

# 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 or the Regulations shall bear the meaning so assigned —

**"Acceptable Tender"** means any tender which, in all respects, complies with the specification and conditions of tender as set out in tender document.

**"Act"** means the Preferential Procurement Policy Act, 2000 (Act No. 5 of 2000).

**"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.

**"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 the lowest price compared to other tenders;

**"Locality"** means the suppliers and/or service providers that has its place of business within the municipal area, or the district area where the municipality is located or the province where the municipality is located.

**"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

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

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

- 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.

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

**‘Regulations** means the Preferential Procurement Regulations, 2022

**“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 a Municipality 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;

## 2. INTRODUCTION

- 2.1 Section 217(1) of the Constitution requires that the public procurement system must be fair, equitable, transparent, competitive, and cost-

effective.

- 2.2 The only exception to the general rule in s 217(1) is that envisaged by ss 217(2) and (3) <sup>1</sup>.
- 2.3 Therefore, the only escape for Breede Valley Municipality from the reach of s 217(1) of the Constitution is to bring our Preferential Procurement Policy within ss (2) and (3) read with the Act<sup>2</sup>.
- 2.4 Section 217(2) and section 2(1)(d)(i) and (ii) of the Act allows our municipality to develop and implement a preferential procurement policy, to provide for categories of preference in the allocation of contracts and the protection and advancement of people disadvantaged by unfair discrimination.
- 2.5 Section 2(1)(d)(i) and (ii) of the Act, 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.
- 2.6 The Constitution further provides in sections 152 and 153 that local government must promote social and economic development and that the municipality must strive within its financial and administrative capacity, to achieve the objectives.
- 2.7 The Broad-Based Black Economic Empowerment Act, 2003 provides in section 10 (b) that every organ of state and public entity must apply any relevant code of good practice issued in terms of the Act in developing and implementing a preferential procurement policy.
- 2.8 Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994 as the basis for development in South Africa, and are 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

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<sup>1</sup> Airports Company South Africa SOC Ltd v Imperial Group Ltd and Others [2020] ZASCA 2; 2020 (4) SA 17 (SCA) para 64

<sup>2</sup> Afribus NPC v The Minister of Finance (Case no 1050/2019) [2020] ZASCA 140 para 39

### **3. APPLICATION OF THE POLICY**

- 3.1 This policy applies to all procurement of goods and services by the municipality with a value of R30,000 and above.
- 3.2 This policy does not apply to public auctions or any other sale or lease of assets where it is not practical to apply a system of preference.
- 3.3 This policy must be applied concurrently with other legislative prescripts and other policies that regulates the procurement of goods and services by the municipality.

### **4. OBJECTIVE OF THE POLICY**

- 4.1 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 paragraph 3.1 (a) (i) and (ii) will be implemented.

### **5. APPLICATION OF PREFERENCE POINT SYSTEM**

- 5.1 The Municipality shall, 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 Act and this policy.
- 5.2 If it is unclear whether the 80/20 or 90/10 preference point system applies—
  - (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.
- 5.3 Any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.
- 5.4 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.
- (i) may only score in terms of the 80/90-point formula for price; and
- (ii) scores 0 points for the relevant specific goals where the supplier or service provider did not stipulate locality.
- 5.5 The preference points scored by a tenderer must be added to the points scored for price.
- 5.6 The points scored must be rounded off to the nearest two decimal places.
- 5.7 The contract must be awarded to the tenderer scoring the highest preference points.

**6. 80/20 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES WITH RAND VALUE EQUAL TO OR BELOW R50 MILLION**

- 6.1 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 below 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.

- 6.2 A maximum of 20 points may be awarded to a tenderer for the specified goals for the tender.

- 6.3 The points scored for the specific goal must be added to the points scored for the price and the total must be rounded off to the nearest two decimal places.
- 6.4 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tendering scoring the highest points.

**7. 90/10 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES WITH RAND VALUE ABOVE R50 MILLION**

- 7.1 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-

- P<sub>s</sub> = Points scored for price of tender under consideration;
- P<sub>t</sub> = Price of tender under consideration; and
- P<sub>min</sub> = Price of lowest acceptable tender.

- 7.2 A maximum of 10 points may be awarded to a tenderer for the specified goals for the tender.
- 7.3 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.
- 7.4 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.



**8. 80/20 PREFERENCE POINTS SYSTEM FOR TENDERS TO FOR INCOME-GENERATING CONTRACTS WITH RAND VALUE EQUAL TO OR BELOW R50 MILLION**

8.1 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.

