclusion of targeted procurement in the PPPFA regulations	the dti submits that even though the regulations allude to procurement from townships and rural areas, clear guidelines are needed on "targeted procurement (set asides)", particularly with regards to the evaluation criteria to be followed. Targeted procurement is critical in the provision of opportunities to emerging black owned or empowered entities. The dti submits that should be included in the revised regulations. The B-BBEE Act (Act No.46 of 2013) specifies economic empowerment of all black people in particular women, workers, youth, people with disabilities and people living in rural areas are targeted for empowerment.	**The comments have been addressed extensively in a separate document.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		5. 80/20 preference point system for acquisition of goods or services for Rand value of up to R 100 Million.	(a) Paragraph (4)	(a) The Tenderer should be disqualified if they do not have a B-BBEE Status Level. Transformation and complying to B-BBEE is needed	**The comments have been addressed extensively in a separate document.**
		6. 90/10 preference point system for acquisition of goods or services for Rand value above R 100 Million.	(a) Paragraph (4)	(a) The Tenderer should be disqualified if they do not have a B-BBEE Status Level. Transformation and complying to B-BBEE is needed	**The comments have been addressed extensively in a separate document.**
		7. Award of contracts to tenderers not scoring highest points	The proposed regulations 5(8) and 6(8) are very clear and prescriptive that the contract must be awarded to the tenderer who scores the highest points, subject to regulation 7. However, regulation 7 is less prescriptive in that it states that a contract may be awarded to a tenderer who did not score the highest	In statutes and sometimes in contracts, the word *'may'* must be read in context to determine if it means an act is optional or mandatory as distinguished from "must" which makes it mandatory and imperative. The	**The comments have been addressed extensively in a separate document.**

AD.

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			number of points, only in accordance with section 2(1(f) of the Act. (a) 7(3)(a) Terminology to be aligned to B-BBEE Act	interpretation of the aforementioned clauses will be subject to legal challenges and adverse audit findings, depending on the reasoning for deviation to award contracts to a tenderer with the lowest score. This also incentivises perverse behaviour in the procurement system for corruption, favouritism and cronyism (a) 7(3)(a)(i) EMEs or QSEs which are 51% Black Women Owned (b) 7(3)(a)(ii) EMEs or QSEs which are owned by black youth (c) 7(3)(a)(iii) EMEs or QSEs which are 51% Black Owned (d) 7(3)(a)(iv) EMEs or QSEs which are at least 51%	

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				owned by 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	
		8. Criteria for breaking deadlock in scoring.	The proposed regulation 8 states that if two or more tenderers score equal points in respect of the B-BBEE and functionality, the award must be decided through the tossing of the coin.	A better measure should be considered than tossing a coin. In other sections, regulations call for objective criteria in justifying the awarding of contracts to a tenderer with lowest points but in regulation 8, tossing of a coin is the determining factor. the dti submits that positive economic spill-overs should also be considered as criteria for breaking a deadlock in scoring rather than tossing of a coin.	**The comments have been addressed extensively in a separate document.**
		9. Local production and content	**(a) Definition of the designated sector and powers of the dti to designate** In the proposed Regulations: Designation	This is not the definition per se, but the shifting of the legislative powers to designate from the dti	**The comments have been addressed extensively in a separate document.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			means a sector, sub-sector or industry designated by the National Treasury, after consultation with the Department of Trade & Industry (the dti), taking into account national and industrial policies, competition and other economic factors. ***(b) Consideration of competition issues in the designation process*** Before designating a product for local production, the dti is in principle following	to the National Treasury. In the current regulations, Designations means a sector, sub-sector or industry designated by the sub-sector or industry that has been designated by the dti in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content. In the proposed regulations, it means the National Treasury has legislative powers to designate and the role of the dti is reduced as the latter has to be consulted by the former. the dti does not support this clause as it is not just a definition clause but shifts	

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			a designation framework that considers international trade and procurement laws, economic multipliers, trade balances, industry structure and the levels of competition as well as the government expenditure on the product, sector, sub-sector or industry.	the powers to designate to the National Treasury without a proper rationale being provided. The dti submits that the definition should remain as it is in the current regulations. **the dti** does not support the elevation of Competition as a specific factor to be considered under designation. It is other removed or encompassed under other economic factors. The other economic factors mentioned on the above are also quintessential in the designation process. It is well documented that the South African economy is highly concentrated in few conglomerates and that in certain sectors; the country is a small	

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			(c)Definition of local content and production	producer in terms of global value chains. It is in this context that local content is anchored such that it protects local manufacturing capability, capacity, attract new manufacturing investments and nurture emerging industries like set-top boxes, solar water geysers and the green economy in general. Given the small market and low demand in certain designated sectors, there is no way that South Africa will have multiple suppliers as contemplated by the competition policy and theory. There is no doubt that for the state to get good value for money and hence make good use of scarce public resources, competition is paramount.	

AD.

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				However, limited competition in a particular industry should not be used to inhibit local content. In such conditions, the state should use a price reference system to deal with incidence of collusion and price fixing in the public procurement system. The use of public procurement to further and support local industries is not an uncommon phenomenon internationally. The National Treasury should provide its comments at the research stage regarding competition and other economic factors and not after the Minister of Trade & Industry has designated the sector. the dti proposes that under the definition of local content and	

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				production, **local content and imported content** be separated and clearly defined. The definitions should be in line with **South African Bureau of Standards: Technical Specification on the Measurement and Verification of Local Content (SATS 1286:2011).** **Proposals on definitions** **(i) imported content** that portion of the tender price represented by a) the cost of imported components, and b) the cost of parts or materials which have been or are still to be imported (whether by the suppliers or the suppliers' subcontractors or any other third	

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			(d)Removal of Regulation 9.3 (local procurement of non-designated products) in the draft regulations	party) the costs of which are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing cost, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry excluding value added tax (VAT) **(ii) local content:** that portion of the tender price that is not included in the imported content, provided that local manufacturing takes place and is calculated in accordance with the local content formula. **(iii)imported content deemed as local** that portion of the tender price represented by: the cost of imported material or	
			(e)Remedies and powers to deal with non-		

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			compliance on local content / designation In terms of the current PPPFA regulations, the dti has powers to designate sectors but no powers to reprimand non-compliance. Section 13 of the current PPPFA Regulations states that 13. (1) An organ of state **must**, upon detecting that: (a) the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis; or (b) any of the conditions of the contract have not been fulfilled, act against the tenderer or person awarded the contract. ***(f) Remedies to deal with non-compliance on local content***	component specifically deemed and allowed to be treated as local content for economic reasons. This cost will be treated as local content when the local content percentage is computed. **(iv) exempt imported content (lowering of threshold for local production)** that portion of the tender price which is local but specifically applied for by the supplier to be exempted from local content for production and economic reasons. This cost is included in the portion of local content the tender price.	

