UMZUMBE LOCAL MUNICIPALITY

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Contents

1. INTRODUCTION

The Constitution of South Africa Act 108 of 1996, and the Municipal Finance Management Act No.56 of 2003, (MFMA) prescribe that procurement for any organ of the State should be dealt with through a system that is fair, equitable, competitive, transparent, and cost-effective. The Constitution also allows for the implementation of Supply Chain Management policies providing for categories of preference in the allocation of contracts and the protection, or advancement, of persons previously disadvantaged by unfair discrimination. The public sector Supply Chain Management system can be utilized to attain certain socio–economic objectives. Umzumbe Local Municipality is committed to good governance and the promotion of previously marginalized individuals and businesses.

2. PURPOSE

This Policy aims to ensure that the manner in which Umzumbe Local Municipality procures goods and services: -

1. is fair, equitable, transparent, competitive, and cost-effective as envisaged in section 217 of the Constitution of the Republic of South Africa, 1996 and section 51(1)(a)(iii) of the MFMA.

2. complies with the MFMA and the Treasury Regulations or Treasury Instructions regarding supply chain management and other applicable regulations or Instructions in terms of the MFMA.
3. complies with the PPPFA, BBBEEA, the SITA Act, and other applicable legislation, including applicable subordinate legislation made under any such legislation.
4. provides the Umzumbe Local Municipality with the best value for money while improving service delivery.
5. Pursues specific preference, including socio-economic objectives through a preference points system for BEE, in accordance with the MFMA.
6. Implement efficient and effective supply chain management as an integral part of financial management and
7. Standardises SCM activities within the Umzumbe Local Municipality.
8. The legislative requirement of the Preferential Procurement Policy Framework Act, 2000 by determining the preferential procurement system and the specific goals that must be followed in the awarding of tenders.

3. DEFINITIONS AND TERMS

For the purpose of this policy the following definitions and abbreviations are applicable:

Terminology	**Description**
80/20 Preference System	Point System applied to evaluate all quotations with the rand equal to or below value R50million
90/10 Preference System	Procurement System applied to evaluate all procurement with the rand value above R50 000 000.00 (Bids/Tenders)
Acceptable Tender	This means a tender offer, duly submitted by a prospective service provider, that meets the minimum requirements as set out in the bid documents
Black People	As defined in **Broad-Based Black Economic Empowerment Act** 53 of 2003 as amended by **act 46** of 2013
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
A Proponent	Any person, whether natural or juristic, that submits an unsolicited proposal to an institution
Designated Groups	This means: i) black designated groups ii) black people iii) women vi) people with disabilities v) military veterans vii) small enterprises; as defined in section 1 of the National Small Enterprises Act, 1996 (Act No 102 of 1996
EME	This means an exempted micro-enterprise in terms of the codes of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act
Military Veteran	Has the meaning assigned to it in section 1 of the Military Veterans Act 18 of 2011
People with disabilities	Has the meaning assigned to it in section 1 of the Employment Equity Act 55 of 1998
Price	Includes all applicable taxes less all unconditional discounts
QSE	This means a qualifying small business enterprise in terms of the codes of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act

Rand Value	This means the total estimated value of a contract in rands calculated at the time of the tender invitation
Rural Area	A sparsely 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 primarily on migratory labour and remittances and government social grants for survival and that may have a traditional land tenure system
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	This 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
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 auction.
The Act	This means the Preferential Procurement Policy Framework Act 5 of 2000
Youth	Has the meaning assigned to it in section 1 of the National Youth Development Agency Act 54 of 2008

4. ABBREVIATIONS

Abbreviation	Description
BAC	Bid Adjudication Committee
BEC	Bid Evaluation Committee
BEE	Black Economic Empowerment
BBBEEA	Broad Based Black Economic Empowerment Act, 2003 (Act 53 of 2003), as amended
SCM	Supply Chain Management
IT	Information Technology
NT	National Treasury
MFMA	Public Finance Management Act, 1999 (Act 1 of 1999), as amended.
PPP	Public Private Partnerships
PPPFA	Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), as amended
RFQ	Request for Quotation
SARS	South African Revenue Services
SITA	State Information Technology Agency
SITA Act	State Information Technology Agency Act, 1998 (Act 88 of 1998) as amended
SLA	Service Level Agreement
TOR	Terms of Reference

