

**THEEWATERSKLOOF
MUNICIPALITY**



**SUPPLY CHAIN MANAGEMENT
PREFERENTIAL PROCUREMENT
REGULATIONS POLICY**

July 2026

This Policy consists of:

The Preferential Procurement Policy, adopted in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and the Preferential Procurement Regulations of 2022.

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1. DEFINITIONS

"Acceptable Tender"	mean any tender which, in all respects, complies with the specification and conditions of tender as set out in tender document
"All applicable taxes"	includes Value-Added Tax, Pay-as-you-Earn, Income Tax, Unemployment Insurance Fund Contributions and Skills Development Levies;
"B-BBEE"	means Broad-Based Black Economic Empowerment as defined in Section 1 of the Broad-Based Black Economic Empowerment Act;
"B-BBEE status level of contributor"	means the B-BBEE status 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, is- sued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
"Black designated groups"	has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
"Black people"	has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;
"Broad-Based Black Economic Empowerment Act" (B-BBEEA)	means the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003);
"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;
"Contract"	means the agreement that results from the acceptance of a tender by Theewaterskloof municipality;
"Designated group"	means- (a) black designated groups; (b) black people; (c) women; (d) people with disabilities; or (e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);
"Designated sector"	means a sector, sub-sector or industry or product designated in terms of [clause] paragraph 8(1)(a);
"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.
"District municipal"	means the Overberg District Municipal Area;
"EME"	means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
"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;
"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;
"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”	<i>means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders;</i>
“Large enterprises”	<i>is a company with an annual turnover in excess of R50 million.</i>
“Price”	<i>means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts.</i>
“Rand value”	<i>means the total estimated value of a contract in Rand, calculated at the time of the tender invitation.</i>
“Tender”	<i>means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation</i>
“Tender for income-generating contracts”	<i>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.</i>
“The Act”	<i>means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).</i>
“Specific goals”	<i>means specific goals as contemplated in section 2(1) (d) of the Act which may include contracting with person, 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 dates 23 November 1994.</i>

2. OPENING STATEMENT

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).

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.

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.

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.

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.

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.

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

The upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.

3. APPLICATION OF THE POLICY

- 1) This policy applies to all procurement of goods and services by means of a tender as defined in paragraph 1 above.
- 2) This policy does not apply to public auctions or any other sale or lease of assets where it is not practical to apply a system of preference.
- 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.

4. PURPOSE, AND OBJECTIVES

- 1) The purpose of this policy is to:
 - a. Provide for categories of preference in awarding of tenders.
 - b. Provide for the advancement of persons or categories of persons disadvantaged by unfair discrimination; and
 - c. Clarify the mechanisms how the above items in paragraph 2 (i) and (ii) will be implemented.
- 2) Objectives
 - a. Promote Broad-Based Black Economic Empowerment (B-BBEE) - enterprises providing services and goods.
 - b. Promote Small Medium and Micro Enterprises (SMME's), Joint Ventures, Consortiums, and partnerships.
 - c. Implement recognised best procurement practices through effective planning, strategic purchasing, and contract management.

5. IDENTIFICATION OF PREFERENCE POINT SYSTEM

- (1) An organ of state must, in the tender documents, stipulate—
 - a) the applicable preference point system as envisaged in regulations 4, 5, 6 or 7;
 - b) 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.
- (2) If it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
 - (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.

6. 80/20 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES FOR RAND VALUE EQUAL TO OR ABOVE R2000.01 AND UP TO R50 MILLION.

- (1) The following formula must be used to calculate the points out of 80 for price in respect of an invitation for 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.

- (2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
- (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.
- (4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

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

- (1) The following formula must be used to calculate the points out of 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

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

Where-

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

- (2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.
- (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.
- (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 FOR INCOME-GENERATING CONTRACTS WITH RAND VALUE EQUAL TO OR BELOW R50 MILLION

- (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.

- (2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
- (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.
- (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

- (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.

- (2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.
- (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.
- (4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

10. POINTS FOR SPECIFIC GOALS TO PROMOTE ECONOMIC DEVELOPMENT

- (1) The tendering conditions will stipulate the specific goals, as contemplated in section 2(1)(d)(ii) of the Preferential Procurement Policy Framework Act, be attained.
- (2) 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:
 - a. contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender, or disability.
 - b. the promotion of enterprises located in the local area (phased in approach to be applied for other RDP goals)
- (3) Regarding paragraph 10.2 (a) 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-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	8	4
4	6	2.5
5	4	2
6	3	1.5
7	2	1
8	1	0.5
Non-compliant contributor	0	0

- (4) A tenderer must submit proof of its BBBEE status level contributor.
- (5) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-
 - a) may only score in terms of the 80/90 point formula for price; and
 - b) scores 0 points for B-BBEE status level of contributor, which is in line with section 2(d) (i) of the Act, where the supplier or service provider did not provide proof thereof.
- (6) Regarding paragraph 10.2 (b) 50% of the 20/10 points will be allocated to promote this goal. Points will be allocated as follows:

