



CAPE WINELANDS DISTRICT
MUNICIPALITY • MUNISIPALITEIT • UMASIPALA

PREFERENTIAL PROCUREMENT POLICY

FEBRUARY 2015

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PART ONE

DEFINITIONS AND APPLICATION

1. Definitions

In this policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- (a) "**Act**" means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (b) "**all applicable taxes**" includes Value-Added Tax, Pay-as-you-Earn, Income Tax, Unemployment Insurance Fund Contributions and Skills Development Levies;
- (c) "**B-BBEE**" means Broad-Based Black Economic Empowerment as defined in Section 1 of the Broad-Based Black Economic Empowerment Act;
- (d) "**B-BBEE status level of contributor**" means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (e) "**Broad-Based Black Economic Empowerment Act**" (B-BBEEA) means the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003);
- (f) "**Comparative price**" means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration;
- (g) "**Consortium or Joint Venture**" means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (h) "**Contract**" means the agreement that results from the acceptance of a bid by the Cape Winelands District Municipality;
- (i) "**designated sector**" means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content
- (j) "**Exempted Micro Enterprise**" means an Entity with an annual turnover of R 10 (ten) million or less;

- (k) "**Firm price**" is the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of a law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (l) "**Functionality**" means the measurement according to predetermined norms, as set out in the tender documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer;
- (m) "**imported content**" means that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry;
- (n) "**local content**" means that portion of the tender price which is not included in the imported content, provided that local manufacture does take place;
- (o) "**Micro-Enterprise**" means a very small business, often involving only the owner, some family members and at the most one or two paid employees. They usually lack `formality` in terms of business licences, value-added tax (VAT) registration, formal business premises, operating permits, operating permits and accounting procedures. Most of them have a limited capital base and only rudimentary technical or business skills among their operators. However, many micro-enterprises advance into viable small businesses. Earning levels of micro-enterprises differ widely, depending on the particular sector, the growth phase of the business and access to relevant support.
- (p) "**Non-firm prices**" means all prices other than "firm" prices;
- (q) "**Qualifying Small Enterprise**" means an Entity that qualifies for measurement under the Qualifying Small Enterprise scorecard with a turnover of R10 million or more but less than R50 million;
- (r) "**Person**" includes reference to a juristic person;
- (s) "**Rand value**" means the total estimated value of a contract in South African currency, calculated at the time of bid invitations and includes all applicable taxes and excise duties;
- (t) "**Start-up Enterprise**" means a recently formed or incorporated Entity that has been in operation for less than 1 year. A start-up enterprise does not include any newly constituted enterprise which merely a continuation of a pre-existing enterprise;

- (u) **"Stipulated minimum threshold"** means that portion of local production and content as determined by the Department of Trade and Industry;
- (v) **"Sub-Contract"** means the primary contractor's assigning or leasing or making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (w) **"Supplier"** means any supplier or service provider to a Measured Entity if any portion of the supply or service provision falls within the definition of Total Measured Procurement Spend;
- (x) **"Survivalist Enterprise"** means a business set up by people unable to find a paid job or get into an economic sector of their choice. Income generated from these activities usually falls far short of even a minimum income standard, with little capital invested, virtually no skills training in the particular field and only limited opportunities for growth into a viable business. This category is characterised by poverty and the attempt to survive.
- (y) **"Tender"** means a written offer in a prescribed or stipulated form in response to an invitation by the Cape Winelands District Municipality for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (z) **"the Codes"** means the Codes of Good Practice including all the statements as issued under section 9 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003);
- (aa) **"the Generic Scorecard"** means the balanced B-BBEE scorecard as contained in statement 000, Gazette No. 36928, B-BBEE Codes of Good Practice of 11 October 2013;
- (ab) **"Total revenue"** bears the same meaning assigned to this expression as in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 and promulgated in the Government Gazette on 9 February 2007;
- (ac) **"Trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (ad) **"Trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

- (ae) **"51% Black Owned"** means an Entity in which:
- (a) Black people hold at least 51% of the exercisable voting rights as determined under Code series 100, Gazette No. 36928, B-BBEE Codes of Good Practice of 11 October 2013;
 - (b) black people hold at least 51% of the economic interest as determined under Code series 100, Gazette No. 36928, B-BBEE Codes of Good Practice of 11 October 2013; and
 - (c) has earned all the points for Net Value under statement 100, Gazette No. 36928, B-BBEE Codes of Good Practice of 11 October 2013;

2. Application, Objectives & General Requirements

2.1 Application

The Cape Winelands District Municipality must, unless the Minister of Finance has directed otherwise, only apply a preferential procurement system which is in accordance with the Regulations.