REGULATORY FRAMEWORK

The Procurement Policy of the Umzumbe Local Municipality has been written in accordance with the instructions and guidelines published by Government. This policy is based on the following legislation and regulations:

1. The Constitution of the Republic of South Africa, 1996
2. The Municipal Finance Management Act No.56 of 2003, (MFMA) and Treasury regulations issued in terms thereof.
3. Preferential Procurement Policy Framework Act (Act 5 of 2000); and its regulations.
4. Supply Chain Management Guidelines for Accounting Officers.
5. The various National and Provincial Treasury practice notes, circulars, and letters; and
6. The State Information Technology Agency Act.
7. Broad Based Black Economic Empowerment (BBBEE) Act.
8. Prevention and Combating of Corrupt Activities Act 12 of 2004 (Corruption Act)
9. Construction Industry Development Board Act 38 of 2000 (CIDBA)
10. Promotion of Access to Information Act 2 of 2000 (PAIA)
11. Promotion of Administrative Justice Act 3 of 2000 (PAJA)
12. Treasury regulations

5. SCOPE OF APPLICATION

This policy applies to all Umzumbe Local Municipality officials and shall be applied to all activities and/or tasks related to the preferential procurement process.

6. PROCUREMENT SOURCING STRATEGY

The Umzumbe Local Municipality will determine the applicable procurement sourcing strategies in the invitation of tenders or quotations. This process shall include market research or industry analysis or commodity analysis to determine procurement opportunities and supply market to ensure efficacy in the procurement system of the UMZUMBE LOCAL MUNICIPALITY.

7. LEGISLATIVE BACKGROUND

Preferential Procurement must be implemented within the confines of the Constitution of the Republic of South Africa, Act 108 of 1996, particularly section 217 (2) and (3) of the Act. The Constitution is then supported by the Preferential Procurement Policy Framework Act; Act No. 5 of 2000 and its Regulations.

7.1 The Constitution of the Republic of South Africa, Act 108 of 1996

Section 217 of the Constitution provides for the following:

1) When an organ of state in the national, provincial, or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for—
   (a) categories of preference in the allocation of contracts; and
   (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.

7.2 The Preferential Procurement Policy Framework Act No. 5 Of 2000 (PPPFA)

In line with section 217 (3) of the Constitution, the PPPFA has provided a framework within which the policy referred to in subsection (2) of Section 217 of the Constitution must be implemented. Section 2 of the PPPFA provides for the following:

7.2.1 Section 2 of the PPPFA: Framework for implementation of preferential procurement policy. –

1) An organ of state must determine its preferential procurement policy and implement it within the following framework:
   (a) A preference point system must be followed.
   (b) **(i)** for contracts with a Rand value above **R50 Million** a maximum of **10 points** must be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores **90 points** for price.
   (ii) for contracts with a Rand value above **R30 000** and below **R50 Million** a maximum of **20 points** must be allocated for **specific goals** as contemplated in paragraph (d) provided that the lowest acceptable tender scores **80 points for price**.

(c) any other acceptable tenders which are higher in price must score fewer points, on a pro rata basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with a prescribed formula.

(d) the specific goals may include:

(i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;

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

(e) any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.

(f) the contract must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in paragraphs *(d)* and *(e)* justify the award to another tenderer; and

(g) any contract awarded on account of false information furnished by the tenderer to secure preference in terms of this Act, may be cancelled at the sole discretion of the Municipality without prejudice to any other remedies the organ of state may have.

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

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8. APPLICATION OF PREFERENCE POINTS

The Umzumbe Local Municipality shall conduct an industry and commodity analysis to obtain an indicative market-related prices that may be used for benchmarking purposes. Based on the results of the analysis the Umzumbe Local Municipality shall determine the preference points system, which may be 80/20 or 90/10 as stipulated in paragraphs 8.1 and 8.2 below. The applicable preference points system shall be stipulated in the quotation/bid invitation document and shall be used to evaluate offers received.

