

REPUBLIC OF SOUTH AFRICA

INSOURCING BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 47526 of 18
November 2022)*
(The English text is the official text of the Bill)

(Ms OMC MAOTWE, MP)

BILL

To provide for insourcing of certain services that are required on a regular basis by organs of state; and to provide for matters connected therewith.

PREAMBLE

SINCE organs of state require services to be provided to them on a regular basis;

AND SINCE there is a need to provide a legislative framework to supplement the current system of wholesale outsourcing of services and functions required by organs of state in order to address—

- administrative problems created by the outsourcing of services;
- corruption in the tender system; and
- enhancement of accountability in delivering services to the people of the Republic of South Africa;

AND SINCE there is a duty on the State to put an end to the exploitation of workers whose services are currently procured by way of outsourcing to provide the services that the State regularly requires, or to provide the services that the State is required to deliver on a recurring basis;

AND RECOGNISING that section 23 of the Constitution of the Republic of South Africa, 1996, guarantees everyone the right to fair labour practices;

AND RECOGNISING that the fundamental goal of the State is the achievement of decent and productive working conditions and respecting that everyone has the right to choose a trade, occupation or profession, the right to equity and security in the workplace, and to have their human dignity respected and protected;

AND FURTHER RECOGNISING that the government is determined to create a skilled workforce capable of preparing the country for a fast-paced global economy, and has pledged its commitment to the realisation of decent work and sustainable livelihoods for the workforce of South Africa and has undertaken to mainstream decent work imperatives into national development strategies,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. In this Act, unless the context indicates otherwise—

“**accounting officer**”, in relation to—

- (a) a national or provincial government, means the director-general; 5
- (b) a public entity, means the accounting authority contemplated in section 49 of the Public Finance Management Act; 5
- (c) a municipality, means a municipal manager;
- (d) a constitutional institution, means the chief executive officer of the constitutional institution as referred to in section 36 of the Public Finance Management Act; 10
- (e) Parliament, means the Secretary to Parliament as provided for in section 1 of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No.10 of 2009);
- (f) a provincial legislature, means the secretary of the provincial legislature as provided for in section 3 of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No.10 of 2009); and 15
- (g) any other institution or category of institutions included in the definition of “organ of state” in section 239 of the Constitution and recognised by the Minister by notice in the Government *Gazette* as an institution or category of institutions, means the head of that institution or the accounting officer as defined in section 1 of the Public Finance Management Act; 20

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**insource**” means the use by an organ of state of its own resources or personnel for services needed by that organ of state, or for services that the organ of state must provide, and “**insourcing**” has a corresponding meaning; 25

“**Minister**” means the cabinet member responsible for public service and administration;

“**organ of state**” means—

- (a) a national or provincial department as defined in the Public Finance Management Act; 30
- (b) a public entity as defined in the Public Finance Management Act;
- (c) a municipality as contemplated in the Constitution;
- (d) a constitutional institution as defined in the Public Finance Management Act;
- (e) Parliament;
- (f) a provincial legislature; and 35
- (g) any other institution or category of institutions included in the definition of “organ of state” in section 239 of the Constitution and recognised by the Minister by notice in the Government *Gazette* as an institution or category of institutions to which this Act applies; 40

“**outsourcing**” means procuring a supplier or service provider that is not an organ of state or procuring outside resources and personnel, to deliver a service needed by an organ of state, or to deliver a service that the organ of state must provide;

“**prescribed**” means prescribed by regulation made under section 8;

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No.1 of 1999); 45

“**services**” means the services listed in section 2; and

“**this Act**” includes the regulations made under section 8.

Application of Act

2. (1) This Act applies to all organs of state.

(2) This Act applies to the following services: 50

- (a) Security services;
- (b) cleaning services;
- (c) gardening services;
- (d) general maintenance, which includes— 55
 - (i) repairs to buildings; and
 - (ii) refurbishment of infrastructure;
- (e) catering services;
- (f) auditing services;
- (g) transport services;
- (h) information technology services; 60

- (i) administration services;
- (j) healthcare-related services; and
- (k) any other services that may be prescribed by the Minister in terms of section 8.