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			(g) Powers to grant exemptions or lower thresholds for local content of imported materials and/or components (this is in the instruction notes but not in the regulations)	the dti does not support the removal of Regulation 9.3 in the draft amended regulations. Regulation 9.3 facilitates local procurement of non-designated and/or yet to be designated products/commodities. It has been used successfully in the procurement of transformers, pipes and antennas and will go a long way in facilitating the local procurement target of 75%. The dti has forwarded the National Treasury draft guidelines for the local procurement of non-designated products as required by Regulation 9.3 and it is surprising that this regulation is removed in the proposed regulations. Regulation 9.3 should not be deleted and its directives should be circulated	

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			(h)Two-stage tender evaluation	by the National Treasury as required by the current regulations. **The dti proposes that Section 13 be retained and add subsection (c): local content conditions of the contract have not been fulfilled.** This section must be written in peremptory (obligatory) terms, which requires exact compliance. There is currently a vague interpretation on the role and powers of institutions to deal with non-compliance on local content. It should be made clear that procuring entities have vested powers through the	

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
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				PPPFA Regulations and conditions of contract to deal with non-compliance. This stems from the advertisement, adjudication, awarding and performance of tenders designated for local production. The National Treasury in consultation with the dti should be able to cancel such tenders or come up restrictive measures. the dti submits that the proposed regulations dealing with remedies for non-compliance (Section 14) are process laden and shift much of the responsibility to the National Treasury by requiring procuring entities to inform the latter and make submissions in terms of non-compliance by the tenderer.	

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				This is laborious and is not in sync with the law of contract. Parties to the contract and those that can prove *locus standi in judicio* can claim for damages regarding the non-performance of the contract. That power should in the main be vested with the procuring entities, more so because public procurement is devolved in South Africa. the dti submits that ***Section 13(2)*** of the current regulations dealing with remedies should be retained as it is. the dti submits that a clause should be included in the regulations formally granting it powers to grant exemptions if the material, component and/or quantity of designated product	

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				cannot be wholly sourced from South African (SA) based manufacturers. Bidders should obtain written exemption from the dti to supply the remaining material, component and/or quantity at a lower local content threshold. The dti, in consultation with the procuring organ of state, will grant exemption on a case-by-case basis. Regulation 9.4 states that a two-stage tendering process ***may*** be followed. ***"May"***, even though not inherently peremptory (i.e. not requiring exact compliance) has a danger of being applied subjectively to the detriment of the purpose of designation. To foster industrialisation in South	

