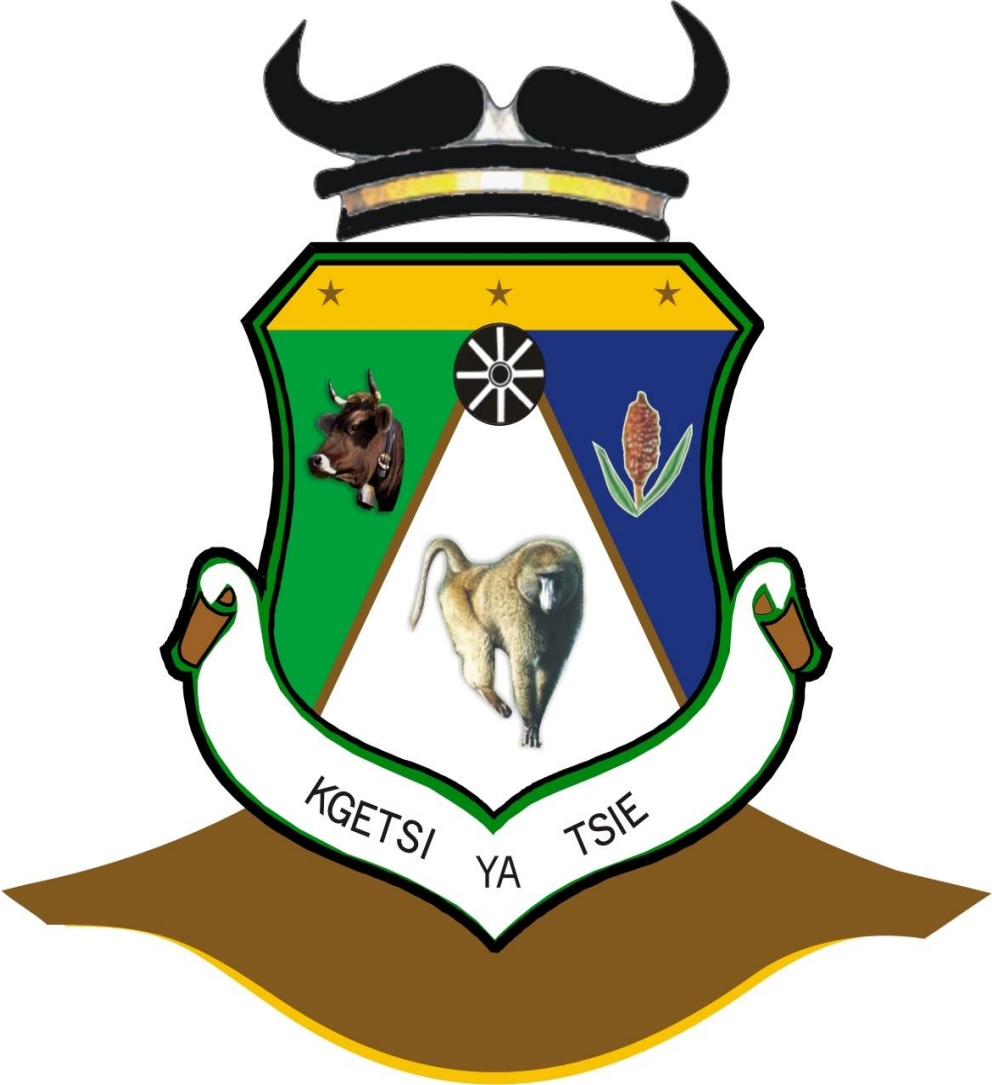


# RAMOTSHERE MOILOA LOCAL MUNICIPALITY



**PREFERENTIAL PROCUREMENT POLICY**

**Effective date: 16 January 2023**

**COUNCIL RESOLUTION NO: \_\_\_\_\_**

## **PURPOSE**

The Minister Finance has, in terms of section 5, read with section 2(1)(b)(i) and (ii) and 2(1)(c), of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), and with effect from 16 January 2023, made the regulations set out in the Schedule. This Guide is intended to assist Accounting Officers and Accounting Authorities with the implementation of the Preferential Procurement Regulations, 2022.

