LEKWA-TEEMANE LOCAL MUNICIPALITY
"NW396"

HELD ON MONDAY 27TH FEBRUARY 2023 AT 10:00, CHRISTIANA COUNCIL CHAMBER

Resolution No.	Item Number	Resolution
18/2023	10.3	**TABLING OF THE PREFERENCIAL PROCUREMENT FRAMEWORK ACT REGULATIONS OF 2022** **RESOLVED** (a) That takes notes of the Preferential Procurement framework act regulations of 2022 as tabled, (b) That Council approves Preferential Procurement Framework act regulations of 2022.

Speaker of Lekwa-Teemane Local Municipality
Cllr M. Pilane

LEKWA TEEMANE LOCAL MUNICIPALITY

SUPPLY CHAIN MANAGEMENT POLICY

In terms of the

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003

CONTENTS

1. Definitions

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

"competitive bidding process" means a competitive bidding process referred to in paragraph 12 (1) (d) of this Policy;

"competitive bid" means a bid in terms of a competitive bidding process;

"final award", in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;

"formal written price quotation" means quotations referred to in paragraph 12 (1) (c) of this Policy;

"in the service of the state" means to be –

(a) a member of –

(i) any municipal council;
(ii) any provincial legislature; or
(iii) the National Assembly or the National Council of Provinces;

(b) a member of the board of directors of any municipal entity;

(c) an official (employee) of any municipality or municipal entity;

(d) (an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

(e) a member of the accounting authority of any national or provincial public entity; or

(f) an employee of Parliament or a provincial legislature;

"long term contract" means a contract with a duration period exceeding one year;

"list of accredited prospective providers" means the list of accredited prospective providers which the municipality must keep in terms of paragraph 14 of this policy;

"other applicable legislation" means any other legislation applicable to municipal supply chain management, including –

(a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
(b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
(c) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);

"Treasury guidelines" means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act;

"the Act" means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

"the Regulations" means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 868 of 2005;

"written or verbal quotations" means quotations referred to in paragraph 12(1)(b) of this Policy.

CHAPTER 1: IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

2. Supply chain management policy

(1) All officials and other role players in the supply chain management system of the municipality:

must implement this Policy in a way that –

(a) gives effect to –

(i) section 217 of the Constitution; and
(ii) Part 1 of Chapter 11 and other applicable provisions of the Act;

(b) is fair, equitable, transparent, competitive and cost effective;

(c) complies with –

(i) the Regulations; and
(ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;

(d) is consistent with other applicable legislation;

(e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and

(f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.

(2) This Policy applies when the municipality:

(a) procures goods or services;
(b) disposes goods no longer needed;

(c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or

(d) selects external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.

(4) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –

(a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and

(b) electricity from Eskom or another public entity, another municipality or a municipal entity.

3. Amendment of the supply chain management policy

(1) The Accounting Officer must –

(a) at least annually review the implementation of this Policy; and

(b) when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the council:

(2) If the accounting officer submits proposed amendments to the council that differs from the model policy issued by the National Treasury, the accounting officer must –

(a) ensure that such proposed amendments comply with the Regulations; and

(b) report any deviation from the model policy to the National Treasury and the relevant provincial treasury.

(3) When amending this supply chain management policy the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

4. Delegation of supply chain management powers and duties

(1) The council hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer –

(a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –

(i) Chapter 8 or 10 of the Act; and
(ii) this Policy;

(b) to maximise administrative and operational efficiency in the implementation of this Policy;

(c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and

(d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.

(2) Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).

(3) The Accounting Officer may not sub-delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality;

(4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

5. Sub-delegations

(1) The accounting officer may in terms of section 79 or 106 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such sub-delegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.

(2) The power to make a final award –

(a) above R10 million (VAT included) may not be sub delegated by the accounting officer;

(b) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub delegated but only to –

(i) the chief financial officer;
(ii) a senior manager; or
(iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or

(c) not exceeding R2 million (VAT included) may be sub delegated but only to –

(i) the Chief Financial Officer;
(ii) a senior manager;
(iii) a manager directly accountable to the chief financial officer or a senior manager; or
(iv) a bid adjudication committee.

(3) An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including–

(a) the amount of the award;
(b) the name of the person to whom the award was made; and
(c) the reason why the award was made to that person.

(4) A written report referred to in subparagraph (3) must be submitted –

(a) to the Accounting Officer, in the case of an award by:

(i) the chief financial officer;
(ii) a senior manager; or
(iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or

(b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –

(i) a manager referred to in subparagraph (2)(c)(iii); or

(ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member

(5) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.

(6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

(7) No supply chain management decision-making powers may be delegated to an advisor or consultant.

6. Oversight role of Council

(1) The council reserves its right to maintain oversight over the implementation of this Policy.

(2) For the purposes of such oversight the accounting officer must –

whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to the council.

(3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policyto the mayor.

(4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

7. Supply chain management unit

(1) A supply chain management unit is hereby established to implement this Policy.

(2) The supply chain management unit operates under the direct supervision of the chief financial officer or an official to whom this duty has been delegated interms of section 82 of the Act.

8. Training of supply chain management officials

The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training.

CHAPTER 2: SUPPLY CHAIN MANAGEMENT SYSTEM

9. Format of supply chain management system

This Policy provides systems for –

(i) demand management;

(ii) acquisition management;

(iii) logistics management;

(iv) disposal management;

(v) risk management; and

(vi) performance management.

Part 1: Demand management

10. System of demand management

(1) The Accounting Officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan.

(2) The demand management system must:

(a) include timely planning and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical deliverydates, and are of the appropriate quality and quantity at a fair cost;

(b) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature; and

(c) provide for the compilation of the required specifications to ensure that its needs are met.

