HANTAM MUNICIPALITY

PREFERENTIAL PROCUREMENT POLICY

SR05.11/06-25

PREFERENCIAL PROCUREMENT POLICY adopted in terms of section 2 of the Preferencial Procurement Policy Framewrok Act, No. 5 of 2000 and Prefencial Procurement Regulations, 2022.

<u>Contents</u>

1. Definitions
2. Introduction
3. Purpose, and Objectives
4. Application of preference point system
5. **80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million**
6. **90/10 preference point system for acquisition of goods or services with Rand value above R50 million**
7. **80/20 preference points system for tenders to for income-generating contracts with Rand value equal to or below R50 million**
8. **90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million**
9. Criteria for breaking deadlock in scoring
10. Award of contracts to tenderers not scoring highest points
11. Remedies
12. Performance Management
13. Reporting
14. Short title and commencement

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—

"**Acceptable Tender**" mean any tender, which, in all respects, complies with the specification and conditions of tender as set out in tender document.

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

"Black people" has the meaning assigned to it in section 1 of the BBBEEA.

"Designated group" means black designated groups, black people, women, people with disabilities; or small enterprises which are enterprises, owned, managed, and controlled by previously disadvantaged persons and which is overcoming business impediments arising from the legacy of apartheid.

"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 BBBEEA**;**

(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.

"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.

"Large Enterprises" is a company with an annual turnover in excess of R50 million;

"Lowest acceptable tender" means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders.

“Locality” means the local suppliers and/or service providers that reside within the Municipal area and within the district boundaries.

“Large Enterprises” is a company with an annual turnover in excess of R50 million.

“**Local Content**” means that portion of tender price, which is not included in the imported content, provided that local manufacture does take place.

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

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

“**Objective Criteria**” for the purpose of section of 2(1)f of the procurement Act 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.

“Price” means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts.

“Proof of B-BBEE status level of contributor” means the B-BBEE status level certificate issued by an authorised body or person

1) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or

2) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act.

“Qualifying Small Enterprise (QSE) “is a company with a turnover between R10 million and R50 million.

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

“Region” means the district and/or Hantam 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 that depends on migratory labour and remittances and government social grants for survival and may have a traditional land tenure system.

“**Specific *goals*”** means specific goals as contemplated in section 2(1)(d) of the Act that 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.

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

“**Tender**” means a written offer in the form determined by a Municipality in response to an invitation to provide goods or services through price quotations above R30 000, 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.

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

“Youth” has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008). In terms of the Act Youth means persons between the ages of 14 and 35.

2. Introduction

2.1 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).

2.2 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.

2.3 The Broad-Based Black Economic Empowerment Act, 2003 provides in section 10 that every organ of state and public entity must apply any relevant code of good practice issued in terms of the Act in (b) developing and implementing a preferential procurement policy.

2.4 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 a Municipality to develop a preferential procurement policy and to implement such policy within the PPPFA framework.

2.4.1 Section 2 (1) (d) (i) and (ii) of the Preferential Procurement Policy Framework Act, 2000 refers to specific goals that 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.

2.4.2 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.

2.4.3 In terms of Section 2 (1)(d)(i) and (ii), the intention and 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): Any of these goals will be implemented as per sepcification committee alongside the standard specific goal of locality.

(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 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 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.

(xiii) The Youth

(xiiii) Black women owned companies or Black men owned companies.

2.5 The Minister of Finance gazetted the new Preferential Procurement Regulations, 2022 dated 4 November 2022 in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (PPPFA)

3. Purpose, and Objectives

3.1 **a) The purpose of this policy is to:**

i) Provide for categories of preference in awarding of bids;

ii) Provide for the advancement of persons or categories of persons disadvantaged by unfair discrimination; and

iii) Clarify the mechanisms how the above items in par 1.1 (a) (i) and (ii) will be implemented.

b) Objectives:

i) Promote Black-Based Black Economic Empowerment (B-BBEE) - enterprises providing services and goods.

ii) Promote Small Medium and Micro Enterprises (SMME's), Joint Ventures, Consortiums, and partnerships.

iii) Implement recognised best procurement practises through effective planning, strategic purchasing, and contract management.

iv) Promote local labour and/or promotion of enterprises located in the municipal area.

v) Promote the Youth.

vi) Promote Black women owned companies or Black men owned companies.

The policy rests upon certain core principles of behaviour as set out in the Constitution and ratified by the Constitutional Certification Judgements. In this context, the policy will be applied in accordance with a system, which is fair, equitable, transparent, competitive, and cost-effective in terms of Section 217 of the Constitution.

