



PREFERENTIAL PROCUREMENT POLICY

2023/2024

Adopted by Council on 30 January 2024 by resolution item: A2

Implementation date: 1 February 2024

PREFERENTIAL PROCUREMENT

1. Where this policy does not provide for a matter regulated by the Preferential Procurement Regulations, 2022 the provisions of the regulations will prevail in respect of a “tender” as defined in the regulations.
2. The following procurement strategies are addressed in this Section:
 - (a) The application of a preference point system for the specified goals envisaged in Section 2(1)(d) and (e) of the PPPFA, through B-BBEE Contributors and locality.
 - (b) The unbundling of large projects, where appropriate, into smaller contracts to ensure that a spread of opportunities is made available to suppliers of various sizes.
 - (c) The use of functionality/quality, where appropriate, in procurement processes to ensure that goods supplied are fit for purpose, or that a minimum level of experience and competence in respect of suppliers is attained.
 - (d) The increase of employment opportunities by encouraging the use of labour-intensive technologies.
 - (e) Continue to redress the skewed employment and ownership patterns in the greater municipal area.
 - (f) Achieve the above by providing procurement and employment opportunities to B-BBEE- and SMME- enterprises and disadvantaged individuals and communities.
 - (g) Enable local- and socio-economic transformation objectives to be linked to fair, transparent, equitable, competitive, and cost-effective procurement practices that will encourage the entry of emerging business into the municipal area.
 - (h) The targeting of labour and/or enterprises from specific areas within the boundaries of the municipal area.
3. Preferential procurement is further enhanced by provisions aimed at improved access to information, simplification of documentation, reduced performance guarantee requirements, reduced retention, reduced payment cycles in accordance with this Policy and good governance.

Aim

4. The aim of this Policy is to give effect to, and to ensure compliance with, all applicable legislation and national directives in respect of preferential procurement and B-BBEE.

Performance Management

5. The level of B-BBEE contribution and localisation achieved by the Municipality through the application of this policy will be monitored in terms of the supply chain management performance management system.

Preferential Procurement System - Key Principles

6. The key principles of this system are:

- (a) the application of an 80/20 preference point system for procurement (competitive bids or quotations) with a Rand value of greater than R2 000 but less than or equal to R50 000 000;
- (b) the application of a 90/10 preference point system for procurement (competitive bids) with a Rand value greater than R50 000 000;
- (c) if it is unclear which preference point system will be applicable, 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;
- (d) that bids may be declared non-responsive if:
 - (i) they fail to meet any special condition of tender if stipulated in the bid documents;
 - (ii) they fail to meet objective criteria as prescribed by Section 2(1)(f) of the PPPFA; or
 - (iii) they fail to achieve a minimum qualifying score for functionality (quality) if indicated in the bid documents.

7. The preference point system shall be used in the evaluation of responsive bids for the purposes of determining preferred/recommended bidders, and for the adjudication thereof.

Planning and Stipulation of Preference Point System

8. Prior to embarking on any procurement process, the responsible end user must properly plan for, and, as far as possible, accurately estimate the cost of the goods, services or construction works for which bids are to be invited.
9. The Bid Specification Committee shall, immediately prior to advertising, determine the appropriate preference point system to be used in the evaluation and adjudication of bids, and shall ensure that such is clearly stipulated in the bid documentation.

Evaluation of Bids on Functionality (Quality)