(d) To undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

Part 2: Acquisition management

11. System of acquisition management

(1) The Accounting Officer must implement the system of acquisition management set out in this Part in order to ensure –

(a) that goods and services are procured by the municipality in accordance with authorised processes only;

(b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;

(c) that the threshold values for the different procurement processes are complied with;

(d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation;

And

(e) that any Treasury guidelines on acquisition management are properly taken into account.

(2) When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the municipality's supply chain management system, including –

(a) the kind of goods or services; and
(b) the name of the supplier.

12. Range of procurement processes

(1) Goods and services may only be procured by way of –

(a) petty cash purchases, up to a transaction value of R2 000 (VAT included);

(b) written or verbal quotations for procurements of a transaction value over R2 000 up to R30 000 (VAT included);

(c) formal written price quotations for procurements of a transaction value over R30 000 up to R200 000 (VAT included); and

(d) a competitive bidding process for–

(i) procurements above a transaction value of R200 000 (VAT included); and

(ii) the procurement of long term contracts.

(2) The accounting officer may, in writing-

(a) lower, but not increase, the different threshold values specified in subparagraph (1); or

(b) direct that –

(i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;

(ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R30 000; or

(iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.

(3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

13. General preconditions for consideration of written quotations or bids

A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –

(a) has furnished that provider's –

(i) full name;
(ii) identification number or company or other registration number; and
(iv) tax reference number and VAT registration number, if any;

(b) has authorised the municipality to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; And

(c) has indicated –

i. whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;

ii. if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or

(iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

14. Lists of accredited prospective providers

(1) The accounting officer must –

(a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations in the Central Supplier Database; and

(b) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.

(2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.

(3) The list must be compiled per commodity and per type of service.

15. Petty cash purchases

The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (a) of this Policy, are as follows –

(a) Municipal Manager may determine the terms on which a Manager may delegate responsibility for petty cash to an official reporting to the manager;

(b) Municipal Manager may determine the maximum number of petty cash purchases or the maximum amounts per month for each Manager;

(c) Municipal Manager may determine any types of expenditure from petty cash purchases that are excluded, where this is considered necessary; and

(d) a monthly reconciliation report from each manager must be provided to the chief financial officer, including –

(i) the total amount of petty cash purchases for that month; and
(ii) receipts and appropriate documents for each purchase.

16. Written or verbal quotations

The conditions for the procurement of goods or services through written or verbal quotations, are as follows:

(a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers (Central Supplier Database) provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;

(b) to the extent feasible, providers must be requested to submit such quotations in writing;

(c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;

(d) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and

(e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

17. Formal written price quotations

(1) The conditions for the procurement of goods or services through formal written price quotations, are as follows:

(a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers (Central Supplier Database;)

(b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 14(1)(b) and (c) of this Policy;

(c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and

(d) the accounting officer must record the names of the potential providers and their written quotations.

(2) A designated official referred to in subparagraph (1) (c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

17.1. GOODS AND SERVICES

Supply chain management policy

17.3. Each municipality and each municipal entity must have and implement a supply chain management policy which gives effect to the provisions of this Part.

Supply chain management policy to comply with prescribed framework

17.4. (1) The supply chain management policy of a municipality or municipal entity must be fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework for municipal supply chain management, which must cover at least the following:

(a) The range of supply chain management processes that municipalities and municipal entities may use, including tenders, quotations, auctions and other types of competitive bidding;

(b) when a municipality or municipal entity may or must use a particular type of process;

(c) procedures and mechanisms for each type of process;

(d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;

(e) open and transparent pre-qualification processes for tenders or other bids;

(f) competitive bidding processes in which only pre-qualified persons may participate;

(g) bid documentation, advertising of and invitations for contracts;

(h) procedures and mechanisms for—

(i) the opening, registering and recording of bids in the presence of interested persons;

(j) the evaluation of bids to ensure best value for money;

(k) negotiating the final terms of contracts; and

(l) the approval of bids;

(m) screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value;

(n) compulsory disclosure of any conflicts of interests prospective contractors

(o) may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids;

(p) participation in the supply chain management system of persons who are not officials of the municipality or municipal entity, subject to section 117;

(q) the barring of persons from participating in tendering or other bidding processes, including persons—

(i) who were convicted for fraud or corruption during the past five years;

(ii) who willfully neglected, reneged on or failed to comply with a government contract during the past five years; or

(iii) whose tax matters are not cleared by South African Revenue Service;

(r) measures for—

(i) combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and

(ii) promoting ethics of officials and other role players involved in municipal supply chain management;

(s) the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by—

(i) Councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act; or municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 to that Act;

(t) the procurement of goods and services by municipalities or municipal entities through contracts procured by other organs of state;

(u) contract management and dispute settling procedures; and

(w) the delegation of municipal supply chain management powers and duties, including to officials.

(2) The regulatory framework for municipal supply chain management must be fair equitable, transparent, competitive and cost-effective.

Part 2: Public-private partnerships

Conditions and process for public-private partnerships

17.5. (1) A municipality may enter into a public-private partnership agreement, but only if the municipality can demonstrate that the agreement will—

(a) provide value for money to the municipality;

(b) be affordable for the municipality; and

(c) transfer appropriate technical, operational and financial risk to the private party.

(2) A public-private partnership agreement must comply with any prescribed regulatory framework for public-private partnerships.

(3) If the public-private partnership involves the provision of a municipal service, Chapter 8 of the Municipal Systems Act must also be complied with.

(4) Before a public-private partnership is concluded, the municipality must conduct a feasibility study that—

(a) explains the strategic and operational benefits of the public-private partnership for the municipality in terms of its objectives;

(b) describes in specific terms—

(i) the nature of the private party's role in the public-private partnership;
(ii) he extent to which this role, both legally and by nature, can be performed by a private party; and
(iii) how the proposed agreement will—

(aa) provide value for money to the municipality;

(bb) be affordable for the municipality;

(cc) transfer appropriate technical, operational and financial risks to the private party; and

(dd) impact on the municipality's revenue flows and its current and future budgets;

(c) takes into account all relevant information; and

(d) explains the capacity of the municipality to effectively monitor, manage and enforce the agreement.

