

WEST RAND DISTRICT MUNICIPALITY



PREFERENTIAL PROCUREMENT POLICY

DATE OF APPROVAL:
COUNCIL RESOLUTION NUMBER:

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SECTION 1: DEFINITIONS

Definition	Description
"acceptable tender"	mean any tender which, in all respects, complies with the specification and conditions of tender as set out in tender document
"all applicable taxes"	includes Value-Added Tax, Pay-as-you-Earn, Income Tax, Unemployment Insurance Fund Contributions and Skills Development Levies;
"black people"	has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;
"Broad-Based Black Economic Empowerment Act" (B-BBEEA)	means the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003);
"comparative price"	means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
"lowest acceptable tender"	means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders
"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
"contract"	means the agreement that results from the acceptance of a tender by the West Rand District Municipality
"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.
"Youth"	has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).
"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;
"objective criteria"	for the purpose of section of 2(1)f of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5) must be criteria other than the additional to criteria relating to equity ownership by HDI's or whether or not a bidder was located in a particular province or municipal area
"tender"	means a written offer in the form determined by the West Rand District Municipality in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

Definition	Description
"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;
"the Act"	means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
"rand value"	means the total estimated value of a contract in Rand, calculated at the time of the tender invitation
"Black People"	As per the Broad-Based Black Economic Empowerment Act 53 of 2003 as Amended by Act No 46 of 2013 "Black People" is a generic term which means Africans, Coloureds and Indians- (a) who are citizens of the Republic of South Africa by birth or descent; or (b) who became citizens of the Republic of South Africa by Naturalization - i. before 27 April 1994; or ii. on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date;"
"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) or the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) ("the Interim Constitution"); 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.

SECTION 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 Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)-[PPPFA] was enacted 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 16085 dated 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 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 Micro, Small and Medium Enterprises (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 province for work to be done or services to be rendered in that region.
- vii. The promotion of enterprises located in a specific province 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.

SECTION 3: APPLICATION OF THE POLICY

- 1) This policy applies to all procurement of goods and services with the exception of petty cash transactions.
- 2) This policy must be applied in conjunction with other legislative prescripts and other policies that regulate the procurement of goods and services by the municipality.

SECTION 4: OBJECTIVE OF THE POLICY

- 1) To provide for categories of preference in the awarding of quotations and tenders;
- 2) To provide for the advancement of persons or categories of persons disadvantaged by unfair discrimination; and
- 3) To provide clarity on how the West Rand District Municipality will implement (1) & (2) above.

SECTION 5: IDENTIFICATION OF PREFERENCE POINT SYSTEM

- 1) The Municipality shall, in the tender documents, or in any invitation for quotations in excess of R2000.00, stipulate the following -
 - a) the preference point system applicable; and
 - b) any specific goal as envisaged in section 2(1)(d) and (e) of the Preferential Procurement Act.
- 2) If it is unclear whether the 80/20 or 90/10 preference point system applies, the municipality shall stipulate in the case of -
 - 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.

SECTION 6: 80/20 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES WITH RAND VALUE EQUAL TO OR BELOW R50 MILLION

- 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 of over R 2000.00 up to 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.

- 2) A maximum of 20 points may be awarded to a tenderer for the specified goals for the tender.
- 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.
- 4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

SECTION 7: 90/10 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES WITH RAND VALUE ABOVE R50 MILLION

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.

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

SECTION 8: 80/20 PREFERENCE POINTS SYSTEM FOR TENDERS FOR INCOME-GENERATING CONTRACTS WITH RAND VALUE EQUAL TO OR BELOW R50 MILLION

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

2. A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
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.
4. Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

SECTION 9: 90/10 PREFERENCE POINT SYSTEM FOR TENDERS FOR INCOME-GENERATING CONTRACTS WITH RAND VALUE ABOVE R50 MILLION

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

1. A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.
2. 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.
3. Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

SECTION 10: ALLOCATION OF POINTS FOR SPECIFIC GOALS

1. The tendering conditions must stipulate how the points for the specific goals, as contemplated in section 2(1)(d)(ii) of the Preferential Procurement Policy Framework Act, will be allocated.
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) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability.
 - b) Implementing the programmes of the Reconstruction and Development Programme (RDP) as published in Government Gazette 16085 dated 23 November 1994. For this goal points will be allocated for the promotion of SMMEs namely, Exempted Micro Enterprises (EMEs) and Qualifying Small Enterprises (QSEs), as the well the promotion of companies owned by Youth. (Phased in approach to be applied for other RDP goals)

3. The municipality will allocate points in respect of the goals contemplated in paragraph 9.2(a) as follows:

Specific Goals	Allocation of Points	
	80/20 Preference Point System	90/10 Preference Point System
a) Persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability		
Black people	6	4
Women	3	1
People living with disability	2	1
b) Implementation of the programmes of the Reconstruction and Development Programme (RDP) as published in Government Gazette 16085 dated 23 November 1994		
Exempted Micro Enterprises(EMEs) or Qualifying Small Enterprises(QSEs)	2	1
Youth	3	1
Enterprises located in Gauteng Province –	4 i. Within Gauteng = 2 ii. Within West Rand = 4	2 i. Within Gauteng = 1 ii. Within West Rand = 2

4. Any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.
5. In case of a Joint Venture specific points for HDI must be allocated in proportion to the percentage held by an HDI in the Joint Venture agreement.
6. The preference points scored by a tenderer must be added to the points scored for price.
7. The points scored must be rounded off to the nearest two decimal places.
8. The contract must be awarded to the tenderer scoring the highest points.

SECTION 11: CRITERIA FOR BREAKING DEADLOCK IN SCORING

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

SECTION 12: AWARD OF CONTRACTS TO TENDERERS NOT SCORING HIGHEST POINTS

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.

SECTION 12: REMEDIES

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-
2. After considering the representations referred to in paragraph 13 (1)(b), the Municipality may-
 - a) if it concludes that such false information was submitted by the tenderer-
 - i) disqualify the tenderer or terminate the contract in whole or in part; and
 - ii) if applicable, claim damages from the tenderer.