

REPUBLIC OF SOUTH AFRICA

PUBLIC PROCUREMENT AMENDMENT 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. 53515
of 17 October 2025)
(The English text is the official text of the Bill)*

(MR M CUTHBERT, MP)

Amendment of section 15 of Act 28 of 2024**2. Section 15 of the principal Act is hereby amended—**

- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(b) invite the affected person to provide reasons, within [10] 20 days, 5
 why the debarment order should not be issued.”;
- (b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
 “(c) [connived] conspired or attempted, with or without others, to 10
 interfere with the participation of other bidders;”;
- (c) by the substitution in subsection (3) for paragraph (d) of the following paragraph:
 “(d) has been convicted of an offence involving corruption, dishon-
 esty, fraud, collusion or coercion, price fixing or breach of confidentiality 15
 relating to procurement by a procuring institution;”.

Amendment of section 16 of Act 28 of 2024**3. Section 16 of the principal Act is hereby amended—**

- (a) by the substitution in subsection (1) for the words following paragraph (b) of the following words:
 “envisaged in section 217(2) and (3) of the Constitution, in accordance 20
 with the Sustainable Development Goals outlined in subsection (1A), the
 objects of this Act, the framework in this Chapter and regulations made
 in terms of this Act.”;
- (b) by the insertion after subsection (1) of the following subsection:
 “(1A) The procurement policy contemplated in subsection (1), must 25
 contribute towards the achievement of the following Sustainable
 Development Goals within the Republic:
 (a) Eradicating poverty;
 (b) eradicating hunger;
 (c) good health and well-being; 30
 (d) quality education;
 (e) gender equality;
 (f) access to sanitation and clean water;
 (g) affordable and clean energy;
 (h) decent work and economic growth; 35
 (i) sustainable industrialisation, innovation and resilient infrastructure;
 (j) reduction of inequality;
 (k) sustainable cities and communities;
 (l) responsible consumption and production;
 (m) combating climate change; 40
 (n) conservation and sustainable use of the oceans, seas and marine life;
 (o) protection, restoration and promotion of the sustainable use of
 terrestrial ecosystems;
 (p) peace, justice and strong institutions; and
 (q) partnerships for the achievement of the goals contemplated in 45
 paragraphs (a) to (p).”; and
- (c) by the deletion of subsections (2), (3), (4) and (6).

Repeal of sections 17, 18, 19 and 20 of Act 28 of 2024

- 4. Sections 17, 18, 19 and 20 of the principal Act are hereby repealed.**

Amendment of section 21 of Act 28 of 2024

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- 5. The following section is hereby substituted for section 21 of the principal Act:**

“Measures to advance sustainable development

21. A procuring institution [**may**] must, in accordance with prescribed conditions, provide for measures to advance sustainable development in procurement.”.

Amendment of section 38 of Act 28 of 2024 5

6. Section 38 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A person may be appointed as a member of the Tribunal if that person—
- (a) possesses the necessary skills, expertise and knowledge[; **and**] in—
 - (i) law;
 - (ii) public administration;
 - (iii) public finance;
 - (iv) public procurement; or
 - (v) supply chain management;
 - (b) is a citizen or permanent resident of the Republic; and
 - (c) is a fit and proper person.”.

Amendment of section 57 of Act 28 of 2024

7. Section 57 of the principal Act is hereby amended by the deletion in subsection (2) of paragraph (a).

Amendment of section 61 of Act 28 of 2024 20

8. Section 61 of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (a).

Amendment of section 62 of Act 28 of 2024

9. Section 62 of the principal Act is hereby amended—
- (a) by the insertion in subsection (1) of the word “or” at the end of paragraph (a); 25
 - (b) by the deletion in subsection (1) of the semi-colon and the word “or” at the end of paragraph (b) and the insertion of a full stop; and
 - (c) by the deletion in subsection (1) of paragraph (c).

