

REPORT ON THE REVISED 16TH SUPPLY CHAIN MANAGEMENT POLICY

1. PURPOSE

The purpose of this item is to obtain an approval to amend the Supply Chain Management Policy in alignment with the revised Preferential Procurement Regulations, 2022 as promulgated in Government Gazette, No 47452 of the 4th November 2022.

2. BACKGROUND AND DISCUSSION:

The Preferential Procurement Regulations, 2017 gave effect to the announcement made by the then President in the State of the Nation Address in 2015. The President stated that Government will set aside 30% of appropriate categories of State Procurement for purchasing from SMME'S Cooperatives, as well as township and rural enterprises.

The following regulations were introduced to give effect to the President's pronouncement:

- **Regulation 4:** Prequalification criteria for preferential procurement
- **Regulation 9:** Subcontracting as a condition of tender .

In the turn of events, Regulation 3,4 and 9 were successfully challenged in 2022 through court process by Agribusiness(Sakeliga) and Minister of Finance being the respondent. The following were the judgement overview:

- a. Regulation 4 & 9 were an important part of achieving Section 217(2) of the Constitution.
- b. The majority judgement felt that it was not necessary or expedient for the Minister to prescribe the impugned regulations.
- c. Section 2(1) of the Act vested the power to determine preferential procurement policy with an organ of state.
- d. The judgement viewed the Minister 's action of prescribing Regulation 4 and 9 as amounting to the determination of Preferential Procurement Policy.

Overview of the content of the revised Preferential Procurement Regulation, 2022:

- 2.1 Key changes to the regulations since the 2011 and 2017 regulations are the following omission:
 - 2.1.1 The use of B-BBEE status level of contributor as a specified goal to be used when allocating preferential points.
 - 2.1.2 Regulation 8 of the 2017 providing for local content production and content since it is outside the scope of the Act and of the Minister 's regulation-making authority.
In addition the following were omitted since they are not provided for in terms of Section 2(1) of the PPPFA:
 - 2.1.3. Provision for evaluation on functionality

- 2.1.4. Regulations providing for subcontracting after award of a tender, negotiation of a fair market price and cancellation of tenders
- 2.1.5 Regulations providing for pre-qualifications for preferential procurement and subcontracting as a condition of tender;
- 2.1.6 Regulations providing for the issuance of circulars and guidelines.

New Provisions in the Regulations:

1. Revised regulations provide for new provisions and propose to prescribe formula to be used when allocating preferential points in tenders to generate income, dispose of or lease assets by an organ of state.
2. Regulation 1, which deals with definitions had been adjusted
3. Regulation 3, which deals with identification of preference point system are now allocated on the basis of specific goals and not on B-BBEE status level of contributor.
4. Regulation 4: 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million.
5. 90/10 preference points system for acquisition of goods or services with Rands value above R50 mill.
6. Regulation 6 and 7 which deals with 80/20 and 90/10 preference point system for tenders to generate income or to dispose of or to lease assets.
7. Regulation 8 which deals with Criteria for breaking deadlock in scoring
8. Regulation 9 dealing with Remedies
9. Regulation 10 dealing with Repeal of Regulations
10. Regulation 11 dealing with Short title and commencement

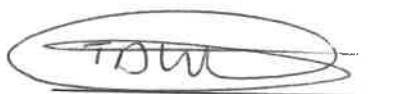
RECOMMENDATIONS:

1. That Council take note of amended Preferential Procurement policy framework Act Regulations of 2022 as promulgated.
2. That Council approves the revised Supply Chain Management policy in accordance with the revised Preferential Policy Framework Act Regulations of 2022.


Submitted by:


L Denge
Acting Chief Financial Officer

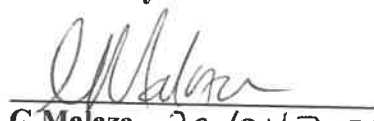
Recommended by:


T Motlashuping
Acting City Manager

Approved By:


Councillor MA Siyonzana
Executive Mayor

Ratified By:


G Malaza 30/01/2023
National Cabinet Representative