

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NO. 3978

20 October 2023

MR. DEAN MACPHERSON, MP

PUBLICATION FOR PUBLIC COMMENT

THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK

AMENDMENT BILL, 2023

Mr Dean Macpherson, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Preferential Procurement Policy Framework Amendment Bill, 2023, (“the draft Bill”) in Parliament, and hereby publishes the attached draft Bill for public comment in terms of Rule 276(1)(c) of the Rules of the National Assembly (9th Edition) and section 154(2) of the Constitution of the Republic of South Africa, 1996.

Mr Dean Macpherson, MP previously published an explanatory summary of the Bill in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition) in Government Gazette No.46242 of 14 April 2022.

Organised local government, municipalities, interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to the Speaker, PO Box 15, Cape Town, 8000; or emailed to speaker@parliament.gov.za and copied to legislation@da.org.za.

REPUBLIC OF SOUTH AFRICA

PREFERENTIAL PROCUREMENT POLICY FRAMEWORK AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76 Bill); prior notice of its
introduction together with an explanatory summary of Bill published in Government Gazette*

No. 46242 of 14 April 2023)

(The English text is the official text of the bill)

(Mr.D. Macpherson, MP)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Preferential Procurement Policy Framework Act, 2000, so as to delete obsolete Roman numberings and to add a definition; to delete the obligation on an organ of state to follow a preferential point system when determining its preferential procurement policy and to replace it with a discretionary power; to delete the references to the maximum amount of points that may be allocated in instances where either a contract has a Rand value above, equal or below a prescribed amount; to provide that the achievement of specific goals may constitute a tiebreaker mechanism or constitute a maximum of 10 or 20 points, depending on the circumstances; to repeal the reference to what the specific goals may include and to replace it with the utilisation of Sustainable Development Goals as a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution; to delete the option that specific goals may include the implementation of the Reconstruction and Development Programme; to substitute the Minister's discretion to make regulations with an obligation to do so, including to clarify the framework of utilising Sustainable Development Goals; to provide that draft regulations must be submitted to the National Assembly; to repeal the Broad-Based Black Economic Empowerment Act, 2003 as well as references to that Act wherever it appears in other legislation; to provide for transitional arrangements to deal with the repeal of the Broad-Based Blank Economic Empowerment Act and to provide for matters connected therewith.

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

Amendment of section 2 of Act 5 of 2000

1. Section 1 of the Preferential Procurement Policy Framework Act, 2000 (hereinafter referred to as the “principal Act”), is hereby amended—

- (a) by the deletion of the Roman numerals before and after each definition; and
- (b) by the insertion after the definition of “prescribed” of the following definition:
““Sustainable Development Goals” means the goals referred to in section 2(1)(d); and”.

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:

“(a) A preference point system **[must]** may be followed;

- (b) (i) for contracts with a Rand value above a prescribed amount **[a maximum of 10 points may be allocated for specific goals as contemplated in paragraph (d)]** the achievement of specific goals as outlined in paragraph (d) may constitute a tiebreaker mechanism or constitute a maximum of 10 points [provided]; Provided that the lowest acceptable tender scores 90 points for price;
- (ii) for contracts with a Rand value equal to or below a prescribed amount **[a maximum of 20 points may be allocated for specific goals as contemplated in paragraph (d)]** the achievement of specific goals as outlined in paragraph (d) may constitute a tiebreaker mechanism or constitute a maximum of 20 points

[provided]; Provided that the lowest acceptable tender scores 80 points for price;” and

(b) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) the specific goals may include [—

(i) **contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;**

(ii) **implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette 16085 dated 23 November 1994]** contributions made towards the achievement of the following Sustainable Development Goals:

(aa) No poverty;

(bb) zero hunger;

(cc) good health and well-being;

(dd) quality education;

(ee) gender equality;

(ff) clean water and sanitation;

(gg) affordable and clean energy;

(hh) decent work and economic growth;

(ii) industry, innovation and infrastructure;

(jj) reduced inequalities;

(kk) sustainable cities and communities;

(ll) responsible consumption and production;

(mm) climate action;

(nn) life below water;

(oo) life on land;

(pp) peace, justice and strong institutions; and

(qq) partnerships for the goals contemplated in items (aa) to (pp);”.

Amendment of section 5 of Act 5 of 2000

3. Section 5 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Minister [**may**] must make regulations regarding any matter that may be necessary or expedient to prescribe in order to achieve the objects of this Act[.], including—

(a) details of what will constitute a contribution towards the achievement of a Sustainable Development Goal; and

(b) a framework outlining how contributions made towards the achievement of Sustainable Development Goals are to be measured and points allocated.”; and

(b) by the insertion after subsection (1) of the following subsection:

“(1A) Any regulation or notice issued by the Minister in terms of this Act must be tabled in the National Assembly for consideration prior to publication or gazetting.”.

Repeal and amendment of laws

4. The Acts referred to in the first and second columns of the Schedule are repealed or amended to the extent specified in the third column of that schedule.

Transitional provisions

5. (1) Notwithstanding section 4, the Minister and the Commission referred to in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) must, within three months of the commencement of this Amendment Act, conduct and complete an analysis of all primary and secondary legislation, code, policy or similar measure developed, which refers to or is issued in terms of the Broad-Based Black Economic Empowerment Act, 2003.

(2) The Minister must table a report on the analysis contemplated in subsections (1) in the National Assembly within 30 days after the finalisation of the analysis.

(3) After the lapse of 12 months from the commencement of this Amendment Act—
(a) the Minister; or
(b) the relevant minister responsible for the administration of any of the primary legislation, secondary legislation or code, policy or similar measure contemplated in subsection (1),
respectively, must, with the introduction of any new primary legislation or secondary legislation, propose the repeal of any reference to the Broad-Based Black Economic Empowerment Act, 2003 in any such primary legislation, secondary legislation or code or similar measure or replace it with the Sustainable Development Goals where appropriate to do so.

Short title and commencement

6. This Act is called the Preferential Procurement Policy Framework Amendment Act, 2023, and comes into operation on a date fixed by the President by Proclamation in the *Gazette*.