Amendment of section 63 of Act 28 of 2024

10. Section 63 of the principal Act is hereby amended— 30
- (a) by the deletion of the word “and” at the end of subsection (1)(a)(xiii); and
 - (b) by the addition to subsection (1)(a) of the following subparagraphs:
 - “(xv) details of what will constitute a contribution towards the achievement of a Sustainable Development Goal; and
 - (xvi) a framework outlining how contributions made towards the achievement of Sustainable Development Goals are to be measured and points allocated;”;
 - (c) by the deletion in subsection (2) of the word “and” at the end of paragraph (a);
 - (d) by the deletion in subsection (2) of the full stop at the end of paragraph (b) and the insertion of a semi-colon and the word “and”; 40
 - (e) by the addition to subsection (2) of the following paragraph: and
 - “(c) the National Economic Development Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994).”; and
 - (f) by the substitution for subsection (4) of the following subsection: 45
 - “(4) The Minister must submit regulations to be made to Parliament for parliamentary scrutiny at least [**30**] 90 days before their promulgation.”.

Amendment of Preamble of Act 28 of 2024

11. The Preamble of the principal Act is hereby amended by the deletion of the eighth paragraph.

Amendment of Schedule to Act 28 of 2024

12. The Schedule to the principal Act is hereby amended by the deletion of item 13. 5

Amendment of arrangement of sections of Act 28 of 2024

13. The arrangement of sections of the principal Act is hereby amended by the deletion of the items relating to sections 17, 18, 19 and 20.

Amendment and repeal of laws

14. The laws mentioned in Schedule 1 are hereby amended or repealed to the extent 10 set out in the fourth column of the said Schedule.

Transitional provisions

15. The transitional provisions in respect of the principal Act, as amended by this Act, and in respect of the amendment and repeal of the laws listed in Schedule 1, are set out in Schedule 2. 15

Short title and commencement

16. This Act is called the Public Procurement Amendment Act, 2026, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

AMENDMENT AND REPEAL OF LAWS: SECTION 14

Act No.	Year	Title	Extent of amendment or repeal	
57	1997	Lotteries Act	1. The amendment of section 13A(2) by the deletion of paragraph (d).	5
4	1998	Cross-Border Road Transport Act	1. The amendment of section 27(1A) by the deletion of paragraph (c).	
107	1998	National Environmental Management Act	1. The amendment of section 1(1) by the deletion of the definition of "black".	10
13	2000	Independent Communications Authority of South Africa Act	1. The amendment of section 1 by the deletion of the definition of "broad-based black economic empowerment". 2. The amendment of section 4(3) by the deletion of paragraph (k).	15
53	2003	Broad-Based Black Economic Empowerment Act	1. The repeal of the whole.	20
7	2004	National Gambling Act	1. The amendment of section 45(2)(b) by the deletion of subparagraph (ii). 2. The amendment of section 53(1)(a) by the deletion of subparagraph (i).	25
34	2005	National Credit Act	1. The amendment of the long title by the deletion of the words "to promote black economic empowerment and ownership within the consumer credit industry;". 2. The amendment of section 16(1)(e) by the deletion of subparagraph (ii). 3. The amendment of section 48(1) by the deletion of paragraph (a).	30
36	2005	Electronic Communications Act	1. The amendment of section 1— (a) by the deletion of the definition of "broad-based black economic empowerment"; and (b) by the deletion of the definition of "ICT Charter". 2. The amendment of section 2 by the deletion of paragraph (h). 3. The amendment of section 5(9) by the deletion of paragraph (b). 4. The amendment of section 13(3) by the substitution for paragraph (a) of the following paragraph: "(a) promote the ownership and control of electronic communications services by historically disadvantaged groups [and to promote broad-based black economic empowerment]; or".	35 40 45 50
19	2006	Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act	1. The amendment of the Preamble by the deletion in the fourth paragraph of the words "and broad-based black economic empowerment compliance issues". 2. The amendment of section 1 by the deletion of the definition of "rating agency".	55 60

