

# **UMHLATHUZE MUNICIPALITY**

## **PREFERENTIAL PROCUREMENT POLICY**

**June 2003**

## **STATEMENT OF POLICY**

In terms of **Council Resolution 715 of 20 November 2001** the policy of the uMhlathuze Municipality in respect of Preferential Procurement is that:

1. Preferential Procurement is recognized in the uMhlathuze Municipality as a valid instrument for social reform;
2. It is recognised that preferential procurement can not be applied without cost and that such cost should be subject to the prioritisation processes applicable to all Council's expenditure.
3. Preferential Procurement shall be applied to the procurement of all goods or services procured by the uMhlathuze Municipality from the date of the implementation of the policy and in terms of the "*Preferential Procurement Regulations*" appended hereto,
4. The uMhlathuze Municipality Preferential Procurement Policy be reviewed on an annual basis and no later than the month of February in each year of its existence ;

# REGULATIONS

## 1 DEFINITIONS

In this document :

- [I] “**acceptable bid**” means any bid which in all respects complies with the specifications and conditions of bid set out in a call for bid document ;
- [II] “**aspirant vendor**” means any potential supplier of goods or services who aspires to do business with the uMhlathuze Municipality;
- [III] “**aspirant preference vendor**” means any aspirant vendor who wishes to claim preference in accordance with the policy;
- [IV] “**bid**” means tender, quotation or proposal received from an aspirant vendor ;
- [V] “**closing time or date**” means the time and date stated in a bid document to be the deadline for the submission of such a bid ;
- [VI] “**contender**” means any aspirant vendor who has submitted a bid to supply goods, carry out work or provide a professional service of any nature to or for the uMhlathuze Municipality ;
- [VII] “**contender score**” means the arithmetical sum of the preference point and the pricing point ;
- [VIII] “**contract**” means an agreement between a vendor and the uMhlathuze Municipality in terms of which the vendor will supply goods, carry out work or provide a professional service to or for the uMhlathuze Municipality ;
- [IX] “**contract sum**” means the total amount including VAT to be paid to a vendor for goods or services arising from a particular bid, on completion of a contract or delivery of goods ;
- [X] “**Historically disadvantaged Individual (HDI)**” means such individuals as defined in Section 1(h) of the Preferential Procurement Regulations, 2001 ;
- [XI] “**open competition**” means the process of obtaining bids without any preselection of aspirant vendors ;

- [XII] “**preference premium**” means the difference in Rand value, including VAT, between the contract sum and the lowest acceptable bid received ;
- [XIII] “**Preferential Procurement Policy Framework Act**” means the Preferential Procurement Policy Framework Act (Act No. 5 of 2000) and its regulations ;
- [XIV] “**preferential procurement policy**“ means the uMhlathuze Municipality Preferential Procurement Policy” ;
- [XV] “**Preferential Procurement Regulations, 2001**” means the Preferential Procurement Regulations pertaining to the Preferential Procurement policy Framework Act : No 5 of 2000 as published in the government Gazette;
- [XVI] “**preference point**” means the accredited points awarded to a bid in accordance with its claim for preference ;
- [XVII] “**pricing point**” means the points awarded to a bid in accordance with its contract sum relative to the contract sum of the lowest acceptable bid
- [XVIII] “**procurement preference**” means one contender being given preference over another as a result of the application of this policy
- [XIX] “**procuring officer**” means any person charged by the uMhlathuze Municipality to prepare and request a particular bid, and may be an individual or an organization ;
- [XX] “**regulations**” means the uMhlathuze Municipality Preferential Procurement Regulations ;
- [XXI] “**request for bid**” means a request for a quotation, an advertisement of tender or a call for proposals to supply goods, carry out work or provide a professional service of any nature to or for the uMhlathuze Municipality ;
- [XXII] “**responsive contender**” shall mean a contender who has submitted an acceptable tender, quotation or proposal ;
- [XXIII] “**selective competition**” means competition on price where aspirant vendors have been preselected on the basis of technical competence vis-à-vis the procurement being contemplated;
- [XXIV] “**successful preferential vendor**” means an aspirant preference vendor whose bid has been accepted as a result of preferences applied for in terms of the preferential procurement policy.

