

# **OVERBERG**

## **DISTRICT MUNICIPALITY**

### **PREFERENTIAL PROCUREMENT POLICY**

Reviewed: 18 February 2019



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**1. BACKGROUND**

- 1.1 The Preferential Procurement Policy Framework Act, (no 5 of 2000) sets out regulations for implementation. The accounting officer of the municipality must take all reasonable steps to ensure that the municipality has and implements these regulations.

**2. PURPOSE OF THE POLICY**

- 2.1 This Policy shall give effect to the legislation as applied to the procurement activities of the municipality.

**3. TERMINOLOGY**

- 3.1 In this policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the MFMA has the same meaning as in the MFMA, and

**“Accounting Officer”** means the municipal manager referred to in section 60 of the MFMA;

**“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

**“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 terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“Bid”** means any person submitting a competitive bid or quotation;

**“Black designated groups”** 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;

**“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”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003);

**“Competitive bidding process”** means a competitive bidding process referred to in the supply chain management policy of ODM;

**“Competitive bid”** means a bid in terms of a competitive bidding process;

**“Contract”** means the agreement which is concluded when the municipality accepts, in writing, a competitive bid or quotation submitted by a supplier;

**“Co-operative”** means a co-operative registered in terms of section of the Co-operatives Act, 2005 (Act No.14 of 2005);

**“Designated group”** means-

- a) black designated groups;
- b) black people;
- c) women
- d) people with disabilities; or
- e) small enterprises, as defined in section 1 of the National Small Enterprises Act, 1996 (Act No. 102 of 1996);

**“Designated sector”** means a sector, sub-sector or industry or product designated in terms of paragraph 11.1.1.

**“EME”** means an exempted micro enterprise in terms of a code of good practice on broad-based black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“Functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents;

**“MFMA”** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

**“Military veteran”** has the meaning assigned to it in section 1 of the Military Veterans Act, 2001 (Act No. 18 of 2011);

**“Municipality”** means Overberg District Municipality or any person(s) or committee delegated with the authority to act on its behalf.

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

**“ODM”** means Overberg District Municipality or any person(s) or committee delegated with the authority to act on its behalf.

**“Other applicable legislation”** means any other legislation applicable to municipal supply chain management, including –

- (a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- and
- (c) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);

**“People with disabilities”** has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 1998);

**“Price”** includes all applicable taxes less all unconditional discounts;

**“Proof of B-BBEE status level of contributor”** means-

- a) the B-BBEE status level certificate issued by an authorized body or person;
- b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;

**“QSE”** 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;

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

**“Regulation”** means the Local Government: Municipal Finance Management Act, 2003 Municipal Supply Chain Management Regulations;

**“Rural area”** means-

- a) 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
- 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;

**“Stipulated minimum threshold”** means the minimum threshold stipulated in terms of paragraph 11.2.

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

**“Township”** means an urban living area that any time from the late 19<sup>th</sup> century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;

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

**“Treasury guidelines”** means any guidelines on supply chain management issued by the Minister in terms of section 168 of the MFMA;

“Youth” has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

#### **4. LEGISLATIVE ENVIRONMENT**

4.1 ODM is committed to adhering to and applying the prescribed legislative environment as it affects procurement.

4.1.1 The Constitution of the Republic of South Africa, Act No 108 of 1996, as amended;

4.1.2 The Local Government Municipal Finance Management Act, Act No 56 of 2003;

4.1.3 Treasury regulations issued in terms of the MFMA;

4.1.4 Municipal Systems Act 32 of 2000, Chapter 8 Section 83(1), (2), (3) and (4);

4.1.5 The Policy to Guide Uniformity in Procurement Reform Processes in Government as approved by Cabinet 10 September 2003 and promulgated on 05 December 2003;

4.1.6 National Treasury Circulars: All documents relevant to SCM available electronically on National Treasury's web page <http://www.treasury.gov.za/MFMA/regulations/circulars>;