Local area of supplier	Number of Points for Preference	
	80/20	90/10
Within the boundaries of the Theewaterskloof Municipality	10	5
Within the boundaries of Overberg District	6	3
Within the boundaries of the Western Cape	4	2
Outside of the boundaries of the Western Cape	0	0

- (7) Any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.
- (8) 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. -

- (a) may only score in terms of the 80/90 point formula for price; and
- (b) scores 0 points for the relevant specific goals where the supplier or service provider did not stipulate locality .
- (9) The preference points scored by a tenderer must be added to the points scored for price.
- (10) The points scored must be rounded off to the nearest two decimal places.
- (11) The contract must be awarded to the tenderer scoring the highest points.
- (12) If the price offered by a tenderer scoring the highest points is not market related, the organ of state may not award the contract to that tenderer.

11. CRITERIA FOR BREAKING DEADLOCK IN SCORING

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

12. AWARD OF CONTRACTS TO TENDERERS NOT SCORING HIGHEST POINTS

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

13. REMEDIES

- (1) If an organ of state 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.
- (2) After considering the representations referred to in subregulation (1)(b), the organ of state may, if it concludes that such information is false—
 - (a) disqualify the tenderer or terminate the contract in whole or in part; and
 - (b) if applicable, claim damages from the tenderer.

14. REPEAL OF REGULATIONS

- (1) Subject to this regulation, the Preferential Procurement Regulations, 2017 published in Government No. 40553 of 20 January 2017, are hereby repealed with effect from the date referred to in regulation 11.
- (2) Any tender advertised before the date referred to in regulation 11 must be dealt with in terms of the Preferential Procurement Regulations, 2017.

ANNEXURE A

Code of Conduct for Supply Chain Management Practitioners and Other Role Players

The purpose of this Code of Conduct is to promote mutual trust and respect and an environment where business can be conducted with integrity and in a fair and reasonable manner.

General Principles

The **Theewaterskloof Municipality** commits itself to a policy of fair dealing and integrity in the conducting of its business. Officials and other role players involved in Supply Chain Management (SCM) are in a position of trust, implying a duty to act in the public interest. Officials and other role players should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or provider/contractor for themselves, their family or their friends.

Officials and other role players involved in SCM should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.

Officials and other role players involved in SCM should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them.

Conflict of interest

An official or other role player involved with Supply Chain Management –

- a) must treat all providers and potential providers equitably;
- b) may not use his or her position for private gain or to improperly benefit another person;
- c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- d) must declare to the Accounting Officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;

- e) must declare to the Accounting Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process, or in any award of a contract by the municipality ;
- f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- g) must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- h) should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
- i) should not take improper advantage of their previous office after leaving their official position.

Accountability

Practitioners are accountable for their decisions and actions to the public. Practitioners should use public property scrupulously. Only Accounting Officers or their delegates have the authority to commit the municipality to any transaction for the procurement of goods and / or services. All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.

Practitioners must assist the Accounting Officer in combating fraud, corruption, favouritism and unfair and irregular practices in the Supply Chain Management system.

Practitioners must report to the Accounting Officer any alleged irregular conduct in the Supply Chain Management system which that person may become aware of, including:

- a) any alleged fraud, corruption, favoritism or unfair conduct;
- b) any alleged contravention of the policy on inducements, rewards, gifts and favours to municipality officials or other role players; and
- c) any alleged breach of this code of conduct.

Any declarations made must be recorded in a register which the Accounting Officer must keep for this purpose. Any declarations made by the Accounting Officer must be made to the executive mayor who must ensure that such declaration is recorded in the register.

Openness

Practitioners should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only if it is in the public interest to do so.

Confidentiality

Any information that is the property of the municipality or its providers should be protected at all times. No information regarding any bid / contract / bidder / contractor may be revealed if such an action will infringe on the relevant bidder's / contractors personal rights.

Matters of confidential nature in the possession of officials and other role players involved in SCM should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions also apply to officials and other role players involved in SCM after separation from service.

Bid Specification / Evaluation / Adjudication Committees

- 6.1 Bid specification, evaluation and adjudication committees should implement Supply Chain Management on behalf of the **Theewaterskloof Municipality** in an honest, fair, impartial, transparent, cost-effective and accountable manner.
- 6.2 Bid evaluation / adjudication committees should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of Supply Chain Management in order to perform effectively and efficiently.
- 6.3 All members of bid adjudication committees should be cleared by the Accounting Officer at the level of "CONFIDENTIAL" and should be required to declare their financial interest annually.
- 6.4 No person should-
 - 6.4.1 interfere with the Supply Chain Management system of the municipality or
 - 6.4.2 amend or tamper with any price quotation / bid after its submission.

Combative Practices

Combative practices are unethical and illegal and should be avoided at all cost.

They include but are not limited to:

- a) Suggestions to fictitious lower quotations;
- b) Reference to non-existent competition;
- c) Exploiting errors in price quotations / bids;
- d) Soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters.