



SETSOTO LOCAL MUNICIPALITY

Preferential Procurement Policy

2024

ISSUED IN TERMS OF SECTIONS 152(1)(C) AND 217 OF THE CONSTITUTION READ WITH SECTION 2 OF THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 5 OF 2000 AND PREFERENTIAL PROCUREMENT REGULATIONS 2022

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DOCUMENT DEFINITION

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DEFINITIONS

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

- a) **“Black people / persons”** has the meaning assigned to it in section 1 of the BBBEEA.
- b) **“Disability or disabled”** 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.
- c) **“Locality”** means the local suppliers and/or service providers that reside within the Municipal area, within the district boundaries or provincial boundaries.
- d) **“Ownership or owned”** means the measurement of ownership as per Code 100 of the B-BBEE Codes.
- e) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- f) **“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.
- g) **“Proof of disability”** means an affidavit issued by a registered medical practitioner confirming that the person is disabled.
- h) **“Rand value”** means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;
- i) **“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;
- j) **“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;
- k) **“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 also excluding all sales of municipal services or facilities open to all members of public.
- l) **“The Act” or “Act”** means the Preferential Procurement Policy Act, 2000 (Act No. 5 of 2000).
- m) **“The Regulations or “regulations”** means the Preferential Procurement Regulations, 2022

PART 1. INTRODUCTION

- 1.1 The preferential procurement framework act, section 2(1) prescribes that each government institution must determine its own preferential procurement policy, within a framework upon which the institution will specify how the preferential points will be allocated when awarding bids and how it intends to use procurement as one of its enablers for economic development. The national treasury provided preferential procurement regulations 2022, issued on 4 November 2022, to provide minimum guidance and requirements for all government institutions, on the determination of their own preferential procurement policies.
- 1.2 This policy is aimed at assisting the government's program of redressing the historical imbalances through the application of the preferential points system and other incentive programs aimed at economic local economic development.

PART 2. APPLICATION OF THE POLICY

- 2.1 This policy applies to all procurement of goods, services, and infrastructure by the municipality with a value of R2,000 and above.
- 2.3 This policy must be applied concurrently with other legislative prescripts and other policies that regulates the procurement of goods and services by the municipality.

PART 3. PURPOSE AND OBJECTIVES

- 3.1. To give effect to the prescribed preference point system as set out in the Preferential Procurement Regulations, 2022 in which the municipality must add to this preference points system its 10 or 20 points for specific goals as set out in section 2(1)(d) (i) and (ii) of the Preferential Procurement Policy Framework Act 5 of 2000.
- 3.2 Furthermore, assist municipalities to adhere to the objects of 1994 RDP white paper issued 23 November 1994, and implement and achieve the objectives of the PPPFA through the following:
- 3.1.1. Validate the Municipality's commitment to local- and socio- economic development and preferential procurement.
- 3.1.2. Create opportunities for local small, medium, and micro enterprises [SMME].
- 3.1.3 Stimulate local- and socio-economic development.
- 3.1.4 Contribute towards reduction of unemployment, especially within the Municipal Area.
- 3.1.5 Broadening the tax base within the Municipal Area.
- 3.1.6 Promote skills transfer and training of the historically disadvantaged.

PART 4. POLICY STATEMENTS

4.1 Application

- 4.1.1 This policy is applicable to all tenders which the municipality will apply preference points when making the final award.
- 4.1.2 furthermore, this Policy will apply to all active industry sectors in the municipal area. It is accepted that through the population of reliable data, trends will be evident which will continuously require a review of the Policy to ensure its relevance of all active industry sectors.
- 4.1.3 This Policy must be read and applied jointly with the Municipality's SCM Policy and the PPPFA prescripts amended from time-to-time.
- 4.1.4 Construction tenders will also have to adhere to the policy requirements.
- 4.1.5 The principles of this policy, where possible, must apply to deviations as per SCMR 36, contracts procured from other organs of state as per SCMR 32 and transversal contracts.
- 4.1.6 The policy objectives should form part of the conditions of tender and RFQ's to be active and brought into life. The policy objectives should **not form part of the functionality criteria set out to determine the capability of the bidder.**

4.2 Targeting

- 4.2.1 Targeting will be regarded as a specific goal identified the Municipality and will be reflected in Part 6 to this Policy.
- 4.2.2 These targets will be determined prior to the invitation of tenders and reflected in the tender document and on any other tender information applicable.

PART 5. APPLICABLE POINTS SYSTEM

5.1 Application of preference point system

- 5.1.1 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.
- 5.1.2 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.

