

# Equity and Inclusion of Women-Owned Businesses in Public Procurement in South Africa

Research Report  
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## **Open Contracting Partnership 2021.**

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# Summary

South Africa's President Cyril Ramaphosa has committed to setting aside 40% of all government procurement for women-owned businesses (WOB). This report analyses the barriers and the opportunities for WOBs in the South African post-Covid-19 procurement system. In researching the report, we interviewed WOBs, procurement and supply chain managers, regulators, and other stakeholders, and we reviewed the main academic and policy literature on the inclusion of WOBs in public procurement in South Africa and beyond. The report also describes the legal and policy framework for preferential treatment in public procurement in South Africa, barriers to advocacy, and lessons from the Black Economic Empowerment framework, and it makes recommendations aimed at boosting WOBs' participation in public procurement in South Africa.

The misalignment between South Africa's economic, gender, and procurement policies and issues related to the focus on "black women" in the preferential procurement legislation is one of the policy and legal barriers. However, institutional and cultural barriers pose more of an obstacle to women's participation in procurement. Public agencies are reticent to prioritise WOBs in the absence of an explicit mandate to do so and are reluctant to favour new market entrants and small, medium, and micro-enterprises (SMMEs).

Other barriers include the gendered impact of procurement corruption, the gendered impact of Covid-19, which has terminated public contracts in sectors serviced by WOBs, high rates of gender-based violence, and the complexity and opacity of the procurement process. In addition, WOBs in South Africa face financial limitations, inadequate contractor development initiatives, and an inability of the public sector to identify WOBs in relevant sectors.

The report also finds that the historical lack of attention to women's participation in South Africa's procurement system, and the lack of disaggregated data on preferential and gendered contracts, has made it difficult to understand the extent of women's participation and the nature of required policy interventions.

With the government's current drafting of regulations to accompany the new Public Procurement Bill, there is an immediate opportunity for reform. While longstanding challenges affecting South Africa's procurement system more generally need to be addressed in the longer term, increasing WOB's participation in procurement is a key and urgent priority to release the country's social and economic potential.

Our report makes the following key recommendations.<sup>1</sup>

1. The South African government should create **a comprehensive policy and regulations to implement gender-responsive procurement**, setting out objectives and targets including mandatory requirements for gender inclusion. It should provide direction on how these targets can be met and guidance on implementation, including implementation of the President's 40% target for WOB participation. Possible measures include requiring subcontracts to be offered to WOBs; using gender as a tie-breaker between equally qualified bidders; reserving contracts under certain thresholds to WOBs; providing for

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<sup>1</sup> For the recommendations in full, see section 3.

direct women's economic empowerment scores, separate from the Black Economic Empowerment score; including gender as a sub-criterion when evaluating bid quality; and requiring contract holders to take the gender perspective into account when executing commissioned tasks.

2. The government should incorporate **an inclusive definition of WOBs** covering all women, in line with the International Organization for Standardization's International Workshop Agreement definition (IWA 34, 2021). The racial economic empowerment provisions should give further preferences to black WOBs without excluding non-black WOBs from the preferential framework.
3. The government should implement **measures to address transparency, complexity, capacity, and accessibility concerns**. These should include publishing collated data on gendered procurement at departmental, local, provincial, and national levels in an accessible format. Central Supplier Database procurement information should be disaggregated by gender and searchable by public buyers for WOBs in a particular sector. Municipalities should use gender-disaggregated statistics for planning and service delivery.
4. South African government entities should adopt a more integrated and long-term approach **to the support and development of WOBs**, including training for business owners and employees focused on "soft" skills, such as personal initiative training. The government should establish a one stop shop where WOBs can obtain advice on construction, goods, and services procurement, plus assistance to simplify the contractor registration process and help for informal WOBs to become formalised. The government should develop a policy for improving WOBs' business competitiveness and providing finance to WOBs, including preferential banking terms and tax relief.
5. South Africa needs an **advocacy and awareness campaign** to promote public understanding of the benefits of gender-inclusive procurement, especially at the local level, and to drive cultural change in how the public and private sectors think about gender-based procurement and in the way stakeholders operate.

# Introduction

Government procurement in South Africa is big business, and the government spends close to R1.5 trillion (US\$94 billion) a year on goods, services, and construction (Fourie and Malan, 2020). At present only between 1% and 6% of this spend ends up with women-owned businesses (WOBs), despite the fact that women make up 51.2% of the population and own between 19% to 31% of businesses (Mastercard, 2020). The current situation is hardly fair or inclusive and has an impact on the survival of WOBs and the economic empowerment of women and families.

According to Statistics South Africa, 41.2% of the country's households are headed by women, and 42% of children are raised by single mothers. The lack of public support for women is thus detrimental to the welfare of these children and entrenches societal poverty.

In the area of public procurement, South African government policies and programmes do not promote gender mainstreaming. Instead they exacerbate inequalities between women and men due to a lack of focus and of prioritisation of gender issues and inattention to understanding the needs of WOBs.

## Defining women-owned (and women-led) businesses

South Africa does not define a WOB, but its procurement legislation grants preferences to businesses that are at least 51% owned by black women. There is at present no globally accepted definition of a WOB. Many countries follow the lead of the US, which defines a women's business enterprise as one that is 51% owned, managed, and controlled by a woman who is a US citizen or permanent resident. Cultural problems with the focus on 51% ownership were highlighted by the International Trade Centre in its *Technical Note on Definitions for Women Owned Businesses*.<sup>2</sup>

The International Organization for Standardization has developed an International Workshop Agreement on the definition of women's entrepreneurship.<sup>3</sup> This defines a WOB as one that is "more than 50% owned by one or more women, whose management and control lie with one or more women, where a woman is a signatory of the business's legal documents and financial accounts, and which is operated independently from businesses that are not owned by women". The International Workshop Agreement defines management as the "ability to direct basic functions and day-to-day activities of the enterprise, including, but not limited to, signature responsibility for insurance and/or bonds, investments, the ability to sign payroll checks and letters of credit, [and] the authority to negotiate contracts and financial services". Control is defined as "power, as evidenced by the governance documents when applicable, to direct or cause the direction of the management or policies and

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<sup>2</sup> [International Trade Centre, 2020](#)

<sup>3</sup> [International Organization for Standardization, 2021](#)

the ability to make decisions on strategy and the direction of the enterprise without any provisions which restrict the ability of the woman/women from exercising this power”.

The Open Contracting Partnership, in its flagship report *Towards Gender Balance in Public Procurement*, has adopted the following definition of women-led business, to draw attention to the importance of the decision-making influence of women within a firm:

- ≥51% ownership/stake by a woman/women; or
- b) ≥1 woman as CEO/COO (president/vice president); or
- c) women sole-proprietors.<sup>4</sup>

The imperative for gender equity in procurement stems from the fact that women comprise half the human resources of most countries, and economies and societies do better when women’s capacities are fully utilised (Basheka, 2018). It is also a moral imperative, because women have the right to social and economic development, and public procurement is a key policy tool to advance social and economic goals including gender equality (Basheka, 2018).

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*As leaders representing leading economic institutions, we share this urgent message: to rebuild our global economy and improve the lives of all people, governments must prioritise gender equality in their economic recovery strategies.*<sup>5</sup>

The inclusion of WOBs in procurement is a crucial means to advance women’s rights in local, national, and international economies, as noted by the UN High-Level Panel on Women’s Economic Empowerment and the Open Contracting Partnership (UN Women, 2017a; Open Contracting Partnership, 2020). Women are key community actors and tend to reinvest their profits in their families and communities (OECD/DAC, 2010), benefiting communities and alleviating poverty. WOBs also often partner with other women, increasing the gendered impact of support to WOBs. In addition, research indicates that there are significant growth benefits when small, medium, and micro-enterprises (SMMEs) and WOBs obtain public contracts (McGann and Ali, 2021), and there is a relationship between gender equality and domestic competitiveness (Lopez-Claros et al., 2020). Globally, the international community and the development agenda have recognised the importance of gender equality in public procurement.

