



Approved Preferential Procurement Policy 2022/2023

Issued in terms of sections 152(1)(c) and 217 of the Constitution read with section 2 of the Preferential Procurement Policy Framework Act 5 of 2000 and Preferential Procurement Regulations 2022.

APPROVED



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DOCUMENT DEFINITION

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DEFINITIONS

The words in this policy shall bear a meaning as prescribed and/or ascribed by applicable legislation, and in the event of a conflict, the meaning attached thereto by National Legislation shall prevail:

- 1) **“Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
- 2) **“Black people”** as defined in the Broad-Based Black Economic Empowerment Act, 2003 (Act No 53 of 2003), is a generic term which means Africans, Coloured and Indians.
- 3) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No 53 of 2003).
- 4) **“Code of good practice”** means a generic or sector-specific B-BBEE certificate;
- 5) **“Collusion”** means an intentional and unlawful agreement by two or more companies/firms which is intended or calculated to misrepresent facts or defraud with the sole purpose of influencing the procurement process thereby prejudicing the interests of the service provider.
- 6) **“Companies and Shares”** shall be read to include Close Corporations and members interest’s mutatis mutandis.
- 7) **“Conditions of Tender”** means A document of the procedures, the manner in which those engaged in the procurement process are to behave, the obligations of the tenderer and the undertakings of the municipality. The Conditions of Tender are distinct from the General Conditions of Contract and the Special Conditions of Contract.
- 8) **“Unincorporated or Incorporated 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.
- 9) **“Contract”** means the agreement that results from the acceptance of a tender by an organ of state.
- 10) **“CFO”** means Chief Financial Officer.



- 11) **"Direct Sales"** means sales directly to citizens and customers where a competitive bidding process was not followed. Direct sales include the income generated for municipal services; entrance tickets to municipal venues; Direct sales also include sales for bulk services that are negotiated with a bulk customer.
- 12) **"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.
- 13) **"Firm price"** is the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, 'levy, or tax, which, in terms of a law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract.
- 14) **"Income generating contract"** means a legal agreement between the municipality 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;
- 15) **"Individual"** an individual shall mean a natural person.
- 16) **"Indigent"** any person who appears on the Municipality's indigent register as of 1 July of the year under consideration.
- 17) **"Local Labour"** means South African residents who permanently resides in the Mogale City Local Municipality area.
- 18) **"Local Business"** means an enterprise which has an operational office located within the Mogale City Local Municipality area.
- 19) **"Local economic development"** means local and socio-economic development as contemplated in section 152 of the Constitution, 1998.
- 20) **"Management"** in relation to an enterprise or business, means an activity inclusive of control and performed daily, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director.
- 21) **"Non-firm prices"** means all prices other than "firm" prices.



- 22) **“Person”** includes reference to a juristic person.
- 23) **“Public auction”** means a traditional “open cry” auction where it is not practical to apply a system of preference. Examples include events facilitated by an auctioneer during asset disposal auctions; auction of unwanted goods; staff auctions etc. Public auctions would NOT include “electronic auctions”, “beauty contests”, “sealed bid” auctions, and “Anglo-Dutch” auctions.
- 24) **“Rand value”** means the total estimated value of a contract in Rand denomination which is calculated at the time of tender invitations and includes all applicable taxes and excise duties.
- 25) **“Sub-Contracting”** means the primary contractor’s assigning or leasing or making out work to or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.
- 26) **“Nominated Sub-contractor”** means contractors accredited on the Municipal database for construction related work as contemplated in the CIDBA.
- 27) **“Tender”** means a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services or goods.
- 28) **“Tender format/strategy”** means the special conditions describing the tender strategy approach in order to achieve identified targets.
- 29) **“Trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person.
- 30) **“Trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.



PART 1. INTRODUCTION


- 1.1 The preferential procurement framework act, section 2(1) prescribes that each government institution must determine its own preferential procurement policy, within a framework upon which the institution will specify how the preferential points will be allocated when awarding bids and how it intends to use procurement as one of its enablers for economic development.

National Treasury provided preferential procurement regulations 2022, issued on 4 November 2022, to provide minimum guidance and requirements for all government institutions, on the determination of their own preferential procurement policies.

- 1.2 This policy is aimed at assisting the government's program of redressing the historical imbalances through the application of the preferential points system and other incentive programs aimed at economic local economic development.

PART 2. PURPOSE AND OBJECTIVES

- 2.1 The purpose of the Policy is to assist municipalities to implement and achieve the objectives of the PPPFA and the implementation of section 152 of the constitution through the following:
- 2.1.1 Validate the Mogale City Local Municipality's commitment to local- and socio-economic development and preferential procurement.
 - 2.1.2 Ensure effective and efficient application of resources.
 - 2.1.3 Promote accountability, transparency, and fairness.
 - 2.1.4 Create opportunities for local small, medium, and micro enterprises (SMME).
 - 2.1.5 Enhance quality of services.
 - 2.1.6 Stimulate local- and socio-economic development.
 - 2.1.7 Eliminate and counter corruption.
 - 2.1.8 Contribute towards reduction of unemployment, especially within the Municipal Area.

