The state of preferential procurement in the construction sector with specific reference to the Department of Public Works (DPW), Pretoria

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Executive Summary

This research seeks to explore how the Preferential Point Scoring System has impacted on the construction sector with particular reference to the Department of Public Works. There is little empirical research being undertaken on the impact of the preferential point scoring system and thus there is a need for research in this field, to contribute to the knowledge of how to plan and implement policies in the public sector. It is our contention that the implementation of the laws and regulations is deficient, including the manner in which the allocation of points is awarded. This results we believe, in a poor success rate in terms of preference of businesses owned by black individuals, women or the disabled. The Department has not undertaken research to identify how successful the Preferential Procurement Framework Policy is and its impact on Black Economic Empowerment (BEE) in the Department. This study intends to identify, document and evaluate the current practices and impact of preferential point scoring system on the construction sector and to propose possible improvements.

The objective of this study is to: provide a description of the department's policy on preferential procurement and document its implementation for the construction industry. The research methodology includes a review of literature of public and private sector intervention as well as journals and internet searches in order to gain an overall context of preferential procurement. The primary tools that were used were the opinion survey and questionnaire (random sampling). Research covers the period 2005 -2006 and 2006-2007. A random survey of 25 cases (5 cases per year) was drawn using the Excel computer system. Members of the Bid Adjudication Committee and contractors were interviewed. Interviews were allowed to develop by allowing the interviewees to express themselves.

The findings were as follows:

From the analysis it could be determined that the department was able to achieve its objective for the Historically Disadvantaged Individuals (HDI's). It can be observed from the survey undertaken of the extent to which these groups are participating in the bid processes. The barriers to participation are briefly as follows: The use of fronting by companies to secure bids; a lack of contractor training and development programmes for women and disabled; a lack of finance by Historically Disadvantaged Individuals (HDI's) and the need for contractor training. The number and value of contracts awarded to BEE companies has fallen well below the targets. HDI's secured 53% of contracts in 2006-07 compared to 60% in 2005-06. The shortage is especially acute as regards black women and disabled contractors in the mechanical and electrical sectors. During 2006-07 women made up a mere 1.7% in the construction sector but 12% during 2005-06. This shows a decrease of 10.3% of women owned construction companies from 2005-2007. Women owned construction companies represented 10.3% in the mechanical sector for 2005-06 but do not feature in this sector at all during 2006-07. The mechanical and electrical industries are particularly problematic. HDI's are mostly registered in grades 1-4 (bids valued from R200, 000- R3m) and are underrepresented in grades 7-9 (bids from R30m and over). Where targets were reached, it is primarily in the smaller categories. This is primarily due to newly emerging black companies.

In addition to this is: the inability of small contractors to prepare acceptable proposals. Contractors lack the experience and expertise to properly prepare price proposals; failure to meet the requirements for registration on the supplier database. Many fail to submit the correct documentation for registration purposes with CIDB. This ultimately delays contractor registration; frequency of poor performance ratings, leading to failure to be re-appointed. A contractor will abandon site, often due to financial difficulties on site and lack of project management skills; deficiencies in the point scoring process. There is no proper verification checks undertaken and this makes it easy for companies which tender to misrepresent themselves by claiming fraudulently for preference points; contractors expressed the need for training especially in the business environment; the creation of opportunities for fronting to occur; the lack of formation of joint ventures. Based on these findings, we suggest the following improvement framework:

The Department of Public Works (DPW) needs to embark on a communication awareness and hold briefing sessions with prospective contractors on the bidding process, and the documents required in the tender process; DPW together with the Construction Industry Development Board (CIDB) should undertake road shows, workshops and use the media to disseminate information to potential contractors; DPW should partner with financial institutions to assist successful bidders to secure funding for the project. The letter of award should be used as proof that it has secured a government contract; officials in the Supply Chain Management unit should conduct verification checks on the preferences claimed by contractors. This should include in-loco inspections; specific days in the year should be devoted to training of potential bidders. The dates should be advertised in the media and the department's website, public places and at hardware stores; measures should be placed to verify preference points claimed by contractors before award of bids. The investigation of fronting by companies, criminal prosecution and blacklisting of companies should occur; a plan must be embarked upon to encourage black and white business to partner with each other by means of outsourced production elements processes.

CONTENT

1. Introduction

This document incorporates research, which seeks to explore how the implementation of the Preferential Point Scoring System in procurement by the Department of Public Works (DPW) has impacted on the construction sector. The point scoring system aims to ensure that Historically Disadvantaged Individuals (HDI's) benefit economically from government procurement. Although equality and equity is the cornerstone of our democracy, women are not as yet major beneficiaries of Black Economic Empowerment (BEE). The empowerment of women, especially black women is an economic factor (Report of the Portfolio Committee on Public Works, 2006). The Constitution places an obligation on all state entities to contract for goods and services "in accordance with a system that is fair, equitable, transparent, competitive and cost effective" and which has been incorporated in to the Public Finance Management Act, No.1 of 1999(PFMA), as amended. All state entities are responsible in terms of the PFMA for proper tender administration. The responsibilities of the Department of Public Works (DPW) are: provision and management of land and accommodation to National Departments and public institutions; leadership given to the construction and property industry by the Department; co-ordination, monitoring and the implementation of the expanded public works project (EPWP); adherence and conformity to the requirements of the PFMA and the Division of Revenue Act (DORA); support given to entities by the department; the role and the responsiveness of entities for their assigned mandates (Report of the Portfolio Committee on Public Works,2006). In order to meet the aims of the Preferential Procurement Policy Framework Act No. 5 of 2000 (PPPFA) the DPW has embarked on a strategy as follows:

preferential procurement practices aligned to purchasing from BEE companies; aligning its legislation, policies and restructuring of state assets; and integrate the BEE and SMME's initiatives into its strategies.