## **2 APPLICATION OF THE UMHLATHUZE MUNICIPALITY PREFERENTIAL PROCUREMENT POLICY**

Subject to:

- [I] professional services being procured in terms of Section 3 below;  
and
- [II] the availability of funds set aside for the purpose of applying preferential procurement,

all goods and services procured by the uMhlathuze Municipality shall, with the exception of those goods and services exempted in terms of Section 6, be procured :

- [III] through open or selective competition ;  
and
- [IV] in terms of these regulations.

Providing that :

- [V] Where an external body making funds available to the uMhlathuze Municipality stipulates the application of its own preferential procurement policy as a condition of such funds being made available, the Preferential Procurement Policy of such an external body shall be applied. .

## **3 PROCUREMENT OF PROFESSIONAL SERVICES**

- [I] Application of preferential procurement policy in respect of professional disciplines

Subject only to the provision contemplated in Section 6 this policy is applicable to the procurement of professional services in all disciplines.

- [II] Competition

Subject only to the exemptions contemplated Section 6, the procurement of professional services in all disciplines shall be on the basis of open or selective competition and in terms of the procedure set out below :

- (a) The “two envelope” principle shall be used whereby aspirant vendors of professional services submit their technical and financial proposals separately ;

- (b) Contenders shall be evaluated at first on the merits of their technical proposals and ranked accordingly ;
- (c) In the event of there being found to be more than one contender with equally ranked technical proposals the following shall apply :
  - i the envelopes containing the financial proposals of the technically equally ranked proposals will be opened for the purpose of choosing between contenders.
  - ii Once opened for the purpose of choosing between equally ranked technical proposals, the provisions of the uMhlathuze Municipality Preferential Procurement Policy shall apply mutatis mutandis ;
- (d) In the event of there being found to be a single top ranked contender:
  - i The contract shall be awarded to the top ranked contender, subject only to the value of the bid being within budget limitations ;
  - ii This eventuality shall be reported to the Executive Committee via the Tenders and Contracts Committee in terms of the criteria for reporting set out in Section 6[III].

#### **4 PREFERENTIAL PROCUREMENT ACCREDITATION**

Aspirant preference vendors shall qualify to receive procurement preference under this policy only if they are registered on a data base maintained by a body approved by the uMhlathuze Municipality and have received accreditation through such an approved body, providing further that :

- [I] The onus to register on such an approved data base data base and to obtain such approved accreditation rests entirely on aspirant preference vendors ;
- [II] The onus of claiming procurement preference shall rest solely on aspirant preference vendors ;
- [III] Any costs incurred by aspirant preference vendors through registering on an approved data base and obtaining approved accreditation as contemplated above shall be for their sole account;
- [IV] The act of registering on such an approved data base and obtaining accreditation shall in itself in no way entitle aspirant preference vendors to be awarded any order or contract by the uMhlathuze Municipality.

[V] The sole benefit to be obtained by an aspirant preference vendor who has claimed procurement preference shall be that of possibly being awarded an order or contract in the value of the contract sum contained in its bid where, in the absence of this preferential procurement policy, such an award would not have been made.

- [VI] Claims for procurement preference together with accreditation thereof:
- (a) Must be submitted together with bids ;
  - (b) Must be submitted each time any aspirant preference vendor submits a bid ;
  - (c) Shall not under any circumstances be carried forward from one bid to another ;
  - (d) Shall under no circumstances be taken into account if presented after the closing date or time for bids.

## **5 PREFERENCES**

[I] Preference categories

Preference points shall be awarded in terms of 5[II] below in the categories listed as follows:

(a) Historically Disadvantaged Individuals

To businesses owned and managed by historically disadvantaged individuals according to the proportion of ownership and management.

(b) SMME's

To small, medium or micro enterprises which employ 25 people or fewer.

(c) Local labour

For the use of labour provided by people residing within the boundaries of the uMhlathuze Municipality.

