

# **WEST COAST DISTRICT MUNICIPALITY**



## **Accelerated Local-Economic Development and Preferential Procurement Policy**

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

## TABLE OF CONTENTS

<b>INDEX</b>	
<b>DEFINITIONS</b>	
<b><u>PART 1</u></b>	<b>INTRODUCTION</b>
<b><u>PART 2</u></b>	<b>PREAMBLE</b>
<b><u>PART 3</u></b>	<b>PURPOSE AND OBJECTIVES</b>
<b><u>PART 4</u></b>	<b>LEGISLATIVE FRAMEWORK</b>
<b><u>PART 5</u></b>	<b>PRINCIPLES</b>
<b><u>PART 6</u></b>	<b>POLICY STATEMENTS</b>
<b><u>PART 7</u></b>	<b>LOCAL- AND SOCIO-ECONOMIC AND PREFERENCE TARGETS</b>
<b><u>PART 8</u></b>	<b>PROCUREMENT PROCESS</b>
<b><u>PART 9</u></b>	<b>DEVIATIONS AND EXEMPTIONS</b>
<b><u>PART 10</u></b>	<b>COMPLAINTS, ENQUIRIES, DISPUTES OR APPEALS</b>
<b><u>PART 11</u></b>	<b>ACCESS TO INFORMATION</b>
<b><u>PART 12</u></b>	<b>INSTITUTIONALISATION OF THIS POLICY</b>
<b><u>PART 13</u></b>	<b>MAINTENANCE</b>
<b><u>PART 14</u></b>	<b>IMPLEMENTATION</b>

## 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) "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:
  - a. Increasing the number of black people that manage, own and control enterprises and productive assets.
  - b. Facilitating ownership and management of enterprises and productive assets by communities, worker's cooperatives and other collective enterprises.
  - c. Human resource and skills development.
  - d. Achieving equitable representation in all occupational categories and levels in the workforce.
  - e. Preferential procurement.
  - f. Investment in enterprises that are owned or managed by black people.
- 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.
- 5) "Broad-Based Black Economic Empowerment Act" means the Broad-Based Black Economic Empowerment Act, 2003 (Act No 53 of 2003).
- 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.
- 7) "Companies and Shares" shall be read to include Close Corporations and member's interest's mutatis mutandis.
- 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) "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.

- 10) "Contract" means the agreement that results from the acceptance of a tender by an organ of state.
- 11) "CFO" means Chief Financial Officer.
- 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) "Individual" an individual shall mean a natural person.
- 15) "Indigent" any person who appears on the Municipality's indigent register as of 1 July of the year under consideration.
- 16) "Local" means labour and business within a specific local area applying the following priority framework:
  - (i) The local municipality which is the beneficiary of the specific goods or services;
  - (ii) Should (i) not be feasible, the local area will apply to the District Area;
  - (iii) Should (i) and (ii) not be feasible, the Western Cape Province; and
  - (iv) Should (i), (ii) and (iii) not be feasible, the Country.
- 17) "Local Labour" means South African residents who permanently resides in the West Coast District Municipal area.
- 18) "Local Business" means an enterprise which has an operational office located within the West Coast District Municipal area.
- 19) "Local Content" means local manufacturing as contemplated in PPPFA Regulations 2017, Regulation 1.
- 20) "Local economic development" means local and socio-economic development as contemplated in section 152 of the Constitution, 1998.
- 21) "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.

- 22) "Non-firm prices" means all prices other than "firm" prices.
- 23) "Person" includes reference to a juristic person.
- 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**

The Policy of West Coast District Municipality, in respect of sustainable procurement complementary to Local- and Socio-Economic and Preferential Procurement is that:

- 1.1. State expenditure is recognised as an instrument of government policy to achieve economic, socio-economic and development objectives. This is supported by the United Nations confirmation that public procurement in SA contributes to 29% of its GDP.
- 1.2. Procurement can be applied as an instrument of secondary redistribution to alter primary income distribution and to address historic imbalances by means of creating employment and business opportunities for historically disadvantaged groups in the South African society.
- 1.3. Local- and Socio-Economic and Preferential Procurement is Constitutionally recognised as a valid instrument for such social reform.
- 1.4. 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.

- 1.5. It is the intention, that once appropriate data and trends-analysis are available that this Policy shall be applied to the procurement of all goods or services as directed by Council.
- 1.6. 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.
- 1.7. The West Coast District Municipality Sustainable Procurement Policy will be reviewed on an annual basis or when new census data is available.
- 1.8. This Policy will follow a phased implementation process and with the increase in maturity of the West Coast District 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 West Coast District Area.

## **PART 2: PREAMBLE**

- 2.1. The Constitution of the Republic of South Africa, 1996, provides in sections 152(1)(c) and 152(2) 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).
- 2.2. Additionally, the Constitution further provides in section 217 that an organ of state must contract for goods or services in accordance with a procurement system which is fair, equitable, transparent, competitive, and cost effective and to implement a policy to grant preferences within a framework prescribed by National Legislation.
- 2.3. A national Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)-[PPPFA] 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.
- 2.4. ### Municipality acknowledges the legislative and governance mandates listed above and confirms its objective to improve the quality of life of the local community and to free the potential of each person in the municipal area. This objective will be achieved by using its procurement spent as a leverage within a regulated governance framework that facilitates service delivery, acknowledging the need for transparent procedures but also gives effect to the principles of local- and socio-economic as well as preferential procurement.
- 2.5. The Municipality acknowledges that local- and socio-economic development plays a crucial role in creating a prosperous, equitable, stable, and democratic society and the overall national vision of economic development is one of decent work and living standards for all in the context of qualitative improved equality in ownership, skills and access to opportunities.
- 2.6. Mindful of the above legislative mandates, the Municipality will promote the principles of sustainable procurement defined by the United Nations as the: *“Process to meet needs for goods and services by achieving value for money on whole of life basis, generating benefits to government, the society, the economy and the environment.”*

2.7. It is therefore the intention of this policy to assist the West Coast District Municipality to:

- 2.7.1. Continue to redress the skewed employment and ownership patterns in the greater West Coast District Municipality area.
- 2.7.2. Achieve the above by providing procurement and employment opportunities to B-BBEE – and SMME - enterprises and disadvantaged communities.
- 2.7.3. Enable local- and socio-economic transformation objectives to be linked to fair, transparent, equitable, competitive, and cost-effective procurement practices that will encourage the entry of emerging business into the West Coast District Municipal Area.
- 2.7.4. Establish a society based on democratic values, social justice, and fundamental human rights.

### **PART 3: PURPOSE AND OBJECTIVES**

3.1. The broad purpose of the Policy is to:

- 3.1.1. Validate West Coast District Municipality's commitment to local- and socio- economic development and preferential procurement.
- 3.1.2. Ensure effective and efficient application of resources.
- 3.1.3. Promote accountability, transparency, and fairness.
- 3.1.4. Create opportunities for local small, medium, and micro enterprises [SMME].
- 3.1.5. Enhance quality of services.
- 3.1.6. Stimulate local- and socio-economic development.
- 3.1.7. Eliminate and counter corruption.
- 3.1.8. Contribute towards reduction of unemployment, especially within the West Coast District Municipal Area.
- 3.1.9. Broadening the tax base within the West Coast District Municipal Area.
- 3.1.10. Encourage linkages between small and large enterprises.
- 3.1.11. Promote skills transfer and training of the historically disadvantaged.
- 3.1.12. Protect local industry against unfair competition.

3.2. To achieve this, empowerment goals have been set, which aims to redress the skewed distribution of wealth and therefore contribute to the alleviation of poverty, as well as increasing usage of local resources, stimulation of skills development and transfer, fast tracking the growth and ensuring sustainability of SMME's.

3.3. The policy rests upon certain core principles of behaviour as set out in the Constitution and ratified by the Constitutional Certification Judgements. In this context, the policy will be applied in accordance with a system, which is fair, equitable, transparent, competitive, and cost-effective.