2.2 Objectives

The objectives of Councils' policy are to:

- (a) Provide clarity on the municipality's approach to procurement, particularly with regards to requirements of preferential procurement;
- (b) Provide access to contracts for historical disadvantaged individuals;
- (c) Promote capacity development and skills transfer;
- (d) Promote Local Economic Development.

2.3 General requirements

- (a) Any specific goal required for consideration in the bidding process must be clearly determined by the Bid Specification Committee and be defined in the bid documentation, taking into account prescriptions of the Construction Industry Development Board [CIDB] in respect of construction related contracts.
- (b) Outputs required will be quantified and will form part of the contractual arrangement upon awarding of the contract.

PART TWO

PREFERENCE POINT SYSTEM AND BROAD-BASED BLACK ECONOMIC EMPOWERMENT STATUS, EVALUATION OF BIDS ON FUNCTIONALITY, AWARD OF CONTRACTS TO BIDDERS NOT SCORING THE HIGHEST NUMBER OF POINTS AND THE CANCELLATION AND RE-INVITATION OF BIDS

3. Planning and stipulation of preference point system to be utilized

The Cape Winelands District Municipality must, prior to making an invitation for bids-

- (a) properly plan for, and, as far as possible, accurately estimate the costs of the provision of services, works or goods for which an invitation for bids is to be made; and
- (b) determine and stipulate the appropriate preference point system to be utilized in the evaluation and adjudication of the bids.
- (c) determine whether the services, works or goods for which an invitation is to be made has been designated for local production and content in terms of Paragraph 9.

4. Evaluation of bids based on functionality

- (1) The Cape Winelands District Municipality must in the bid documents indicate if, in respect of a particular bid invitation, bids will also be evaluated on functionality;
- (2) The evaluation criteria for measuring functionality must be objective.
- (3) Bids invited on the basis of functionality as a criterion must be evaluated in two stages – first functionality must be assessed and then in accordance with the 80/20 or 90/10 preference point systems prescribed in Paragraph 5 and 6. The evaluation must be done as follows:

(3.1) First stage – Evaluation of functionality

- Bids must be evaluated in terms of the evaluation criteria embodied in the bid documents. The amendment of evaluation criteria, weights, applicable values and/or the minimum qualifying score for functionality after the closure of bids is not allowed as this may jeopardise the fairness of the process.
- A bid will be considered further if it achieves the prescribed minimum qualifying score for functionality.
- Bids that fail to achieve the minimum qualifying score for functionality must be disqualified.

- Score sheets should be prepared and provided to panel members to evaluate the bids.
- The score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation as indicated in the bid documents.
- Each panel member should after thorough evaluation independently award his / her own value to each individual criterion.
- Score sheets should be signed by panel members and if necessary, written motivation may be requested from panel members where vast discrepancies in the values awarded for each criterion exist.
- If the minimum qualifying score for functionality is indicated as a percentage in the bid documents, the percentage scored for functionality may be calculated as follows:
 - a. The value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria;
 - b. The scores for each criterion should be added to obtain the total score; and
 - c. The following formula should be used to convert the total score to percentage for functionality:

$$Ps = \frac{So}{Ms} \times 100$$

where:

Ps = percentage scored for functionality by bid under consideration

So = total score of bid under consideration

Ms = maximum possible score

- The percentage of each panel member should be added and divided by the number of panel members to establish the average percentage obtained by each bidder for functionality.