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- 2.1.9 Broadening the tax base within the Mogale City Local Municipality.
 - 2.1.10 Encourage linkages between small and large enterprises.
 - 2.1.11 Promote skills transfer and training of the historically disadvantaged.
 - 2.1.12 Protect local industry against unfair competition.
 - 2.1.13 Create new jobs or intensify labour absorption within the local area.
 - 2.1.14 Promote enterprises located within the Mogale City Local Municipality for work to be done or services to be rendered.

PART 3. LEGISLATIVE FRAMEWORK

Constitution, 1996 (Act 108 of 1996)

- 3.1 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).
- 3.2 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]

- 3.3 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.
- 3.4 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]



- 3.5 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'.
- 3.6 The other relevant legislation and prescripts are discussed in the Municipal SCM Policy and can be obtained from the Office of the CFO.

PART 4. POLICY STATEMENTS

4.1 Application

- 4.1.1 This policy is applicable to all request for Quotations (RFQ's) and bids which the municipality will apply preference points when making the final award.
- 4.1.2 Furthermore, 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.
- 4.1.3 This Policy must be read and applied jointly with the Mogale City Local Municipality's SCM Policy and the PPPFA prescripts amended from time-to-time.
- 4.1.4 Construction tenders will also have to adhere to the policy requirements.
- 4.1.5 The principles of this policy, where possible, must apply to deviations as per SCMR 36, contracts procured from other organs of state as per SCMR 32 and transversal contracts.
- 4.1.6 The policy objectives should form part of the conditions of tender and RFQ's in order to be active and brought into life. The policy objectives should **not form part of the functionality criteria set out to determine the capability of the bidder.**

4.2 Uniformity and simplification

- 4.2.1 Tender documents will be rationalised and simplified.
- 4.2.2 Tender documents will include all certificates, declarations, and preference requirements.
- 4.2.3 Where possible standardised contract templates will form part of tender documents.



4.3 Database, panels, roster and/or rotation application

- 4.3.1 A supplier database or various supplier databases, dependent on the commodity must be subject to this policy.
- 4.3.2 The supplier's database(s) will be updated on an annual basis to determine compliance to this policy.

4.4. Unbundling

- 4.3.3 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.
- 4.3.4 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:
 - a) Providing third-party management support to enterprises which are not capable of operating as prime contractors.
 - b) Providing training to new entrants.
 - c) Promoting learner-ships, internships, pupil-ships, etc.
 - d) Obligating main contractors or service providers to engage targeted enterprises in the performance of their contracts incorporating resource specifications.
 - e) Foster joint ventures that are formed between large businesses and targeted enterprises (termed as Structured Joint Ventures).
 - f) Encourage and involve funding institutions to assist small businesses with access to finance and negotiate for credit lines.
 - g) Encourage local manufacturing and procurement from small businesses within the Mogale City Local Municipality area.
 - h) 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.



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

4.4 Targeting

- 4.4.1 Targeting will be regarded as a specific goal identified by Mogale City Local Municipality and will be reflected in Part 7 to this Policy.
- 4.4.2 These targets will be determined prior to the invitation of tenders and reflected as special and/or pre-qualifying conditions.

PART 5. IDENTIFICATION AND APPLICATION OF POINTS SYSTEM

- 5.1 The Municipality must in line with section 2 of PPPFA and Regulations 4, 5, 6 and 7 of the PPR 2022 determine the applicable preference points system applicable in the tender document for quotations, competitive bids and multiple limited bids for the procurement of goods, services and works; the disposal assets or goods no longer required; and for income-generating contracts:
- 5.1.1 The **80/20 preference point system** for contracts with a Rand value between the threshold used for Petty Cash and less than or equal to **R50 million** including all applicable taxes; or
- 5.1.2 The **90/10 preference point system** for contracts with a Rand value greater than **R50 million** including all applicable taxes.
- 5.2 Where the municipality is uncertain of the Rand value of bid, it must indicate in the tender document that either 80/20 or 90/10 will apply, to avoid cancellation of tenders thus delaying service delivery:
- 5.2.1 For an invitation for procurement contracts, that the lowest acceptable tender will be used to determine the applicable preference point system; or
- 5.2.2 For an invitation for disposal or income-generating contracts, that the highest acceptable tender will be used to determine the applicable preference point system.
- 5.3 The application of points system:**
- 5.3.1 Where the tender includes evaluation criteria, the municipality should first determine the bids meeting the set criteria (important to note that the provision of this policy should not form part of the evaluation criteria, rather be included as a conditions of tender).