3.4. The specific objectives of the Policy are to:

- 3.4.1. Implement best procurement practises through effective planning, strategic purchasing, and contract management.
- 3.4.2. Standardise levels of skill and knowledge of employees/workers.

- 3.4.3. Promote B-BBEE - enterprises providing services and goods within the West Coast District Municipal Area.
- 3.4.4. Introduce a systematic approach to the appointment of service providers and to promote consistency in respect of supply chain management.
- 3.4.5. Promote SMME's, Joint Ventures, Consortiums, Co-ops, and partnerships, especially within the West Coast District Municipal Area.
- 3.4.6. Create new jobs or intensify labour absorption within the local area.
- 3.4.7. Promote enterprises located within the West Coast District Municipal Area for work to be done or services to be rendered.
- 3.4.8. Promote enterprises located in rural areas in and around the West Coast District Municipal Area.
- 3.4.9. Empower the work force by standardising the level of skill and knowledge of workers.
- 3.4.10. Develop human resources, inclusive of assistance with tertiary and other advanced training programs, in line with key indicators such as percentage of wage bill spent on education and training and improvement of management skills.
- 3.4.11. Uplift local communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.
- 3.4.12. Ensure that specific goals are measurable and quantifiable, and the municipal officials must monitor the execution of the contract for compliance with such goals.

#### **PART 4: LEGISLATIVE FRAMEWORK**

##### **Constitution, 1996 (Act 108 of 1996)**

- 4.1. 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).
- 4.2. 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]**

- 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 support 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. As per the recent Constitutional judgement of 17 February 2022 that the PPPFA Regulations of 2017 are unconstitutional and invalid in totality concluding that: *"Since each organ of state is empowered to determine its own preferential procurement policy, it cannot also lie with the Minister to make regulations that cover the same field."* According to the judgement organs of state are therefore required to determine its own preferential procurement policy.
- 4.7. The other relevant legislation and prescripts are discussed in the Municipal SCM Policy and can be obtained from the Office of the CFO.

## **PART 5: PRINCIPLES**

- 5.1. The principles that underpin this policy are as follows:
- a) 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.
  - b) All preferential procurement processes will be transparent and subjected to audit in accordance with sound business principles and practices.
  - c) ### 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; restricted suppliers; suppliers in the employ 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 the AO 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:

- a) Open, honest, and co-operative business relations.
- b) Confidentiality of commercial information.
- c) Avoidance of conflict of interest or a perception of bias.
- d) Disclosure of conflict of interest as soon as they arise.
- e) Fair dealing and impartiality in the conduct of tender evaluations.
- f) 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**

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

### **PART 6: POLICY STATEMENTS**

#### **6.1. Application**

6.1.1. This Policy will apply to all active industry sectors in the West Coast District 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 and applied jointly with the West Coast District Municipality's SCM Policy and the PPPFA prescripts amended from time-to-time.

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

6.1.4. The principles of this policy, where possible, must apply to deviations, sharing of contracts with other organs of state and transversal contracts.

#### **6.2. Uniformity and simplification**

6.2.1. Tender documents will be rationalised and simplified.

6.2.2. Tender documents will include all certificates, declarations, and preference requirements.

6.2.3. Where possible standardised contract templates will form part of tender documents.

6.2.4. Contracts will include payment cycles linked to delivery and performance reporting cycles.

### **6.3. Database, panels, roster and/or rotation application**

6.3.1. A supplier database or various supplier databases, dependent on the commodity, will be maintained.

6.3.2. The supplier's database(s) will be updated on an annual basis and used on a roster or rotation mechanism basis.

### **6.4. Unbundling**

6.4.1. 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.

6.4.2. 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 West Coast District municipal 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.

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

### **6.5. Targeting**

6.5.1. Targeting will be regarded as a specific goal identified by West Coast District Municipality and will be reflected in Part 7 to this Policy.

6.5.2. These targets will be determined prior to the invitation of tenders and reflected as special and/or pre-qualifying conditions.

### **6.6. Payment cycles**

6.6.1. 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.

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

6.6.3. Officials must endeavour to, where feasible, process invoices of SMME's within 5-7 days in order to promote their cash flow position. Invoices must be submitted before 10:00 on a Wednesday, to facilitate timely payment.

