



City of Johannesburg

Group Strategic Supply Chain Management

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**TO : EXECUTIVE DIRECTORS
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SCM PRACTITIONERS AND ROLE PLAYERS**

**FROM : MR. FLOYD BRINK
CITY MANAGER**

**COPY : MR. BONGANI MNTAMBO
GROUP HEAD: STRATEGIC SUPPLY CHAIN MANAGEMENT**

**: MR. TEBOGO MORAKA
ACTING GROUP CHIEF EXECUTIVE OFFICER**

DATE : MONDAY, 17 APRIL 2023

**SUBJECT : PRACTICE NOTE 02/2023: APPLICATION OF PREFERENTIAL POINT SYSTEM
FOR PROCUREMENT ABOVE THE RAND VALUE OF R2000.00 ALL
INCLUSIVE.**

This Practice Note provides guidance to all City departments and its entities on the application of Preferential Goals to comply with Preferential Procurement Policy Framework Act and the City's Integrated Development Plan. This practice note replaces the previous Practice Note No. 01/2023 and should be implemented from Friday, 05 May 2023.

ABBREVIATIONS:

BBBEEA : Broad-Based Black Economic Empowerment (Act no 53 Of 2003)

CoJ : City of Johannesburg.

CIDB : Construction Industry Development Board.

EME	: Exempted Micro Enterprise.
GSSCM	: Group Strategic Supply Chain Management.
HDI	: Historically Disadvantaged Individual.
LGBTQIA	: Lesbians, Gays, Bisexuals, Transgender Intersexual.
MFMA	: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).
PPFA	: Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
PPR2022	: Preferential Procurement Regulation, 2022.
RDP	: Reconstruction and Development Programme.
TEDA	: Township Economic Development Act, 2022 (Act No. 2 of 2022).
TEZ	: Township Enterprise Zoning.

DEFINITIONS

Disability - in respect of a person, a permanent impairment of physical, intellectual, or sensory function, which results in restricted, or lack of ability to perform an activity in the manner, or within the range, considered normal for a human being.

Five key RDP programmes includes:

- Meeting Basic Needs
- Developing our Human Resources
- Building the Economy
- Democratizing the State and Society
- Implementing the RDP

Historically Disadvantaged Individual (HDI) – a South African citizen:

- Who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act no 110 of 1983) or the Constitution of the Republic of South Africa, 1993, (Act no 200 of 1993) ("the interim constitution"); and/or
- Who is a female; and/or
- Who has a disability provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be a HDI.

IDP – refers to the Integrated Development Plan being a five-year strategic plan required in terms of the Municipal Systems Act, 2000 (Act no 32 of 2000), guiding the City in executing its constitutional mandate.

Locality - means that tenderer/bidder must have a business enterprise located within the boundaries of City of Johannesburg Municipal Metropolitan Municipality or Gauteng Province to score points for locality.

Lowest Acceptable Tender - means the tender that complies with all specifications and conditions of the tender and that has the lowest price compared to other tenders.

Small, Medium and Micro Enterprises (SMMEs) - bears the same meaning assigned to this expression in the National Small Business Act, 1996 (Act 102 of 1996).

Sub-Contracting - means the use of the 3rd party or subcontractor by the main contractor to help fulfil the obligations of the contract

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 implementing of programmes of the Reconstruction and Development Programme as published in *Government Gazette* No. 16085 dated 23 November 1994.

The Act - Means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

User Department - the departments and municipal entities within the City procuring goods or service(s).

People with disabilities - has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998).

Person - includes reference to natural person and/or juristic person.

1. INTRODUCTION

The City of Johannesburg will implement new procurement reforms as embodied in various Regulations, Circulars and Policies initiatives in the country that include, amongst others, the Constitution of the Republic of South Africa, 1996, the MFMA, PPPFA, CIDB, RDP and the B-BBEEA to ensure alignment with latest developments prescribed by the National Treasury and all other associated regulators.

On 4 November 2022, the Minister of Finance gazetted the new Preferential Procurement Regulations of 2022 (PPRs 2022) with effect from 16 January 2023.

The purpose of the 2022 Regulations is therefore to comply with Section 217 of the Constitution on procurement of goods and services by organs of state, the PPPFA of 2000 and the Constitutional Court judgement of 16 February 2022.

Following the promulgation of the PPR 2022, Organs of States are therefore required to implement its own Preferential Procurement Policy in terms of Section 2(1) of the PPPFA and provide the threshold and formula as prescribed in the 2022 regulations.