4.1.7 Preferential Procurement Policy Framework Act (PPPFA), Act No 5 of 2000;

4.1.8 Preferential Procurement Policy Framework Act Regulations as amended by Preferential Procurement Regulations 2017;

- 4.1.9 Broad Based Black Economic Empowerment Act (B-BBEE Act), Act No 53 of 2003;
- 4.1.10 Prevention and Combating of Corrupt Activities Act, Act 12 of 2004;
- 4.1.11 King IV Report on Corporate Governance for South Africa;
- 4.1.12 State Information Technology Act 38 of 1998 as amended;
- 4.1.13 National Small Business Act, Act No 102 of 1996, as amended;
- 4.1.14 Public Service Act, Act No 23 of 1994;
- 4.1.15 Promotion of Administrative Justice Act,-Act No 3 of 2000;
- 4.1.16 Promotion of Access to Information Act, Act No 2 of 2000;
- 4.1.17 Protected Disclosure Act, Act No 26 of 2000;
- 4.1.18 The Competition Act, Act No 89 of 1998.

## **5. SCOPE FOR APPLICATION**

- 5.1 This policy applies to activities relating to procurement in terms of the supply chain management system and policies of the municipality.

## **6. IDENTIFICATION OF PREFERENCE POINT SYSTEM**

- 6.1 ODM must:

- 6.1.1 Determine and stipulate in the tender documents:

- i). The preference point system applicable to the tender as envisaged in paragraph 9 or 10;



- 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;
- 6.1.2 Determine whether pre-qualification criteria are applicable to the tender as envisaged in paragraph 7;
- 6.1.3 Determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in paragraph 11;
- 6.1.4 Determine whether compulsory subcontracting is applicable to the tender as envisaged in paragraph 12; and
- 6.1.5 Determine whether objective criteria are applicable to the tender as envisaged in paragraph 14.

## **7. PRE-QUALIFICATION CRITERIA FOR PREFERENTIAL PROCUREMENT**

- 7.1 If ODM decides to apply pre-qualifying criteria to advance certain designated groups, ODM must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond:
- 7.1.1 A tenderer having a stipulated minimum B-BBEE status level of contributor;
  - 7.1.2 An EME or QSE;
  - 7.1.3 A tenderer subcontracting a minimum of 30% to:
    - i). An EME or QSE which is at least 51% owned by black people,
    - ii). An EME or QSE which is at least 51% owned by black people who are youth;

- iii). An EME or QSE which is at least 51% owned by black people who are women;
- iv). An EME or QSE which is at least 51% owned by black people with disabilities;
- v). An EME or QSE which is at least 51% owned by black people living in rural areas or townships;
- vi). A co-operative which is 51% owned by black people;
- vii). An EME or QSE which is at least 51% owned by black people who are military veterans;
- viii). An EME or QSE.

7.2 A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

## **8. TENDERS TO BE EVALUATED ON FUNCTIONALITY**

8.1 ODM must state in the tender documents if the tender will be evaluated on functionality.

8.2 The evaluation criteria for measuring functionality must be objective.

8.3 The tender documents must specify:

8.3.1 The evaluation criteria for measuring functionality;

8.3.2 The points for each criteria and, if any, each sub-criterion; and

8.3.3 The minimum qualifying score for functionality.

8.4 The minimum qualifying score for functionality for a tender to be considered further:

8.4.1 Must be determined separately for each tender; and

8.4.2 May not be so:

- i). Low that it may jeopardize the quality of the required goods or services; or
- ii). High that it is unreasonably restrictive.

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

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

8.7 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 paragraph 14.

**9. 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**

9.1 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:

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

Where:

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

9.2 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
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1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- 9.3 A tenderer must submit proof of its B-BBEE status level of contributor.
- 9.4 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:
- 9.4.1 May only score points out of 80 for price; and
- 9.4.2 Scores 0 points out of 20 for B-BBEE.
- 9.5 A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an-EME that has the capability to execute the subcontract.
- 9.6 The points scored by a tenderer for B-BBEE in terms of paragraph 9.2 must be added to the points scored for price under paragraph 9.1.
- 9.7 The points scored must be rounded off to the nearest two decimal places.