Act No.	Year	Title	Extent of amendment or repeal	
51	2008	Intellectual Property Rights from Publicly Financed Research and Development Act	<p>1. The amendment of section 1 by the deletion of the definition of “BBBEE”.</p> <p>2. The amendment of section 2(2) by the substitution for paragraph (e) of the following paragraph: “(e) the people of the Republic, particularly small enterprises [and BBBEE entities], have preferential access to opportunities arising from the production of knowledge from publicly financed research and development and the attendant intellectual property;”.</p> <p>3. The amendment of section 11(1) by the substitution for paragraph (b) of the following paragraph: “(b) preference must be given to [BBBEE entities and] small enterprises;”.</p>	5 10 15 20
23	2014	Infrastructure Development Act	1. The amendment of section 21(1)(b) by the deletion of subparagraph (vi).	
9	2017	Financial Sector Regulation Act	<p>1. The amendment of section 1(1) by the deletion of the definition of “transformation of the financial sector”.</p> <p>2. The amendment of section 7(1) by the deletion of paragraph (g).</p> <p>3. The amendment of section 81(1) by the deletion of paragraph (g).</p>	25 30
18	2017	Insurance Act	<p>1. The amendment of section 1(1)— (a) by the deletion of the definition of “Financial Sector Code”; and (b) by the deletion of the definition of “transformation of the insurance sector”.</p> <p>2. The amendment of section 3 by the deletion of paragraph (d).</p> <p>3. The amendment of section 22(1)(c) by the deletion of subparagraph (iii).</p> <p>4. The amendment of section 26(1) by the substitution for paragraph (b) of the following paragraph: “(b) when it is in the public interest[, including transformation of the insurance sector];”.</p> <p>5. The amendment of section 66(1) by the substitution for paragraph (c) of the following paragraph: “(c) for developmental, financial inclusion and transformation objectives necessary to facilitate the progressive or incremental compliance of this Act by a specific insurer[, including meeting the targets envisaged by the Financial Sector Code]; and”.</p> <p>6. The amendment of Schedule 3 by the deletion in item 6(3)(b) of subparagraph (iii).</p>	35 40 45 50 55
22	2019	Property Practitioners Act	<p>1. The amendment of section 20 by the substitution for subsection (2) of the following subsection: “(2) When procuring property related goods and services, all organs of state must utilise the services of property practitioners who comply with the [broad-based black economic empowerment and] employment equity legislation and policies.”.</p>	60 65

Act No.	Year	Title	Extent of amendment or repeal
20	2023	National Health Insurance Act	<p>1. The amendment of section 38 by the substitution for subsection (7) of the following subsection:</p> <p>“(7) The provisions of this section are subject to public procurement laws and policies of the Republic that give effect to the provisions of section 217 of the Constitution, including the [Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), and the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)] <u>Public Procurement Act, 2024 (Act No. 28 of 2024)</u>.”.</p>

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SCHEDULE 2

TRANSITIONAL PROVISIONS: SECTION 15

1. Interpretation

For purposes of this Schedule—

- (a) “**BBBEE Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); 5
- (b) “**Commission**” means the Broad-Based Black Economic Empowerment Commission established in terms of section 13B of the BBBEE Act;
- (c) “**Department**” means the Department of Trade, Industry and Competition;
- (d) “**Minister**” means the Minister responsible for trade and industry; 10
- (e) “**principal Act**” means the Public Procurement Act, 2024 (Act No. 28 of 2024); and
- (f) “**this Act**” means the Public Procurement Amendment Act, 2026.

2. Previous bids and awards

A bid awarded or advertised, but before the commencement of this Act, must be dealt with in terms of the law applicable at the time of the award or advertisement. 15

3. Effect of repeal of BBBEE Act

(1) The repeal of the BBBEE Act does not affect—

- (a) any right, privilege, obligation or liability acquired, accrued or incurred under the said Act; 20
- (b) any penalty, forfeiture or punishment incurred in respect of any offence committed in terms of the said Act; or
- (c) any investigation, legal proceeding or remedy in respect of any right, privilege, obligation, liability, forfeiture or punishment referred to in paragraphs (a) and (b). 25

(2) Any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any penalty, forfeiture or punishment, referred to in sub-item (1), as if this Act had not been passed.