Therefore, the CoJ as an Organ of State, among other things, is required in terms of the 2022 Regulations, to stipulate in its tender document the applicable preference point system as envisaged in the said regulations and the specific goals in the invitation to submit the tender for which points may be awarded.

In light of the said developments, the GSSCM processes will be aligned with new reforms to ensure that service delivery obstacles are reviewed and promote the delivery of services within the required timeframe.

2. PURPOSE

- 2.1. This practice note outlines the preferential procurement goals for planning and acquisition of goods and/or services, to ensure compliance with PPR 2022.
- 2.2. This practice note applies to all procurement transactions entered on behalf of COJ with effect from the 1st of May 2023.
- 2.3. The evaluation of quotations and tenders using the 80/20 or 90/10 point system applies to all procurement irrespective of the rand value and method of procurement with the exception of petty cash transactions below R2000.00.

3. LEGAL LEGISLATIVE FRAMEWORK

The CoJ procurement activities shall comply with the following regulatory framework on which this practice note is based:

- 3.1. Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).
- 3.2. Municipal Finance Management Act, 2003 (Act No. 56 of 2003).
- 3.3. SCM: A guide for Accounting Officers of Municipalities and Municipal Entities, 2004.
- 3.4. National Small Business Act, 1996 (Act No. 102 of 1996).
- 3.5. Preferential Procurement Policy Framework, 2000 (Act No. 5 of 2000).
- 3.6. Municipal Supply Chain Management Regulations of 2005.
- 3.7. Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
- 3.8. Preferential Procurement Regulations, 2022.
- 3.9. CoJ: Integrated Development Plan, 2022/2027.

4. PROCUREMENT PLANNING

4.1. Submission of Procurement Plans

- 4.1.1. Procurement planning process should be linked to the approved budget allocation with realistic delivery timeframes.
- 4.1.2. As far as possible, make an accurate estimate of what the goods and/or services, in total will cost.
- 4.1.3. Procurement strategies that seek to promote the City's preferential goals should also be identified when preparing the procurement plans.
- 4.1.4. Departments will not be allowed to procure any goods or services not listed on the approved procurement plan, except under exceptional circumstances to be approved by the Accounting Officer.

4.2. Amendment of Procurement Plans

- 4.2.1. With effect from 16 January 2023, amendments to procurement plans may be allowed only once a year or in exceptional circumstances such as change in the City's strategic imperatives that necessitates procurement of certain goods and

- services. Departments are required to revise their inputs into Procurement Plans during the budget adjustment period.
- 4.2.2. The final approved adjusted procurement plan should be submitted to the National Treasury within 7 days after the approval of adjustment budget using a prescribed template.
 - 4.2.3. The Departments should ensure that all projects listed on the Adjusted Procurement Plan are finalised by end of the financial year – 30 June.
 - 4.2.4. The following annexures must form part of the submission:
 - 4.2.4.1. Original submission with tracked changes.
 - 4.2.4.2. Clean amended plan using the prescribed template.
 - 4.2.4.3. Copy of signed plan before amendment.
 - 4.2.4.4. Needs analysis for the amended items.
 - 4.2.4.5. Motivational report providing reasons for the amendment.
 - 4.2.4.6. Draft technical specifications document.
 - 4.2.4.7. Budget confirmation by Finance Directors.

5. REFERENCE TO THE CITY'S IDP DOCUMENT

- 5.1. The City's IDP document of 2022/27 identified some challenges and opportunities in growing its economy, these are also considered on the differing preferential goals below. Some of the City's preferential goals were extracted from the City's IDP document which identified the following challenges and areas of development:
 - 5.1.1. High rate of unemployed youth in the City.
 - 5.1.2. Establishment of Priority Economic Zones (PEZ) to address both spatial and economic challenges.
 - 5.1.3. SMME development and support.
 - 5.1.4. Elderly development and support.
 - 5.1.5. Women development and support.
 - 5.1.6. Youth development and support.
 - 5.1.7. People with disabilities (PWDs) development and support.
 - 5.1.8. LGBTQIA development and support.
- 5.2. The City intends mitigating its risks through coordinated programmes across all departments, as well as allocating a percentage spent on SMMEs.