(3.2) Second stage – Evaluation in terms of the 80/20 or 90/10 preference point systems

- Only bids that achieve the minimum qualifying score / percentage for functionality must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Paragraph 5 and 6.

5. The 80/20 preference point system for acquisition of goods, works and / or services up to a Rand value of R1,0 million

(1)(a) The following formula must be used to calculate the points for price in respect of competitive bids / price quotations with a Rand value equal to, or above R30 000 and up to a Rand value of R1 000 000 (all applicable taxes included):

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

Where

P_s = Points scored for comparative price of bid / offer under consideration

P_t = Comparative price of bid / offer under consideration

P_{min} = Comparative price of lowest acceptable bid / offer.

(1)(b) The Cape Winelands District Municipality may, however, apply this formula for price quotations with a value less than R 30 000, if and when appropriate.

(2) A maximum of 20 points must be awarded to a bidder for attaining the B-BBEE status level contemplated in the B-BBEE Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 and promulgated in the Government Gazette on 9 February 2007.

- (3) Points must be awarded to a bidder on the following basis:

B-BBEE Status Level of Contributor	Number of points
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- (4) The points scored by a bidder in respect of B-BBEE contribution contemplated in sub regulation (3) must be added to the points scored for price.
- (5) Only the bid with the highest number of points scored may be selected.

6. The 90/10 preference point system for acquisition of goods, works and / or services with a Rand value above R1,0 million

- (1) The following formula must be used to calculate the points for price in respect of bids with a Rand value above R1 000 000 (all applicable taxes included):

$$P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

Ps = Points scored for comparative price of tender or offer under consideration;

Pt = Comparative price of tender or offer under consideration; and

Pmin = Comparative price of lowest acceptable tender or offer.

- (2) Subject to sub-paragraph (3), points must be awarded to a tenderer for attaining their B-BBEE status level of contributor in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

- (3) A maximum of 10 points be allocated in accordance with sub-paragraph (2).

- (4) The points scored by a tenderer in respect of the level of B-BBEE contribution contemplated in sub-paragraph (2) must be added to the points scored for price as calculated in accordance with sub-paragraph (1).

- (5) Subject to regulation 7, the contract must be awarded to the tenderer who scores the highest total number of points.

7. Award of contract to bids not scoring the highest number of points

Contract may be awarded to a tenderer that did not score the highest total number of points if objective criteria in addition to specific goals justify the award to another tenderer.

8. Cancellation and re-invitation of bids

- (1) (a) In the event that, in the application of the 80/20 preference point system as stipulated in the tender documents, all tenders received exceed the estimated Rand value of R1 000 000, the tender invitation must be cancelled.
- (b) If one or more of the acceptable tenders received are within the prescribed threshold of R1 000 000, all tenders received must be evaluated on the 80/20 preference point system.
- (2) (a) In the event that, in the application of the 90/10 preference point system as stipulated in the tender documents, all tenders received are equal to, or below R1 000 000, the tender must be cancelled.
- (b) If one or more of the acceptable tenders received are above the prescribed threshold of R1 000 000, all tenders received must be evaluated on the 90/10 preference point system.
- (3) In the event that the Cape Winelands District Municipality has cancelled a tender invitation as contemplated in sub-paragraph (1)(a) and 2(a), tenders must be re-invited and the tender documents must stipulate the correct preference point system to be applied.
- (4) The Cape Winelands District Municipality may, prior to the award of a tender, cancel a tender if:
- (a) due to changed circumstances, there is no longer a need for the services, works or goods requested, or
- (b) funds are no longer available to cover the total envisaged expenditure;
or
- (c) no acceptable tenders are received.
- (5) The decision to cancel a tender in terms of sub-paragraph (4) must be published in the media in which the original tender invitation was advertised.

PART THREE

LOCAL PRODUCTION AND CONTENT, B-BBEE STATUS LEVEL CERTIFICATES, CONDITIONS, DECLARATIONS, REMEDIES AND TAX CLEARANCE

9. Local Production and Content

The Cape Winelands District Municipality must, in the case of designated sectors, where in the award of tenders local production and content is of critical importance, advertise such tenders with a specific tendering condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.

