

KNYSNA LOCAL MUNICIPALITY

PREFERENTIAL PROCUREMENT POLICY

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1. Definitions

In these Regulations, unless the context indicates otherwise, any word or expression to which a meaning have been assigned in the Act must bear the meaning so assigned-

1.1	"Act"	means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
1.2.	"B-BBEE"	means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act
1.3.	"B-BBEE status level of contributor"	means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act
1.4.	"black designated groups"	has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act
1.5.	"black people"	has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act
1.6.	"Broad-Based Black Economic Empowerment Act"	means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)
1.7.	"co-operative"	means a co-operative registered in terms of Section 7 of the Cooperatives Act, 2005 (Act No. 14 of 2005)
1.8.	"designated group"	<p>1.8.1. black designated groups</p> <p>1.8.2. black people</p> <p>1.8.3. women</p> <p>1.8.4. people with disabilities; or</p> <p>1.8.5. small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996)</p> <p>1.8.6. emerging enterprises which are enterprises, owned, managed and controlled by previously disadvantaged</p>

	persons and which is overcoming business impediments arising from the legacy of apartheid
1.9. “designated sector”	means a sector, sub-sector or industry or product designated in terms of regulation 8(1)(a)
1.10. “EME”	means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act
1.11. “functionality”	means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents
1.12. “military veteran”	has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011)
1.13. “National Treasury”	has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
1.14. “people with disabilities”	has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998)
1.15. “price”	includes all applicable taxes less all unconditional discounts
1.16. “proof of B-BBEE status level of contributor”	<p>1.16.1. the B-BBEE status level certificate issued by an authorised body or person</p> <p>1.16.2. a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or</p> <p>1.16.3. any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act</p>
1.17. “QSE”	means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act
1.18. “Rand value”	means the total estimated value of a contract in Rand, calculated at the time of the tender invitation
1.19. “rural area”	<p>means-</p> <p>1.19.1. 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</p>

	1.19.2. an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system
1.20. “stipulated minimum threshold”	means the minimum threshold stipulated in terms of regulation 8(1)(b)
1.21. “the Act”	means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
1.22. “township”	means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994
1.23. “treasury”	has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
1.24. “youth”	has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008)

2. Application, Objectives & General Requirements

- 2.1.** This Policy complies with the framework of the PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000.
- 2.2.** This Policy was developed in terms of the PREFERENTIAL PROCUREMENT REGULATIONS, 2017.
- 2.3.** This Policy applies to the Knysna Municipality and the objectives are to:
 - 2.3.1.** Provide clarity on the municipality’s approach to procurement, particularly with regards to requirements of preferential procurement;
 - 2.3.2.** Provide access to contracts for historical disadvantaged individuals;
 - 2.3.3.** Promote participation by SMMEs;
 - 2.3.4.** Promote capacity development and skills transfer through sub-contracting opportunities for HDI owned enterprises;
 - 2.3.5.** Promote local economic development and SMME support and development;
 - 2.3.6.** Promote joint venture opportunities between HDI owned enterprises and SMMEs, and other business entities. This opportunities are encouraged and opportunity exist within the bid requirements for such entities to bid
- 2.4.** General requirements
 - 2.4.1.** Any specific goal required for consideration in the bidding process must be clearly determined by the Bid Specification Committee and be defined in the bid documentation, taking into account prescriptions of the Construction Industry Development Board [CIDB] in respect of construction related contracts.
 - 2.4.2.** Outputs required will be quantified and will form part of the contractual arrangement upon awarding of the contract.

3. Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and sub-contracting

3.1. The municipality must-

3.1.1. determine and stipulate in the tender documents-

- (i) the preference point system applicable to the tender as envisaged in Section 6 or 7; or
- (ii) if it is unclear which preference point system will be applicable, 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;

3.1.2. determine whether pre-qualification criteria are applicable to the tender as envisaged in Section 4;

3.1.3. determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in Section 8;

3.1.4. determine whether compulsory sub-contracting is applicable to the tender as envisaged in Section 9; and

3.1.5. determine whether objective criteria are applicable to the tender as envisaged in Section 11.

4. Pre-qualification criteria for preferential procurement

4.1. If the municipality decides to apply pre-qualifying criteria to advance certain designated groups, the municipality must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond-

4.1.1. a tenderer having a stipulated minimum B-BBEE status level of contributor;

4.1.2. an EME or QSE;

4.1.3. a tenderer sub-contracting a minimum of 30% to-

- (i) an EME or QSE which is at least 51% owned by black people;
- (ii) an EME or QSE which is at least 51% owned by black people who are youth;
- (iii) an EME or QSE which is at least 51% owned by black people who are women;
- (iv) an EME or QSE which is at least 51% owned by black people with disabilities;
- (v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- (vi) a cooperative which is at least 51% owned by black people;
- (vii) an EME or QSE which is at least 51% owned by black people who are military veterans;
- (viii) an EME or QSE.

4.2. A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

4.3. Pre-qualification criteria should be considered and selected in such a way that the efficiency, effectiveness and the economic value of service delivery is not affected.