The question is whether preferential procurement is encouraging BEE and whether the annual targets of the DPW have been attained. The research presents an overview of the conceptual framework that will underpin the study whilst a qualitative research methodology will be utilised to substantiate the findings. There is little empirical research being undertaken on the impact of the point scoring system in preferential procurement and thus there is a need for research in this field, to contribute to the knowledge of how to plan and implement policies in the public sector.

2. Background to the study

Unfortunately, most Black South Africans, particularly African women, and the physically challenged, continue to live in under-resourced areas and remain reliant on the informal sector for their survival. Government concern was that Blacks were not participating in the ownership, control and management of companies. This inequality means they are prevented from any meaningful participation in the economy and can do very little to improve their quality of life. The newly elected democratic government of the day has embarked on an ambitious programme of empowerment of individuals who were previously marginalised and left out of the mainstream of economic activity, as a result of the previous regime, which was centred on apartheid and benefited a privileged few. This gave rise to a skewed income distribution and disparities, which manifested itself with inequalities in gender and race. Unemployment and poverty remain threats to economic development for South Africa. For economic development to occur there has to be equality and freedom.

The legacy of apartheid led to a situation in the country whereby the majority of the population were largely excluded from participation in the economic mainstream. Consequently, the Black majority continue to live in circumstances of poverty, unemployment and underdevelopment. This has led to income distortions with the gap between the rich and poor widening even more. This could provide a reason to destabilise the new democracy. An aspect of concern of the Reconstruction and Development Programme (RDP) was the domination of business activities by white entrepreneurs. Hence a key objective of the RDP was to deracialise business ownership by way of the BEE policy and the Preferential Procurement Policy Framework Act 2000 (PPPFA) as government is a source of extremely lucrative contracts (tenders).

According to Business Map Foundation, during 2000, government on procurement spent some 40% or R 100 billion, with most contracts being passed on to black-owned companies. These policies provided for the moral, political and economic justification of such policy implementation. The PPPFA for instance, permits both state and Parastatals to grant preferential consideration to companies that tender for state contracts, if they can prove black ownership, women and the disabled, or are companies that advance the goals of the RDP. These events provided a stimulus for black entrepreneurs to establish businesses with the intention of winning state contracts, whilst white- dominated businesses began to take on black investors and partners to meet empowerment requirements.

This research will endeavour to establish to what extent women, the disabled, SME enterprises have been able to secure state contracts.

3. Problem statement

The Department of Public Works publishes tenders in the government gazette and newspapers. Invitation from bidders are then solicited and closed. Bids are then evaluated in terms of the Preferential Procurement Policy Framework Act, No. of 5 of 2000. Points are awarded for price and functionality. Tenders up to R500 000 are evaluated using the 80/20 scoring system and for those exceeding R500 000, the 90/10 point scoring system is used. Emerging contractors are dependent on prompt payment and if the DPW does pay contractors promptly, this will lead to such contractors experiencing cash flow problems. Equally important is the issue of fronting by companies eager to secure lucrative government contracts. Other issues are sub-standard performance and contractors failing to meet their contractual obligations. The department is obliged in terms of the Public Finance Management Act, No.1 of 1999, and (PFMA), to ensure that money is spent efficiently, economically and effectively, whilst any misspending is simply a waste of taxpayers' money. It is not uncommon to find contractors abandoning site. The department has to ensure that in awarding a tender, it exercises the utmost care by ensuring that enterprises that are BEE compliant/ favours BEE enterprises, secure bids and at the same time, receive services where quality is not compromised. In any event, the monitoring of results has been poor.

It is our contention that the implementation of the laws and regulations is deficient, including the manner in which the allocation of points is awarded. This results we believe, in a poor success rate in terms of preference of businesses owned by black individuals, women or the disabled. There is little empirical research available to determine the impact of preferential procurement on the construction sector. The Department has not undertaken research to identify how successful the Preferential Procurement Framework Policy is and its impact on BEE in the Department. This study intends to identify, document and evaluate the current practices and impact of preferential procurement on the construction sector and to propose possible improvements.

The objective of this study is to:

provide a description of the department's policy on preferential procurement and document its implementation for the construction industry;

identify if the annual targets as outlined in the strategy are being attained;

identify if there has been a significant increase in its procurement spend on targeted contractors; and, propose guidelines for improved bidding within the context of the preferential procurement policy.

4. Purpose statement

The purpose of this research is to examine whether the DPW strategy has contributed to the attainment of its preferential procurement objectives as outlined its strategy and devise key performance indicators as well recommendations that may be used to measure supplier/contractor development, and contractor performance.

5. Research questions

The research will investigate and document the current practice of Preferential Procurement and its impact on the promotion of BEE pertaining to the Department of Public Works. The research will seek to answer the following question :

Is the point scoring system achieving the desired outcomes?