The tender/ quotation invitation shall stipulate the specific goals and the points that will be awarded to each goal and proof that must be submitted to claim for such a goal.

If there is uncertainty on the preference point system to be applied, the bid must be advertised with a directive that:

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

b) Any other invitation of 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.

8.1 80/20 Preference Points System

The PPPFA and its Regulations prescribe the framework for the preference point system. The Act and its Regulations incorporate the '80/20' and '90/10' preference point system, which the Umzumbe Local Municipality shall apply, as required. **The 80/20 preference point system will apply to all acquisitions of goods, works and/or services for a rand value equal to or below R 50 million.**

8.1.1 The following formula shall be used to calculate the points out of 80 for price in respect of quotations/bids with a Rand value equal to or below R50 000 000 (all applicable taxes included):

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

Where Ps = Points scored for price of bid under consideration.
Pt = Price of bid under consideration; and
Pmin = Price of lowest acceptable bid.

8.1.2 Points for Specific Goals: 20 points

a) A maximum of 20 points may be awarded to a tenderer for the specific goal specified in the tender/ quotation
b) Points scored for the specific goals must be added to the points scored for price and the total must be rounded off to the nearest two decimal places
c) The contract must be awarded to the tenderer scoring the highest points subject to section 2 (1) (f) of the PPPFA, 2000.

8.2 The following formula shall be used to calculate the points out of 90 for price in respect of quotations/bids with a Rand value above R50 000 000 (all applicable taxes included):

$$\boldsymbol{Ps = 90\left(1 - \frac{Pt - P\,min}{P\,min}\right)}$$

Where Ps = Points scored for price of bid under consideration.
Pt = Price of bid under consideration; and
Pmin = Price of lowest acceptable bid.

a) A maximum of 10 points may be awarded to a tenderer for the specific goal specified in the tender/ quotation
b) Points scored for the specific goals must be added to the points scored for price and the total must be rounded off to the nearest two decimal places
c) The contract must be awarded to the tenderer scoring the highest points subject to section 2 (1) (f) of the PPPFA, 2000.

8.3 **80/20 preference point system for tenders/ quotations for income-generating contracts with Rand value equal to or below R50 million**

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

80/20 or **90/10**

$$Ps = 80\left(1 + \frac{Pt - Pmax}{Pmax}\right) \quad \text{or} \quad Ps = 90\left(1 + \frac{Pt - Pmax}{Pmax}\right)$$

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

a) A maximum of 20 or 10 points may be awarded to a tenderer for the specific goal specified in the tender/ quotation
b) Points scored for the specific goals must be added to the points scored for price and the total must be rounded off to the nearest two decimal places
c) The contract must be awarded to the tenderer scoring the highest points subject to section 2 (1) (f) of the PPPFA, 2000.

9. INSTITUTIONAL PREFERENTIAL PROCUREMENT POINT SYSTEM

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.

Ownership

- ✓ The equity ownership equates to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company's shares that are owned by individuals, who are actively involved in the management of the enterprise or business and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of the tender. Preference points stipulated in respect of a tender must include preference points for equity ownership by HDIs.

Empowerment

- ✓ "Empowerment is a practice of sharing information, rewards, and power to empower local contractors in order to build their capacity and also to create jobs. To empower and develop SMMEs, Rural and Township Business will help small businesses compete with larger brands."

Reconstruction & Development Programme (RDP) Goals

- ✓ RDP attempted to combine measures to boost the economy such as contained fiscal spending, sustained or lowered taxes, reduction of government debt and trade liberalisation with socially minded social service provisions and infrastructural projects.

Other Specified Goals

- ✓ "To empower contractors in order to build their capacity and to address unemployment by giving opportunities to Enterprises 100% owned by Youth, Women, Disabled and Military Veterans.