6.6.4. Depending on the commodity and the procurement process adopted, deposits, establishment fees, upfront payments, front-loaded payments, etc. may be allowed if provided for in the tender specifications and contract provisions. Appropriate control mechanisms and guarantees must support such payments.

### 6.7. Performance guarantees

6.7.1. The following level of sureties or guarantees will be introduced as a minimum, based on the risk exposure and type of contract, where relevant, inclusive of CIDB tenders:

TYPE	DEFINITION	LEVEL OF SURETY
Major	<ul style="list-style-type: none"> <li>➤ Onerous requirements</li> <li>➤ High contract value</li> <li>➤ Large scale development</li> </ul>	➤ 10% above R 10m contract value
Minor	<ul style="list-style-type: none"> <li>➤ Risks are judged to be acceptable</li> <li>➤ Low value</li> <li>➤ Straight-forward work</li> </ul>	➤ 3% above R 5m contract value
Micro	<ul style="list-style-type: none"> <li>➤ Risks are judged to be limited or non-existent</li> <li>➤ Low value</li> <li>➤ Limited documentation flow</li> <li>➤ Short term project</li> </ul>	➤ 0% below R 5m contract value

### 6.8. Skills transfer

6.8.1. Skills transfer is promoted, and West Coast District Municipality will endeavour to support SMME's and B-BBEE enterprises skills transfer through:

- a) Proper contract management.
- b) Provision of adequate information of why tenders were not successful.
- c) Develop and provide a training programme and related sessions for small suppliers as part of the Municipal Local Economic Development [LED] programme.
- d) Promoting access to uniform and standardised bid documents with proper instructions for completion.

6.8.2. The following skills transfer principles will be introduced as a minimum, based on the risk exposure and type of contract, where relevant, inclusive of CIDB tenders:

TYPE	DEFINITION	LEVEL OF SKILLS TRANSFER
Major	<ul style="list-style-type: none"> <li>➤ Onerous requirements</li> <li>➤ High contract value</li> <li>➤ Large scale development</li> <li>➤ Above R 5m</li> <li>➤ Long-term contracts</li> </ul>	Formal training, inclusive of accredited training; Certificates/ Diplomas/ Degrees; Interns; Learner ships; Pupil-ships and Bursaries
Minor	<ul style="list-style-type: none"> <li>➤ Risks are judged to be acceptable</li> <li>➤ Low value</li> <li>➤ Straight-forward work</li> <li>➤ Above R 3 m</li> <li>➤ Contracts for more than 1-year</li> </ul>	Informal training inclusive of Interns; Learner ships; Pupil-ships and Bursaries
Micro	<ul style="list-style-type: none"> <li>➤ Risks are judged to be limited or non-existent</li> <li>➤ Low value</li> <li>➤ Limited documentation flow</li> <li>➤ Short term projects</li> </ul>	Basic training and certificate of jobs performed

### 6.9. CSI – Corporate Social Investment

6.9.1. 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.

6.9.2. 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 Municipal Grant-in-Aid Policy.

6.9.3. 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 West Coast District Municipal 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:

- a) On the job training and development of staff (learner ships), particularly for the unemployed or young people including the recruitment of long-term job seekers and handicapped people.
- b) Young women / mother's upliftment / leadership programme.
- c) Skills development initiatives (technical and soft skills) must be accredited with recognised institutions.
- d) Youth leadership and empowerment projects.
- e) Early childhood development.

- f) Projects can be in collaboration with local CBO's, NGOs, and relevant institutions.
- g) Business skills and enterprise support including mentoring of local enterprises.
- h) Development of Parks and open spaces.

6.9.4. It is specifically recorded that NO CSI financial contributions will be required or accepted.

6.9.5. The Municipality will adopt a uniform standard in acknowledging, monitoring, and reporting on CSI contributions.

#### **6.10. Contract conditions**

6.10.1. Contract conditions for each strategy needs to consider the following elements:

- a) Is an additional contract necessary and if so, what will the terms be?
- b) What is the contract monitoring and reporting mechanism?
- c) Consider whether Employment contracts to be in place and how will it be monitored (to ensure minimum wages are paid and UIF, etc. in place)
- d) Is LED support required?
- e) Identified contract manager and contract administrator.

