



Preferential Procurement Policy

Date of approval by Council: 30 March 2023

Council Resolution number: 148

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1. Definitions

In this policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

"Acceptable Tender"	mean any tender which, in all respects, complies with the specification and conditions of tender as set out in tender document
"the Act"	means the Preferential Procurement Policy Framework Act 2000 (Act No. 5 of 200)
"the municipality"	refers to Moqhaka Local Municipality
"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 lowest price compared to other tenders
"price"	means an amount of money tendered for goods or services, and 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;
"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.
"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.
"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.
“Proof of B-BBEE status level of contributor”	means: <ol style="list-style-type: none"> 1. the B-BBEE status level certificate issued by an authorised body or person. 2. a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or 3. any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act.
“Locality”/“Local Area”	means the local suppliers and/or service providers that resides within the Moghaka Local Municipality area, Fezile Dabi District, Free State Province or any other Province within the Republic of South Africa.
“SMME”	means small, medium and micro enterprises namely Exempted Micro Enterprises and Qualifying Small Enterprises
“Proof of locality”	Means: <ol style="list-style-type: none"> 1. a municipal account in the name of the bidder (not older than 90 days) 2. where bidder is a lessee, a valid signed lease agreement in the name of the bidder. 3. Where based in rural areas, an official letter from the local tribal authority; 4. A signed letter or valid invoice/statement of account from an estate agent may also be accepted. 5. if the municipal rates and taxes statement is in the Landlord's or Director's name an affidavit certified by the commissioner of oaths must be attached indicating that the company/enterprise is operating from the stated addressed, accompanied by their municipal rates and taxes statement. 6. Official letter from bank confirming business address of bidder.
“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;
“Youth”	Those individuals aged between 15 to 35 years. As defined in the National Youth Commission Act of 1996.
“RDP”	The Reconstruction and Development Programme (RDP), Government Gazette 16085 dated 23 November 1994.
“HDI”	Historically disadvantaged individuals.

Commented [TJ1]: Here I just sorted out the numbering

Commented [TJ2]: Please relook at the insertion and revise where in agreement.

Commented [TJ3]: SMME - please relook at the definition for SMME ie (small, medium, micro enterprises).

I think we should have two separate definitions for SMME and EME as the BBBEE codes of good practice has a separate definition for Exempt micro enterprises.

2. Introduction

2.1 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).

2.2 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.

2.3 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.

2.4 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.

2.4.1 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.

2.4.2 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.

2.4.3 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

3.1 The purpose of this policy is to:

- (i) Provide for categories of preference in awarding of tenders;
- (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.

3.2 The objectives to be achieved through this policy is to:

- (i) Promote Black-Based Black Economic Empowerment (B-BBEE) enterprises providing services and goods.
- (ii) Promote local enterprises located in the municipal area.
- (iii) Promote Small Medium and Micro Enterprises (SMME's)

4. Application of the Preference Point System

4.1 The Municipality will, in the tender documents, stipulate —

- (a) the preference point system applicable; and
- (b) the specific goals in the invitation to submit the tender; and
- (c) the number of points that will be awarded for each specific goals; as well as
- (d) the documents to be provided as proof to claim the points for the specific goal.

4.2 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. 80/20 preference point system for acquisition of goods or services with a Rand value equal to or below R50 million

5.1 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:

$$Ps = 80 \left(1 - \frac{(Pt - Pmin)}{Pmin} \right)$$

Where;

Ps = Points scored for price of tender under consideration.

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

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

5.3 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.

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

6. 90/10 preference point system for acquisition of goods or services with a Rand value above R50 million

6.1 The following formula must be used to calculate the points out of 90 for price in respect of an invitation for tender with a Rand value above R50 million, inclusive of all applicable taxes:

$$Ps = 90 \left(1 - \frac{(Pt - Pmin)}{Pmin} \right)$$

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 for the tender.