(3) In the event of any inconsistency between this Act and any other legislation, this Act prevails. 5

Insourcing policy

3. The Minister must develop an insourcing policy that—
- (a) complies with the basic values and principles governing public administration as contemplated in section 195 of the Constitution; 10
 - (b) requires insourcing for the services listed in section 2, and any other prescribed services;
 - (c) limits outsourcing and promotes job security;
 - (d) sets criteria for when a service may be outsourced;
 - (e) provides for an annual skills audit of all employees of that organ of state; 15
 - (f) requires a database containing the skills of all employees of that organ of state; and
 - (g) promotes fair labour practices.

Implementation of insourcing policy

4. (1) The accounting officer of an organ of state must implement the insourcing policy developed by the Minister in terms of section 3. 20
- (2) In order to effectively implement the insourcing policy, an organ of state must ensure that—
- (a) personnel are adequately deployed and that proper mechanisms and resources are in place to insource services; and 25
 - (b) monitoring and evaluation mechanisms are in place.

Obligation on organs of state to insource services

5. (1) An organ of state must insource all services referred to in section 2(2) and those prescribed by the Minister in terms of section 8.
- (2) If circumstances prevent, or severely hinder, an organ of state to insource a service, that organ of state may procure a service by way of outsourcing in terms of the insourcing policy developed in terms of section 3 and in accordance with the relevant procurement legislation. 30
- (3) Before an organ of state procures a service by way of outsourcing in terms of subsection (2), the accounting officer of that organ of state must confirm that the service cannot be provided by a person already employed by that organ of state, taking into account— 35
- (a) the database containing the skills of all employees of that organ of state contemplated in section 3(e); and
 - (b) the availability and willingness of an employee with the required skill to undertake or perform the service, where that service does not form part of the employee's core functions. 40
- (4)(a) Where a service is outsourced, the organ of state must require the supplier or the service provider to provide training to a person already employed by that organ of state to provide that service. 45
- (b) The requirement for training referred to in paragraph (a) must be included as a term in the contract between the organ of state and the supplier or the service provider of the outsourced service.
- (c) The value of the training must at least be equal to the prescribed percentage of the value of the contract. 50
- (5) The accounting officer of an organ of state must quarterly submit a report to the Minister on—
- (a) the services that were outsourced;
 - (b) the reasons as to why those services could not be insourced; and
 - (c) the training that was provided by the supplier or service provider to whom the services were outsourced, as well as the steps taken to ensure that the services can be insourced in future. 55

Exemption

6. The Minister may, on request from the accounting officer, exempt an organ of state from any or all of the provisions of this Act if—
- (a) it is in the interest of national security;
 - (b) the services needed can only be obtained from an international supplier; or
 - (c) it is in the public interest to grant such an exemption.

Insourcing report

7. The Minister must, annually, table a report in the National Assembly setting out—
- (a) the progress made by all organs of state regarding the implementation of the insourcing policy;
 - (b) all projects where an organ of state could not insource services, with reasons why those services could not be insourced; and
 - (c) the training of personnel provided by the organs of state and the suppliers or service providers of the outsourced services, as well as steps taken by the organs of state to ensure that the services can be insourced in future.

Regulations

8. (1) The Minister may—
- (a) prescribe any other services that must be insourced by organs of state; and
 - (b) make regulations regarding any matter that may be necessary or expedient to prescribe in order to achieve the objects of the Act.
- (2) The Minister must prescribe the percentage value of the contract referred to in section 5(4).
- (3) Different regulations may be made to suit the varying requirements of particular services.
- (4) Any regulations made in terms of this section must, before publication in the *Gazette*, be approved by Parliament.

Transitional provisions

9. (1) Any services outsourced under any procurement legislation before the commencement of this Act, where the contract has not ended, must continue to be so provided until the termination date of the contract.
- (2) All contracts already concluded and tenders already advertised before the commencement of this Act must be continued with, provided that where a contract exceeds 12 months, the service provider must be requested, where legally and practically possible, to provide training to a person identified by the organ of state.