#### **6.11. Performance management**

6.11.1. The effectiveness and efficiency of this Policy will be reviewed as per the West Coast District Municipality's SCM Policy and related performance management provisions.

6.11.2. Constructive and active contract management and administration will result in an increase in the capacity of suppliers and service providers as well as continuous performance improvements.

#### **6.12. Penalties**

6.12.1. Where a contract has been awarded based on information which, after the conclusion of the relevant agreement, is proved to have been incorrect, the municipality may, in addition to any other legal remedy it may have:

- a) Disqualify the person from the tendering process.
- b) Recover all costs, losses or damages it has incurred or suffered because of the award of the contract.
- c) Cancel the contract and claim any damages which it has suffered because of having to make less favourable arrangements due to such cancellations.
- d) Restrict the tenderer of contractor, its shareholders, and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding ten (10) years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- e) Forward the matter for criminal prosecution.

6.12.2. Upon detecting that a preference in terms of the PPPFA, the Regulations or this Policy have been obtained on a fraudulent basis, or any specified goals are not attained in the performance of the contract, the Municipality shall act against the person awarded the contract.

6.12.3. The Municipality may also request the court in terms of Section 28(1)(a) of the **Prevention and Combating of Corrupt Activities Act, 2003** to add the relevant bidder's details on the Register for Tender Defaulters, as the relevant section provides that:

*'A court, when convicting a person of an offence in respect of corrupt activities relating to contracts or corrupt activities relating to the procuring and withdrawal of tenders 'may', in addition to imposing sentences contemplated by the Act, order that the particulars of the person, the conviction and sentence, and any other order of the court consequent thereon, be endorsed on a Register for Tender Defaulters'.*

### 6.13. Risk

6.13.1. Risk management will be conducted as per the West Coast District Municipality's SCM Policy and related risk management provisions.

### 6.14. Declarations

6.14.1. The stipulations of the PPPFA, MFMA and SCM Regulations will apply.

6.14.2. In addition to paragraph 6.14.1 above the following will also apply:

- a) In the case of joint ventures or consortium, only legally established entities may partake in the preference system. An agreement of intent will suffice as well as a separate B-BBEE certificate issued for the institution specific, to qualify for preferences. A joint BBEE certificate must be attached to qualify for preference claims as prescribed.
- b) Preference points claimed will depend on the management participation and *profit ratio* of parties claiming such preferences.
- c) Bidders may at any time be requested by West Coast District Municipality to substantiate preference claims.

## PART 7. PREFERENCE TARGETS IDENTIFIED

7.1 Considering all the data available, this Policy will strive to achieve the following targets:

POLICY OBJECTIVE	TARGET
Improve market share of <b>SMME's</b>	<ul style="list-style-type: none"> <li>➤ By year 2022/2023 the market-share of SMME's to be at least 30% of all municipal procurement.</li> <li>➤ By year 2024/2025 the market-share of SMME's to be at least 35% of all municipal procurement.</li> </ul>
Improve the <b>local economic market</b>	<ul style="list-style-type: none"> <li>➤ By year 2022/2203 the market-share of local businesses to be at least 40% of all municipal procurement.</li> </ul>

POLICY OBJECTIVE	TARGET
	➤ By year 2024/2025 the market-share of local businesses to be at least 45% of all municipal procurement
Employment of <b>semi-&amp; unskilled workers</b>	<ul style="list-style-type: none"> <li>➤ By year 2022/2023 at least 50% of construction and related sector wage and allowance costs must represent local labour.</li> <li>➤ By year 2024/2025 at least 60% of construction and related sector wage and allowance costs must represent local labour.</li> </ul>
Empowerment of <b>registered indigents</b>	<ul style="list-style-type: none"> <li>➤ By year 2022/2023 at least 25% of procurement must be from business that formed co-operatives with indigents.</li> <li>➤ By year 2024/2025 at least 35% of procurement must be from business that formed co-operatives with indigents.</li> </ul>
Ensure <b>equitable work distribution</b> in West Coast District Municipal area.	Develop a rotation mechanism to employ local businesses registered on the 2022/2023 Municipality Supplier Database for projects below R 200 000, inclusive of construction related services.
Address identified <b>socio-economic weakness areas</b> i.e: (i) Unemployed Youth	➤ By 2022/2023 West Coast District Municipal procurement spend to unemployed youth be improved by 10% calculated from data compiled since 2021.