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				Africa, compliance to local content must be considered first in designated tenders. ***"May"*** allow evaluators of tenders to deviate from the intention of the regulation and is ultimately dependent on the evaluator's decision on the interpretation and clarity of the regulation	
		10. Pre-qualification criteria for preferential procurement	***Synchronisation between the objective and qualification criteria in the evaluation of Tenders***	In the proposed regulation it is now easy to juxtapose the qualification criteria with the objective criteria as contemplated in Section 2(d) of the PPPFA (the Act itself). The regulations state that the objective criteria must be aligned with Section of the PPPFA, which deals with RDP Goals, categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability. This criterion is not in	**The comments have been addressed extensively in a separate document.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				line or synchronised with the amended B-BBEE Codes of Good Practice. A stronger alignment is needed in this regards.	
			(a) 10(1)(b) Terminology to be aligned to B-BBEE Act, (vi) to be changed to (iv)	(a) 10(1)(b)(i) EMEs or QSEs which are 51% Black Women Owned (b) 10(1)(b)(ii) EMEs or QSEs which are owned by black youth (c) 10(1)(b)(iii) EMEs or QSEs which are 51% Black Owned (d) 10(1)(b)(iv) EMEs or QSEs which are at least 51% owned by 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	**The comments have been addressed extensively in a separate document.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		11. Disposal, Sale and letting of property or assets.	The dti did not submit any comments	The dti did not submit any comments	**The comments have been addressed extensively in a separate document.**
		12. Cancellation of tender	The dti did not submit any comments	The dti did not submit any comments	**The comments have been addressed extensively in a separate document.**
		13. Sub-contracting			
33	**SENTECH SOC LTD**	**Regulation 1**	**"Rand Value"** – why is the rand value "estimated?"		**Rejected: The organ of state cannot know upfront how much exactly the costs.**
		Regulation 1	**Stipulated minimum threshold"** – where is the stipulated minimum threshold published after consultation with the Department of Trade and Industry?		**In instructions.**
		Regulation 4	**Section 4(2)** – what constitutes "objective criteria?"		**Rejected: Fair and impartial criteria.**
		Regulation 5	R100 million is too much, considering that	80/20 should be applicable to	**Noted. The threshold for**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			these are still emerging companies we would like to promote here will they have the capacity to perform a R100 mil project without having to fail. This will increase the risk of fronting What about a co-operative? Does a co-operative qualify 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?	until R50million If the tenderer submits false information regarding its B-BBEE status level of contributor, should this not constitute grounds for automatic disqualification of the tenderer?	**preference point system should be visited taking into consideration the fiscal constraints.** **Yes cooperative qualify for BEE points if they submit the relevant documents.**
		Regulation 6	90/10 to apply to estimated value of above R50million What about a co-operative? Does a co-operative qualify 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?	If the tenderer submits false information regarding its B-BBEE status level of contributor, should this not constitute grounds for automatic disqualification of the tenderer?	**In all instances where tenderers submit false information, PAJA processes must be followed.**
		Regulation 13	13.1 For contracts above R30 million, the tenderer must sub-contract a minimum of 30% of the value of the contract.		**This is a very lousy comment: obviously the organ of state could not have foreseen that the**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			What happens in an instance where a contract was awarded for R29 million and there's a 10% variation order?		**value will be increased.**
		General	SENTECH would like to propose a 50/50 point system from R0-R500K. The 50 is for price then the other 50 can be split as follows: 35 BBBEE scorecard 10 for Youth empowerment 15 for disability. These two criterion are not assessed on the scorecard. To implement this National Treasury will have to introduce a separate SBD document or expand on SBD 6.1		**Rejected: unfortunately the regulations cannot introduce a new preference point system other than what is already provided for in the act.**
34	**Cerimele Construction Company (PTY) LTd**	**Regulation 7**	On steel welded pipelines the value of pipes and valves alone make up 50 – 60 % of the project price.	Sub-contracting 30% of work to be done excluding the material supply. 70% of all valves already needs to be locally manufactured thus will be beneficial to local economy already.	**Accepted: not all tenders can allow for subcontracting the regulation will be revised so that it is not a one size fits all.**
		Regulation10	Continuously welded pipeline the pipe supply and make up 50 – 60 % of the project.	Sub-Contract 30 % of the work to be done, excluding material supply.	**Resolution above refers.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		Regulation 12	On steel welded pipelines the value of pipes and valves alone make up 50 – 60 % of the project price.	Sub-Contract 30 % of the work to be done, excluding material supply.	**Resolution above refers.**
		General	Sub-contracting contracts by 30% where material make up 50 – 60% of the contract/ project leaves little resources for the main contractor to manage or train young and upcoming companies, leaving more margin for critical errors that can be life threatening and may also cripple both companies. This will lead to much needed job opportunities to be lost in the process.		**Resolution above refers.**
35	**Aletia Naidoo**	**Regulation 5 and 6**	If the previous limit for the 80/20 points system was R1.0M, then the new one should be R2.0M, not 100 Million. I also wonder if the Treasury has enough money to fund this additional cost, as the points system can award to bidders with higher prices. Excess costs lead to lower economic growth, as there is then less money for other projects that create jobs. □ The 90/10 preference system should then start at R2M.		**Noted: the threshold will be revisited to consider fiscal constraints however increasing the threshold remains one area of empowering designated enterprises.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		Regulation 7	□ Introducing Objective criteria allows for abuse of the system. Now companies (also black companies) will develop schemes to get the business. These regulations are dangerous and difficult to police(policing will also cost huge amounts of money, once again a loss to the economy) □ The Objective Criteria regarding sub-contracting: We are an Imports Company in the scientific sector. There is no manufacturing in this sector in South Africa. So we import finished product. The only outsourcing possible is couriers, which account for 1-2% of the cost. How is anyone in our sector supposed to outsource 30% of the value? Usually our profit isn't even 30% of the value of the contract. □ If you make a stipulation regarding sub-contracting, then should it not be measured against the costs? Makes no sense to do it based on value, value includes profit, which cannot be outsourced. This will drive the costs up dramatically. Maybe 10% is a more realistic value than 30%, which is excessively high.		**Noted** **Accepted: not all tenders can allow for subcontracting the regulation will be revised so that it is not a one size fits all.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			□ Wow: Now you give Government a tool to abuse the system and give the business to friends with high BEE levels (Tenderpreneurs). You will disqualify competent companies based on BEE levels, leaving the business open for a small amount of small Level 1-2 Black businesses. They can then leave the functionality quite broad, maybe specifying local based business or other. □ You have left the criteria "But are not limited to" to broad, this will be abused and used to benefit friends. This needs to be "locked" down in definition. Rather spend more time to define exactly what may be used; if you want to use Pre-Qualification, which I in any event find should be excluded, due to the danger of abuse. □ I hope you have deep pockets to fund this extra cost, as you will exclude competitive companies, but maybe that is exactly your objective, to cripple WHITE owned companies, in which case, WELL PLAYED. □ The pre-qualification on sub-contracting		**This regulation is meant for genuine empowerment other than corruption as suggested.** **The objective criteria will be revisited to ensure that it is not open ended.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			is to high, 30% is not possible in many sectors, start with 10% of value, that is reachable. It will also make the tenders much more expensive, the time and effort to sort out a 30% sub-contractor is astronomical, costs will just escalate, really bad for the economy.		
		Regulation 13	Same as the above, regarding the 30%, way too high.		**Noted same as in previous resolution.**
36	**Industrial Development Corporation - Mr Grant Augustine**	1	The definition for Services appears to be very limited and we therefore propose an expansion thereof by including the following wording: "and any other services".	"Services" includes any services to build or maintain infrastructure and any other services.	**Noted and accepted: the definition will be revised to consider this comment and other comments.**
			The 80/20 preference points system still raises a concern despite the proposed increase of the threshold value to R100 million in that 20 points for BEE are insufficient for black owned businesses to compete with traditional firms where pricing accounts for 80 points.	60/40 preference point system for acquisition of goods or services for Rand value up to R 100 million.	**Rejected: the regulations cannot introduce a new preference point system other than expand what is in the primary legislation.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			It has been our experience that traditional firms with many years of experience offer better pricing that gives these suppliers an added advantage over and above the 20 points that they lose under BEE. The 80/20 principal provides BEE suppliers with a mere 20% advantage during tender adjudication processes with pricing accounting for the lion share. It has also been noticed that most traditional firms have a BEE contributor level which allows them to score points for BEE and this makes it even more difficult for emerging black owned businesses to compete with traditional firms e.g. On a R100 million tender (which is the proposed threshold for the 80/20 preference system) where a black owned and traditional firm compete for the business the application of the preference point system will be as follows:		**The example provided is defective and only suggest that Black owned enterprises offer prices that are far away from market prices. It is still a requirement that organs of state must pay market prices when contracting with any supplier or contractor.**

Bidder Type	Price	Bee Score	Total Score
100% Black owned	R100 mil	20.00	80.00
Traditional Firm (No BEE level)	R80 mil	0.00	80.00

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION

Traditional Firm (BEE Level 8)	R80 mil	2.00	82.00
Traditional Firm (BEE Level 5)	R85 mil	8.00	83.00

Based on the above scenario, it is evident that traditional firms have a better chance to score more points if BEE is only limited to 20 points and price is 80 points. It is our view that the 80/20 preference point system does not address transformation effectively as it accords price a higher weight as opposed to transformation goals.

It is therefore recommended that the PPPFA and the preference point system should be revisited to have BEE and Price weight adjusted by increasing the BEE level to at least 40 (i.e. 60/40) for transactions up to R100 million. Assuming a 60/40 preference point system on the scenario above, the outcome will be as follows:

Bidder Type	Price	Bee Score	Total Score
100% Black owned	R100 mil	40.00	85.00

Refer to paragraph above on introducing the 60/40 threshold as a new threshold for the evaluation of tenders.

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION

Traditional Firm (No BEE level)	R80 mil	0.00	60.00
Traditional Firm (BEE Level 8)	R80 mil	4.00	64.00
Traditional Firm (BEE Level 5)	R85 mil	16.00	72.25

Conclusion: It is therefore clear that the 80/20 preference point system does not benefit / advantage emerging black owned firms to the extent needed to accelerate transformation. For example in IT tenders, it is common practice for traditional firms to obtain higher discounted margins from OEMs based on their long standing associations with such firms which disadvantages emerging (mainly black owned) firms during competitive tendering processes. The Constitution requires organs of state to contract using a system that is Fair, Equitable, Cost effective, transparent and competitive. Price and Equitable procurement are enshrined in The Constitution and to split the weights to 80/20 amongst the 2 elements has not been as effective to accelerate economic

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			transformation. It is for this reason that a recommendation is put forward to adjust the weights by increasing the BEE weight and lowering the price weight (60/40) under the Preference Point system. This approach would still encourage cost effective proposals as competitive processes would be followed, but on a basis where BEE's weight is increased to 40. It is proposed that once economic transformation have been reached / addressed, then a review could be undertaken to promote competitive pricing as a priority by increasing the weight for pricing at a time where the supplier market would be transformed and developed which would realize even greater levels of cost effective procurement in the future. **It is our view that by merely increasing the threshold value for the 80/20 preference point system to R100 million will only perpetuate the economic divisions within our society as traditional firms would still score the highest points as depicted in our scenarios, but only with**		

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			greater scope in terms of transaction values.		
		Page 5 – Point 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."	Point 5: It has been our experience that the provision to request for a Joint BEE certificate in joint ventures does not encourage the formation of JVs and this could be due to the complexities involved in obtaining a joint BEE certificate. JVs are useful in accelerating transformation objectives and partnerships but JVs fail to score on the BEE element without a joint certificate. The procurement system should therefore make it easier for JVs to obtain BEE recognition to encourage traditional companies to partner with black owned entities for Government business opportunities.	It is proposed that the National Treasury in consultation with the BEE Commissioner develops a system that could consider a more seamless processing of BEE certificates for JV partners with valid BEE certificates to encourage JV partnerships.	**Noted: the responsibility for BEE certificate rests with the DTI if there are concerns with joint venture certificates, it is proper that those concerns are raised with the dti however treasury will look into the issue as part of promoting procurement equity.**
		90/10 preference point system for acquisition of goods or services for Rand value above R 100	As per the rationale depicted under 80/20 we would propose that this be revisited e.g. 70/30 where 70 points is allocated to price and 30 points to BEE.	70/30 preference point system for acquisition of goods or services for Rand value above R 100 million	**Rejected: The regulations cannot introduce a new preference point system.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		Million.			
		9. Local production and content.	The proposed provisions in terms of local production and local content are not as enforceable as the provisions in the prevailing regulations that were introduced in 2011. National Treasury has omitted 9.3 in the current version, which effectively allows an organ of state to stipulate its own local content criteria in the absence of designation. This is an important provision, which gives organs of state the flexibility to self-designate, where an industry/sector/product is not designated. Where an organ(s) of state undertakes a fleet procurement programme(s), a mandatory assessment must be conducted in terms of local content thresholds in the absence of a designated industry/sector/product. Following the assessment, the tender must stipulate the local content thresholds for the fleet procurement programme. Organs of	It is also recommended that the proposed regulations should be strengthened to include a provision that will require that local production and local content should be measurable, audited and include penalties for non-compliance with local content. The regulations should also stipulate clearly the penalties for non-compliance to local content thresholds including an option for cancellation (with litigation to recover state monies) if there is persistent non-compliance by a tenderer. Where a successful tenderer is found to be in contravention of the stipulated local content	**Noted: the dti and National Treasury are reached an agreement to retain the clause and issue a directive on its application.** **Noted: Issues of noncompliance with local procurement will be dealt with in directives issued by the national treasury in consultation with the dti.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			state may cooperate to ensure that local content provisions on fleet procurement programmes are standardised in order to promote localisation. For example, there is no reason why buses used in Tshwane is different from those in Cape Town. This may also apply to bulk procurement such as fencing, road studs and accessories etc.	thresholds by more than 10% by SABS or an independent verification agency, corrective measures must be immediately instituted. A follow up measurement must be conducted by SABS or an independent verification within an agreed upon period with the contracting organ of state	
		12.Sub-contracting. Page 9 – 13. (2) – "If a successful tenderer subcontracts to another person without disclosing it in its tender documents, the organ of state must penalise the tenderer 10% of	The penalty for non-disclosing information during the tender process should allow a discretionary penalty value and it is therefore proposed that the wording should indicate: a "minimum" penalty of 10%."	If a successful tenderer subcontracts to another contractor without disclosing it in its tender documents, the organ of state must penalise the tenderer a minimum of 10% of the value of the contract, unless the tenderer submit a satisfactory reason for failing to make the disclosure.	**This regulation will be aligned with the provisions of Promotion of Administrative Justice Act. This is to ensure that no unlawful decisions are taken against tenderers.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		the value of the contract, unless the tenderer submit a satisfactory reason for failing to make the disclosure."			
		General	Objective criteria section 7(2) provides that an organ of state may apply objective criteria in terms of section 2(1)(f) of the PPPFA Clarity is sought whether objective criteria that relates to the objectives of the NGP such as job creation, inclusive transformation and creating opportunities in changing regional and global environments may be used for tender adjudication purposes as section 7(3) of the proposed regulations seems to suggested that objective criteria is not limited to the provisions in s7(3) (a) (i) – (v)		**Agreed: objective criteria can be used to promote economic growth, job creation and economic transformation.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			While the intention of the review is acknowledged, it seems that the National Treasury should allow more time for organs of state to review proposals in a more holistic manner and to determine comprehensive input concerning some of the following focus areas: • the trade-offs in our proposals, e.g. the cost implications and their impact on government procurement budgets; • practical implementation issues and unintended consequences, e.g. relevance to different industries, impact of 30% sub-contracting proposal, etc.;		**We acknowledge that preferential procurement is also about trade-offs to bring economic equity however a suitable balance must be struck. A lot of training will be needed to for successful implementation of regulations.**
37	**MBB Services International (Pty) Ltd Dr R-D Heinsohn Chief Executive**	**General**	MBB Services International (MSI) comprises professionals in the consulting engineering, environment and quantity surveying disciplines. We have been in operation for more than 40 years, working in a variety of sectors, including the Built Environment sector, where such legislation		**Noted**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			will cause many negative consequences to the industry and the country. 2. We regard this policy review as an excessive inflation of current preferential procurement targets, which it is misaligned to the reality of available representation in the country. 3. The Engineering Council of South Africa's 2015 Annual Report provides the following table and graph (see overleaf): **4. Refer to stats provided on their original documents.**		
			These data show that of the people in the industry, 26% are non-white or "designated groups". In the highest category, which makes up the backbone of the professional industry, designated people make up only 16% of the total. As a result of the successful implementation of BBBEE and Employment Equity, many		**Noted.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			previously white dominated businesses employ many designated engineers. For the sake of simplicity, one can assume that this accounts for 50% of the designated people. This means that, at most, 13% of all engineers and technicians who are not employed by previously white dominated businesses are from designated groups, yet, the procurement framework calls for this small sector to receive the majority of business, in excess of its capacity. This will lead to distorted work distribution and probably poor work, fronting or passing on of work by these engineers (after taking their 'commission'), all of which have the reality of slowing down delivery. This is because it is simply impossible for such a small number of people to do all the work that is required. Indeed, a serious weakness of the policy is that it focuses on ownership and not on capacity building, training and the many other worthwhile objectives of BBBEE.		