6. PREFERENTIAL PROCUREMENT SYSTEM

- 6.1. The acquisition of all goods and services is done through the normal procurement procedures and regulations according to MFMA, General Conditions of Contract [GCC], General Conditions of Contract for Construction Works, MFMA Circulars for SCM, PPPFA and any other applicable regulations.
- 6.2. Section 217 in Chapter 13 of the Constitution of the Republic of South Africa deals with procurement and states the following:

- 6.2.1. 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**.
- 6.2.2. Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for:
- a) Categories of preference in the allocation of contracts; and
 - b) The protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
- 6.2.3. National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.
- 6.3. **The Preferential Procurement Policy Framework Act No. 5 of 2000 (PPPFA)**
- 6.3.1. In line with section 217(3) of the Constitution, the PPPFA has provided a framework within which the policy referred to in Section 217(2) of the Constitution must be implemented. Section 2 of the PPPFA provides for the following:
- 6.3.2. **Section 2(1) of the PPPFA: Framework for implementation of preferential procurement policy:-**
- 6.3.3. *An organ of the 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 prescribed amount 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 prescribed amount a maximum of 20 points may be allocated for specific goals contemplated in paragraph (d) 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 in order 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.*

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

6.4. **Section 10 (1) (b) BBBEEA, Status of codes of good practice states the following:**

6.4.1. Every Organ of State and Public Entity must take into account, as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act in-

- (a) Developing and implementing a Preferential Procurement Policy.

6.5. This Preferential Procurement System gives effect to both the PPPFA and BBBEEA.

6.6. COJ will state, in its tender documents:

- a) The Preferential Point System applicable to that tender;
- b) The specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.

6.7. If it is unclear whether the 80/20 or the 90/10 Preference Points System applies, an organ of the state must, in the tender documents, stipulate in the case of-

- (a) An invitation for income-generating contracts, that either the 80/20 or the 90/10 Preference Point System will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
- (b) Any other invitation for tender, that either the 80/20 or the 90/10 preference point system will apply and that, the lowest acceptable tender will be used to determine the applicable preference system.

6.8. **80/20 Preference Point System for acquisition of goods or services with Rand value equals to or below R50 million (including all applicable taxes).**

- (a) The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

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

Where

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

- (b) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
- (c) The points scored for the specific goal must be added to the points scored for price and the total rounded off to the nearest two decimal places.
- (d) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tender scoring the highest points.

6.9. 90/10 Preference Point System for acquisition of goods or services with Rand value above R50 million (all applicable taxes included).

- (a) The following formula must be used to calculate the points out of 90 for price in respect of an invitation for 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 bid under consideration;
 P_t = Price of bid under consideration; and
 P_{min} = Price of lowest acceptable bid.

- (b) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.
- (c) The points scored for the specific goal must be added to the points scored for price and the total rounded off to the nearest two decimal places.
- (d) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tender scoring the highest points.

6.10. 80/20 Preference Point System for tenders for income-generating contracts with Rand value equals to or below R50 million (including all applicable taxes).

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

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

Where-

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

- (b) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
 - (c) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
 - (d) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.
- 6.11. **90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million (including all applicable taxes).**

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

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

Where-

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

- (b) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.
 - (c) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
 - (d) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.
- 6.12. **CRITERIA FOR BREAKING DEADLOCK IN SCORING**
- (a) 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.
 - (b) If two or more tenderers score equal points total points in all respects, the award must be decided by the drawing of lots.

6.13. CATEGORIES OF SPECIFIC GOALS FOR COJ

- (a) The categories of preferential goals as contained in the relevant legislation and the COJ IDP document is hereby listed below and COJ will be at liberty to apply specific goals in any combination format depending on preference targets and availability of suppliers. Both specific goal 1 and goal 2 must be included in the Request for Quotations and tenders.

6.14. SPECIFIC GOAL 1: HDI

A maximum of 10 points from specific goal 1 must be allocated when applying the 80/20 Preference Point System or 5 points when using the 90/10 Preference Points System. Bidder may score the points based on company ownership. The tender/RFQ must be advertised with a specific tendering preferential procurement requirement in order for the bidder to claim 10 or 5 points for specific goal 1, the tenderer must be 51% owned or more by the following designated groups:

- (a) Black People.
- (b) Women.
- (c) Black Youth.
- (d) Black People with Disabilities.
- (e) Black People who are Military Veterans.
- (f) Cooperative which is at least 51% owned by Black People.

