

RESUBMISSION - PREFERENTIAL PROCUREMENT REGULATIONS 2022, SCM POLICY & PREFERENTIAL PROCUREMENT POLICY – DIRECTOR FINANCIAL SERVICES (CFO)

Purpose of report

To resubmit a report to request the Council to approve the updated SCM policy and the new Preferential Procurement Policy in line with the new Preferential Procurement Regulations 2022.

Background

On 4 November 2022 the new Preferential Procurement Regulations were issued and come into effect from the 16 January 2023. In line with these regulations, Municipalities are supposed to adopt preferential procurement policies and SCM policies in line with these regulation.

No, written comments or representations were received after the Langeberg Municipality Preferential Procurement Policy went out for the public participation process from the 6th of December 2022 until the 3rd of January 2023.

Recommendation

That council adopts the following:

- 1 Adopt and approve the Langeberg Municipality Preferential Procurement Policy
- 2 Adopt and approve the updated SCM policy in line with the Preferential Procurement Regulation 2022

This item served before a Special Meeting of Council on 24 January 2023

Hierdie item het gedien voor 'n Spesiale Vergadering van die Raad op 24 Januarie 2023

Eenparig Besluit / Unanimously Resolved

That council adopts the following:

- 1 Adopt and approve the Langeberg Municipality Preferential Procurement Policy.
- 2 Adopt and approve the updated SCM policy in line with the Preferential Procurement Regulation 2022.



SUPPLY CHAIN MANAGEMENT POLICY

This Policy consists of three parts that must be read together with this Policy:-

The first part is the **Supply Chain Management Policy**, adopted in terms of section 111 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 and the Municipal Supply Chain Management Regulations;

The second part is the **Supply Chain Management Regulations**, as amended from time to time and promulgated in terms of section 168 of the Municipal Finance Management Act; and

The third part is the **Preferential Procurement Regulations**, dated 04 November 2022, as amended from time to time, and promulgated in terms of section 5 of the Preferential Policy Framework Act, Act No. 5 of 2000, which, together with the Supply Chain Management Policy, forms the preferential procurement policy.

Annexure

Annexure A - The Code of Conduct for Suppliers

1. PREAMBLE

WHEREAS Section 217 of the Constitution of the Republic of South Africa requires an organ of state in the local sphere of government, when contracting for goods or services, to do that in accordance with a system which is fair, equitable, transparent, competitive and cost-effective through a procurement policy which may provide for categories of preference and the advancement of persons disadvantaged by unfair discrimination within a framework prescribed by national legislation; and

WHEREAS Section 111 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) requires a Municipality to adopt, maintain and implement a Supply Chain Management Policy; and

WHEREAS the Municipal Supply Chain Management Regulations prescribe what such Supply Chain Management Policy must provide for; and

WHEREAS the Preferential Procurement Regulations prescribe how the preference of certain bidders must be dealt with;

Now **THEREFORE**, the Council of Langeberg Municipality adopts the Supply Chain Management Policy as set out in this document.

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1. DEFINITIONS

In this Supply Chain Management Policy a word or expression to which a meaning has been assigned in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), the Municipal Supply Chain Management Regulations, the Preferential Procurement Policy Framework Act (Act No. 5 of 2000), the Preferential Procurement Regulations, 2022 published in GG 47452 dated 04 November 2022, and the Broad-Based Black Empowerment Act, 2003 (Act No. 53 of 2003), all as amended from time to time, has the meaning so assigned, and, unless the context indicates otherwise:-

“Accounting Officer” means the Municipal Manager of the Municipality or any person acting lawfully in his/her place or on his/her behalf;

“Act” means the Local Government: Municipal Finance Management Act of 2003 (Act No. 56 of 2003);

“Closing time” means the date and hour specified in the bid documents where after no bids will be accepted;

“Contract” refers to legally binding agreement between Langeberg Municipality and the service provider;

“Corrected Bid Sum” means the Bid sum, corrected in terms of the bid documentation, where applicable;

“Council” and **“Municipality”** means Langeberg Municipality;

“Order” means an official written order issued for the supply of goods or the rendering of a service in accordance of the accepted bid or price quotation;

“Policy” means this Supply Chain Management Policy;

“Regulations” means the Local Government: Municipal Supply Chain Management Regulations issued in terms of section 168 of the Local Government: Municipal Finance Management Act of 2003, (Act No. 56 of 2003);

“Service Provider” means a current or potential supplier, manufacturer, contractor, vendor, agent, or professional service provider;

“SMME’s” means separate and distinct business entities, including co-operative enterprise and NGOs, managed by one or more owner, as defined as micro enterprises in the National Small Business Act (Act No. 102 of 1996);

“Systems Act” means the Local Government: Municipal Systems Act of 2000 (Act No. 32 of 2000);

“Treasury guidelines” means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act;

“Written” or **“in writing”** means hand written in ink or any form of mechanical writing in printed form.

Any reference to a transaction value or money in the Policy is **inclusive** of Value Added Tax, unless specifically indicated otherwise.

CHAPTER 1

OBJECTIVES, PRINCIPLES AND ROLES

2. Objectives

- (1) The objectives of this Policy are to give effect to:-
 - (a) the provisions of section 217 of the Constitution of the Republic of South Africa, 1996;
 - (b) the provisions of the Act;
 - (c) the Regulations; and
 - (d) the Preferential Procurement Regulations.
- (2) The Municipality may not act otherwise than in accordance with this Policy when:-
 - (a) procuring goods or services;
 - (b) disposing of goods no longer needed;
 - (c) selecting services providers to aid in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
 - (d) selecting external mechanisms referred to in section 80(1)(b) of the Systems Act for the provision of municipal services in the circumstances contemplated in section 83 of that Act.
- (3) This Policy does not apply, except where specifically provided otherwise in this Policy, in respect of the procurement of goods and services or the disposal of goods as contemplated in section 110(2) of the Act from or to another organ of state, including procuring electricity from Eskom.

3. Principles

The principles of the Policy are:-

- (a) **Accountability:** An effective supply chain management system must be maintained in order to enable the Accounting Officer to discharge his/her responsibilities;
- (b) **Efficiency:** The procurement process must be carried out as cost-effective as possible;
- (c) **Effectiveness:** The Municipality must meet the socio-economic goals of the National Government and sound financial governance appropriate to procurement requirements;
- (d) **Fairness:** The service providers must be treated fairly. The Municipality must not impose unnecessary burdens or constraints on service providers;

- (e) **Legality:** The Municipality must comply with all applicable legislative requirements;
- (f) **Transparency:** The Municipality must ensure that openness and clarity underpin this Policy and its deliverables;
- (g) **Responsiveness:** The Municipality must endeavour to meet the aspirations, expectations and needs of the community served by the procurement;
- (h) **Informed decision-making:** The Municipality needs to base decisions on accurate information and monitor requirements to ensure that they are being met;
- (i) **Integrity:** There must be no corruption or collusion in the execution of this Policy;
- (j) **Consistency:** All service providers and prospective service providers must receive equal treatment in terms of the Policy;
- (k) **Competitiveness:** Procurement must be carried out by competitive process unless there are convincing reasons to the contrary.

4. Oversight role of the Council

The Council must maintain oversight over the implementation of the Supply Chain Management Policy. For the purpose of such oversight, the Accounting Officer must:

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- (a) within 10 days after the end of each quarter, submit a report on the implementation of the Policy to the Executive Mayor;
- (b) within 30 days after the end of the financial year, submit a report on the implementation of the Policy to the Council;
- (c) whenever there are serious and material problems in the implementation of the Policy, immediately submit a report to the Executive Mayor; and
- (d) make public the reports on the Policy in accordance with section 21A of the Systems Act.

5. Role of the Accounting Officer

The Accounting Officer must: -

- (a) at least annually review the implementation of the Policy and when considering it necessary, submit proposals for the amendment of the Policy to Council;
- (b) implement the Policy;
- (c) take account of the need for the uniformity in supply chain practices, particularly to promote accessibility of supply chain management systems for small businesses;
- (d) develop the internal procedures and processes;
- (e) report to Council regarding the implementation of the Policy; and
- (f) ensure the training of supply chain practitioners.

- (g) - record in a register all bids received in time;
- make the register available for public inspection; and
- publish the entries in the register and the bid results on the website of the municipality

6. Delegation of supply chain management powers and duties

- (1) The Council hereby delegates to the Accounting Officer all powers and duties as set out in this Policy as well as those to enable the Accounting Officer: -
 - (a) to discharge the supply chain management responsibilities conferred on the Accounting Officer in terms of: -
 - (i) chapter 8 and 11 of the Act; and
 - (ii) this Policy.
 - (b) to maximise administrative and operational efficiency in the implementation of this Policy;
 - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy;
 - (d) to comply with his/her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) The Accounting Officer may not delegate or sub-delegate any supply chain management powers or duties to: -
 - (a) a person who is not an official of the Municipality;
 - (b) a committee which is not exclusively composed of officials of the Municipality; or
 - (c) an advisor or consultant to the Municipality.
- (3) The delegation to the Accounting Officer in terms of sub-paragraph (1) above is subject to the following further conditions: -
 - (a) that a competitive bidding process will be followed for any procurement of a transaction value above R200 000 and the procurement of long-term contracts;
 - (b) that on recommendation from the bid adjudication committee, the Accounting Officer makes final awards on procurement of a transaction value above R200 000;
 - (c) that a final award in a competitive bidding process must be made through the committee system provided for in paragraph 8 of this Policy; and
 - (d) that no requirement for goods or services above an estimated transaction value of R200 000 may be split into parts or items of lesser value for the sake of procuring the goods or services otherwise than through a competitive bidding process.

7. Sub-delegations

- (1) The Accounting Officer may in terms of section 79 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the Accounting Officer in terms of this Policy, but any such sub-delegation must be consistent with legislation, this Policy and subparagraph (2) of this paragraph.
- (2) The power to make a final award with a transaction value: -
 - (a) above R10 000 000 may not be sub-delegated;
 - (b) of R200 000, but not exceeding R10 000 000, may be sub-delegated but only to a bid adjudication committee of which the chief financial officer is the chairperson and at least 3 (three) senior managers are members and present at the consideration and all are in favour of the award; and
 - (c) up to R200 000 may be sub-delegated to an official.
- (3) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated to make a final award in a competitive bidding process, otherwise than through the committee system provided for in paragraph 8 of this Policy.

8. The committee system for competitive bids will consist of:-

- (a) a bid specification committee;
- (b) a bid evaluation committee; and
- (c) a bid adjudication committee.