5. Tenders to be evaluated on functionality

- 5.1. The municipality must state in the tender documents if the tender will be evaluated on functionality.
- 5.2. The evaluation criteria for measuring functionality must be objective.
- 5.3. The tender documents must specify-
 - 5.3.1. the evaluation criteria for measuring functionality;
 - 5.3.2. the points for each criteria and, if any, each sub-criterion; and
 - 5.3.3. the minimum qualifying score for functionality.
- 5.4. The minimum qualifying score for functionality for a tender to be considered further-
 - 5.4.1. must be determined separately for each tender; and
 - 5.4.2. may not be so-
 - (i) low that it may jeopardise the quality of the required goods or services; or
 - (ii) high that it is unreasonably restrictive.
- 5.5. Points scored for functionality must be rounded off to the nearest two decimal places.
- 5.6. A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.
- 5.7. Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in Section 11.

6. 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million

- 6.1. The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

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

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{min} = Price of lowest acceptable tender.

- 6.2. The following table must be used to calculate the score out of 20 for BBBEE:

B-BBEE Status Level of Contributor Number of Points

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12

5	8
6	6
7	4
8	2
Non-compliant contributor	0

- 6.3. A tenderer must submit proof of its B-BBEE status level of contributor.
- 6.4. A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-
 - 6.4.1. may only score points out of 80 for price; and
 - 6.4.2. scores 0 points out of 20 for B-BBEE.
- 6.5. A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends sub-contracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended sub-contractor is an EME that has the capability to execute the sub-contract.
- 6.6. The points scored by a tenderer for B-BBEE in terms of Sub-Section 6.2 must be added to the points scored for price under Sub-Regulation (1).
- 6.7. The points scored must be rounded off to the nearest two decimal places.
- 6.8. Subject to Sub-Section 6.9 and Section 11, the contract must be awarded to the tenderer scoring the highest points.
- 6.9. If the price offered by a tenderer scoring the highest points is not market-related, the organ of state may not award the contract to that tenderer.
- 6.10. The municipality may-
 - 6.10.1. negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
 - 6.10.2. if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
 - 6.10.3. if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- 6.11. If a market-related price is not agreed as envisaged in Sub-Section 6.10.3, the municipality must cancel the tender.

7. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million

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

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

Where-

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

- 7.2. The following table must be used to calculate the points out of 10 for B-BBEE:

B-BBEE Status Level of Contributor Number of Points

B-BBEE Status Level of Contributor	Number of Points
1	10
2	9
3	6
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

- 7.3. A tenderer must submit proof of its B-BBEE status level of contributor.
- 7.4. A tenderer failing to submit proof of B-BBEE status level of contribution or is a non-compliant contributor to B-BBEE may not be disqualified, but-
 - 7.4.1. may only score points out of 90 for price; and
 - 7.4.2. scores 0 points out of 10 for B-BBEE.
- 7.5. A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends sub-contracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended sub-contractor is an EME that has the capability to execute the sub-contract.
- 7.6. The points scored by a tenderer for B-BBEE contribution in terms of Sub-Section (2) must be added to the points scored for price under Sub-Section (1).
- 7.7. The points scored must be rounded off to the nearest two decimal places.
- 7.8. Subject to Sub-Section (9) and Regulation 11, the contract must be awarded to the tenderer scoring the highest points.
- 7.9. If the price offered by a tenderer scoring the highest points is not market-related, the municipality may not award the contract to that tenderer.
- 7.10. The municipality may-
 - 7.10.1. negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
 - 7.10.2. if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
 - 7.10.3. if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- 7.11. If a market-related price is not agreed as envisaged in Sub-Section 7.10.3., the municipality must cancel the tender.

8. Local production and content

- 8.1. The Department of Trade and Industry may, in consultation with the National Treasury-
 - 8.1.1. designate a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced services or goods or locally manufactured goods meet the stipulated

minimum threshold for local production and content, taking into account economic and other relevant factors; and

- 8.1.2.** stipulate a minimum threshold for local production and content.
- 8.2.** The municipality must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.
- 8.3.** The National Treasury must inform the municipality of any designation made in terms of Sub-Section 8(1) through a Circular.
- 8.4.** If there is no designated sector, the municipality may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.
- 8.5.** The threshold referred to in Section 8.4 must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.
- 8.6.** A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

9. Sub-contracting as condition of tender

- 9.1.** If feasible to sub-contract for a contract above R30 million, the municipality must apply sub-contracting to advance designated groups.
- 9.2.** If the municipality applies sub-contracting as contemplated in Sub-Section (1), the municipality must advertise the tender with a specific tendering condition that the successful tenderer must sub-contract a minimum of 30% of the value of the contract to-
 - 9.2.1.** an EME or QSE;
 - 9.2.2.** an EME or QSE which is at least 51% owned by black people;
 - 9.2.3.** an EME or QSE which is at least 51% owned by black people who are youth;
 - 9.2.4.** an EME or QSE which is at least 51% owned by black people who are women;
 - 9.2.5.** an EME or QSE which is at least 51% owned by black people with disabilities;
 - 9.2.6.** an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
 - 9.2.7.** a cooperative which is at least 51% owned by black people;
 - 9.2.8.** an EME or QSE which is at least 51% owned by black people who are military veterans;
or
 - 9.2.9.** more than one of the categories referred to in Sub-Sections 1 to 8.
- 9.3.** The municipality must make available the list of all suppliers registered on a database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in Sub-Section (2) from which the tenderer must select a supplier.

