



## **PREFERENTIAL PROCUREMENT POLICY**

Adopted by Council: 00/00/18 COUNCIL RESOLUTION DC 00/00/18



Garden Route District Municipality, the leading, enabling and inclusive district, characterised by equitable and sustainable development, high quality of life and equal opportunities for all.

In order to achieve its vision, the Garden Route District Council accepted the mission below. The Garden Route District Municipality as a category C local authority strives, to deliver on our mandate through:

- Unlocking resources for equitable, prosperous and sustainable development.
- Provide the platform for coordination of bulk infrastructure planning across the district.
- Provide strategic leadership towards inclusive / radical / rigorous socio-economic transformation to address social, economic and spatial injustice.
- Redress inequalities, access to ensure inclusive services, information and opportunities for all citizens of the district.
- Initiate funding mobilisation initiatives/ programmes to ensure financial sustainability.
- Coordinate and facilitate social development initiatives.

## **Foreword:**

### **Section 217 of the Constitution of the Republic of South Africa -**

1. *When an organ of state in the national, provincial or Local sphere of Government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.*
2. *Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for –*
  - a) *Categories of preference in allocation of contracts; and*
  - b) *The protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination*
3. *National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.*

### **Section 2 of Preferential Procurement Policy Act of 2000 –**

1. *An organ of state must determine its preferential procurement policy and implement it within the following framework:*
  - (a) *A preference point system must be followed*
  - (b)
    - i. *for contracts with a Rand value above a prescribed amount a maximum of 10 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 90 points for price*
    - ii. *For contracts with a Rand value equal to or below a prescribed amount a maximum of 20 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 80 points*
  - (c) *Any other acceptable tenders which are higher in prices must score fewer points, on pro rata basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with prescribed formula*
  - (d) *The specific goals may include –*
    - i. *Contracting with persons or categories of persons from designated sectors on the basis of race, gender or disability*
    - ii. *Implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994*
  - (e) *Any specific goal for which a point may be awarded must be clearly specified in the invitation to submit a tender*
  - (f) *The contract must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to another tenderer; and*
  - (g) *Any contract awarded on account of false information furnished by the tenderer in order to secure preference in terms of this Act, may be cancelled at the sole discretion of the organ of state without prejudice to any other remedies the organ of state may have.*

*(h) Any Goals contemplated in subsection (1)(e) must be measurable, quantifiable and monitored for compliance*

### **Exemption**

*The minister may, on request, exempt an organ of state from any or all the provisions of this Act if-*

- (a) It is in the interest of national security*
- (b) The likely tenderers are international suppliers; or*
- (c) It is in the public interest*

### **In Accordance with the Garden Route District Council's Supply Chain Management Policy, Section 3(4)**

*The desired outcome of the policy is to provide mechanism to ensure sound, sustainable and accountable Supply Chain Management with the Garden Route District Municipality while promoting the following Regional Economic and development objectives:*

- 1) to stimulate and promote local economic development in a targeted and focused manner as per Regional Economic Development Strategy and Regional Economic Policy;*
- 2) to promote resource efficiency and reduce the negative environmental impact of daily operations of the Garden Route District;*
- 3) to facilitate creation of employment and business opportunities for the people of the Garden Route District with particular reference to Preferential Procurement Policy Framework Act, 2000*
- 4) to promote the competitiveness of regional businesses within approved Regional Economic Development Strategy in line with relevant Framework Act;*

*In Accordance with the Garden Route District Council's Supply Chain Management Policy, section 35*

### **35. Proudly South African Campaign / Proudly Garden Route Campaign**

*(1)The municipality supports the **Proudly SA Campaign** local industries can provide such goods and services*

*(2) The district to develop and support Proudly Garden Route Brand and products with ,the aim to support the regional economic strategy and developing a vibrant economy within the Garden Route economic corridor.*

### **Conclusion:**

In order for council to realise its vision and mission, key strategies and policies must be put in place to translate the vision into a tangible reality.

Preferential procurement policy should be applied in within the ambit of to the Regional Economic and Development Strategy of the Garden Route Its application and implementation should be transparent, measurable, fulfil sector specific objectives of regional economic and development strategy for transformation and empowerment with an underlying premise of value for money.