<sup>4</sup> [Open Contracting Partnership, 2020](#)

<sup>5</sup> Kristalina Georgieva (International Monetary Fund), Christine Lagarde (European Central Bank), Ursula von der Leyen (European Commission), Ngozi Okonjo-Iweala (World Trade Organization), Baroness Minouche Shafik (London School of Economics and Political Science), Vera Songwe (UN Economic Commission for Africa), [“Statement on gender equality”](#), June 2021

Gender-responsive procurement is extremely limited in South Africa in terms of the WOBs that obtain public contracts and the impact of such contracts on women's empowerment. The country's preferential procurement regulations permit contracting authorities to award preference to businesses from designated groups including women, black people, and small enterprises. The regulations specifically permit contracting authorities to limit a call for tenders to companies that are 51% owned by black women, who are considered a subset of "black people".<sup>6</sup> Black people are defined as

"... Africans, Coloureds and Indians –

(a) who are citizens of the Republic of South Africa by birth or descent; or

(b) who became citizens of the Republic of South Africa by naturalisation –

(i) before 27 April 1994; or

(ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date."<sup>7</sup>

This definition is restrictive because it excludes South African citizens who became naturalised after 1994 and would not have been entitled to be naturalised before 1994. It also excludes non-South Africans from being considered "black" for all official purposes. To put this into context, a black woman who acquired citizenship by naturalisation in 1999 will not qualify for preferential contracts under this section, as she does not meet the statutory definition of "black".

The government's attempts to redress the legacies of apartheid by favouring black South Africans in public procurement has led to a strained definition of "women" that excludes white South African women, all women who became naturalised after 1994, and black non-South African women. This definition severely limits the pool of WOBs that may qualify for preferential contracts. Further, the black South African WOBs that do qualify for preferential contracts are not in any way preferred over the other categories of black people: black men, black youth, black people with disabilities, black people living in rural areas or townships, and black military veterans.

Apart from the legal barriers, and the reticence of officials to engage in conduct that is not expressly required by law by intentionally preferring WOBs, other structural, institutional, and cultural barriers limit women's participation in the procurement system. Added to these is the corruption that bedevils public procurement, and the gendered effect of this corruption, which disproportionately hurts women (Boehm and Sierra, 2015), as well as the disproportionate impact of Covid-19 on WOBs. Further, existing data on contract awards to WOBs in South Africa is extremely limited, and where the data exists, the information on preferential contract awards is not sufficiently disaggregated for policy-makers to track the nature, impact, or success of contracts awarded to WOBs or to understand what additional interventions are needed.

The above situation persists despite recent international measures and research designed to foster and advocate the inclusion of WOBs in public procurement and global supply chains.

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<sup>6</sup> Broad-Based Black Economic Empowerment Act 2003 as amended, section 1.

<sup>7</sup> Preferential Procurement Regulations 2017, regulation 4.

Such measures and research include the Women’s Empowerment Principles,<sup>8</sup> UN Women’s Corporate Guide to Gender-Responsive Procurement,<sup>9</sup> and research on gender-responsive procurement by the Open Contracting Partnership,<sup>10</sup> the UK Department for International Development,<sup>11</sup> and Chatham House.<sup>12</sup> Our research is situated within this international context, and in the national context of South African President Ramaphosa’s 2020 commitment to increase women’s participation in public procurement to 40%.<sup>13</sup>

This report is comprised of six sections. Section 1 examines the legal and policy framework relevant to gender-based procurement in South Africa. Section 2 analyses current barriers to the inclusion of WOBs in public procurement, describing legal, policy, institutional, cultural, and technological barriers, and is based on interviews with relevant people in South Africa. Section 3 distils recommendations to address the barriers highlighted in section 2, while section 4 analyses obstacles to advocacy. Section 5 considers lessons on preferential procurement from the Broad-Based Black Economic Empowerment Act, and section 6 provides the report’s conclusions and highlights priorities for action.

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<sup>8</sup> [UN Women and UN Global Compact, 2011](#)

<sup>9</sup> [UN Women, 2017](#)

<sup>10</sup> [Open Contracting Partnership, 2020](#)

<sup>11</sup> [Department for International Development, 2006](#)

<sup>12</sup> [Chatham House, 2017](#)

<sup>13</sup> [The Presidency, Republic of South Africa, 2020](#)

# Methodology

The research for this report adopts an empirical and doctrinal approach.

Empirical evidence was garnered from interviews with 18 stakeholders, including two ethnically diverse and 100% women-owned businesses (WOBs) in construction and services; one head of procurement in financial services; three municipality managers; two heads of supply chain management in state-owned enterprises; one head of supply chain management in a municipality; one chief financial officer in a municipality; the head of supply chain management in a provincial education department; an official in the National Treasury and another in the Commission on Gender Equality; officials working with international and national intergovernmental and non-governmental organisations such as UN Women and Corruption Watch; an official working with a bilateral partner; and a board member of the South African Production and Inventory Control Society, which is the country's professional body for supply chain management.

These interviews with decision-makers, regulators, system users, and others helped elucidate the structural barriers to WOBs in public procurement and the cultural and institutional factors that influence women's participation.

The doctrinal evidence was obtained from a contextual analysis of the policies, legislation, and literature on gendered procurement in South Africa and beyond.

# 1. The legal and policy framework for the inclusion of women-owned businesses in public procurement in South Africa

## Legal framework

The South African procurement framework is fragmented, with procurement-relevant provisions located in the Constitution, a plethora of laws, regulations, and instruction notes from the National Treasury, which serves as the procurement regulator. The Constitution provides the standard by which all procurement laws are measured and expressly supports equitable and inclusive procurement. The Constitution provides that a procurement system must be fair, equitable, transparent, competitive, and cost effective, and may include categories of preference in the allocation of contracts, to protect or advance persons disadvantaged by unfair discrimination.

The most important laws regulating procurement in South Africa are the Preferential Procurement Policy Framework Act (PPPFA)<sup>14</sup> and its regulations;<sup>15</sup> the Broad-Based Black Economic Empowerment Act (BBBEEA)<sup>16</sup> and its Codes;<sup>17</sup> the Public Finance Management Act<sup>18</sup> and its regulations;<sup>19</sup> the Municipal Finance Management Act<sup>20</sup> and its regulations;<sup>21</sup> the Construction Industry Development Board Act<sup>22</sup> and its standards;<sup>23</sup> and the Promotion of Equality and Prevention of Unfair Discrimination Act.<sup>24</sup>

In relation to gender-based procurement, relevant provisions are located in the PPPFA and its regulations. The PPPFA establishes the framework for the implementation of a preference policy in public procurement and provides that the goals of the policy may include contracting with individuals historically disadvantaged by unfair discrimination on the basis of race, *gender*, or disability. The PPPFA regulations, which give effect to the PPPFA, provide that qualifying categories of “designated groups” for preferential procurement include *women* and black people.

