



PREFERENTIAL PROCUREMENT POLICY

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

NATIONAL TREASURY

NO. 2721

4 November 2022

PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000:
PREFERENTIAL PROCUREMENT REGULATIONS

The Minister Finance has, in terms of section 5, read with section 2(1)(b)(i) and (j) and 2(1)(c), of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), and with effect from 18 January 2023, made the regulations set out in the Schedule.

SCHEDULE

PREFERENTIAL PROCUREMENT REGULATIONS, 2022

Contents

1. Definitions
2. Application
3. Identification of preference point system
4. 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million
5. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million
6. 80/20 preference points system for tenders to generate income or to dispose of or lease assets with Rand value equal to or below R50 million
7. 90/10 preference point system for tenders to generate income or to dispose of or lease assets with Rand value above R50 million
8. Criteria for breaking deadlock in scoring
9. Remedies
10. Repeal of regulations
11. Short title and commencement

Definitions

1. In these Regulations, 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—
"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;

1. FOREWORD

- 1.1. State expenditure is recognized as an instrument of government policy to achieve economic, socio-economic and development objectives.
- 1.2. Procurement can be applied as an instrument of secondary redistribution to alter primary income distribution and to address historic imbalances by means of creating employment and business opportunities for historically disadvantaged groups in the South African society.
- 1.3. Preferential Procurement is recognized as a valid instrument for such social reform.
- 1.4. It is recognized that preferential procurement cannot be applied without cost and that such cost should be subject to the Municipal Budget and the prioritization processes applicable to all Municipal expenditure.
- 1.5. It is the intention, that once appropriate data and trends-analysis are available. The that preferential procurement shall be applied to the procurement of all goods or services more than R 30 000. For In the 2019/20 2020/21 financial year, where applicable. this Policy will apply to all tenders in excess of R 200 000 for which formal tenders are invited.
- 1.6. Ultimately, preferential procurement could go some way to providing a springboard to encourage redistribution and reducing economic concentration, which in turn would foster competition and promote effective and appropriate resource allocation.
- 1.7. The uMgungundlovu Economic Development Agency Preferential Procurement Policy will be reviewed on an annual basis or when new census data is available.

2. PREAMBLE

- 2.1. The Constitution of the Republic of South Africa, 1996 in section 217 requires an organ of state to contract for goods or services in accordance with a procurement system which is fair, equitable, transparent, competitive and cost effective and to grant preferences within a framework prescribed by National Legislation.
- 2.2. A National Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)-[PPPFA] was promulgated in response to the Constitutional provision and allow for an organ of state to develop a preferential procurement policy and to implement such policy within the PPPFA framework.
- 2.3. uMgungundlovu Economic Development Agency aims to improve the quality of life of the local community and to free the potential of each person within a framework of facilitating service delivery, through effective governance and the Board takes into account the need for transparent procedures that give the effect to the principle of preferential procurement.
- 2.4. Local Economic Development (LED) plays a crucial role in creating a prosperous, equitable, stable and democratic society and the overall national vision of economic development is one of decent work and living standards for all in the context of qualitative improved equality in ownership, skills and access to opportunities.

3. DEFINITIONS AND APPLICATION

The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings in this Guideline, namely –

“Bid” means a written offer, in the form determined by instruction, in response to an invitation for the procurement of goods or services or other form of procurement through a price quotation, a competitive bidding process, a limited bidding process or any other method envisaged in the Act;

“Bidder” means any person/enterprise which has submitted a Bid;

“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.

“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;

“National Treasury” means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“People with disabilities” In terms of the Code of Good Practice on the Employment of Persons with disabilities: it is persons who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into, or advancement in employment.

“Price” mean **“Rand value”** means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;

“SMMs” means small businesses; as defined in section 1 of the National Small Business Act, 1996 (Act No 102 of 1996) a separate and distinct business entity, including co-operative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub sector of the economy mentioned in Column I of the Schedule and which can be classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria 40 mentioned in columns 3; 4 and 5 of the Schedule opposite the smallest relevant size or class as mentioned in column 2 of the Schedule.

“Specific goals” means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of

programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994;

"Tender" means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

"Tender for income-generating contracts" means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

"The Act" means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

"Youth" means persons between the ages of 14 and 35 as the National Youth Development Agency Act 54 of 2008.