Table below provides for the guide on the allocation and verification of specific points under goal 1:

SPECIFIC GOAL 1: HDI	MEANS OF VERIFICATION	80/20	90/10
Maximum points:		10	5
Business owned by 51% or more - Black People	CSD, Valid BBBEE Certificate / Affidavit Sworn under oath, ID copy of owner/s of the business and Shareholder's certificate.	5	2
Business owned by 51% or more – Women	CSD, ID copy of owner/s of the business and Shareholder's certificate.	10	3
Business owned by 51% or more – Black Youth	CSD, Valid BBBEE Certificate / Affidavit Sworn under oath, ID copy of owner/s of the business and Shareholder's certificate.	10	3
Business owned by 51% or more - Black People with Disabilities	CSD, ID copy of owner/s of the business, and Shareholder's certificate.	2	1
Business owned by 51% or more - Black People who are Military Veterans	CSD, registration with military veteran's database (stamped printout from military veterans' office showing the principal	2	1

	member with the ID number will be required), and Valid BBBEE Certificate / Affidavit Sworn under oath.		
Cooperative which is at least 51% owned by Black People	CSD, Valid BBBEE Certificate / Affidavit Sworn under oath, ID copy of owner/s of the business and CIPC registration document.	5	1

6.15. SPECIFIC GOAL 2: PROMOTION OF LOCAL ECONOMY

A maximum of 10 points from specific goal 2 must be allocated when applying the 80/20 Preference Point System or 5 points when using the 90/10 Preference Points System. These Specific Goals are regarded as critical in contributing towards the economic development and growth in Gauteng Province. The tender/RFQ must be advertised with a specific tendering preferential procurement requirement in order for the bidder to claim 10/5 points for specific goals. Therefore, specific goal 2 points may be allocated for the following RDP including COJ IDP Goals:

- Promotion of SMMEs (An EME or QSE).
- The promotion of enterprises located within the City of Johannesburg Metropolitan Municipality.
- Promotion of enterprises located in a specific region within the City of Johannesburg Metropolitan Municipality for work to be done or services to be rendered in that region.
- The promotion of enterprises located in Townships.
- The upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.
- Subcontracting to business owned by designated groups (up to 30%).

Table below provides for the guide on the allocation and verification of specific points under goal 2:

SPECIFIC GOAL 2: PROMOTION OF LOCAL ECONOMY	MEANS OF VERIFICATION	80/20	90/10
Maximum points:		10	5
SMMEs (An EME or QSE).	CSD and BBBEE Certificate / Affidavit Sworn under oath.	5	1
Enterprises located within the City of Johannesburg Metropolitan Municipality.	CSD and proof of municipal account.	10	5
Enterprises located in a specific region within the City of Johannesburg Metropolitan Municipality for work to be done or services to be rendered in that region.	CSD and proof of municipal account / letter from the Ward Council confirming the business address.	5	5
Enterprises located in Townships.	CSD and proof of municipal account / letter from the Ward Council confirming the business address.	4	1
Upliftment of communities through, but not limited to, housing, transport, schools,	CSIR policy, list of organisations assisted in the current financial	4	3

infrastructure donations, and charity organisations.	year and reference/acceptance letters from those organisations.		
Subcontracting to business owned by designated groups (up to 30%).	Draft subcontracting agreement to the designated groups, and Valid BBEE Certificate / Sworn Affidavit of the subcontracted business.	5	5

6.16. LOCAL PRODUCTION AND CONTENT

The City must, in the case of designated sectors, and in compliance with the requirements as published from time to time by the Department of Trade, Industry and Competition, advertise such tenders with a specific bidding condition that only locally produced goods, services and infrastructure or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered.

All bids issued where local production and content is a criterion, must be measurable and audited and must meet fully the requirements of the South African Bureau of Standards Technical Specification SATS1286:2017 – Local goods, services and works – Measurement and verification of local content.

The following mechanisms will be used to evaluate tenders, and should be submitted with the proposal documentation at the closing date and time of the bid to substantiate the declaration made in terms of the local production and content:

- Annexure, C, D and E.
- Completed and signed CoJ tailored MBD 6.2 form.

The City commits to only conduct business with service providers that comply with the Department of Trade, Industry and Competition requirement for local production and content.

6.17. MONITORING AND EVALUATION

The specific goals referred to above must be measurable, quantifiable, and monitored for compliance. The user department shall monitor compliance and prepare a report to the SCM Department on a monthly basis.

6.18. CANCELLATION ON ACCOUNT OF FALSE INFORMATION

Any contract awarded on account of false information furnished by the tenderer in order to secure preference may be cancelled at the sole discretion of the organ of state without prejudice to any other remedies the organ of state may have.

Any enquiries in respect of this memo should be directed to the Group Head: Strategic Supply Chain Management (Mr. Bongani Mntambo) via email: bonganinn@joburg.org.za.



DATE: 4/05/2023

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Recommended / ~~Not recommended~~



Bongani Mntambo

Group Head: Strategic Supply Chain Management

Finance Department

04/05/2023

Date

Supported / Not supported



Tebogo Moraka

Acting Group Chief Financial Officer

04/05/2023

Date

✓
Approved / ~~Not approved~~



Floyd Brink

City Manager

4/05/2023

Date