However, in providing for the groups that will benefit from preferences, the PPPFA regulations refer to three groups of people:

- (i) tenderers having a stipulated B-BBEE status level<sup>25</sup>

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<sup>14</sup> [PPPFA 2020](#)

<sup>15</sup> [Preferential Procurement Regulations, 2017](#)

<sup>16</sup> [BBBEEA, 2003](#)

<sup>17</sup> [BBBEE Codes of Good Practice](#)

<sup>18</sup> [Public Finance Management Act, 1999](#)

<sup>19</sup> [Treasury Regulations, 2001](#)

<sup>20</sup> [MFMA, 2003](#)

<sup>21</sup> [MFMA Regulations, 2005, 2017](#)

<sup>22</sup> [CIDB Act, 2000](#)

<sup>23</sup> [CIDB](#)

<sup>24</sup> [Promotion of Equality and Prevention of Unfair Discrimination Act, 2000](#)

<sup>25</sup> BBBEE status level is determined by five indicators: ownership, management control, skills development, enterprise and supplier development, and socioeconomic development. A firm is awarded points for each of these indicators, culminating in a categorisation as a Level 1-8 contributor, depending on the scores. Black women are given enhanced recognition and are required to form between 40% and 50% of the beneficiaries of the indicators.

- (ii) an Exempted Micro-Enterprise (EME)<sup>26</sup> or a Qualifying Small Business Enterprise (QSE)<sup>27</sup>
- (iii) and a contractor subcontracting at least 30% of the contract value to an EME or QSE, or an EME or QSE which is at least 51% owned by black people, including black women.

In addition, the PPPFA regulations permit subcontracting of up to 25% of the contract value. Subcontracting of more than 25% of the contract value is permitted only if the subcontractor has an equal or higher BBBEE status level than the main contractor, or if the subcontractor is an EME. This means that, while preferences in theory are available for women under the PPPFA, the regulations only make explicit provision only for black women-owned businesses (WOBs). The definition of black woman, as previously noted, is restrictive in excluding white South African women, all black South African women who became naturalised after 1994 and would not have been entitled to naturalisation before 1994, and black non-South African women. However, non-black WOBs will still have access to preferential procurement if they qualify as an EME or QSE, have a stipulated BBBEE status level, or are included as a subcontractor.

There is thus a gap in the legislation that does not cater for WOBs that do not have a BBBEE scorecard and are not EMEs or QSEs. So a WOB that has been in operation for more than a year but does not have an adequate BBBEE status level does not qualify for preferential treatment. South African women of all races and ethnicities as a broad category are therefore not explicitly preferred.

This situation persists despite the constitutional imperatives on fairness and equity in procurement and the Promotion of Equality and Prevention of Unfair Discrimination Act. The latter Act prohibits the denial of access to opportunities for women, including contractual opportunities,<sup>28</sup> and it requires South Africans to recognise the existence of systemic discrimination and inequality in the area of race, brought about by colonialism, apartheid, and patriarchy.<sup>29</sup> Under this Act, government ministers are required to formulate plans for achieving equality in their areas of responsibility.<sup>30</sup> This has clearly not been done in the area of public procurement.

## Policy framework

The South African government has issued a gender policy,<sup>31</sup> as have a number of provinces and municipalities. While these policies broadly advocate increasing women's participation in public procurement, there is no formalised *procurement* policy focused on increasing women's access. The 1997 Green Paper on Public Sector Procurement Reform highlighted the need for affirmative action to address the deliberate marginalisation of women from economic, political, and social opportunities and to promote WOBs' access to, and participation in, public

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<sup>26</sup> A firm with a turnover of less than R10 million (US\$0.65 million) that has been operating for less than a year and is not judged on its BBBEE scorecard as it automatically qualifies for a BBBEE status level of 1-4.

<sup>27</sup> A firm with a turnover of R10 to R50 million (US\$0.65 to US\$3.25 million), which is judged on its BBBEE scorecard.

<sup>28</sup> Section 8.

<sup>29</sup> Section 4.

<sup>30</sup> Sections 24 (4) and 26.

<sup>31</sup> [National Policy Framework on Women's Empowerment and Gender Equality, 2000](#)

procurement. Yet no policy documents in the last 24 years have restated this earlier commitment to gendered procurement.

The closest to a policy articulation in favour of WOBs' participation in public procurement is a public statement by President Cyril Ramaphosa on the occasion of South Africa's National Women's Day on 9 August 2020. In the statement, President Ramaphosa committed to "a new social compact with the women of this country" and to set aside 40% of procurement contracts to WOBs, with the expectation that government departments would monitor and report on how many women have participated in each public procurement process and a requirement for them to "develop clear plans on how they will broaden women's participation over the next 12 months" (to August 2021).<sup>32</sup> However, up till September 2021, neither the National Treasury nor the Office of the Chief Procurement Officer have issued any document on how the increase in women's participation will be implemented or achieved, and there is no indication that they intend to do so.

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*The proclamation by the President is very much appreciated. The unfortunate part is that the only provision or legislation applicable is in terms of the PPPFA; there is absolutely no other legislation that allows us to implement preference for women. – National Treasury official*

At the provincial level, most supply chain management policies in the various provinces merely restate the provisions of the PPPFA regulations and do not prioritise procurement by WOBs in an intentional way.<sup>33</sup> Others include a commitment to the economic development of WOBs but do not articulate how this will be achieved.<sup>34</sup>

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<sup>32</sup> [The Presidency, Republic of South Africa, 2020](#)

<sup>33</sup> [For example, Supply Chain Management Policy, City of Cape Town](#)

<sup>34</sup> [For example, Supply Chain Management Policy, City of Johannesburg](#)

## 2. Current barriers to the inclusion of women-owned businesses in public procurement

### Legal, policy, and institutional barriers

At present, little is being done in South Africa within the narrow confines of the current legal framework discussed in section 1 to promote the inclusion of women-owned businesses (WOBs) in procurement. This is evidenced by WOBs' low levels of participation in procurement, stated to be 3% by the Commission for Gender Equality.<sup>35</sup>

The lack of express legal provisions on gendered procurement in the Preferential Procurement Policy Framework Act (PPPFA) that are not related to Broad-Based Black Economic Empowerment (BBBEE) has led to a reluctance on the part of procurement officials to advance an agenda that is not expressly required by law.



*There's nothing in particular, both in law and in our approach, that would favour a woman in particular. Until the law is very clearly written about what can be done for women in procurement, municipalities, especially in the Western Cape, will not move to do anything that may put them in jeopardy to audit outcomes. –  
Municipal Director of Strategic Support Services*

In 2013, the Women's Empowerment and Gender Equality Bill was introduced to Parliament. This would have put an obligation on the public sector to "increase access to financing, procurement, land rights, skills development ... and ... compile such data relating to economic empowerment of women as may be prescribed".<sup>36</sup> This Bill never became law, and South Africa missed a chance to provide a clear legal framework for the promotion of WOBs in public procurement.

The focus on price as the main criterion for evaluating procurement contracts under the PPPFA may in practice exclude small WOBs, which may be unable to compete with larger firms that can harness economies of scale. The move towards aggregation using transversal contracts further locks out small, medium, and micro-enterprises (SMMEs) and WOBs, as these contracts temporarily "close the market" for the duration.

Institutionally, there is also a reticence and even a fear in the highly regulated procurement environment to engage in conduct not expressly required by law by intentionally preferring WOBs. The absence of a clear legislative mandate has thus created an unwillingness to push the narrow boundaries of the current preferential procurement laws in favour of women.

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<sup>35</sup> [Commission for Gender Equality, Gender Transformation on Procurement 2018/2019](#)

<sup>36</sup> Section 10.

