

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA**NOTICE 3559 OF 2025****MR M. CUTHBERT, MP****NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBER'S BILL
AND INVITATION FOR COMMENT ON THE DRAFT PUBLIC
PROCUREMENT AMENDMENT BILL, 2025**

Mr M. Cuthbert, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996 ("Constitution"), intends to introduce the Public Procurement Amendment Bill, 2025 ("draft Bill"), in Parliament. An explanatory summary of the draft Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

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.

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.

The Public Procurement Act, 2024 (Act No. 28 of 2024) ("principal Act"), gives effect to section 217(2) of the 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.

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.

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.

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 majority of South Africans.

The draft Bill seeks to amend the principal Act, so as to make provision for procuring institutions to develop and implement public procurement policies, in terms of section 217(2) of the Constitution, which also contribute toward the achievement of the Sustainable Development Goals as adopted by the United Nations in 2015 ("SDGs").

The draft 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 draft 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.

The draft Bill further proposes the repeal of the provisions of the principal Act 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 draft Bill seeks to expand the qualification criteria for the appointment of a person as a member of the Public Procurement 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.

The draft 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.

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, P O Box 15 Cape Town 8000, or emailed to speaker@parliament.gov.za and copied to legislation@da.org.za.

Copies of the draft Bill may be obtained by emailing legislation@da.org.za.