5.4 Determine the points scored using the price formula 80 or 90 points system.

5.4.1 For procurement 80/90:

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

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

5.4.2 For disposal or income-generating contracts:

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

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

5.4.3 Determine the Specific Goals for 20 or 10 preference points system, as outline in section 2 (d) of the PPPFA.

5.4.4 The allocation of the applicable preference points to be determined by each council for each tender and must be set out in the tender document.

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

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

PART 6. PREFERENCE TARGETS AND EMPOWERMENT OBJECTIVES

6.1. Empowerment objectives

6.1.1 As part of the implementation of section 152 of the constitution, the municipality has systematically institutionalised empowerment incentives for procurements exceeding the specified threshold values, which have formed part of the conditions of tenders, with the view of maximising the rand value benefit for the local community.

6.1.2 The determination of the empowerment objectives per tender shall be prepared in collaboration between SCM unit, Enterprise Development (LED) Unit and Line Department.



6.1.3 The data to be produced by the preferred service provider as evidence of meeting the empowerment objectives, shall be jointly determined between SCM unit, Enterprise Development (LED) Unit and Line Department. The contract owner (project manager) shall be responsible for active monitoring and approval of achievements of objectives, which will form part of the payment certificates/invoices.

6.1.4 The threshold values and types of contracts which empowerment objectives will apply:

TYPE	THRESHOLD VALUE	DEFINITION
Major Contracts	Contract Exceeding R 10 million rand	<ul style="list-style-type: none"> ➤ High contract value ➤ Large scale development ➤ Any bid category (CIDB or General goods and services)
Long term contracts	Contract Exceeding one year	<ul style="list-style-type: none"> ➤ Risks are judged to be acceptable. ➤ Medium to high complex works. ➤ Any bid category (CIDB or General goods and services)
Micro	Contracts exceeding R 5 million but less than R10 million Rand	<ul style="list-style-type: none"> ➤ Risks are judged to be limited or non-existent. ➤ Low to medium complexity types of works ➤ Short term project ➤ Any bid category (CIDB or General goods and services)



6.2. Empowerment programs

6.2.1 Through this policy the council of Mogale City can determine its own empowerment programs which will be aimed at community upliftment.

6.2.2 The types of empowerment programs to be determined by council can typically fall within the following areas:

6.2.2.1 CSI – Corporate Social Investment

- a. 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.
- b. 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 Mogale City Local Municipality Grant-in-Aid Policy.
- c. 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 Mogale City Local Municipality 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:
 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.
 2. Young women / mother's upliftment / leadership programme.
 3. Skills development initiatives (technical and soft skills) must be accredited with recognised institutions.
 4. Youth leadership and empowerment projects.
 5. Early childhood development.
 6. Projects can be in collaboration with local CBO's, NGOs, and relevant institutions.
 7. Business skills and enterprise support including mentoring of local enterprises.
 8. Development of Parks and open spaces.



- d. Mogale City Local Municipality will utilise 2% Corporate Social Responsibility Policy to fund projects as outlined in the policy.
- e. The Municipality will adopt a uniform standard in acknowledging, monitoring, and reporting on CSI contributions.

6.2.2.2 Skills transfer

- a. The council shall determine a system for skills transfer of knowledge and expertise to identified municipal staff members where the service provider shall train officials provide evidence.
- b. if the project is community based, the service provider shall train identified community members in operating, maintaining, and securing the asset.
- c. where feasible the municipality should make it a condition of contract that the service provider must train SMME's in business operations, financial aspects of business and compliance aspects of business.

6.2.2.3 Contractor development and Special purpose vehicle projects

- a. Where the municipality has an active contractor development programme, where SMME's are registered, the service provider shall be required to conduct a contractor development programme on behalf of the municipality.
- b. As part of the conditions, the service provider shall be required to give preference to the SMME's in the contractor development incubation programme in pre-determined areas of work.

6.3 Preference targets

- 6.3.1 The municipality's procurement policy should be a progressive policy which aims to continuously set aspirational targets to achieve in empowering the local community as follows:



POLICY OBJECTIVE	TARGET
Improve market share of local SMME's	➤ The municipality will continuously promote and implement targeted strategies and modalities, in order to improve the local SMME's competitiveness in the market, as guided by section 152 of the Constitution.
Improve the local economic market [local buying]	➤ Bidders awarded bids by the Municipality must source the materials within the Municipal area, where possible.
Employment of local semi-& unskilled workers	➤ In all projects implemented in the Municipal area, the main contractor will source unskilled and Semi-Skilled labourers in the area per Municipal ward.
Ensure equitable work distribution in the Mogale City Local Municipality area.	➤ Develop a rotation mechanism to employ local businesses registered on the National Treasury Central Supplier Database (CSD) for projects below R 300 000, inclusive of construction related services.
Address identified local socio - economic weakness areas i.e.: (i) Unemployed Youth	➤ The municipality will continuously identify commodities in the demand management plans that will be marked as special purpose vehicles focusing on youth employment. ➤ Enterprise Development (LED) unit will compile and keep a database of the demographics of the youth and other groups employment status per ward level and Municipal level.

