



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 BBBEEA.

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

“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 BBBEEA.

(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 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 above R2 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 above R2 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 above R20 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 above R2 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.