Economic Development and Planning Department to partake in the process of setting targets for the organization with clear guidelines for their measurement.

## 1. Definitions

In this Policy, unless the context indicates otherwise, any word or expression to which a meaning have been assigned in the Act must bear the meaning so assigned-

<b>1.1 "Act"</b>	means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
<b>1.2. "B-BBEE"</b>	means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act
<b>1.3. "B-BBEE status level of contributor"</b>	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
<b>1.4. "black designated groups"</b>	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
<b>1.5. "black people"</b>	has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act
<b>1.6. "Broad-Based Black Economic Empowerment Act"</b>	means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)
<b>1.7. "Co-operative"</b>	means a co-operative registered in terms of Section 7 of the Co-operatives Act, 2005 (Act No. 14 of 2005)
<b>1.8. "designated group"</b>	<p><b>1.8.1.</b> black designated groups;</p> <p><b>1.8.2.</b> black people;</p> <p><b>1.8.3.</b> women;</p> <p><b>1.8.4.</b> people with disabilities;</p> <p><b>1.8.5.</b> small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996); or</p> <p><b>1.8.6.</b> emerging enterprises which are enterprises, owned, managed and controlled by people listed in 1.8.1 – 1.8.4, persons and which is overcoming business impediments arising from the legacy of apartheid;</p>
<b>1.9. "designated sector"</b>	means a sector, sub-sector or industry or product

	designated by the Department of Trade and Industry
<b>1.10. “EME”</b>	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
<b>1.11. “functionality”</b>	means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents
<b>1.13. “National Treasury”</b>	has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
<b>1.14. “people with disabilities”</b>	has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998)
<b>1.15. “price”</b>	includes all applicable taxes less all unconditional discounts
<b>1.16. “proof of B-BBEE status level of contributor</b>	<p><b>Means:</b></p> <p><b>1.16.1.</b>the B-BBEE status level certificate issued by an authorised body or person</p> <p><b>1.16.2.</b>a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or</p> <p><b>1.16.3.</b>any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act</p>
<b>1.17. “QSE”</b>	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
<b>1.18. “Rand value”</b>	means the total estimated value of a contract in Rand, calculated at the time of the tender invitation
<b>1.19. “rural area”</b>	<p>means-</p> <p><b>1.19.1.</b>a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or</p> <p><b>1.19.2.</b>an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system</p>

<b>1.20. “stipulated minimum threshold</b>	means the minimum threshold stipulated in terms of Department of Trade Industry and National Treasury
<b>1.22. “township”</b>	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
<b>1.23. “treasury”</b>	has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
<b>1.24. “youth”</b>	has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008)

## **2. Application, Objectives & General Requirements**

- 2.1.** This Policy complies with the framework of the PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000.
- 2.2.** This Policy applies to the Garden Route District Municipality and the objectives are to:
  - 2.2.1.** Provide clarity on the municipality’s approach to procurement, particularly with regards to requirements of preferential procurement;
  - 2.2.2.** Provide access to contracts for historical disadvantaged individuals;
  - 2.2.3.** Promote participation by SMMEs;
  - 2.2.4.** Promote capacity development and skills transfer;
  - 2.2.5.** Promote Local Economic Development and endeavour to use procurement as a means to boost the economy of the Garden Route Region
  - 2.2.6.** To redress inequalities of the past and promote broader inclusion of the previously marginalised into the mainstream of the formal economy with a targeted approach as per Local Economic Development Strategy
- 2.3.** General requirements
  - 2.3.1.** Any specific goal required for consideration in the bidding process must be clearly determined by the Bid Specification Committee and be defined in the bid documentation, taking into account prescriptions of the Construction Industry Development Board [CIDB] in respect of construction related contracts.
  - 2.3.2.** Outputs required will be quantified and will form part of the contractual arrangement upon awarding of the contract.