9. Committees

- (1) The Accounting Officer must appoint the chairperson, determine the quorum of the committees and appoint members of each committee as follows: -
 - (a) **Bid Specification Committee**

The bid specification committee must consist of one or more officials of the Municipality, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
 - (b) **Bid Evaluation Committee**

The bid evaluation committee must consist of officials from departments requiring the goods or services and at least one supply chain management practitioner.
 - (c) **Bid Adjudication Committee**

The bid adjudication committee must consist of at least 4 (four) senior managers of the Municipality, and must include the following officials:

 - (i) the Chief Financial Officer or, if the Chief Financial Officer is not available, another manager in the office of the Chief Financial

- Officer reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer;
 - (ii) at least one senior supply chain management practitioner; and
 - (iii) an official who has knowledge of the relevant field of the contract, if available.
- (2) Proper record must be kept of all meetings of committees through agendas and minutes.

10. Functions and Purposes of Committees

The following are functions and purposes of the different committees:

(1) Bid Specification Committee

- (a) A bid specification committee must compile the specifications for each procurement of goods and services.
- (b) Specifications: -
 - (i) must be drafted in an unbiased manner to allow all potential service providers to offer their goods or services;
 - (ii) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organization, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
 - (iii) where possible, must be described in terms of performance required rather than in terms of descriptive characteristics for design;
 - (iv) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification unless it is unavoidable;
 - (v) may not refer to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words "equivalent";
 - (vi) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Policy;
 - (vii) must contain the criteria how the technical and financial ability of the bidder will be determined; and
 - (viii) must be approved by the Accounting Officer prior to publication of the invitation for bids.
- (c) The bid specification committee must ensure that a system of awarding points is determined to promote the identified goals of Council.

(2) Bid Evaluation Committee

- (a) A bid evaluation committee must: -
 - (i) evaluate bids in accordance with: -
 - the specifications for a specific procurement; and
 - the points system as set out in the regulations as promulgated under the Preferential Procurement Policy Framework Act.
 - (ii) evaluate each bidder's ability to execute the contract;
 - (iii) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrear and all other technical requirements have been complied with; and
 - (iv) submit to the adjudication committee a report and recommendations regarding the award of the bid or related matter.

(3) **Bid Adjudication Committee**

- (a) A bid adjudication committee must: -
 - (i) consider the report and recommendations of the bid evaluation committee; and
 - (ii) either: -
 - depending on its delegation, make a final award or a recommendation to the Accounting Officer on the award; or
 - make a recommendation to the Accounting Officer on how to proceed with the relevant procurement.
- (b) The Accounting Officer may refuse, approve, amend or refer the recommendation back to the evaluation and/or the adjudication committee for reconsideration.
- (c) If a bid other than the one recommended in the normal course of implementing this Policy is approved, the Accounting Officer must comply with section 114 of the Act within 10 (ten) working days.

CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

11. Format of Supply Chain Management System

This Policy provides systems for: -

- (a) demand management
- (b) acquisition management
- (c) logistics management
- (d) disposal management
- (e) risk management; and
- (f) performance management
- (g) contract management

Part 1: Demand Management

12. System of demand management

- (1) The Accounting Officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the Municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan.
- (2) The demand management system must: -
 - (a) include timely planning and management processes to ensure that all goods and services required by the Municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical dates, and re of the appropriate quality at a fair cost;
 - (b) consider any benefits of economies of scale that may be derived;
 - (c) provide for the compilation of the required specifications to ensure that its needs are met; and
 - (d) to undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

(3) Benefits of Demand Management

The aims of demand management are to achieve: -

- best value for money;
- better risk management;
- more efficient procurement;
- improvements in procurement outcomes;
- more opportunities for innovating bidding and contract management;
- more opportunities for implementing and achieving National Government's broader policy objectives;

- effective partnership between supply chain management practitioners and end-users.

Part 2: Acquisition Management

13. System of acquisition management

- (1) The Accounting Officer must implement a system of acquisition management to ensure: -
 - (a) that goods and services will be procured by the Municipality in accordance with authorised processes only;
 - (b) that expenditure on goods and services will be incurred in terms of the approved budget;
 - (c) that the threshold values for different procurement processes will be complied with;
 - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of contract, are in accordance with any applicable legislation;
 - (e) that any Treasury guidelines on acquisition management will be properly considered;
 - (f) unless the Municipality otherwise directs, that bids are invited in the Republic only; and
 - (g) that the laws of the Republic govern contracts arising from the acceptance of bids.
- (2) In addition to paragraph 2(3), this Policy will not apply if the Municipality contracts with another organ of state as described in paragraph 24.
- (3) The following line items are not required to be procured in terms of the supply chain management process: -
 - Audit fees;
 - Library books;
 - Telecommunication costs;
 - Reference books, newspapers and magazines;
 - Legal expenses;
 - Advertising costs;
 - Accommodation expenses and car rental for staff and councillors within the range approved by the Municipality's policy;
 - Occupational health expenses.

14. Range of Procurement processes

- (1) The procurement of goods and services will be procured as follow: -
 - (a) petty cash purchases up to a transaction value of R100. The Chief Financial Officer or senior manager can approve petty cash purchases up to an amount of R500 per transaction in exceptional cases;
 - (b) a documented verbal quotation for purchases below R2000 which are not petty cash purchases;
 - (c) 3 (three) formal written quotations where the transaction value is between R2000 to R200 000;
 - (d) a competitive bidding process is required for: -
 - (i) procurement for transactions above a value of R200 000; and
 - (ii) the procurement of long-term contracts.
- (2) The Accounting Officer may in writing lower, but not increase the threshold values specified in (1) above.
- (3) Goods or services may not be split into parts or items of a lesser value to avoid complying with the requirements of this Policy.
- (4) When determining transaction values, the procurement of goods or services consisting of different parts or items must be treated and dealt with as a single transaction.

15. Duty of service provider when submitting bids or verbal and written quotations.

It is the duty of a service provider when submitting a bid, or a verbal or written quotation, to apply to be listed as an accredited service provider on the Central Supplier Database (CSD). If a service provider does not apply in the case of bids and written quotations, such bids or written quotations may not be considered. In the case of verbal quotations, such quotation may only be considered if the service provider complied with the information requirements of paragraph 16(5)(a) to (i) and (r).

16. Lists of accredited service providers

- (1) The Accounting Officer must: -
 - (a) Must make use of suppliers in the Central Supplier;
 - (b) at least once a year through newspapers commonly circulating locally, the municipal website or any other appropriate ways, invite service providers to apply for evaluation and listing as accredited service providers on the Central Supplier Database; and
 - (c) disallow the listing of any service provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.

17. Petty Cash Purchases

The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 14(1)(a) are as follows:-

- (a) petty cash transactions have to be approved by the relevant Manager after receipt of documentary proof of the expenditure where possible, or a declaration by the official who incurred the expenditure where documentary proof is not possible;
- (b) petty cash purchases are limited up to R100 per transaction. A senior manager can approve petty cash purchases up to an amount of R500 per transaction, in exceptional cases;
- (c) the petty cash fund cannot be used to: -
 - (i) purchase goods covered by annual contracts;
 - (ii) reimburse expenditure greater than R100 except if the approval in subparagraph (b) was obtained.
- (d) depending on the item purchased, one of the following is required for expenditure exceeding R100 per transaction: -
 - (i) direct payment voucher;
 - (ii) requisition book; or
 - (iii) official purchase order.
- (e) the Expenditure Department is responsible for the reconciliation of petty cash and the reconciliation should be prepared and provided to the Chief Financial Officer, including: -
 - (i) the total amount of petty cash purchases for that month; and
 - (ii) receipts and appropriate documents for each purchase.

18. Verbal price quotations

The procurement of goods or services by means of a verbal quotation referred to in paragraph 14(1)(b) is as follows: -

- (a) a verbal quotation may only be obtained for a transaction of a value of not more than R2000 (two thousand rand);
- (b) quotations must be obtained from at least one service provider preferably from, but not limited to, service providers whose names appear on the list of accredited service providers (CSD).
- (c) if a quotation was obtained verbally, the order may only be placed after written confirmation of such quotation and the required information have been received from the service provider.

19. Formal written price quotations

The procurement of goods or services through formal written price quotations referred to in paragraph 14(1)(c) is as follows: -

- (a) quotations must be obtained in writing from the different providers whose names appear on the Central Supplier Database;
- (c) if it is not possible to obtain at least 3 quotations, the reasons must be recorded and approved by the Chief Financial Officer or an official(s) designated by the Chief Financial Officer. Documentary proof must be provided that quotations have been requested;
- (d) the official(s) referred in (c) above must within 3 days after the end of each month report to the Chief Financial Officer on any approvals given during that month by that official(s); and
- (e) the names of the service providers and their written quotations must be recorded.

20. Further Procedures: formal written quotations

In addition to paragraph 19, the following must also be considered regarding formal written price quotations: -

- (a) all transactions in excess of R30 000 that are made by means of written quotations, must be advertised for at least 7 calendar days on the website and official notice board;
- (b) where the quotations have been invited via the notice board and website of the Municipality, no additional quotations need to be obtained should the number of responses be less than 3 quotations;
- (c) when using the Central Supplier Database list of accredited service providers, the Municipality must:-
 - (i) promote ongoing competition amongst the providers, including by inviting providers to submit quotations on a rotational basis;
 - (ii) promote the objectives of the Broad-Based Black Economic Empowerment Act;
 - (iii) apply the Preferential Procurement Policy Framework Act and any applicable regulations; and
 - (iv) promote the goals as identified by Council;
- (d) the Accounting Officer must take all reasonable steps to ensure that the procurement of goods and services through formal written price quotations is not abused;
- (e) the Accounting Officer must on a monthly basis be notified in writing of all formal written quotations accepted by an official acting in terms of a sub-delegation;
- (f) offers below R30 000 must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (g) acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;

- (h) a proper record must be kept of the received written quotations;
- (i) the goals of Council must be considered before offers/quotations are awarded; and
- (j) in the case of construction works, where required a site inspection may be conducted before the close of the quotation due date to ensure that providers understand the scope of the project and that they comply with the conditions and requirements.

21. Process for competitive bidding

The stages of a competitive bidding process are as follows: -

(1) Compilation of bidding documentation

The bid documentation must in addition to the information required in paragraph 15: -

- (a) Consider: -
 - the general conditions of contract and any special conditions of contract, if specified;
 - any Treasury guidelines on bid documentation; and
 - the requirement of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure.
- (b) include evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) require the bidders to furnish the following if the value of the transaction is expected to exceed R10 000 000: -
 - If the bidder is required by law to prepare annual financial statements, their audited annual financial statements: -
 - for the past 3 (three) years; or
 - since establishment, if established during the past 3 (three) years;
 - a certificate signed by bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or the service provider in respect of which payment is overdue for more than 30 days;
 - particulars of any contracts awarded to the bidder by an organ of state during the past 5 (five) years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
 - a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic,

and, if so, what portion and whether any portion of payment from the Municipality is expected to be transferred out of the Republic.

- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law;
- (f) the preference points applicable in terms of the Preferential Procurement Regulations;
- (g) indicate that the bidder with the lowest tender amount would not necessarily be awarded the tender;
- (h) the sureties, guarantees, insurance, retention and penalties required and applicable as determined by the nature of the contract.

(2) Issuing of bid documents

- (a) On the date that the advertisement appears in the media, website or notice board, service providers may request copies of the tender documentation.
- (b) If a fee is payable, an official receipt must be issued before the bid document is handed to the bidder.
- (c) No bid responses from any tenderer will be accepted if sent via the internet, e-mail or fax

The Supply Chain Management Unit will facilitate all communication between service providers and the Municipality with regard to any advertised bid. Municipal staff is only allowed to communicate with potential bidders with the knowledge of the Manager: Supply Chain Management.

(3) Payment for bid documents

- (a) To ensure that only bona fide bidders collect documentation and to recover printing costs, bid documents will be issued only after payment to the Municipality of the amounts as determined by the Municipality. The amounts may differ in respect of the quantum of the contract value.
- (b) No fees will be payable if tender documents are provided electronically.

(4) Public Invitation for competitive bids

The procedure for the invitation of competitive bids referred to in paragraph 14(1)(d) is as follows: -

- (a) the invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the Municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin);
- (b) the bids submitted must be sealed and bids may only be submitted on the bid documentation provided by the municipality;
- (c) the advertisements will be placed in English;
- (d) the following information must appear in any advertisement: -
 - bid number;
 - the website where the requirements and this Policy can be read;

- the place where the bid documents can be obtained;
 - the date, time and venue where site inspection/briefing session will be (if applicable);
 - the closure date for the submission of bids, which may not be less than 30 (thirty) days in the case of transactions over R10 000 000 (ten million rand), or which are of a long-term nature, or 14 (fourteen) days in any other case, from the date on which the advertisement is placed in a newspaper; subject to (v) below;
 - the fee applicable that must be paid before the bid documents will be issued.
- (e) the Accounting Officer may determine a closure date for the submission of bids which is less than the 30 (thirty) or 14 (fourteen) days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

(5) Site meetings or briefing sessions

A site inspection/meeting may be conducted before the close of the bids to ensure that the bidders understand the scope of the project and that they can comply with the conditions and requirements.

If it is a requirement that prospective bidders must attend a site inspection, non-attendance will invalidate a bid. A bidder may be represented by a representative at such inspection/meeting.

(6) Handling of bids submitted in response to public invitation

(a) Closing of bids

All bids will close on 12:00 on the date as stipulated on the advertisement, which must also be reflected in the bid document.

Bids are late if they are received after the closing date and/or time.

A late bid will not be admitted for consideration and, where practical, should be returned unopened to the bidder with a comment that the bid was received too late.

(b) Opening of bids

Bids are opened in public as soon as possible after the closure in the presence of the Manager: Supply Chain Management or his/her delegate.

The official opening the bids should in each case read out the name of the bidder and the amount of the bid, if practical.

The bid should be stamped with the official stamp of the Municipality and endorsed with the signatures of the persons opening it and, in whose presence, it was opened.

Bids must be recorded in a register and kept on record.

(7) Validity of the bids

The validity period of a bid may not be less than 90 (ninety) days, and is calculated from the date of bid closure.

Should the validity period expire on a Saturday, Sunday or Public holiday, the bid must remain valid and open for acceptance until business closure on the following working day.

The validity period of bids may be extended at the request of the Municipality if a bidder agrees thereto.

(8) Consideration of bids

The Municipality takes all bids duly admitted into consideration.

The Municipality reserves the right not to accept the lowest or any bid received.

The decision by the Municipality regarding the award of a bid is final subject to subparagraph (10).

The Municipality may contact the bidder to enquire about any information in the bid, including obvious mistakes, in such a manner that no other bidder is prejudiced.

(9) Evaluation of bids

Service providers must comply with the requirements to be listed as a service provider set out in paragraph 16 as well as the following: -

- (a) compliance with the bid conditions and all requirements as determined in this Policy and the Regulations;
- (b) meeting technical specifications and functionality. A minimum threshold may be set for functionality to be considered for the award of a tender;
- (c) financial ability to execute the contract; and
- (d) price as determined in terms of the Preferential Procurement Regulations.

(10) Acceptance of bids

Service providers will be notified in writing of the acceptance of their bids subject to no rights vesting until expiry of 21 (twenty-one) days after notification. If a valid appeal has been received under section 62 of the Systems Act within 21 (twenty-one) days, then rights will only vest after the consideration of the appeal and entering into a contract.

Unsuccessful bidders must simultaneously with the successful bidder be informed of the outcome and their right of appeal in terms of section 62 of the Systems Act.

Bids will not be returned to bidders, but will be retained by the Municipality.

(11) Publication of bid information

The particulars of the successful bidders will be published on the Municipality's website.

(12) Cancellation and re-invitation of bids

In the event that the preference point system is incorrectly stipulated in the bid documents, the bid invitation must at the discretion of the Accounting Officer either be cancelled or all bidders be allowed to amend their bids accordingly.

An invitation to bid and a bid may at any time before finalisation and entering into a contract be cancelled by the Municipality or the bidder

(13) Negotiations with preferred bidders

- (i) It is allowed under this Policy that the Accounting Officer may negotiate the final terms of a contract with bidder or bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation: -
 - Does not allow any preferred bidder a second or unfair opportunity;
 - Is not to the detriment of any other bidder; and
 - Does not lead to a higher price than the bid as submitted.
- (ii) Minutes of such negotiations must be kept for record purposes.

(14) Two-stage bidding process

- (i) A two-stage bidding process may be allowed for: -
 - Large complex projects;
 - Projects where it may be undesirable to prepare complete detailed technical specifications; or
 - Long-term projects with a duration period exceeding 3 (three) years.
- (ii) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (iii) In the second stage, final technical proposals and priced bids should be invited.

22. Procurement of banking services

The procurement of banking services must be done in accordance with section 30 of the Regulations.

23. Procurement of IT related goods and services

The Accounting Officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process in accordance with section 31 of the Regulations.

24. Procurement of goods and services under a contract secured by other organs of state

The Accounting Officer may procure goods and services under a contract secured by another organ of state in accordance with and subject to compliance with section 32 of the Regulations.

25. Procurement of goods necessitating special safety arrangements

The acquisition and storage of goods in bulk (or other than water) which necessitate special arrangements, including gasses and fuel, should be avoided wherever possible.

Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the Accounting Officer.

26. Proudly SA Campaign

The Municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from: -

- (1) firstly – supplier and businesses within the Municipality or district;
- (2) secondly – suppliers and businesses within the relevant province;
- (3) thirdly – suppliers and businesses within the Republic.

27. Appointment of Consultant

When procuring consulting services, the Accounting Officer considers any Treasury guidelines.

In addition to any requirements prescribed by this Policy for competitive bids, bidders must furnish particulars of all consultancy services provided to an organ of state in the last 5 (five) years, specifying similar services.

The Accounting Officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised by the consultant in the course of the consultancy service, will be vested in the Municipality.

28. Deviation from, and ratification of minor breaches of procurement processes

- (1) The Accounting Officer may: -
 - (a) dispense with the official procurement processes established by this Policy and procure any required goods or services through any convenient process, which may include direct negotiations, but only: -
 - (i) in the event of an emergency where preferably a written quotation may be obtained;
 - (ii) if the required goods or services are available from a sole provider only, a written quotation is to be obtained. Documentary proof must be provided that the service provider is a sole provider;
 - (iii) in respect of repairs to motor vehicles, machinery and equipment that need to be stripped to quote, only a written quotation may be obtained;
 - (iv) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - (v) for the acquisition of animals for game reserves; or
 - (iv) in other exceptional cases where it is impractical or impossible to follow the prescripts of this Policy.
 - (b) ratify any minor breaches of the procurement processes which are of a technical nature by an official or committee acting in good faith in terms of delegated powers or duties.

- (2) The Accounting Officer must record the reasons for any deviations in terms of subparagraph 1(a) and 1(b) of this paragraph and report this to the Executive Mayor and the next meeting of the Council and include it as a note to the annual financial statements.

29. Unsolicited bids

- (1) The Municipality is not obliged to consider unsolicited bids received outside the normal competitive bidding process as prescribed in this Policy.
- (2) The Accounting Officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if: -
 - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (b) the product or service will be beneficial or have exceptional cost advantages for the Municipality and/or the public;
 - (c) the person who made the bid is the sole provider or the originator of the product or service; and
 - (d) the reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.
- (3) If the Accounting Officer decides to consider an unsolicited bid that complies with subparagraph (2), the decision must be made public in accordance with section 21A of the Municipal System Act, together with: -
 - (a) reasons why the bid should not be open to other competitors;
 - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
 - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) All written comments received pursuant to subparagraph (c), including any responses from the unsolicited bidder, must be submitted to the National Treasury and Provincial Treasury for comment. If no comments have been received by the Municipality after 45 days from submission, the matter will continue as if there are no comments.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must consider: -
 - (a) any comments submitted by the public and
 - (b) any written comments and recommendations of the National Treasury or the Provincial Treasury.

- (8) If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations
- (9) Such submission must be made within 7 (seven) days after the decision on the award of the unsolicited bid has been taken, but no contract committing the Municipality to the bid may be entered into or signed within 30 (thirty) days of the submission.

30. Combating of abuse of the Supply Chain Management System

- (1) The Accounting Officer must provide measures for the combating of abuse of the Supply Chain Management system as follows: -
 - (a) To take all reasonable steps to prevent such abuse;
 - (b) To investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy and when justified: -
 - (i) take appropriate steps against such official or other role player; or
 - (ii) report any prima facie criminal conduct to the South African Police Service.
 - (c) To check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
 - (d) To reject any bid from a bidder: -
 - (i) if any undisputed municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the Municipality or municipal entity, or to any other Municipality or municipal entity are in arrears for more than 3 months; or
 - (ii) who during the last 5 years has failed to perform satisfactorily on a previous contract with the Municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory.
 - (e) To reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
 - (f) To cancel a contract awarded to a bidder if: -
 - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the

contract that benefited that person and this was not brought to the attention of the Accounting Officer.

- (g) To reject the bid of any bidder if that bidder or any of its directors: -
 - (i) has abused the supply chain management system of the Municipality or has committed any improper conduct in relation to such system;
 - (ii) has been convicted for fraud or corruption during the past 5 years;
 - (iii) has neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past 5 years;
 - (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (Act No. 12 of 2004).
- (2) The Accounting Officer must inform the National Treasury and Provincial Treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this Policy.

Part 3: Logistics, Disposal, Risk, Performance and Contract Management

31. Logistics Management

- (1) The Accounting Officer must establish and implement an effective system of logistics management, which must include the following: -
 - (a) **Stockholding**

Central stores will only hold stock complying with the following criteria:

 - (i) **Essential Goods-** only items which should be immediately available to maintain a municipal service, are considered essential;
 - (ii) **Bulk Purchased Supplies-** items of sufficient demand, in common use and which offer a reduction in cost over direct supply, considering stockholding costs.
 - (b) **Internal Requisitions**

Where stocks are held in a central store, items must be requisitioned internally as the sole source of supply;
 - (c) **Stores Procedures**

Procedures must be issued by the Chief Financial Officer which must be utilised for the regulation of stock levels and movement as well as to provide adequate management information;

(d) **Warehouse Management**

(i) **Receiving of stock items**

Stock items received should be verified with the purchase order and inspected for proper quantities to ensure receipt of what was ordered. The delivery note is then signed indicating acceptance of goods received.

(ii) **Issuing of stock items**

Stock items should be issued only on the authority of a properly approved, pre-numbered requisition, signed by a designated person, which should give the following information: -

- Source and date of requisition;
- Account(s) to be charged;
- On each item: Quantity, Unit stock number, description, unit price and total Rand value.

Stock items that are issued, must immediately be recorded.

(iii) **Shelving**

Stores personnel should categorize and organise storage areas for efficient, logical and safe storage of all supplies.

(iv) **Purchase requisitions for stock items**

All purchase requisitions for stock items must have the signature of the Chief Financial Officer, or a person designated by the Chief Financial Officer, prior to acquisitions.

(v) **Expediting of orders**

If the delivery conditions reflected on the purchase order form are not complied with, it should be followed up with the supplier immediately.

(vi) **Access**

Central stores should be operated as a closed store, whereby customers are excluded from the stores area except on a specially approved or escorted basis.

(vii) **Damaged Goods**

Damaged goods from suppliers must be returned to the supplier for credit or replacement.

(e) **Stock Reviews**

In order to manage the stores operations effectively, the Manager in charge should continually review their stockholding based on information such as number of issues, levels of service achieved, total value of stock held and stock turnover.

Redundant and obsolete stock should be identified and cleared regularly.

(f) **Stock Levels**

The following should be determined to maintain the optimum stock levels: -

- Minimum, maximum and re-order levels;
- Slow moving or obsolete stock.

(g) **Annual Stock-taking Procedures**

- (i) The stock-taking must take place close to year end (30 June).
- (ii) The stock-taking must take place in the presence of the person who is in charge of the store.
- (iii) The person conducting the inventory counts all items and makes appropriate notations on the inventory sheet. At the conclusion of each section, the person who conducts the inventory count as well as the person in charge of the store, dates and signs the inventory sheet.
- (iv) At the conclusion of all inventory sections, all discrepancies will be double-checked. The Chief Financial Officer, or a person designated by the Chief Financial Officer, will make appropriate adjustments and will approve all such adjustments to correct inventory records to actual count.
- (v) All printouts, original documents, work papers, adjustments and corrected inventory printouts are placed on file and must be kept for audit purposes.

(h) **Reporting**

Stores must provide a monthly report, which must include the following information: -

- (a) Total value of monthly issues;
- (b) Total value of stock purchases;
- (c) Stock on hand;
- (d) Value of stock on hand.

A report of the stock-taking at year-end must be provided to Council.

32. Disposal Management

- (1) The Municipal Council will dispose assets using the following ways:-
 - (a) Transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
 - (b) Transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - (c) Selling the asset at market related price or auction; or
 - (d) Destroying the asset if obsolete.
- (2) The disposal of capital assets is dealt with in terms of the Act and the Asset Management Regulations promulgated thereunder.

33. Risk Management

- (1) The Accounting Officer should in the implementation of this Policy, develop a risk management plan in order to address the following factors: -
 - (i) **Risk Identification:** Identify risks associated with the project on a case-by-case basis;
 - (ii) **Risk Assessment:** The likelihood and magnitude of the risks;
 - (iii) **Risk Mitigation:** Strategies for pre-empting and treating the occurrence of risk;
 - (iv) **Risk Allocation:** Detailing responsibility for managing a risk to the party best suited to manage such risks;
 - (v) **Acceptance of the risk:** Acceptance of the risk where it cannot be eliminated, transferred or reduced where the cost of eliminating, transferring or reducing the risk is greater than that of retaining it;
 - (vi) **Management of risks:** In a pro-active manner and the provision of adequate cover for residual risks;
 - (vii) **Monitor and Control:** Identify new risks as they emerge.

- (2) In order to reduce the risk associated with a contract, the Accounting Officer must include the provision of sureties for the due performance on a contract and retention of a portion of moneys due to a contract.
- (3) The sureties, guarantees, insurance, retention and penalties will be determined by the nature of the contract, which is specified in the bid document.
- (4) Service providers will be subjected to disqualification if there is sufficient evidence of consistent failure to meet the standards specified by the Municipality.
- (5) Service providers will be evaluated based on contract adherence and performance. Upon reasonable notice in writing to the service provider involved, and after a reasonable opportunity for response, a service provider may be disqualified for a period not exceeding 5 years from participation in a bid process for goods and services. Service providers will be disqualified in the event of: -
 - (a) breach of contract indicating unwillingness to perform a contract in accordance with the terms and conditions;
 - (b) an indication of lack of business integrity or honesty which impacts on the integrity of the contractor.

34. Performance Management

The Accounting Officer must establish and implement an internal monitoring system in order to determine whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved.

35. Contract Management

(1) Service Level Agreements

Contracts concluded for the procurement of goods and services may be made subject to the conclusion of a Service Level Agreement.

(2) Expansion or Variation of orders against the original contract

- a) The Accounting Officer must as far as possible refrain from extending/expanding contracts and/or allowing variation orders as it increases the risks, reflects possible flaws in the planning process and it creates an uncompetitive environment, possibly unfairly prejudicing other possible vendors.
- b) Contracts may be expanded or varied by not more than 20% for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract.
- c) Anything beyond the abovementioned thresholds must be reported to Council and dealt with in terms of the provision of section 116(3) of the

MFMA Act 56 of 2003, which will be regarded as an amendment to the contract.

(3) Orders

Supplies should be delivered and services rendered only upon a written official order from the Municipality, and accounts should be rendered as indicated on the official order or in the contract, as the case may be.

(4) Payment for Supplies and Services

Subject to any instructions issued with a contract or order, a contractor will be paid for supplies delivered and services rendered in accordance with the under-mentioned provisions: -

- (a) On the basis of delivery into store or to another nominated destination, only after receipt of a detailed account and after delivery has been affected;
- (b) On the basis of receipt of a detailed account supported which have been certified that the goods and/or services have been provided satisfactorily;
- (c) Payment will be made in terms of Council's Cash Management and Investment Policy on receipt of all the required documentation. Should a contractor indicate a special discount on his/her account provided payment is made within a certain time, every effort should be made to take advantage of such discount;
- (d) As a rule, payment is made to the contractor only. When payment is claimed by another party payment may only be made under special circumstances and on written approval of the Chief Financial Officer.

(5) Remedies in case of death, sequestration, liquidation or judicial management

In the event of the death of a contractor or the provision or final sequestration of his/her estate or of his/her cession or transfer of a contract without the approval of the Council or of the surrender of his/her estate or of his/her reaching a compromise with his/her creditors or of the provisional or final liquidation of a contractor's company or the placing of its affairs under judicial management, the Council must, without prejudice to any other rights it may have, exercise any of the following:-

- (a) cancel the contract and accept any of the bids, which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved from liability for any claim which has risen or may arise against the contractor in respect of supplies not delivered or work not carried out by him/her under the contract, and the Council shall have the right to hold and retain all or any of the securities and retention moneys held by it at the date of the aforesaid occurrences until such claim has been satisfied; or

- (b) Allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expenses of the estate of the contractor to carry on with and complete the contract.

(6) Contractor's Liability

In the event of the contract being cancelled by the Council in the exercise of its rights, the contractor will be liable to pay to Council any losses sustained and/or additional costs or expenditure incurred as a result of such cancellation and Council will have the right to recover such losses, damages or additional costs by means of set-off from moneys due or which may become due in terms of the contract or any other contract, or from a guarantee provided for the due fulfilment of the contract and, until such time as the amount of such losses, damages or additional costs have been determined, to retain such moneys or guarantee or any deposit as security for any loss which the Council may suffer or have suffered.

The contractor must be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise, in the supply or service rendered or if the supply or service as a result of such defect, latent or otherwise, does not conform to any condition or requirement of the contract.

(7) Contractor's not performing

In the case where contractors are not performing in terms of the tender conditions or contract or are delivering a poor service, the relevant Manager must provide the Accounting Officer with a written report, together with a letter that informed the contractor as well as the response of the contractor.

(8) Management of projects

Projects should be managed properly by the relevant Manager, especially where projects are subdivided between the contractors for material, labour, etc.

Part 4: Other Matters

36. Declarations

- (1) A bidder must, in the stipulated manner, declare that: -
 - (a) the information regarding any claim from preference points provided is true and correct;
 - (b) the signatory to the bid document is duly authorized; and
 - (c) documentary proof regarding any bidding issue will, when required, be submitted to the satisfaction of the Municipality.

37. Measures to promote local suppliers and SMME's

- (1) As far as possible, quotations/tenders should be awarded to local SMME's for the following services: -
 - (a) Advertisement, media, communications;

- (b) Internal and external cleaning services and the provision of cleaning products;
 - (c) Clothes and textiles;
 - (d) Catering services;
 - (e) Internal and external furniture and décor;
 - (f) Co-ordination and management of opportunities;
 - (g) Maintenance, repairs, construction and office space;
 - (h) Travel co-ordination and commuting services;
 - (i) Perishable food and the provision thereof; and
 - (j) Stationery stock and printing.
- (2) an advertisement must be placed in the local newspapers to inform existing and any prospective local SMME's of the services whereby they can benefit.
 - (3) the following criteria, as determined in the National Small Business Act (Act No. 102 of 1996), will be used to determine if a person/enterprise/business qualify as a SMME: -
 - (a)t total full-time equivalent of paid employees: less than 5 ; and
 - (b) total annual turnover: less than R200 000; and
 - (c) total gross asset value (fixed assets excluded): less than R100 000.
 - (4) if the Municipality has the capacity, assistance will be given to local SMME's who were successful bidders to execute projects.
 - (5) in cases of purchases up to R50 000, a minimum acceptable bid/quotation amount be determined to ensure that local bidders can execute the project successfully, considered legal aspects and financial viability.

