



B-BBEE MAC SECTOR COUNCIL PROCUREMENT POLICY

1. BACKGROUND/INTRODUCTION/OVERVIEW

- 1.1. The B-BBEE MAC Sector Council is established in terms of section 9 (1) of the B-BBEE Act of 2003 as amended, with a mandate to oversee and monitor the implementation of the MAC Sector Code. The responsibilities of the Council including but not limited to: -
 - 1.1.1. Advise the organs of state on all matters relating to B-BBEE in the MAC Sector
 - 1.1.2. Monitor and review the implementation of the MAC Sector Codes and all matters related thereto in the MAC Sector.
 - 1.1.3. Be responsible for the development and fostering of common standards and code of ethics in the implementation of MAC Sector Codes in the industry and compliance with B-BBEE legislation and Codes of Good Practice.
 - 1.1.4. Issue guidance notes on the interpretation and application of the MAC Sector Codes.
 - 1.1.5. Prepare an annual review, which outlines progress and evaluates new areas of intervention and submit the report to the DTIC for publication.
 - 1.1.6. Engage with government, the public sector, the B-BBEE Advisory Council and other regulatory agencies to promote the implementation of the MAC Sector Codes.
- 1.2. The B-BBEE Act of 2003, Codes of Good Practice published on 16 May 2015, the Council Constitution, its Terms of Reference and the MAC Sector Code of 2016 regulate the Council's activities.

2. PURPOSE OF THE POLICY

- 2.1. The purpose of this Policy is to provide a clear mandate and guidelines to be adopted and implemented within the Council in respect of all its procurement activities.

3. POLICY OBJECTIVES

- 3.1. To provide clear guidelines for the procurement of goods and services for the Council to be able to do its work.
- 3.2. To ensure and strengthen integrity of all procurement activities for the Council.
- 3.3. To ensure that all procurement activities of the Council are underpinned by the principles of fairness and equal opportunity.
- 3.4. To ensure that the procurement activities of the Council seek to maximize scarce resources to obtain maximum value.

4. SCOPE

- 4.1. The policy applies to all goods and services required to conduct the work of the B-BBEE MAC Sector Council.

5. CODE OF CONDUCT.

- 5.1. No Councilor shall participate in the selection, award, or administration of a contract if it is identified that there is real conflict of interest. Such a conflict would arise when the employee, officer, any member of his or her immediate family, his or her partner, or an organization which employs hem/her or is about to employ any of the parties indicated herein, has a financial or other interest in the entity selected for an award.
- 5.2. The Councilors or any official appointed to oversee or support the work of the Council shall neither solicit nor accept gratuities, favours, or anything of monetary value from contractors, or parties to sub-agreements.
- 5.3. Councilors shall comply with all relevant fiduciary duties, including those governing conflicts of interest, when they vote upon matters related to procurement contracts in which they

have a direct or indirect financial or personal interest.

- 5.4. Councilors and Council employees shall be subject to disciplinary actions or criminal prosecution for violations of this Code of Conduct.

6. COMPETITION.

- 6.1. All procurement transactions shall be conducted in a manner as to provide, to the maximum extent practical, open and free competition.
- 6.2. The Council shall be alert to conflicts of interest as well as non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade.
- 6.3. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids and/or requests for proposals shall be excluded from competing for such procurements.
- 6.4. Awards shall be made to the bidder whose bid is responsive to the solicitation and is most advantageous to the Council in respect of price, quality and other factors as articulated in the Terms of Reference of the bid.
- 6.5. The Terms of Reference shall clearly set forth all requirements that the bidder shall fulfill for the bid or offer to be evaluated by the Council or its nominated representatives. Any and all bids may be rejected when it is in the Council's interest to do so with clear and recorded reasons for such a decision.
- 6.6. In all procurement the Council shall avoid practices that are restrictive of competition. These include but are not limited to:
 - 6.6.1. Placing unreasonable requirements on service providers for them to qualify to do business,
 - 6.6.2. Requiring unnecessary experience and excessive quality standards,
 - 6.6.3. Noncompetitive awards to consultants that are on retainer contracts,
 - 6.6.4. Organizational conflicts of interest,
 - 6.6.5. Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement,
 - 6.6.6. Any arbitrary action in the procurement process.