(5) The national government may assist municipalities in carrying out and assessing feasibility studies referred to in subsection (4).

(6) When a feasibility study has been completed, the accounting officer of the municipality must—

(a) submit the report on the feasibility study together with all other relevant documents to the council for a decision, in principle, on whether the municipality should continue with the proposed public-private partnership;

(b) at least 60 days prior to the meeting of the council at which the matter is to be considered, in accordance with section 21A of the Municipal Systems Act—

(i) make public particulars of the proposed public-private partnership, including the report on the feasibility study; and invite the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed public-private partnership; and

(ii) solicit the views and recommendations of—

(i) the National Treasury;
(ii) the national department responsible for local government;
(iii) if the public-private partnership involves the provision of water, sanitation, electricity or any other service as may be prescribed, the responsible national department; and
(iv) any other national or provincial organ of state as may be prescribed.

(7) Part 1 of this Chapter applies to the procurement of public-private partnership agreements. Section 33 also applies if the agreement will have multi-year budgetary implications for the municipality within the meaning of that section.

The implementation of the Supply Chain Management Policy is be delegated to the Accounting Officer and its implementation shall be in strict compliance with the Supply Chain Management Policy and any SCM Regulations published in terms of the MFMA.

18. Procedures for procuring goods or services through written or verbal quotations and formal written price quotations:

The procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations, is as follows:

(a) when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;

(b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised at official notice boards of the municipality;

(c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;

(d) the Accounting Officer or Chief Financial Officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a subdelegation;

(e) offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;

(f) acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;

19. Competitive bids

(1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 11(2) of this Policy.

(2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

20. Process for competitive bidding

The procedures for the following stages of a competitive bidding process are as follows:

(a) Compilation of bidding documentation as detailed in paragraph 21;
(b) Public invitation of bids as detailed in paragraph 22;
(c) Site meetings or briefing sessions as detailed in paragraph 22;
(d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
(e) Evaluation of bids as detailed in paragraph 28;
(f) Award of contracts as detailed in paragraph 29;
(g) Administration of contracts
 (i) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
(h) Proper record keeping
 (i) Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.

21. Bid documentation for competitive bids

The criteria to which bid documentation for a competitive bidding process must comply, must –

(a) take into account –

(i) the general conditions of contract and any special conditions of contract, if specified;

(ii) any Treasury guidelines on bid documentation; and

(iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;

(b) include the preference points system to be used , goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;

(c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;

(d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–

(i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –

(aa) for the past three years; or

(bb) since their establishment if established during the past three years;

(ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;

(iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;

(iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and

(e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

22. Public invitation for competitive bids

(1) The procedure for the invitation of competitive bids, is as follows:

(a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and

(a) the information contained in a public advertisement, must include –

(i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;

(ii) a statement that bids may only be submitted on the bid documentation provided by the municipality; and

(iv) date, time and venue of any proposed site meetings or briefing sessions.;

(2) The Accounting Officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

(3) Bids submitted must be sealed.

(4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

23. Procedure for handling, opening and recording of bids

The procedures for the handling, opening and recording of bids, are as follows:

(a) Bids:

(i) must be opened only in public

(ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and

(iii) received after the closing time should not be considered and returned unopened immediately.

(b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;

(b) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and

(c) The accounting officer must:

(i) record in a register all bids received in time;

(ii) make the register available for public inspection; and

(iii) publish the entries in the register and the bid results on the website.

24. Negotiations with preferred bidders

(1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –

(a) does not allow any preferred bidder a second or unfair opportunity;

(b) is not to the detriment of any other bidder; and

(c) does not lead to a higher price than the bid as submitted.

(2) Minutes of such negotiations must be kept for record purposes.

25. Two-stage bidding process

(1) A two-stage bidding process is allowed for:

(a) large complex projects;

(b) projects where it may be undesirable to prepare complete detailed technical specifications; or

(c) long term projects with a duration period exceeding three years.

(2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.

(3) In the second stage final technical proposals and priced bids should beinvited.

26. Committee system for competitive bids

(1) A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the accounting officer may determine:

(a) a bid specification committee;

(b) a bid evaluation committee; and

(c) a bid adjudication committee;

(2) The accounting officer appoints the members of each committee, taking into account section 117 of the Act; and

(3) A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.

(4) The committee system must be consistent with –

(a) paragraph 27, 28 and 29 of this Policy; and
(b) any other applicable legislation.

(5) The accounting officer may apply the committee system to formal written price quotations.

27. Bid specification committees

(1) A bid specification committee must compile the specifications for each procurement of goods or services by the municipality.

(2) Specifications:

(a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;

(b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;

(c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;

(d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;

(e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which casesuch reference must be accompanied by the word "equivalent";

(f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2001; and

(g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.

(3) A bid specification committee must be composed of one or more officials of the municipality preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.

(4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

28. Bid evaluation committees

(1) A bid evaluation committee must:

(a) evaluate bids in accordance with:

(i) the specifications for a specific procurement; and
(ii) the points system set out in terms of paragraph 27(2)(f).

(b) evaluate each bidder's ability to execute the contract; check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;

(c) submit to the adjudication committee a report and recommendationsregarding the award of the bid or any other related matter.

(2) A bid evaluation committee must as far as possible be composed of:

(a) officials from departments requiring the goods or services; and

(b) at least one supply chain management practitioner of the municipality.

29. Bid adjudication committees

(1) A bid adjudication committee must:

(a) consider the report and recommendations of the bid evaluation committee; and

(b) either –

(i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or

(ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.