6.3.2 The municipality shall determine a policy implementation strategy which shall detail the specific targets to ensure the above preference targets are met, and the strategy shall be reviewed annually in conjunction with the budget polices.



- 6.3.3. To determine which tender conditions will be applicable to a specific tender, the following considerations will apply:
- a) The Municipality must apply the empowerment goals as per section 2 of PPPFA for allocating preference points within the preference point system applicable to the tender
 - b) The Municipality must determine and record its reasons whether the goods or services for which a tender is to be invited, will be evaluated based on functionality. Apply functionality as per case law best practice.
 - c) The Municipality must determine targeting conditions for procurement within the thresholds as directed by Council in 8.1 above and apply such as conditions of tender and/or conditions of contract.
 - d) The Municipality must determine whether and what additional objective criteria are applicable to the tender as envisaged in the PPPFA 2(1)(f):
 - a. Objective criteria (2(1)(f)) may be included in the invitation to quote or bid, but will not be limited to that which is published; and
 - b. Objective criteria (2(1)(f)) must not include evaluation criteria used to determine an acceptable tender and must not include the Specific Goals used to determine the 20 or 10 points.
 - e) All attempts should be made to use the labour and materials from residents per ward for projects to the benefit of such specific wards.
- 6.3.4. The LED and SCM Unit must jointly determine which data to maintain to be able to monitor and report on matters such as local buying, alignment between municipal demographics vis-à-vis SCM spent, and related factors.

PART 7. ALIGNMENT WITH THE PROCUREMENT PROCESS

- 7.1 Mogale City's SCM Policy will guide the relevant SCM activities required.
- 7.2 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'.



PART 8. DEVIATIONS AND EXEMPTIONS

- 8.1 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.

PART 9. ADMINISTRATION OF POLICY

9.1 Responsibility

- 9.1.1 Responsibility for the implementation and administration of the Policy is delegated to the **Executive Manager: Economic Development Services, who will use the support from the SCM and Enterprise Development/ (LED) Managers.**
- 9.1.2. **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.**

9.2 Enterprise Development/LED

- 9.2.1. The Accounting Officer must ensure that the organisational design of the Enterprise Development/ LED Office is appropriately structured, resourced, and capacitated.
- 9.2.2. The data captured by the SCM Unit will be analysed and reported on by the Manager: Enterprise Development/LED.

9.3 SCM Unit

- 9.3.1. The SCM Unit 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.
- 9.3.2. The data relevant to this Policy will be maintained by the SCM Unit as part of its contract register.



9.4. Oversight by Council

9.4.1. 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.

PART 10. MAINTENANCE

10.1. 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.

PART 11. IMPLEMENTATION

11.1. This Policy is effective from **01 July 2023**.

11.4. To achieve the above, the following immediate implementation steps are required:

- a. Increased capacity in the Office of the SCM and Enterprise Development/ LED Managers.
- b. Commence with the development of a Municipal Emerging Contractor and Service Provider Development Policy.
- c. Communication with the local community.
- d. Establishment and institutionalisation of the Demand Management Committee.
- e. Development and approval of procurement plans/tender strategies via relevant Demand Management Committee.



Annexure A

Preference target matrix

POLICY OBJECTIVE	TARGET
Improve market share of local SMME's	<ul style="list-style-type: none"> ➤ By year 2025 the market-share of SMME's to be at least 30% of all municipal procurement. ➤ By year 2026 the market-share of SMME's to be at least 35% of all municipal procurement.
Improve the local economic market [local buying]	<ul style="list-style-type: none"> ➤ By year 2027 the market-share of local businesses to be at least 40% of all municipal procurement. ➤ By year 2028 the market-share of local businesses to be at least 45% of all municipal procurement
Employment of local semi-& unskilled workers	<ul style="list-style-type: none"> ➤ By year 2025 at least 50% of construction and related sector wage and allowance costs must represent local labour. ➤ By year 2026 at least 60% of construction and related sector wage and allowance costs must represent local labour.
Ensure equitable work distribution in Mogale City Local Municipality area.	Develop a rotation mechanism to employ 10 local businesses registered on the National Treasury Central Supplier Database (CSD) for projects below R 300 000, inclusive of construction related services.
Address identified local socio - economic weakness areas i.e: (ii) Unemployed Youth	➤ By year # municipal procurement spend to unemployed youth be improved by 10% calculated from data compiled since 2021.