



PREFERENTIAL PROCUREMENT POLICY

2023/24

**The Preferential Procurement Policy is meant to be a
“Living” Document and will be subject to regular
reviews.**

TABLE OF CONTENTS

- 1. Definitions**
- 2. Application**
- 3. Identification of preference point system**
- 4. 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million**
- 5. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million**
- 6. 80/20 preference points system for tenders to generate income or to dispose of or lease assets with Rand value equal to or below R50 million**
- 7. 90/10 preference point system for tenders to generate income or to dispose of or lease assets with Rand value above R50 million**
- 8. Criteria for breaking deadlock in scoring**
- 9. Remedies**
- 10. Application of goals as provided for by the preferential procurement policy framework act (PPFA)**
- 11. The basket of preference goals**

PREAMBLE

- This policy is intended to assist the municipality with the development of their organizational preferential procurement policies as provided for by the Constitution of the Republic of South Africa, Act 108 of 1996 (RSA Constitution), Preferential Procurement Policy Framework Act, Act Number 5 of 2000 (PPPFA) and the Broad-Based Black Economic Empowerment, Act 53 of 2003.
- The Preferential Procurement Policy Framework Act requires an Organ of State to determine its Preferential Procurement Policy and to implement it within the framework prescribed.

OBJECTIVES OF THE POLICY

The principal objectives of the Ray Nkonyeni Municipality is to provide a mechanism to ensure sound, sustainable and accountable supply chain management within the Ray Nkonyeni Municipality, whilst promoting black economic empowerment, which includes but not solely confined to achieving the following socio-economic principles:

- To stimulate and promote Local Economic Development in a targeted and focused manner;
- To promote resource efficiency and greening;
- To facilitate creation of employment and business opportunities for the people of Ray Nkonyeni Municipality with particular reference to Historical Disadvantaged Individual's (HDIs) as cited in section 217 (2) of the Constitution of the Republic of South Africa Act 106 of 1996 ;
- To promote Local Content and the competitiveness of local businesses operating within the Ray Nkonyeni Municipality;
- To increase the small business sector access, in general, to procurement business opportunities created by Council;
- To increase participation by small, medium and micro enterprises (SMME's), including cooperatives and

Considering all the data available this policy will strive to achieve the following targets linked to its identified opportunities and the developmental perspectives outlined in the Municipality's Integrated Development Plan:

POLICY OBJECTIVES	TARGET
To promote local economic development and the support of emerging enterprises and SMMEs	<ul style="list-style-type: none"> • To spend a minimum of 40% (forty percent) of its annual procurement budget with Historically Disadvantaged Individuals (HDIs) youth, women, people with disabilities within the jurisdiction of Ray Nkonyeni Municipality, through the application of Preferential Procurement Policy and relevant policies. - 25% Youth - 25% Women - 10% People living with disabilities - 10% Military veterans - 30% Black people living in Rural areas and township.
To promote township and rural development through nodal developments	<ul style="list-style-type: none"> • Sub-contracting to a maximum of 30% on contracts of the approved budget per department. The 30% would be allocated to local black emerging contractor(s), local youth emerging contractor(s) inclusive of women and contractors of people with disabilities and co-operatives within the jurisdiction of Ray Nkonyeni Municipality.
To promote employment of local semi & unskilled workers.	<ul style="list-style-type: none"> • Identify 10% of SCM tenders that are labour intensive and ensure that the labour component is sourced from the local area where the project is based.

1. DEFINITIONS

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

"Bid" means a written offer, in the form determined by instruction, in response to an invitation for the procurement of goods or services or other form of procurement through a price quotation, a competitive bidding process, a limited bidding process or any other method envisaged in the Act;

"Bidder" means any person/enterprise which has submitted a Bid;

"Black People" has the meaning assigned to it in section 1 of the Broad Based Black Economic Empowerment Act.

Commented [AZ1]: This needs to be defined. Use BBBEE Act

"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.

"Exempted Micro Enterprise (EME)" means any enterprise with an annual total revenue of R10 million or less, as per Statement 000 of the BBBEE Codes of Good Practice.

"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;

"Historically Disadvantaged Individual (HDI)" means a South African citizen: 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 who is a female; and/or 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 a HDI

"Local business enterprise or local Supplier" means a service provider who permanently reside in the Ray Nkonyeni Municipality or enterprise that is permanently based in the Ray Nkonyeni Municipality.

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

"National Treasury" means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"People with disabilities" In terms of the Code of Good Practice on the Employment of Persons with disabilities: it is persons who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into, or advancement in employment.