Because of South Africa's apartheid history, race trumps gender in the procurement system. In our interviews with stakeholders, both public and private sector participants indicated that there would be no changes in favour of WOBs in procurement unless they were legislated for. A municipality manager interviewed indicated that their municipality would not do anything that would compromise getting a clean audit from the Auditor-General, and a head of procurement at a state-owned enterprise indicated that the agency would not do anything that could lead to a negative audit, which could affect individual careers, and that fear will keep leaders from being "radical" about WOBs. The public sector interviews also highlighted that there are no plans to take measures to prioritise WOBs based on the 2020 presidential statement.

There is also a tension between regulatory compliance and sustainability concerns, including gender in public procurement. Some interviewees believed that preferring WOBs would be a breach of the requirements for a fair procurement process in section 217 of the Constitution, which states: "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**" (emphasis added).

This is an inaccurate but seemingly widely held belief. The head of supply chain management in a small municipality indicated that they lacked the appetite to prefer WOBs as they felt they should procure so that all groups in the community would benefit. All the public sector interviewees indicated that they do not intentionally prioritise or favour women but instead use the BBBEE scorecards to determine which businesses best qualify for the award of a tender.

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*As a municipality, we don't have a big appetite to give preference for women... as part of the BEE, as we felt that we are working for the community, and we want to give everybody the same opportunity to do business with the municipality. – Municipal Head of Supply Chain Management*

Although under the BBBEE scorecards WOBs will score higher points, price, quality, and ability to deliver are the primary determinants in the evaluation of tenders, and there is no intentional prioritisation of women or even recognition that this is important. This has meant that the award of public contracts to WOBs has remained low at between 3% and 6% of spend in the municipalities where we interviewed officials and that had collected this data.

There is also evidence from interviews that municipal policy priorities differ from national priorities, and that municipal priorities directed at purchasing from local suppliers (even if they are not the most cost effective) take precedence over gender procurement issues. Gender-responsive procurement is also hampered by a reticence to take a risk on new suppliers, because of past issues with non-delivery.

“ Municipalities are less and less willing to take a risk on new service providers ... We don't want to repeat the procurement process, because it is lengthy, and you don't want to waste money on a service provider where they are learning on the job that you've given them. – Municipality manager

As discussed above, there is no mandatory policy to guide officials in pursuit of gendered procurement. Although the BBBEE policy grants higher scores to WOBs,<sup>37</sup> the scores and preferences granted are not large enough to displace price competitiveness. Thus the 10 or 20 points preference out of the maximum 100 points does not sufficiently level the playing field for WOBs. However, there are pockets of excellence in the public sector, and the South African National Roads Agency currently has a transformation policy that advances gender-inclusive procurement. Some municipalities also have a contractor development policy that requires the subcontracting of construction contracts over certain thresholds to WOBs and to other target groups.

Existing gender policies in South Africa are vague and do not provide for tracking and measurement of implementation. There is an absence of standardised targets for gender-based procurement and of a homogeneous monitoring framework to track contracts awarded to WOBs, and a further lack of consequences for not meeting targets (Basheka, 2018). The opacity and ambiguities inherent in gender equality objectives and institutional resistance limit the efficacy of such policies (Mergaert, 2012; Callerstig, 2014).

Gender policies, in addition, do not mandate the representation of women in all sectors of society, limiting their coherence and effectiveness. And interventions that address gender procurement are often sporadic and reactionary. Our interviews revealed that, where there has been success in increasing the participation of WOBs in procurement, this has been as a result of long-term sustained intervention at the municipal level.

The idea of gender mainstreaming in the public sector is relatively new, with the first “gender responsive planning, budgeting, monitoring, evaluation and auditing framework” developed only in October 2020. This framework aims to put women’s empowerment at the centre of public policy and resource allocation.

Gender mainstreaming in procurement should be part of a broader approach to gender-responsive public financial management, since procurement does not happen in isolation. There needs to be a prioritisation of gender issues among competing policy agendas, together with “rethinking and re-articulating policy ends and means from a gender perspective” (Jahan, 1996). A 2018 examination of the South African government’s monitoring

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<sup>37</sup> A 100% owned WOB will be regarded as a BBBEE Level 1 contributor and get the maximum number of preference points available in a contract, which is 10 points out of 100 for contracts under R50 million (US\$3.25 million) and 20 points out of 100 for contracts over R50 million.

and evaluation framework concluded that “gender is not mentioned in any meaningful manner in the policy framework” (Marock and Konstant, 2018).

Misalignment between gender policies and policies on procurement and economic development is a further factor. Many municipalities’ gender policies are vague on the inclusion of WOBs in local procurement, and where policies are clear on targets for WOBs there is no tracking or measurement.

In addition, local economic development plans do not address the needs of WOBs in relation to procurement. For instance, the Local Procurement Accord signed between government, business, organised labour, and social partners in 2011, which was designed to increase procurement of locally produced goods, did not cater for WOBs. Thus, stated government desires to increase the participation of WOBs in the economy through public procurement misalign with local policies on economic development. This was highlighted during interviews, with public sector participants alluding to the double-edged sword of being required to develop and support newer contractors while also being held liable through unfavourable audits and personal cost orders should these contractors fail to perform.



*There isn't a strategy alignment in terms of women-owned businesses.  
– Head of supply chain management, state-owned enterprise*

### **Lack of transparency, fairness, and information**

Transparency in public procurement is a constitutional and legal requirement in South Africa, and there are requirements for the publication of contract information, publicity for contract opportunities, and access to evaluation and adjudication information. Despite these, many WOBs find that transparency in procurement receives only lip-service, and they rarely enjoy the benefits of a fair process.

Among the causes of this situation is, first, the cultural perception propagated by patriarchal thinking that women business owners are of lesser importance, value, and agency than men (Mudau and Obadire, 2017) and can thus be given less fair treatment. Second is the general disregard of procurement law requirements by some municipalities and government departments. And third is a lack of accountability for public sector breaches of procurement law, which creates more impunity (Munzhedzi, 2016).

All the women business owners we interviewed reported that they were rarely given reasons upon request for the loss of public contracts, which is a breach of the Promotion of Administrative Justice Act. Interviewees said that there are still shortcomings in the advertisement of public contract opportunities. Some municipalities do not advertise all tender opportunities in the required medium, locking out new entrants and businesses that do not have an existing relationship with the municipality.

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*The first thing would be transparency around the procurement process, because it's always a cloak-and-dagger experience. – Private sector interviewee*

The limited access to public procurement data presents barriers to the inclusion of WOBs in a number of ways. First, there is a general lack of aggregation of all opportunities including requests for proposals across the public sector. This makes it difficult for WOBs and new entrants to participate and provides continuing advantages to informal ties within existing patronage networks.

Second, there is an almost complete lack of disaggregated procurement data or information on WOBs, which makes it difficult for public agencies to understand the extent to which WOBs participate in their supply chains and what further measures might be useful. There is also a lack of data on whether WOBs participate more as subcontractors or prime contractors. The lack of data on the numbers of WOBs and the sectors where they operate prevents public agencies from understanding market size by gender in various sectors for effective targeting of WOBs. Although there are trade associations for WOBs, many interviewees reported insufficient linkages between these associations and the public sector.

Interviews with public sector officials indicated that, in both the public and private sectors, procurement managers struggle to identify WOBs for gender-based preferences. Managers find it difficult to identify the WOBs that can address their procurement needs and often do not have the capacity to undertake market research to identify them. Interviews further revealed that, even where government departments located suitable WOBs, they did not find enough WOBs to make a significant difference to their procurement spend. This may be because local WOBs are typically small and often concentrated in a limited number of industry sectors (Open Contracting Partnership, 2020).