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			Importantly, the turnaround of the current situation as presented in the table and graph is not an overnight exercise as it takes 4-5 years to obtain a primary qualification and another 3-5 years to register as a professional. Indeed, it is very rare for an engineer to be fully competent within 10 years. 8. While progress is being made in transformation, it is important that transformation is in skills and competence at the same time as ownership. At present, many Black engineers are more focussed on salaries and Government jobs in favour of positions where they can be trained and mentored. Admittedly, this increases their immediate earnings but it hampers their technical and managerial development which will cause a shortage of real competency in the sector in the future. As a country we cannot afford this and certainly we should not want this type of outcome. In the Built Environment sector, few		

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			projects are above R 100 million in value and, therefore, under this dispensation, almost all projects will be on the 80:20 system. This large increase from the previous value is not understood (and is not justified in the policy). Sub-contracting through the imposition of "objective" criteria to targeted groups in item 7(3)a is onerous and does not take account of the realities of the sector; for example, what technical work can be sub-contracted, who carries the risk and will the targeted groups be responsible for their own insurances (most notably, professional indemnity insurance)? It must be stressed that it is imperative that the Built Environment sector transforms and develops an internationally competitive competence. This can only be done within a framework that strives for excellence, including significant training and mentorship that enables people to mature in their abilities over time. There are no short-		

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			cuts to experience and engineering is fundamentally based in experience. In order for such experience to be gained, young entrants and designated groups need to practice as engineers and not leapfrog into ownership and management; indeed, by leapfrogging the system they are not being exposed adequately to the learning that is so crucial. In closing, MBB Services International is opposed to this new policy; however, we are willing to engage in constructive discussion to meet the imperatives of the country in an equitable and beneficial manner.		
38	**Mott MacDonald - Douglas Smetherham**	**General**	My experience as a consulting engineer has been the following: The current tendering system based on price is producing tender prices of variation such that it makes the B-BBEE score meaningless and current proposed changes do not address this. I am aware of widespread frustration particularly amongst people of colour that B-BBEE is not working.	My suggestion is that National Treasury commission a study with inputs relevant to the South African market to develop a mathematical model that can predict a system that will actually work, i.e. . The applied maths departments of our Universities come to mind as the right people to undertake this.	**Noted: may be the proposal can be considered further on the PP-Bill as it cannot be included in current regulations owing the PPPFA constraints which limit preference to 80/20 and 90/10 point system.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			As an engineer my frustration is that you are left with a purely price driven appointment which has driven prices to unsustainable levels and resulted in an exodus of people from the industry. This is evident by our dearth of mid-career engineers. The appointments are constantly below cost and so the industry is inherently unprofitable. The current system ensures the industry is not attractive to stay in and people leave. People of colour coming from financially more strained background have then even more of a tendency to leave thus exacerbating the difficulties in transformation. By choosing the lowest price we have been under investing in engineering skills and transformation. The consequences of both are disastrous.	The desired outputs should be to grow engineering skills and increase transformation. I cannot see the current regulations or proposed as being able to pass this test. As a quick stab at a system that might work : Have a points system purely on price, you then limit the prices you consider to levels that will enable the tenderers to be able to make a reasonable profit and grow the industry. Arguably a true cost is the median? If you want to attract people to an industry then perhaps you limit considered tendered prices too slightly above the median? You then apply a reward system in terms of B-BBEE, if you have a higher B-BBEE skill you get a	