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

“Qualifying Small Enterprise (QSE)” means a measured entity with an annual total revenue of between R10 million and R50 million, as per Statement 000 of the BBBEE Codes of Good Practice

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

“SMMes” means small businesses; as defined in section 1 of the National Small Business Act, 1996 (Act No 102 of 1996) a separate and distinct business entity, including co-operative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub sector of the economy mentioned in Column 1 of the Schedule and which can be classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria 40 mentioned in columns 3; 4 and 5 of the Schedule opposite the smallest relevant size or class as mentioned in column 2 of the Schedule.

“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 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;

“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; and

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

“Youth” means persons between the ages of 14 and 35 as the National Youth Development Agency Act 54 of 2008.

2. APPLICATION

- (1) This Policy Applies to RNM as per Regulations set out for organs of state as defined in section 11 of the Act.

3. IDENTIFICATION OF PREFERENCE POINT SYSTEM

- (1) The Municipality 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.

4. 80/20 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES WITH RAND VALUE EQUAL TO OR BELOW 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-

- Ps = Points scored for price of tender under consideration;
 Pt = Price of tender under consideration; and
 Pmin = 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.

5. 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 90 for price in respect of an invitation for 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-

- Ps = Points scored for price of tender under consideration;
 Pt = Price of tender under consideration; and
 Pmin = 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.

6. 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.

7. 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.

08. 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.

09. 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.

10. APPLICATION OF GOALS AS PROVIDED FOR BY THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT (PPPFA)

(a) Section 2 (1) of the Act requires that an organ of state must determine its preferential procurement policy and implement it within the following framework:

- (d) the specific goals 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 as published in Government Gazette No. 16085 dated 23 November 1994;

11. THE BASKET OF PREFERENCE GOALS

- (a) The basket of preference goals as contained in the relevant legislation are listed hereunder and Ray Nkonyeni is at liberty to apply specific goals in any combination format depending on the preference targets.

11.1 PREFERENCE GOAL 1

Ownership as specific goal

A maximum of 20 points (80/20 preference points system) or 10 (90/10 preference points system), may be allocated. Bidder may score preference points based on company ownership. If an organ of state applies ownership as specific goal, the municipality must advertise the tender with a specific

tendering preferential procurement requirement that in order for a tenderer to claim 10 / 20 points for specific goals, a tendering company must have the following ownership:

- race, (HDI) or
- gender (HDI) or;
- disability (HDI);

Ownership verification may be conducted in line with the Central Suppliers Database by National Treasury. Ownership verification may also be verified using the CIPC website.

11.2. PREFERENCE GOAL 2

RDP Goals

Over and above the awarding of preference points in favour of HDIs, the following activities may be regarded as a contribution towards achieving the goals of the RDP (published in Government Gazette No. 16085 dated 23 November 1994):

- a. The promotion of South African owned enterprises;
- b. The promotion of export orientated production to create jobs;
- c. The promotion of SMMEs;
- d. The creation of new jobs or the intensification of labour absorption;
- e. The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;
- f. The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region;
- g. The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered;
- h. The promotion of enterprises located in rural areas;
- i. The empowerment of the work force by standardising the level of skill and knowledge of workers;
- j. 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
- k. The upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.

The Municipality may also use other RDP goals identified in the Government Gazette

No. 16085 dated 23 November 1994;

<https://www.gov.za/sites/default/files/governmentgazetteid16085.pdf>

11.3. Preference Goal 3

B-BBEE Status Level of contributor

B-BBEE Act S10

(b) Every organ of state and public entity must take into account and, as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act in-

(b) developing and implementing a preferential procurement policy

The municipality may also adopt the B-BBEE status level of contributor as their specific goals. If an organ of state decides to adopt the B-BBEE status level of contributor as a specific goal, the organ of state must liaise with the Department of Trade and Industry together with BEE Commission for guidance on how to apply these provisions. This will assist in the understanding the relevant sector codes and any other applicable matters.

11.4. Preference Goal 4

Broad-Based Black Economic Empowerment Scorecard (B-BBEE) Combined with RDP

The municipality may also include in their policies as a specific goal, a combination of B-BBEE scorecard in line with the applicable codes of good practice and RDP goals. If the combination is applied, a portion of the 20/10 points may be allocated to promote this goal and points will be allocated in terms of the BBBEE scorecard and the remainder of the points can be used for other policy objectives as per the following example:

Example: 80/20 Preference Points system

B-BBEE Status Level of Contributor	Number of Points for Preference
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0
RDP Goals	
Promotion of SMMEs	5
Enterprises located in a specific province	2
Empowerment of the work force	3

11.5. Preference Goal 5

Combinations of any other Goals

The municipality may also combine any specific goals above in a manner that will help evaluate and apply preference points to tenders.

Annexure A attached to this policy provides a practical breakdown and points allocation per specific goal to be utilized as guidelines when compiling bid specs in line with the new PPPFA Regulations of 2022.