[II] Awarding of Preferences

Preferences may be claimed and awarded as follows:

- (a) For procurement orders not exceeding R 500 000 (including VAT), the 80:20 method, as contemplated in Section 2 of the Preferential Procurement Policy Framework Act, shall be applied

when calculating the contender score, with preference points being awarded as follows:

i HDI Equity

Points<sup>1</sup> calculated in terms of the formula contained in Section 13(5)(c) of the Preferential Procurement Regulations, 2001 with NOP as follows

	<b>NOP</b>
South African citizens who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983, (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993, (Act No 200 of 1993)	5
South African citizens who are female	3
South African citizens who are handicapped	3
ii SMME's	
Points for small, medium or micro enterprises which employ 25 people or fewer	3
iii Local labour	
Points according to the proportion of people residing within the uMhlathuze Municipality, by number of total people employed on a particular contract:	
Under 10 %	0
More than 10% and up to and including 40%	2
More than 40% and up to and including 80%	4
More than 80%	6

(b) For procurement orders exceeding R 500 000 (including VAT), the 90:10 method, as contemplated in Section 2 of the Preferential Procurement Policy Framework Act, shall be applied when calculating the contender score, with preference points being awarded as follows:

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<sup>1</sup> Points calculated for this category shall be rounded to two decimal places

i HDI Equity

Points<sup>2</sup> calculated in terms of the formula contained in Section 13(5)(c) of the Preferential Procurement Regulations, 2001 with NOP as follows

	<b>NOP</b>
South African citizens who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983, (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993, (Act No 200 of 1993)	3
South African citizens who are female	2
South African citizens who are handicapped	1
ii SMME's	
Points for small, medium or micro enterprises which employ 25 people or fewer	2
iii Local labour	
Points according to the proportion of people residing within the uMhlathuze Municipality, by number of total people employed on a particular contract:	
More than 50%	2

[III] Calculation of Contender Score

The contender score shall be the sum of the preference points and the pricing point obtained by a contender, each of which shall be obtained as follows:

(a) Preference Points

In all cases the preference point shall be the accredited point supplied and confirmed in writing by an approved body as contemplated in Section 4 above of these regulations ;

(b) Pricing point

The pricing point shall be the point calculated in the following formula:

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<sup>2</sup> Points calculated for this category shall be rounded to two decimal places

$$Np = A \times \left[ 1 - \left( \frac{P - Pm}{Pm} \right) \right]$$

Where :

- Np : is the number of adjudication points awarded for price (Pricing Point) ;
- Pm : is the price of the lowest acceptable bid in contention ;
- P : is the price offered by the contender under consideration ;
- A : = 80 or 90 as contemplated in Section 5[II](a) and Section 5[II](b) above.

## **6 GOODS AND SERVICES EXEMPTED FROM COMPETITIVE PROCUREMENT**

[I] Authority to exempt :

Any exemption from open or selective competition in respect of any procurement shall be permitted only with the joint approval of the Chief Executive Officer and the Head of the Department concerned ;

[II] Criteria for exemption

Circumstances where the procurement of goods or services for the uMhlathuze Municipality are exempted from open or selective competition are :

- (a) Where the services required are professional services of a specialist nature ;
- (b) Where goods or services are required to meet an emergency situation ;

[III] Reporting of exemptions

- (a) Procurements made in terms of the criteria for exemption above shall be reported within two calendar months to the Executive Committee via the Tenders and Contracts Committee ;
- (b) Such reports shall contain at least the following information:
  - i The names of firms or businesses that were considered ;
  - ii Reasons for the particular choice having been made ;
  - iii The agreed basis of remuneration to be paid ;

- iv The timescale for completion of the service or supply of goods ;
- v The value of the particular procurement

## **7 ADMINISTRATION OF THE PREFERENTIAL PROCUREMENT POLICY**

### **[I] Responsibility**

Responsibility for the administration of the preferential procurement policy is delegated to the City Treasurer.