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

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

7. 80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million

7.1 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

7.2 A maximum of 20 points may be awarded to a tenderer for the specific goal specified 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. 90/10 preference point system for tenders for income-generating contracts with a Rand value above R50 million

8.1 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

8.2 A maximum of 10 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. Identification and Application of Points for Specific Goals

9.1 The tendering conditions will stipulate the specific goals, as contemplated in section 2(1)(d)(ii) of the Preferential Procurement Policy Framework 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) The Promotion of Black-Based Black Economic Empowerment (B-BBEE) enterprises;
- (b) the promotion of SMMEs located in the local area;
- (c) the promotion of enterprises owned by women; youth and disabled individuals.

Commented [TJ4]: disabled

9.3 Regarding paragraph 9.2 (a), if a portion of the 20/10 points is allocated to promote this goal, the following BBBEE status level of contributors should be used. The points per level will be determined in the tender specification document.

Commented [TJ5]: used

B-BBEE Status Level of Contributor
1
2
3
4
5
6
7
8
Non-compliant contributor

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

9.5 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 out of 80 or 90 for price; and
- b) scores 0 points out of 20 or 10 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.

9.6 Regarding paragraph 9.2 (b) if a portion of the 20/10 points is allocated to promote this goal, the following **locality** categories should be used. **The points must be allocated as per the table below, in an effort to promote local service providers.**

Locality of Supplier (Tick One)
Within the boundaries of Moqhaka Local Municipality
Within the boundaries of Fezile Dabi District
Within the boundaries of the Free State
Outside of the boundaries of the Free State

Commented [TJ6]: Change location to 'locality'

Commented [TJ7]: See proposed points allocation per table below. It is advised that point allocations for locality be stipulated at policy level than leaving them to the discretion of Specifications Committee.

Locality of supplier (Tick One)	Number of Points for Preference	
	80/20	90/10
Within the boundaries of Moqhaka Local Municipality	10	5
Within the boundaries of Fezile Dabi District	6	3
Within the boundaries of the Free State	4	2
Outside of the boundaries of the Free State	0	0

9.7 (i) A tenderer must submit their Municipal rates and taxes statement, which is not older than three (3) months (90 days);

(ii) or an official letter from the local tribal authority;

(iii) or valid (not expired at closing date) lease agreement which is in the name of the company and signed.

(iv) If the municipal rates and taxes statement is in the Landlord's or Director's name an affidavit certified by the commissioner of oaths must be attached indicating that the company/enterprise is operating from the stated address, accompanied by their municipal rates and taxes statement.

(v) A signed letter or valid invoice/statement of account from an estate agent may also be accepted.

9.8 Regarding paragraph 9.2 (c) for Youth Ownership of the company/enterprise, if a portion of the 20/10 points is allocated to promote this goal, the following ownership percentage categories should be used. **The points per percentage category will be determined in the tender specification document.**

Youth Ownership of Company (Youth is 35 years and younger)
81 – 100% Youth Owned
61 – 80% Youth Owned
41 – 60% Youth Owned
21 – 40% Youth Owned
1 – 20% Youth Owned
0% Youth Owned

9.9 A tenderer must submit a copy of their company registration and /or shareholder certificate as proof.

9.10 Any other specific goal where categories are not specifically determined in the policy, the points and proof documents will be determined in the tender specification document.

9.11 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.

- may only score in terms of the 80/90-point formula for price; and
- scores 0 points out of 10/5 of the relevant specific goals where the supplier or service provider did not stipulate.

9.12 The preference points scored by a tenderer must be added to the points scored for price.

9.13 The points scored must be rounded off to the nearest two decimal places.

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 equal total points in all respects, the award must be decided by the drawing of lots.

11. Remedies

11. 1 If the 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.

11.2 After considering the representations referred to in sub regulation (1)(b), the municipality may, if it concludes that such information is false—

- (a) disqualify the tenderer or terminate the contract in whole or in part; and
- (b) if applicable, claim damages from the tenderer.

12. Short title

This policy is called the Preferential Procurement Policy of Moqhaka Local Municipality.

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