Every tender issued in terms of Paragraph 9 must be measurable and audited.

9.1 INVITATION OF BIDS BASED ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT

9.1.1 Designated Sectors

9.1.1(a) Bids in respect of services, works or goods that have been designated for local production and content, must contain a specific bidding condition that only locally produced goods, services or works or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered.

9.1.1(b) The municipality must stipulate in bid invitations that the exchange rate to be used for the calculation of local content (local content and local production are used interchangeably) must be the exchange rate published by the SARB at 12:00 on the date, one week (7 calendar days) prior to the closing date of the bid.

9.1.1(c) Only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:201x must be used to calculate local content. The following formula to calculate local content must be disclosed in the bid documentation:

The local content (LC) as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 201x as follows:

$$LC = [1 - x/y] * 100$$

Where

x = imported content

y = bid price excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the SARB at 12:00 on the date, one week (7 calendar days) prior to the closing date of the bid.

9.1.1(d) For the purpose of paragraphs 9.1.1(a), 9.1.1(b) and 9.1.1(c) above, the MBD 6.2 (Declaration Certificate for Local Content) must form part of the bid documentation.

9.1.1(e) The Declaration Certificate for Local Content (MBD 6.2) must be completed and duly signed. The municipality is required to verify the accuracy of the rates of exchange quoted by the bidder in paragraph 4.1 of this Certificate.

9.1.1(f) The Minister of Finance has approved the issuance of directives together with the Municipal Bidding Documents (MBD 6.2) "Declaration Certificate for Local Production and Content for Designated Sectors" for the following sectors that have been designated:

- Textile, clothing, leather and footwear;
- Buses (bus body);
- Steel power pylons;
- Canned / processed vegetables;
- Rail rolling stock;
- Set top boxes;
- Furniture; and
- Electrical and telecom cable products.

9.1.2 Non-Designated Sectors

- 9.1.2(a) Where there is no designated sector, the municipality may decide to include a specific bidding condition that only locally produced goods, services or works or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered, on condition that such prescript and threshold(s) are in accordance with the specific directives issued for this purpose by the National Treasury in consultation with the DTI.
- 9.1.2(b) The municipality must stipulate in bid invitations that the exchange rate to be used for the calculation of local content must be the exchange rate published by the SARB at 12:00 on the date, one week (7 calendar days) prior to the date of closure of the bid.
- 9.1.2(c) Only the South African Bureau of Standards approved technical specification number SATS 1286:201x as indicated in paragraph 9.1.3 above must be used to calculate local content.
- 9.1.2(d) For the purpose of paragraphs 9.1.2(a), 9.1.2(b) and 9.1.2(c) above, the MBD 6.2 (Declaration Certificate for Local Content) must form part of the bid documentation.
- 9.1.2(e) The Declaration Certificate for Local Content (MBD 6.2) must be completed and duly signed. The municipality is required to verify the accuracy of the rate(s) of exchange quoted by the bidder in paragraph 4.1 of this Certificate.

9.2 EVALUATION OF BIDS BASED ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT

Bids that were invited on the basis of local production and content should be evaluated by following a two-stage bidding process:

- 9.2.1 First stage – Evaluation in terms of the stipulated minimum threshold for local production and content
- 9.2.1(a) Bids must be evaluated in terms of the evaluation criteria stipulated in the bid documents. The amendment of the stipulated minimum threshold for local production and content after the closure of bids is not allowed as this may jeopardise the fairness of the process.
- 9.2.1(b) A bid will be disqualified if:
- the bidder fails to achieve the stipulated minimum threshold for local production and content; and
 - the Declaration Certificate for Local Content (MBD 6.2) referred to in paragraphs 9.1.1(d) and 9.1.2(d) is not submitted as part of the bid documentation.

9.2.1(c) Calculation of Local Content

The local content (LC) as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 201x as indicated in paragraph 9.1.1(c) above.

9.2.1(d) The municipality must verify the accuracy of the rates of exchange quoted by the bidder in paragraph 4.1 of the Declaration Certificate for Local Content (MBD 6.2)

9.2.2 Second stage - Evaluation in terms of the 80/20 or 90/10 preference point systems

9.2.2(a) Only bids that achieve the minimum stipulated threshold for local production and content must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Paragraph 5 and 6.

