



**CAPE WINELANDS DISTRICT**  
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# **PREFERENTIAL PROCUREMENT POLICY**

*Council resolved on 6 February 2023 (C 15.1) in terms of section 111 of the Local Government Municipal Finance Management Act (No. 56 of 2003), to adopt the following proposal as the Preferential Procurement Policy of the Cape Winelands District Municipality*

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## 1. DEFINITIONS

In this policy, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act or the Regulations shall bear the meaning so assigned –

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

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

**"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.

**"Highest acceptable tender"** means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders.

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

**“Locality”** means an enterprise who’s head office or primary place of business or regional or satellite office is located within the boundaries of the Western Cape Province/ the Cape Winelands District Municipal Area.

**“Proof of locality”** means a –

- 1) municipal account in the name of the tenderer not older than 90 days;
- 2) lease agreement where the tenderer is the lessee; or
- 3) an official letter from the bank confirming the registered business address of the tenderer;

**“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, a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or any other requirement prescribed in terms 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.

**“Regulations”** means the Preferential Procurement Regulations, 2022.

**“Specific goals”** means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994.

**“Tender”** means a written offer in the form determined by a municipality in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation.

**“Tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions.

## 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 (b) that every organ of state and public entity must apply any relevant code of good practice issued in terms of the Act in 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 for 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 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.

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)(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 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.

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 paragraph 3.1 (a) (i) and (ii) will be implemented.
- 3.2 (b) The objectives to be achieved through this policy is to:
- (i) Promote Black-Based Black Economic Empowerment (B-BBEE) - enterprises providing services and goods.
  - (ii) Promote local labour and/ or promotion of enterprises located in the municipal area.
  - (iii) Promote Small Medium and Micro Enterprises (SMME's), Joint Ventures, Consortiums, and partnerships.

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

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 consistency with the SCM policies in line with sections 152(1)(c) and 152(2) of the Constitution.

#### **4. APPLICATION OF THE POLICY**

- 3.1 This policy applies to all procurement of goods and services by the municipality with a value of R 2,000 (VAT included) and above.
- 3.2 This policy does not apply to public auctions.
- 3.3 This policy must be applied concurrently with other legislative prescripts and other policies that regulates the procurement of goods and services by the Municipality.

#### **5. APPLICATION OF PREFERENCE POINT SYSTEM**

- 5.1 The Municipality shall, in the tender documents, stipulate –
  - 5.1.1 The preference point system applicable; and

- 5.1.2 the specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.
- 5.2 If it is unclear whether the 80/20 or 90/10 preference point system applies –
  - 5.2.1 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
  - 5.2.2 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.
- 5.3 Any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.
- 5.4 A tenderer failing to submit required proof to claim preferences for specified goals, which is in line with sections 2(1)(d)(i) and (ii) of the Act –
  - 5.4.1 May only score in terms of the 80/90-point formula for price; and
  - 5.4.2 Scores 0 points for the relevant specific goals
- 5.5 The preference points scored by a tenderer must be added to the points scored for price.
- 5.6 The points scored must be rounded off to the nearest two decimal places.
- 5.7 The contract must be awarded to the tenderer scoring the highest preference points.

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

6.1 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:

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

Where-

$P_s$  = Points scored for price of tender under consideration;  
 $P_t$  = Price of tender under consideration; and  
 $P_{\min}$  = Price of lowest acceptable tender.

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

6.3 The points scored for the specific goal(s) must be added to the points scored for the 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 tendering scoring the highest points.

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

7.1 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:

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

Where-

- $P_s$  = Points scored for price of tender under consideration;  
 $P_t$  = Price of tender under consideration; and  
 $P_{min}$  = Price of lowest acceptable tender.

- 7.2 A maximum of 10 points may be awarded to a tenderer for the specified goals 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.

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

- 8.1 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:

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

Where-

- $P_s$  = Points scored for price of tender under consideration;  
 $P_t$  = Price of tender under consideration; and  
 $P_{max}$  = Price of highest acceptable tender.

- 8.2 A maximum of 20 points may be awarded to a tenderer for the specific goal(s) 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.

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

9.1 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:

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

Where-

$P_s$  = Points scored for price of tender under consideration;

$P_t$  = Price of tender under consideration; and

$P_{max}$  = Price of highest acceptable tender.

9.2 A maximum of 10 points may be awarded to a tenderer for the specific goal(s) specified for the tender.

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

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

## 10. SPECIFIC GOALS IN COMPLIANCE WITH SECTIONS 2(1)(d)(i) and (ii) OF THE ACT

10.1 Section 2(1)(d)(i) of the Act states that specific goals may include contracting with persons, or categories of persons, historically

disadvantaged by unfair discrimination on the basis of race, gender or disability.

10.2 Section 2(1)(d)(ii) of the Act states that specific goals may include implementing the programmes of the Reconstruction and Development Programme (RDP) as published in Government Gazette No. 16085 dated 23 November 1994.

10.3 The tendering conditions shall stipulate the specific goals, as contemplated in section 2(1)(d)(i) and (ii) of the Preferential Procurement Act, to be attained.