4. LEGISLATIVE FRAMEWORK

- 4.1. Section 217(1) of the Constitution, 1996 (Act 108 of 1996) provides that when contracting for goods and services, The municipality must do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective.
- 4.2. Section 217(2) and (3) of the Constitution allows The Agency to grant preferences when procuring for goods and services within a Framework prescribed by National legislation.
- 4.3. The MFMA aims to regulate financial management and Supply Chain Management [SCM] of local government to ensure that all revenue, expenditure, assets and liabilities are managed efficiently and effectively.
- 4.4. Sections 110 – 119 of the MFMA deals with SCM requirements and must be read together with the SCM TR's 1 – 52 issued in terms of section 168 of the MFMA through GG 27636 effective from 30 May 2005. Both these sets of prescripts support the application of the PPPFA.
- 4.5. The PPPFA, 2000 took effect on 3 February 2000. The main thrust of the PPPFA, 2000 is that an organ of state must determine its preferential procurement policy and implement such within the preferential procurement framework, the latter which is commonly called the '80/20 or 90/10 principle'.
- 4.6. The National Treasury, in consultation with the Department of Trade and Industry, reviewed the Regulations issued in terms of the PPPFA, in 2011, and issued new Regulations that become effective on 1 April 2017.
- 4.7. The other relevant legislation and prescripts are discussed in the SCM PPOS and can be obtained from the Office of the CFO.

5. PRINCIPLES

5.1. The principles that underpin this policy are as follows:

- Sound commercial principles will underlie all transactions. There will be no compromise on quality, service delivery or any other commercial aspects related to the delivery of business objectives.
- All preferential procurement processes will be transparent and subjected to audit in accordance with sound business principles and practices.
- uMgungundlovu Economic Development Agency will only conduct business with service providers that comply with legal requirements (registered with SARS; municipal taxes are not in arrears for more than three months; restricted suppliers; suppliers in the employ of the State, etc.)

5.2. The Policy is founded upon the following core principles:

5.2.1. Value for money

Price alone is often not a reliable indicator, and the AO will not necessarily obtain the best value for money by accepting the lowest price offer that meets mandatory requirements. Best value for money means the best available outcome when all relevant costs and benefits over the procurement cycle are considered.

5.2.2. Open and effective competition

All procurement laws, policies, practices and procedures must be readily accessible to all parties involved in the procurement process. The procurement process must be open and transparent, and reasons must be provided for decisions in terms of current legislation.

5.2.3. Ethics and fair dealing

All procurement officials must comply with the municipal ethical standards to promote mutual trust and respect and an environment where business can be conducted in a fair and reasonable manner. The following is regarded as an acceptable ethical behaviour:

- Open, honest and co-operative business relations.
- Confidentiality of commercial information.
- Avoidance of conflict of interest or a perception of bias.
- Disclosure of conflict of interest as soon as they arise.
- Fair dealing and impartiality in the conduct of tender evaluations.
- Avoidance of combative or collusive practices.

5.2.4. Accountability and reporting

Procurement officials and other officials involved in SCM must be answerable for their decisions and actions to the public.

5.2.5. Equity

uMgungundlovu Economic Development Agency will at all times strive to enhance the development of SMME's and B-BBEE enterprises to allow them to contribute meaningfully in the economy of the uMgungundlovu District Area.

6. POLICY STATEMENTS

6.1. Application

6.1.1. This Policy will apply to all active industry sectors in the UMDM 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.

6.1.2. This Policy must be read with the uMgungundlovu Economic Development Agency's SCM Policy, Standard Operating Procedures (SOP), and the PPPFA prescripts amended from time-to-time.

6.1.3. Constructions tenders will also have to adhere to the requirements of the CIDB.

6.1.4. The principles of this policy, where possible, must apply to deviations, sharing of contracts with other agencies, municipality and transversal contracts.

6.2. Uniformity and simplification

6.2.1. Tender documents will be rationalised and simplified.

6.2.2. Tender documents will include all certificates, declarations and preference requirements.

6.2.3. Where possible standardised contract templates will form part of tender documents.

7. PREFERENCE TARGETS IDENTIFIED

7.1. Preference Goal 1

Ownership as specific goal

A maximum of 20 points (80/20 preference points system) or 10 (90/10) preference points system), may be allocated. Bidder may score preference points based on company ownership. If an organ of state applies ownership as specific goal, the organ of state must advertise the tender with a specific tendering preferential procurement requirements that in order for a tenderer to claim 10 / 20 points for specific goals, a tendering company must have the following ownership:

- race, (HDP) or
- gender (HDP) or;
- disability (HDP);

Ownership verification may be conducted through the Companies and Intellectual Property Commission (CIPC).

