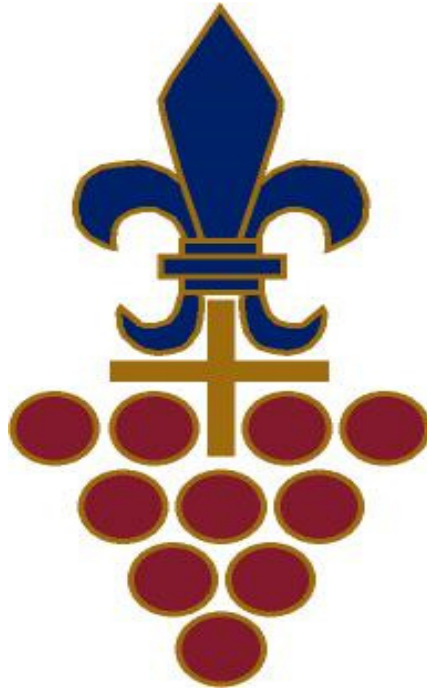


STELLENBOSCH MUNICIPALITY



**PREFERENTIAL PROCUREMENT
POLICY**

2021/2022



STELLENBOSCH MUNICIPALITY

PREFERENTIAL PROCUREMENT POLICY

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1. PREAMBLE

- 1.1 The Constitution of the Republic of South Africa, 1996 in section 217 requires an organ of state to contract for goods or services in accordance with a procurement system which is fair, equitable, transparent, competitive and cost effective and to grant preferences within a framework prescribed by National Legislation.
- 1.2 A National Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)- [PPPPFA] was promulgated in response to the Constitutional provision and allow for an organ of state to develop a preferential procurement policy and to implement such policy within the PPPFA framework.

From the preamble from the Constitution:

*We therefore, through our freely elected representatives, adopt this Constitution as **the supreme law of the Republic** so as to*

- *Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;*
- ***Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;***
- ***Improve the quality of life of all citizens and free the potential of each person; and***
- *Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.*

From Chapter 7 of the Constitution:

152. Objects of local government

1. The objects of local government are -

- a. *to provide democratic and accountable government for local communities;*
- b. *to ensure the provision of services to communities in a sustainable manner;*
- c. *to promote social and economic development;*
- d. *to promote a safe and healthy environment; and*
- e. *to encourage the involvement of communities and community organisations in the matters of local government.*

2. A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

153. Developmental duties of municipalities

A municipality must

- a. *structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and*
- b. *participate in national and provincial development programmes.*

2. FOREWORD

The policy of Stellenbosch Municipality – in respect of Preferential Procurement is that:

- 2.1 State expenditure is recognised as an instrument of government policy to achieve economic, socio-economic and development objectives.
- 2.2 Procurement can be applied as an instrument of secondary redistribution to alter primary income distribution and as a means to address historic imbalances by means of creating employment and business opportunities for historically disadvantaged groups in the South African society.
- 2.3 Preferential Procurement is recognised as a valid instrument for such social reform.
- 2.4 It is recognised that preferential procurement cannot be applied without cost and that such cost should be subject to the Municipal Budget and the prioritisation processes applicable to all Municipal expenditure.
- 2.5 Ultimately, preferential procurement could go some way to providing a springboard to encourage redistribution and reducing economic concentration, which in turn would foster competition and promote effective and appropriate resource allocation.
- 2.6 The Stellenbosch Municipality Preferential Procurement Policy will be reviewed regularly.
- 2.7 This Policy marks the beginning of a long term path the Stellenbosch Municipality intends to walk with the citizens of Stellenbosch and that this Policy represents the first phase of implementation. With the increase in maturity of the Stellenbosch Municipality as well as its suppliers, it is further accepted that this Policy will also mature to the extent that visible socio- and economic benefits can be experienced by all citizens living in Stellenbosch.

3. PURPOSE AND OBJECTIVES

The broad purpose of the Preferential Procurement Policy is to:

- 3.1 Validate Stellenbosch Municipality's commitment to Preferential Procurement.
- 3.2 Ensure effective and efficient application of resources.
- 3.3 Promote accountability, transparency and fairness.
- 3.4 Create opportunities for local small, medium and micro enterprises.

- 3.5 Enhance quality of services.
- 3.6 Stimulate socio-economic development.
- 3.7 Eliminate and counter corruption.
- 3.8 Contribute towards reduction of unemployment, especially within the Stellenbosch Municipal Area.
- 3.9 Broadening the tax base within the Stellenbosch Municipal Area.
- 3.10 Encourage linkages between small and large enterprises.
- 3.11 Promote skills transfer and training of the historically disadvantaged.
- 3.12 Protect local industry against unfair competition.

4. LEGISLATIVE FRAMEWORK

Constitution, 1996 (Act 108 of 1996)

- 4.1 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.
- 4.2 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]

- 4.3 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.
- 4.4 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 supports the application of the PPPFA.

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

- 4.5 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'.
- 4.6 The National Treasury, in consultation with the Department of Trade and Industry, reviewed the Regulations issued in terms of the PPPFA, in 2001, and issued new Regulations that become effective on 01 April 2017

5. PRINCIPLES

- 5.1. The principles that underpin this policy are as follows:
- 5.1.1 Sound commercial principles will underlie all transactions. There will be no compromise on quality, service delivery or any other commercial aspects related to the delivery of business objectives.
- 5.1.2 All preferential procurement processes will be transparent and subjected to audit in accordance with sound business principles and practices.
- 5.1.3 Stellenbosch Municipality will only conduct business with service providers that comply with legal requirements (registered with SARS; municipal taxes are not in arrears for more than three months; not on the restricted suppliers or tender defaulters lists; suppliers not deemed as in the service of the State, etc.)
- 5.2. The Policy is founded upon the following core principles:

5.2.1. Value for money

Price alone is often not a reliable indicator and will not necessarily obtain the best value for money by accepting the lowest price offer that meets mandatory requirements. Best value for money means the best available outcome when all relevant costs and benefits over the procurement cycle are considered.

5.2.2. Open and effective competition

All procurement laws, policies, practices and procedures must be readily accessible to all parties involved in the procurement process. The procurement process must be open and transparent and reasons must be provided for decisions in terms of current legislation.

5.2.3. Ethics and fair dealing

All procurement officials must comply with the municipal ethical standards to promote mutual trust and respect and an environment where business can be conducted in a fair and reasonable manner. The following is regarded as an acceptable ethical behaviour:

- Open, honest and co-operative business relations.
- Confidentiality of commercial information.
- Avoidance of conflict of interest or a perception of bias.
- Disclosure of conflict of interest as soon as they arise.
- Fair dealing and impartiality in the conduct of tender evaluations.
- Avoidance of combative or collusive practices.

5.2.4. Accountability and reporting

Procurement officials and other officials involved in SCM must be answerable for their decisions and actions to the public.

5.2.5. Equity

Stellenbosch Municipality will at all times strive to enhance the development of SMME's and B-BBEE enterprises' to allow them to contribute meaningfully in the economy of the Stellenbosch Municipal Area.

6. POLICY STATEMENTS

6.1 Application

6.1.1. This Policy will apply to all active industry sectors in the Stellenbosch 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.

6.1.2. This Policy must be read with the Stellenbosch Municipality's SCM Policy

6.1.3. Construction tenders will also have to adhere to the requirements of the CIDBA.

6.2 Targeting

6.2.1. Targeting will be regarded as a specific goal identified by Stellenbosch Municipality and will be reflected in Part 7 to this Policy.

6.2.2. These targets will be determined prior to the invitation of tenders and reflected as special conditions.

6.3 Payment cycles

6.3.1. 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.

6.3.2. Reasons for not approving an invoice must be communicated to the tenderer prior to the lapsing of the said 30 days.

6.3.3. Officials must endeavour to, where feasible, process invoices of SMME's within 7-15 days in order to promote their cash flow position.

7. PREFERENCE TARGETS IDENTIFIED

7.1 Considering all the data available this Policy for the 2019/20 financial years will strive to achieve the following targets linked to its identified opportunities listed in paragraph 7.1 above:

POLICY OBJECTIVE	TARGET
Improve the local economic market	➤ Make 10%appointments to local businesses through Formal Quotations for appointments below R200,000
Improve the local economic market	➤ Obtain 30% quotations from local businesses for appointments below R30,000
Employment of local semi-& unskilled workers	➤ Identify 10% of SCM tenders that are labour intensive to include specific conditions of a practical content of local semi-& unskilled workers from LED database / Indigent list.

Methodology to achieve targets in the short term is to include specific conditions in the SCM documents for Formal Quotations and Bids similar to the following two examples:

Example No 1:

“SPECIFIC CONDITIONS: TOTAL MAINTENANCE OF PARKS AND P.O.S WITH MANUAL MACHINES AS WELL AS ALL FLOWERBEDS AND YOUNG TREES IN THE MUNICIPAL AREA:

The intention of the municipality is to promote development of all enterprises. Suitably qualified contractors will be expected to spend at least **80%** of the value of the work on local people to ensure that local economic development is promoted. For this purpose the municipal area is divided into 5 smaller areas. For each area the service provider will be required to appoint a supervisor, and a team of at least **6** people.”

Monitoring will be based on the following methods by the End user dept.

1. Local Municipal accounts / Affidavits with ID numbers certified
2. Training and skills development certificates issued

Example No 2:

TENDER DATA: SPECIAL CONDITIONS RELEVANT TO PROJECT.