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				bonus proportional to your B-BBEE score, that way B-BBEE is always relevant and worth focussing on. A suggestion is that this could be a figure up to 10%. Engineering is on the scarce skills list in our country. Efforts are needed to protect it.	
39	**MASITHU CONSULTING & PROJECT MANAGEMENT ('MCPM') - Sizwe N Mchunu Managing Member – Civil Eng; PMP; MBA**	**General**	We as MCPM hereby wish to tender our support for the proposed construction regulation of sub-contracting 30% minimum of the contract value of all construction contracts to black owned Exempted Micro Enterprises (EME's) or Qualifying Small Business Enterprises (QSE's) as published on the 14 June 2016, National Treasury published draft new Procurement Regulations in terms of the Preferential Procurement Policy Framework Act, No 5 of 2000. If necessary, MCPM would like to avail its senior management to be part of the forum		**Appreciation noted. We will keep the offer in mind in case there is a need to establish a forum.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			or panel for the promulgation of the new proposed regulation as and when or if required. We trust all to be in order, should you have any queries please do not hesitate to contact the writer.		
40	**International Trade Administration Commission of SA - Zanoxolo Koyana**	**Regulation 1**	The BBBEE is clear it talks to Black people and the white person should not be counted in that category. Rather the proposal is to have BBBEE-Black and it should be for SA citizen only and not mix up with , then if a white business is to be considers, then I should be Joint Bidding-Empowerment or any suitable name and this should be for small business if white and black person or even including a foreigner in join force.		**Noted: The definition of Black will be aligned with the definition in the BEE Act.**
		Regulation 4	Functionality Threshold - There should be no blanket approach on functionality – businesses should be assessed according to their capacity on experience and not mix up with industry leaders on functionality as they will not come close to their experience.		**Rejected: The capacity of a tenderer to perform on work tendered is equally important as a result functionality , or any evaluation criteria must be met first before a**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			- Revenue Threshold is recommended for black business if they are the target and there should be a discretion that allow that only black SA citizen businesses be the ones given a chance if they are competing with whites at the same level of threshold. - Big black businesses should have functionality criteria with their counter parts based on revenue generated and experience.		**tender can be evaluated further.** **The regulations should still comply with the constitution, the PPPFA and the B-BBEE Act.**
		General	Quotation Quote up to a certain amount should be reserved for black businesses only in order to really address the imbalance of the past which the government has dismally failed to address as it treat white business on the same level as black businesses. There should be support mechanism to help black businesses and also allow advances to be given and if it already exist, then that should be communicated to state institutions to have that knowledge, especially if black		**Noted: The intention of the regulations is to strengthen preferential procurement, limiting this to quotations has been criticised that it undermines the capacity of Black entrepreneurs to carryout serious and lucrative state tenders.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			business win the bid and does not have funds to procure, and they need to get advances or be advise where to go the get financial support. This can be done using the approach of the state agents giving only guarantee to the supplier to release goods to the black business prior to payment if there is a PO, but condition should be that the funding agent has the first claim to the invoice to be paid in order to mitigate risk of non-payment and these financial assistance should have a very low interest.		**We agree that there are other means to develop small enterprises besides public procurement however this responsibility rests with SEDA amongst others.**
		General	Evaluation SA government should use evaluation criteria that give Black SA business priority if they meet requirements as per criteria and threshold and they should compete amongst each other, but quality should not be compromised and should be based on the nature of goods or services. There should be prohibition for big business from competing with smaller businesses, but		**Noted: peer competition on government tenders need to be considered carefully as at times amount to unfair competition especially where CIDB grades compete for work at the level of lower grades as lower grades cannot compete at higher level.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			also measure in place to monitor use of small business bidding on behalf of big business. Then a Joint Business Empowerment (mix of black, white and foreigner) should be evaluated with business in the same category. Relationship of white big business claiming to capacitated small black business need to be scrutinised and that relationship need to be disclosed. There should be cancellation clause if wrong doing is detected or fronting and money spend recovered. There should be similar approach of fair discrimination on business for black like the case of Affirmative Action.		**Regulation 14 deals with remedies in case a tenderer has falsified information.**
		Regulation 8	Criteria for Deadlock Tossing the coin and drawing slot (Big No) - The factors to consider in such situation is instead reference on past experience for business in the same category, so final decision should be pending confirmation from past clients.		**Rejected: tossing a coin and drawing of lots is still considered a fair system than introducing criteria that was not advertised with the tender.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			- If white business is competing with black business for whatever reason, then black should get priority. - The other issue to consider is its black against black business, then the panel need to check how many business opportunity the other had and how much was made and consider giving the less privilege a chance or split the deal between them. This will address the issue of once empowered always empowered.		
		General	Locality - Business from other provinces should not dominate, while local residence suffer. - So economic development of local residence at municipal level should take priority and partnering with local business should be a must with outside business if they lack skill so that it can be transferred and the % sharing be clearly explained		**Noted and rejected: public procurement should be opened to all South Africans irrespective of their geographical origins however regulation 7 and 10 seek to ensure that local suppliers get preference without excluding others.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		General	Support for small businesses - All contracts given to big business should have a condition that they must empower small businesses and it should be included in the bid documents.		**Regulation 13 seeks to address this concern through subcontracting.**
41	**Lukhozi Consulting Engineers - Greg Tucker Pr Eng, Pr CPM Director**	**Regulation 2**		Replace third word "applies" with "apply"	**Accepted, correction will be done.**
		Regulation 5(1) & 6(1)	R100 million way too high. Very few professional services in the built environment will reach this figure. Even construction contracts of this value are scarce.	I would suggest a figure of R10 million would be more relevant.	**Noted: the regulation will be revisited taking into consideration fiscal challenges.**
		Regulation 5(4)		Replace "the tenderer is not" with "the tenderer may not".	**Accepted, correction will be done.**
		Regulation 6(4)		Replace "the tenderer is not" with "the tenderer may not be".	**Accepted, correction will be done.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
		Regulation 7(3)	Would a mathematical/statistical formula (e.g. normal distribution and probability function) for the elimination of unreasonably low and high tender prices qualify as "an objective criteria"? I see no reason why it shouldn't be acceptable given the context of this new section. This could be an important breakthrough in dealing with the reckless discounting experienced in the built environment sector.		**Disqualification on the basis of price should be revisited however organs of state are not obliged to accept very low prices that are so unreasonable that they may not fulfil the contract or unreasonable high.**
		Regulation 7(3) (b)	This is not clear.		**Noted: needs to be addressed through training.**
		Regulation 7(3) (c)		Replace "quantity surveyor" with "relevant registered built environment professional".	**Accepted: the regulation will redrafted to have standard term that can be used by other professions.**
		Regulation 10(1)(a)		Omit this clause. Tenderers should not be eliminated on the basis of their BBBEE status. BBBEE status is already provided for in sections 5 & 6. If this clause is kept, it will be abused by some organs of	**Rejected: prequalification happens even prior to evaluation on 80/20 or 90/10 point system.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				state.	
		Regulation 13(2)	It is not always practical to identify the extent of the scope that will be subcontracted, and even if any part of the scope will be subcontracted at all, at tender stage. It is even more difficult to identify specific subcontractors at tender stage. Often the scope of the service changes substantially after award, and consequently the need for sub-contractors changes. Suggest that the tenderer be allowed to nominate the identity of subcontractors at contract award.		**Noted: subcontracting should not be a one size fits all. The regulation will be revisited.**
		General	Some Supply Chain Management officials in organs of state apply the PPPFA regulations strictly, without taking into account the prescripts of the CIDB regulations (I am referring specifically to the Built Environment). I suggest that reference should be made to the CIDB prescripts in section 7 of the draft PPPFA regulations.		**Noted: there should more collaboration between NT and CIDB on implantation of SCM prescripts however the matter is not to be addressed by changes in these Regulations.**
42	**Road Accident Fund - Mabatho Moremi**	**Regulation 7**	Sub-regulation (3)(a)(ii) provides for categories of persons who may be benefitted through subcontracting with the tenderer, *inter alia*, "*EMEs or QSEs owned by black*		**Accepted: the regulation will be changed to ages between 18 to 35 years old.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
	Senior legal Adviser		*people who are from the ages 14 to 35*". It must be noted that it is an instance of the rule of law and the legality principle that legislation must not be arbitrary. National Treasury must therefore be able to justify that the age range specified in sub-regulation (3)(a)(ii), and elsewhere in the draft regulations, is (a) rationally related to a legitimate government purpose, and (b) rational in its implementation. Assuming that sub-regulation (3)(a)(ii) is aimed at benefiting the "youth", what informed the age ranges? Is National Treasury able to demonstrate to a person that is 13 that he, or she, is excluded from the definition of "youth" in preference of a person aged 35?		
		Regulation 10		**A. Proposed addition –** It is proposed that the instances of pre-qualification provided for explicitly in sub-regulation (1) be expanded to include a paragraph limiting certain tenders, at the election of the organ of state, to designated	**Accepted: ownership percentage threshold should be considered as a determining factor in determining the award.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				groups. It is therefore proposed that the following paragraph must be inserted after the current paragraph (a): *"(b) the tenderer being one or more of the following -* *(i) EMEs or QSEs owned by black people who are female;* *(ii) EMEs or QSEs owned by black people who are from the ages 14 to 35;* *(iii) EMEs or QSEs owned by black people;* *(iv) EMEs or QSEs owned by black people with disabilities; or* *(v) a tenderer in which specified categories of persons from one or more of the categories of persons contemplated in subparagraphs (i) to (iv) hold a specified percentage ownership in the tenderer;* Note that our earlier comment in respect of the age limits	

