



BITOU MUNICIPALITY

PREFERENTIAL PROCUREMENT POLICY, 2024/2025

THIS PREFERENTIAL PROCUREMENT POLICY is adopted in terms of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and Section 217 (2) of the Republic of South Africa Constitution

PREAMBLE

WHEREAS the Bitou Municipality aims to improve the quality of life of the local community and to free the potential of each person within a framework of facilitating service delivery, through effective governance and the Council considers the need for transparent procedures that give the effect to the principle of preferential procurement.

AND WHEREAS local economic development plays a crucial role in creating a prosperous, equitable, stable, and democratic society and the overall national vision of economic development is one of decent work and living standards for all in the context of qualitative improved equality in ownership, skills, and access to opportunities.

NOW THEREFORE the Council of the Bitou Municipality resolves in terms of Section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000, that the Bitou Preferential Procurement Policy is are herewith adopted to form the basis of its procurement activities.

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| VERSION CONTROL | | | | | |
|-------------------------------|---------------|-----------------|---|-------------|--------------------------------------|
| POLICY OWNER: | | | Bitou Municipality Supply Chain Management Unit | | |
| POLICY EFFECTIVE DATE: | | | January 2023 | | |
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| 4 | January 2024 | | All | All | SCM Regulation and thresholds change |

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1. Definitions

1.1. In this policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

| # | Term | Definition |
|------|---|--|
| 1.1. | "Act" | means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) – PPPFA. |
| 1.2. | "B-BBEE" | means Broad-Based Black Economic Empowerment as defined in Section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003). |
| 1.3. | "Broad-based black economic empowerment act" (B-BBEEA) | means the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003) – BBEEA. |
| 1.4. | "B-BBEE status level of contributor" | means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the BBEEA. |
| 1.5 | "Bid" | |
| 1.6 | "Black designated groups" | has the meaning assigned to it in the codes of good practice issued in terms of section 9 (1) of the BBEEA. |
| 1.7 | "Black people" | has the meaning assigned to it in section 1 of the BBEEA. |
| 1.8 | "Consortium or joint venture" | means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill, and knowledge in an activity for the execution of a contract. |
| 1.9 | "Contract" | means the agreement that results from the acceptance of a bid by the Bitou Municipality. |
| 1.10 | "Comparative price" | means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration. |
| 1.11 | "Co-operative" | means a co-operative registered in terms of Section 7 of the Cooperatives Act, 2005 (Act No. 14 of 2005). |
| 1.12 | "Designated group" | means: 1) black designated groups 2) black people 3) women 4) people with disabilities; or 5) small enterprises which are enterprises, owned, managed, and controlled by previously disadvantaged persons and which is overcoming business impediments arising from the legacy of apartheid. |
| 1.13 | "Designated sector" | means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content. |
| 1.14 | "Disability" | means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being. |
| 1.15 | "District municipality" | means the Garden Route District Municipality, a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155 (1) of the RSA Constitution as a category C municipality. |
| 1.16 | "Fronting practice" | means a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of this Act or the implementation of any of the provisions of |