5.2 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million

5.2.1 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.

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

5.2.3 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.

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

5.3 90/10 preference point system for acquisition of goods or services with Rand value above R50 million

5.3.1 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_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

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

- 5.4 A maximum of 10 points may be awarded to a tenderer for the specified goals for the tender.
- 5.5 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..
- 5.6 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

5.6 80/20 preference points system for tenders to for income-generating contracts with Rand value equal to or below R50 million

- 5.6.1 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:

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

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.

- 5.6.2 A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
- 5.6.3 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.

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

5.7 90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million

5.7.1 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.

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

5.7.3 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.

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

PART 6. IDENTIFICATION AND APPLICATION OF POINTS SYSTEM

6.1 The Municipality must in line with section 2 of PPPFA and Regulations 4,5,6 and 7 of the PPR 2022 determine the applicable preference points system applicable in the tender document for quotations, competitive bids and multiple limited bids for the procurement of goods, services and works; the disposal assets or goods no longer required; and for income-generating contracts:

6.2 The 80/20 preference point system for contracts with a Rand value between the threshold R30 000 and less than or equal to R50,000,000 including all applicable taxes; or the 90/10 preference point system for contracts with a Rand value greater than R50,000,000 including all applicable taxes.

6.3 Where the municipality is uncertain of the rand value of the tender, it must indicate in the tender document that either 80/20 or 90/10 will apply, to avoid cancellation of tender thus delaying service delivery.

6.4 invitation for procurement contracts, that the lowest acceptable tender will be used to determine the applicable

6.5 preference point system; or for an invitation for disposal or income-generating contracts, that the highest acceptable tender will be used to determine the applicable preference point system.

6.6 The application of points system:

6.5.1 Section 2(1)(d)(i) of the Act, states that specific goals may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination based on:

- a) Race,
- b) Gender or
- c) Disability
- d) Youth
- e) Locality

Points for the specific goals for contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of Race

Black-owned and B-BBEE Status Level of Contributor	Number of points on 80/20 points system	Number of points on 90/10 points system	<u>Evidence to be submitted by the supplier to substantiate the points claimed/allocated per specific goal (NB: Any of the evidence indicated below per specific goal should be regarded as sufficient).</u>
100% Black-owned enterprise with a valid B-BBEE level 1 or affidavit	6	3	<ul style="list-style-type: none"> • Sworn affidavit signed by the EME or QSE representative and attested by a Commissioner of Oaths. • A certified copy of a BB-BEE certificate issued by the verification agency accredited by SANAS Proof of B-BBEE issued by DTIC
51% Black-owned enterprise with a valid B-BBEE level 2	4	2	
51% Black-owned enterprise with a valid B-BBEE level 3	2	1	
Less than 51% Black-owned enterprise irrespective of B-BBEE level	0	0	

Points for the specific goals for contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of Gender (Women)

Women-owned and B-BBEE Status Level of Contributor	Number of points on 80/20 points system	Number of points on 90/10 points system	Evidence to be submitted by the supplier to substantiate the points claimed/allocated per specific goal (NB: Any of the evidence indicated below per specific goal should be regarded as sufficient).
100% Women-owned enterprise with no B-BBEE certificate or with a Sworn Affidavit	4	2	<ul style="list-style-type: none"> Sworn affidavit signed by the EME or QSE representative and attested by a Commissioner of Oaths. A certified copy of a BB-BEE certificate issued by the verification agency accredited by SANAS Proof of B-BBEE issued by DTIC
51% Women-owned enterprise with a valid B-BBEE level 1	3	1	
51% Women-owned enterprise with a valid B-BBEE level 2	2	1	
51% Women-owned enterprise with a valid B-BBEE level 3	1	1	
Less than 51% Women-owned enterprise irrespective of B-BBEE level	0	0	

Points for the specific goals for contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of Disability

Black-owned and B-BBEE Status Level of Contributor	Number of points on 80/20 points system	Number of points on 90/10 points system	Evidence to be submitted by the supplier to substantiate the points claimed/allocated per specific goal (NB: Any of the evidence indicated below per specific goal should be regarded as sufficient).
100% Disabled-owned enterprise with no B-BBEE certificate but with proof of disability.	2	1	<ul style="list-style-type: none"> Sworn affidavit signed by the EME or QSE representative and attested by a Commissioner of Oaths.
51% Disabled-owned enterprise with a valid B-BBEE level 1	1	1	