7. METHODS OF PROCUREMENT TO BE FOLLOWED.

7.1. PROCUREMENT OF PRODUCTS/SERVICES UP TO R10 000

The product or service should be procured through obtaining written from three (3) quotes based on price comparison. Receipt of purchase should be kept. For fairness, services should, as far as is possible, be procured from different service providers, were possible from SMMEs, Black-owned and Women-owned businesses. Priority is given to the service provider who can provide the product or service within specified timeframes and the prescribed quality.

7.2. PROCUREMENT FROM R10 001 – R499 000

- 7.2.1. This will apply to services that will take a maximum of one (1) month to finalise, with a period of three weeks (or a shorter period determined by the Council best on the urgency of the goods, product or service required) provided for the submission of bids.
- 7.2.2. The Executive Committee of the Council, or a delegated authority will draft terms of Reference outlining the specifications regarding the required service for approval.
- 7.2.3. The advertisement will be placed on the Council website to be able to attract SMMEs and Measured Entities. The Council shall appoint a Bid Evaluation Committee constituted by the Head of Secretariat and two Councilors to conduct the evaluation of the Bids and make a recommendation to the Council Executive Committee.
- 7.2.4. The service provider shall be appointed from three finally short-listed service providers. Interested parties on request shall record the final deliberations and decisions on the appointed service provider for perusal.

7.3. PROCUREMENT FROM R500 000 UPWARDS

- 7.3.1. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids or small purchase procedures. If this method is used, the following requirements apply:

- 7.3.1.1. Terms of Reference will be developed with direct specifications regarding the required product or service, including the timeframes for the submission of the Bids for approval by the Council EXCO or the delegated authority.
- 7.3.1.2. The Terms of Reference will also outline the evaluation criteria and related weightings to be used to evaluate the bids.
- 7.3.1.3. The Council Bid Adjudication Committee shall evaluate the bids and recommend the service provider based on the evaluation criteria. Although this must be avoided as far as possible, where the Council Adjudication Committee appoints a service provider that does not fully meet some of the requirements, clear reasons thereof must be stated and recorded. It is important to try and circumvent this eventuality by ensuring that the Terms of Reference are as specific as possible about the required product or service.
- 7.3.1.4. The Council may use the competitive proposal procedures for qualifications-based procurement of highly specialized services, through requesting competitive Bids from selected companies. The most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This provision is also applicable for emergencies where the time for the receipt of bids might be reduced to less than three weeks.
- 7.3.1.5. The Bid Adjudication Committee shall submit their recommendations for the Service Provider to the Council Executive Committee for approval.

7.4. PROCUREMENT BY NON-COMPETITIVE PROPOSALS

- 7.4.1. Procurement is carried out through solicitation of a proposal from only one source, when after solicitation of several sources, competition is determined to be inadequate or an appropriate service provider could not be identified through a competitive process.
- 7.4.2. This is also applicable in the case of highly specialized services where there is a single service provider. The reasons for non-competitive process must be recorded for consideration and approval by the Council EXCO
- 7.4.3. The Council EXCO or the delegated authority should draft terms of Reference for the procurement of service or product for approval.
- 7.4.4. The Adjudication Committee will still be required to deliberate on the bid to determine its

suitability and viability in terms of pricing.

7.4.5. The Adjudication Committee will submit recommendations for the approval of the Council.

8. THE COUNCIL BID ADJUDICATION COMMITTEE (CBAC)

8.1. The Council shall appoint a CBAC to preside over the Bids received.

8.2. The CBAC shall be constituted by four members, with two being staff members of the Council and two nominated Councillors. Where applicable, an additional member may be sourced from the DTSPS or any other organization considered important to strengthen compliance of the process or assist in identifying an appropriate service provider.