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| # | Term | Definition |
|------|---|--|
| | | <p>this Act, including but not limited to practices in connection with a B-BBEE initiative-</p> <p>(a) in terms of which black persons who are appointed to an enterprise are discouraged or inhibited from substantially participating in the core activities of that enterprise.</p> <p>(b) in terms of which the economic benefits received because of the broad-based black economic empowerment status of an enterprise do not flow to black people in the ratio specified in the relevant legal documentation.</p> <p>(c) involving the conclusion of a legal relationship with a black person for the purpose of that enterprise achieving a certain level of broad-based black economic empowerment compliance without granting that black person the economic benefits that would reasonably be expected to be associated with the status or position held by that black person.</p> <p>(d) involving the conclusion of an agreement with another enterprise to achieve or enhance broad-based black economic empowerment status in circumstances in which-</p> <p>(i) there are significant limitations, whether implicit or explicit, on the identity of suppliers, service providers, clients, or customers.</p> <p>(ii) the maintenance of business operations is reasonably considered to be improbable, having regard to the resources available.</p> <p>(iii) the terms and conditions were not negotiated at arm's length and on a fair and reasonable basis.</p> |
| 1.17 | <i>“Functionality”</i> | means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents. |
| 1.18 | <i>“Historically disadvantaged individual (HDI)”</i> | <p>means a South African citizen –</p> <p>(1) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983); and / or</p> <p>(2) who is a female; and / or</p> <p>(3) who has a disability:</p> <p>Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI.</p> |
| 1.19 | <i>LED</i> | “Local economic development” |
| 1.20 | <i>“Locality”</i> | means the local suppliers and/or service providers that reside within the Bitou Municipality area and within the Region or Garden Route District Municipality. |
| 1.21 | <i>“Military veteran”</i> | has the meaning assigned to it section 1 of the Military Veteran’s Act, 2011 (Act no. 18 of 2011). |
| 1.22 | <i>“National treasury”</i> | has the meaning assigned to it in section 1 of the Public Finance Management Act 1999 (Act No. 1 of 1999). |
| 1.23 | <i>“People with disabilities”</i> | has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998). |
| 1.24 | <i>“Price”</i> | Includes all applicable taxes less all unconditional discounts. |
| 1.25 | <i>“Proof of B-BBEE status level of contributor”</i> | <p>Means the B-BBEE status level certificate issued by an authorised body or person</p> <p>1) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or</p> <p>any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act</p> |
| 1.26 | <i>“Rand value”</i> | means the total estimated value of a contract in Rand, calculated at the time of bid invitation. |

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| # | Term | Definition |
|------|---------------------------------------|---|
| 1.27 | “Region” | 2) means the district and/or Garden Route District Municipality |
| 1.28 | “Rural area” | means- 1) a separately 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 on migratory labour and remittances and government social grants for survival and may have a traditional land tenure system. |
| 1.29 | “Stipulated minimum threshold” | means that portion of local production and content as determined by the Department of Trade and Industry. |
| 1.30 | “Township” | 2) means urban living area that any time from the late 19 th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994. |
| 1.31 | “Treasury” | has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999). |
| 1.32 | “Youth” | has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008). |

2. Legislative Framework

Constitution, 1996 (Act 108 of 1996)

- 2.1. Sections 152(1)(c) and 152(2) of the Constitution provides that local government must promote social and economic development and that the municipality must strive within its financial and administrative capacity, to achieve the objects set out in subsection 152(1).
- 2.2. Section 217(1) of the Constitution, 1996 (Act 108 of 1996) provides that when contracting for goods and services, organs of state must do so in accordance with a system that is fair, equitable, transparent, competitive, and cost effective. Section 217(2) and (3) of the Constitution allows organs of state to grant preferences when procuring for goods and services within a Framework prescribed by National legislation.

Local Government Municipal Finance Management Act, 2003 (Act 56 of 2003) – [MFMA] and related SCM Treasury Regulations, 2005 [SCM TR]

- 2.3. The MFMA aims to regulate financial management and Supply Chain Management [SCM] of local government to ensure that all revenue, expenditure, assets, and liabilities are managed efficiently and effectively.
- 2.4. Sections 110 – 119 of the MFMA deals with SCM requirements and must be read together with the SCM TR's 1 – 52 issued in terms of section 168 of the MFMA through GG 27636 effective from 30 May 2005. Both these sets of prescripts support the application of the PPPFA.

Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) – [PPPFA]

- 2.5. The PPPFA, 2000 took effect on 3 February 2000. The main thrust of the PPPFA, 2000 is that an organ of state must determine its preferential procurement policy and implement such within the preferential procurement framework, the latter which is commonly called the '80/20 or 90/10 principle'.
- 2.6. As per the recent Constitutional judgement of 17 February 2022 that the PPPFA Regulations of 2017 are unconstitutional and invalid in totality concluding that: *"Since each organ of state is empowered to determine its own preferential procurement policy, it cannot also lie with the Minister to make regulations that cover the same field."* According to the judgement organs of state are therefore required to determine its own preferential procurement policy.
- 2.7. The other relevant legislation and prescripts are discussed in the Municipal SCM Policy and can be obtained from the Office of the CFO.