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*Currently one of the biggest barriers ... [is that] we don't have a big base of market intelligence, because I think for us to implement it properly, we would need to have proper market intelligence. – Head of supply chain management, state-owned enterprise*

## Bias

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*There was a discussion as to how we could use regulation specifically for women... but the idea didn't catch on. – Municipal director of strategic support services*

Interviews with women business owners highlighted that men in public leadership positions often do not see women as professionals or competent, and this affects the ability of WOBs to obtain public contracts. In our interviews we observed that male public sector leaders exhibit a gender bias that manifests as a lack of confidence in the ability of WOBs to deliver on public contracts. Gender biases in public officials involved in the adjudication of tenders will likely affect adjudication outcomes and can also shape how officials approach policy interventions and gender equality. WOBs thus face a gender penalty and struggle to win public tenders as a result of biases against them.

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*It's so difficult, because you work so hard to prove yourself, and you end up not knowing what you must do. So sometimes you do the work and send one of your male colleagues to present and the meeting goes well, because if you present the work yourself, then it is a problem. – Private sector interviewee*

These biases are reinforced against new WOBs, especially in male-dominated sectors such as construction, sanitation, and engineering services. WOBs are rarely given an opportunity to displace established male businesses, even though they might have the same level of competency and qualifications.

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*The majority of our budget is primarily infrastructure projects. And unfortunately, the construction sphere is a male-dominated area. So that's a big barrier in terms of promoting woman-owned business. – Municipal Head of supply chain management*

Our interviewees highlighted that the lack of confidence in WOBs affects their participation in public procurement and leads to WOBs being consigned to obtaining contracts in service sectors like catering, cleaning, hospitality, and small supplies, while simultaneously being locked out of more lucrative and often male-dominated industries.

“ *Women have to show double strength to make anyone believe in them. It is a mindset that has to change. There's a lack of trust in women. – Head of supply chain management, state-owned enterprise*

At the municipal level, larger contracts are in the areas of water, sanitation, electricity, construction, housing, roads, and stormwater. These are all highly male-dominated sectors, regarded as the preserve of men, with women in these sectors less likely to be taken seriously enough to be awarded public contracts. Further, policy changes at the municipal level have to be approved by councils, which are often run by men, who may not be gender conscious or fully appreciate the need for the municipality to prioritise WOBs. One interviewee highlighted the negotiation required to get their councillors to agree to the implementation of a contractor development policy.

An additional social and cultural barrier faced by South African women, which affects them in all spheres including public procurement, is gender-based violence. South Africa has high rates of gender-based violence, which creates risks for, and fears in, all South African women.<sup>38</sup> Some interviewees mentioned their fears of meeting strangers or attending meetings in unknown locations, which impacted on their mobility to pursue economic opportunities in the public and private sectors. Interviews also highlighted that WOBs seeking contracts are often intimidated by public officials, which may lead to the withdrawal of bids. Intimidatory tactics are also used to prevent women from reporting misconduct on the part of public officials.

Gender-based violence in all its forms limits women's confidence and ability to pursue entrepreneurial ventures, and it includes the absence of support or the express denial of “permission” for women to engage in business ventures.

“ *You get asked to meet somebody somewhere, because they don't want to discuss the details of the contract with you. I don't do those meetings, unless we meet at your office with the procurement team, and I bring my team. It's quite scary at times, to be honest. – Private sector interviewee*

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<sup>38</sup> See Statistics South Africa, [“Crimes against women in South Africa, an analysis of the phenomenon of GBV and femicide”](#)

## **Lack of awareness**

There is a stark lack of awareness about the need for gender-sensitive procurement, and this was seen in interviews with both male and female leaders in South Africa's public sector. Some public sector leaders interviewed also believed that a focus on women in procurement would lead to the exclusion of non-binary people. Very few leaders interviewed recognised the need for inclusive public procurement and that ensuring women's participation in the economy is important. Even fewer leaders could link the issue to South Africa's high proportion of female-headed households, child poverty, and gender-based violence. Some municipal officials interviewed stressed that they would face a backlash from their constituents if they began to favour WOBs in procurement.

Public discourse on women in South Africa focuses on gender-based violence and the representation of women in leadership, but no concerted attention is paid to women's economic empowerment in the public and private sectors (World Economic Forum, 2019).

## **Impact of corruption**

Corruption is both a human rights issue and a gender issue. The gendered impact of corruption on women has only recently begun to receive attention from academics (Fazekas et al., 2020), policy-makers, and international organisations (UN Office on Drugs and Crime, 2020). In public procurement, the impact of corruption is felt at economic, political, and social levels (Munzhedzi, 2016). Corruption affects the competitiveness of the procurement system and process, reduces trust in the system, undermines system integrity, and rewards malfeasance and unethical conduct.

South Africa has had a long battle with procurement corruption, which is exacerbated by political impunity and loss of accountability, weak governance, weakened institutions, and a constrained financial control system. Although there is no reliable data on the cost of corruption and its impact on women in South Africa, research in other jurisdictions suggests that corruption accounts for around 26% of procurement project costs (Ruiz, 2020). As with most forms of exploitation, corruption disproportionately affects vulnerable groups such as women (UN Office on Drugs and Crime, 2020).

The effect of procurement corruption on women can be seen in four areas.

First, women are more harmed by corruption as they are often perceived as easier targets in contexts where they have less socio-economic power, agency, and recourse than men (UN Office on Drugs and Crime, 2020). Interviews with WOBs highlighted that public officials were more willing to flout the rules and engage in unethical activity in dealing with WOBs, since they considered them to be of lesser importance and to have less power. Interviews also revealed that bribery and sextortion are used to limit women's access to procurement contracts. One interviewee gave anecdotes about public officials using the offer of public contracts as a predatory tactic to lure women into sexual relationships. Interviews confirmed that women business owners face sexual harassment from men in both the public and private sectors.

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*Some of the cases that have come to our attention have been about when women-owned enterprises go and bid for a tender and someone wants to have sex with them before. – International non-governmental organisation*

Second, corruption is disadvantageous to women because of gendered influences on who is included in corrupt networks that benefit the participants. Women are often excluded from these networks, and in public procurement they are locked out of the privileges granted by such networks (UN Office on Drugs and Crime, 2020). In some public agencies in South Africa there are more contract opportunities than those advertised, and in some cases clandestine unadvertised contracts are concluded with male-owned businesses in breach of the procurement regulations.

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*I struggled with the fact that men would come together over a beer, and suddenly they were a vendor. The car tracking people would go and play golf with the dealers, and suddenly they've now got the contract to do the tracking of the vehicles. We were never invited to those parties. – Private sector participant*

“Fronting”, or the exploitation of black women and WOBs to obtain the preference points needed to obtain public contracts, was also highlighted in the interviews as one of the ways South African women are disadvantaged by procurement corruption.

Third, vulnerable groups such as women and children are affected disproportionately when their access to public services such as education or health is hindered as a result of corruption and the need to pay bribes.

And fourth, some interviewees reported that they had had to walk away from signing an awarded contract when they were asked to pay a bribe prior to contract signature. WOBs thus lose out on the limited contract opportunities available to them when they do not want to be implicated in corruption. It was also suggested in interviews that WOBs may refuse to tender for public contracts because they perceive that the process will be corruptly manipulated.



*You get a call saying, 'There's seven people sitting on your adjudication committee for this tender. Can you please deposit R50k per person or R10k per person before we actually adjudicate? Because that will help you to get this tender.' This happened to me four times last year. – Private sector interviewee*

*Possibly some women-owned businesses do not want to do business with the state because it is too tough to interface where there is an entrenched culture of corruption in departments and municipalities. So they don't even put in a tender. – Non-governmental organisation*

Besides all the evidence of the benefits of gender-responsive procurement for economic development, for reducing inequalities, and for creating new markets, increasing women's participation in procurement can disrupt corruption networks and reduce the amount of corruption (UN Office on Drugs and Crime, 2020a). Yet South Africa has rarely, if ever, adopted a gendered lens to procurement contracts.

