



MEDIA RELEASE

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THE 2022 PPPFA REGULATIONS HAVE NOT EXEMPTED ORGANS OF STATE AND PUBLIC ENTITIES FROM IMPLEMENTING B-BBEE AS PART OF PREFERENTIAL PROCUREMENT

The B-BBEE Commission has noted the newly issued PPPFA Regulations of 2022, and confirms that the Regulations have not removed the obligation for organs of state and public entities to implement the B-BBEE Act (53 of 2003 as amended by Act 46 of 2013) and its requirements concerning preferential procurement.

The B-BBEE Act in section 10 stipulates that all organs of state and public entities apply the relevant Codes of Good Practice (the Codes) when determining a criteria for preferential procurement amongst others. Further, the B-BBEE Act permits organs of state or public entities to set B-BBEE qualification criteria for procurement and other economic activities that exceed the criteria set in the Codes through section 9 (6) of the B-BBEE Act. For example, an organ of state or public entity may therefore set the 51% qualification criteria for tenders with the permission of the Minister of Trade, Industry and Competition (**the dtic**), and the PPPFA Regulation of 2022 do not change this provision of the B-BBEE Act.

The only time that these prescripts of the B-BBEE Act may not be applied by an organ of state or public entity is when such an organ of state or public entity has been granted an exemption by the Minister of **the dtic** in terms of section 10 (2) of the B-BBEE Act, meaning that it is only under the B-BBEE Act that exemptions can be granted, and to date there is no gazette notice issued to this effect by the Minister of **the dtic**.

Thus in implementing preferential procurement, an organ of state or public entity will have to comply with both the requirements of the 2022 PPPFA Regulations and the B-BBEE Act, which means that B-BBEE criteria will still be part of the 20 and 10 points under the 80/20 and 90/10 procurement system which currently empowers organs of state and public entities to set a goal, which in this regard includes promoting access by black people and black enterprises to procurement opportunities in organs of state and public entities. There should be no conflict nor confusion in the relationship between the PPPFA with its Regulations and B-BBEE Act processes, and it should be noted that section 3 (2) of the B-BBEE Act also introduced a trumping effect in the event of conflict of legislation.

The B-BBEE Commission urges stakeholders to follow the prescripts in the B-BBEE Act in respect of measures and initiatives to advance economic transformation in a manner envisaged in the B-BBEE Act. As a public service, the B-BBEE Commission is always available to provide advice at no cost to all stakeholders, including organs of state and public entities on the application of the B-BBEE Act.

ENDS

The B-BBEE Commission was established in terms of Section 13B of the amended B-BBEE Act No 46 of 2013 effective from 6 June 2016. The Commission's mandate, amongst others, is to supervise and encourage adherence to the B-BBEE Act in the interest of the public, to promote good governance and accountability by creating an effective and efficient environment for the promotion and implementation of the objectives of broad-based black economic empowerment.

Issued by the B-BBEE Commission

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