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

8.3 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.

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

**9. 90/10 PREFERENCE POINT SYSTEM FOR TENDERS FOR INCOME-GENERATING CONTRACTS WITH RAND VALUE ABOVE R50 MILLION**

9.1 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.

- 9.2 A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.
- 9.3 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.
- 9.4 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

## 10. SPECIFIC GOALS IN COMPLIANCE WITH SECTION 2(1)(d)(i) OF THE ACT / HDI GOALS / B-BBEE POINTS

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

10.2 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;
- (b) promotion of enterprises located in the municipal area (phased in approach to be applied for other RDP goals)

10.3 Regarding paragraph 10.2(a), a maximum of 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	10	5
2	9	4
3	8	3

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

- 10.5 A tenderer must submit proof of its BBEE status level contributor [scorecard].
- 10.6 A tenderer failing to submit proof of BBEE status level of contributor may only score in terms of the 80/90-point formula for price; and scores 0 points for BBEE status level of contributor.

## **11. SPECIFIC GOALS IN COMPLIANCE WITH SECTION 2(1)(d)(ii) OF THE ACT / LOCALITY**

- 11.1 Section 2(1)(d)(ii) of the act states that specific goals may include implementing the programmes of the Reconstruction and Development Programme (RDP) as published in Government Gazette No. 16085 dated 23 November 1994;
- 11.2 The programmes of the RDP (published in Government Gazette No. 16085 dated 23 November 1994) relevant to this municipality in the context of preferential procurement specific goals are:
- 11.2.1 The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;
  - 11.2.2 The promotion of enterprises located in a specific district for work to be done or services to be rendered in that district;
  - 11.2.3 The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered in that municipal area;
- 11.3 The specific RDP programmes for local government must further be applied in the context of sections 152 and 153 of the Constitution effective from 4 February 1997 read with section 23 of the Municipal Systems Act, 32 of 2000 that determines that the municipal administration must be structured to promote social and economic

development

#### **11.4 POINTS FOR SPECIFIC GOALS TO PROMOTE ECONOMIC DEVELOPMENT – ENTERPRISE LOCATED IN A PROVINCE, DISTRICT OR MUNICIPAL AREA / (HEREAFTER REFERRED TO AS LOCALITY)**

11.4.1 Each tender must specify in the invitation to tender that a **maximum of** 50% of the 20/10 points will be allocated to promote the specific goal of locality.

11.4.2 Only one of the points as set out below that best describes the enterprise's locality may be awarded if applicable.

<b>No</b>	<b>Requirement</b>	<b>Points for enterprises within Breede Valley municipal area</b>	<b>Points for enterprises within Cape Winelands District region</b>	<b>Points for enterprises within the Western Cape Province</b>
1	Procurement under the 80/20 preference points system where the enterprise head office or primary place of business is located	10	5	2
2	Procurement under the 90/10 preference points system where the enterprise head office or primary place of business is located in:	5	3	2

11.4.3 A enterprise that does not have a head office or a primary place of business in the Western Cape Province shall score 0 points for the specific goal of locality.

## **12. CRITERIA FOR BREAKING DEADLOCK IN SCORING**

- 12.1.1 Although Regulation 8 set some criteria for breaking the deadlock in scoring the further matters as set out in paragraph 12.1.2 to 12.1.3 shall further enhance the objective fairness in breaking the deadlock and thus shall apply in addition to those measures in regulation 8 before drawing a lot.
- 12.1.2 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.
- 12.1.3 If functionality is part of the evaluation process and two or more tenderers score equal total points and equal specific goal points the contract must be awarded to the tenderer that scored the highest points for functionality.
- 12.1.4 If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

## **13. AWARD OF CONTRACTS TO TENDERERS NOT SCORING THE HIGHEST POINTS**

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.

## **14. REMEDIES**

- 9.1 If a Municipality 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—
- 14.2 After considering the representations referred to in par 12 (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;

## **15. PERFORMANCE MANAGEMENT**

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.

## **16. REPORTING**

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.

## **17. REPEAL OF POLICY**

- 17.1 This Policy repeal all previous preferential procurement policies of the municipality in its entirety.
- 17.2 Any tender advertised before the date referred to in subsection 16 must be dealt with in terms of the Preferential Procurement Regulations, 2017.

## **18. SHORT TITLE AND COMMENCEMENT**

This Policy shall be called the Breede Valley Municipality Preferential Procurement Policy, 2022 and take effect on 24 January 2023.

