

Sub-contracting rules to be aware of when responding to tenders

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There seems to be a lot of confusion amongst entrepreneurs when it comes to tenders and sub-contracting, due in large part to **The Preferential Procurement Regulations, 2017 that has been implemented on the 1st of April 2017**. Many entrepreneurs ask us whether they should sub-contract or not, in responding to a tender and how and where do they get onto the sub-contracting lists.

There are 3 sub-contracting rules in the Preferential Procurement Regulations 2017 that Organs of State can/must apply when issuing tenders to the public.

The first Regulation is **Regulation 4** which state inter alia: if an Organ of State decides to apply pre-qualification criteria to advance certain designated groups that Organ of State must ADVERTISE the tender with a specific tendering condition that certain bidders can or may respond.

The second Regulation is **Regulation 9** which state inter alia: if it is feasible to sub-contract for a contract above R30 million, an Organ of State must apply sub-contracting to advance designated groups.

The designate groups mentioned in both Regulation 4 and 9 are Black Owned Enterprises with 51% or more black ownership and any of female Black owned, youth black owned, black people with disabilities owned or black military veterans owned enterprises.

The third sub-contracting rule has to do with sub-contracting after the award of the tender. **Regulation 12** states inter alia: (3) a person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

The tender document will dictate how you should or should not sub-contract. **Read** the tender document carefully; follow the instructions precisely and to the point. Organs of State are applying these Regulations rigorously and failing to comply will lead to your tender response being disqualified.

Tender trends and Regulations are changing frequently.

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Contact us at estelle@howtotender.co.za should you require more information.

You can also purchase a Tender Manual (Handbook) on our website <https://howtotender.co.za/> which is a step by step guide how to respond to a South African Tender. It includes examples of completed SBD forms.