3. Application, Objectives & General Requirements

- 3.1. This Policy complies with the framework as prescribed by section 2 of the PPPFA and as contemplated by section 217(2) of the Constitution of the Republic of South Africa.
- 3.2. This Policy applies to the Bitou Municipality.
- 3.3. This Policy will apply to all active industry sectors in the Municipal Area. It is accepted that through the population of reliable data, trends will be evident which will continuously require a review of the Policy to ensure its relevance of all active industry sectors.
- 3.4. This Policy must be read and applied jointly with the Bitou Municipality's SCM Policy and the PPPFA prescripts amended from time-to-time.
- 3.5. The principles of this policy, where possible, must apply to deviations, sharing of contracts with other organs of state and transversal contracts.
- 3.6. The objectives of the Policy are to:
 - 3.6.1. Promote Bitou Municipality's Local Economic Development Strategy and endeavour to ensure the attainment of the award of at least 40% of all procurement within the boundaries of the Bitou Municipality.
 - 3.6.2. Implement best procurement practises through effective planning, strategic purchasing, and contract management.
 - 3.6.3. Standardise levels of skill and knowledge of employees/workers.
 - 3.6.4. Promote B-BBEE - enterprises providing services and goods within the Bitou Municipal Area.
 - 3.6.5. Introduce a systematic approach to the appointment of service providers and to promote consistency in respect of supply chain management.
 - 3.6.6. Promote SMME's, Joint Ventures, Consortiums, Co-ops, and partnerships, especially within the Bitou Municipal Area.
 - 3.6.7. Create new jobs or intensify labour absorption within the local area.
 - 3.6.8. Promote enterprises located within the Bitou Municipal Area for work to be done or services to be rendered.
 - 3.6.9. Promote enterprises located in rural areas in and around the Bitou Municipal Area.
 - 3.6.10. Empower the work force by standardising the level of skill and knowledge of workers.
 - 3.6.11. Develop human resources, inclusive of assistance with tertiary and other advanced training programs, in line with key indicators such as percentage of wage bill spent on education and training and improvement of management skills.
 - 3.6.12. Uplift local communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.
 - 3.6.13. Ensure that specific goals are measurable and quantifiable, and the municipal officials must monitor the execution of the contract for compliance with such goals.
 - 3.6.14. Provide clarity on the municipality's approach to procurement, particularly with regards to requirements of preferential procurement.

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3.7. The Policy specific requirements are that:

3.7.1. 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, considering the prescripts of the Construction Industry Development Board [CIDB] in respect of construction related contracts.

3.7.2. Outputs required will be quantified and will form part of the contractual arrangement upon awarding of the contract.

4. Applicable preference points system

4.1. The Municipality must determine and stipulate in the tender documents-

4.1.1. The 80/20 or 90/10 preference point system applicable to the tender as envisaged in this Policy; and/or

4.1.2. 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.

5. The 80/20 preference point system for acquisition of goods, works and / or services up to a Rand value of R50 million

5.1. The following formula must be used to calculate the points for price in respect of competitive bids / price quotations with a Rand value equal to, or above R 2 000 and up to a Rand value of R50 000 000 (all applicable taxes included):

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

Where:

Ps = Points scored for comparative price of tender under consideration

Pt = Comparative price of tender under consideration

Pmin = Comparative price of lowest acceptable tender

5.2. A maximum of 20 points may be awarded to a tenderer in relation to its achieving any of the specified goals.

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| Specific Goal | Policy targets for 2022/2023 | Points to be allocated |
|---|---|---|
| Improving opportunities for black people via the BBBEE scorecard, inclusive of: (i) Ownership (ii) Management control (iii) Skills development (iv) Enterprise and supplier development | | 10 |
| Locality | | |
| (a) Bitou Area | 10 | |
| (b) Garden Route | 6 | |
| (c) Western Cape Province | 3 | |
| (d) South Africa | 1 | 10 |
| TOTAL | | 20 points |
| The 10 points in respect of the B-BBEE scorecard will be allocated as follows: | | |
| B-BBEE Status Level of Contributor | Number of Points for Preference (80/20) | Number of Points for Preference (90/10) |
| 1 | 10 | 5 |
| 2 | 8 | 4 |
| 3 | 6 | 3 |
| 4 | 4 | 2 |
| 5 | 2 | 1 |
| 6 | 2 | 1 |
| 7 | 2 | 1 |
| 8 | 2 | 1 |
| Non-compliant contributor | 0 | 0 |

- 5.3. A tenderer must submit proof of its BBBEE status level contributor [scorecard].
- 5.4. A tenderer failing to submit proof of BBBEE status level of contributor -
- 5.4.1. may only score in terms of the 80-point formula for price; and
- 5.4.2. Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 5.5. A tenderer failing to submit proof of required evidence to claim preferences for other specified goals, excluding the BBBEE scorecard -
- 5.5.1. may only score in terms of the 80-point formula for price; and
- 5.5.2. scores 0 points out of the relevant preference points where the supplier or service provider did not provide proof thereof.
- 5.6. The preference points scored by a tenderer must be added to the points scored for price.
- 5.7. The points scored must be rounded off to the nearest two decimal places.