### **Impact of Covid-19**

Research by the World Bank indicates that the Covid-19 pandemic has exacerbated gender inequalities in economic opportunity in Africa (World Bank, 2020a). This is largely because many African WOBs operate in the informal sector and may not be able to access funds reserved for formalised firms to withstand the impact of the pandemic. WOBs are often also SMMEs and in the main have lacked sufficient reserve funds to overcome the effects of economic lockdowns. Across Africa, more WOBs than male-owned businesses closed as a result of the pandemic. In South Africa, 52% of WOBs reported closures compared with 36% of male-owned businesses (World Bank, 2020b; World Bank, 2020c). Data from the World Economic Forum indicates that the pandemic has increased the time needed to close the global gender gap from 99.5 years to 135.6 years, and the pandemic all but halted measures towards gender parity ("Statement on Gender Equality", 2021).

In public procurement in South Africa, Covid-19 had a mixed impact on WOBs. Interviews revealed that the pandemic had led to an embargo on non-essential services and contracts, and the subsequent lockdowns had led to the stoppage of contracts in services and hospitality sectors dominated by WOBs such as catering and cleaning. However, some new opportunities had arisen for WOBs in relation to the production of cloth face masks and personal protective equipment. Many women business owners had to suddenly balance family care requirements with their business and without support may have had to scale down or close the business. Further, many WOBs in South Africa, being informal, did not have access to the Covid-19 recovery grants available to formal businesses. Some municipality managers interviewed thought that it will be harder to prioritise WOBs due to the economic

impact of Covid-19, and that it is more important for them to focus on supporting local businesses.

### **Issues around complexity, capacity, and accessibility**

The procurement system in South Africa is unduly complex and imposes high requirements on public contractors. Bidding for public contracts is time and resource intensive, in South Africa as elsewhere, has high transaction costs, and can be extremely burdensome, even for large companies (UN Women, 2017b). Our interviews revealed that this complexity is exacerbated by the use of highly technical language and by the publication of tender opportunities in English alone. These factors have a dissuasive effect on WOBs who seek to access procurement markets.

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*We have not put in any tenders where we didn't have to pay for the documents, and sometimes it's R1,000, R2,000 or even R3,000.*

*– Private sector interviewee*

Procurement complexity affects WOBs in a number of ways. First, because many WOB are relatively new, especially in male-dominated sectors like construction and infrastructure, they may not have the capacity to compete with their male counterparts. This may result from their limited financial capacity and limited number of employees, or because of bidding requirements related to years of experience, audited financial statements, or past contractual performance. WOBs are especially less able to meet the requirements for larger public contracts in such areas as proven technical competence, financial resources, or equipment (Basheka, 2018). Many WOBs are often smaller than their male-owned counterparts, which may hamper their participation in large contracts (Basheka and Auriacombe, 2020). Research indicates too that there are “gender-based differences in terms of pursuing risk-related ventures; ... challenges relating to business start-ups; expectations regarding business performance; and performance outcomes” (Basheka and Auriacombe, 2020).

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*We understand that 70% to 80% of our budget is spent with four companies... they are our big construction companies. – Municipal director of strategic support services*

*We just tried to change the status quo because a large chunk of our budget was going to established businesses. – Head of supply chain management, state-owned enterprise*

The second way that procurement complexity affects WOBs is that, in the case of newer companies, lack of knowledge about procedures and lack of experience of the public system limit their ability to participate in public contracts (Open Contracting Partnership, 2020). As a result of limited access to opportunities, WOBs may not have the track record that public buyers require. Lack of prior opportunities to benefit from procurement contracts thus constrains new opportunities.

Third, there is a lack of aggregated information on public contracting opportunities in South Africa, and tender opportunities are not centrally warehoused but located on multiple websites. Smaller businesses that cannot afford the private databases that aggregate contract opportunities, and lack the staff to keep tabs on multiple government websites, may not be able to access all relevant contract opportunities.

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*A big issue is access to market, and when we have access to market we are killed with contract conditions that do not suit our businesses.  
– Board member of South African Inventory and Production Control Society and private supply chain management consultant*

Fourth, businesses that are not formalised are locked out of the procurement market, which requires formal business registration, evidence of registration with the South African Revenue Service, compliance with tax matters, and certification from relevant statutory bodies. Registration requirements are not in themselves negative, but they disproportionately affect the many WOBs operating in the informal sector (UN Women, 2017b). And fifth, the unfavourable payment terms of up to 30 days or more imposed by South Africa's public sector on its contractors constraints SMMEs' cash flow and impacts on the ability of women-owned SMMEs to participate in public contracts (UN Women, 2017b).

### **Lack of access to finance and contractor development programmes**

Interventions for WOBs have not been able to bridge the financing gap that WOBs face. Investors and banks in a patriarchal society are less willing to bet on women entrepreneurs because they doubt their ability to succeed (Chinomona and Maziriri, 2015). This persists despite the research indicating that closing the financing gap between men and WOBs would lead to 12% per capita growth in most countries (Deloitte and OECD Business and Industry Advisory Committee, 2015).

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*It is harder for women, especially black women, to obtain venture capital, business loans, or a line of credit. As a consequence, many SMMEs are started using personal credit cards or bootstrapped by friends and family who give an informal loan. Because not*

*everyone's friends and family have spare cash, this perpetuates how the economy is shaped. Banks are risk averse in their lending to small businesses. – Non-governmental organisation*

Our interviews revealed that WOBs have a harder time accessing finance than men, and when they do access finance, interest rates may be higher or loan values set lower. Microfinance loans also limit the size and scalability of businesses.

Tailored enabling support to assist WOBs in building capacity for trade and export readiness, scaling up business operations, and accessing new markets is not widely available in South Africa. And our interviews revealed that some existing contractor development programmes have been seen as failing because they did not seek to provide contracts to participating WOBs.

### 3. Recommendations for improving the inclusion of women-owned businesses in public procurement in South Africa

#### Addressing the policy, legal, and institutional barriers

##### Policy changes

This research has highlighted that South Africa has no overarching policy for gender-inclusive procurement, although there are broad gender policies issued by the provinces, which in some cases mention gender-based procurement. One way this can be overcome is for the Office of the Chief Procurement Officer to issue policy direction on how the President's target for women-owned businesses (WOBs) should be achieved in an adjusted time frame, and what practical measures government entities can take to implement gender-responsive procurement.

Gender responsiveness and mainstreaming in procurement should be part of a broader approach to public financial management, since procurement does not happen in isolation. Thus the government should create a comprehensive gender policy that sets out objectives and targets for gender-inclusive procurement and provides direction on how these targets can be met and guidance on implementation.

The policy on gender-inclusive procurement should provide incentives to the private sector to promote gendered procurement in their supply chains. Business policy should also focus on improving business competitiveness and providing finance to WOBs, including preferential banking terms and tax relief. A comprehensive women's economic empowerment (WEE) charter is a necessary part of gender policies, and this should contain policies for women's empowerment in both the private and public sectors. The charter should include performance targets by sector. Municipalities that struggle to award contracts to WOBs should be incentivised to do so through access to conditional grants that are released once targets are met.

