

PUBLIC PROCUREMENT & HUMAN RIGHTS IN SOUTH AFRICA

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AFRICAN PROCUREMENT LAW UNIT

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

217 Procurement

(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for-

- (a) categories of preference in the allocation of contracts; and
- (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

(3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented

Preferential Procurement Policy Framework Act of 2000

Broad-based Black Economic Empowerment status level

- Ownership,
- Management Control,
- Employment Equity,
- Skills Development,
- Preferential Procurement,
- Enterprise Development
- Socio-Economic Development and Sector Specific Contributions.

Preferential procurement

Preferential Procurement Regulations, 2017

Pre-qualification: set-asides

- B-BBEE status level
- QSE/EME (= SMMEs)
- Subcontracting to
 - QSE/EME min 51% black ownership, youth, women, disabilities, rural areas, underdeveloped areas, townships, military veterans

Discretionary

Preferential procurement

Award: Price (80/90 points) + Preference (20/10 points)

BBBEE Status Level	Points 80/20	Points 90/10
1	20	10
2	18	9
3	14	6
4	12	5
5	8	4
6	6	3
7	4	2
8	2	1
none	0	0

Preferential procurement

Preferential Procurement Regulations, 2017

Mandatory subcontracting: 30% to small business which is at least 51% owned by

black people;

black people who are youth;

by black people who are women;

by black people with disabilities;

by black people living in rural or underdeveloped areas or townships;

black people who are military veterans; or

a cooperative which is at least 51 % owned by black people; or

more than one of the categories

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THANK YOU

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