

LAINGSBURG MUNICIPALITY



Preferential Procurement Policy 2023/24

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Laingsburg Municipality's Preferential Procurement Policy

Issued in terms of sections 152(1)(c) and 217 of the Constitution read with section 2 of the Preferential Procurement Policy Framework Act 5 of 2000 and Preferential Procurement regulations 2022

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**LAINGSBURG MUNICIPALITY
PREFERENTIAL PROCUREMENT POLICY VERSION 2**

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PREFERENTIAL PROCUREMENT POLICY VERSION 2**

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”	means 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;
“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.
“Market Analysis”	means a technique used to identify market characteristics for specific

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	goods or services.
“Municipality”	means the Laingsburg Local Municipality.
“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 Central Karoo 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 which 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 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.
“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 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).

2. Introduction

2.1. The Preferential Procurement Framework Act, section 2(1) prescribes that each government institution must determine its own preferential procurement policy, within a framework upon which the institution will specify how the preferential points will be allocated when awarding bids and how it intends to use procurement as one of its enablers for economic development.

The national treasury provided Preferential Procurement Regulations 2022, issued on 4 November 2022, to provide minimum guidance and requirements for all government institutions, on the determination of their own preferential procurement policies.

2.2. This policy is aimed at assisting the government’s program of redressing the historical imbalances through the application of the preferential points system and other incentive programs aimed at economic local economic development.

3. Purpose and Objectives

3.1. The purpose of this policy is to:

- 3.1.1. Provide for categories of preference in awarding of bids;
- 3.1.2. Provide for the advancement of persons or categories of persons disadvantaged by unfair discrimination; and
- 3.1.3. Clarify the mechanisms how the above items in paragraph 3.1.1 and 3.1.2 will be implemented.

3.2. The objectives of this policy includes:

- 3.2.1. Promote Black-Based Black Economic Empowerment (B-BBEE) - enterprises providing services and goods.
- 3.2.2. Promote Small Medium and Micro Enterprises (SMME’s), Joint Ventures, Consortiums, and partnerships.
- 3.2.3. Implement recognised best procurement practices through effective planning, strategic purchasing, and contract management.

3.3. 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.

3.4. 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).

3.5. This policy applies to the municipality and must be read together with the Supply Chain Management Policy.

4. Application of preference points system

4.1. The Municipality will, in the tender documents, stipulate -

- 4.1.1. The preference point system applicable; and
- 4.1.2. Any specific goal as envisaged in section 2(1)(d) and (e) of the Preferential Procurement Act.
- 4.1.3. The preference point system will be applicable for all procurement in excess of R 30 000.

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

- 4.2.1. 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
- 4.2.2. 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. 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 R 50 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.

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.

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 R 50 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.

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.

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 R 50 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

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.

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 R 50 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.

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.

9. Specified contract participation goals

9.1. The tendering conditions will stipulate the specific goals, as contemplated in section 2(1)(d)(ii) of the Preferential Procurement Act, be attained.

9.2. A maximum of **20 points** (80/20 preference points system) or **10 points** (90/10 preference points system), will be allocated for specific goals. These goals are:

9.2.1. Contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability; (B-BBEE Status).

9.2.2. Local labour and/ or promotion of enterprises located in the municipal area (phased in approach to be applied for other RDP goals).

9.3. In terms of paragraph 9.2.1 a maximum of **10 / 5** of the **20 / 10 points** will be allocated to promote this goal and points will be allocated in terms of the BBBEE scorecard as follows.

B-BBEE Status Level of Contributor	Number of Points for Preference (80/20)	Number of Points for Preference (90/10)
1	10	5
2	9	4.5
3	7	3
4	6	2.5
5	4	2
6	3	1.5
7	2	1
8	1	0.5
Non-compliant contributor	0	0

9.4. A tenderer must submit proof of its BBBEE status level contributor [scorecard].

9.5. A tenderer failing to submit proof of BBBEE status level of contributor –

9.5.1. may only score in terms of the 80/90 point formula for price; and

9.5.2. scores 0 points out of **10 / 5** BBBEE status level of contributor, which is in line with section 2 (1) (d) (i) of the Act, where the supplier or service provider did not provide proof thereof.

9.6. In terms of paragraph 9.2.2 a maximum of **10 / 5** of the **20 / 10 points** will be allocated to promote this goal. Points will be allocated as follows.

Locality of supplier/ Local Labour	Points (80/20)	Points (90/10)
Within the boundaries of the municipality	10	5
Outside of the boundaries of the Municipality	0	0

9.7. A tenderer failing to submit proof of required evidence to claim preferences for other specified goals, which is in line with section 2 (1) (d) (ii) of the Act.

9.7.1. may only score in terms of the 80/90 point formula for price; and

9.7.2. scores 0 points out of **10 / 5** of the relevant specific goals where the supplier or service provider did not stipulate.

9.8. The policy does not include any Pre-qualification goals.

9.9. Any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.

9.10. The preference points scored by a tenderer must be added to the points scored for price.

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

9.12. The contract must be awarded to the tenderer scoring the highest procurement points.

10. Criteria for breaking deadlock in scoring

- 10.1.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.
- 10.2.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.
- 10.3.If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

11. Award of contracts to tenderers not scoring highest points

- 11.1. 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.

12. Remedies

- 12.1.If a Municipality is of the view that a tenderer submitted false information regarding a specific goal, it must –
 - 12.1.1. inform the tenderer; accordingly, and
 - 12.1.2. 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.
- 12.2.After considering the representations referred to in paragraph 12.1.2, the Municipality may -
 - 12.2.1. if it concludes that such false information was submitted by the tenderer –
 - 12.2.1.1. disqualify the tenderer or terminate the contract in whole or in part; and
 - 12.2.1.2. if applicable, claim damages from the tenderer;

13. Performance Management

- 13.1.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.

14. Reporting

- 14.1.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.

15. Short title commencement

15.1. This policy is called the Laingsburg Municipality Preferential Procurement Policy and take effect on 01 July 2023.