10. Criteria for breaking deadlock in scoring

- 10.1.** If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for B-BBEE.

- 10.2.** If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preference points for B-BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.
- 10.3.** If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

11. Award of contracts to tenderers not scoring highest points

- 11.1.** A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Act.
- 11.2.** If the municipality intends to apply objective criteria in terms of section 2(1) (f) of the Act, the municipality must stipulate the objective criteria in the tender documents.

12. Conditions

- 12.1.** Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered.
- 12.2.** The municipality must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.
- 12.3.** A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is processed.
- 12.4.** Points scored must be rounded off to the nearest 2 decimals places.
- 12.5.** A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 12.6.** A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.
- 12.7.** When the municipality is in need of a service provided by only tertiary institutions, such services must be procured through a tendering process from the identified tertiary institutions.
- 12.8.** Tertiary institutions referred to in sub-Section (11) will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good practice.

13. Declarations

- 13.1.** A tender must, in the manner stipulated in the document, declare that-
- 13.1.1.** the information provided is true and correct;
 - 13.1.2.** the signatory to the tender document is duly authorised; and
 - 13.1.3.** documentary proof regarding any tendering issue will, when required, be submitted to the satisfaction of the municipality.

14. Sub-contracting after award of tender

- 14.1.** A person awarded a contract may only enter into a sub-contracting arrangement with the approval of the municipality.

14.2. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

14.3. A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

15. Cancellation of tender

15.1. The municipality may, before the award of a tender, cancel a tender invitation if-

15.1.1. due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;

15.1.2. funds are no longer available to cover the total envisaged expenditure;

15.1.3. no acceptable tender is received; or

15.1.4. there is a material irregularity in the tender process.

15.2. The decision to cancel a tender invitation in terms of Sub-Section (1) must be published in the same manner in which the original tender invitation was advertised.

15.3. The municipality may only with the prior approval of the Provincial Treasury cancel a tender invitation for the second time.

16. Remedies

16.1. Upon detecting that a tenderer submitted false information regarding its BBBEE status level of contributor, local production and content, or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any sub-contracting arrangements, the municipality must-

16.1.1. inform the tenderer accordingly;

16.1.2. give the tenderer an opportunity to make representations within 14 days as to why-

(iii) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;

(iv) if the successful tenderer sub-contracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and

(v) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and

16.1.3. if it concludes, after considering the representations referred to in Sub-Section (1)(b), that-

(i) such false information was submitted by the tenderer-

(aa) disqualify the tenderer or terminate the contract in whole or in part; and

(bb) if applicable, claim damages from the tenderer; or

- (ii) the successful tenderer sub-contracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

16.2. The municipality must-

- 16.2.1.** inform the National Treasury, in writing, of any actions taken in terms of Sub-Section (1);
- 16.2.2.** provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
- 16.2.3.** submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

16.3. The National Treasury may request the municipality to submit further information pertaining to Sub-Section 1 within a specified period.

16.4. The National Treasury must-

- 16.4.1.** after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any Municipality for a period not exceeding 10 years; and
- 16.4.2.** maintain and publish on its official website a list of restricted suppliers.

17. Mechanisms to support preferential procurement

17.1. The municipality will create an enabling environment to enable SMMEs to become part of the supply chain management process. Steps to be taken include, but are not limited to:

- 17.1.1.** Bidding and related information will, where possible and practical, be made available in a simplified and uncomplicated format to assist new and emerging enterprises and any business or organisation bidding for municipal business.
- 17.1.2.** Assistance will, where practically possible, be provided by the SCM and LED Units to increase SMME awareness and share in the supply chain and procurement process. Assistance will be provided for new and emerging SMMEs in any of the three languages of the Western Cape.

17.2. Design and implement appropriate Supplier and Contractor Development Programmes for the active promotion of the following development outcomes:

- 17.2.1.** Improve the grading status of suppliers, service providers and contractors in targeted categories and grades;
- 17.2.2.** Increase the number of black women, disabled, and youth-owned companies in targeted categories;
- 17.2.3.** Create sustainable contracting enterprises by enabling continuous work through a competitive process;
- 17.2.4.** Improve the performance of suppliers, service providers and contractors in terms of quality, employment practices, skills development, safety, health and the environment; and
- 17.2.5.** Improve the business management and technical skills of these suppliers, service providers and contractors.

18. Circulars and guidelines

18.1. The National Treasury may issue-

- 18.1.1. a circular to inform Municipality of any matter pertaining to these Regulations; or
- 18.1.2. a guideline to assist Municipality with the implementation of any provision of these Regulations.

19. Short title and commencement

- 19.1. This Policy is called the Knysna Local Municipality Preferential Procurement Policy and takes effect upon Council approval.