



PREFERENTIAL PROCUREMENT POLICY

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

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 price must score fewer points, on a pro rata basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with the 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 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.*

Western Cape Provincial Treasury Circular Mun No. 1/2023

Garden Route District Municipality takes cognizance of the Constitutional Court outcomes that has resulted in the transition from Preferential Procurement Regulations 2017 to the Preferential Procurement Regulations 2022. We note the legalities implicit in the Preferential Procurement Regulations of 2022 and the risk inherent in Policy Formulation where it is not evidence led by reasonable empowerment impact assessment and any other supporting research.

The proposed policy is an evolving policy that will encompass a demand management process that is based on the Integrated Development Plan (IDP) and Local Economic Strategy (LED) of Garden Route District. The specific goals as envisaged in the Section 2(1)(d) & (e) of the Preferential Procurement Policy Act 5, will be aligned to the IDP and the LED Strategy Documents to ensure that specific goals realized through procurement spending of the municipality is a conduit to realizing the strategy of council for the Garden Route District.

In alignment to the guidance issued by The Western Cape Provincial Government through Treasury Circular Mun No. 1/2023, Garden Route District adopts a transitional process to allow council to develop its specific goals in alignment to the IDP and LED strategy. The interim policy is to ensure that the Municipality can execute its current projects as provided for in the approved budget for the 2022/23 financial year.

The preferential procurement goals contemplated in the Section 2(1)(d) of the PPPFA through the relevant B-BBEE score cards as specified in the Broad based Black Economic Empowerment Act, 2003 (B-BBEE Act) and codes of Good Practice, be accepted as supporting evidence to claim preference points (B-BBEE Level Contributor Certificate) or a sworn Affidavit for Exempt Micro Enterprises.

The B-BBEE score card is based upon the RDP goals and was specifically developed as a scientific measurement of these individual goals and issued by accredited to ensure credibility of the assessment. The B-BBEE score card amongst others gives effect to 6 RDP Goals.

- i. the promotion of South African Owned enterprises
- ii. the promotion of SMMEs
- iii. the creation of new Jobs or the intensification of Labor absorption
- iv. the empowerment of the work force by standardising the level of skill and knowledge of workers
- v. the development of human resources, including by assisting in tertiary and other advanced training programs, in line with key indicators such as percentage of wage bill spent on education and training and improvement of management skills.
- vi. the upliftment of communities through, but not limited to housing, transport, schools, infrastructure, donations, charity organisations.

The 2023/24 budget process and review of budget related policies will allow thorough engagement by council to give effect to specific goals set by council for implementation.

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1. Definitions

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

“National Treasury” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

“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; and

“The Act” means the Preferential Procurement Policy Act, 2000 (Act No. 5 of 2000).

“Black designated groups” has the meaning assigned to it in the codes of good practice issued in terms of section 9 (1) of the BBEEA.

“Black people” has the meaning assigned to it in section 1 of the BBEEA.

“Designated group” means black designated groups, black people, women, people with disabilities; or small enterprises as defined in section 1 of the National Small Enterprise Act, 1996

“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.

“EME” means.

(1) exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the BBEEA.

(2) an entity with an annual turnover of R10 000 00.000 (ten million Rand) or less

“Historically disadvantaged individual (HDI)” means a South African citizen –

(1) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983); and / or

(2) who is a female; and / or

(3) who has a disability:

Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI.

“B-BBEE status level of contributor” means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in term of section 9(1) of the Broad-Based Black Economic Empowerment Act.

“Acceptable Tender” mean any tender which, in all respects, complies with the specification and conditions of tender as set out in tender document;

“Highest acceptable tender” means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other acceptable tenders;

“Lowest acceptable tender” means a tender that complies with all specifications and conditions of tender and that has the lowest price compared to other acceptable tenders;

“Market Analysis” means a technique used to identify market characteristics for specific goods or services.

“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.16805 dated 23 November 1994;

“tender” means a written offer in the form determined by an organ of state in response to an invitation provide goods or services through Informal Tenders, competitive tendering process or any other tendering 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 agreements between the organ of state and a third party that produces revenue for the organ of state, and includes, but not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions

“Qualifying Small Enterprise (QSE)” means a qualifying small business enterprise in terms of the code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act

“Region” means the Garden Route District Municipality.

“Rural area” means-

- 1) a separately populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or
- 2) an area including a large settlement which depends on migratory labor and remittances and government social grants for survival and may have a traditional land tenure system.

“SMME” means small, medium and micro enterprises namely Exempted Micro Enterprises and Qualifying Small Enterprises.

“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 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).

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.

The Broad-Based Black Economic Empowerment Act, 2003 requires: “ (1) Every organ of state and public entity must apply any relevant code of good practice issued in terms of this Act in (b) developing and implementing a preferential procurement policy.

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.

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 16805, 23 November 1994.

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.

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 favor 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 labor 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

- a) The purpose of this policy is to:
 - i. To give effect to section 217(1) and (2) of the Constitution of the Republic of South Africa
 - ii. To give effect to the Preferential Procurement Policy Framework Act of 2000 in establishing Garden Route District Municipality's preferential procurement policy
- b) Objective
 - i. To give effect to the Preferential procurement Regulations, 2022, through adoption of Preferential Procurement Policy of Garden Route District Municipality as adopted by council.

Section 2 of the Preferential Procurement Policy states that *"an organ of state must determine its preferential procurement policy and implement it within the following framework:"*

Regulation 3(3) of the Municipal Supply Chain Management Regulations states *"When preparing or amending its supply chain management policy, a municipality or municipal entity must take into account of the need for uniformity in supply chain management practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management system for small businesses."*

This policy strives to ensure that the objectives for uniformity in the supply chain management systems between Municipalities/Municipal entities, is not undermined and that consistency with the SCM and LED policies in line with sections 152(1)(c) and 152(2).