4. Commission

(1) In view of the effect of the repeal of the BBBEE Act, as set out in item 3, the Commission will continue to operate for a period of 12 months from the date of the commencement of section 13 of this Act, in order to wind up the affairs of the Commission. 30

(2)(a) The Commission will dissolve upon the conclusion of the 12 month period referred to in sub-item (1). 35

(b) The Minister may, by notice in the *Gazette*, shorten or lengthen the period referred to in sub-item (1), if necessary.

(3) Upon the dissolution of the Commission, the employees of the Commission will be transferred within the Department, or to another department, in accordance with the relevant provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994). 40

5. Consequential amendments

(1)(a) The Minister must, within 12 months of the commencement of section 13 of this Act, conduct an analysis of all primary legislation, not listed in Schedule 1, as well as all relevant subordinate legislation, that refers to the BBBEE Act or to black economic empowerment. 45

(b) The Minister must, within 30 days of the finalisation of the analysis contemplated in paragraph (a), table a report on the said analysis in the National Assembly.

(2) After the lapse of a period of 12 months from the commencement of this Act—

- (a) the Minister; or
- (b) the relevant minister responsible for the administration of any of the primary legislation, or subordinate legislation, contained in the analysis contemplated in sub-item (1), 50

must, with the introduction of legislation, or the making of any necessary subordinate legislation, propose the deletion of any reference to the BBBEE Act and to black economic empowerment in any such primary legislation, or subordinate legislation, contemplated in sub-item (1), and must further propose all consequential amendments necessitated by the deletion of the aforesaid. 55

MEMORANDUM ON THE OBJECTS OF THE PUBLIC PROCUREMENT AMENDMENT BILL, 2026

1. INTRODUCTION

- 1.1 The Republic of South Africa remains a highly unequal society and the legacy of apartheid and decades of governance failures, mismanagement and corruption have left deep and systemic inequalities across society. Thirty years of democracy have failed to usher in adequate improvements in the quality of living and the socio-economic status of the most vulnerable South Africans. National government interventions in the public procurement space have failed to address the root causes of these inequalities.
- 1.2 The key role played by public procurement processes in leveraging government buying to assist in the alleviation of poverty, the combatting of inequality, and making socio-economic gains through private partnerships, is recognised. At the same time, there is a dire need for an objective and effective measuring stick in preferential procurement processes that does not centre around race-based classifications.
- 1.3 The Public Procurement Act, 2024 (Act No. 28 of 2024) (“principal Act”), gives effect to section 217(2) of the Constitution of the Republic of South Africa, 1996 (“Constitution”), which provides that organs of state may implement a procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination. To give effect to the aforementioned constitutional provision, the principal Act uses broad-based black economic empowerment (“BBBEE”), as contemplated in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (“BBBEE Act”), to award preference to tenderers.
- 1.4 However, race-based preferences have failed to bring about socio-economic change to the majority of South Africans. Instead, these policies favour the implementation of often complicated asset sales, sub-contracting allocations, and share transfers amongst large corporate entities in order to comply with the complex race-based procurement targets, thereby qualifying for lucrative government contracts.
- 1.5 BBBEE has proven to be an ineffective method of promoting economic inclusion, as it is rooted in the idea of ‘trickle down redress’, where corporates are used to transfer assets, positions and contracts from one elite person to another to promote economic inclusion. However, those who tend to benefit most from BBBEE currently, tend to be either politically connected, already wealthy or highly educated persons. Therefore, the vast majority of South Africans who are intended to benefit from this policy are excluded from its ambit.
- 1.6 In essence, our current race-based procurement policies have centralised the benefits of preferential procurement programmes in the hands of the elite few, instead of addressing the root causes of inequality and bringing about true socio-economic change for the many.
- 1.7 The Public Procurement Amendment Bill, 2026 (“Bill”), aims to amend the current legislative framework by replacing the reliance upon race-based classifications in determining preferential procurement policy, with the Sustainable Development Goals as adopted by the United Nations in 2015 (“SDG”).

2. OBJECTIVES OF BILL

- 2.1 The Bill proposes to amend the principal Act by incorporating SDGs as the basis for an objectively measured, race-neutral and socio-economically progressive alternative procurement framework. The Bill therefore provides

for procuring institutions to develop and implement public procurement policies, as envisaged in section 217(2) of the Constitution, in accordance with the SDGs.

- 2.2 The Bill further proposes the repeal of the provisions related to set-asides, prequalification criteria for preferential procurement, subcontracting as a condition to bid, and the designation of sectors for local production and content, in order to align the principal Act with the spirit, purport and text of section 217 of the Constitution. The Bill further seeks to expand the qualification criteria for the appointment of a person as a member of the Public Procurement Tribunal (“Tribunal”) and to remove a threat to national security as justification for the exemption of a procuring institution from any provision of the principal Act.
- 2.3 The Bill further seeks to repeal the BBBEE Act and proposes the necessary consequential amendments to other related legislation which will be affected by the repeal of the BBBEE Act.

3. CONTENTS OF BILL

- 3.1 Clause 1 seeks to amend section 1 of the principal Act by inserting the definition of “Sustainable Development Goal”.
- 3.2 Clause 2 seeks to amend section 2 of the principal Act by increasing the number of days within which an affected person may provide reasons as to why a debarment order should not be issued.
- 3.3 Clause 3 seeks to amend section 3 of the principal Act by providing for procuring institutions to develop and implement public procurement policies, in terms of section 217(2) of the Constitution, which contribute toward the achievement of SDGs.
- 3.4 Clause 4 seeks to repeal sections 17, 18, 19 and 20 of the principal Act in order to repeal the provisions related to set-asides and prequalification criteria for preferential procurement; to repeal the provisions related to subcontracting as a condition to bid and to provide for the necessary consequential amendments; and to repeal the provisions concerning the designation of sectors for local production and content. The rationale for the proposed repeal of the aforementioned provisions is due to the text of the said provisions being contrary to the spirit, purport and text of section 217 of the Constitution, which requires the implementation of a fair, equitable, transparent, competitive and cost-effective public procurement system.
- 3.5 Clause 5 seeks to amend section 21 of the principal Act by providing that procuring institutions must provide for measures to advance sustainable development in procurement, as opposed to having a discretion to do so.
- 3.6 Clause 6 seeks to amend section 38 of the principal Act by expanding the qualification criteria for the appointment of a person as a member of the Tribunal.
- 3.7 Clause 7 seeks to amend section 57 of the principal Act as a consequence of the proposed repeal of section 20.
- 3.8 Clause 8 seeks to amend section 61 of the principal Act in order to remove a threat to national security as justification for the Minister of Finance (“Minister”) to exempt a procuring institution from any provision of the principal Act.

- 3.9 Clause 9 seeks to amend section 62 of the principal Act by removing a threat to national security as justification for the Public Procurement Office to authorise a departure from a provision of an instruction which it has issued.
- 3.10 Clause 10 seeks to amend section 63 of the principal Act by empowering the Minister to make regulations which relate to the SDGs and to extend the consultation processes required when making any regulations.
- 3.11 Clause 11 seeks to amend the Preamble of the principal Act.
- 3.12 Clause 12 seeks to amend the Schedule to the principal Act.
- 3.13 Clause 13 seeks to amend the arrangement of sections of the principal Act.
- 3.14 Clause 14 seeks to provide for the amendment or repeal of the laws listed in Schedule 1 to the Bill, which includes the repeal of the BBBEE Act.
- 3.15 Clause 15 seeks to provide for the transitional provisions, as set out in Schedule 2 to the Bill, necessitated by the amendments proposed by the Bill.
- 3.16 Clause 16 provides for the short title and commencement of the envisaged Amendment Act.

4. DEPARTMENTS AND BODIES CONSULTED

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

- 6.1 Section 76(4) of the Constitution provides that a Bill must be dealt with in accordance with the procedure established in section 76 of the Constitution, if such Bill deals with legislation envisaged in Chapter 13 of the Constitution, which includes procurement contemplated in section 217. The Member therefore proposes that the Bill must be dealt with in accordance with the procedure established in section 76 of the Constitution.
- 6.2 The Member is further of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), as the Bill does not contain any provisions which directly affect traditional or Khoi-San communities, or provisions which pertain to customary law or customs of traditional or Khoi-San communities.