(2) A bid adjudication committee must consist of at least one senior Manager and at least two other managers reporting directly to senior managers of the municipality which must include –

(a) the chief financial officer or, if the chief financial officer is not available,another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and

(b) at least one senior supply chain management practitioner who is an official of the municipality; and

(c) a technical expert in the relevant field who is an official, if such an expert exists.

(3) The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.

(4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.

(5) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –

(i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;

(ii) notify the Accounting Officer.

(c) The Accounting Officer may –

(i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and

(iii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.

(6) The Accounting Officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.

(7) The Accounting Officer must comply with section 114 of the Act within 10 working days

30. Procurement of banking services

(1) A contract for banking services –

(a) must be procured through competitive bids;
(b) must be consistent with section 7 or 85 of the Act; and
(c) may not be for a period of more than five years at a time.

(2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.

(3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

31. Procurement of IT related goods or services

(1) The Accounting Officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.

(2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.

(3) The Accounting Officer must notify SITA together with a motivation of the IT needs if –

(a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or

(b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).

(4) If SITA comments on the submission and the municipality disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

32. Procurement of goods and services under contracts secured by other organs of state

(1) The Accounting Officer may procure goods or services under a contractsecured by another organ of state, but only if:

(a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;

(b) there is no reason to believe that such contract was not validly procured;

(c) there are demonstrable discounts or benefits to do so; and

(d) that other organ of state and the provider have consented to such procurement in writing.

(2) Subparagraphs (1)(c) and (d) do not apply if:

(a) a municipal entity procures goods or services through a contract secured by its parent municipality; or

(b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

33. Procurement of goods necessitating special safety arrangements

(1) The acquisition and storage of goods in bulk (other than water), which necessitate special safety arrangements, including gasses and fuel, should be avoided where ever possible.

(2) Where the storage of goods in bulk is justified, such justification ed on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the accounting officer.

34. Proudly SA Campaign

The municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from:

- Firstly – suppliers and businesses within the municipality or district;
- Secondly – suppliers and businesses within the relevant province;
- Thirdly – suppliers and businesses within the Republic.

35. Appointment of consultants

(1) The Accounting Officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.

(2) Consultancy services must be procured through a competitive bid if

(a) the value of the contract exceeds R200 000 (VAT included); or
(b) the duration period of the contract exceeds one year.

(3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –

(a) all consultancy services provided to an organ of state in the last five years; and

(b) any similar consultancy services provided to an organ of state in the last five years.

(4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.

36. Deviation from, and ratification of minor breaches of, procurement processes

(1) The Accounting Officer may:

(a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –

- (i) in an emergency;
- (ii) if such goods or services are produced or available from a single provider only;
- (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
- (iv) acquisition of animals for zoos and/or nature and game reserves; or
- (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

(b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.

(2) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.

(3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

37. Unsolicited bids

(1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.

(2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if:

(a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;

(b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;

(c) the person who made the bid is the sole provider of the product or service; and

(d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.

(3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –

(a) reasons as to why the bid should not be open to other competitors;

(b) an explanation of the potential benefits if the unsolicited bid were accepted; and

(c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

(4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.

(5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.

(6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

(7) When considering the matter, the adjudication committee must take into account –

(a) any comments submitted by the public; and
(b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.

(8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.

(9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

38. Combating of abuse of supply chain management system

(1) The accounting officer must–

(a) take all reasonable steps to prevent abuse of the supply chain management system;

(b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified –

(i) take appropriate steps against such official or other role player; or

(ii) report any alleged criminal conduct to the South African Police Service;

(c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;

(d) reject any bid from a bidder–

(i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or

(ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;

(e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;

(f) cancel a contract awarded to a person if –

(i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or

(ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and

(g) reject the bid of any bidder if that bidder or any of its directors –

(i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;

(ii) has been convicted for fraud or corruption during the past five years;

(iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or

(iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

(2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

Part 3: Logistics, Disposal, Risk and Performance Management

39. Logistics management

The accounting officer must establish and implement an effective system of logistics management, which must include:

(a) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each itemhas a unique number;

(b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;

(c) the placing of manual or electronic orders for all acquisitions other than those from petty cash;

(d) before payment is approved , certification by the responsible officer that the goods and services are received or rendered on time and is in accordancewith the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;

(e) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;

(f) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and

(g) monitoring and review of the supply vendor performance to ensurecompliance with specifications and contract conditions for particular goods or services.

40. Disposal management

(1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, are as follows: Council will decide if they want to auction assets in public or trade in the assets.

(2) Assets may be disposed of by –

(i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;

(ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;

(iii) selling the asset; or

(iv) destroying the asset.

(3) The Accounting Officer must ensure that –

(a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;

(b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whicheveris the most advantageous;

(c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;

(d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;

(e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;

(f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and

(g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.

41. Risk management

(1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows:

(2) Risk management must include:

(a) the identification of risks on a case-by-case basis;

(b) the allocation of risks to the party best suited to manage such risks;

(c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;

(d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and

(e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

42. Performance management

The Accounting Officer must establish and implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved.

Part 4: Other matters

43. Prohibition on awards to persons whose tax matters are not in order

(1) No award above R15 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.

(2) Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order.

(3) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.

44. Prohibition on awards to persons in the service of the state

Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy –

(a) who is in the service of the state;

(b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or

(c) a person who is an advisor or consultant contracted with the municipality.

45. Awards to close family members of persons in the service of the state

The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

(a) the name of that person;

(b) the capacity in which that person is in the service of the state; and

(c) the amount of the award.

46. Ethical standards

(1) A code of ethical standards as set out in subparagraph (2) is hereby established for officials and other role players in the supply chain management system of the municipality in order to promote –

(a) mutual trust and respect; and

(b) an environment where business can be conducted with integrity and in a fair and reasonable manner.