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5.8. Subject to clause 11 below, the contract must be awarded to the tenderer scoring the highest procurement points.

6. The 90/10 preference point system for acquisition of goods, works and / or services with a Rand value above R50 million

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

$$Ps = 90 \left(1 - \frac{(Pt - Pmin)}{Pmin} \right)$$

Where:

Ps = Points scored for comparative price of tender under consideration

Pt = Comparative price of tender under consideration and

Pmin = Comparative price of lowest acceptable tender

6.2. A maximum of 10 points may be awarded to a tenderer in relation to any of the specified goals.

| Specific Goal | Policy targets for 2022/2023 | Points to be allocated |
|--|---|---|
| Improving opportunities for black people via the BBEE scorecard, inclusive of: (v) Ownership (vi) Management control (vii) Skills development (viii) Enterprise and supplier development | | 5 |
| Locality | | |
| (e) Bitou Area | 5 | |
| (f) Garden Route | 3 | |
| (g) Western Cape Province | 2 | |
| (h) South Africa | 1 | 5 |
| TOTAL | | 10 points |
| The 5 points in respect of the B-BBEE scorecard will be allocated as follows: | | |
| B-BBEE Status Level of Contributor | Number of Points for Preference (80/20) | Number of Points for Preference (90/10) |
| 1 | 10 | 5 |
| 2 | 8 | 4 |
| 3 | 6 | 3 |
| 4 | 4 | 2 |
| 5 | 2 | 1 |
| 6 | 2 | 1 |
| 7 | 2 | 1 |
| 8 | 2 | 1 |
| Non-compliant contributor | 0 | 0 |

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- 6.3. A tenderer must submit proof of its BBBEE status level contributor [scorecard].
- 6.4. A tenderer failing to submit proof of BBBEE status level of contributor -
 - 6.4.1. may only score in terms of the 90-point formula for price; and
 - 6.4.2. Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 6.5. A tenderer failing to submit proof of required evidence to claim preferences for other specified goals, excluding the BBBEE scorecard -
 - 6.5.1. may only score in terms of the 90-point formula for price; and
 - 6.5.2. scores 0 points out of the relevant preference points where the supplier or service provider did not provide proof thereof.
- 6.6. The preference points scored by a tenderer must be added to the points scored for price.
- 6.7. The points scored must be rounded off to the nearest two decimal places.
- 6.8. Subject to clause 11 below, the contract must be awarded to the tenderer scoring the highest procurement points.

7. The 80/20 preference point system for tenders to generate income or to dispose of or lease assets up to a Rand value up to R50 million

- 7.1. Tenders that generate income or to dispose of or lease assets with a rand value above R2 000 and up to Rand value of R50 million, the following formula must be used to calculate the points for price:

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

Where:

P_s = Points scored for comparative price of tender under consideration

P_t = Comparative price of tender under consideration and

P_{min} = Comparative price of highest acceptable tender

- 7.2. A maximum of 20 points may be awarded to a tenderer for the specified goals envisaged in this Policy.
- 7.3. The points scored must be rounded off to the nearest 2 decimal places.
- 7.4. Subject to clause 11 below, the contract must be awarded to the tenderer scoring the highest procurement points.
- 7.5. Specific goals for the tender and points claimed are indicated per the table below.