The following Conditions shall be adopted as per the Municipal PPPFA Policy

SPECIAL CONDITIONS OF TENDER		
	Comply Y/N	Ref in proposal
A. CONDITIONS APPLICABLE TO THE PROMOTION OF MUNICIPAL LOCAL AND SOCIO-ECONOMIC DEVELOPMENT		
The full portion budgeted for unskilled labour will be executed by unskilled, unemployed labourers who are beneficiaries of this project. The service provider must provide evidence of the identity and addresses of these labourers within 14 days after award of the contract. Minimum prescribed wages must be paid. In the event that this condition cannot be adhered to the contractor must obtain prior approval from the Municipality.		
All materials procured for this project MUST be sourced from local suppliers In the event that this condition cannot be adhered to the contractor must obtain prior approval from the Municipality.		
Use a local EME sub-contractor in for all manual labour in regards to excavations, filling and compaction of cable trenches, pole holes road crossings etc. Suppliers must submit sub-contracting agreement with the tender proposal, together with an indication of the payment arrangements. In the event that this condition cannot be adhered to the contractor must obtain prior approval from the Municipality.		
Suppliers must submit sub-contracting agreement with the tender proposal, together with an indication of the payment arrangements		
B. CONDITIONS APPLICABLE AFTER CLOSING OF TENDER BUT BEFORE A SELECTED SERVICE PROVIDER IS ANNOUNCED		
Any additional information upon request must be submitted in writing within 48 hours of receipt.		
C. CONDITIONS APPLICABLE AFTER AWARDING OF THE TENDER		
The service provider must provide the Municipality with a completed list of local labourers to be used, within 14 days after final award of the tender for approval by the Municipality.		
The aforesaid list must be updated and submitted together with the service providers progress report and invoice, inclusive of the following details: a) Salary / wages spent on local employees versus total wages / salary budget at site b) Number of local employees employed versus per total workforce at site c) Payments made to the subcontractor and his performance		

<p>Any amendments prior approval from the Municipality. The service provider must provide local labourers with basic on-the-job training and provide them with a reference letter after completion of their services.</p>		
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8. IMPLEMENTATION

- 8.1 This Policy is effective from 1 July 2019.
- 8.2 It is the responsibility of the Office of the CFO and various Line Department Managers to bring the content of this Policy to the attention of all parties concerned.
- 8.3 This Policy marks the beginning of a long term path the Stellenbosch Municipality intends to walk with the citizens of Stellenbosch and that this Policy represents the first phase of implementation. With the increase in maturity of the Stellenbosch Municipality as well as its suppliers, it is further accepted that this Policy will also mature to the extent that visible socio- and economic benefits can be experienced by all citizens living in Stellenbosch.
- 8.4 In order to achieve the above, the following immediate implementation steps are required:

By 30 September 2019:

- a. Increased capacity in the SCM Unit.
- b. Identification and appointment of a PPPFA Champion.

9. 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.

- 9.1 “**Act**” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- 9.2 “**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.
- 9.3 “**B-BBEE**” means broad-based black economic empowerment defined as the economic empowerment of all black people including women, workers, youth, people with

disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to:

- Increasing the number of black people that manage, own and control enterprises and productive assets;
- Facilitating ownership and management of enterprises and productive assets by communities, workers cooperatives and other collective enterprises;
- Human resource and skills development;
- Achieving equitable representation in all occupational categories and levels in the workforce;
- Preferential procurement; and
- Investment in enterprises that are owned or managed by black people.

9.4 “**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 Broad-Based Black Economic Empowerment Act.

9.5 “**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No 53 of 2003);

9.6 “**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;

9.7 “**Companies and Shares**” shall be read so as to include Close Corporations and members interests mutatis mutandis;

9.8 “**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;

9.9 “**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;

9.10 “**Contract**” means the agreement that results from the acceptance of a tender by an organ of state;

9.11 “**CFO**” means Chief Financial Officer

- 9.12 **“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;
- 9.13 **“Executive Management Committee”** shall mean a committee comprising the Agency’s Heads of Divisions and any other Manager so invited.
- 9.14 **“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;
- 9.15 **“Individual”** an individual shall mean a natural person;
- 9.16 **“Indigent”** any person who appears on the Municipality’s indigent register as of 1 July of the year under consideration;
- 9.17 **“Local Labour”** means South African residents who permanently resides in the Stellenbosch Municipal area;
- 9.18 **“Local Business”** means an enterprise which has its sole office or head office located within the Stellenbosch Municipal area;
- 9.19 **“Local Content”** means local manufacturing as contemplated in PPPFA Regulations 2011, Regulation 1;
- 9.20 **“Local economic development”** means local and socio-economic development as contemplated in section 152 of the Constitution, 1998;
- 9.21 **“Management”** in relation to an enterprise or business, means an activity inclusive of control and performed on a daily basis, 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;
- 9.22 **“Non-firm prices”** means all prices other than “firm” prices;
- 9.23 **“Person”** includes reference to a juristic person;
- 9.24 **“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;

- 9.25 **“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;
- 9.26 **“Nominated Sub-contractor”** means contractors accredited on the Municipal database for construction related work as contemplated in the CIDBA.
- 9.27 **“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;
- 9.28 **“Tender format/strategy”** means the special conditions describing the tender strategy approach in order to achieve identified targets.
- 9.29 **“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; and
- 9.30 **“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.