



REPABOLIKI YA AFERIKA BORWA

REPUBLIC VAN SUID AFRIKA

BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT

Section 9(5): Codes of Good Practice

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

**CODE 1500: MEASUREMENT OF THE PREFERENTIAL PROCUREMENT ELEMENT OF
BROAD-BASED BLACK ECONOMIC EMPOWERMENT FOR QUALIFYING SMALL
ENTERPRISES**

**STATEMENT 1500: THE RECOGNITION OF PREFERENTIAL PROCUREMENT
CONTRIBUTIONS FOR QUALIFYING SMALL ENTERPRISES**

Issued under section 9 of the Broad-Based Black Economic Empowerment Act of 2003

Arrangement of this Statement

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1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

1.1 **"BEE Procurement Recognition Level"** means the percentage BEE Procurement Recognition Levels as determined by reference to the mechanism for determining that level as set out in Code 1000 Statement 1000; and

1.1.1 in relation to Exempted Micro Enterprises , a deemed BEE Procurement Recognition

of 100% and BEE Status of Level 4 Contributor as contemplated in Code 1000 Statement 1000;

- 1.2 **"BEE Procurement Spend"** is Total Measured Procurement Spend, multiplied by the BEE Procurement Recognition Level of the supplier;
- 1.3 **"Measured Enterprise"** means the Qualifying Small Enterprise subject to measurement under this statement;
- 1.4 **"QSE Preferential Procurement Scorecard"** means the scorecard in paragraph 6;
- 1.5 **"Qualifying Small Enterprise Scorecard"** means the balanced BEE scorecard included in Annexe 1000-A of Code 1000, Statement 1000;
- 1.6 **"Qualifying Small Enterprise"** has the meaning defined in Code 1000 Statement 1000;
- 1.7 **"Supplier"** means any supplier or service provider to a Measured Entity, regardless of whether such supplier or service provider may be a Qualifying Small Enterprise or an Exempted Micro Enterprise, provided that a portion of the supply or service provision made by that supplier or service provider falls within the definition of Measured Procurement Spend;
- 1.8 **"the Act"** means the Broad-based Black Economic Empowerment Act 53 of 2003;
- 1.9 **"the Codes"** means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement; and
- 1.10 **"Total Measured Procurement Spend"** is the sum total value of items included in the calculation of Measured Procurement spend as contemplated in paragraph 7

2 INTERPRETATION OF THIS STATEMENT

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

3 APPLICATION OF THIS STATEMENT

- 3.1 This statement is to be used in the measurement of the preferential procurement element of broad-based black economic empowerment for all Qualifying Small Enterprises.
- 3.2 Notwithstanding paragraph 3.1, this statement is not to be used in the measurement of the preferential procurement element of broad-based black economic empowerment in respect of an Enterprise particularly excluded from the provisions of this statement by the

Minister, by notice in a gazette.

4 OBJECTIVES OF THIS STATEMENT

The objective of this statement is to specify the QSE Preferential Procurement Scorecard

5 STATEMENT OF PRINCIPLE

5.1 Qualifying Small Enterprises are entitled to receive points on the QSE Preferential Procurement Scorecard based upon preferential procurement contributions made by them.

5.1.1 In determining the nature of the preferential procurement contributions made by the Qualifying Small Enterprises, those Enterprises should be guided by this statement read in conjunction with Code 1000 Statement 1000; and

5.1.2 if there is any uncertainty or lack of specificity in this statement as to the recognition of any specific type of preferential procurement contribution identified in the QSE Preferential Procurement Scorecard or the manner of calculation of those calculations in the QSE Preferential Procurement Scorecard, regard must be had to the principles outlined in the statements in Code 500.

6 QSE PREFERENTIAL PROCUREMENT SCORECARD

The following table represents the criteria for the purposes of deriving a score for preferential procurement in terms of this statement:

Criteria	Weighting points	Compliance target
BEE Procurement Spend from Suppliers based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	20%	50%

7 MEASURED PROCUREMENT SPEND

7.1 For the purpose of this statement, the following items are **included** in the calculation of Measured Procurement spend:

7.1.1 Procured goods and services that comprises the cost of sales of the Measured Entity,

7.1.2 Procured goods and services that comprises the operational expenditure of the Measured Entity;

- 7.1.3 Goods and services procured from suppliers that enjoy a monopolistic position
- 7.1.4 Capital expenditure incurred by the Measured Entity;
- 7.1.5 Goods and services procured from organs of state and public entities;
- 7.1.6 Procurement on behalf of a third party or a client, where the cost of that procurement is included as an expense in the Measured Entity's annual financial statements;
- 7.1.7 Payment to independent contractors and to labour brokers for services provided by individuals who are not employees of the Measured Entity;
- 7.1.8 Goods and services procured for the purpose of implementing BEE initiatives, including without limitation, procurement in relation to skills development, enterprise development, as well as initiatives included under residual element of BEE;
- 7.1.9 Goods and services procured from a non-South African source and all imported goods and services procured; and
- 7.1.10 Goods and services procured from subsidiaries or holding companies of the Measured Entity, the terms "subsidiary" and "holding company" to be interpreted in accordance with the Companies Act 61 of 1973.
- 7.1.11 Fund management costs for the administration of pension funds, provident funds, other post retirement funding schemes, medical aid schemes or insurance products
- 7.2 Notwithstanding the provisions of paragraph 7.1, the following items are **excluded** in the calculation of Measured Procurement spend:
 - 7.2.1 Any amount payable to any person, which represents a lawful tax or levy imposed by an organ of state duly authorized to impose such tax or levy. For the avoidance of doubt, any rates imposed by a municipality or other local government is excluded;
 - 7.2.2 Any amount payable to an employee as an element of their basic salary or wage.
 - 7.2.3 Contributions made by an employer on behalf of its employees towards:
 - 7.2.3.1 any pension fund, provident fund or other post retirement funding scheme ;or
 - 7.2.3.2 any medical aid or insurance product .
 - 7.2.4 For the avoidance of doubt, only the portion that relates to fund management costs, where the administrators of such pension funds, provident funds, other post retirement funding schemes, medical aid schemes or insurance products referred to in paragraph

7.2.3 are able to distinguish between the portion of such contributions which relate to fund management costs and the remainder of such contributions, is included within the Measured Procurement Spend,

- 7.2.5 Any emolument or similar payment paid to a director of a Measured Entity;
- 7.2.6 Procurement of goods and services by a Measured Entity on behalf of a third party, where such procurement is not represented as an expense in the annual financial statements of the Measured Entity;
- 7.2.7 Investments in or loans to an Associated Enterprise;
- 7.2.8 Investments in or loans qualifying for recognition under any statement under Code 1600;
- 7.2.9 Donations, investments or loans qualifying for recognition under any statement under Code 1700;
- 7.2.10 Subject to a maximum level of exclusion of which is by value equivalent to 25% Total Procurement after exclusion of the items in paragraphs 7.2.1 to 7.2.7, any of the following imported goods and services:
 - 7.2.10.1 imported capital goods or components for value-added production in South Africa provided that:
 - 7.2.10.1.1 there is no existing local production of such capital goods or components; and
 - 7.2.10.1.2 the importation of such capital goods or components facilitates further value-added production within South Africa;
 - 7.2.10.2 imported goods and services other than as contemplated in paragraph 7.2.10.1 if there is no local production of such goods or services. For the avoidance of uncertainty, the following cannot be the sole grounds for excluding imported goods and services from Measured Procurement Spend:
 - 7.2.10.2.1 where the only difference between the imported goods or services and the locally produced goods or services is cost;
 - 7.2.10.2.2 where the imported goods or services carry a brand different to the locally produced goods or services; or
 - 7.2.10.2.3 where the imported goods or services have different technical specifications to the locally produced goods or services, but where such technical specifications

have no direct impact on the value of the goods and services to the Measured Entity.

8 CALCULATION OF BEE PROCUREMENT SPEND

8.1 BEE Procurement Spend is calculated as the sum of the value of the Procurement Items included in the calculation of Measured Procurement spend as contemplated in paragraph 7. Multiplied by the BEE Procurement Recognition Level or Deemed Micro Enterprise Recognition Level (as the case may be) of the Supplier.

8.2 BEE Procurement Spend is calculated as follows:

$$A = \sum (B \times C)$$

Where

A is the calculated total BEE Procurement Spend for the Measured Entity. It is equal to the sum of the result of the product of B and C in respect of each Supplier of the Measured Entity **included** in the calculation of Measured Procurement spend as contemplated in paragraph 7

B is the value of Procurement Items included in the calculation of Measured Procurement spend as contemplated in paragraph 7, Procured from each Supplier of the Measured Entity

C is the BEE Procurement Recognition Level or Deemed Micro Enterprise Recognition Level (as the case may be) of each such Supplier of the Measured Entity

9 THE CALCULATION OF PREFERENTIAL PROCUREMENT CONTRIBUTIONS TO BEE

A Measured Entity's score for preferential procurement contributions to BEE under the preferential procurement scorecard shall be calculated as follows:

$$A = \frac{B}{C} \times D$$

Where

A is the calculated preferential procurement score for the Measured Entity.

B is the total BEE Procurement Spend of the Measured Entity calculated in terms of paragraph 8 as a percentage of Total Measured Procurement Spend of that Measured Entity

C is the preferential procurement as specified in paragraph 6

D is the Weighting points as specified in paragraph 6