##### Legal changes

One of the main priorities for increasing the participation of WOBs in public procurement in South Africa is the legal inclusion of targets, set-asides, or preferences. There is currently an opportunity for legislative reform as the National Treasury drafts regulations to accompany the draft Public Procurement Bill that is due for passage in the near future. All the stakeholders interviewed for this research indicated that government agencies were hamstrung by the absence of express and mandatory requirements for gender inclusion in the procurement system. The least disruptive way to meet this lack is to include these preferences in the regulations that will implement the provisions of the draft bill when it becomes law.

**“** *You must change the law to change the way we operate. – Municipality manager*

One area that the regulations need to address is an inclusive new definition of WOBs that covers all women, to replace the current restrictive definition under the Preferential Procurement Policy Framework Act (PPPFA). The International Organization for Standardization's International Workshop Agreement (IWA 34, 2021),<sup>39</sup> discussed above, defines a WOB as one that is "more than 50% owned by one or more women, whose management and control lie with one or more women, where a woman is a signatory of the business's legal documents and financial accounts, and which is operated independently from businesses that are not owned by women".

Among possible measures to make procurement more gender inclusive are: requiring subcontracts to be offered to WOBs; using gender as a tie-breaker between equally qualified bidders; and reserving contracts under certain thresholds to WOBs. Kenya's Access to Government Procurement Opportunities legislation exempts WOBs from bid bonds and from invoice discounting with financial institutions. All these measures reduce the barriers that WOBs face in navigating the procurement system. South Africa's new regulations could provide for direct and separate WEE scores, over and above the BBBEE score, to drive WOBs' inclusion in procurement. And its racial economic empowerment provisions could give further preferences to black WOBs without excluding non-black WOBs from the preferential framework.

Different approaches can be used to integrate gender in public sector procurement: in the selection criteria, by excluding companies on the basis of gender; through contract award criteria, by including gender as a sub-criterion when evaluating the quality of the offer; and in the contract performance conditions, through an obligation to take the gender perspective into account when executing the commissioned tasks (Decuyper, 2009). There should also be consequences for failure to comply with gender-responsive regulations, as occurs with other breaches of the procurement legislation.

## **Addressing transparency, complexity, capacity, and accessibility concerns**

### **The role of data**

To understand women's participation in procurement, we need high-quality data that indicates what sectors WOBs operate in and helps demonstrate the impact of policies and interventions aimed at women (Ruiz, 2020). This requires data on gendered procurement to be collated at departmental, local, provincial, and national level and to be published in an accessible format. Beyond the identity numbers of company directors, which are currently collected on the Central Supplier Database (CSD), procurement information should be disaggregated by gender. Public buyers should be able to search the CSD for WOBs in a particular sector, and gender markers could be used to identify which businesses in the CSD meet the WOB definition.

Beyond procurement data, gender-disaggregated statistics should be used by municipalities for planning and service delivery. Our interviews revealed that where there has been success in increasing the participation of WOBs in procurement in South Africa, this has been the result of a long-term sustained intervention at the municipal level. As a starting measure, the

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<sup>39</sup> [www.iso.org/obp/ui/#iso:std:iso:iwa:34:ed-1:v1:en](http://www.iso.org/obp/ui/#iso:std:iso:iwa:34:ed-1:v1:en)

National Treasury, as the procurement regulator, could issue guidance to government entities on measures to increase transparency and on the open data requirements.

### **Language**

The language used in procurement is often unduly technical and complex. Tender documentation should be simplified and where possible made available in languages other than English. In addition, websites, procurement information, tenders, and requests for proposals should include gender-inclusive language to reduce barriers to WOBs.

### **Training and capacity building**

Despite pockets of excellence in relation to the support and development of WOBs, our interviews revealed that South Africa needs a more integrated and long-term approach. World Bank research has highlighted that training for business owners and employees that focuses on “soft” skills, such as personal initiative training – which teaches women to be proactive and to demonstrate perseverance – may help women bounce back from the economic consequences of Covid-19. In Togo, one personal initiative training programme resulted in a 40% increase in profits for women entrepreneurs when compared to the results of traditional business training (Campos et al., 2018).

In addition, to support their access to the procurement system, WOBs need a one stop shop where they can obtain advice on construction, goods, and services procurement. This will help WOBs understand what is required to participate in public procurement and close the information asymmetry that makes the process seem distant and inaccessible. Part of this development must include assistance to simplify the contractor registration process for WOBs and to help informal WOBs become formalised. Some municipalities have a development programme that targets WOBs and require that a set percentage of contracts are subcontracted to WOBs. There also needs to be better alignment between women’s business associations and the public sector.

### **An advocacy and awareness campaign**

An advocacy and awareness campaign is needed in South Africa to promote public understanding of the imperative of gender-inclusive procurement in the public and private sectors. The campaign should relate the importance of gender-inclusive procurement to the development of local communities. Research has shown that WOBs and women often use their income and profits to build their communities, and so empowering WOBs will have a real impact on local poverty alleviation.

In view of the widespread resistance in South African municipalities to intentionally prefer WOBs in public procurement, the awareness campaign should link preferring WOBs to local purchasing requirements and highlight the relationship between buying local and buying from WOBs and the potential impact of gender-based procurement on local communities. The aim should be to drive cultural change in the way the public and private sectors think about gender-based procurement and to change the way stakeholders operate.

## Tackling corruption and promoting fairness in public procurement

Our research has revealed that WOBs face bias on the part of public sector officials and, like all other bidders, are affected by corruption in the procurement system. Increased use of technology could address both bias and corruption in public procurement. For example, the use of digital marketplaces where public agencies can make under-threshold purchases from WOBs would eliminate the biases that WOBs face from public officials and should increase the representation of WOBs in public contracts.

In some countries, public agencies are permitted to make “micro-purchases” from electronic marketplaces such as Amazon. In South Africa, electronic marketplaces like Takealot.com are used by small, medium, and micro-enterprises (SMMEs) and WOBs to access consumers; giving public agencies access to these marketplaces would connect SMMEs and WOBs to the public procurement market. Other digital platforms that seek to connect WOBs to public and private markets, such as SheTrades.com and WEConnect International, should be properly funded to ensure that WOBs in South Africa can register and link to the procurement market. Municipalities should create databases of WOBs that meet their criteria and keep these updated.

Another measure to address corruption in public procurement in South Africa would be the use of tools from the field of behavioural psychology. Anti-corruption frameworks and interventions, especially legal frameworks, have historically ignored behavioural factors such as individual bias, the pull of reciprocity, cognitive inconsistencies, unconscious moral balancing and justifications, contextual character fluidity, moral dynamism, and social factors. However, behavioural science shows us that some of the traditional steps taken to address corruption, such as limiting discretion, diffusing responsibility, and increasing and formalising controls through compliance checklists, may be counterproductive and create more corruption risks (OECD, 2018).

Evidence from behavioural psychology suggests that most people are intrinsically motivated to act ethically and that social and institutional factors may have a positive or a negative impact on this desire (Slota, 2018). The job of policy-makers is to create anti-corruption interventions that support, and that enable the institutional and societal context to support, these intrinsic motivations. Digital tools known as “nudges”, such as simple text messages, quizzes taken before work portals open, and awareness campaigns focused on the integrity risks that employees may face, can have an impact on the moral choices that public procurement officials make (Kobis et al., 2019).

## 4. Obstacles to advocacy on the inclusion of women-owned businesses in public procurement

### Knowledge and awareness

One of the challenges confronting advocacy for more gender-inclusive procurement is the lack of knowledge about the necessity for it. Many stakeholders we spoke to at municipal level did not see the necessity for gender-based procurement and would instead prefer more regulatory support for local purchasing. Advocacy on gender-inclusive procurement should therefore be integrated with advocacy on local procurement to mitigate the resistance caused by a lack of awareness and knowledge of the topic. In addition, gender-sensitive training should be an integral part of public sector education.