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				specified, i.e. ages 14 to 35, applies equally to the above proposal.	
		General - Drafting	**B. Drafting –** The wording used in draft sub-regulation (2) provides that: "*A tender that fails to obtain any pre-qualification criteria stipulated in the tender documents is not an acceptable tender*". The Act defines an acceptable tender as "*…a tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document*".		**Accepted: the wording of the regulation will be revisited to align with the provisions of the act.**
		Regulation 11	Note that this draft regulation conflicts with Treasury Regulation 16A.7.4 made by the Minister of Finance under the Public Finance Management Act, No. 1 of 1999, which requires that the letting of immovable property must be at market-related tariffs, unless the relevant treasury approves otherwise.		**Accepted: The regulation must be revisited.**
		Regulation 13	**13. Sub-contracting:** The wording used in draft sub-regulation (2), i.e. "*…unless the tenderer submit a satisfactory…*" can be improved upon as		**Accepted: the regulation will be redrafted.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			follows: "*...unless the tenderer submits a satisfactory...*"		
		Regulation 14	**A. Drafting -** a) The wording used in draft sub-regulation (1), i.e. "*When detecting that a tenderer has submitted false information...*", implies that a final view is taken on the tenderer's conduct before the tenderer's submission is considered. The aforementioned wording is at odds with the requirement in paragraph (c) to first consider the tenderer's submissions before concluding that false information was submitted. Consequently, we suggest the underlined revision of sub-regulation (1): "*When detecting that a tenderer [has] may have submitted false information...*" b) The wording used in draft sub-regulation (1)(c), i.e. "concludes, after considering submissions, that...", does not flow from the wording used in draft sub-regulation (1), i.e. "...the organ of state must-". Consequently, we suggest the underlined revision of draft		**Accepted the regulation will be redrafted.** **Accepted: the regulation will be redrafted.** **Accepted: the regulation will be redrafted.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			sub-regulation (1)(c): "if it concludes, after considering submissions, that…", **B. Conflicts -** This draft regulation conflicts with the provisions for remedial action contained in National Treasury Instruction Note No. 3 of 2016/17, issued by the National Treasury on 19 April 2016. Clearly, this regulation would supersede the aforementioned document as regards the particular subject matter it intends to regulate. However, to ensure congruity, a revision to the National Treasury Instruction Note No. 3 of 2016/17 would be necessary (as regards fraud, by a tenderer, related to a tenderer's B-BBEE status).		
		Regulation 15	**15. Circulars and guidelines:** Parliament delegated legislative authority to the Minister of Finance, not National Treasury, to make subordinate legislation in the form of regulations prescribed following a public consultation process. The applicable section reads as follows:		**Accepted: The extension of the power of the Minister to issue Instructions and circulars is not in the Act it is done to assist with implementing the regulations.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			5. Regulations.—(1) The Minister may make regulations regarding any matter that may be necessary or expedient to prescribe in order to achieve the objects of this Act. *(2) Draft regulations must be published for public comment in the Government Gazette and every Provincial Gazette before promulgation.* This draft regulation seeks to empower National Treasury to issue circulars and guidelines "*…to inform…*" and to "*…assist organs of state with the implementation…*" of the draft Regulations. Provided that the contemplated circulars and guidelines will not conflict with the Act and Regulations, the draft regulation does not give rise to difficulty. However, to the extent that the contemplated circulars and guidelines are intended to conflict with the Act and Regulations, same will be *ultra vires*. This input is informed by a recent occurrence where National Treasury issued National Treasury Instruction Note No. 3 of		**Noted: Check with Empie if the Regulations were published in Provincial gazettes as this will have serious impact on the Validity of the Regulations.**

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
			2016/17 which document contains provisions that are in conflict with the Treasury Regulations made by the Minister of Finance under the Public Finance Management Act, No. 1 of 1999.		
43	**Core Focus - Gustav Coetzee**	**General**	The National Treasury Office of the Chief Procurement Officer has recently issued the Guidelines for Infrastructure Procurement and Delivery Management. In the guidelines it provides for the following tender data for evaluation method 4 (Financial Offers, Quality and Preferences) – in respect of construction and infrastructure related tenders.		**Noted.**
		Regulation 5and 6	Regulations 5 and 6 of the draft PPPFA regulations for 2016, sub regulation (6), (7) and (8) stipulate how points must be calculated. It is not clear whether the total number of points in sub-regulation (7) makes provision for the adding of quality score as provided for in the Standard for Infrastructure Procurement.		**Noted: any evaluation criteria must be done first before the tender is evaluated further on preference point system.**