6. Literature review

Construction procurement includes services, suppliers, engineering and construction works and disposals (demolitions) and the reduction of surplus materials and equipment. The construction sector plays a key role in the economy and has both an upstream and downstream impact on many other sectors. Government views the preferential procurement policy applied to this and other sectors as a tool to attain its socio-economic objectives, whilst simultaneously making a contribution to the development of the industry. However the implementation of the preferential procurement policy tends to produce unintended consequences for the industry. The construction sector needs to grow to ensure economic growth, job creation and eradicate the infrastructure backlog attributed to the previous government's policies. If preferential procurement is not applied correctly, it can lead to a reduction in the efficiency of this sector with attendant cost implications. This will have an impact both on consumers and on the number of enterprises emerging, and the sustainability of such enterprises, employment and empowerment. Government has direct influence on the demand and supply sides of the industry with public sector spending forming a major source of demand. The State, as this sectors major client, is in the unique position to exert market power. Government spending is determined by political priorities and presently, priority is on capital formation in the public sector on structured major works programmes. The role of the state as legislator, policy maker, and major purchaser permits it to introduce new methods of procurement and construction, set standards and/or constrain the market in which the industry operates. The industry provides delivery mechanisms for government policy. This influence by the state means demand is influenced by economic activity and the social policies of the state. Guidelines on how the construction industry can develop its capacity to meet infrastructure needs are contained in the DPW's White Paper on Creating an Enabling Environment for Reconstruction and Development in the Construction Industry which states: "… a construction industry policy and strategy that promotes stability, fosters economic growth and international competitiveness, creates sustainable employment and addresses historic imbalances as it generates new industry capacity for industry development" (Kajimo- Shakantu and Root, (2004))

Many companies find it a challenge to find suppliers capable of delivery on its requirements and meeting the company's stated credentials from a BEE perspective. As the process is bound by red tape, it hampers business agility.

6.1 Definition of procurement

Procurement can be defined as " a functional activity involving the day to day management of material flows and information. The types of activities carried out in procurement include: commodity analysis, market research, purchase order tracking and follow up, determination of needs and specifications for internal customers; transmitting forecasts of future needs to suppliers; ongoing supplier performance measurement; management of supplier quality; contract management and negotiation; management of in-bound and outbound transportation; price/cost analysis (Monczka , 1998, in van der Waldt et al, 2002). Another definition is that, " it relates to the entire process of acquisition from third parties (including the logistical aspects) and covers goods, services and construction projects. Hence procurement covers the process from business requirements conceptualisation until disposal of asset or termination of a contract. (van der Waldt et al, 2002) This latter definition is more appropriate to the new concept and practise of Supply Chain Management.

It is a "process that creates, manages and fulfils contracts." The role of procurement is to determine and document the requirement, soliciting bids to construct or maintain a structure, award the bid and monitor and pay the contractor upon successful completion of the project. Construction procurement can be categorised into engineering and construction works, disposal of redundant and surplus assets, and supplies, services and supplies. (CIDB Toolkit) Public procurement includes procurement by government, statutory boards and non-ministerial bodies. In its broadest sense, procurement covers issues of procurement strategy, storage, distribution, contract monitoring, and supplier management, and synonymous with Supply Chain Management.

The purchasing phase of the procurement cycle is the selection of suppliers, negotiating, and contracting for goods and services. Contracting for public works and construction is separated from the purchase of goods and services for several reasons. Whilst goods and services are either consumed or used as intermediate inputs, public works are tangible final outputs. Thus, there are strict and different standards and specifications for construction tenders and contracts, and the contracting process which un-bundles as a project, and the need to separate contracts for each component, such as design, technical services, and construction itself. The process stretches much longer than that for goods and services and requires closer and continuous supervision. The contracting out of such services as transport and garbage collection has become prominent.

It is possible for procurement to be either centralised or decentralised with standards and criteria determined by central government. Public managers are expected to adhere to prescribed competitive procedures with rules of fairness and equity, oversight by the legislature and audit, besides internal accountability. Mistakes and malfeasance have serious political repercussions due to media focus and the public place on the subject. (Acquiring goods and services: public procurement, 2000)

6.2 Objectives of public procurement

Economy is the acquisition of goods and services as specified on a timely basis and at lowest cost. Economy is a useful criterion, as it is linked to the performance of the procurement function. It is subsumed economically under efficiency, i.e., lowest unit cost of production: should goods and services be procured and are inappropriate for efficient production, procuring them at least cost is of no real advantage. Wasteful procurement often results from duplication and overlap in government operations, inability to predict the flow of funds to public agencies, and a lack of incentives for officials to make best use of supplies. Sound procurement is dependent on various organisational and incentive factors, which are beyond the control of those responsible for the procurement function.

Fostering competition in procurement is to have equal opportunity for qualified suppliers competing for public contracts. Competition and impartiality ensures a beneficial outcome in price and quality, narrows down sole-source contracting and also public accountability. Increased competition in procurement is a goal of most governments and supported by international organisations. Open bidding is advocated, to improve the handling of competitive bids, streamline administration and payment procedures and attract more firms to compete for government contracts. As the number of qualified suppliers is associated with the degree of competition, many developing countries and aid agencies favour the release of information and technical assistance to bidders to gain more understanding to procurement rules and thus qualify to compete.

Developing countries have barriers to competition, such as, entry and information gaps for small and less experienced suppliers. These barriers may be due to the administrative process, for instance, floating large bids, single centralised decision, or expensive and formal over-specification of requirements that small and inexperienced suppliers may find costly to fulfil. In areas like emerging technology, developing countries may be obliged to deal with one or two bidders as government is often restricted to choose only from donor country suppliers. The long term strategy would be to encourage developing the domestic contracting industry by means such as, lowering barriers to entry for small business and untying aid by better cooperation amongst donors and improved leadership by multilateral financial institutions. (Acquiring goods and services: public procurement, 2000)

6.3 The governance dimension

Predictability as a principle of good governance, assumes consistent principles and regulations for procurement, qualification of contractors, award of bids and contract management. Information and documentation on the rules should be distributed and rules enforced fairly and consistently. There has to be a well understood system to register and resolve complaints speedily, a well–functioning system to settle disputes and check on the arbitrary behaviour of procurement managers and inconsistent exercise of discretionary power in contract award, enforcement and management. Also vital for procurement is the need for accountability and transparency. (Acquiring goods and services: public procurement, 2000)

6.4 Legal and regulatory framework for procurement

The legal framework includes international obligations, domestic legislation on procurement, contract and commercial law, patent and copyright law, labour law and laws governing lease and hire purchase agreements, arbitration and conciliation. Some countries, like South Africa, have constitutional provisions, as well as enabling laws for procurement, such as Section 187 of the Constitution of 1994. (Acquiring goods and services: public procurement, 2000)

6.5 The Regulatory Framework

General contract law is used to regulate public procurement by internal rules that prescribe the formal process of bidding, the evaluation of bids, the award and conclusion of contracts, and contract management. These rules cover possible court challenges from unsuccessful bidders and procedures for contract interpretation, breach of contract, and dispute resolution and arbitration. The intention is to have a self-contained regime for contract award and management and avoid recourse to external arbitrators.

Procurement regulations and audit rules place emphasis on competition and objective decision-making (except in specified emergencies). This leads to oversight by external agencies and much bureaucratic review and approval processes. After award of contract, other regulations deal with breach of contract and unsatisfactory contractor performance. Having clear and complete specifications can reduce unsatisfactory contractor performance, ensure well-defined performance standards, and the inclusion of incentives and penalties in the contract. Such measures add costs and delays to the phase of contract execution. Formal legal remedies, like penalties or exclusion from future contracts are costly and dilatory where governments have inadequate judicial systems. Hence many countries are streamlining and consolidating existing laws and regulations or writing simple laws and regulations to manage procurement transactions. (Acquiring goods and services: public procurement, 2000)

6.6 Model codes

The trend is to have a uniform procurement code that sets the basic framework for procurement, supplemented by detailed rules by implementing ministries, for instance the Australian model. The most widely used model for public procurement law is that of the UN Commission on International Trade Law (UNCITRAL) in 1994. It serves as a basis for developing and transitional economies to modernise procurement regulations or establish such regulations. The law mandates open tenders as a method of procurement because it is the best method to promote competition, economy and efficiency in procurement.

6.7 Manuals and procedures

Public procurement manuals usually comprise of a policy manual, which sets out purchasing rules and administrative procedures and an operational manual of internal practices and procedures and a vendor manual, such as a booklet entitled "Doing business with government". Policy matters are issued as instructions to ministries and departments but several countries permit different degrees of departmental discretion in devising procurement regulations. In Singapore, the Ministry of Finance issued an instruction manual which sets these procedures. New Zealand and the United Kingdom issues central guidelines but individual departments can issue regulations specific to their needs within those guidelines. (Acquiring goods and services: public procurement, 2000).

In the South African context, National Treasury's guidelines (Supply Chain Management A Guide For Accounting Officers/Authorities, February 2004) are used to regulate the process of procurement of goods and services. In the construction environment prescripts of the construction industry development board is used. (CIDB Practice Guide No. B2 Methods and procedures for implementing preferential procurement policies, June 2003)

6.8 Organizational issues in procurement

6.8 .1 Organisational arrangements

Procurement can be either centralised or decentralised. The Municipal Financial Management Act, for example, requires that municipalities carry out procurement on a centralised basis, through a central Supply Chain Management unit. The advantage of this form of centralisation is that procurement officers know the law, policies and procedures and have institutional memory to gain maximum benefit for government. On the other hand, decentralization may speed up the procurement process by focusing on the goods and services to be delivered. In most countries, the ministries and spending agencies do their own procurement and award contracts for civil works and supplies with the procurement guidelines and goals prescribed by a central unit. (Acquiring goods and services: public procurement, 2000). The central unit determines the threshold for purchases or contracts within the discretion of the head of each spending agency. It is useful to build a consultation mechanism in the procurement process to provide expert advice and also check on imprudence in procurement. (Acquiring goods and services: public procurement, 2000)

6.9 The Procurement Process

The form of procurement procedures that are practiced in a country is dependent on the nature of the goods and services, the size and complexity of the contract, the administrative level and the market structure. However, International organisation guidelines and bid documents heed the following forms of procurement:

competitive bidding;

shopping;

direct contracting/sole-source contracting;

force account; or,

procurement through agents.

Competitive bidding or open tendering seeks to provide all eligible bidders with timely and adequate notification of the tender requirements and an equal opportunity to bid for the good, service or works. Some countries grant preference to domestic suppliers. National competitive bidding is used if foreign bidders may not be interested due to the nature of the goods and services or the purchase size is small. (Acquiring goods and services: public procurement, 2000) Limited competitive bidding is used when the values are small or there are only a few suppliers. Bids are received from a limited number of suppliers but enough to ensure competitive prices. Shopping is the process whereby price quotations are obtained from at minimum, three suppliers, for off- the- shelf goods having little value, such as books, furniture, office equipment and educational material. The World Bank projects in India uses shopping for items costing less than $ 30,000 per contract, to a specified maximum amount.