## **CONTENTS**

1. Definitions
2. Application
3. Identification of preference point system
4. 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million
5. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million
6. 80/20 preference points system for tenders to generate income or to dispose of or lease assets with Rand value equal to or below R50 million
7. 90/10 preference point system for tenders to generate income or to dispose of or lease assets with Rand value above R50 million
8. Criteria for breaking deadlock in scoring
9. Remedies
10. Repeal of regulations
11. Short title and commencement

## **DEFINITIONS**

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

**“highest acceptable tender”** means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders;

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

**“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

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

**“specific goals”** means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994;

**“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

**“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement

between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and

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

## **APPLICATION**

2. These Regulations apply to organs of state as defined in section 11 of the Act.

### **Identification of preference point system**

3.(1) An organ of state must, in the tender documents, stipulate—

(a) the applicable preference point system as envisaged in regulations 4, 5, 6 or 7;

(b) the specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.

(2) If it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

(a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system.

## **FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES**

### **POINTS AWARDED FOR PRICE**

#### **80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million**

4.(1) The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or

below R50 million, inclusive of all applicable taxes:

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

Where

$P_s$  = Points scored for price of tender under consideration;

$P_t$  = Price of tender under consideration; and

$P_{\min}$  = Price of lowest acceptable tender.

(2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

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

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

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

Where

$P_s$  = Points scored for price of tender under consideration;

$P_t$  = Price of tender under consideration; and

P min =

Price of lowest acceptable tender.

(2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

## **FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT**

### **POINTS AWARDED FOR PRICE**

#### **80/20 preference points system for tenders for income-generating contracts with Rand value equal to or below R50 million**

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

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

Where

$P_s$  = Points scored for price of tender under consideration;

$P_t$  = Price of tender under consideration; and

$P_{\max}$  = Price of highest acceptable tender.

(2) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

### **90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million**

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

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

Where

$P_s$  = Points scored for price of tender under consideration;

$P_t$  = Price of tender under consideration; and

$P_{\max}$  = Price of highest acceptable tender.

(2) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.

(3) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

(4) Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

**POINTS AWARDED FOR SPECIFIC GOALS**

1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

(a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**

***(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.***

***Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)***

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the	Number of points allocated (80/20 system) (To be completed by the	Number of points claimed (90/10 system) (To be completed	Number of points claimed (80/20 system) (To be completed
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	organ of state)	organ of state)	by the tenderer)	by the tenderer)
Locality	2	4		
Gender	2	4		
Disability	2	4		
Youth	2	4		
Nationality	2	4		

**NB: Specific goals will be determined by the specification committee in alignment to the PPR 2022 per tender.**

**CRITERIA FOR BREAKING DEADLOCK IN SCORING**

8.(1) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for specific goals.

(2) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

**REMEDIES**

9.(1) If an organ of state is of the view that a tenderer submitted false information regarding a specific goal, it must—

- (a) inform the tenderer accordingly; and
- (b) give the tenderer an opportunity to make representations within 14 days as to why the tender may not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part.

(2) After considering the representations referred to in subregulation (1)(b), the organ of state may, if it concludes that such information is false—

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

(b) if applicable, claim damages from the tenderer.

### **REPEAL OF REGULATIONS**

10.(1) Subject to this regulation, the Preferential Procurement Regulations, 2017

published in Government No. 40553 of 20 January 2017, are hereby repealed with effect

from the date referred to in regulation 11.

(2) Any tender advertised before the date referred to in regulation 11 must be

dealt with in terms of the Preferential Procurement Regulations, 2017.

### **SHORT TITLE AND COMMENCEMENT**

11. These Regulations are called the Preferential Procurement Regulations, 2022 and take effect on 16 January 2023.

### **BIDDING DOCUMENTS**

The Bidding Documents affected by the Preferential Procurement Regulations, 2022 are:

a) MBD 6.1.

AOs / AAs should customize and utilize the bidding documents (MBDs) by incorporating the institutions name, logo and contact details.

The relevant MBDs must be utilized for procurement by means of written price quotations, advertised competitive bids or proposals.

## **IMPLEMENTATION OF THIS POLICY**

1. This policy will be effective from the date the policy is approved per council resolution.
2. The implementation of this policy cannot be backdated and all sections thereof will only be implemented from date of approval.
3. All Circulars issued by National Treasury are acknowledged and shall be implemented as subsequent directives in line with the intended outcomes.

**NB: IT IS TO BE NOTED THAT THIS POLICY IS REPLACING CHAPTER 5 OF THE MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY.**