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 of preference point system

4.1 The Municipality will, in the tender documents, stipulate —

(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.

(c) any specific goal as oulined in the PPPFA policy under section 2.4.3 of this policy.

4.2 If it is unclear whether the 80/20 or 90/10 preference point system applies—

(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.

5. 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 a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

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

Where-

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender.

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

5.3 The points scored for the specific goal must be added to the points scored for the price and the total must be rounded off to the nearest two decimal places.

5.4 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tendering scoring the highest points.

5.5 A tenderer must submit proof of it's B-BBEE status level of contributor in order to claim points for B-BBEE.

5.6 As stated in 2.4.3 we have raised a few specific goals and can/will be selected by the municipality as per tender/municipalities needs and proof must be submitted as per request in the tender document.

5.7 A tenderer must submit proof of locality in order to claiming of point(s) for locality.

5.8 A tenderer failing to submit proof of locality with his quotation/tender may not be disqualified but will only score 0 points for locality.

5.9 A tenderer that scores 0 points for B-BBEE and/or 0 points for locality must be scored for price in addition to points for B-BBEE or locality.

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 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

$$Ps = 90\left(1 - \frac{Pt - P\min}{P\min}\right)$$

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 specified goals for the tender.

6.3 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.

6.4 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

6.5 A tenderer must submit proof of it's B-BBEE status level of contributor in order to claim points for B-BBEE

6.6 As stated in 2.4.3 we have raised a few specific goals and can/will be selected by the municipality as per tender/municipalities needs and proof must be submitted as per request in the tender document.

6.7 A tenderer must submit proof of locality in order to claiming of point(s) for locality.

6.8 A tenderer failing to submit proof of locality with his quotation/tender may not be disqualified, but will only score 0 points for locality.

6.9 A tenderer that scores 0 points for B-BBEE and/or 0 points for locality must be scored for price in addition to points for B-BBEE or locality.

7. 80/20 preference points system for tenders to for income-generating 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 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 Act, the contract must be awarded to the tenderer scoring the highest points.

7.5 A tenderer must submit proof of it's B-BBEE status level of contributor in order to claim points for B-BBEE

7.6 A As stated in 2.4.3 we have raised a few specific goals and can/will be selected by the municipality as per tender/municipalities needs and proof must be submitted as per request in the tender document.

7.7 A tenderer must submit proof of locality in order to claiming of point(s) for locality.

7.8 A tenderer failing to submit proof of locality with his quotation/tender may not be disqualified, but will only score 0 points for locality.

7.9 A tenderer that scores 0 points for B-BBEE and/or 0 points for locality must be scored for price in addition to points for B-BBEE or locality, as the case may be.

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 goal specified for the tender.

8.3 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.

8.4 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

8.5 A tenderer must submit proof of it's B-BBEE status level of contributor in order to claim points for B-BBEE

8.6 As stated in 2.4.3 we have raised a few specific goals and can/will be selected by the municipality as per tender/municipalities needs and proof must be submitted as per request in the tender document.

8.7 A tenderer must submit proof of locality in order to claiming of point(s) for locality.

8.8 A tenderer failing to submit proof of locality with his quotation/tender may not be disqualified, but will only score 0 points for locality.

8.9 A tenderer that scores 0 points for B-BBEE and/or 0 points for locality must be scored for price in addition to points for B-BBEE or locality, as the case may be.

8.10 The 80 / 20 or 90/10 principle is applicable; 80 or 90 points for price and 10 or 5 points for specific goals status level verification certificate and 10 or 5 points for locality. The maximum of 10 or 5 points will be standard for locality as follows; (10 points for 80/20 principle and 5 points for 90/10 principle).

<u>Locality:</u>

Locality Points Scoring

Locality of Tenderer's Offices	**Number of Points (80/20 System)**	**Number of Points (90/10 System)**
Within the borders of the Northern Cape	4	2
Within the borders of Hantam Municipality	10	5

The specific goals, as indicated on point 2.4.3, will be chosen based on the specifications committee.

9. Criteria for breaking the 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 specific goals.

9.2 If two or more tenderers score an equal total number of points, the objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to the tenderer that scored the highest points in terms in accordance with section 2(1)(f) of the Act.

9.3 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.

9.4 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

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.

11. Process for competitive bidding

The procedures for the following stages of a competitive bidding process are as follows:

(a) Compilation of bidding documentation as detailed in paragraph 21;

(b) Public invitation of bids as detailed in paragraph 22;

(c) Site meetings or briefing sessions as detailed in paragraph 22;

(d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;

(e) Evaluation of bids as detailed in paragraph 28;

(f) Award of contracts as detailed in paragraph 29;

(g) Administration of contracts

(i) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.