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Table 1: Number of points for contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability.

| B-BBEE Status Level of Contributor | Number of Points for Preference (80/20) |
|------------------------------------|---|
| 1 | 10 |
| 2 | 8 |
| 3 | 6 |
| 4 | 4 |
| 5 | 2 |
| 6 | 2 |
| 7 | 2 |
| 8 | 2 |
| Non-compliant contributor | 0 |

Table 2: Number of points for promotion of enterprises located in the local area.

| Specific Goal | Policy targets |
|--|------------------|
| Improving opportunities for black people via the BBEE scorecard, inclusive of: <ul style="list-style-type: none"> Ownership Management control Skills development Enterprise and supplier development | 10 |
| Locality | |
| Bitou Area | 10 |
| Garden Route | 6 |
| Western Cape Province | 3 |
| South Africa | 1 |
| TOTAL | 20 points |

8. The 90/10 preference point system for tenders to generate income or to dispose of or lease assets up to a Rand value above R50 million

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- 8.1. Tenders that generate income or to dispose of or lease assets with a rand value above R 50 million, will be awarded to the bidder with the highest bid on offer.
- 8.2. Tenders that generate income or to dispose of or lease assets with a rand value above R2 000 and up to Rand value of R50 million, the following formula must be used to calculate the points for price:

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

Where:

P_s = Points scored for comparative price of tender under consideration

P_t = Comparative price of tender under consideration and

P_{min} = Comparative price of highest acceptable tender

- 8.3. A maximum of 10 points may be awarded to a tenderer for the specified goals envisaged in this Policy.
- 8.4. The points scored must be rounded off to the nearest 2 decimal places.
- 8.5. Subject to clause 11 below, the contract must be awarded to the tenderer scoring the highest procurement points.
- 8.6. Specific goals for the tender and points claimed are indicated per the table below.

Table 1: Number of points for contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability.

| B-BBEE Status Level of Contributor | Number of Points for Preference (90/10) |
|------------------------------------|---|
| 1 | 5 |
| 2 | 4 |
| 3 | 3 |
| 4 | 2 |
| 5 | 1 |
| 6 | 1 |
| 7 | 1 |
| 8 | 1 |
| Non-compliant contributor | 0 |

Table 2: Number of points for promotion of enterprises located in the local area.

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| Specific Goal | Policy targets |
|---|------------------|
| Improving opportunities for black people via the BBBEE scorecard, inclusive of: Ownership Management control Skills development Enterprise and supplier development | 5 |
| Locality | |
| Bitou Area | 5 |
| Garden Route | 3 |
| Western Cape Province | 1 |
| South Africa | 1 |
| TOTAL | 10 points |

9. Criteria for breaking deadlock in scoring

- 9.1. 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 preferences.
- 9.2. 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.
- 9.3. If two or more tenderers score equal total points in all respects, the award must be decided by drawing of lots.

10. Award of contracts to bids not scoring the highest number of points

- 10.1. 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.
- 10.2. If the municipality intends to apply objective criteria in terms of section 2(1)(f) of the Act, and it is feasible to do so, the municipality must stipulate the objective criteria in the tender documents.

11. Cancellation and re-invitation of bids

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- 11.1. In the event that, in the application of the 80/20 preference point system as stipulated in the tender documents:
- i. all tenders received exceed the estimated Rand value of R50 million the tender invitation must be cancelled.
 - ii. If one or more of the acceptable tenders received are within the prescribed threshold of R50 million, all tenders received must be evaluated on the 80/20 preference point system.
- 11.2. In the event that, in the application of the 90/10 preference point system as stipulated in the tender documents,
- 11.2.1. all tenders received are equal to, or below R50 million the tender must be cancelled.
 - 11.2.2. If one or more of the acceptable tenders received are above the prescribed threshold of R50 million all tenders received must be evaluated on the 90/10 preference point system.
- 11.3. The Municipality may, prior to the award of a tender, cancel a tender if:
- 11.3.1. no acceptable tenders were received, or
 - 11.3.2. due to changed circumstances, there is no longer a need for the services, works or goods requested, or
 - 11.3.3. funds are no longer available to cover the total envisaged expenditure, or
 - 11.3.4. no acceptable tenders are received, or
 - 11.3.5. a material irregularity in the tender process has been identified, or
 - 11.3.6. the validity period has expired, due to unforeseen and unavoidable circumstances.
- 11.4. The decision to cancel a tender in terms of clause 11.1 above must be published in the media in which the original tender invitation was advertised.