7.2. To determine which tender conditions will be applicable to a specific tender, the following considerations will apply:

- a) The Municipality must continue to apply the BBBEE scorecard for allocating preference points within the preference point system applicable to the tender, i.e., the 80/20 preference point system for tenders between R 30 000 and R 50million or 90/10 preference point system for tenders above R 50million.
- b) Determine and record its reasons whether the goods or services for which a tender is to be invited, will be evaluated based on functionality.
- c) Determination targeting conditions for procurement within the thresholds as directed by Council.
- d) Determination of whether objective criteria are applicable to the tender as envisaged in the PPPFA 2(1)(f).
- e) All attempts should be made to use the labour and materials from local residents per ward for projects to the benefit of such specific wards.

7.3. 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 8: ALIGNMENT WITH THE PROCUREMENT PROCESS**

8.1. The Municipal SCM Policy will guide the relevant SCM activities required.

8.2. 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 9: DEVIATIONS AND EXEMPTIONS**

9.1 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 10: COMPLAINTS, ENQUIRIES, DISPUTES OR APPEALS**

10.1. The West Coast District Municipality SCM Policy, provides for a mechanism to deal with SCM related complaints, enquiries or disputes which will apply when bidders wish to record any complaint, enquiry, or dispute regarding this Policy.

## **PART 11: ACCESS TO INFORMATION AND TRAINING**

11.1. Unsuccessful bidders will be informed of the reasons for their bid not being successful, if so, requested in writing. To ease the administrative burden a checklist will be used.

11.2. Bidders should be supported to obtain tender information.

11.3. Any prospective bidder will be entitled to receive information and/or training regarding the following:

- a) Financial support.
- b) SCM related training.
- c) Assistance with tendering process.
- d) Bidding process.
- e) Preferential procurement.
- f) Completion of Bid documentation.
- g) Project and contract management.

11.4. Formal requests for access to information must be dealt with within the PAIA Policy of the West Coast District Municipality.

11.5. Requests for access to training must be directed to the **LED Manager**.

## **PART 12: ADMINISTRATION OF POLICY**

### **12.1 Responsibility**

12.1.1 Responsibility for the implementation and administration of the Policy is delegated to the Accounting Officer, who will use the support from the LED Manager.

12.1.2. 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.

## **12.2 LED**

12.2.1. The Accounting Officer must ensure that the organisational design of the LED Office is appropriately structured, resourced, and capacitated.

12.2.2. The data captured by the SCM Unit will be analysed and report on by the Manager: LED.

## **12.3 SCMU**

12.3.1. The SCMU 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.

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

## **12.4 Oversight by Council**

12.4.1. 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 13: MAINTENANCE**

13.1. 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.

13.2. For clarification of any matter contained in this Policy, please address queries to the LED Manager.

## **PART 14: IMPLEMENTATION**

14.1. This Policy is effective from Council Resolution.

14.2. This Policy will be implemented in phases as follows:

- a. For the 2022/2023 financial year this Policy will apply to only selected tenders in excess of R 200 000 for which formal tenders are invited [to be confirmed in Policy].
- b. For the 2022/2023 financial year this Policy will apply to all tenders within a specific sector in excess of R 200 000.
- c. For the 2021/2022 financial year this Policy will apply to all tenders in excess of R 30 000.
- d. For the 2023/2024 financial year this Policy will apply to all procurement activities.

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

- a. Increased capacity in the Office of the LED Manager.
- 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.
- f. Identification of one major project to pilot the activation of this Policy.