(h) Sub-contracting

1. (i) A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.

(ii) 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.

(iii) A person awarded a contract may not submit 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.

2. New Regulations aimed at empowering designated groups especially in sectors where there is a lack of transformation.

3. An organ of state must, in case of selected tenders where it is feasible to sub-contract, apply compulsory sub-contracting to advance designated groups in contracts above R 30 million.

4. That organ of state must advertise such tender with a specific tendering condition that the successful tenderer must sub-contract a minimum of the value of the contract to -

(i) an EME or QSE which is at least 51% Black Owned;

(ii) an EME or QSE which is at least 51% owned black owned by black youth;

(iii) and EME or QSE which is at least 51% Black Women Owned;

(iv) an EME or QSE which is at least 51% owned by black people with disabilities;

(v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas and / or townships;

(vi) a Cooperative which is at least 51% owned by black people;

(vii) an EME or QSE which is at least 51% owned by black people who are military veterans;

(i) Evaluation of bids that scored equal points

In the event that two or more bids have scored equal total, the successful bid must be the one that scored the highest points for specific goals.

If two or more bids have equal points, including equal preference points for specific goals, the successful bid must be the one scoring the highest points for functionality, if functionality is part of the evaluation process.

In the event that two or more bids are equal in all respects, the award must be decided by drawing lots.

(j) Cancellation and re-invitation of bids

(i) Addition of sub-regulation related to cancellation of tender due to material

Irregularities.

(ii) Also in addition of a provision that an organ of state may cancel a tender for the second time, only with the approval of the relevant treasury.

(k) Awarding of contracts

A contract must be awarded to the bidder who scored the highest total number of points in terms of the preference point system. Points scored must be rounded off to the nearest 2 decimal places.

In exceptional circumstances a contract may, on reasonable and justifiable grounds be awarded to a bidder that did not score the highest number of points. The reasons for such a decision must be approved and recorded for audit purposes and must be defendable in a court of law.

(l) Sale and letting of assets

The Preferential Procurement Regulations, 2011, are not applicable to the sale and letting of assets.

In instances where assets are sold or leased, by means of a bidding process, the bid must be awarded to the bidder with the highest price

(m) Proper record keeping

(i) Original l legal copies of written contracts agreements should be kept in a secure place for reference purposes.

12. Local Content

The Preferential Procurement Regulations, 2011 pertaining to the Preferential Procurement Policy Framework Act, Act No 5 OF 2000 which came into effect on 7 December 2011 make provision for the dti to designate sectors in line with national development and industrial policies for local production. To this end the dti has designated and determined the stipulated minimum thresholds for the following sectors:

-Bus Sector	70 - 80 %
-Pylons	100 %
-Rolling Stock	55 – 80 %
-Textiles	100%
- Processed Vegetables	80 %
- Set Top Boxes	30 %
- Furniture Products	from 65 to 100%
- Electrical and telecom cable products	90%

Note: Other designated sectors may be added by dti in future.

When inviting bids/quotations where local content is applicable, municipalities must indicate this in the bid advertisement. The MBD 6.2, SABS Specification SATS 1286:2011, and dti Guidance on the calculations of local content [available on dti's official website http://www.thedti.gov.za] should also be included in the bid documents/quotations.

The supplier has to proof that the product he offers does indeed comply with the stipulated thresholds. In order to do this there are three annexures which the supplier has to fill in and submit together with the bid document/quotation. These forms are also available on the dti Guidance on the calculations of Local content. It is advisable that municipalities attach the Guidance document to the bid documents/quotations in order to assist the suppliers to fill in the bid documents.

A two-stage evaluation process may be followed

-First stage: calculate if the bidder adheres to the local content percentage requirement

-Second stage: Only the bidders who comply with the local content percentage requirement will be evaluated further.

13. Remedies

11.1 (i) If a 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—

11.2 After considering the representations referred to in par 12 (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;

(iii) Inform National Treasury of the matter; and

(iv) Maintain and publish on its official website a list of restricted suppliers.

14. Performance Management

The specific goals achieved through the application of the Preferential Procurement Framework Act, 2000 will be monitored in terms of the elements embedded in the Supply Chain Management Policy.

15. Reporting

The Accounting Officer must align its reporting requirements to the Council as per SCM Regulation 6 to also report on progress with the implementation of this Policy.

16. Short title and commencement

These Regulations are called the Preferential Procurement Regulations,

2022 and take effect on 30 June 2025.