- 9.8 Subject to paragraphs 9.9, 9.10 and 14, the contract must be awarded to the tenderer scoring the highest points.
- 9.9 If the price offered by a tenderer scoring the highest points is not market-related, the ODM may not award the contract to that tenderer.

9.10 The ODM may:

9.10.1 Negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;

9.10.2 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;

9.10.3 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.

9.10.4 If a market-related price is not agreed as envisaged in paragraph 9.10.3, the ODM must cancel the tender.

**10. 90/10 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES WITH THE RAND VALUE ABOVE R50 MILLION**

10.1 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<sub>s</sub> = Points scored for price of tender under consideration;

P<sub>t</sub> = Price of tender under consideration; and

P<sub>min</sub> = Price of lowest acceptable tender.

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

<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

10.3 A tenderer must submit proof of his B-BBEE status level of contributor.

10.4 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:

10.4.1 May only score points out of 90 for price; and

10.4.2 Scores 0 points out of 10 for B-BBEE.

10.5 A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting 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 subcontractor is an EME that has the capability to execute the subcontract.

10.6 The points scored by a tenderer for B-BBEE contribution in terms of paragraph 10.2 must be added to the points scored for price under paragraph 10.1.

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

10.8 Subject to paragraphs 10.9, 10.10 and 14, the contract must be awarded to the tenderer scoring the highest points.

10.9 If the price offered by a tenderer scoring the highest points is not market-related, ODM may not award the contract to that tenderer.

10.10 ODM may:

10.10.1 Negotiate a market-related price with the tenderer scoring the highest points or cancel the tender.

10.10.2 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;

10.10.3 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.

10.10.4 If a market-related price is not agreed as envisaged in paragraph 10.10.3, ODM must cancel the tender.

## **11. LOCAL PRODUCTION AND CONTENT**

11.1 The Department of Trade and Industry may, in consultation with the National Treasury:

11.1.1 designates a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced services or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors; and

11.1.2 stipulate a minimum threshold for local production and content.



- 11.2 ODM must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.
- 11.3 The National Treasury must inform ODM of any designation made in terms of paragraph 11.1 through a circular.
- 11.4 If there is no designated sector, ODM may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.
- 11.5 The threshold referred to in paragraph 11.4 must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.
- 11.6 A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

## **12. SUBCONTRACTING AS A CONDITION OF TENDER**

- 12.1 If feasible to subcontract for a contract above R30 million, ODM must apply subcontracting to advance designated groups.
- 12.2 If ODM applies subcontracting as contemplated in paragraph 12.1, ODM must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to:
- 12.2.1 An EME or QSE;
  - 12.2.2 An EME or QSE which is at least 51% owned by black people;
  - 12.2.3 An EME or QSE which is at least 51% owned by black people who are youth;

- 12.2.4 An EME or QSE which is at least 51% owned by black people who are woman;
  - 12.2.5 An EME or QSE which is at least 51% owned by black people with disabilities;
  - 12.2.6 An EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships
  - 12.2.7 A cooperative which is at least 51% owned by black people;
  - 12.2.8 An EME or QSE which is at least 51% owned by black people who are military veterans; or
  - 12.2.9 More than one of the categories referred to in paragraphs 12.2.1 to 12.2.8.
- 12.3 ODM must make available the list of all suppliers registered on a database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in paragraph 12.2 from which the tenderer must select a supplier.

### **13. CRITERIA FOR BREAKING DEADLOCK IN SCORING**

- 13.1 If two or more tenderers score an equal total number of points, the contract must be awarded to:
- 13.1.1 The tenderer that scored the highest points for B-BBEE.
  - 13.1.2 If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preferential points for B-BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.
  - 13.1.3 If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

**14. AWARD OF CONTRACTS TO TENDERERS NOT SCORING THE HIGHEST POINTS**

- 14.1 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.
- 14.2 If ODM intends to apply objective criteria in terms of section 2(1)(f) of the Act, ODM must stipulate the objective criteria in the tender documents.