10. Functionality (otherwise known as quality) may be included in the bid evaluation process as a qualifying (eligibility) criterion.
11. If a bid is to be evaluated on functionality, this must be clearly stated in the bid documentation.
12. The evaluation criteria for measuring functionality must be objective.
13. The following must be clearly stipulated in the bid document when evaluating bids on functionality the:
 - (a) evaluation criteria for measuring functionality;
 - (b) the points for each criterion and, if any, each sub-criterion; and
 - (c) the minimum qualifying score for functionality rounded off to the nearest two decimal places (if applicable).
14. The minimum qualifying score for functionality for a tender to be responsive must be determined separately for each tender. The norm for the minimum qualifying score for functionality shall be 60% of the total possible score. For more specialised or complex tenders the minimum score may, at the discretion of the Bid Specification Committee, be increased to up to 70% of the total possible score. The setting of a minimum score any higher than 70% of the total possible score must be motivated to, and approved by, the Manager: Supply Chain Management prior to use and must not be unreasonably restrictive.
15. If a bid fails to achieve the minimum qualifying score for functionality as indicated in the bid document, it must be regarded as non-responsive, and be rejected (not considered any further in the evaluation process).

16. Bids that have achieved the minimum score for functionality, and passed any other responsiveness tests, must be evaluated further in terms of the preference point system prescribed below.

Evaluation and Adjudication of Bids

17. An 80/20 preference point system is stipulated for bids with a Rand value of greater than R2 000, but less than or equal to R50 000 000, and a 90/10 preference point system of procurement with a Rand value of greater than R50 000 000. If it is unclear which preference point system will be applicable, 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.

18. This means that either 80 or 90 points, depending on the Rand value of the bid, will be awarded to the person who offers the lowest price, and proportionately fewer points are awarded to those with higher prices. Either 20 or 10 points are then available as preference points for goals envisaged in Section 2(1)(d) and (e) of the PPPFA.

19. Irrespective of the preference point system used, the following will be applicable:

- (a) Points for preference may be awarded to bidders having attained a B-BBEE status level of contributor and/or for goals envisaged in Section 2(1)(d) and (e) of the PPPFA.
- (b) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified but may only score points for price and must be awarded zero points for preference.
- (c) The points for preference scored by a bidder must be added to the points for price scored, to obtain the total number of adjudication points scored for each responsive bid. The points scored must be rounded off to the nearest two decimal places (if applicable).
- (d) Subject to Section 2(1)(f) of the PPPFA, the contract must be awarded to (and/or order placed with) the bidder that scores the highest total number of adjudication points.
- (e) If the price offered by a tenderer scoring the highest points is not market related, the Municipality may not award the contract to that tenderer, prior to:
 - (i) negotiating a market related price with the tenderer scoring the highest points or cancel the tender;
 - (ii) if the tenderer does not agree to a market related price, negotiate a market related price with the tenderer scoring the second highest points;

- (iii) if the tenderer scoring the second highest points does not agree to a market related price, negotiate a market related price with the tenderer scoring the third highest points; and
- (iv) apply the foregoing principles to all formal written price quotations subject to the approval of Manager: Supply Chain Management or his delegated official.

20. If a market-related price is not agreed as envisaged in Section 19(e), the Municipality must cancel the tender.

21. The criteria applicable to break any deadlock where tenderers score the equal number of points will be as follows:

- (a) The contract must be awarded to the tenderer that scored the highest points for B-BBEE.
- (b) If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preference points for B-BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.
- (c) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

22. The remedies for any breach detected for the submission of any false information by a bidder are as follows:

- (a) Inform the tenderer accordingly and 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.
- (b) After considering the representations, the municipality may, if it concludes that such information is false disqualify the tenderer or terminate the contract in whole or in part; and if applicable, claim damages from the tenderer.

Cancellation of Bids

23. The Municipality may cancel bids before the award of a bid as follows:

- (a) Due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
- (b) Funds are no longer available to cover the total envisaged expenditure;
- (c) No acceptable tender is received;

(d) There is a material irregularity in the tender process; or

(e) The validity period of the tender has lapsed.

24. The decision to cancel a tender invitation must be published in the same way the original tender invitation was advertised.