Short title and commencement

10. This Act is called the Insourcing Act, 2025, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE INSOURCING BILL, 2025

1. PURPOSE AND BACKGROUND

The South African government in all spheres, including organs of state, provide services to citizens, but in order to do so, it often contracts third parties who provide these services and use their own employees to deliver these services. This includes, but is not limited to: cleaning services; security services; gardening services; construction of buildings and infrastructure; maintenance of buildings and infrastructure; IT services; catering services; auditing services; transport services; administration services, and healthcare-related services. All these services are usually required on a recurring basis, and there is always a need for government to provide these services for an indefinite period of time.

Post-1994 the South African government embarked on a programme of wholesale outsourcing of services and functions, required or provided by government. This emphasised the principles of de-bureaucratisation of the public sector and local government, reforming and strengthening management practices in government, decentralising decision making, and outsourcing of all government functions where possible.

These reforms created many administrative problems. One such issue is that prices for contracts are often purposefully inflated through manipulation of the tender system. This underlies the majority of corrupt activities that are currently taking place in all spheres of government, including in organs of state. It has further, to a large extent, collapsed the ability of the State to deliver the necessary services to the people of South Africa. Secondly, there is continuous exploitation of the workers who are employed by these service providers to deliver these services — services that the State will for the foreseeable future be required to provide on a recurring basis. By contracting third parties who provide outsourced workers, the government in all spheres, including organs of state, is often making use of persons whose labour is exploited, whose employment is on a casual basis, providing minimal job security, whose labour is under-paid, who receives minimal or no benefits and who are accordingly not properly protected by labour legislation.

The Insourcing Bill, 2025 (“Bill”), seeks to provide a comprehensive legislative mechanism to bring an end to these problems and challenges brought about by the outsourcing of services and functions provided by government.

2. OBJECTS OF BILL

The Bill seeks to provide for insourcing of services that are required on a regular basis by the organs of state.

3. CONTENTS OF BILL

3.1 Clause 1 provides for definitions of words used in the Bill.

3.2 Clause 2 sets out the application of the Act.

3.3 Clause 3 states that the Minister must develop an insourcing policy that complies with basic values and principles governing public values; promotes high ethical standards and prohibits fraud and corruption; promotes job security and fair labour practices.

3.4 Clause 4 provides that the accounting officer of an organ of state has an obligation to implement the insourcing policy developed by the Minister. In terms of this clause, an organ of state must ensure that personnel are adequately deployed and that proper mechanisms and resources are in place to enable insourcing of services.

- 3.5 Clause 5 places an obligation on the organs of state to insource all services. It also sets out the criteria which must be followed before any service can be outsourced.
- 3.6 Clause 6 permits an organ of state to apply for an exemption from any provisions of the Act under certain circumstances.
- 3.7 Clause 7 places an obligation on the Minister to table a report in the National Assembly of all the projects where services could not be insourced and state the reasons why those services could not be insourced.
- 3.8 Clause 8 empowers the Minister to make regulations.
- 3.9 Clause 9 provides for transitional provisions and provides that where there is a contract in place for services before the commencement of this Act, and if that contract has not yet come to an end, those services must be provided until the end of the contract. Furthermore, Clause 9 provides that all contracts already concluded and tenders already advertised before the commencement of this Act must be continued with, provided that where a contract exceeds 12 months, the service provider must be requested, where legally and practically possible, to provide training to a person identified by the organ of state.
- 3.10 Clause 10 provides for the short title and commencement.

4. FINANCIAL IMPLICATIONS FOR THE STATE

Funds may be required to develop the insourcing policy.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

It is not anticipated that there will be additional organisation and personnel implications, as organs of state will make use of their employees.

6. PARLIAMENTARY PROCEDURE

- 6.1 Whether a Bill is a section 76 Bill, is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a) to (f) of the Constitution and second, whether the provisions of the Bill, in substantial measure, fall within a functional area of concurrent national and provincial legislative competence as listed in Schedule 4.
- 6.2 Section 76(3)(d) of the Constitution provides that any legislation contemplated in section 195(4) of the Constitution must be passed in accordance with the procedure in section 76.
- 6.3 The Member is, therefore, of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution as provided for in section 76(3) of the Constitution, as the Bill is considered to be legislation envisaged in section 195(4) of the Constitution.
- 6.4 The Member is of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders, in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not directly affect traditional or Khoi-San communities or contain any provisions pertaining to customary law or customs of traditional or Khoi-San communities.

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