



PREFERENTIAL PROCUREMENT POLICY

2023/2024 FINANCIAL YEAR



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1. Definitions

(a) In this policy, unless the context indicates otherwise, any word or expression to which a meaning has been assigned must bear the meaning so assigned –

- **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- **“B-BBEE Status Level Contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- **“Black designated groups”** has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- **“Designated group”** means –
 - a) black designated groups;
 - b) black people;
 - c) women;
 - d) people with disabilities;
 - e) youth;
 - f) township enterprises;
 - g) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);
- **“Designated sector”** means a sector, sub-sector or industry, or product designated in terms of the Department of Trade, Industry and Competition;
- **“DTIC”** means the Department of Trade, Industry and Competition of the Republic of South Africa;
- **“EME”** means an exempted micro-enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- **“Functionality”** means the ability of a tender to provide goods or services in accordance with specifications as set out in the tender documents;
- **“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;
- **“Local enterprises”** refers to Local Economic Development, means social and economic development in relation to local business, products, manufacturing, residents and labour as contemplated by sections 152 and 153 of the Constitution read with the RDP as contemplated by section 2(1)(d)(ii) of the PPPFA and will apply within the following order of priority:
 - First priority is to target local business, products, manufacturing, residents and labour within the relevant beneficiary ward.
 - If (i) is impractical, second priority is to target local business, products, manufacturing, residents and labour within the relevant local municipal area.

- If (i) and (ii) is impractical, third priority is to target local business, products, manufacturing, residents and labour within the relevant district municipal area.
 - If (i), (ii) and (iii) is impractical, fourth priority is to target local business, products, manufacturing, residents and labour within the provincial area.
 - If (i), (ii), (iii) and (iv) is impractical, fifth priority is to target local business, products, manufacturing, residents and labour within the country.
- **“Lowest acceptable tender”** means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders;
 - **“MLM”** means Midvaal Local Municipality;
 - **“Midvaal Jurisdiction”** means the area over which the municipality governs as determined by the Municipal Demarcation Board, Municipal Demarcation Act, 1998 (Act No 27 of 1998);
 - **“People with disabilities”** has the same meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);
 - **“Price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
 - **“PPPFA”** means the Preferential Procurement Policy Framework Act (No.5 of 2000);
 - **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) 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;
 - **“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
 - **“Township”** means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;

- **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
- **“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 Preferential Procurement Policy Framework Act (No.5 of 2000) (Hereafter PPPFA) was enacted 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.

Section 2 (a) of The Black-based Economic Empowerment Act, No.53 of 2003, states that one of the goals of the Act is to promote economic transformation to enable meaningful participation of black people in the economy. This Policy gives rise to the National Legislation to advance section 217 of the Constitution.

The purpose of the PPPFA is to enhance the participation of historically disadvantaged Individuals (HDIs), local enterprises, youth-owned, women-owned, and small, medium and micro enterprises (SMMEs) in the public-sector procurement system. The intention of this policy is not to discriminate participation from any specific group but to give preference to the identified groups as per specific goals.

Local government is mandated, as per the White Paper on Reconstruction and Development (Notice No. 1954 OF 1994) to deliver basic services, extend local control, managing local economic development and redistributing public resources. Furthermore, local authorities must advocate for programmes and budgets that promote gender sensitivity. Local authorities can play a role in the implementation of affirmative action with the private sector through special criteria for local government contracts.

3. PURPOSE

- 1) The broad purpose of this Preferential Procurement Policy is to give effect to:
 - The validation of Midvaal Local Municipality’s (MLM) commitment to Preferential Procurement.
 - Ensure effective and efficient application of resources.
 - Promote accountability, transparency and fairness.
 - Create opportunities for local small, medium and micro enterprises.
 - Enhance quality of services.
 - Stimulate socio-economic development, especially within the MLM Area.
 - Contribute towards reduction of unemployment, especially within the MLM Area.
 - Broadening the tax base within the MLM Area.
 - Encourage linkages between small and large enterprises.
 - Promote skills transfer and training of the historically disadvantaged.

- Promote economic participation from designated groups through the advancement of specific goals.
 - Promote local economic development and SMME support and development.
- 2) To achieve this, empowerment goals have been set, which aim to redress the skewed distribution of wealth and therefore contribute to the alleviation of poverty, as well as increasing usage of local resources, stimulation of skills development and transfer, fast-tracking the growth and ensuring the sustainability of SMME's.

