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## 1. DEFINITIONS

In this Policy, 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-

**“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad Based Black Economic Empowerment Act;

**“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“Black designated groups”** has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

**“Black people”** has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;

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

**“co-operative”** means a co-operative registered in terms of section 7 of the Cooperatives Act, 2005 (Act No. 14 of 2005);

**“Designated group”** means-

- a) black designated groups;
- b) black people;
- c) women;
- d) people with disabilities; or
- e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

**“Designated sector”** means a sector, sub-sector or industry or product designated in terms of paragraph 8(1)(a);

**“Military veteran”** has the meaning assigned to it in section 1 of the military veterans act, 2011 (act no. 18 of 2011);

**“National treasury”** has the meaning assigned to it in section 1 of the public finance management act, 1999 (act no. 1 of 1999);

**“People with disabilities”** has the meaning assigned to it in section 1 of the employment equity act, 1998 (act no. 55 of 1998);

**“Price”** includes all applicable taxes less all unconditional discounts;

**“Proof of B-BBEE status level of contributor”** means-

- a) the B-BBEE status level certificate issued by an authorised body or person;
- b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;

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

**“Rural area”** means-

- a) 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
- b) 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;

**“Stipulated minimum threshold”** means the minimum threshold stipulated in terms of paragraph 8(1)(b);

**“The Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000); **“township”** means an urban living area that any time from the late 19<sup>th</sup> century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994;

**“Treasury”** has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and

**“Youth”** has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

## **2. APPLICATION**

The Kannaland Municipality must, unless the Minister of Finance has directed otherwise, only apply a preferential procurement system which is in accordance with the Regulations.

## **3. IDENTIFICATION OF PREFERENCE POINT SYSTEM, DESIGNATED SECTOR, PRE-QUALIFICATION CRITERIA, OBJECTIVE CRITERIA AND SUBCONTRACTING**

The municipality must-

- a) determine and stipulate in the tender documents-
  - i. the preference point system applicable to the tender as envisaged in paragraph 6 or 7; or
  - ii. 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;
  - iii. if it is unclear which preference points system applies- 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;
- b) determine whether pre-qualification criteria are applicable to the tender as envisaged in paragraph 4;
- c) determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in paragraph 8;
- d) determine whether compulsory subcontracting is applicable to the tender as envisaged in paragraph 9; and
- e) determine whether objective criteria are applicable to the tender as envisaged in paragraph 11.

#### 4. 80/20 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES FOR RAND VALUE EQUAL TO OR ABOVE R30 000 AND UP TO R50 MILLION

4.1 The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of 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.

4.2 The following table must be used to calculate the score out of 20 for B-BBEE:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

4.3 A tenderer must submit proof of its B-BBEE status level of contributor.

4.4 A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-

a) may only score points, out of 80 for price; and

b) scores 0 points out of 20 for B-BBEE.

4.5 A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of

the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

- 4.6 The points scored by a tenderer for B-BBEE in terms of sub-paragraph (6.2) must be added to the points scored for price under sub-paragraph (6.1).
- 4.7 The points scored must be rounded off to the nearest two decimal places.
- 4.8 Subject to sub-paragraph (6.9) and paragraph 11, the contract must be awarded to the tenderer scoring the highest points.
- 4.9 If the price offered by a tenderer –
- a) scoring the highest points is not market-related, the municipality may not award the contract to that tenderer.
  - b) The municipality may-
    - i. negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
    - ii. if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
    - iii. if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- 4.10 If a market-related price is not agreed as envisaged in paragraph (b)(iii), the municipality must cancel the tender.

## **5. 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 of 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes: Where-

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

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

5.2 The following table must be used to calculate the points out of 10 for B-BBEE:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of Points</b>
1	10
2	9
3	6
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

5.3 A tenderer must submit proof of its B-BBEE status level of contributor.

5.4 A tenderer failing to submit proof of B-BBEE status level of contribution or is a non-compliant contributor to B-BBEE may not be disqualified, but-

- a) may only score points out of 90 for price;  
and
- b) scores 0 points out of 10 for B-BBEE.

5.5 A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

5.6 The points scored by a tenderer for B-BBEE contribution in terms of sub-paragraph (7.2) must be added to the points scored for price under sub-paragraph (7.1).

5.7 The points scored must be rounded off to the nearest two decimal places.

- 5.8 Subject to sub-paragraph (7.9) and paragraph 11, the contract must be awarded to the tenderer scoring the highest points.
- 5.9 If the price offered by –
- a) a tenderer scoring the highest points is not market-related, the municipality may not award the contract to that tenderer.
  - b) The municipality may-
    - i. negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
    - ii. if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
    - iii. if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
  - c) If a market-related price is not agreed as envisaged in paragraph (b)(iii), the municipality must cancel the tender.