**15. SUBCONTRACTING AFTER AWARD OF TENDER**

- 15.1 A person awarded a contract may only enter into a subcontracting arrangement with the approval of ODM.
- 15.2 A person awarded a contract in relation to a designated sector, may not subcontract 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.
- 15.3 A person awarded a contract may not subcontract 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 subcontracted to an EME that has the capability and ability to execute the subcontract.

**16. CANCELLATION OF TENDER**

- 16.1 ODM may, before the award of a tender, cancel a tender invitation if:
  - 16.1.1 Due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
  - 16.1.2 Funds are longer available to cover the total envisaged expenditure;

16.1.3 No acceptable tender is received; or

16.1.4 There is a material irregularity in the tender process.

16.2 The decision to cancel a tender invitation in terms of paragraph 16.1 must be published in the same manner in which the original tender invitation was advertised.

16.3 ODM may only with prior approval of the relevant treasury cancel a tender invitation for the second time.

## **17. REMEDIES**

17.1 Upon detecting that a tenderer submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of this policy which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, ODM must:

17.1.1 Inform the tenderer accordingly;

17.1.2 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 subcontracted 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 of state; and

17.1.3 If it concludes, after considering the representations referred to in paragraph 17.1.2, that:

- i). Such false information was submitted by the tenderer:
  - (aa) disqualify the tenderer or terminate the contract in whole or in part; and
  - (bb) if applicable, claim damages from the tenderer; or
- ii). The successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

17.2 ODM must:

17.2.1 Inform the National Treasury, in writing, of any actions taken in terms of paragraph 17.1;

17.2.2 Provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and

17.2.3 Submit written representations from the tenderer as to why that tender should not be restricted from conducting business with any organ of state.

17.3 The National Treasury may request an organ of state to submit further information pertaining to paragraph 17.1 within a specified period.

## **18. CIRCULARS AND GUIDELINES**

18.1 The National Treasury may issue:

18.1.1 A circular to inform organs of state of any matter pertaining to the preferential procurement regulations; or

18.1.2 A guideline to assist organs of state with the implementation of any provision of the preferential procurement regulations.

18.2 ODM must follow the guidance and adhere to the circulars and guidelines issued in terms of paragraph 18.1.

## **19. RELATED DOCUMENTS**

21.1 The following documents are related to this policy:

21.1.1 Supply chain management policy

21.1.2 Demand Management policy

21.1.3 Asset management policy

21.1.4 Management and administration of immovable assets policy

21.1.5 Integrated development plan

21.1.6 Infrastructure procurement and delivery management policy

## **20. REVIEW**

20.1 This Policy shall be reviewed at least annually or when Legislation requires immediate amendment to the policy.

20.2 Where the National Treasury and the Provincial Treasury issue amendments, those instructions, must also be taken into account in the execution of the Supply Chain Management in addition to the Policy and the Policy amended at the earliest convenient opportunity.

20.3 When necessary, recommendations for amendments to the Policy deemed must be submitted to the council committees for consideration and approval.

20.4 The accounting officer must –

- (a) at least annually review the implementation of this policy; and
- (b) when the accounting officer considers it necessary, submit proposals for the amendment of this policy to the council.

- 20.5 If the accounting officer submits proposed amendments to the Council that differs from the model policy issued by National Treasury, the accounting officer must –
- (a) ensure that such proposed amendments complies with the preferential procurement regulations; and
  - (b) report any deviation from the model policy to the National Treasury and the relevant provincial treasury.

**21. EFFECTIVE DATE**

- 21.1 This policy shall come into effect on the latter of 1 July 2017, or the date which it was adopted by Council and shall remain in full force and effect until it is reviewed, revoked or amended by Council.
- 21.2 Any tender advertised before the date referred to in paragraph 21.1 must be dealt with in terms of the 2011 preferential procurement regulations.