The Preference Point System for the Procurement (Acquisition) of Goods, Services or Construction Works

25. The following formula must be used to calculate the points out of 80 for price in respect of bids (including price quotations) with a Rand value of greater than R2 000 and up to a Rand value of R50 000 000 (all applicable taxes included):

$$P_s = 80 \frac{[1 - (P_t - P_{min})]}{P_{min}}$$

Where :

P_s = Points scored for price of the bid under consideration;

P_t = Price (corrected, if applicable, inclusive of VAT) of the bid under consideration;

and

P_{min} = Price (corrected, if applicable, inclusive of VAT) of lowest responsive bid.

26. The 90/10 Preference Point System for the Procurement (Acquisition) of Goods, Services or Construction Works with a Rand Value above R50 000 000. The following formula must be used to calculate the points for price in respect of bids with a Rand value above R50 000 000 (all applicable taxes included):

$$P_s = 90 \frac{[1 - (P_t - P_{min})]}{P_{min}}$$

Where :

P_s = Points scored for price of the bid under consideration;

P_t = Price (corrected, if applicable, inclusive of VAT) of the bid under consideration;

and

P_{min} = Price (corrected, if applicable, inclusive of VAT) of lowest responsive bid.

27. 80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million 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:

$$P_s = 80 \frac{[1 + (P_t - P_{max})]}{P_{max}}$$

a)

Where

Ps = Points scored for price of tender under consideration.

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender

28. A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
29. 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.
30. Subject to Section 2(1)(f) of the PPPFA, the contract must be awarded to the tenderer scoring the highest points.
31. 90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million. The following formula must be used to calculate the points for price in respect of a tender for in-come-generating contracts, with a Rand value above R50 million, inclusive of all applicable taxes:

$$Ps = 90 \frac{[1 + (Pt - Pmax)]}{Pmax}$$

Where :

Ps = Points scored for price of the bid under consideration;

Pt = Price (corrected, if applicable, inclusive of VAT) of the bid under consideration;
and

Pmax = Price (corrected, if applicable, inclusive of VAT) of lowest responsive bid.

32. A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.
33. 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.
34. Subject to Section 2(1)(f) of the PPPFA, the contract must be awarded to the tenderer scoring the highest points.
35. The tendering conditions will stipulate the specific goals, as contemplated in Section 2(1)(d)(ii) of the PPPFA, be attained.
36. 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) the promotion of enterprises located in the local area (phased in approach to be applied for other RDP goals)

37. In respect of Section 36(a), 50% of the 20/10 points will be allocated to promote B-BBEE and points will be allocated in terms of the B-BBEE scorecard as follows:

BBBEE Level	80/20	50%	90,/10	50%
1	20	10	10	5
2	18	9	9	4,5
3	14	7	6	3
4	12	6	5	2,5
5	8	4	4	2
6	6	3	3	1,5
7	4	2	2	1
8	2	1	1	0,5
Non-compliant	0	0	0	0

38. A tenderer must submit proof of its BBBEE status level contributor.

39. A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-

(a) may only score points for price; and

(b) scores 0 points for B-BBEE 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.

40. In respect of paragraph 36(b), 50% of the 20/10 points will be allocated to promote locality, and points will be allocated as follows:

Local area of supplier	Number of Points for Preference	
	80/20	90/10
Within the boundaries of the Swellendam municipality	10	5
Within the boundaries of the Overberg District	4	2
Within the boundaries of the Western Cape	2	1
Outside of the boundaries of the Western Cape	0	0

41. 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 PPPFA:

(a) may not be disqualified; and

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

42. The preference points scored by a tenderer must be added to the points scored for price.
43. The points scored must be rounded off to the nearest two decimal places.
44. The contract must be awarded to the tenderer scoring the highest points, subject to Section 2(1)(f) of the PPPFA.