12. Remedies

- 12.1. Upon detecting that a tenderer submitted false information regarding its BBBEE status level of contributor, or any other matter 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-
- 12.2. Inform the tenderer accordingly.
- 12.3. Give the tenderer an opportunity to make representations within 7 days as to why-
- 12.3.1.1. 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; and
 - 12.3.1.2. 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.
- 12.3.2. After considering the representations referred to above, resolves that-
- 12.3.2.1. Such false information was submitted by the tenderer-
 - 12.3.2.1.1. Disqualify the tenderer or terminate the contract in whole or in part.
 - 12.3.2.1.2. If applicable, claim damages from the tenderer.
 - 12.3.2.1.3. Apply any other approved consequence management action as deemed necessary.
- 12.4. Where the successful tenderer sub-contracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10% of the value of the contract.

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12.5. The Municipality must-

12.5.1. Inform the National Treasury, in writing, of any actions taken as above.

12.5.2. Provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state.

12.5.3. Submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

13. Mechanisms to support preferential procurement.

13.1. Uniformity and simplification:

13.1.1. Tender documents will be rationalised and simplified.

13.1.2. Tender documents will include all certificates, declarations, and preference requirements.

13.1.3. Where possible standardised contract templates will form part of tender documents.

13.1.4. Contracts will include payment cycles linked to delivery and performance reporting cycles.

13.2. Database, panels, roster and/or rotation application:

13.2.1. A supplier database or various supplier databases, dependent on the commodity, will be maintained.

13.2.2. The supplier's database(s) will be updated on an annual basis and used on a roster or rotation mechanism basis.

13.3. Unbundling:

13.3.1. Tenders must, where practical, be unbundled into cost components and specific strategies be determined for each, e.g., for the semi- and unskilled labour portion, only locally based unemployed youth must be targeted.

13.3.2. Unbundling strategies can be afforded to the full spectrum of businesses, from those operating as labour only contractors to those operating as prime contractors. Some of these strategies can be summarised as follows:

13.3.2.1. Providing third-party management support to enterprises which are not capable of operating as prime contractors.

13.3.2.2. Providing training to new entrants.

13.3.2.3. Promoting learner-ships, internships, pupil-ships, etc.

13.3.2.4. Obligating main contractors or service providers to engage targeted enterprises in the performance of their contracts incorporating resource specifications.

13.3.2.5. Foster joint ventures that are formed between large businesses and targeted enterprises (termed as Structured Joint Ventures).

13.3.2.6. Encourage and involve funding institutions to assist small businesses with access to finance and negotiate for credit lines.

13.3.2.7. Encourage local manufacturing and procurement from small businesses within the Bitou municipal area.

13.3.2.8. Unbundling of big projects and identifying opportunities and areas/scope of works that can be carried out by emerging contractors bar those from the main assignment shall be pursued vigorously.

13.3.2.9. Unbundling strategies do not include the breaking down of projects into smaller portions to remain below certain threshold values or more than one contract.

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13.4. Payment cycles:

- 13.4.1. The payment of invoices is dependent on timely invoicing, approval of invoices and on the payment administration. Responsible officials must process approved invoices within 30 days of receiving the invoice, unless otherwise provided for in the contract.
- 13.4.2. Reasons for not approving an invoice must be communicated to the tenderer prior to the lapsing of the said 30 days.
- 13.4.3. Officials must endeavour to, where feasible, process invoices of SMME's within 5-7 days to promote their cash flow position. Invoices must be submitted before 10:00 on a Wednesday, to facilitate timely payment.
- 13.4.4. Depending on the commodity and the procurement process adopted, deposits, establishment fees, upfront payments, front-loaded payments, etc may be allowed if provided for in the tender specifications and contract provisions. Appropriate control mechanisms and guarantees must support such payments.

13.5. Performance guarantees:

- 13.5.1. The following level of sureties or guarantees will be introduced as a minimum, based on the risk exposure and type of contract, where relevant, inclusive of CIDB tenders:

| TYPE | DEFINITION | LEVEL OF SURETY |
|-------|--|----------------------------------|
| Major | <ul style="list-style-type: none"> ➤ Onerous requirements ➤ High contract value ➤ Large scale development | ➤ 10% above R 10m contract value |
| Minor | <ul style="list-style-type: none"> ➤ Risks are judged to be acceptable. ➤ Low value ➤ Straight-forward work | ➤ 5% above R 5m contract value |
| Micro | <ul style="list-style-type: none"> ➤ Risks are judged to be limited or non-existent. ➤ Low value ➤ Limited documentation flow ➤ Short term project | ➤ 2.5% below R 5m contract value |