38. Measures for utilising local labour

- (1) Projects must, as far as possible, be divided between materials, labour, etc.
- (2) In cases where tenders/quotations are invited for labour, it be made a condition that only labour in that specific area/town will be utilised.
- (3) In cases where it is not in the interest of Council to divide the project, it be made a condition that the contractor/tenderer must as far as possible use people for labour from that specific area/town where the project will be executed.
- (4) The Accounting Officer can approve non-compliance with paragraph (2) and (3) above if it is not in the interest of Council.

39. Penalties

- (1) Where a contract has been awarded on the strength of preference information furnished by the contractor, which, after the conclusion of the relevant contract, is proved to have been incorrect, the Municipality may, in addition to any other legal remedy it may have: -
 - (a) recover from the contractor all costs, losses or damages incurred or sustained by the Municipality as a result of the award of the contract; and/or
 - (b) cancel the contract and claim damages which the Municipality may suffer as a result of having to make less favourable arrangements; and/or
 - (c) impose on the contractor a penalty not exceeding the amount calculated in sub-paragraph (a) or 5 percent of the value of the contract.

40. Prohibition on awards to persons whose tax matters are not in order

- (1) The Municipality may not award a contract above R15 000 to a person whose tax matters has not been declared by the South African Revenue Services to be in order.
- (2) Except as set out in sub-paragraph (1), no contract may be awarded to a person who failed to submit a tax clearance certificate from the South African Revenue Services (SARS) certifying that the taxes of that person is in order or that suitable arrangements have been made with SARS.

41. Prohibition on awards to persons in the service of the state or consultants

- (1) No award must be given to a person: -
 - (a) who is in the service of the state; or
 - (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
 - (c) a person who is an advisor or consultant contracted with the Municipality.

42. Awards to close family members of persons in the service of the state

The notes to the annual financial statements must disclose particulars of any award of more than R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous 12 months, including:

-

- (a) the name of that person;
- (b) the capacity in which that person is in the service of the state; and
- (c) the amount of the award.

43. Ethical Standards

- (1) In addition to the Code of Conduct for employees of the Municipality as contained in the Systems Act, a code of ethical standards as set out in regulation 46 of the Regulations with the aims as set out in regulation 46(1) and the content as set out in regulation 46(2) is hereby established.
- (2) Declarations in terms of regulation 46(2)(d) and (e):-
 - (a) by all officials, except the Accounting Officer, must be made to the Accounting Officer who must ensure that such declarations are recorded in a register, which the Accounting Officer must keep for this purpose;
 - (b) by the Accounting Office must be made to the Executive Mayor who must ensure that such declarations are recorded in the register referred to in sub-paragraph (a).
- (3) A breach of the code of ethics must be dealt with as follows: -
 - (a) in the case of an employee, in terms of the disciplinary procedures of the Municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
 - (b) in the case of a role player who is not an employee, through other appropriate means in relation to the severity of the breach;
 - (c) in all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

44. Inducements, rewards, gifts and favours to Municipality, officials and other role players

- (1) No person who is a provider or prospective provider of goods or services, or a recipient of goods disposed or to be disposed of must either directly or through a representative or intermediary promise, offer or grant: -
 - (a) any inducement or reward to the Municipality for or in connection with the award of a contract; or
 - (b) Any reward, gift, favour or hospitality to: -
 - (i) any official; or
 - (ii) any other role player involved in the implementation of this Policy.
- (2) The Accounting Officer must promptly report any prima facie contravention of subparagraph (1) to the National Treasury for consideration whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

45 Sponsorships

The Accounting Officer must promptly disclose to the National Treasury and the Provincial Treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is: -

- (a) a provider or prospective provider of goods and services; or
- (b) a recipient or prospective recipient of goods disposed or to be disposed.

46. Objections, complaints and appeals

Persons aggrieved by decision or actions taken in the implementation of this supply chain management system may lodge a written complaint regarding such decision or action within 14 (fourteen) days of that decision or action.

47. Resolution of disputes, objections, complaints and queries

The Accounting Officer may appoint an independent and impartial person, not directly involved in the supply chain management process, to investigate any complaint received in terms of paragraph 46.

48. Contracts providing for compensation based on turnover

If a service provider acts on behalf of a Municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the Municipality must stipulate: -

- (1) a cap on the compensation payable to the service provider; and
- (2) that such compensation must be performance based.

49. Short Title

This Policy is called the Langeberg Municipality: Supply Chain Management Policy

CODE OF CONDUCT FOR SERVICE PROVIDERS

Langeberg Municipality is committed to observe the highest ethical standards in all its procurement activities. This Code of Conduct for Suppliers has been prepared to provide a clear summary of the Municipality's requirements from all its service providers in all procurement dealings, ensuring that all actions are lawful and that procurement ethics are followed.

The Municipality practices zero tolerance on corruption and demands no form of conflict of interests from, and honest representation of, the capabilities of service providers.

Service providers are required to familiarise themselves with the Supply Chain Management Policy (the Policy) and this Code of Conduct to ensure a successful working relationship with the Municipality.

A. Bribery, Corruption and Conflict of Interest

The Municipality requires all service providers to conduct their business in accordance with the highest legal and ethical standards. They must comply with the Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004, the Policy, this Code and all requirements to prevent bribery, corruption and unacceptable business practices. Service providers must observe the following:

1. To not, directly or indirectly, offer, give or agree or promise to give to any municipal employee or councillor, or any other person at their behest, any gratuity, whether at the request of such person or not, in respect of any aspect of the Policy, before, during or after any procurement action;
2. To immediately inform the Municipal Manager, or if the Municipal Manager is involved the Speaker, in the event of any employee or councillor soliciting, or obtaining, or attempting to obtain any gratification for himself/herself or for any other persons.
3. To note that employees and councillors have a similar duty to report any action by a service provider or on behalf of a service provider to directly or indirectly offer, give or agree or promise to give to any municipal employee or councillor or any other person, any gratuity in respect of any aspect of the Policy.
4. To truthfully complete all declarations required to be listed as a service provider. Any false declaration may lead to the removing of the service provider from the list, cancellation of any contract already entered into as well as possible criminal and civil action. If anything occurs after the declarations have been completed that affects such declarations, the service provider must immediately amend the declarations in possession of the Municipality.

B. Conduct of Service Providers

Langeberg Municipality expects all its service providers to warrant that they:

1. Will comply with the Policy and all rules, regulations and statutory requirements relating to the provision of the products/services to the Municipality;
2. Will not collude with other service providers when participating in a bid;
3. Are duly authorised or certified to provide of the products or services and shall not, expressly or impliedly, profess to be so authorised or certified;
4. Will only supply products that are compliant with the quality required by the specifications;
5. Possess the necessary capabilities, equipment and premises to perform their obligations;
6. Will not subcontract or outsource any portion of the products/services unless prior written consent from Municipality has been obtained; and
7. Will ensure and maintain the highest standards of integrity and quality of work at all times.

C. Applicability of this Code

This Code of Conduct shall apply to all service providers, their staff, sub-contractors, representatives or any other entities acting behalf of them.

D. Monitoring Compliance with this Code

To facilitate the monitoring of suppliers' compliance with this Code, the Municipality requires service providers to:

1. Develop and maintain all the necessary documentation to support compliance with the Code and standards required;
2. Consent that the Municipality may contact any person or institution where the service provider provided services or goods previously;
3. Provide the Municipality on request with access to relevant records;
4. Consent that the Municipality conduct private interviews with the service provider's employees and management when necessary;
5. Consent that the Municipality conduct announced and unannounced site visits; and

6. Respond promptly to reasonable enquiries from the Municipality in relation to the implementation of this Code of Code.

E. Secure Communication Channels

Langeberg Municipality has established a secure communication channel to enable service providers to raise their concerns confidentially and responsibly. If service providers have questions about this Code or wishes to report any questionable behaviour or possible violation of this Code, the service provider is encouraged to contact the Municipal Manager or a person authorised by him/her at:

Address: 28 Main Road, Ashton, 6715.
Telephone: 023 615 8000
E-mail: aeverson@langeberg.gov.za

The Municipality will not tolerate any retribution or retaliation by anyone against a service provider who has, in good faith, sought advice or has reported questionable behaviour and/or a possible violation. The Municipality will take disciplinary action against an employee or a councillor anyone who threatens or engages in retaliation, retribution or harassment of the service provider. Identities and contents of all information or complaints will be dealt with as confidential, but complainants must be prepared to testify or provide written complaints when required to do that.

F. Sanctions

Breach of the Code may result in actions being taken against that service providers, in addition to any contractual or legal remedies. The actions applied will depend on the nature and seriousness of the breach and on the degree of commitment shown by the service provider to resolve any issues stemming from the breach. The range of actions to be imposed include but are not restricted to the following:

- Formal written warnings;
- Required disclosure of nature of breach in terms of the Policy;
- Immediate termination of contract;
- Criminal and/or civil action.

Acknowledgement and Acceptance (to be submitted together with application for listing as provider of goods and services)

This is to certify that I have fully read the Service Provider's Code of Conduct and the Supply Chain Management Policy. I hereby commit myself/my company to comply with the Code of Conduct. I am authorised to sign this document.

Service Provider: _____

Address: _____

Representative: _____

Signature: _____

Date: _____



Langeberg Municipality Preferential Procurement Policy



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1. Definitions

In this policy, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act must bear the meaning so assigned—

“National Treasury” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“Price” includes all applicable taxes less all unconditional discounts;

“Rand value” means the total estimated value of a contract in Rand, calculated at the time of the tender invitation; and

“The Act” means the Preferential Procurement Policy Act, 2000 (Act No. 5 of 2000).

“Black designated groups” has the meaning assigned to it in the codes of good practice issued in terms of section 9 (1) of the BBEEA.

“Black people” has the meaning assigned to it in section 1 of the BBEEA.