## **3. Identification of preference point system, objective criteria and sub-contracting**



**3.1. The Garden Route District Municipality must-**

**3.1.1. determine and stipulate in the tender documents-**

- (i) the preference point system applicable to the tender as envisaged in Section,5, 6,or 7 of the Garden Route District Municipality Preferential Procurement Policy
- (ii) 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;

**3.1.2. determine sub-contracting is applicable to the tender as envisaged in Section 9;**

Determine whether objective criteria are applicable to the tender as envisaged in section 10

**3.2.**

**4. Tenders to be evaluated on functionality**

**4.1.** The Municipality must state in the tender documents if the tender will be evaluated on functionality.

**4.2.** The evaluation criteria for measuring functionality must be objective.

**4.3.** The tender documents must specify-

**4.3.1.** the evaluation criteria for measuring functionality;

**4.3.2.** the points for each criteria and, if any, each sub-criterion; and

**4.3.3.** the minimum qualifying score for functionality.

**4.4.** The minimum qualifying score for functionality for a tender to be considered further-

**4.4.1.** must be determined separately for each tender; and

**4.4.2.** may not be so-

- (i) low that it may jeopardise the quality of the required goods or services;  
or

- (ii) high that it is unreasonably restrictive.

**4.5.** Points scored for functionality must be rounded off to the nearest two decimal places.

**4.6.** A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.

**4.7.** Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in Section 10.

**5. 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million**

- 5.1.** 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 above R30 000 and up to a Rand value of 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.** The following table must be used to calculate the score out of 20 for B-BBEE:

**B-BBEE Status Level of Contributor Number of Points**

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- 5.3.** A tenderer must submit proof of its B-BBEE status level of contributor.
- 5.4.** 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-
- 5.4.1.** may only score points out of 80 for price; and
- 5.4.2.** scores 0 points out of 20 for B-BBEE.

- 5.5. A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer 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 tenderer qualifies for, unless the intended sub-contractor is an EME that has the capability to execute the sub-contract.
- 5.6. The points scored by a tenderer for B-BBEE in terms of section 6.2 must be added to the points scored for price under sub-section (1).
- 5.7. The points scored must be rounded off to the nearest two decimal places.
- 5.8. Subject to sub-section 5.9 and section 10, the contract must be awarded to the tenderer scoring the highest points.
- 5.9. 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.
- 5.10. The Municipality may-
  - 5.10.1. negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
  - 5.10.2. if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
  - 5.10.3. 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 or cancel the tender.
- 5.11. If a market-related price is not agreed as envisaged in section 5.10.3, the Municipality must cancel the tender.

**6. 90/10 preference point system for acquisition of goods or services with 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 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.

**6.2.** The following table must be used to calculate the points out of 10 for B-BBEE:

**B-BBEE Status Level of Contributor Number of Points**

<b>B-BBEE Status Level of Contributor</b>	<b>Number of Points</b>
1	10
2	9
3	6
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

**6.3.** A tenderer must submit proof of its B-BBEE status level of contributor.

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

**6.4.1.** may only score points out of 90 for price; and

**6.4.2.** scores 0 points out of 10 for B-BBEE.

**6.5.** A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer 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 tenderer qualifies for, unless the intended sub-contractor is an EME that has the capability to execute the sub-contract.

**6.6.** The points scored by a tenderer for B-BBEE contribution in terms of Sub-Section (2) must be added to the points scored for price under Sub-Section (1).

- 6.7.** The points scored must be rounded off to the nearest two decimal places.
- 6.8.** Subject to sub-section (6.9) and section 10, the contract must be awarded to the tenderer scoring the highest points.
- 6.9.** 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.
- 6.10.** The Municipality may-
- 6.10.1.** negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
  - 6.10.2.** if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
  - 6.10.3.** 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 or cancel the tender.
- 6.11.** If a market-related price is not agreed as envisaged in section 6.10.3., the Municipality must cancel the tender.

## **7. Tenders to generate income or to dispose of or lease assets**

**8.1 Tenders that Generate income or to dispose of or lease assets with a rand value below R30 000, will be awarded to the bidder with the highest bid on offer**

**8.2 80/20 preference points system for tenders to generate income or to dispose of or lease assets with Rand value equal to or above R30 000 and up to Rand value of R50 million**

8.2.1 The following formula must be used to calculate the points for price in respect of a tender to generate income or to dispose of or lease assets, with a Rand value equal to, or above R 30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

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

$P_s$  = Points scored for price of tender under consideration;

$P_t$  = Price of tender under consideration; and

$P_{\max}$  = Price of highest acceptable tender.