4. Application and Identification of preference point system

- 4.1 The Garden Route District Municipality will, in the tender documents, stipulate —
 - (a) the preference point system applicable as envisaged in regulations 4, 5, 6 or 7.
 - (b) the specific goal in the invitation tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of claim for such a goal, as envisaged in section 2(1)(d) and (e) of the Preferential Procurement Policy, Act 5 of 2000
- 4.2 If it is unclear whether the 80/20 or 90/10 preference point system applies—
 - (a) in the case of a tender income-generating contracts, either the 80/20 or the 90/10 preference pint system will apply, and the highest acceptable tender will be used to determine the applicable preference point system: or

(b) in 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. Points for Price: 80/20 preference point system for acquisition of goods or services with 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:

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

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

5.3 The points scored for the specific goal(s) 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 Preferential Procurement Policy, Act 5 of 2000, the contract must be awarded to the tenderer scoring the highest points.

6. Points for price: 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 90 for price in respect of an invitation for 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-

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 specific goals for the specified for the tender.

6.3 The points scored for the specific goal(s) 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 Preferential Procurement Policy, Act 5 of 2000, the contract must be awarded to the tenderer scoring the highest points.

7. 80/20 preference points system for tenders for income-generate 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(s) 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 Preferential Procurement Policy, Act 5 of 200, 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 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 goals specified for the tender.

8.3 The points scored for the specific goal(s) 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 Preferential Procurement Policy, Act 5 of 2000, the contract must be awarded to the tenderer scoring the highest points.

9. Specified contract participation goals.

9.1 Every invitation for a tender will stipulate the specific goals to which preference points (10 or 20) will be allocated, as contemplated in section 2(1)(d)(ii) of the Preferential Procurement Act, be attained.

9.2 To align procurement to the Growth and Development Strategy of Council, preferential procurement policy will address the Reconstruction and Development Goal of growing the regional and local economy through preference point allocation. Preference Points allocation will be allocated as per 9.3 below, allocating preference to B-BBEE level contribution and Locality. The objective of the goal is to grow the regional economy of the district by procuring from business entities in the region.

9.3 Preference points allocations:

- a. A maximum of 10 points B-BBEE Scorecard and a maximum of 10 for locality in a (80/20 preference points system),
- b. Maximum of 5 points B-BBEE Scorecard and a maximum of 5 for locality in a (90/10 preference points system), will be allocated as tabled below:

9.3.1 B-BBEE Points

B-BBEE Status Level of Contributor	Number of Points for Preference (80/20)	Number of Points for Preference (90/10)
1	10	5
2	9	4.5
3	7	3
4	6	2.5
5	4	2
6	3	1.5
7	2	1
8	1	0.5
Non-compliant contributor	0	0

9.3.2 Preference Points for Locality

Locality	Number of points for Preference (80/20)	Number of Points for Preference (90/10)
Supplier / Service provider located within Garden Route District	10	5
Supplier / Service Provider located within Western Cape Province	5	2.5
Supplier / Service Provider located within South Africa but outside the Western Cape Province	0	0

9.4 A tenderer must submit proof of its BBBEE status level contributor certificate; a tenderer failing to submit proof of BBBEE status level of contributor –

- a) may only score in terms of the 80/90-point formula for price; and
- b) scores 0 points out of 10 or 20 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.

9.5A Tenderer must submit a Municipal Account for their primary business location or valid lease agreement, as per address indicated in the bid document, to claim preference points for locality

9.6 Failure to submit a valid Municipal Account or Lease agreement will result in 0 preference point allocation for locality

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. Award of contracts to tenderers not scoring highest points

A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of 13 the Act.

12 Remedies

12.1.1 Upon detecting that a tenderer submitted false information regarding specific goals, or any other matter required in terms of this policy which will affect or has affected the evaluation of a tender, the Garden Route District Municipality will affect the following:

- (a) inform the tenderer; accordingly, and
- (b) give the tenderer an opportunity to make a representation 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: and

12.2 After considering the representations referred to in par 12(1)(1)(b), council may, if it concludes such information to be false:

- (i) disqualify the tenderer or terminate the contract in whole or in part; and
- (ii) if applicable, claim damages from the tenderer.
- (iii) Follow the National Treasury Debarment guidelines.

13 Policy Review

Accounting Officer to effect Policy review:

- a) Annual review together with all other budget related policies.
- b) When required due to the changes in Legislation, regulations, adoption of National Treasury or Provincial Treasury Circulars

14 Joint Venture and Consortiums - Preference points

14.1. B-BBEE Preference Points

- i. Joint Ventures and Consortiums must submit a consolidated B-BBEE level contribution certificate in the name of the joint venture or the consortium to be able to claim B-BBEE preference points
- ii. In the absence of a consolidated B-BBEE certificate, the Joint Venture and Consortium may not be awarded B-BBEE preference points

14.2. Locality Preference Points

- i. Joint Ventures or Consortiums to claim preference points for locality within;
- ii. Garden Route Region - All members of the Joint Venture or Consortium must reside in Garden Route to be able to claim preference points. If one or more members of the Joint venture or Consortium is not based in the Garden Route, the bidding entity can not claim any preference points for locality in the Garden Route District
- iii. Western Cape Province: All members of the Joint Venture or Consortium must be based in the Western Cape Province to be eligible to claim preference for locality. If one or more members of

the consortium is not based in the Western Cape Province, the bidding entity may not claim points for locality in the Western Cape.