Evidence of B-BBEE Status Level

45. To qualify for preference points in terms of this policy, bidders must submit documentary proof of their B-BBEE level of contribution in accordance with the applicable codes of good practise as specified in the tender documents.
46. The submission of such documentary proof must comply with the requirements of instructions in accordance with notices published by the Department of Trade and Industry in the Government Gazette.
47. Bidders who fail to submit the required documentary proof, or certified copies thereof, will be deemed to be non-compliant contributors.
48. Where specific sector charters have been gazetted in terms of the B-BBEE Act, bid documentation for procurement from within such sectors, may specify that only bidders verified, or who are Exempted Micro Enterprises or Qualifying Small Enterprises, in terms of the particular sector charter (or Code of Good Practice), will qualify for a preference. A status level of contributor in respect of generic Codes of Good Practice will not, in such circumstances, qualify for any preference.
49. Where no specific sector charter has been gazetted, the gazetted generic Codes of Good Practice will be applicable to all bidders to qualify for a preference.
50. For the purposes of transparency, bidders shall be required to indicate, in their bid submission, their B-BBEE status level of contribution.
51. Notwithstanding what is contained in the bid submission, preference points may be allocated during the bid evaluation process in accordance with the verified B-BBEE status level (or deemed status level) of contributor as at the closing date of the bid.

Conditions Relating to the Granting of Preferences

52. Bidders must, in the manner stipulated in the bid documentation, declare that:
 - (a) the information provided is true and correct;
 - (b) the signatory to the bid document is duly authorised; and

(c) documentary proof regarding any bidding issue will, when required, be submitted to the satisfaction of the Municipality.

53. Only bidders who have completed and signed the necessary declarations may be considered for the granting of preference points.
54. The Bid Evaluation Committee must, when calculating prices, consider any discounts which have been offered unconditionally.
55. A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is effected.
56. A trust, joint venture or co-operative will qualify for preference points for their B-BBEE status level of contributor as a legal entity, provided that the entity has submitted its verified B-BBEE status level certificate (or certified copy thereof) to the Municipality.
57. A trust or joint venture will qualify for preference points for their B-BBEE status level as an unincorporated entity, provided that the entity has submitted its consolidated B-BBEE scorecard as if it is a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid. The consolidated B-BBEE scorecard must be submitted in the form of a certificate issued by an accredited verification agency (or a certified copy thereof).
58. A bidder may not be awarded points for B-BBEE status level of contributor if the bid documents indicate that such a bidder intends sub-contracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
59. A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract. Compliance with this particular requirement must be monitored by the end user during the execution of the contract.
60. A person awarded a contract may only enter into a subcontracting arrangement with the approval of the Municipality.
61. If a service is required that can only be provided by tertiary institutions, such services may be procured through a bidding process from the identified tertiary institutions. The tertiary institutions must submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

62. If a service is required that can be provided by one or more public entities and enterprises from the private sector, the appointment of a supplier must be done by means of a competitive bidding process. Public entities must submit their B-BBEE status in terms of the specialized scorecard contained in the gazetted B-BBEE Codes of Good Practice.

Other Specific Goals

Unbundling Strategies

63. To encourage increased participation and the sustainable growth of the small business sector, the unbundling of larger projects into smaller, more manageable, contracts are encouraged.

64. Unbundling must however be considered in the context of:

- (a) economies of scale being lost;
- (b) abortive work becoming necessary;
- (c) additional demands (not only financial) being placed on the Municipality's resources; and
- (d) the risk of later phases not being completed because of budget cuts becoming necessary in the future.

65. Unbundling, and all its associated implications, must therefore be carefully considered at the planning stage of any project, and the budgets for, and design thereof, should be structured accordingly.

66. It is important to note that while it is the Municipality's policy to procure goods, services or construction works in the smallest practicable quantities, the practice of parcelling such procurement to avoid complying with the requirements of the different range of procurement processes described in this policy is not permitted.

67. Unbundling strategies can be afforded to the full spectrum of businesses, from those operating as labour only contractors to those operating as prime contractors. Some of these strategies can be summarised as follows:

- (a) Providing third-party management support to enterprises which are not capable of operating as prime contractors.
- (b) Providing training to new entrants.
- (c) Promoting learner-ships, internships, pupil-ships, etc.