(2) An official or other role player involved in the implementation of this Policy:

(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) notwithstanding subparagraph (2) (c), 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 businessinterest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, 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 be scrupulous in his or her use of property belonging to municipality;

(h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and

(i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –

  (i) any alleged fraud, corruption, favouritism or unfair conduct;
  (ii) any alleged contravention of paragraph 47(1) of this Policy; or
  (iii) any alleged breach of this code of ethical standards.

(3) Declarations in terms of subparagraphs (2)(d) and (e) -

(a) must be recorded in a register which the accounting officer must keep for this purpose;

(b) by the accounting officer must be made to the mayor of the municipality who must ensure that such declarations are recorded in the register.

(4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.

(5) A breach of the code of ethics must be dealt with as follows -

(a) in the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h) of the Municipal Systems Act;

i. in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.

ii. In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act

47. Inducements, rewards, gifts and favours to municipalities, officials and other role players

(1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –

(a) any inducement or reward to the municipality for or in connection with the award of a contract; or

(b) any reward, gift, favour or hospitality to –

(i) any official; or

(ii) any other role player involved in the implementation of this Policy.

(2) The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

(3) Subparagraph (1) does not apply to gifts less than R350 in value.

48. Sponsorships

The accounting officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is –

(a) a provider or prospective provider of goods or services; or
(b) a recipient or prospective recipient of goods disposed or to be disposed.

49. Objections and complaints

Persons aggrieved by decisions or actions taken in the implementation of this supply chain management system, may lodge within 14 days of the decision or action, a written objection or complaint against the decision or action.

50. Resolution of disputes, objections, complaints and queries

(1) The Accounting Officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –

(a) to assist in the resolution of disputes between the municipality and other persons regarding -

(i) any decisions or actions taken in the implementation of the supply chain management system; or

(ii) any matter arising from a contract awarded in the course of the supply chain management system; or

(b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

(2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.

(3) The person appointed must –

(a) strive to resolve promptly all disputes, objections, complaints or queries received; and

(b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.

(4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –

(a) the dispute, objection, complaint or query is not resolved within 60 days; or

(b) no response is forthcoming within 60 days.

(5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.

(6) This paragraph must not be read as affecting a person's rights to approach a court at any time.

51. Contracts providing for compensation based on turnover

If a service provider acts on behalf of a municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the municipalitymust stipulate –

(a) a cap on the compensation payable to the service provider; and that such compensation must be performance based.

52. Commencement

This Policy shall commence on date of approval by Council

APPROVED BY COUNCIL ON......18/2023............ **UNDER ITEM NO**...10.3.......

MUNICIPAL MANAGER   **MAYOR OBO COUNCIL**

ANNEXURE A

PREFERENCIAL PROCUREMENT POLICY

1. INTRODUCTION

- The Constitution of South Africa Act 108 of 1996, and the Municipal Finance Management Act No.56 of 2003, (MFMA) prescribe that procurement for any organ of the State should be dealt with through a system that is fair, equitable, competitive, transparent, and cost-effective. The Constitution also allows for the implementation of Supply Chain Management policies providing for categories of preference in the allocation of contracts and the protection, or advancement, of persons previously disadvantaged by unfair discrimination. The public sector Supply Chain Management system can be utilized to attain certain socio–economic objectives. Lekwa-Teemane Local Municipality is committed to good governance and the promotion of previously marginalized individuals and businesses.

2. PURPOSE

- This Policy aims to ensure that the manner in which Lekwa-Teemane Local Municipality procures goods and services: -
  - is fair, equitable, transparent, competitive, and cost-effective as envisaged in section 217 of the Constitution of the Republic of South Africa, 1996 and section 51(1)(a)(iii) of the MFMA;
  - complies with the MFMA and the Treasury Regulations or Treasury Instructions regarding supply chain management and other applicable regulations or Instructions in terms of the MFMA;
  - complies with the PPPFA, BBBEEA, the SITA Act, and other applicable legislation, including applicable subordinate legislation made under any such legislation;
  - provides the Lekwa-Teemane Local Munucipality with the best value for money while improving service delivery;
  - Pursues specific preference, including socio-economic objectives through a preference points system for BEE, in accordance with the MFMA;
  - Implement efficient and effective supply chain management as an integral part of financial management and;
  - Standardises SCM activities within the Lekwa-Teemane Local Municipality;
  - The legislative requirement of the Preferential Procurement Policy Framework Act, 2000 by determining the preferential procurement system and the specific goals that must be followed in the awarding of tenders;

3. DEFINITIONS AND TERMS

- For the purpose of this policy the following definitions and abbreviations are applicable:

Terminology	Description
80/20 Preference System	Point System applied to evaluate all quotations with the rand equal to or below value R50million
90/10 Preference System	Procurement System applied to evaluate all procurement with the rand value above R50 000 000.00 (Bids/Tenders)
Acceptable Tender	This means a tender offer, duly submitted by a prospective service provider, that meets the minimum requirements as set out in the bid documents
A Proponent	Any person, whether natural or juristic, that submits an unsolicited proposal to an institution
Designated Groups	This means: i) black designated groups ii) black people iii) women vi) people with disabilities v) military veterans vii) small enterprises; as defined in section 1 of the National Small Enterprises Act, 1996 (Act No 102 of 1996
EME	This means an exempted micro-enterprise in terms of the codes of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act
Military Veteran	Has the meaning assigned to it in section 1 of the Military Veterans Act 18 of 2011
People with disabilities	Has the meaning assigned to it in section 1 of the Employment Equity Act 55 of 1998
Price	Includes all applicable taxes less all unconditional discounts
QSE	This means a qualifying small business enterprise in terms of the codes of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act
Rand Value	This means the total estimated value of a contract in rands calculated at the time of the tender invitation