If the purchasing agency lacks organization or skills, it may use a specialised procurement spending firm or a project management company for construction projects. Consultants may be used to draw up documents or inspect supplies and works. Direct selection/sole-source selection is used for small contracts, which need the specialised skills of a specific individual, or firm where time is of the essence. With build-operate-transfer contracts or turnkey projects for construction, the private company procures the goods and services for the project according to the designs and specifications in the contract. (Acquiring goods and services: public procurement, 2000)

6.10 Competitive bidding

Competitive bidding is prescribed for procurement above a specified value. The complexity of the process is dependent on the value and nature of goods and services to be procured. The requirements for competitive bidding are:

a clear and fair description of what must be purchased;

a publicised opportunity to bid;

fair criteria for selection and decision making;
receiving bids from suppliers/contractors;
comparing bids and determining the most responsive bid based on predetermined and publicised rules for selection; and,
contract award.
The stages of competitive bidding are:
pre-bid;
invitation of bids;
bid opening and evaluation;
resolution of complaints; and, contract award and conclusion. (Acquiring goods and services: public procurement, 2000)

Pre-bid process

The pre-bid requirements comprise the standardised bid and tender documents, rules for classifying and registering contractors and suppliers, rules for prequalification, bid evaluation committees (if needed) and process of deciding on the award of the bids. The documents need clear specifications, instructions to bidders, and contracting terms. The fee charged for documents need to be reasonable and only reflect the cost of printing and delivery and not so high as to detract small bidders. Similarly bid security must also not be set too high. Security can be in a form acceptable, such as, certified cheque, bank draft, letter of credit or cash. To ensure fairness and openness, bid documents should be easily available in a comprehensible language to all willing bidders. In some countries information and documentation is available electronically via outlets or association of contractors.

Potential suppliers need to be allowed sufficient time to bid, for the purchasing agency to do the evaluation and award a decision, for the final details of the contract to be negotiated, and to receive the goods and services or commence with work. Procurement planning has to consider these time requirements and the purchasing agency must commence early to make certain that the goods and services will be ready when needed and so avoid high-cost decisions. Timeliness of purchase is a part of the economy criterion. (Acquiring goods and services: public procurement, 2000)

Public notice and invitation to bid

Timely notification of bids is essential in competitive bidding. Notices should be published in local and international newspapers, official gazettes or electronic bulletins to suit the nature and size of the project. Information of the bid should be available at the offices of the agency and the district for local projects. Bid notices should be publicised in the local language to enable small contractors and community organisations to bid.

For large complex works, turnkey contracts or large consultancies, a two-stage bidding procedure may be used. Unpriced technical proposals are invited using technical and performance specifications. Responsive proposals to the technical criteria are invited to submit price bids. *Prequalification* of bidders is done for large or complex works or when the high cost of preparing bids may discourage competition. This ensures that invitations to bid are extended only to those with adequate capability and resources. Prequalification needs to be restricted to the capacity, experience and resources of contractors to perform the contract satisfactorily, considering their past performance in similar contracts. Prequalification has to be based on transparent and well- publicised guidelines. Specified criteria are used when deciding on which persons or entities are allowed to bid. At times, contractors are pre-qualified for a group or type of contracts. (Acquiring goods and services: public procurement, 2000)

Bidding documents needs to provide the necessary information to prospective bidders to bid for the good, service or works. Bidding documents are generally comprised of the following:

invitation to bid;
instruction to bidders, and criteria for bid evaluation;
form of bid;
form of contract;
general and special conditions of contract;
specifications (and drawings where relevant);
list of goods or quantities;
delivery time or schedule of completion; and,
necessary appendixes for such items as the types of deposits or securities.

The documents should be in the local language and an international language such as English. Aid-receiving countries are expected to use the standard bidding documents of the donor organisation. This practice saves resources and provides the protection needed by the donor and the recipient and boosts the confidence of suppliers. (Acquiring goods and services: public procurement, 2000)

Bid opening and evaluation

A key aspect of transparency and fairness is the opening of bids at a designated time and place in the presence of bidders or their representatives who attend. Such public bid openings reduce the possibility of bids being leaked to competitors, lost or manipulated. After opening the bids, no information on the bid evaluation and award recommendations should be disclosed until after the successful bidder has been notified of the award. Bid evaluation is a difficult step to execute correctly and fairly as it is an easy step to manipulate. Most countries have bid evaluation committees for procurement above a threshold value. Experts are often used to evaluate complex bids. Decisions on small value bids are delegated to appropriate levels. A report on the evaluation of bids should be prepared stating specific reasons for the recommendations. At this stage, judgment should be exercised to spot unrealistically low bids which can lead to change orders or unsatisfactory performance. Management in developing countries need to guard against rigging of the process by suppliers or contractors who want to share the market or rotate jobs. Also important is for the results of the bidding process to be evaluated periodically to identify suspicious trends.