“Designated group” means black designated groups, black people, women, people with disabilities; or small enterprises which are enterprises, owned, managed, and controlled by previously disadvantaged persons and which is overcoming business impediments arising from the legacy of apartheid.

“Disability” means in respect of a person, a permanent means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.

“EME” means

(1) exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the BBEEA.

(2) an entity with an annual turnover of R10 000 00.000 (ten million Rand) or less

“Historically disadvantaged individual (HDI)” means a South African citizen –

(1) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983); and / or

(2) who is a female; and / or

(3) who has a disability:

Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI.

“Locality” means the local suppliers and/or service providers that reside within the Municipal area and within the district boundaries.

“Large Enterprises” is a company with an annual turnover in excess of R50 million.

“Proof of B-BBEE status level of contributor” means the B-BBEE status level certificate issued by an authorised body or person

“Tender” means a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services or goods

“Acceptable Tender” mean any tender which, in all respects, complies with the specification and conditions of tender as set out in tender document

“Local Content” means that portion of tender price, which is not included in the imported content, provided that local manufacture does take place

“Market Analysis” means a technique used to identify market characteristics for specific goods or services

“Specific goals” means that it must be measurable and quantifiable, and organs of state must monitor the execution of the contract for compliance with such goals

“Objective Criteria” for the purpose of section of 2(1)f of the procurement Act must be criteria other than the additional to criteria relating to equity ownership by HDI's or whether or not a bidder was located in a particular province or municipal area.

"Revenue Generating Tender" means a legal agreement between a Municipality/Municipal entity and a third party that yields a financial return for the Municipality/Municipal entity

- 1) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- 2) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act.

"Qualifying Small Enterprise (QSE)" is a company with a turnover between R10 million and R50 million.

"Region" means the district and/or Cape Winelands District Municipality.

"Municipal Area" means the Langeberg Municipal jurisdiction/area.

"Rural area" means-

- 1) a separately populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or
- 2) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival and may have a traditional land tenure system.

"SMME" means small, medium and micro enterprises namely Exempted Micro Enterprises and Qualifying Small Enterprises.

"Youth" has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

2. Introduction

The Constitution of the Republic of South Africa, 1996, provides in sections 152(1)(c) and 152(2) that local government must promote social and economic development and that the municipality must strive within its financial and administrative capacity, to achieve the objects set out in subsection 152(1).

The Constitution provides in section 217 that an organ of state must contract for goods or services in accordance with a procurement system which is fair, equitable, transparent, competitive, and cost effective and to implement a policy to grant preferences within a framework prescribed by National Legislation.

The Broad-Based Black Economic Empowerment Act, 2003 requires: " (1) Every organ of state and public entity must apply any relevant code of good practice issued in terms of this Act in (b) developing and implementing a preferential procurement policy

The Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)-[PPPFA] was promulgated by the Minister in response to the Constitutional provision and allow for a Municipality to develop a preferential procurement policy and to implement such policy within the PPPFA framework.

Section 2 (1) (d) (i) and (ii) of the Preferential Procurement Policy Framework Act, 2000 refers to specific goals which may include:

- (i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;
- (ii) implementing the programmes of the Reconstruction and Development Programme (RDP) as published in *Government Gazette* 16085 dated 23 November 1994.

The RDP (1994), as basis for development in South Africa, was meant to provide a holistic, integrated, coherent socio-economic policy that is aimed at mobilising people and resources to work towards the upliftment of the material and social conditions of local communities to build sustainable livelihoods for these communities.

In terms of Section 2 (1)(d)(ii), the following activities may be regarded as a contribution towards achieving the goals of the RDP, in addition to the awarding of preference points in favour of HDIs (published in *Government Gazette* No. 16085 dated 23 November 1994):

- (i) The promotion of South African owned enterprises;
- (ii) The promotion of export orientated production to create jobs;
- (iii) The promotion of SMMEs;
- (iv) The creation of new jobs or the intensification of labour absorption;
- (v) The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;
- (vi) The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region;
- (vii) The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered in that municipal area;
- (viii) The promotion of enterprises located in rural areas;
- (ix) The empowerment of the work force by standardising the level of skill and knowledge of workers;
- (x) The development of human resources, including by assisting in tertiary and other advanced training programmes, in line with key indicators such as percentage of wage bill spent on education and training and improvement of management skills; and
- (xi) The upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.

3. Purpose, and Objectives

- a) The purpose of this policy is to:
 - i) Provide for categories of preference in awarding of bids;
 - ii) Provide for the advancement of persons or categories of persons disadvantaged by unfair discrimination; and
 - iii) Clarify the mechanisms how the above items in par 1.1 (a) (i) and (ii) will be implemented.
- b) Objectives
 - a) Promote Black-Based Black Economic Empowerment (B-BBEE) - enterprises providing services and goods.
 - b) Promote Small Medium and Micro Enterprises (SMME's), Joint Ventures, Consortiums, and partnerships.
 - c) Implement recognised best procurement practises through effective planning, strategic purchasing, and contract management.

The policy rests upon certain core principles of behaviour as set out in the Constitution and ratified by the Constitutional Certification Judgements. In this context, the policy will be applied in accordance with a system, which is fair, equitable, transparent, competitive, and cost-effective in terms of Section 217 of the Constitution.

This policy strives to ensure that the objectives for uniformity in the supply chain management systems between Municipalities/Municipal entities, is not undermined and that consistency with the SCM and LED policies in line with sections 152(1)(c) and 152(2).

4. Application of preference point system

- 4.1 The Municipality will, in the tender documents, stipulate —
 - (a) the preference point system applicable; and
 - (b) any specific goal as envisaged in section 2(1)(d) and (e) of the Preferential Procurement Act.

- 4.2 If it is unclear whether the 80/20 or 90/10 preference point system applies—
- (a) in the case of a tender to generate income or to dispose of or lease assets, the highest acceptable tender; or
 - (b) in the case of any other tender, the lowest acceptable tender, must be used to determine the applicable preference point system.

5. Points for Price: 80/20 preference point system for acquisition of goods or services with Rand value equal to or above R30 000 and up to R50 million

- 5.1 The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

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

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

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

- 5.2 A maximum of 20 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

- 5.3 The points scored must be rounded off to the nearest two decimal places.

- 5.4 The contract must be awarded to the tenderer scoring the highest points.

6. Points for price: 90/10 preference point system for acquisition of goods or services with Rand value above R50 million

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

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

6.2 A maximum of 10 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

6.3 The points scored must be rounded off to the nearest 2 decimal places.

6.4 The contract must be awarded to the tenderer scoring the highest points.

7. Points for price: 80/20 preference points system for tenders to generate income or to dispose of or lease assets with Rand value equal to or above R30 000 and up to Rand value of R50 million

7.1 The following formula must be used to calculate the points for price in respect of a tender to generate income or to dispose of or lease assets, with a Rand value equal to, or above R 30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

7.2 A maximum of 20 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

7.3 The points scored must be rounded off to the nearest 2 decimal places.

7.4 The contract must be awarded to the tenderer scoring the highest points.

8. Points for price: 90/10 preference point system for tenders to generate income or to dispose of or lease assets with Rand value equal to or above R50 million

8.1 The following formula must be used to calculate the points for price in respect of a tender to generate income or to dispose of or lease assets, with a Rand value above R50 million, inclusive of all applicable taxes:

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

8.2 A maximum of 10 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

8.3 The points scored must be rounded off to the nearest 2 decimal places.

8.4 The contract must be awarded to the tenderer scoring the highest points.

9. Specified contract participation goals

9.1 The tendering conditions will stipulate the specific goals, as contemplated in section 2(1)(d)(ii) of the Preferential Procurement Act, be attained.

9.2 A maximum of 20 points (80/20 preference points system) or 10 (90/10) preference points system), will be allocated for specific goals. These goals are:

- (a) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability (BBBEE);
- (b) Promotion of enterprises located in the municipal area

9.3 Regarding par 9.2 (a) 50% of the 20/10 points will be allocated to promote this goal and points will be allocated in terms of the BBBEE scorecard as follows:

B-BBEE Status Level of Contributor	Number of Points for Preference (80/20)	Number of Points for Preference (90/10)
1	20	10
2	18	9
3	16	8
4	12	5
5	8	4
6	6	3
7	4	2
8	2	1
Non-compliant contributor	0	0

9.4 A tenderer must submit proof of its BBBEE status level contributor [scorecard].

9.5 A tenderer failing to submit proof of BBBEE status level of contributor –

9.5.1 may only score in terms of the 80/90-point formula for price; and

9.5.2 scores 0 points out of 10/5 BBBEE status level of contributor, which is in line with section 2 (1) (d) (i) of the Act, where the supplier or service provider did not provide proof thereof.

9.6 Regarding par 9.2 (b) 50% of the 20/10 points will be allocated to promote this goal. Points will be allocated as follows.

Locality of supplier	Points
Within the boundaries of the municipality	10
Outside of the boundaries of the municipality	0

9.7 The policy should not include Pre-qualification goals.

9.8 Any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.

9.9 A tenderer failing to submit proof of required evidence to claim preferences for other specified goals, which is in line with section 2 (1) (d) (ii) of the Act.

9.9.1 may only score in terms of the 80/90-point formula for price; and

9.9.2 scores 0 points out of 10/5 of the relevant specific goals where the supplier or service provider did not stipulate.

9.10 The preference points scored by a tenderer must be added to the points scored for price.

9.11 The points scored must be rounded off to the nearest two decimal places.

9.12 The contract must be awarded to the tenderer scoring the highest procurement points.

10 Criteria for breaking deadlock in scoring

10.1 If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for specific goals.

10.2 If two or more tenderers score an equal total number of points, the objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to the tenderer that scored the highest points in terms in accordance with section 2(1)(f) of the Act.

10.3 If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

11. Award of contracts to tenderers not scoring highest points

11.1 A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Act.

12 Remedies

- 12.1 Upon detecting that a tenderer submitted false information regarding specific goals, or any other matter required in terms of this policy which will affect or has affected the evaluation of a tender, the Municipality will—
- (a) inform the tenderer; accordingly, and
 - (b) give the tenderer an opportunity to make representations within 14 days as to why—
 - (i) the tender submitted may not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part; and
 - (ii) the Municipality might restrict the tenderer from conducting any business for a period not exceeding 10 years with any Municipality.
- 12.2 After considering the representations referred to in par 13 (1)(b), the Municipality may—
- (a) if it concludes that such false information was submitted by the tenderer—
 - (i) disqualify the tenderer or terminate the contract in whole or in part; and
 - (ii) if applicable, claim damages from the tenderer;
 - (b) if it concludes that the tenderer must be restricted, restrict the tenderer from doing business with any Municipality for a period not exceeding 10 years.
- 12.3 The Municipality will, within five working days—
- (a) inform the National Treasury, in writing, of any action taken in terms of par 13 (2); and
 - (b) if it decides to restrict a tenderer, request the National Treasury to publish the name of the tenderer in its list of restricted suppliers.
- 12.4 The National Treasury must be requested, within three working days after receiving a request in terms of sub regulation (3)(b), publish the name of the tenderer in its list of restricted suppliers.