7.2. Preference Goal 2

RDP Goals

Over and above the awarding of preference points in favour of HDIs, the following activities may be regarded as a contribution towards achieving the goals of the RDP (published in Government Gazette No. 16085 dated 23 November 1994):

- a) The promotion of South African owned enterprises;
- b) The promotion of export orientated production to create jobs;
- c) The promotion of SMMEs;
- d) The creation of new jobs or the intensification of labour absorption;
- e) The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;
- f) The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region;
- g) The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered;
- h) The promotion of enterprises located in rural areas;
- i) The empowerment of the work force by standardising the level of skill and knowledge of workers;
- j) 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
- k) The upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.

7.3. Preference Goal 3

B-BBEE Status Level of contributor

B-BBEE Act S10

- (a) Every organ of state and public entity must take into account and, as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act in-
 - i. developing and implementing a preferential procurement policy

The municipality may also adopt the B-BBEE status level of contributor as their specific goals. If municipality decides to adopt the B-BBEE status level of contributor as a specific goal, the municipality must liaise with the Department of Trade and Industry together with BEE Commission for guidance on how to apply these provisions. This will assist in the understanding the relevant sector codes and any other applicable matters.

7.4. Preference Goal 4

Broad-Based Black Economic Empowerment Scorecard (B-BBEE) Combined with RDP

The municipality may also include in their policies as a specific goal, a combination of B-BBEE scorecard in line with the applicable codes of good practice and RDP goals. If the combination is applied, a portion of the 20/10 points may be allocated to promote this goal and points will be allocated in terms of the BBEE scorecard and the remainder of the points can be used for other policy objectives as per the following example:

Example: 80/20 Preference Points system

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
RDP Goals	
Race	5
Gender	2
Disability	3

7.5. Preference Goal 5

Combinations of any other Goals

The entity may also combine any specific goals above in a manner that will help them evaluate and apply preference points to tenders.

8. PROCUREMENT PROCESS

- 8.1. The Municipal SCM Policy will guide the relevant SCM activities required.
- 8.2. The 'tender format/strategy' as identified in the policy statements and the targets above will be considered and where feasible included in any tender specifications above R 200 000 in value as 'special conditions to tender'.
- 8.3. The municipality must state in the tender documents if the tender will be evaluated on functionality.
- 8.4. The evaluation criteria for measuring functionality must be objective.

UMGUNGUNDLOVU ECONOMIC DEVELOPMENT AGENCY PREFERENTIAL PROCUREMENT POLICY

- 8.5. The tender documents must specify-
- 8.5.1. the evaluation criteria for measuring functionality;
 - 8.5.2. the points for each criteria and, if any, each sub-criterion; and
 - 8.5.3. the minimum qualifying score for functionality.
- 8.6. The minimum qualifying score for functionality for a tender to be considered further-
- 8.6.1. must be determined separately for each tender; and
 - 8.6.2. may not be so-
 - 8.6.2.1. low that it may jeopardise the quality of the required goods or services; or
 - 8.6.2.2. high that it is unreasonably restrictive.
- 8.7. Points scored for functionality must be rounded off to the nearest two decimal places.
- 8.8. A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.
- 8.9. 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.

9. ADMINISTRATION OF PREFERENTIAL PROCUREMENT

- 9.1. Responsibility
- 9.1.1. Responsibility for the implementation and administration of the Preferential Procurement Policy is delegated to the Accounting Officer, who will use the support from the LED Manager.
 - 9.1.2. The Accounting Officer must ensure that each budget holder assumes responsibility for the implementation of the Preferential Procurement Policy within his/her area of responsibility and that such responsibility is included in his/her Performance Indicators, if so required.

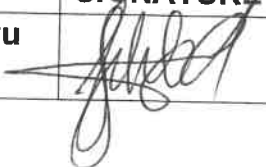
10. REVIEW OF THE POLICY

- 10.1. This Preferential Procurement Policy is the sole policy preferential procurement in the municipality. The Municipal Council must approve any reviews to this policy.
- 10.2. Whenever the Minister of Finance or the National Treasury or the Auditor-General requires changes to the policy by means of legislation or requests, it should be reviewed promptly in accordance with such requirements, giving full details of the reasons for the revision.

11. IMPLEMENTATION

- 11.1. This Policy is effective from 16 January 2023.

APPROVAL

NAME	SIGNATURE	DESIGNATION	DATE
DR. S. Ndlovu		CHAIRPERSON: BOARD	13 January 2023