An unusual or lengthy delay in bid evaluation signal trouble and indicates that someone is attempting to discourage the best bidders or allow extra time for favoured bidders, using leaked information. Such delays should be discouraged. (Acquiring goods and services: public procurement, 2000)

Award of contract

The contract needs to be awarded within the period of validity of the bids to the bidder whose bid has been considered (i) as substantially responsive and (ii) offers the lowest evaluated cost. Bidders should not be expected to assume responsibilities not stated in the bidding documents or to modify the bid. Should the winning bid exceed the prebid estimates, the agency can negotiate with the successful bidder to lower the contract price by a reduction of the scope of work or reallocating responsibility. Delays are usually due to unfair or corrupt practices. The EU for instance, expects purchasing agencies to publish results in the official journal and the data bank of the EU. The notice has to state the conditions under which the contract was awarded (i.e., the criteria applied and the price) and also furnish unsuccessful bidders with reasons for selecting the successful bid. This permits the latter to request for a review if proper evaluation procedures were not followed. (Acquiring goods and services: public procurement, 2000)

Redress of complaints

Procedures for the resolution of grievances and complaints from bidders regarding the fairness and confidentiality of the process and clarifying issues should be available. In many countries procedures exist within the procurement entity to investigate complaints from contractors and their redress. In some countries, complaints can be lodged with the procurement personnel, an ombudsman or with the judiciary. A correct attitude is important. If complaints and suggestions are not responded to, this can make it less attractive to undertake business with government and so reduce effective competition in the future. The EU expects procedures that allow bidding firms to challenge decisions either in court or administrative commissions. Both Hungary and Poland have specialised institutions to handle procurement complaints. (Acquiring goods and services: public procurement, 2000)

6.11 Other forms of procurement

Sole-source procurement

This is also called single-tender purchase, direct selection or direct contracting. It is appropriate when purchasing highly specialised systems and equipment, during emergencies or natural disasters or the standardisation of equipment or spare parts justifies the purchase from the same supplier. In some developing countries, competitive bidding is waived if the supply or works contract is entrusted directly to a state-owned enterprise on a negotiated basis.

Direct selection is appropriate for procuring consulting services, as a track record of specialised technical expertise is crucial and timing is the key. This occurs in the public sector where contracts are small and individual consultants are needed. Direct selection can be defended by developing countries, provided rules exist on how and when this form of procurement can be used and the determination is based on market research and product testing. Alternatively it can be used to cover–up collusive corruption or bureaucratic laziness to exploit better alternatives. (Acquiring goods and services: public procurement, 2000)

Request for proposals (RFP’s)

RFP’s are negotiated bids whereby parties enter into a contract after having discussed the terms, provisions, costs and other issues. RFP’s are common in consulting and other professional services, such as architects. Whilst invitation to bid focuses on minimum qualification, RFP's focus on quality. RFP's can be used for sole- source suppliers of special products like computer software programs. The process commences with defining the scope of services and identifying possible bidders who are encouraged to provide the service or product. Prices and other terms are negotiated. In developing countries, RFP's create the impression of corruption as they are judgmental, not transparent and can lead to higher costs. A skills shortage leads them to depend on foreign consultants. (Acquiring goods and services: public procurement, 2000)

Procurement from other government entities

Intergovernmental contracting occurs when a government unit agrees to provide a service to another government unit. For instance, with refuse collection, the country can receive payment from the city or use property taxes to defray the costs. Intergovernmental contracting is a useful means of governmental integration in developing countries. It can ensure uniformity of services and economies of scale, avoid the hassles of contract management and create cooperation among local government units or governmental social capital. (Acquiring goods and services: public procurement, 2000)

Small purchases

Almost all countries and international organisations have threshold values below which competitive bidding is not required and procurement delegated to lower levels of authority or shopping procedures are permitted. India and Singapore are such examples. The contract is awarded by obtaining at last three quotations from known suppliers. The contract agreement is a mere exchange of letters. Some countries allow the registration of vendors and the placing of orders with them on a rotation basis during the year. Other countries make provision for contracts to be awarded at a negotiated price, to labour and community associations after determining their competence and experience.

In developing countries, poor-quality goods are often purchased at exorbitant prices through collusion by purchasing, using quotations, as occurred in Tanzania. Hence, the practice of annual purchase requirements being split into small packages below the threshold value. This practice may be attributed to fluctuations in the availability of funds for agencies and delays from central purchasing. As small purchases can add up to form a significant part of the budget, the possibility for corruption and waste can be substantial. The key safeguards are alert public managers and robust audits. If such practice is forced on public managers, due to complex rules of inefficiency, a solution is to reform the central procurement entity or streamline the procurement rules. (Acquiring goods and services: public procurement, 2000)

Procurement from non-profit and community agencies

Local communities or non-government organisations (NGO's) are encouraged to bid for contracts in several countries and projects assisted by donor agencies. The approach is especially relevant for the delivery of social services to targeted groups. Besides its advantages of NGO participation in government procurement, there are risks and pitfalls and developing countries need to exercise caution. In some countries, affirmative action policies prescribe set-asides for small business, minority business or women–owned business. These transactions may not be market-based as they seek to correct perceived market imperfections or introduce social purposes into economic outcomes. (Acquiring goods and services: public procurement, 2000)

6.12 Contract Administration and Monitoring

6.12.1 Importance of contract administration

Contract administration and monitoring is often neglected in many developing countries, meaning poor implementation capability. Contracts need to be carefully implemented and monitored. Using private parties does not resolve the problem for government as accountability becomes more difficult. Many developing countries have experienced severe delays and excessive costs of implementation, as well as abuse, waste, and fraud in contract execution. By contracting out services, it does not relieve government of responsibility for the way service is provided or work constructed as well as quality. If government disregards these, an angry public will arise once anything goes wrong.