4. IDENTIFICATION OF PREFERENCE POINT SYSTEM

- 1) The municipality must include as part of its tender document or invitation (in the case of quotations), stipulate –
- a. the applicable preference point system as envisaged;
 - b. the specific goal for which points will be awarded, the number of points that will be awarded to each goal, and the required proof for claiming such goal(s) points.
- 2) If it is unclear whether to use the 80/20 or 90/10 preference point system, the municipality must, in the case of –
- a. any other invitation to tender, apply the 80/20 or 90/10 preference point system whereby the lowest acceptable tender will be used to determine the applicable preference point system.
 - b. an invitation for a tender that is income-generating, apply the 80/20 or 90/10 preference point system whereby the highest acceptable tender will be used to determine the applicable preference point system.

5. MIDVAAL LOCAL MUNICIPALITY'S EMPOWERMENT GOALS

- 1) MLM's empowerment goals are designed to alleviate unemployment within the Municipality's jurisdiction by advancing economic participation from:
- a) local enterprises;
 - b) designated groups consisting of at least 51% of ownership by:
 - i. youth;
 - ii. women;
 - iii. people with disabilities;
 - iv. black people;
 - c) township-based enterprises;
 - d) specific B-BBEE status level contributors;
 - e) EME or QSE with more than 51% of ownership held by:
 - i. youth;
 - ii. women;
 - iii. people with disabilities;
 - iv. black people;
 - f) designated sectors.

6. EVALUATION OF TENDERS ON FUNCTIONALITY

- 1) The tender documents must stipulate –
 - a. an objective criterion for evaluating and measuring functionality;
 - b. the points for each criterion and, if any, each sub-criterion; and
 - c. the minimum score to be achieved by a tenderer to be further evaluated.
- 2) The minimum qualifying score for functionality for a tender to be further considered must -
 - a. be determined separately for each tender;
 - b. be clear and not so low that it may jeopardise the quality of the required goods or services; or
 - c. unreasonably high and rigid.
- 3) Points scored for functionality must be rounded off to the nearest two decimal places.
- 4) A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender document is not an acceptable tender.
- 5) Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference points system.

7. 80/20 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES WITH A RAND VALUE EQUAL TO OR BELOW R50 MILLION

- 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:

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

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(s) as stipulated in 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) The contract must be awarded to the tenderer scoring the highest points as per Section (2) (1) (f) of the PPPFA, 2000.

8. 90/10 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES WITH A RAND VALUE ABOVE R50 MILLION

- 1) The following formula must be used to calculate the points out of 90 for price in respect of an invitation for 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_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(s) as stipulated in 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) The contract must be awarded to the tenderer scoring the highest points as per Section (2) (1) (f) of the PPPFA, 2000.

9. 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:

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

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{\max} = 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) The contract must be awarded to the tenderer scoring the highest points as per Section (2) (1) (f) of the PPPFA, 2000.

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

- 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) The contract must be awarded to the tenderer scoring the highest points as per Section (2) (1) (f) of the PPPFA, 2000.

11. B-BBEE STATUS LEVEL POINTS ALLOCATION

- 1) The municipality may apply one of the three options from the table below to allocate points eligible to a tenderer based on their B-BBEE status contributor, and then add other points claimed for specific goals, as may be determined:

Status Level Contributor	Maximum 20 Number of Points	Maximum 10 Number of Points	Maximum 5 Number of Points
1	20	10	5
2	18	8	4
3	16	6	3
4	12	5	2.5
5	8	4	2
6	6	3	1.5
7	4	2	1
8	1	1	0.5
Non-compliant contributor	0	0	0

- 2) A tenderer is only eligible to be allocated points if the submitted B-BBEE certificate is issued by the DTIC (The Department of Trade and Industry and Competition) through CIPC, or from an accredited institution registered with SANAS, or is a valid sworn affidavit, as issued by the DTIC.

12. SPECIFIC GOAL POINTS ALLOCATION

- 1) The municipality's preference point system may envisage specific goals to be achieved.
- 2) The determined specific goal(s) as stipulated in the invitation must clearly outline the number of points to be allocated for each goal, and also indicate the proof required for the claim.
- 3) The specific goals that may be considered by the municipality are expressed in section 5 of this policy.

13. CALCULATION OF PROCUREMENT POINTS

- 1) The procurement points to be scored by a tenderer will be calculated by taking the following into consideration:
 - a) the total points scored for price, in terms of clause 7,8, 9, or 10;
 - b) the applied B-BBEE criteria points, in terms of clause 11; and, or
 - c) any other identified specific goal points in terms of clause 12.
- 2) The total from 1(a-c) above must be rounded off to the nearest 2 decimals, and a tenderer scoring the highest procurement points will be awarded or recommended to be awarded the contract.

14. Commencement

This Policy takes effect from date of adoption by Council.