8.3. CBAC shall be required to declare any conflict of interest

8.4. The Council may utilize two approaches to the appointment of the CBAC:

8.4.1. Appoint a permanent CBAC to process all bids.

8.4.2. Appoint a CBAC based on the type and nature of each bid to ensure that the relevant CBAC members are familiar with the content of work required, where the work required is of a highly technical nature.

8.4.3. The Council may recommend that someone else outside the employment of the Council become a CBAC member based on the provisions of paragraph 8.2.2.

8.5. The Chief Executive Officer or delegated official shall be responsible for receiving all the Bids, recording them and preparing those bids for consideration by the Bid Adjudication Committee.

8.6. The CBAC shall:

8.6.1. Examine all bids received

8.6.2. Shortlist all potential Service providers

8.6.3. Interrogate each proposal from the Service Provider

8.6.4. Recommend a service provider to the Council for appointment.

8.7. All deliberations by the CBAC shall be recorded and filed for future reference.

9. PROCUREMENT PROCEDURES

9.1. All procurement by the Council shall comply with the following:

- 9.1.1. Where appropriate, an analysis is made of rental and purchase alternatives to determine which would be the most economical and practical procurement.
- 9.1.2. Solicitations for goods and services provide for all of the following:
 - 9.1.2.1. A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
 - 9.1.2.2. Requirements which must be fulfilled and all other factors to be used in evaluating proposal submitted in response to solicitations.
 - 9.1.2.3. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
 - 9.1.2.4. When relevant, the specific features of "brand name or equal" descriptions that are to be included in responses submitted to solicitation.
 - 9.1.2.5. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- 9.1.3. Positive efforts shall be made by the Council to utilize SMMEs, Black-owned companies, and Black women-owned companies, whenever possible. The Council shall take all the following steps to further this goal.
 - 9.1.3.1. Ensure that small SMMEs, Black-owned companies, and Black women-owned companies are fully used practicable.
 - 9.1.3.2. Make information on forthcoming opportunities available e.g. publish on website to encourage and facilitate participation by these targeted service providers.
 - 9.1.3.3. Consider in the contract process whether service providers competing for larger contracts intend to subcontract with SMMEs, Black-owned or Black Women-Owned Businesses.
 - 9.1.3.4. Encourage, when practical, contracting with consortiums of small businesses, Black-owned and Black women-owned companies.
 - 9.1.3.5. Use the services and assistance, as appropriate and practical, of such organizations as the Department of Small Business Development, GCIS, National Treasury's Central Database System, among others, in the solicitation and utilization of SMMEs, Black-owned or Black

Women-Owned Businesses

- 9.1.3.6. The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the Council EXCO but shall be appropriate for the procurement and for promoting the best interest of the program or project involved.
- 9.1.3.7. Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.
- 9.1.3.8. Debarment and Suspension - No contract shall be made to parties listed on the National Treasury Blacklisted companies.

6. PROCUREMENT RECORDS

- 6.1. All procurement records shall be filed and kept in a secure place to be utilized for future or current reference, including audits, investigations and other requirements.

7. CONTRACT ADMINISTRATION.

- 7.1. A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases.
- 7.2. The Council, or its delegated project manager, shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.
- 7.3. All contracts shall contain suitable provisions for termination by the Council, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

- 7.4. Contracts shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms and provide for such remedial actions as may be appropriate.
- 7.5. All negotiated contracts awarded by the Council shall include a provision to the effect that the Council shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

8. REVIEW OF THE POLICY

- 8.1. The Policy shall be reviewed every two years or any time if the circumstances require the review of the Policy to streamline Council operations.

APPROVED:

SIGNATURE:

NAME OF CHAIRPERSON

CHAIRPERSON

DATE: