



**REPABOLIKI YA AFERIKA BORWA**

**REPUBLIEK 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 500: MEASUREMENT OF THE PREFERENTIAL PROCUREMENT ELEMENT OF  
BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

**STATEMENT 500: THE RECOGNITION OF PREFERENTIAL PROCUREMENT  
CONTRIBUTIONS**

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

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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 **"Associated Enterprise"** means an associated enterprise as defined in Code 100 Statement 101;
- 1.2 **"BEE Procurement Spend"** means the BEE procurement spend determined in accordance with the provisions of paragraph 8;
- 1.3 **"BEE Procurement Recognition Level"** means the percentage BEE Procurement Recognition Levels as determined:

- 1.3.1 in relation to Enterprises which are neither Qualifying Small Enterprises nor Exempted Micro Enterprises, by reference to the mechanism for determining that level set out in Code 000 Statement 000;
- 1.3.2 in relation to Qualifying Small Enterprises, by reference to the mechanism for determining that level set out in Code 1000 Statement 1000; and
- 1.3.3 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;
- 1.4 "**BEE**" means black economic empowerment;
- 1.5 "**Enterprise**" shall have the same meaning as defined in Code 100 Statement 100;
- 1.6 "**Exempted Micro Enterprise**" has the meaning defined in Code 1000 Statement 1000;
- 1.7 "**Measured Entity**" means any Enterprise as well as any organ of state or public entity subject to measurement under the Codes;
- 1.8 "**Procurement Items**" for the purposes of this statement, means the items referred to in paragraph 7.1;
- 1.9 "**Qualifying Small Enterprise**" has the meaning defined in Code 1000 Statement 1000;
- 1.10 "**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 Total Measured Procurement Spend;
- 1.11 "**the Act**" means the Broad-based Black Economic Empowerment Act 53 of 2003;
- 1.12 "**the Codes**" means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement;

- 1.13 **"the National Small Business Act"** means the National Small Business Act 102 of 1996, as amended or substituted; and
- 1.14 **"Total Measured Procurement Spend"** means total procurement spend of the Measured Entity as contemplated in paragraph 7.1 other than the exclusions in paragraph 7.

## 2 **INTERPRETATION OF THIS STATEMENT**

- 2.1 When interpreting the provisions of this statement, any reasonable interpretation which is consistent with the objectives of the Act and those set forth in paragraph 4 must be preferred over any other interpretation which is inconsistent with such objectives.
- 2.2 To the extent that any provision of this statement is inconsistent with the Act, the Act shall prevail.

## 3 **APPLICATION OF THIS STATEMENT**

This statement is to be used in the measurement of the preferential procurement Element of broad-based black economic empowerment in respect of all Measured Entities.

## 4 **OBJECTIVES OF THIS STATEMENT**

The objectives of this statement are to:

- 4.1 specify the preferential procurement scorecard;
- 4.2 specify the key measurement principles to be applied when calculating preferential procurement contributions to BEE;
- 4.3 specify a basis for the award of an enhanced recognition status to certain categories of preferential procurement;
- 4.4 specify principles to be applied when calculating BEE Procurement Spend; and
- 4.5 specify the formula for the calculation of the individual criteria specified in the preferential procurement scorecard.

## 5 PREFERENTIAL PROCUREMENT SCORECARD

5.1 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
5.1.1	BEE Procurement Spend from Suppliers based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	15	70%
5.1.2	BEE Procurement Spend from Qualifying Small Enterprises based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	4	15%
5.1.3	BEE Procurement Spend from Exempted Micro Enterprises based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	1	5%

5.2 For the avoidance of doubt, the calculations in paragraphs 5.1.1 to 5.1.3 are not intended to be cumulative.

## 6 KEY MEASUREMENT PRINCIPLES

6.1 Where a Measured Entity attains a score in respect of any one of the criteria specified in the preferential procurement scorecard that is in excess of the corresponding Weighting points, then that Measured Enterprise shall only be entitled to the corresponding Weighting points.

6.2 All procurement of goods and services by the Measured Entity, other than such portion specifically excluded in terms of this statement, is to be included in the calculation of Total Measured Procurement Spend of the Measured Entity.

6.3 Where a Measured Entity can demonstrate that it procures goods and services directly from a Supplier which is also a recipient of enterprise development contributions to BEE made by the Measured Entity and which are recognized in terms of any statement in Code 600, all BEE Procurement Spend from that Supplier shall be multiplied by a factor of 1.2 when calculating the BEE Procurement Spend of the Measured Entity.

## 7 TOTAL MEASURED PROCUREMENT SPEND

7.1 Save as provided elsewhere in this paragraph, the following are considered to be Procurement Items:

7.1.1 all goods and services procured that comprise the cost of sales of the Measured Entity,

7.1.2 all goods and services procured that comprise the operational expenditure of the Measured Entity;

7.1.3 all capital expenditure incurred by the Measured Entity;

7.1.4 all goods and services procured from organs of state and public entities;

7.1.5 all goods and services procured from suppliers that enjoy a monopolistic position;

7.1.6 all 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 all 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 all goods and services procured from a non-South African source and all imported goods and services procured; and

7.1.10 all 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.

7.2 Notwithstanding the provisions of paragraph 7.1, the following list represents the only permissible exclusions from the Procurement Items in paragraph 7.1 in the calculation

of Total 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 authorised to impose such tax or levy. For the avoidance of doubt, any rates imposed by a municipality or other local government falls within this exclusion;

7.2.2 any amount payable to an employee as an element of their basic salary or wage. In this regard:

7.2.2.1 any contribution made by an employer to any pension fund, provident fund or other post retirement funding scheme; or

7.2.2.2 any amount contributed towards a medical aid or insurance product

on behalf of the employers employees must be included within Total Measured Procurement Spend. Where the administrators of such pension funds, provident funds, other post retirement funding schemes, medical aid schemes or insurance products are able to distinguish between that portion of such contributions which relate to fund management costs and the remainder of such contributions, only that portion that relates to fund management costs will be included in the calculation of Total Measured Procurement Spend;

7.2.3 any emolument or similar payment paid to a director of a Measured Entity;

7.2.4 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, provided that any such excluded Procurement Items must be included in the Total Measured Procurement Spend of the third party;

7.2.5 investments in or loans to an Associated Enterprise;

7.2.6 investments in or loans qualifying for recognition under any statement under Code 600;

7.2.7 donations, investments or loans qualifying for recognition under any statement under Code 700; any

7.2.8 subject to a maximum level of exclusion of which is by value equivalent to 25% of Total Procurement after exclusion of the items in paragraphs 7.2.1 to 7.2.7, the following imported goods and services:

7.2.8.1 imported capital goods or components for value-added production in South Africa provided that:

7.2.8.1.1 there is no existing local production of such capital goods or components;  
and

7.2.8.1.2 the importation of such capital goods or components facilitates further value-added production within South Africa;

7.2.8.2 imported goods and services other than as contemplated in paragraph 7.2.8.1 if there is no local production of such goods or services. For the avoidance of uncertainty, the following cannot be the sole grounds for exclusion of imported goods and services from Total Procurement Spend:

7.2.8.2.1 where the only difference between the imported goods or services and the locally produced goods or services is cost;

7.2.8.2.2 where the imported goods or services carry a brand different to the locally produced goods or services; or

7.2.8.2.3 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.

7.3 Notwithstanding the foregoing, where the Measured Entity procures services from a municipality or other local government and that municipality or other local government:

7.3.1 is itself the primary supplier of the services, such Procurement Items will be included in BEE Procurement Spend at the BEE Recognition Level of the municipality or other local government in question; and

7.3.2 procures that service from another primary Supplier, such Procurement Items will

be included in BEE Procurement Spend at the BEE Recognition Level of the primary Supplier of the services in question.

## 8 MEASUREMENT OF BEE PROCUREMENT SPEND

8.1 BEE Procurement Spend is calculated as the sum of the value of the Procurement Items not excluded in terms of paragraph 7.2 multiplied by the BEE Procurement Recognition Level 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 not excluded in accordance with paragraph 7.2

**B** is the value of Procurement Items not excluded in terms of paragraph 7.2 Procured from each Supplier of the Measured Entity

**C** is the BEE Procurement Recognition Level 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 each criteria in paragraphs 5.1.1, 5.1.2, 5.1.3 for the Measured Entity.

**B** is the total BEE Procurement Spend of the Measured Entity calculated in terms of paragraph 8.2 as a percentage of Total Measured Procurement Spend of that Measured Entity

**C** is the compliance target for each criteria specified in paragraphs 5.1.1, 5.1.2, 5.1.3

**D** is the Weighting points allocated to each criteria specified in paragraphs 5.1.1, 5.1.2, 5.1.3