Contract management effectiveness is mostly influenced by decisions taken prior to award. Ambiguous, unrealistic or conflicting agreements can make it difficult for public managers to oversee their execution. Contract size determines the scope of contract administration, whilst skills like coordination and negotiation, and in-depth knowledge of contract terms and customer expectations are important in all instances. Many contracts do not contain clear performance standards by which the contractor's work can be judged as well as to protect them from arbitrary interference. Procurement managers should be encouraged to draft contracts which place emphasis on results, monitoring and which both field officers and contractor representatives can easily understand. (Acquiring goods and services: public procurement, 2000)

6.12.2. Nature of contract monitoring

Contract monitoring

Monitoring continues for the life of the contract. Not even careful preparation of the contact or detailed specifications can guarantee adequate performance when the actual performance passes by unmonitored. Monitoring the contract entails a review of contract reports, undertaking inspections, requesting audits and getting feedback from citizens. Relationships between government officials and contractors must not be adversarial and antagonistic. The key element remains direct inspection and observation of work in progress. Financial audits occur late and cannot remedy problems relating to execution but may provide evidence of wrongdoing, which can be used in court or to disqualify the contractor from future work. Reviews by senior officials take up much time and effort and do not yield significant results. The maintenance of professional relationship with the contractor can lead to good contract execution. Corruption occurs by receiving unrealistically low bids with agreement that it will be increased after negotiations due to unforeseen circumstances. Thus effective contract monitoring can prevent this. (Acquiring goods and services: public procurement, 2000)

Quality assurance

Quality is an element of economy with quality assurance being critical to contract monitoring. It relates to having a clear draft of the technical and other characteristics of the product, work, or service expected under the contract. The type of quality assurance will be determined by nature of the output. For example, with construction work, inspectors will require compliance with building codes and legal mandates and specifications. In many countries there are quality control units established within the public works ministries.

Some developing countries expect the contractor to verify and assure product quality prior to delivery. This requires greater contractor responsibility, contract management skill and quick dispute resolution. These three factors may be lacking in developing countries and hence they need to not to rely on physical output performance indicators as this can lead to lower-quality output.

The central procurement unit should distribute guidelines regarding the inspection and testing of goods and services under the different contracts and on testing facilities and other quality assurance techniques (such as compliance certificates). Formal reporting systems should exist to receive complaints against vendors by agencies and the public and to action deficiencies found during inspection and to deal with warranties and latent defects. The payment schedule needs to be coupled with inspections to withhold payment should problems occur and are satisfactorily resolved. Citizen associations should be consulted as stakeholders and as their feedback is very reliable and is a cost- effective method to monitor contracts and ensure the integrity of government staff. (Acquiring goods and services: public procurement, 2000)

6.12.3. Safeguarding integrity in procurement

Areas of corruption

Corruption can occur when procurement is excessively regulated, rules are unclear and accessible to the public, bid documents are badly drafted or ambiguous, specifications and standards are unclear and contract monitoring is loose. Thus the procurement unit or bidder is able to corrupt the procurement process. The procurement unit can:

write specifications to suit a supplier or contractor;

restrict information on bidding to selected bidders;

use urgency as an excuse to award a contract on a sole-source basis;

provide preferred bidders with confidential information on bids from other bidders;

disqualify suppliers by improper prequalification or excessive bidding costs; and,

act in collusion with bidders or outsiders to distort the process.

Bidders can also distort the bidding process and the outcome, by:

colluding to fix bid prices;

collude to rotate or not participate in turns or wilfully submit unacceptable or technically unsuitable offers (even careful scrutiny will not reveal this tactic, but periodically the procurement results for a specific period should be reviewed);

promote discriminatory technical standards; and, use their influence or bribes to influence political leaders or senior public officials to intervene improperly in bid evaluation.

Another method of bribery is to avoid competitive bidding and have the contract awarded to a favoured party by direct negotiation. Even after receiving bids, opportunities for misbehaviour can arise. Confidentiality is key to fairness in the process. If rules do not allow for bidders to be present when bids are opened, the procurement officer can disclose the lowest bid to the desired bidder who can then provide an even lower bid that is then included for evaluation. Corruption can also occur at the contract execution phase, as:

not enforcing quality standards, quantities or other performance standards of contract (enforcement is either superficial or nonexistent);

processing payment for shoddy workmanship, or to accept delivery of inferior goods and services, fictitious claims of loss in transit or false deductions for material losses in construction;

accepting low bids which are later inflated by mutual consent for a price;

delaying payments in order to receive a bribe;

spot purchases during emergencies; or,

granting legislators influence on the award of contracts in their constituencies.