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STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			It will be clearer if it refers to the total evaluation points as in the standard and will end the discrepancy between the CIDB standards for infrastructure procurement and the PPPFA regulations once and for all. From time to time it may be necessary to change delivery strategy on a project due to a number of reasons and while it is essential to grow the economy in these areas it is proposed that regulations 13(2) makes provision for obtaining permission for subcontracting after the contract has been concluded as well instead of just submitting a reason for changing the delivery strategy.		**Noted: This arrangement can be done by the contractor on his own without being regulated, if this door is open it can be subject to abuse by contractors or organs of state.**
44	**South African Airways - THAMSANQA MBATHA Legal Advisor**	**General**	[1] We are requested to provide comments on the Preferential Procurement Regulations, 2016, the proposed regulations which were published for public comments on 14 June 2016. The closing date for comments is 15 July 2016. [2] The comments recorded in this		**Noted.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			memorandum are a compilation pursuant to a discussion held between the writer hereof and the recipient. The comments are, on the whole, made in the form of an explanatory memorandum.		
		Regulation 1	**Regulation 1** – Definitions We propose that a definition of "acceptable tender" be inserted in regulation. The definition, as appearing from section 1 of the Act (as defined in these Regulations), is hereby proposed: The proposed insertion will provide sufficient meaning to the proposed sub-regulations 4(5) and 10(2).	*"acceptable tender" means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document.*	**Rejected: This definition is in the act, it serves no purpose to redefine it in the regulations.**
		Regulation 3	We propose a deletion of the word "applicable", where it first appears in sub-regulation 3(a), such that the remaining text reads:	*"(a) determine, and stipulate in the tender documents, the preference point system applicable to the tender; and"*	**Accepted.**
		Regulation 10	We propose a deletion of the word "at",	*"(b) the tender to sub-*	**Accepted.**

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NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			where it appears in sub-regulation 10(1)(b), such that the remaining text reads as follows:	*contract a minimum of 30% of the value of the contract to one or more –"*	
		Sub-regulation 10(1)(b)	Sub-regulation 10(1)(b) suggests that an organ of state may apply a pre-qualifying criteria requiring a tenderer to sub-contract 30% of the contract value. There is no threshold stipulated for the pre-qualifying criteria. We anticipate that, where organs of state rely on the current formulation of sub-regulation 10(1)(b), it is quite plausible that some judicial challenges may ensue where such reliance [on sub-regulation 10(1)(b)] is in respect of tenders with a contract value below R30 million referred to in regulation 13.	We, therefore, propose that where it intended that sub-regulation 10(1)(b) should apply irrespective of the contract value, such is made explicit by a further insertion of sub-regulation 10(4), to read as follows: *"10.(4)The pre-qualifying criteria stipulated in sub-regulation 10(1) may be included irrespective of the value of the contract"*	**Accepted: prequalification can be considered irrespective of the value however the regulation should be refined further.**
		Regulation 13	We welcome the substance of what sub-regulation 13(1) is seeking to achieve. The peremptory sub-contracting provision will provide the much needed support to the categories set out in sub-regulation 13(1)(a) – 13(1)(c).	We propose, however, that given the frequency of tenders with the threshold of R30 million, that the threshold in sub-regulation 13(1) be lowered to R10 million, such that sub-regulation 13(1)	**Noted: The suggestion is subject to review and lowering the threshold should be considered in light of the many comments received.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				reads as follows: *"13.(1)For contracts above R10 million, the tenderer must sub-contract a minimum of 30% of the value of the contract to –"*	
		Sub-regulation 13(2)	The 10% penalty stipulated in sub-regulation 13(2) is too lenient. We presume that sub-regulation 13(2) refers to an instance where the successful tenderer has, after the award, and pursuant to a purported compliance with sub-regulation 13(1), sub-contracts to another person who may not necessarily be a person falling into any of the categories set out in sub-regulation 13(1). The 10% penalty undermines the potential gains which sub-regulation 13(1) will bring. It further benefits the organ of state rather the categories which sub-regulation 13(1) is seeking to protect.	Therefore, we propose that any breach of sub-regulation 13(1) be dealt with in accordance with regulation 14. We therefore propose that sub-regulation 13(2) should read as follows: *"13.2 If a successful tenderer sub-contracts to another person without disclosing it in its tender documents, the organ of state must apply the procedure set out in regulation 14"* Where the breach of sub-regulation 13(1) takes place after a written agreement has been concluded between the tenderer and an organ of state, the breach	**Accepted**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
				should be handled in accordance with the terms of the agreement.	
45	*Laurika Nxumalo (Miss .)*	**Regulation 7**	Award of contract to tender not scoring the highest number of points. Despite regulations 3(4), 4(4), 5(4), 6(4) and 8(8), a contract may, on reasonable and justifiable grounds, be awarded to a tender that did not score the highest number of points." ➢ What kinds of grounds are considered reasonable and justifiable? Can the public be given guidance on those, and if such grounds haven't been published or gazetted can we ask that such be done for public knowledge.		**Noted: the intention is to allow for the unknown circumstances. The regulation will be revisited**
		Regulation 8	In the event that two or more tenders have scored equal total points, the successful tender must be the one scoring the highest number of preference points for specified goals. Should two or more tenders be equal in all respects, the award shall be decided by the drawing of lots."		**Rejected: organs of state cannot introduce new criteria after closing date and time of tender.**

STAKEHOLDER COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS 2016					
NO	STAKEHOLDER	REGULATION	COMMENTS	PROPOSALS	NATIONAL TREASURY RESOLUTION
			➢ Deciding the awarding of a tender based on the drawing of lots turns it into a gamble and is no longer about competence, and that becomes unfair to bidders. It is advisable that if two or more tenders are equal in all respects the awarding of the tenders should be decided upon the conclusion of the conduct of an interview with individual bidders.		
		Regulation 7	Over and above the awarding of preference points in favour of HDIs, the following activities may be regarded as a contribution towards achieving the goals of the RDP (published in Government Gazette No. 16085 dated 23 November 1994): e) The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province; f) The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region; g) The promotion of enterprises located	➢ Rather give 80% preference to enterprises in that province, region or municipal area and 20% to outside enterprises.	**Rejected: the proposal is not practical on what constitute the 80 or 20 points and how it will be implemented.**