### Legislative obstacles

Another obstacle to advocacy on gender-inclusive procurement is the perceived lack of flexibility in South Africa's current procurement regulatory framework. The current procurement regime makes only limited provision for preferential criteria, as described above, and this is only for bidders with a stipulated Broad-Based Black Economic Empowerment (BBBEE) status level, or for Exempted Micro-Enterprises (EMEs), Qualifying Small Business Enterprises (QSEs), contractors subcontracting at least 30% of the contract value to an EME or QSE, or an EME or QSE at least 51% owned by black people, including black women. There is no flexibility to apply more than 10 or 20 points out of 100 towards these preferential criteria and no possibility to grant those points to businesses that do not meet the stipulated criteria.

In interviews with stakeholders, this concern was raised by all public sector participants as the reason why they did not and could not do more to include WOBs in public procurement. And it is certain to be raised as the main justification for the lack of gender-inclusive procurement in response to advocacy efforts.

### Lack of advocates and interest

Interviews revealed that there is a lack of interest in, and an absence of advocates for, gender-inclusive procurement. Few public sector organisations consider the lack of gender-inclusive procurement to be a problem that requires a remedy. It may prove difficult to find a suitable number of advocates in the public sector, and it may also be challenging to find advocates who are willing to keep up sustained activity on this issue, which many in the public and private sectors do not see as a priority or only pay lip-service to.

## 5. Lessons from the Broad-Based Black Economic Empowerment framework

### **Avoid restrictive definitions**

As discussed above, the BBBEE framework was instituted to create economic opportunities for historically disadvantaged individuals (HDIs) under apartheid. It instituted preferential procurement to benefit businesses defined as “black businesses” under the legislation. However, the definition of a “black” person under the BBBEE Act is restrictive and excludes some people whose ethnicity is black, such as black non-South Africans, and naturalised black South African citizens who became naturalised after 1994.

Policy and regulations on gender-responsive procurement should avoid the above pitfall and employ definitions that are inclusive and conventional. Internationally, there are definitions of gender-responsive procurement and WOBs that can be adopted by South Africa (International Trade Centre, 2014; Rimmer, 2017; UN Women, 2017b; International Organization for Standardization, IWA 34, 2021).

### **Clarify preference targets and ensure they are met**

As previously noted, South Africa’s current preferential procurement legislation limits the preferences for HDIs to a maximum of 10 to 20 out of 100 points, and these points are allocated for the contractor’s performance against indicators including black ownership, management, and control, skills development, equitable representation of black people, and investment in black-owned firms. It is thus possible for non-black businesses to qualify for these preferences if they meet some of the indicators. Besides, the limited number of points means that smaller black-owned businesses can be displaced by larger non-black-owned businesses that are more competitive on price and meet the other BBBEE indicators without having black ownership, representation, or management. This has led to a perception that the BBBEE framework has not sufficiently increased black representation in the public procurement market.

A focus on gender-responsive procurement must operate differently from the current BBBEE provisions to ensure that a higher percentage of contracts end up with WOBs. Different approaches could be adopted. First, the government should clarify whether its 2020 40% target for WOBs refers to contracts by volume or by spend. There also needs to be clarification in the new procurement regulations whether a percentage of contracts will be set aside for WOBs. This is done in other countries such as the US, which reserves 5% of its federal procurement spend for WOBs (Orser, et al., 2019), and Kenya, which reserves 30% of public contracts for preferred categories including WOBs.

South Africa’s current approach can be adapted to increase the number of preference points granted to qualifying WOBs to ensure that WOBs really are preferred in public procurement and not forced to compete with disadvantaged male groups, as is currently the case under the BBBEE framework. In addition, qualification criteria should not contain onerous conditions, such as long establishment criteria for businesses, which can prejudice the system against WOBs and SMMEs. Public sector supplier criteria must not be an obstacle to WOBs and SMMEs in procurement.

### **Avoid the pitfalls of a focus on subcontracting**

South Africa's preferential procurement regulations focus on subcontracting with emerging contractors as a means of developing these contractors. However, our interviews with WOBs revealed that this approach does not often serve WOBs, with some WOBs reporting an unwillingness on the part of main contractors to provide adequate work for them as subcontractors. Our interviews also indicated that, even when they are subcontracted, WOBs experience late or no payment for work done and unfair labour practices. Incorrect and gender-biased perceptions of the competence of WOBs have often prevented WOB subcontractors from scaling up to become prime contractors.

Future approaches to gender-responsive procurement must avoid these pitfalls and not limit or restrict WOBs' opportunities to subcontracting. Where subcontracting is used to include WOBs, public agencies must maintain oversight over both subcontracts and prime contracts.

## 6. Conclusions and priorities for action

This report has described the barriers to the inclusion of women-owned businesses (WOBs) in public procurement in South Africa. It has shown that government policy and legislation have not prioritised WOBs' inclusion in public procurement and that a range of legal, policy, cultural, and institutional barriers militate against WOBs. The impact of corruption and of Covid-19 on WOBs and the complexity of the procurement process have made it extremely difficult for WOBs to fully participate.

However, there are opportunities to redress this situation, given President Ramaphosa's 2020 statement that 40% of procurement contracts should be awarded to WOBs and that government departments should improve gender equality in procurement. Complementary and sustained action is needed on a number of fronts. As stated in the recommendations, South Africa needs legal and policy changes that provide a clear mandate for preferring WOBs in the new procurement legal framework currently in process. The country also needs sustained advocacy to address cultural and institutional resistance to gender-responsive procurement, measures to reduce the complexity of the procurement system, and capacity development programmes geared to ensuring WOBs obtain public contracts.

Because the preferential legal and policy framework does not currently support gender-based procurement, this will require advocacy to push the case for change. There is a legislative opportunity for such change as the government drafts regulations to accompany the new Public Procurement Bill, which is expected to be passed later in 2021 or early in 2022. Immediate advocacy on the imperative for including preferences for WOBs in the regulations is an urgent priority to take advantage of the incoming changes in the law.

The second priority is to address critical barriers that exclude WOBs from public procurement in South Africa. Advocacy and institutional and operational changes in the way government departments implement and manage public procurement are needed to counter the lack of transparency and to ensure there is open data in procurement and information across the public sector on the participation of WOBs. As a short-term measure, an instruction note from the National Treasury, as the procurement regulator, could provide guidance to government entities on measures to increase transparency and the necessary open data requirements.

Longstanding barriers that affect the procurement system more generally will need to be addressed in the longer term, such as South Africa's high levels of gender-based discrimination and widespread corruption in public procurement.

The moral and economic rationale for increasing the participation of WOBs in public procurement in South Africa is clear and beyond argument. What is needed is a strong and unambiguous public policy and legal focus on this issue, especially as South Africa moves into recovery from the Covid-19 pandemic. To quote a 2021 joint statement by a prominent international group of women leaders of economic institutions:

“The risks of inaction cannot be overstated. Refusing to economically support women and girls will not just set this recovery back, but it will leave our economies more vulnerable to future shocks. Only if we seize this opportunity to prioritise gender equality can we build a more prosperous world for all.”<sup>40</sup>

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<sup>40</sup> Kristalina Georgieva (International Monetary Fund), Christine Lagarde (European Central Bank), Ursula von der Leyen (European Commission), Ngozi Okonjo-Iweala (World Trade Organization), Baroness Minouche Shafik (London School of Economics and Political Science), Vera Songwe (UN Economic Commission for Africa), [“Statement on gender equality”](#), June 2021

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