10.4 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:

10.4.1 Contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability; and

10.4.2 Implementing the programmes of the RDP (published in Government Gazette No. 16085 dated 23 November 1994).

10.5 Regarding paragraph 10.4.1, 50% of the 20/10 points will be allocated to promote this goal and points will be allocated in terms of the B-BBEE scorecard as follows:

| <b>B-BBEE Status Level of Contributor</b> | <b>Number of Points for Preference (80/20)</b> | <b>Number of Points for Preference (90/10)</b> |
|---|--|--|
| 1   | 50% of 20                                      | 50% of 10                                      |
| 2   | 50% of 18                                      | 50% of 9                                       |
| 3   | 50% of 16                                      | 50% of 8                                       |
| 4   | 50% of 12                                      | 50% of 5                                       |

| <b>B-BBEE Status Level of Contributor</b> | <b>Number of Points for Preference (80/20)</b> | <b>Number of Points for Preference (90/10)</b> |
|---|--|--|
| 5   | 50% of 8                                       | 50% of 4                                       |
| 6   | 50% of 6                                       | 50% of 3                                       |
| 7   | 50% of 4                                       | 50% of 2                                       |
| 8   | 50% of 2                                       | 50% of 1                                       |
| Non-compliant contributor                 | 0  | 0  |

10.6 A tenderer failing to submit proof of B-BBEE status level of contributor may only score in terms of the 80/90-point formula for price; and scores 0 points for B-BBEE status level of contributor.

10.7 Regarding paragraph 10.4.2, the programmes of the RDP (published in Government Gazette No. 16085 dated 23 November 1994) relevant to this Municipality in the context of preferential procurement specific goals are the promotion of enterprises located in a specific district/province for work to be done or services to be rendered in that District/Province (hereafter referred to as “Locality” as defined in paragraph 1 above) –

10.7.1 Each tender must specify in the invitation to tender that 50% of the 20/10 points will be allocated to promote the specific goal of locality. Points will be allocated as follows:

| <b>No.</b> | <b>Requirement</b>  | <b>Number of Points</b> |
|------------|---|-------------------------|
| 1          | Procurement under the 80/20 preference points system where the enterprise head office or primary place of business or regional or satellite office is located within the boundaries of the Cape Winelands District Municipal Area | <b>5</b>                |
| 2          | Procurement under the 90/10 preference points system where the enterprise head office or primary place of business or regional or satellite office is located within the boundaries of the Cape Winelands District Municipal Area | <b>2.5</b>              |

|   |   |            |
|---|---|------------|
| 3 | Procurement under the 80/20 preference points system where the enterprise head office or primary place of business or regional or satellite office is located within the boundaries of the Western Cape Province  | <b>5</b>   |
| 4 | Procurement under the 90/10 preference points system where the enterprise head office or primary place of business or regional or satellite office is located within the boundaries of the Western Cape Province. | <b>2.5</b> |

10.7.2 An enterprise that does not have an enterprise head office or primary place of business or regional or satellite office located within the boundaries of the Cape Winelands District Municipal Area shall score 0 points for the specific goal of locality.

10.8 Regarding paragraph 10.4.1, 50% of the 20/10 points for income generating contracts will be allocated to promote this goal and points will be allocated in terms of the B-BBEE scorecard as follows:

| <b>B-BBEE Status Level of Contributor</b> | <b>Number of Points for Preference (80/20)</b> | <b>Number of Points for Preference (90/10)</b> |
|---|--|--|
| 1   | 50% of 20                                      | 50% of 10                                      |
| 2   | 50% of 18                                      | 50% of 9                                       |
| 3   | 50% of 16                                      | 50% of 8                                       |
| 4   | 50% of 12                                      | 50% of 5                                       |
| 5   | 50% of 8                                       | 50% of 4                                       |
| 6   | 50% of 6                                       | 50% of 3                                       |
| 7   | 50% of 4                                       | 50% of 2                                       |
| 8   | 50% of 2                                       | 50% of 1                                       |
| Non-compliant contributor                 | 0  | 0  |

10.8.1 A tenderer failing to submit proof of B-BBEE status level of contributor may only score in terms of the 80/90-point formula for price; and scores 0 points for B-BBEE status level of contributor.

10.8.2 Regarding paragraph 10.4.2, the programmes of the RDP (published in Government Gazette No. 16085 dated 23 November 1994) relevant to this Municipality in the context of preferential procurement specific goals for income generating contracts are the promotion of South African owned enterprises and 50% of the 20/10 points will be allocated to promote the specific goal to promote South African owned enterprises. Points will be allocated as follows:

| No. | Requirement   | Number of Points |
|-----|---|------------------|
| 1   | Procurement under the 80/20 preference points system where the enterprise head office or primary place of business or regional or satellite office is located within the boundaries of South Africa | 10               |
| 2   | Procurement under the 90/10 preference points system where the enterprise head office or primary place of business or regional or satellite office is located within the boundaries of South Africa | 5                |

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

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

## 11. CRITERIA FOR BREAKING DEADLOCK IN SCORING

11.1 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.

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

## **12. REMEDIES**

If the Municipality is of the view that a tenderer submitted false information regarding a specific goal, it must –

12.1 Inform the tenderer; accordingly, and

12.2 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 –

After considering the representations referred to in paragraph 12.1.2, the Municipality may, if it concludes that such false information was submitted by the tenderer –

12.3 Disqualify the tenderer or terminate the contract in whole or in part; and

12.4 If applicable, claim damages from the tenderer.

## **13. REPEAL OF POLICY**

13.1 This Policy repeal all previous preferential procurement policies of the Municipality in its entirety.

13.2 Any tender advertised before the date referred to in subsection 16 must be dealt with in terms of the Preferential Procurement Regulations, 2017.

## **14. SHORT TITLE AND COMMENCEMENT**

This Policy shall be called the 2022 Preferential Procurement Policy of the Cape Winelands District Municipality, 2022 and take effect on 7 February 2023.