51% Disabled-owned enterprise with a valid B-BBEE level 2	1	1	<ul style="list-style-type: none"> • A certified copy of a BB-BEE certificate issued by the verification agency accredited by SANAS Proof of B-BBEE issued by DTIC
51% Disabled-owned enterprise with a valid B-BBEE level 3	1	1	
Less than 51% Disabled-owned enterprise irrespective of B-BBEE level	0	0	

Points for the specific goals for contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of Youth (Age)

Youth	Number of points on 80/20 points system	Number of points on 90/10 points system	Evidence to be submitted by the supplier to substantiate the points claimed/allocated per specific goal (NB: Any of the evidence indicated below per specific goal should be regarded as sufficient).
Youth is defined as any south African citizen with the age between 18 and 35 years	4	2	<ul style="list-style-type: none"> • RSA identity document • Valid RSA driver's license issued by the relevant authority

Points for Specific Goals to Promote Economic Development – Enterprise Located in a Province, District or Municipal area / (Hereafter referred to as locality)

For Free State based companies, this specific goal is aligned to the districts they are situated in.			<ul style="list-style-type: none"> • Municipal Account • Lease agreement • Title deeds • Permission to occupy land signed by the traditional authority • A letter of confirmation of the address signed by the ward councillor
Suppliers situated in Thabo Mofutsanyane District	4	2	
Free State	2	1	
Other	0	0	

The Accounting Officer is at liberty, can change or determine the sub-criteria on the weighting indicated above based on the type of procurement at hand.

- 6.5.2 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;
- 6.5.3 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:
- a. The promotion of SMMEs;
 - b. The creation of new jobs or the intensification of labour absorption;
 - c. The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;
 - d. The promotion of enterprises located in a specific district for work to be done or services to be rendered in that district;
 - e. The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered in that municipal area;
- 6.5.4 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 in such a way to *inter alia* achieve the following objectives of local government:
- a. to promote social and economic development; and
 - b. to promote a safe and healthy environment;

PART 7. CRITERIA FOR BREAKING DEADLOCK IN SCORING

- 7.1 Although Regulation 8 set some criteria for breaking the deadlock in scoring the further matters as set out in paragraph 7.1.2 to 71.2 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.
- 7.2 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.
- 7.3 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.

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

PART 8. AWARDING OF CONTRACTS TO TENDERERS NOT SCORING THE HIGHEST POINTS

- 8.1 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.

PART 9. 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—
- 9.2 After considering the representations referred to in par 9.1 (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;
 - (iii) if the Municipality concludes that the tenderer must be restricted, restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years.
- 9.3 The Municipality must, within five working days—
- a) inform the National Treasury, in writing, of any action taken in terms of sub-regulation (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.

PART 10. ALIGNMENT WITH THE SUPPLY CHAIN MANAGEMENT POLICY

- 10.1 The Municipal SCM Policy will guide the relevant SCM activities required.
- 10.2 The specific goals achieved through the application of the Preferential Procurement Policy Framework Act, 5 of 2000 will be monitored in terms of the elements of the Supply Chain Management Policy.

PART 11. ADMINISTRATION OF POLICY

11.1 Responsibility

11.1.1 Responsibility for the implementation and administration of the Policy is delegated to the Accounting Officer, who will use the support from the SCM and LED Managers.

11.1.2. The Accounting Officer must ensure that each budget holder assumes responsibility for the implementation of the Policy within his/her area of responsibility and that such responsibility is included in his/her Performance Indicators, if so required.

11.2 LED

11.2.1. The Accounting Officer must ensure that the organisational design of the LED Office is appropriately structured, resourced, and capacitated.

11.2.2. The data captured by the SCM Unit will be analysed and reported on by the Manager: LED.

11.3 SCMU

11.3.1. The SCMU must maintain a database of requests and transactions to develop a trend-analysis and through such a process identify areas for efficiency and cost-effective improvements, e.g., minimising smaller purchases and maximising term contracts as well as determining strategies for universal commodities.

11.3.2. The data relevant to this Policy will be maintained by the SCM Unit as part of its contract register.

PART 12. REPORTING

12.1 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.

12.2 Any Tender advertised prior to commencement date of this policy (16 January 2023), must be dealt with in terms of Preferential Procurement Regulations 2017.

PART 13. REPEAL OF POLICY

13.1 This policy repeals all previous preferential procurement policies of the Municipality in their entirety.

PART 14: COMMENCEMENT AND SHORT TITLE

14.1 This Policy shall be called Setsoto local Municipal Preferential Procurement Policy, and take effect on 16 January 2023.