The tender/ quotation invitation shall stipulate the specific goals and the points that will be allocated to each goal and proof for verification must be submitted to claim for such a goal. **Point System A** (Table Below) will be used where it is feasible to Sub-Contract

9.1. **Specific Goals Point System: A**

	Categories	Weight	80|20	90|10	Supporting Documentation
1	Ownership	50%	10	5	
2	Empowerment	20%	4	2	
3	Reconstruction & Development Programme	20%	4	2	
4	Other (Specify)	10%	2	1	
		100%	**20**	**10**	
#	**Specific Goal(s)**	**Weight**	**80|20 PP**	**90|10 PP**	
	Ownership Categories :				
1	**Broad Based Black Economic Empowerment:**				
	BBBEE Level 1	100%	10	5	BBBEE Certificate
	BBBEE Level 2	80%	8	4	BBBEE Certificate
	BBBEE Level 3 to 8	20%	2	1	BBBEE Certificate
	Empowerment				
2	**Sub-Contracting: [Min 5% for >R5 Million] [Max 30% > R30 Million]**				
	1. an EME or QSE which is at least 100% owned by black people;	100%	4	2	Sworn-Affidavit QSE/EME
	2. an EME or QSE which is at least 51% owned by black people;	50%	2	1	Sworn-Affidavit QSE/EME
	3. an EME or QSE which is at 25% - 50% owned by black people;	25%	1	0.5	Sworn-Affidavit QSE/EME
3	**Promotion of Local Business(s) - RDP**				
	1. Enterprise Located within the District Municipality - Rural	100%	4	2	Utilities: POR*: SAPS Affidavit
	2. Enterprise Located within the District Municipality - Urban	50%	2	1	Utilities: POR*: SAPS Affidavit
	2. Enterprise Located within the Province	25%	1	0.5	Utilities: POR*: SAPS Affidavit
4	***-- Other Specific Goals***				
	1. Enterprise 100% owned by Youth/Women/Disabled/ Military Veterans	100%	2	1	CIPC Reg. and Directors ID

POR*: Proof of Residence (Business)
*Businesses are situated in the rural area and are not liable for any Municipal Payment for Services MUST submit an **Affidavit (SAPS)***

The tender/ quotation invitation shall stipulate the specific goals and the points that will be awarded to each goal and of that must be submitted to claim for such a goal. **Point System B** (Table Below) will be used where it is **NOT FEASIBLE** to Sub-Contract.

9.2. Specific Goals Point System: B

	Categories	Weight	80|20	90|10	Supporting Documentation
1	Ownership	60%	12	6	
2	Reconstruction & Development Programme	30%	6	3	
3	Other Specific Goals-	10%	2	1	
		100%	**20**	**10**	
#	**Specific Goal(s)**	**Weight**	**80|20 PP**	**90|10 PP**	
	Ownership Categories :				
1	**Broad Based Black Economic Empowerment:**				
	BBBEE Level 1	100%	12	6	BBBEE Certificate
	BBBEE Level 2	80%	10	4	BBBEE Certificate
	BBBEE Level 3 to 8	40%	6	2	BBBEE Certificate
2	**Promotion of Local Business(s)**				
	1. Enterprise Located within the District Municipality - Rural	100%	6	3	Utilities: POR*: SAPS Affidavit
	2. Enterprise Located within the District Municipality - Urban	75%	4	2	Utilities: POR*: SAPS Affidavit
	2. Enterprise Located within the Province	25%	2	1	Utilities: POR*: SAPS Affidavit
3	***Other Specific Goals***				
	1. Enterprise 100% owned by Youth/Women/Disabled/ Military V	100%	2	1	CIPC Reg. and Directors ID

POR*: Proof of Residence (Business)

*Businesses are situated in the rural area and are not liable for any Municipal Payment for Services MUST submit an **Affidavit (SAPS**)*

10. APPLICATION OF GOALS AS PROVIDED FOR BY THIS PREFERENTIAL PROCUREMENT POLICY

Section 2 (1) of the Act requires that an organ of state to determine its preferential procurement policy and implement it within the following framework:

(d) the specific goals may include:

i. contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability.
ii. implementing the programmes of the Reconstruction and Development Programme as published in *Government Gazette No. 16085 dated 23 November 1994;*

Institutions must at procurement and tender planning stage identify procurement opportunities to advance designated groups and apply the goals accordingly.