13.6. Skills transfer:

- 13.6.1. Skills transfer is promoted, and Bitou Municipality will endeavour to support SMME's and BBBEE enterprises skills transfer through:
- 13.6.1.1. Proper contract management.
- 13.6.1.2. Provision of adequate information of why tenders were not successful.
- 13.6.1.3. Develop and provide a training programme and related sessions for small suppliers as part of the Municipal Local Economic Development [LED] programme.
- 13.6.1.4. Promoting access to uniform and standardised bid documents with proper instructions for completion.
- 13.6.2. The following skills transfer principles will be introduced as a minimum, based on the risk exposure and type of contract, where relevant, inclusive of CIDB tenders:

| TYPE | DEFINITION | LEVEL OF SKILLS TRANSFER |
|-------|---|---|
| Major | <ul style="list-style-type: none"> ➤ Onerous requirements ➤ High contract value ➤ Large scale development ➤ Above R 5m ➤ Long-term contracts | Formal training, inclusive of accredited training; Certificates/ Diplomas/ Degrees; Interns; Learner ships; Pupil-ships and Bursaries |
| Minor | <ul style="list-style-type: none"> ➤ Risks are judged to be acceptable. ➤ Low value ➤ Straight-forward work ➤ Above R 3 m ➤ Contracts for more than 1-year | Informal training inclusive of Interns; Learner ships; Pupil-ships and Bursaries |

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| TYPE | DEFINITION | LEVEL OF SKILLS TRANSFER |
|-------|---|--|
| Micro | <ul style="list-style-type: none"> ➤ Risks are judged to be limited or non-existent. ➤ Low value ➤ Limited documentation flow ➤ Short term projects | Basic training and certificate of jobs performed |

13.7. CSI – Corporate Social Investment:

13.7.1. Corporate social investment (CSI) is defined as contributions (either employee time and/or resources) which bring benefits over and above those directly associated with the Municipal core business activities.

13.7.2. Depending on the principles of fairness and cost-effectiveness, the relevant commodity required and the profile of the supply industry, the Municipality may require that specific CSI contributions be made in line with the Municipal Grant-in-Aid Policy.

13.7.3. The suppliers shall be expected to indicate or provide an outline of socio-economic projects to be implemented through its Corporate Social Responsibility in the Bitou Municipal area. Proposed projects must be measurable with specific focus on vulnerable groups. Bidders can suggest or explore the following socio-economic project practices for consideration:

13.7.3.1. On the job training and development of staff (learnerships), particularly for the unemployed or young people including the recruitment of long-term job seekers and handicapped people.

13.7.3.2. Young women / mother's upliftment / leadership programme.

13.7.3.3. Skills development initiatives (technical and soft skills) must be accredited with recognised institutions.

13.7.3.4. Youth leadership and empowerment projects.

13.7.3.5. Early childhood development.

13.7.3.6. Projects can be in collaboration with local CBO's, NGOs, and relevant institutions.

13.7.3.7. Business skills and enterprise support including mentoring of local enterprises.

13.7.3.8. Development of Parks and open spaces.

13.7.4. It is specifically recorded that NO CSI financial contributions will be required or accepted.

13.7.5. The Municipality will adopt a uniform standard in acknowledging, monitoring, and reporting on CSI contributions.

13.8. Contract conditions:

13.8.1. Contract conditions for each strategy needs to consider the following elements:

13.8.1.1. Is an additional contract necessary and if so, what will the terms be?

13.8.1.2. What is the contract monitoring and reporting mechanism?

13.8.1.3. Consider whether Employment contracts to be in place and how will it be monitored (to ensure minimum wages are paid and UIF, etc in place)

13.8.1.4. Is LED support required?

13.8.1.5. Identified contract manager and contract administrator.

13.9. Performance management:

13.9.1. The effectiveness and efficiency of this Policy will be reviewed as per the Bitou Municipality's SCM Policy and related performance management provisions.

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13.9.2. Constructive and active contract management and administration will result in an increase in the capacity of suppliers and service providers as well as continuous performance improvements.