- (d) Obligating main contractors or service providers to engage targeted enterprises in the performance of their contracts incorporating resource specifications.
- (e) Foster joint ventures that are formed between large businesses and targeted enterprises (*termed as Structured Joint Ventures*).
- (f) Encourage and involve funding institutions to assist small businesses with access to finance and negotiate for credit lines.
- (g) Encourage local manufacturing and procurement from small businesses within the municipal area.
- (h) Unbundling of big projects and identifying opportunities and areas/scope of works that can be carried out by emerging contractors bar those from the main assignment shall be pursued vigorously.

Increasing Employment Opportunities

- 68. One of the Municipality's key socio-economic objectives is to facilitate the creation of employment for the people within the municipal area.
- 69. Increasing employment opportunities through procurement may be achieved by specifying labour intensive technologies and/or methods of construction in the bid documents.
- 70. It is up to end users to thoroughly investigate the options available in the above regard, to evaluate the positive versus negative impact of any proposals, and to specify labour intensive technologies and/or methods where appropriate.
- 71. All labour earning less than a threshold wage, determined in accordance with National Guidelines, that is employed for the provision of services or construction works for the Municipality, shall be reported in the prescribed format, monthly, to the Municipal EPWP Unit.

Targeted Labour and/or Targeted Enterprises

- 72. The targeting of labour and/or enterprises from specific areas within the boundaries of the Municipal area may be achieved, where appropriate, by specifying in the bid documents, a minimum level of participation (a contract participation goal) that must be achieved in respect of targeted labour and/or targeted enterprises in the performance of the contract.
- 73. Specified contract participation goals must be measurable and achievable, and the performance in respect of which must be monitored by the end users during the execution of the contract.

74. Where a minimum contract participation goal has been specified in respect of targeted labour and/or enterprises, the supplier is obliged to meet that goal, and must be penalised if he or she does not.
75. Contract participation goals in respect of targeted labour and/or enterprises may not be introduced into the preference point system used for the evaluation of bids.

CSI – Corporate Social Investment

76. Corporate social investment (CSI) is defined as contributions (either employee time and/or resources) that bring benefits over and above those directly associated with the Municipal core business activities.
77. Depending on the principles of fairness and cost-effectiveness, the relevant commodity required, and the profile of the supply industry, the Municipality may require that specific CSI contributions are made in line with the Municipal Grant-in-Aid Policy.
78. The suppliers shall be expected to indicate or provide an outline of socio-economic projects to be implemented through its CSI in the Swellendam Municipal area. Proposed projects must be measurable with a specific focus on vulnerable groups. Bidders can suggest or explore the following socio-economic project practices for consideration:
- (a) On-the-job training and development of staff (learnerships), particularly for the unemployed or young people including the recruitment of long-term job seekers and handicapped people;
 - (b) Young women/mother's upliftment/leadership programme;
 - (c) Skills development initiatives (technical and soft skills) must be accredited with recognised institutions;
 - (d) Youth leadership and empowerment projects;
 - (e) Early childhood development;
 - (f) Projects can be in collaboration with local CBO's, NGO's and relevant institutions;
 - (g) Business skills and enterprise support including mentoring of local enterprises; and/or
 - (h) Development of Parks and open spaces.
79. It is specifically recorded that NO CSI financial contributions will be required or accepted.

80. The Municipality will adopt a uniform standard in acknowledging, monitoring and reporting on CSI contributions.

Remedies

Actions in Respect of Fraud

81. The Municipal Manager will act against a bidder or person awarded the contract upon detecting that the B-BBEE status level of contribution has been indicated or obtained on a fraudulent basis in terms of SCM Reg 38 relating to the Abuse of this Supply Chain Management System.

Actions in Regard to Non-performance

82. Contractual penalties will be applicable to breaches of the contractual conditions relating to preferential procurement that were found to be committed.

83. If a successful bidder sub-contracts a portion of the tender to another person without making such disclosure and obtaining approval from the Municipality, a penalty of up to 10% of the value of the contract will be imposed.

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