Rural Area	A sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or An area including a large settlement which depends primarily on migratory labour and remittances and government social grants for survival and that may have a traditional land tenure system
Tender	This means a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services or goods
The Act	This means the Preferential Procurement Policy Framework Act 5 of 2000
Youth	Has the meaning assigned to it in section 1 of the National Youth Development Agency Act 54 of 2008

4. ABBREVIATIONS

Abbreviation	Description
BAC	Bid Adjudication Committee
BEC	Bid Evaluation Committee
BEE	Black Economic Empowerment
BBBEEA	Broad Based Black Economic Empowerment Act, 2003 (Act 53 of 2003), as amended
SCM	Supply Chain Management
IT	Information Technology
NT	National Treasury
MFMA	Public Finance Management Act, 1999 (Act 1 of 1999), as amended.
PPP	Public Private Partnerships
PPPFA	Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), as amended
RFQ	Request for Quotation
SARS	South African Revenue Services
SITA	State Information Technology Agency
SITA Act	State Information Technology Agency Act, 1998 (Act 88 of 1998) as amended
SLA	Service Level Agreement
TOR	Terms of Reference

5. REGULATORY FRAMEWORK

- The Procurement Policy of the Lekwa-Teemane Local Municipality has been written in accordance with the instructions and guidelines published by Government. This policy is based on the following legislation and regulations:
  - The Constitution of the Republic of South Africa, 1996;
  - The Municipal Finance Management Act No.56 of 2003, (MFMA) and Treasury regulations issued in terms thereof;
  - Preferential Procurement Policy Framework Act (Act 5 of 2000); and its regulations;
  - Supply Chain Management Guidelines for Accounting Officers;

- The various National and Provincial Treasury practice notes, circulars, and letters; and
- The State Information Technology Agency Act;
- Broad Based Black Economic Empowerment (BBBEE) Act;
- Prevention and Combating of Corrupt Activities Act 12 of 2004 (Corruption Act);
- Construction Industry Development Board Act 38 of 2000 (CIDBA);
- Promotion of Access to Information Act 2 of 2000 (PAIA);
- Promotion of Administrative Justice Act 3 of 2000 (PAJA);
- Treasury regulations;

6. SCOPE OF APPLICATION

- This policy applies to all Lekwa-Teemane Local Municipality officials and shall be applied to all activities and/or tasks related to the procurement process.

7. PROCUREMENT SOURCING STRATEGY

- The Lekwa-Teemane Local Municipality will determine the applicable procurement sourcing strategies in the invitation of tenders or quotations. This process shall include market research or industry analysis or commodity analysis to determine procurement opportunities and supply market to ensure efficacy in the procurement system of the LEKWA-TEEMANE LOCAL MUNICIPALITY.

8. LEGISLATIVE BACKGROUND

- Preferential Procurement must be implemented within the confines of the Constitution of the Republic of South Africa, Act 108 of 1996, particularly section 217 (2) and (3) of the Act. The Constitution is then supported by the Preferential Procurement Policy Framework Act; Act No. 5 of 2000 and its Regulations.

8.1. The Constitution of the Republic of South Africa, Act 108 of 1996

- Section 217 of the Constitution provides for the following:
    - When an organ of state in the national, provincial, or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
    - Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for –
        - categories of preference in the allocation of contracts; and
        - the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
- National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.

8.2. The Preferential Procurement Policy Framework Act No. 5 Of 2000 (PPPFA)

- In line with section 217 (3) of the Constitution, the PPPFA has provided a framework within which the policy referred to in subsection (2) of Section 217 of the Constitution must be implemented. Section 2 of the PPPFA provides for the following:

8.3. Section 2 of the PPPFA: Framework for implementation of preferential procurement policy. –

- An organ of state must determine its preferential procurement policy and implement it within the following framework:

  (a) A preference point system must be followed.

  (b) (i) for contracts with a Rand value above **R50 Million** a maximum of **10 points** may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores **90 points** for price.

  (ii) for contracts with a Rand value equal to or below a **R50 Million** a maximum of **20 points** may be allocated for **specific goals** as contemplated in paragraph (d) provided that the lowest acceptable tender scores **80 points for price**;

  (c) any other acceptable tenders which are higher in price must score fewer points, on a pro rata basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with a prescribed formula.

  (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.

  (e) any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.

  (f) the contract must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in paragraphs *(d)* and *(e)* justify the award to another tenderer; and

  (g) any contract awarded on account of false information furnished by the tenderer to secure preference in terms of this Act, may be cancelled at the sole discretion of the organ of state without prejudice to any other remedies the organ of state may have.

1) Any goals contemplated in subsection (1) *(e)* must be measurable, quantifiable, and monitored for compliance.

9. APPLICATION OF PREFERENCE POINTS

- The Lekwa-Teemane Local Municipality shall conduct an industry and commodity analysis to obtain an indicative market-related prices that may be used for benchmarking purposes. Based on the results of the analysis the Lekwa-Teemane Local Municipality shall determine the preference points system, which may be 80/20 or 90/10 as stipulated in paragraphs 10.1 and 10.2 below. The applicable preference points system shall be stipulated in the quotation/bid invitation document and shall be used to evaluate offers received.

- The tender/ quotation invitation shall stipulate the specific goals and the points that will be awarded to each goal and proof that must be submitted to claim for such a goal.
- If there is uncertainty on the preference point system to be applied, the bid must be advertised with a directive that:
  - The invitation of tender for income- generating contracts, that either the 80/20 or 90/10 preference point system will apply, and the highest acceptable tender will be used to determine the applicable preference point system; or
  - Any other invitation of 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.