Where procurement opportunities for designated groups have been identified, the invitation to tender must clearly indicate the specific goals for which a point may be awarded.

1. **Preference Goal Category 1**

   Ownership as specific goal
   A maximum of 20 points (80/20 preference points system) or 10 (90/10) preference points system), may be allocated. Bidder may score preference points based on company ownership. If an organ of state applies ownership as specific goal, the organ of state must advertise the tender with a specific tendering preferential procurement requirement that in order for a tenderer to claim 10 / 20 points for specific goals, a tendering company must have the following ownership:
   - race, (HDP) or
   - gender (HDP) or.
   - disability (HDP).

   Ownership verification may be conducted through the Companies and Intellectual Property Commission (CIPC).

2. **Preference Goal Category 2**

   RDP Goals
   Over and above the awarding of preference points in favour of HDIs, the following activities may be regarded as a contribution towards achieving the goals of the RDP (published in *Government Gazette* No. 16085 dated 23 November 1994):

   a. The promotion of South African owned enterprises;
   c. The promotion of SMMEs;
   e. The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;
   f. The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region;
   g. The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered.
   h. The promotion of enterprises located in rural areas;

3. **Preference Goal Category 3**

Empowerment Goals
Organs of state may also combine any specific goals above in a manner that will help them evaluate and apply preference points to tenders.

Empowerment is a practice of sharing information, rewards, and power to empower local contractors in order to build their capacity and to create jobs. To empower and develop SMMEs, Rural and Township Business will help small businesses compete with larger brands through Sub-Contracting and Upliftment.

11. APPLICABILITY OF THE FUNCTIONALITY CRITERIA

11.1 The Umzumbe Local Municipality shall stipulate in the quotation/tender document if the functionality criteria including a sub-criterion where applicable shall be applied during the evaluation process. The functionality criteria must be objective. The tender/ quotation document must specify:

a) **Evaluation criteria for measuring functionality**: The evaluation criteria may include experience for the assignment, the quality of methodology, qualifications of key personnel, transfer of knowledge or any other functionality requirement that would yield the required outcomes.
b) **Points for each criterion**: Points allocated to each criterion should not be generic but should be determined separately for each bid/ quotation on a case-by-case basis.
c) **Points for each sub- criterion**: Points that shall be used when scoring each sub-criterion must be objective and applicable weighting must be stipulated in the bid/ quotation invitation document.

11.2 The minimum qualifying score for functionality criteria for a quotation/bid must be determined separately for each quotation/bid and must not be so low that it may jeopardise the quality of the required goods or services or so high that it may be unreasonably restrictive.

11.3 Points scored for the functionality criteria must be rounded off to the nearest two decimal places. The offer that fails to obtain the minimum qualifying score on the functionality criteria shall be considered as not responsive. Each quotation/ bid that obtains the minimum qualifying score for functionality criteria must be evaluated further in terms of price and specific goals

12. REMEDIES FOR FALSE DECLARATION

a) If the Umzumbe Local Municipality is of the view that a tenderer submitted false information regarding a specific goal it shall:
   i) Inform the tenderer; accordingly, and
   ii) Give the tenderer an opportunity to make representations within 14 days as to why the tender/ quotation may not be disqualified or if the tender/ quotation has already been awarded to the tenderer, the contract should not be terminated in whole or in part.
b) After considering the representation referred to in paragraph 10.5 (a) (ii) above, the Umzumbe Local Municipality may, if it concludes that such information is false:
   i) Disqualify the tenderer or terminate the contract in whole or in part; and
   ii) If applicable claim damages from the tenderer.

13. CRITERIA FOR BREAKING DEADLOCK IN SCORING

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.

14. Effective Date

*The Umzumbe Local Municipality Preferential Procurement Policy is effective from **01 February 2023***