13. Performance Management

- 13.1 The specific goals achieved through the application of the Preferential Procurement Framework Act, 2000 will be monitored in terms of the elements embedded in the Supply Chain Management Policy.

14. Reporting

- 14.1 The Accounting Officer must align its reporting requirements to the Council as per SCM Regulation 6 to also report on progress with the implementation of this Policy

15. Transitional Period

- 15.1 A quotation or tender advertised before 16 January 2023 must be dealt with in terms of the Preferential Procurement Regulations, 2017.

**PREFERENTIAL PROCUREMENT REGULATIONS, 2001
PERTAINING TO THE PREFERENTIAL PROCUREMENT POLICY
FRAMEWORK ACT: NO 5 OF 2000**

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The Minister of Finance has, in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000), made the regulations contained in the Schedule.

SCHEDULE

PART ONE

DEFINITIONS AND APPLICATION

Definitions

1. In these regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and-
 - (a) **“Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000);
 - (b) **“Agent”** means a person mandated by another person (“the principal”) to do business for and on behalf of, or to represent in a business transaction, the principal, and thereby acquire rights for the principal against an organ of state and incur obligations binding the principal in favour of an organ of state;
 - (c) **“Comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration;
 - (d) **“Consortium or Joint Venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
 - (e) **“Contract”** means the agreement that results from the acceptance of a tender by an organ of state;
 - (f) **“Disability”** means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being;

- (g) **“Firm price”** is the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax which, in terms of a law or regulation is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (h) **“Historically Disadvantaged Individual (HDI)”** means a South African citizen –
- (1) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) (“the Interim Constitution”); and / or
 - (2) who is a female; and / or
 - (3) who has a disability:
- Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI;
- (i) **“Management”** in relation to an enterprise or business, means an activity inclusive of control and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director;
- (j) **“Non-firm prices”** means all prices other than “firm” prices;
- (k) **“Person”** includes reference to a juristic person;
- (l) **“Rand value”** means the total estimated value of a contract in Rand denomination which is calculated at the time of tender invitations and includes all applicable taxes and excise duties;

- (m) **“Small, Medium and Micro Enterprises (SMMEs)”** bears the same meaning assigned to this expression in the National Small Business Act, 1996 (Act No102 of 1996);
- (n) **“Sub-Contracting”** means the primary contractor’s assigning or leasing or making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (o) **“Tender”** means a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services or goods;
- (p) **“Trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person;
- (q) **“Trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

Application

- 2.(1) Despite anything to the contrary contained in any law, these regulations apply to organs of state as contemplated in section 1(iii) of the Act.
- (2) An organ of state contemplated in sub-regulation (1) must, unless the Minister of Finance has directed otherwise, only apply a preferential procurement system which is in accordance with the Act and these regulations.
- (3) An organ of state may deviate from the framework contemplated in section 2 of the Act in respect of a pre-determined tariff based professional appointments.

PART TWO

PREFERENCE POINT SYSTEM, EVALUATION OF TENDERS, AWARDING OF TENDERS NOT SCORING HIGHEST POINTS, CANCELLATION AND RE-INVITATION OF TENDERS

The 80/20 preference point system

- 3.(1) The following formula must be used to calculate the points for price in respect of tenders / procurement with a Rand value equal to, or above R 30 000 and up to a Rand value of R500 000. Organs of state may, however, apply this formula for procurement with a value less than R 30 000, if and when appropriate:

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

Where

P_s = Points scored for price of tender under consideration

P_t = Rand value of offer tender consideration

P_{\min} = Rand value of lowest acceptable tender

- (2) A maximum of 20 points may be awarded to a tenderer for being an HDI and / or subcontracting with an HDI and / or achieving any of the specified goals stipulated in regulation 17.
- (3) The points scored by a tenderer in respect of the goals contemplated in sub-regulation (2) must be added to the points scored for price.
- (4) Only the tender with the highest number of points scored may be selected.

The 90/10 preference point system

- 4.(1) The following formula must be used to calculate the points for price in respect of tenders / procurement with a Rand value above R500 000:

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

Where

P_s = Points scored for price of tender under consideration

P_t = Rand value of tender under consideration

P_{min} = Rand value of lowest acceptable tender

- (2) A maximum of 10 points may be awarded to a tenderer for being an HDI and / or subcontracting with an HDI and / or achieving any of the specified goals stipulated in regulation 17.
- (3) The points scored by a tenderer in respect of the goals contemplated in sub-regulation (2) must be added to the points scored for price.
- (4) Only the tender with the highest number of points scored may be selected.

The 80/20 preference point system for the sale and letting of assets.

- 5.(1) The following formula must be used to calculate the points for price in respect of tenders with a Rand value equal to, or above R 30 000 and up to a Rand value of R500 000 and which relate to the sale and letting of assets. Organs of State may, however, apply this formula for sales and letting of assets with a rand value less than R30 000, if and when appropriate:

$$P_s = 80 \left(1 + \frac{P_t - P_h}{P_h} \right)$$

Where

P_s = Points scored for price of tender under consideration

P_t = Rand value of tender under consideration

P_h = Rand value of highest acceptable tender

- (2) A maximum of 20 points may be awarded to a tenderer for being an HDI and / or subcontracting with an HDI and / or achieving any of the specified goals stipulated in regulation 17.
- (3) The points scored by a tenderer in respect of the goals contemplated in sub-regulation (2) must be added to the points scored for price.
- (4) Only the tender with the highest number of points scored may be selected.

The 90/10 preference point system for the sale and letting of assets

- 6.(1) The following formula must be used to calculate the points for price in respect of tenders with a Rand value above R500 000 and which relate to the sale and letting of assets:

$$P_s = 90 \left(1 + \frac{P_t - P_h}{P_h} \right)$$

Where

P_s = Points scored for price of tender under consideration
 P_t = Rand value of tender under consideration
 P_h = Rand value of highest acceptable tender

- (2) A maximum of 10 points may be awarded to a tenderer for being an HDI and / or subcontracting with an HDI and / or achieving any of the specified goals stipulated in regulation 17.
- (3) The points scored by a tenderer in respect of the goals contemplated in sub-regulation (2) must be added to the points scored for price.
- (4) Only the tender with the highest number of points scored may be selected.

Stipulation of preference point system to be used

7. An organ of state must, in the tender documents, stipulate the preference point system which will be applied in the adjudication of tenders.

Evaluation of tenders on functionality and price

- 8.(1) An organ of state must, in the tender documents, indicate if, in respect of a particular tender invitation, tenders will be evaluated on functionality and price.
- (2) The total combined points allowed for functionality and price may, in respect of tenders with an estimated Rand value equal to, or below, R500 000, not exceed 80 points.
- (3) The total combined points allowed for functionality and price may, in respect of tenders with an estimated Rand value above R500 000, not exceed 90 points.

- (4) When evaluating the tenders contemplated in this item, the points for functionality must be calculated for each individual tenderer.
- (5) The conditions of tender may stipulate that a tenderer must score a specified minimum number of points for functionality to qualify for further adjudication.
- (6) The points for price, in respect of a tender which has scored the specified number of points contemplated in sub-regulation (5) must, subject to the application of the evaluation system for functionality and price contemplated in this regulation, be established separately and be calculated in accordance with the provisions of regulations 3 and 4.
- (7) Preferences for being an HDI and / or subcontracting with an HDI and / or achieving specified goals must be calculated separately and must be added to the points scored for functionality and price.
- (8) Only the tender with the highest number of points scored may be selected.

Award of contract to tender not scoring the highest number of points

- 9. 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.

Cancellation and re-invitation of tenders

- 10.(1) In the event that, in the application of the 80/20 preference point system as stipulated in the tender documents, all tenders received exceed the estimated Rand value of R500 000, the tender invitation must be cancelled.
- (2) In the event that, in the application of the 90/10 preference point system as stipulated in the tender documents, all tenders received are equal to, or below R500 000, the tender must be cancelled.
- (3) An organ of state which has cancelled a tender invitation as contemplated in sub-regulations (1) and (2) must re-invite tenders and must, in the tender documents, stipulate the preference point system to be applied.

- (4) An organ of state may, prior to the award of a tender, cancel a tender if-
- (a) due to changed circumstances, there is no longer need for the goods or services tendered for; or
 - (b) funds are no longer available to cover the total envisaged expenditure; or
 - (c) no acceptable tenders are received.

PART THREE

DUTY TO PLAN, GENERAL CONDITIONS, PRINCIPLES, DECLARATIONS, PENALTIES, TAX CLEARANCES AND TENDER GOALS

Duty to plan for invitation of tenders

11. An organ of state must, prior to making an invitation for tenders-
- (a) properly plan for, and, as far as possible, accurately estimate the costs of, the provision of services or goods for which an invitation for tenders is to be made;
 - (b) determine the appropriate preference point system to be utilised in the evaluation of the tenders; and
 - (c) determine the deliverables or performance indicators in terms of which a person awarded a contract will be assessed.

General conditions

- 12.(1) An organ of state may, in the adjudication of tenders, give particular consideration to procuring locally manufactured products. Preferences in this regard may be accommodated within the ambit of the Act's 80/20 or 90/10 point systems. For specific industries (identified by the Department of Trade and Industry), where the award of tenders to local manufacturers are of critical importance, such tenders may be advertised with a specific tendering condition that only locally manufactured products will be considered.

Should preference points be awarded for local manufacturing and/or content, the award of such points must be clearly specified in the tendering conditions.

- (2) Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered for preference points.
- (3) An organ of state may, before a tender is adjudicated or at any time, require a tenderer to substantiate claims it has made with regard to preference.
- (4) An organ of state must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.
- (5) A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is effected.
- (6) In the event that different prices are tendered for different periods of a contract, the price for each period must be regarded as a firm price if it conforms to the definition of a "firm price".
- (7) Points scored must be rounded off to the nearest 2 decimals.
- (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.

Principles

- 13.(1) Preference points stipulated in respect of a tender must include preference points for equity ownership by HDIs.
- (2) The equity ownership contemplated in sub-regulation (1) must be equated to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company's shares that are owned by individuals, who are actively involved in the management of the enterprise or business and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of the tender.