9.1. 80/20 Preference Points System

- The PPPFA and its Regulations prescribe the framework for the preference point system. The Act and its Regulations incorporate the '80/20' and '90/10' preference point system, which the Lekwa-Teemane Local Municipality shall apply, as required. **The 80/20 preference point system will apply to all acquisitions of goods, works and/or services for a rand value equal to or below R 50 million.**

9.2. The following formula shall be used to calculate the points out of 80 for price in respect of quotations/bids with a Rand value equal to or below R50 000 000 (all applicable taxes included):

$$Ps = 80\left(1 - \frac{Pt - Pmin}{Pmin}\right)$$

Where Ps = Points scored for price of bid under consideration.
Pt = Price of bid under consideration; and
Pmin = Price of lowest acceptable bid.

9.2.1. Points for Specific Goals: 20 points

a) A maximum of 20 points may be awarded to a tenderer for the specific goal specified in the tender/ quotation
b) Points scored for the specific goals must be added to the points scored for price and the total must be rounded off to the nearest two decimal places
c) The contract must be awarded to the tenderer scoring the highest points subject to section 2 (1) (f) of the PPPFA, 2000.

9.3. The following formula shall be used to calculate the points out of 90 for price in respect of quotations/bids with a Rand value above R50 000 000 (all applicable taxes included):

$$Ps = 90\left(1 - \frac{Pt - P\,min}{P\,min}\right)$$

Where Ps = Points scored for price of bid under consideration.
Pt = Price of bid under consideration; and
Pmin = Price of lowest acceptable bid.

a) A maximum of 10 points may be awarded to a tenderer for the specific goal specified in the tender/ quotation
b) Points scored for the specific goals must be added to the points scored for price and the total must be rounded off to the nearest two decimal places
c) The contract must be awarded to the tenderer scoring the highest points subject to section 2 (1) (f) of the PPPFA, 2000.

9.3. **80/20 preference point system for tenders/ quotations for income-generating contracts with Rand value equal to or below R50 million**

- The following formula must be used to calculate the points for price in respect of an invitation of bid/ quotation for income generating contracts, with a Rand value equal to or below R50 million or above R50 million inclusive of all applicable taxes:

80/20 or **90/10**

$$Ps = 80\left(1 + \frac{Pt - Pmax}{Pmax}\right) \quad \text{or} \quad Ps = 90\left(1 + \frac{Pt - Pmax}{Pmax}\right)$$

Where:
Ps = Points scored for price of bid under consideration.
Pt = Price of bid under consideration; and
Pmax = Price of highest acceptable tender.

a) A maximum of 20 or 10 points may be awarded to a tenderer for the specific goal specified in the tender/ quotation
b) Points scored for the specific goals must be added to the points scored for price and the total must be rounded off to the nearest two decimal places
c) The contract must be awarded to the tenderer scoring the highest points subject to section 2 (1) (f) of the PPPFA, 2000.

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10. **INSTITUTIONAL PREFERENTIAL PROCUREMENT POINTS MATRIX**

INSTITUTIONAL PREFERENTIAL PROCUREMENT OVERVIEW

	Categories	Weight	<R50 Million 80|20	>R50 Million 90|10
1	Ownership Goals	50%	10	5
2	Empowerment Goals	20%	4	2
3	Reconstruction & Development Programme Goals	20%	4	2
4	Other Goals (Specify)	10%	2	1
		100%	20	10

DEFINITIONS

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 programs of the Reconstruction and Development Programme

Ownership

The equity ownership equates to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company's shares that are owned by individuals, who are actively involved in the management of the enterprise or business and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of the tender. Preference points stipulated in respect of a tender must include preference points for equity ownership by HDIs.

Empowerment

Empowerment is a practice of sharing information, rewards, and power to empower local contractors in order to build their capacity and to create jobs. To empower and develop SMMEs, Rural and Township Business will help small businesses compete with larger brands.

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Reconstruction & Development Programme Goals

RDP attempted to combine measures to boost the economy such as contained fiscal spending, sustained or lowered taxes, reduction of government debt and trade liberalization with socially minded social service provisions and infrastructural projects.

Category: Ownership

#	Specific Goal(s)	Weight	80|20 PP	90|10 PP	Verification
	Ownership Categories :				
1	**EME and QSE**				
	1. an EME or QSE which is at least 100% owned by black people;	100%	10	5	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter
	2. an EME or QSE which is at least 51% owned by black people;	60%	6	3	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter
	3. an EME or QSE which is at 25% - 50% owned by black people;	20%	2	1	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter
2	**Broad Based Black Economic Empowerment :**				
	BBBEE Level 1	100%	10	5	Audited BBBEE Certificate
	BBBEE Level 2	60%	6	3	Audited BBBEE Certificate
	BBBEE Level 3 & Below	20%	2	1	Audited BBBEE Certificate
3	**Gender Based Ownership %**				
a)	**Women Ownership(*Must be South African)**				
	Women ownership - 100% : Black	100%	10	5	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Women ownership - > 51% : Black	80%	8	4	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Women ownership - 25% - 50% : Black	40%	4	2	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Women ownership - 100% : Indian and Coloured	40%	4	2	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Women ownership - > 51% : Indian and Coloured	20%	2	1	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Women ownership - 25% - 50% : Indian and Coloured	10%	1	0.5	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Women ownership - 100% : White	20%	2	1	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
b)	**Men Ownership(*Must be South African)**				
	Men ownership - 100% : Black	80%	8	4	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Men ownership - > 51% : Black	40%	4	2	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Men ownership - 25% - 50% : Black	20%	2	1	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
4	**Youth Development : (Below 35 Years)**				
	Youth ownership - 100% : Black	100%	10	5	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Youth ownership - > 51% : Black	80%	8	4	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Youth ownership - 25% - 50% : Black	40%	4	2	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Youth ownership - 100% : Indian and Coloured	80%	8	4	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Youth ownership - > 51% : Indian and Coloured	60%	6	3	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Youth ownership - 20% - 50% : Indian and Coloured	20%	2	1	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	Youth ownership - 100% : White	20%	2	1	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate

Category: Empowerment

#	Specific Goal(s)	Weight	80|20 PP	90|10 PP	Verification
	Sub-Contracting :				
1	**EME and QSE**				
	1. an EME or QSE which is at least 100% owned by black people;	100%	4	2	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter
	2. an EME or QSE which is at least 51% owned by black people;	50%	2	1	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter
	3. an EME or QSE which is at 25% - 50% owned by black people;	25%	1	0.5	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter
2	**Local Economic Develoment Sub-Contracting (10%-30%)**				
	1. Enterprise 100% owned by Youth	100%	4	2	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	1. Enterprise 100% owned by Disbaled People	100%	4	2	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	1. Enterprise 100% owned by Women	100%	4	2	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	2. Enterprise owned by Black People with CIDB Grading 4 or Less	100%	4	2	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	3. Enterprise 100% owned by MK Veteran	100%	4	2	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate
	3. Enterprise owned by Black Men with at least 51%	50%	2	1	ID Copies : Directors |Co. Registration | CSD | Shareholders Certificate

Category: Reconstruction and Development Programme

#	Specific Goal(s)	Weight	80|20 PP	90|10 PP	Verification
	Reconstruction and Development :				
1	**Promotion of Local Business(s)**				
	1. Enterprise Located within the District Municipality - Rural	100%	4	2	Utilities : Directors or Co. | Affidavit | Existing Lease Agreement
	2. Enterprise Located within the District Municipality - Urban	50%	2	1	Utilities : Directors or Co. | Affidavit | Existing Lease Agreement
	2. Enterprise Located within the Province	25%	1	0.5	Utilities : Directors or Co. | Affidavit | Existing Lease Agreement
2	**SMME Development (EME and QSE)**				
	1. an EME or QSE which is at least 100% owned by black people;	100%	4	2	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter
	2. an EME or QSE which is at least 51% owned by black people;	50%	2	1	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter
	3. an EME or QSE which is at 25% - 50% owned by black people;	25%	1	0.5	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter
3	**SMME Development (EME and QSE)**				
	1. an EME or QSE which is at least 100% owned by black people;	100%	4	2	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter
	2. an EME or QSE which is at least 51% owned by black people;	50%	2	1	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter
	3. an EME or QSE which is at 25% - 50% owned by black people;	25%	1	0.5	Sworn Affidavit - QSE/EME General and Bank Confirmation Letter

11. APPLICATION OF GOALS AS PROVIDED FOR BY THIS PREFERENTIAL PROCUREMENT POLICY

a. **Section 2 (1) of the Act requires that an organ of state to 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;*

Institutions must at procurement and tender planning stage identify procurement opportunities to advance designated groups and apply the goals accordingly.

Where procurement opportunities for designated groups have been identified, the invitation to tender must clearly indicate the specific goals for which a point may be awarded.

b. **Preference Goal Category 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 organ of state 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, (HDP) or
- gender (HDP) or.
- disability (HDP).

Ownership verification may be conducted through the Companies and Intellectual Property Commission (CIPC).

c. **Preference Goal Category 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;
c. The promotion of SMMEs;
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;

d. **Preference Goal Category 3**

Empowerment Goals
Organs of state may also combine any specific goals above in a manner that will help them evaluate and apply preference points to tenders.

Empowerment is a practice of sharing information, rewards, and power to empower local contractors in order to build their capacity and to create jobs. To empower and develop SMMEs, Rural and Township Business will help small businesses compete with larger brands through Sub-Contracting and Upliftment.

12. APPLICABILITY OF THE FUNCTIONALITY CRITERIA

a. The Lekwa-Teemane Local Municipality shall stipulate in the quotation/tender document if the functionality criteria including a sub-criterion where applicable shall be applied during the evaluation process. The functionality criteria must be objective. The tender/ quotation document must specify:

a) **Evaluation criteria for measuring functionality**: The evaluation criteria may include experience for the assignment, the quality of methodology, qualifications of key personnel, transfer of knowledge or any other functionality requirement that would yield the required outcomes.

b) **Points for each criterion**: Points allocated to each criterion should not be generic but should be determined separately for each bid/ quotation on a case-by-case basis.

c) **Points for each sub- criterion**: Points that shall be used when scoring each sub-criterion must be objective and applicable weighting must be stipulated in the bid/ quotation invitation document.

b. The minimum qualifying score for functionality criteria for a quotation/bid must be determined separately for each quotation/bid and must not be so low that it may jeopardise the quality of the required goods or services or so high that it may be unreasonably restrictive.

c. Points scored for the functionality criteria must be rounded off to the nearest two decimal places. The offer that fails to obtain the minimum qualifying score on the functionality criteria shall be considered as not responsive. Each quotation/ bid that obtains the minimum qualifying score for functionality criteria must be evaluated further in terms of price and specific goals

13. REMEDIES FOR FALSE DECLARATION

a) If the Lekwa-Teemane Local Municipality is of the view that a tenderer submitted false information regarding a specific goal it shall:
   i) Inform the tenderer; accordingly, and
   ii) Give the tenderer an opportunity to make representations within 14 days as to why the tender/ quotation may not be disqualified or if the tender/ quotation has already been awarded to the tenderer, the contract should not be terminated in whole or in part.

b) After considering the representation referred to in paragraph 10.5 (a) (ii) above, the Lekwa-Teemane Local Municipality may, if it concludes that such information is false:
   i) Disqualify the tenderer or terminate the contract in whole or in part; and
   ii) If applicable claim damages from the tenderer.

14. 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.

15. EFFECTIVE DATE

The Lekwa-Teemane Local Municipality Preferential Procurement Policy is effective from ***27th of February 2023***

RESOLUTION NUMBER:

MR FORANE K
ACTING MUNICIPAL MANAGER

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