### **[II] Availability of funds**

- (a) Funds made available for the purpose of promoting Preferential Procurement shall be placed in a vote created for that purpose, which vote shall be under the control of the City Treasurer ;
- (b) Should, during the course of a financial year, it be noted that the funds available are in danger of being depleted before the end of that financial year the City Treasurer shall report the fact to the Executive Committee via the Tenders and Contracts Committee, in good time for a decision to be made regarding the provision of additional funds, or for suspending the preferential procurement policy for the remainder of the year in question, as the Executive Committee via the Tenders and Contracts Committee should resolve ;

### **[III] Advertisement of Preferential Procurement Policy**

Subject to the preferential procurement policy not having been suspended as contemplated in Section 7[II](b) all requests for bids that qualify for preference under the preferential procurement policy shall be in writing and shall carry, prominently on their front page or cover, the words :

#### **PREFERENTIAL PROCUREMENT POLICY**

This request for quotations (call for tenders / call for proposals - as the case may be) is subject to the terms of the uMhlathuze Municipality Preferential Procurement Policy. It is solely the responsibility of aspirant vendors who desire to avail themselves of the preferences available under this policy to familiarize themselves of its contents and to make such claims for preference. Copies of the Policy can be obtained on request from the City Treasurer at the address below.

[IV] Procedure

This procedure shall apply to all goods and services advertised in terms of Section 7[III]

- (a) On receipt of bids and after ascertaining their acceptability as contemplated under definition 1[I] of these regulations, the Procuring Officer shall calculate the contender score as set out in Section 5 of these regulations for each aspirant vendor ;
- (b) Subject to the qualifications in respect of exemption contained in Section 6 of these regulations, all contracts for goods and services procured by the uMhlathuze Municipality shall be awarded to the contender submitting the bid achieving the highest contender score ;

Providing that :

- (c) Where there are reasonable and justifiable grounds for not awarding a contract to the tender with the highest score, this shall be reported to the Executive Committee via the Tenders and Contracts Committee in terms of the criteria for reporting set out in Section 6[III](b)
- (d) Irrespective of points calculated in terms of the above requirements any bids not fully compliant with stated technical specifications will not be considered for acceptance.
- (e) Where the bid being accepted is not the lowest acceptable bid received, and where the reason for accepting a bid other than the lowest acceptable bid arises from the application of the preferential procurement policy, the procuring officer shall:
  - i notify the City Treasurer who shall transfer the preference premium from the preferential procurement vote to the vote under which the particular procurement is being made ;
  - ii notify, in writing, all aspirant vendors who submitted bids of the outcome.

[V] Monitoring

- (a) Random inspections and audits of successful preference vendors may from time to time be carried out on behalf of the uMhlathuze Municipality by the approved body contemplated in Section 4 of the regulations ;
- (b) Should inspections and / or audits indicate a successful preference vendor is not operating in accordance with the preference points claimed by itself in terms of Section 4 of the regulations, such a vendor :
  - i Shall be notified in writing of the existence of such discrepancies;
  - ii Shall be notified in writing of the time allowed for such discrepancies to be rectified;
  - iii Shall take immediate corrective steps ;
  - iv Shall become eligible for penalties as contemplated in Section 7[VI] of the regulations.

[VI] Penalties

- (a) In the event of any successful preference vendor failing, within the time allowed in Section 7[V](b) to correct discrepancies identified in terms of Section 7[V] of the regulations, the following shall apply:
  - i A penalty equaling one and a half times the preference premium shall be imposed;
  - ii A portion of the penalty calculated in terms of Section 7[VI](a)i and pro rata to the value of work already done relative to the full contract sum, shall become immediately payable by the vendor to the uMhlathuze Municipality;
  - iii The balance of the penalty calculated in terms of Section 7[VI](a) shall be deducted as work proceeds on a pro rata basis from the remaining payments due to the vendors
  - iv The vendor in question shall be permanently disbarred from claiming preference in respect of any procurement for the uMhlathuze Municipality.
- (b) Once applied, the penalties contemplated in this section shall not be lifted, irrespective of corrective efforts, successful or otherwise, on the part of the vendor.