8.2.2 A maximum of 20 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.

8.2.3 The points scored must be rounded off to the nearest 2 decimal places.

8.2.4 Subject to regulation 9, the contract must be awarded to the tenderer scoring the highest points.

**8.3 90/10 preference point system for tenders to generate income or to dispose of or lease assets with Rand value equal to or above R50 million**

**8.3.1** The following formula must be used to calculate the points for price in respect of a tender to generate income or to dispose of or lease assets, 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.

- 8.3.3 A maximum of 10 points may be awarded to a tenderer for the specified goals envisaged in section 2(1)(d) and (e) of the Act.
- 8.3.4 The points scored must be rounded off to the nearest 2 decimal places.
- 8.3.5 Subject to regulation 9, the contract must be awarded to the tenderer scoring the highest points.

## **8. Sub-contracting as condition of tender**

- 8.1.1.** If The Municipality applies sub-contracting, the Municipality must advertise the tender with a specific tendering condition that the successful tenderer must sub-contract in accordance with CIDB prescripts

## **9. Criteria for breaking deadlock in scoring**

- 9.1.** 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 B-BBEE.
- 9.2.** 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.
- 9.3.** If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

## **10. Award of contracts to tenderers not scoring highest points**

- 10.1.** 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.
- 10.2.** If Garden Route District Municipality intends to apply objective criteria in terms of section 2(1)(f) of the Act, the objective criteria should be stipulated in the tender documents.

## **11. Conditions**

- 11.1.** Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered.
- 11.2.** Garden Route District Municipality must, take into account any discounts which have been offered unconditionally when calculating comparative prices.
- 11.3.** A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is processed.
- 11.4.** Points scored must be rounded off to the nearest 2 decimals places.
- 11.5.** A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

## **12. Declarations**

- 12.1.** A tender must, in the manner stipulated in the document, declare that-
  - 12.1.1.** the information provided is true and correct;
  - 12.1.2.** the signatory to the tender document is duly authorised; and
  - 12.1.3.** documentary proof regarding any tendering issue will, when required, be submitted to the satisfaction of the Municipality.

## **13. Sub-contracting after award of tender**

- 13.1.** A person awarded a contract may only enter into a sub-contracting arrangement with the approval of the Municipality.
- 13.2.** A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 13.3.** 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.

## **14. Cancellation of tender**

- 14.1.** The Municipality may, before the award of a tender, cancel a tender invitation if-
  - 14.1.1.** due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
  - 14.1.2.** funds are no longer available to cover the total envisaged expenditure;
  - 14.1.3.** no acceptable tender is received; or
  - 14.1.4.** there is a material irregularity in the tender process.
- 14.2.** The decision to cancel a tender invitation in terms of Sub-Section (1) must be published on the Municipal Website, inform all tenderers that submitted their bids

### **14.3.**

## **15. Remedies**

**15.1.** Upon detecting that a tenderer submitted false information regarding its B-BBEE status level of contributor, or any other matter required in terms of the GRDM Preferential Procurement Policy which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any sub-contracting arrangements, the Municipality must-

**15.1.1.** inform the tenderer accordingly;

**15.1.2.** give the tenderer an opportunity to make representations within 14 days as to why-

- i. the tender submitted should 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;
- ii. if the successful tenderer sub-contracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
- iii. the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and

**15.1.3.** if it concludes, after considering the representations referred to in sub-section (1)(b), that-

(i) such false information was submitted by the tenderer-

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

(ii) the successful tenderer sub-contracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

**15.2.** The Municipality must-

**15.2.1.** inform the National Treasury, in writing, of any actions taken in terms of Sub-Section (1);

**15.2.2.** provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and

**15.2.3.** submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

## **16. Circulars and guidelines**

**16.1.** Garden Route District Municipality will only adopt Circulars, Guidelines and Advisory Notes in accordance to provisions of section 168(3)(a) of the MFMA,



through council approval. National Treasury may issue-

**16.1.1.** a circular to inform Municipality of any matter pertaining to these Regulations; or

**16.1.2.** a guideline to assist Municipality with the implementation of any provision of these Regulations.

## **17. Short title and commencement**

**17.1.** This Policy is called the Garden Route District Municipality Preferential Procurement Policy and took effect upon Council approval, May 2018, and should be reviewed annually.