- (3) In the event that the percentage of ownership contemplated in sub-regulation (2) changes after the closing date of the tender, the tenderer must notify the relevant organ of state and such tenderer will not be eligible for any preference points.
- (4) Preference points may not be claimed in respect of individuals who are not actively involved in the management of an enterprise or business and who do not exercise control over an enterprise or business commensurate with their degree of ownership.
- (5) Subject to sub-regulations (1), (2), (3) and (4), all claims made for equity ownership by an HDI must be considered according to the following criteria:
 - (a) Equity within private companies must be based on the percentage of equity ownership;
 - (b) Preference points may not be awarded to public companies and tertiary institutions;
 - (c) The following formula must be applied to calculate the number of points for equity ownership by an HDI:

$$NEP = NOP \times \frac{EP}{100}$$

Where

NEP = Points awarded for equity ownership by an HDI

NOP= The maximum number of points awarded for equity ownership by an HDI

EP = The percentage of equity ownership by an HDI within the enterprise or business, determined in accordance with sub-regulations (1), (2), (3) and (4).

- (6) Equity claims for a Trust may only be allowed in respect of those persons who are both trustees and beneficiaries and who are actively involved in the management of the Trust.
- (7) Documentation to substantiate the validity of the credentials of the trustees contemplated in sub-regulation (6) must be submitted to the relevant organ of state.

- (8) A Consortium or Joint Venture may, based on the percentage of the contract value managed or executed by their HDI members, be entitled to equity ownership in respect of an HDI.
- (9) The number of points scored for a Consortium or Joint Venture must be added to the number of points scored for achieving specified goals.
- (10) The points contemplated in sub-regulation (9) must be added to the points scored for price, in order to establish the total number of points scored.
- (11) Subject to regulations 9 and 10, the contract must be awarded to the tender which scores the highest points.
- (12) A person awarded a contract as a result of preference for contracting with, or providing equity ownership to, an HDI, may not subcontract more than 25% of the value of the contract to a person who is not an HDI or does not qualify for such preference.

Declarations

- 14. A tenderer must, in the stipulated manner, declare that-
 - (a) the information provided is true and correct;
 - (b) the signatory to the tender document is duly authorised; and
 - (c) documentary proof regarding any tendering issue will, when required, be submitted to the satisfaction of the relevant organ of state.

Penalties

- 15.(1)An organ of state must, upon detecting that a preference in terms of the Act and these regulations has been obtained on a fraudulent basis, or any specified goals are not attained in the performance of the contract, act against the person awarded the contract.
- (2)An organ of state may, in addition to any other remedy it may have against the person contemplated in sub-regulations (1)-
 - (a) recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;

- (b) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (c) impose a financial penalty more severe than the theoretical financial preference associated with the claim which was made in the tender; and
- (d) restrict the contractor, its shareholders and directors from obtaining business from any organ of state for a period not exceeding 10 years.

Tax clearance certificate

16. No contract may be awarded to a person who has failed to submit an original Tax Clearance Certificate from the South African Revenue Service ("SARS") certifying that the taxes of that person to be in order or that suitable arrangements have been made with SARS.

Specific goals

- 17.(1) The tendering conditions may stipulate that specific goals, as contemplated in section 2(1)(d)(ii) of the Act, be attained.
- (2) The stipulation contemplated in sub-regulations (1) must include the method to be used to calculate the points scored for achieving specific goals.
- (3) 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):
 - (a) The promotion of South African owned enterprises;
 - (b) The promotion of export orientated production to create jobs;
 - (c) The promotion of SMMEs;
 - (d) The creation of new jobs or the intensification of labour absorption;

- (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 in a specific municipal area for work to be done or services to be rendered in that municipal area;
 - (h) The promotion of enterprises located in rural areas;
 - (i) The empowerment of the work force by standardising the level of skill and knowledge of workers;
 - (j) The development of human resources, including by assisting in tertiary and other advanced training programmes, in line with key indicators such as percentage of wage bill spent on education and training and improvement of management skills; and
 - (k) The upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.
- (4) Specific goals must be measurable and quantifiable and organs of state must monitor the execution of the contract for compliance with such goals.

Short title

18. These regulations are called the Preferential Procurement Regulations, 2001.

**T A MANUEL, MP
MINISTER OF FINANCE**

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REPUBLIC OF SOUTH AFRICA

**PREFERENTIAL PROCUREMENT
POLICY FRAMEWORK ACT**

REPUBLIEK VAN SUID-AFRIKA

**WET OP DIE RAAMWERK VIR
VOORKEURVERKRYGINGSBELEID**

No , 2000

ACT

To give effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “acceptable tender” means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document; 5
 - (i) “Minister” means the Minister of Finance; (iii)
 - (iii) “organ of state” means—
 - (a) a national or provincial department as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999); 10
 - (b) a municipality as contemplated in the Constitution;
 - (c) a constitutional institution defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - (d) Parliament; 15
 - (e) a provincial legislature;
 - (f) any other institution or category of institutions included in the definition of “organ of state” in section 239 of the Constitution and recognised by the Minister by notice in the *Government Gazette* as an institution or category of institutions to which this Act applies; (iv) 20
 - (iv) “preferential procurement policy” means a procurement policy contemplated in section 217(2) of the Constitution; (vi)
 - (v) “prescribed” means prescribed by regulation made under section 5; (v)
 - (vi) “this Act” includes any regulations made under section 5. (ii)

Framework for implementation of preferential procurement policy 25

2. (1) An organ of state must determine its preferential procurement policy and implement it within the following framework:
- (a) A preference point system must be followed;
 - (b) (i) for contracts with a Rand value above a prescribed amount a maximum of 10 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 90 points for price; 30
 - (ii) for contracts with a Rand value equal to or below a prescribed amount a maximum of 20 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 80 points for price; 35
 - (c) any other acceptable tenders which are higher in price must score fewer

- points, on a *pro rata* basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with a prescribed formula;
- (d) the specific goals may include—
 - (i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability; 5
 - (ii) implementing the programmes of the Reconstruction and Development Programme as published in *Government Gazette* No. 16085 dated 23 November 1994;
 - (e) any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender; 10
 - (f) the contract must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to another tenderer; and
 - (g) any contract awarded on account of false information furnished by the tenderer in order to secure preference in terms of this Act, may be cancelled at the sole discretion of the organ of state without prejudice to any other remedies the organ of state may have. 15
- (2) Any goals contemplated in subsection 1(e) must be measurable, quantifiable and monitored for compliance.

Exemption 20

3. The Minister may, on request, exempt an organ of state from any or all the provisions of this Act if—
- (a) it is in the interests of national security;
 - (b) the likely tenderers are international suppliers; or
 - (c) it is in the public interest. 25

Transitional provision

4. Any procurement process implemented under a preferential procurement policy where the invitation to tender was advertised before the commencement of this Act, must be finalised as if this Act had not come into operation.

Regulations 30

5. (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.

Short title 35

6. This Act is called the Preferential Procurement Policy Framework Act, 2000.



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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

NATIONAL TREASURY

NO. 2721

4 November 2022

**PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000:
PREFERENTIAL PROCUREMENT REGULATIONS**

The Minister Finance has, in terms of section 5, read with section 2(1)(b)(i) and (ii) and 2(1)(c), of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), and with effect from 16 January 2023, made the regulations set out in the Schedule.

SCHEDULE**PREFERENTIAL PROCUREMENT REGULATIONS, 2022****Contents**

1. Definitions
2. Application
3. Identification of preference point system
4. 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million
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6. 80/20 preference points system for tenders to generate income or to dispose of or lease assets with Rand value equal to or below R50 million
7. 90/10 preference point system for tenders to generate income or to dispose of or lease assets with Rand value above R50 million
8. Criteria for breaking deadlock in scoring
9. Remedies
10. Repeal of regulations
11. Short title and commencement

Definitions

1. In these Regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act must bear the meaning so assigned—

“highest acceptable tender” means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders;

“lowest acceptable tender” means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders;

“price” means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

“Rand value” means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;

“specific goals” means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in *Government Gazette* No. 16085 dated 23 November 1994;

“tender” means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

“tender for income-generating contracts” means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and

“the Act” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

Application

2. These Regulations apply to organs of state as defined in section 1¹ of the Act.

Identification of preference point system

3.(1) An organ of state must, in the tender documents, stipulate—

- (a) the applicable preference point system as envisaged in regulations 4, 5, 6 or 7;
- (b) the specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.

(2) If it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
- (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system.

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

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

¹ Paragraph (f) of the definition of organ of state in section 1 of the Act includes any other institution or category of institutions included in the definition of “organ of state” in section 239 of the Constitution and recognised by the Minister by notice in the *Government Gazette* as an institution or category of institutions to which the Act applies. Government Notices—

(a) R. 501 of 8 June 2011 recognises, with effect from 7 December 2011, all public entities listed in Schedules 2 and 3 to the Public Finance Management Act, 1999; and

(b) R. 571 of 15 June 2017 recognises, with effect from 17 June 2017, national and provincial government components listed in Schedule 3 to the Public Service Act, 1994 and municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000, as institutions to which the Act applies.

Note should be taken of notices issued from time to time in terms of paragraph (f) of this definition. The application of these Regulations is also subject to applicable exemptions approved in terms of section 3 of the Act.

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

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

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

(2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

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

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

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

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

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

(2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million

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

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

(2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million

7.(1) The following formula must be used to calculate the points for price in respect of a tender for income-generating contracts, with a Rand value above R50 million, inclusive of all applicable taxes:

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender.

(2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

Criteria for breaking deadlock in scoring

8.(1) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for specific goals.

(2) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

Remedies

9.(1) If an organ of state is of the view that a tenderer submitted false information regarding a specific goal, it must—

- (a) inform the tenderer accordingly; and
- (b) give the tenderer an opportunity to make representations within 14 days as to why the tender may not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part.

(2) After considering the representations referred to in subregulation (1)(b), the organ of state may, if it concludes that such information is false—

- (a) disqualify the tenderer or terminate the contract in whole or in part; and
- (b) if applicable, claim damages from the tenderer.

Repeal of regulations

10.(1) Subject to this regulation, the Preferential Procurement Regulations, 2017 published in Government No. 40553 of 20 January 2017, are hereby repealed with effect from the date referred to in regulation 11.

(2) Any tender advertised before the date referred to in regulation 11 must be dealt with in terms of the Preferential Procurement Regulations, 2017.

Short title and commencement

11. These Regulations are called the Preferential Procurement Regulations, 2022 and take effect on 16 January 2023.

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