## 6. SPECIFIED CONTRACT PARTICIPATION GOALS

- 6.1 The tendering conditions will stipulate the specific goals, as contemplated in section 2(1)(d)(ii) of the Preferential Procurement Act, to be attained.
- 6.2 A maximum of 20 points (80/20 preference points system) or 10 (90/10) preference points system), will be allocated for specific goals. These goals are:
- (a) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;
  - (b) local labour and/ or promotion of enterprises located in the municipal area (phased in approach to be applied for other RDP goals)
- 6.3 Regarding paragraph 9.2 (a) at least 50% of the 20/10 points will be allocated to promote this goal and points will be allocated in terms of the BBBEE scorecard as follows.

B-BBEE Status Level of Contributor	Number of Points for Preference (80/20)	Number of Points for Preference (90/10)
1	20	10
2	18	9
3	14	6
4	12	5
5	8	4

B-BBEE Status Level of Contributor	Number of Points for Preference (80/20)	Number of Points for Preference (90/10)
6	6	3
7	4	2
8	2	1
Non-compliant contributor	0	0

**Scorecard points to be proportionately adjusted depending on the percentage allocated for this goal. E.g., if the percentage is 60% the maximum points will be 12**

- 6.4 A tenderer must submit proof of its BBEE status level contributor [scorecard].
- 6.5 A tenderer failing to submit proof of BBEE status level of contributor –
- 9.1.1 may only score in terms of the 80/90-point formula for price; and
- 9.1.2 scores 0 points for BBEE status level of contributor, which is in line with section 2 (1) (d) (i) of the Act, where the supplier or service provider did not provide proof thereof.
- 6.6 Regarding paragraph 9.2 (b) a maximum of 50% of the 20/10 points will be allocated to promote this goal. Points will be allocated as follows.

Locality of supplier	Points
Within the boundaries of the municipality	10/5
Outside of the boundaries of the municipality	0

**The maximum will be proportionately adjusted depending on the number of points allocated for this goal. E.G., 40% will equate to 8/4 points.**

- 6.7 The policy should not include Pre-qualification goals.
- 6.8 Any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.
- 6.9 A tenderer failing to submit proof of required evidence to claim preferences for other specified goals, which is in line with section 2 (1) (d) (ii) of the Act.
- (i) may only score in terms of the 80/90-point formula for price; and
- (ii) scores 0 points for the relevant specific goals where the supplier or service provider did not stipulate locality.

- 6.10 The preference points scored by a tenderer must be added to the points scored for price.
- 6.11 The points scored must be rounded off to the nearest two decimal places.
- 6.12 The contract must be awarded to the tenderer scoring the highest preference points.

## **7. CRITERIA FOR BREAKING DEADLOCK IN SCORING**

- 7.1 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 B-BBEE.
- 7.2 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.
- 7.3 If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

## **8. AWARD OF CONTRACTS TO TENDERERS NOT SCORING HIGHEST POINTS**

- 8.1 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.
- 8.2 If the municipality intends to apply objective criteria in terms of section 2(1)(f) of the Act, the municipality must stipulate the objective criteria in the tender documents.

## **9. REMEDIES**

- 9.1 Upon detecting that a tenderer submitted false information regarding its BBBEE status level of contributor, local production and content, or any other matter required in terms of this Policy which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the municipality must-
- a) inform the tenderer accordingly;
  - b) give the tenderer an opportunity to make representations within 14 days as to why-

- i. 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;
  - ii. if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
  - iii. 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; and
- c) if it concludes, after considering the representations referred to in sub-paragraph (14.1)(b), that-
- i. such false information was submitted by the tenderer-
  - ii. disqualify the tenderer or terminate the contract in whole or in part; and
  - iii. if applicable, claim damages from the tenderer; or
  - iv. the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

## 9.2 The municipality

- a) must-
- i. inform the National Treasury, in writing, of any actions taken in terms of sub-paragraph (14.1);
  - ii. provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
  - iii. submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.
- b) The National Treasury may request the municipality to submit further information pertaining to sub-paragraph (14.1) within a specified period.

## 9.3 The National Treasury must-

- a) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and
- b) maintain and publish on its official website a list of restricted suppliers.

## **10. PERFORMANCE MANAGEMENT**

The specific goals achieved through the application of the Preferential Procurement Framework Act, 2000 will be monitored in terms of the elements embedded in the Supply Chain Management Policy.

## **11. REPORTING**

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

## **12. REPLACE OF PREVIOUS POLICIES**

12.1 This policy replaces any previous preferential procurement policies adopted or applied by the municipality.

12.2 Any tender advertised before the date referred to in subsection 16 must be dealt with in terms of the Preferential Procurement Regulations, 2017.

## **13. SHORT TITLE**

This policy is called the Preferential Procurement Policy of the Kannaland Municipality.

## DOCUMENT CONTROL

Summary: This document describes the principles of the Preferential Procurement Policy that will be acceptable to Kannaland Municipality, with effect from 1 July 2022.

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Municipal Manager

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Mayor

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Date

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Date