13.10. Enterprise development:

13.10.1. Co-ordinate the appropriate Supplier and Contractor Development Programmes for the active promotion of the following development outcomes:

13.10.1.1. Improve the grading status of suppliers, service providers and contractors in targeted categories and grades.

13.10.1.2. Increase the number of black women, disabled, and youth-owned companies in targeted categories.

13.10.1.3. Create sustainable contracting enterprises by enabling continuous work through a competitive process.

13.10.1.4. Improve the performance of suppliers, service providers and contractors in terms of quality, employment practices, skills development, safety, health, and the environment.

13.10.1.5. Improve the business management and technical skills of these suppliers, service providers and contractors.

14. Alignment with the procurement process

14.1. The Municipal SCM Policy will guide the relevant SCM activities required.

14.2. The 'tender format/strategy' as identified in the policy statements and the targets above will be considered and where feasible included in any tender specifications as 'special conditions to tender'.

15. Deviations and exemptions

15.1. Any exemption from compliance to this Policy shall be permitted only within the delegatory powers permitted by Council and as prescribed in terms of the MFMA and the PPPFA.

16. Complaints, enquiries, disputes, or appeals.

16.1. The Bitou Municipality SCM Policy, provides for a mechanism to deal with SCM related complaints, enquiries or disputes which will apply when bidders wish to record any complaint, enquiry, or dispute regarding this Policy.

17. Access to information and training

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- 17.1. Unsuccessful bidders will be informed of the reasons for their bid not being successful, if so, requested in writing. To ease the administrative burden a checklist will be used.
- 17.2. Bidders should be supported to obtain tender information.
- 17.3. Any prospective bidder will be entitled to receive information and/or training regarding the following:
 - 17.3.1. Financial support.
 - 17.3.2. SCM related training.
 - 17.3.3. Assistance with tendering process.
 - 17.3.4. Bidding process.
 - 17.3.5. Preferential procurement.
 - 17.3.6. Completion of Bid documentation.
 - 17.3.7. Project and contract management.
- 17.4. Formal requests for access to information must be dealt with within the PAIA Policy of the Bitou Municipality.
- 17.5. Requests for access to training must be directed to the LED Manager.

18. Administration of policy

18.1. Responsibility

- 18.1.1. Responsibility for the implementation and administration of the Policy is delegated to the Accounting Officer, who will use the support from the LED Manager.
- 18.1.2. The Accounting Officer must ensure that each budget holder assumes responsibility for the implementation of the Policy within his/her area of responsibility and that such responsibility is included in his/her Performance Indicators, if so required.

18.2. LED

- 18.2.1. The Accounting Officer must ensure that the organisational design of the LED Office is appropriately structured, resourced, and capacitated.
- 18.2.2. The data captured by the SCM Unit will be analysed and report on by the Manager: LED.

18.3. SCMU

- 18.3.1. The SCMU must maintain a database of requests and transactions to develop a trend-analysis and through such a process identify areas for efficiency and cost-effective improvements, e.g., minimising smaller purchases and maximising term contracts as well as determining strategies for universal commodities.
- 18.3.2. The data relevant to this Policy will be maintained by the SCM Unit as part of its contract register.

18.4. Oversight by Council

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18.4.1. The Accounting Officer must align its reporting requirements to the Council as per SCM TR 6 to also report on progress with the implementation of the Policy.

19. Maintenance

- 19.1. Given the changing nature of the regulatory, control and operational environment of the Municipality, this Policy will be regularly reviewed and updated on an ongoing basis.
- 19.2. For clarification of any matter contained in this Policy, please address queries to the LED Manager.

20. Implementation

- 20.1. This Policy is effective from January 2023.
- 20.2. This Policy will be implemented in phases as follows:
 - 20.2.1. For the 2022/2023 financial year this Policy will apply to all tenders more than R 200 000 and long-term contracts for which formal tenders are invited.
 - 20.2.2. In the interim, all tenders invited in terms of the PPPFA Regulations of 2017 at the time this Policy is adopted must be evaluated and adjudicated *mutatis mutandis*, within the provisions of this Policy.

21. SHORT TITLE

This policy is called the Bitou Municipality Preferential Procurement Policy and takes effect upon Council approval.

As approved by Council at the Council meeting which was held on

Signed at Plettenberg Bay on the day of/20.....

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Municipal Manager