9.2.2(b) Where appropriate, prices may be negotiated only with short listed or preferred bidders. Such negotiations must not prejudice any other bidders.

10. Broad –Based Black Economic Empowerment Status Level Certificates

10.1 Codes of Good Practice - 9 February 2007

10.1.1 Tenders with annual total revenue of R5 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the Broad-Based Black Economic Empowerment Act, and must submit a certificate issued by a registered auditor, accounting officer (as contemplated in section 60(4) of the Close Corporation Act, 1984 (Act No.69 of 1984) or an accredited verification agency.

10.1.2 Tenders other than exempted Micro-Enterprises (EMEs) must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating.

10.1.3 The Submission of such certificates must comply with the requirements of instructions and guidelines issued by the National Treasury and be in accordance with notices published by the Department of Trade and Industry in the Government Gazette.

10.1.4 The B-BBEE status level attained by the tenderer must be used to determine the number of points contemplated in regulations 5(2) and 6(2).

10.2 Codes of Good Practice - 11 October 2013

10.2.1 Eligibility as an Exempted Micro Enterprise (EME)

10.2.1(a) Any enterprise with an annual Total Revenue of R10 Million or less qualifies as an Exempted Micro-Enterprise.

10.2.1(b) An Exempted Micro-Enterprise is deemed to have a B-BBEE Status of "Level Four Contributor" having a B-BBEE recognition level of 100%.

10.2.1(c) Enhanced B-BBEE recognition level for an Exempted Micro-Enterprise:

10.2.1(c)(i) Despite paragraphs 10.2.1(b) an EME which is 100% Black owned qualifies for elevation to "Level One Contributor" having a B-BBEE recognition level of 135%.

10.2.1(c)(ii) Despite paragraph 10.2.1(b) and 10.2.1(c)(i), an EME which is at least 51% Black owned qualifies for elevation to "Level Two Contributor" having a B-BBEE recognition level of 125%.

10.2.1(d) Despite paragraphs 10.2.1(b) and 10.2.1(c), an EME is allowed to be measured in terms of the QSE scorecard should they wish to maximise their points and move to a higher B-BBEE recognition level.

10.2.1(e) An EME is only required to obtain an sworn affidavit on an annual basis, confirming the following:

10.2.1(e)(i) Annual Total Revenue of R10 million or less

10.2.1(e)(ii) Level of Black ownership.

10.2.1(f) Any misrepresentation in terms of Para 10.2.1(e) above constitutes a criminal offence as set out in the B-BBEE Act as amended.

10.2.2 Eligibility as a Qualifying Small Enterprises (QSE)

10.2.2(a) A Measured Entity with an annual Total Revenue of between R10 million and R50 million qualifies as a Qualifying Small Enterprise.

10.2.2(b) A QSE must comply with all of the elements of B-BBEE for the purposes of measurement.

- 10.2.2(c) Enhanced B-BBEE recognition level for QSE:
 - 10.2.2(c)(i) A Qualifying Small Enterprise which is 100% Black owned qualifies for a Level One B-BBEE recognition.
 - 10.2.2(c)(ii) A QSE which is at least 51% Black owned qualifies for Level Two B-BBEE recognition level.
 - 10.2.2(c)(iii) A QSE is only required to obtain an sworn affidavit on an annual basis, confirming the following:
 - 10.2.2(c)(iii)(i) Annual Total Revenue of R50 million or less;
 - 10.2.2(c)(iii)(ii) Level of Black ownership.
- 10.2.2(d) Any misrepresentation in terms of Para 10.2.2(c) above constitutes a criminal offence as set out in the B-BBEE Act as amended.

10.2.3 Start-Up Enterprises

- 10.2.3(a) Start-up Enterprise must be measured as an Exempted Micro-Enterprise under this statement for the first year following their formation or incorporation. This provision applies regardless of the expected total revenue of the Start-up Enterprise.
- 10.2.3(b) Start-up Enterprise is deemed to have the qualifying B-BBEE Status in accordance with the principles of paragraph 10.2.1 of this policy.
- 10.2.3(c) In order to qualify as a Start-up Enterprise, the enterprise must provide an independent confirmation of its status in accordance with paragraph 10.2.1(e).
- 10.2.3(d) Despite paragraph 10.2.3(a) and 10.2.3(b), a Start-up Enterprise must submit a QSE scorecard when tendering for any contract, or seeking any other economic activity covered by Section 10 of the Broad-Based Black Economic Empowerment Act 53 of 2003, with a value higher than R10 million but less than R50 million. For contracts of R50 million or more they should submit the Generic scorecard. The preparation of such scorecards must use annualised data.

10.3 Transitional Period

The newly amended B-BBEE Codes of Good Practice are applicable as from the date of Gazette No. 36928, B-BBEE Codes of Good Practice, which is 11 October 2013. The 2007 B-BBEE Codes of Good Practice are still applicable until the end of the Transitional Period at the end of April 2015. The amended Codes provides entities with an option of electing to use either the 2007 Codes which are still applicable until October 2014, or the amended Codes of 2013.

According to the 2007 Codes, new entities and entities with a turnover that are below R 5 million per annum are exempted from complying with BEE, and are given an automatic status of Level 4. A letter from their Accountant or Auditor is sufficient to prove BEE compliance.

The 2013 amended Codes of Good Practice make a provision for only a sworn affidavit on an annual basis as sufficient for entities with an annual turnover of R 10 million and below to prove B-BBEE compliance.

11. Conditions

- (1) Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered.
- (2) The Cape Winelands District Municipality must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.
- (3) A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is processed.
- (4) Points scored must be rounded off to the nearest 2 decimals places.
- (5)
 - (a) In the event that two or more tenders have scored equal total points, the successful tender must be the one scoring the highest number of preference points for B-BBEE.
 - (b) However, when functionality is part of the evaluation process and two or more tenders have scored equal points including equal preference points for B-BBEE, the successful tender must be the one scoring the highest score for functionality.
 - (c) Should two or more tenders be equal in all respects, the award shall be decided by the drawing of lots.

- (6) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- (7) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.
- (8) A person must not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contact.
- (9) A person awarded a contract may not sub-contract 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 than the person concerned, unless the contract is sub-contracted to an exempted micro enterprise that has the capability and ability to execute the sub-contract.
- (10) A person awarded a contract in relation to a designated sector, may not sub-contract 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.
- (11) When the Cape Winelands District Municipality is in need of a service provided by only tertiary institutions, such services must be procured through a tendering process from the identified tertiary institutions.
- (12) Tertiary institutions referred to in sub-paragraph (11) will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good practice.
- (13) (a) Should the Cape Winelands District Municipality require a service that can be provided by one or more tertiary institutions or public sector, the appointment of a contractor must be done by means of a tendering process;
- (b) Public entities will be required to submit their B-BBEE status in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.

12. Declarations

- (1) A tender must, in the manner stipulated in the document, declare that-
 - (a) the information provided is true and correct;
 - (b) the signatory to the tender document is duly authorised; and
 - (c) documentary proof regarding any tendering issue will, when required, be submitted to the satisfaction of the Cape Winelands District Municipality.

13. Remedies

- (1) The Cape Winelands District Municipality must, upon detecting that-
 - (a) The B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis; or
 - (b) any of the conditions of the contract have not been fulfilled, act against the tenderer or person awarded the contract in terms of the Combatting Abuse of Supply Chain Management Policy).
- (2) The Cape Winelands District Municipality may, in addition to any other remedy it may have against the person contemplated in sub-paragraph (1)-
 - (a) Disqualify the person from the tendering process;
 - (b) Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) Cancel the contract and claim any damages it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) Restrict the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) Forward the matter for criminal prosecution.

14. Tax clearance

No tender may be awarded to any person whose tax matters have not been declared by the South African Revenue Services to be in order.

15. Short Title

This policy is called the Preferential Procurement Policy of the Cape Winelands District Municipality.