An easy and profitable form of corruption in public procurement or works is non-delivery of goods or not building the works. Where there are weak accountability systems or low administrative capacity or widespread systemic corruption, it is easy to falsify delivery documents or certificates of work completion. Citizen feedback can be an effective weapon against corruption. (Acquiring goods and services: public procurement, 2000)

International efforts to secure integrity in procurement

Lending agencies such as the UN, World Bank and ABD are assisting to combat corruption in procurement. The General Procurement Principles for UN agencies expects of procurement officials to have unimpeachable standards of integrity in business relationships in which they work and not to use their office for personal gain. The World Bank likewise expects borrowing countries, bidders, suppliers, and contractors to maintain high ethical standards in procurement in contract execution. The guidelines of UN agencies expect bidders not to be guilty of corrupt and fraudulent practices. ADB recommends that borrowing countries get an undertaking from the bidder to comply with its laws against fraud and corruption when competing for and executing contracts. Any firm found engaged in corrupt practices by the World Bank will have itself disqualified indefinitely for World-bank-financed projects. Bidders need to provide details of commissions or gratuities paid to agents for the bid and certify that no gifts, commissions or payments other than those as reflected were given or received. (Acquiring goods and services: public procurement, 2000)

Building capacity for public procurement

According to Walsh and Leigland the skills and professional standards are the most effective safeguard against irregularities and graft. Procurement needs to be made as a competency requirement for senior managers and its efficient discharge should form part of their performance agreements. Post award contract administration and monitoring needs skills to check that contracting obligations are completed on time and to resolve problems. Legal skills are needed to interpret contracts and follow up complaints with arbitrators and the courts. The central procurement agency can assist departments by keeping current technical information, contract law, management and procurement practice, and fund the attendance of civil servants in procurement courses; job rotation and promotion programmes, recruitment from the private sector and universities for management positions and develop procurement internship programmes. Modules on procurement management can be included in in-service training. Donor agencies could advance these efforts and help in deploying experts to undertake the training.

Government agencies need to initiate and assist to professionalize small contractors and build the capacity of voluntary agencies and community organizations locally to undertake service and small work contracts. Chambers of commerce and contractor associations in different countries can help set up networks and export good procurement practices and training programmes for members and government procurement managers.

In highly political environments, honest and efficient procurement calls for civil servants to be given protection from political "suggestions" and given adequate compensation, and quick penalties, if rules are violated and ensure whistleblowers are protected. (Acquiring goods and services: public procurement, 2000)

6.12.4. Key points and directions of improvement

Key points

As government procurement for goods, services and public works comprises a significant proportion of public expenditure, it has become a major source of corruption in many countries. The main criterion in both government and the private sector is economy, i.e., the timely acquisition of goods and services of a given quality at lowest cost. In most countries, criteria such as environmental issues, and social criteria, such as affirmative action, minorities, women and depressed regions are also relevant.

The legal framework encompassing public procurement comprises contract law, procurement regulations and procedure manuals. To manage the public procurement process, a central agency should set standards, monitor outcomes and have an appeal mechanism. In the short term, it is advisable for central procurement to procure critical supplies like information technology. Actual procurement operations need to be decentralised to ministries and agencies within a framework consisting of procurement standards, rules and oversight.

The procurement procedures should be clear, simple and available to the public. Procurement decisions have to be recorded and reduced in writing with corresponding reasons. Accountability agencies should be in a position to ascertain who made the crucial decisions and why. Tender opportunities for large contracts should be publicised widely to attract sufficient numbers of qualified bidders. Databases on contractor performance are necessary at national and regional levels to reduce the possibility of selecting the wrong contractor and sift out those contractors having records of dishonesty or incompetence.

Competitive bidding is the requirement for public procurement. The granting of preference or set-aside quotas in local contracts for goods and services to small and informal enterprises, cooperatives and disadvantaged groups can be justified as long as costs are not excessive and unsustainable subsidies are not required over time. Some degree of domestic preference is legitimate for developing countries to assist local businesses and small suppliers' capacity. Governments need to avert incurring cost-plus direct selection or purchase from ailing public enterprises to maintain their survival.

Competitive bidding is preferable for large purchases and contacts. The stages of competitive bidding are: setting clear specifications; having public notices and invitation to bid; bid opening and evaluation; and contract award and conclusion. The process should include safeguards to ensure integrity and impartiality and the prevention of collusion, corruption and fraud.

Once contracts are concluded, they need to be carefully monitored. Various types of controls and reports, as well as audits and citizens complaints can be employed to handle contractual problems but there is no substitute for close supervision by government of a new contract. (Acquiring goods and services: public procurement, 2000)

6.12.5. Composition of the construction industry

A nation's infrastructure- energy systems, telecommunications, railways, seaports and airports and major institutions- homes, schools, hospitals and factories- are a direct output of the productivity and innovation of the construction industry. The United States maintains that in order to maintain its economic strength and defence readiness, it is essential for the construction sector to be technologically and globally competitive. The construction in divided into three broad categories based on the construction work being performed: building construction, heavy construction and speciality trade construction. Building construction also called general construction includes the construction of homes, offices, production plants and similar buildings. Heavy construction is the building of a nation's infrastructure, and roadways, seaports, airports, bridges, dams, and energy production facilities. Speciality trade construction is work such as plumbing, painting, carpentry, bricklaying and electrical work and sheet metal, heating and air- conditioning. Architectural and engineering services and construction materials complement the three primary contractor groups. Architectural and engineering firms design and engineer construction work whilst the construction materials sector provides the component-such as bricks, concrete, steel- for the industry. These five components make up the construction industry.

The construction industry is very capital-intensive. Large up-front investments are necessary to begin and execute projects. Many developing nations unable to afford initial investment costs of infrastructure projects are resorting to privatization to develop infrastructure faster and cheaper. Privatization lowers construction costs by 15-25% and operating costs by 20-40%. The future of the construction industry rests on its ability to anticipate, shape and respond to key issue, challenges and opportunities. Some of these challenges are a critical shortage of skilled labour, influence of information technology and changes in the global construction market. If companies do not invest in research and development they run the risk of stagnating and losing their competitive edge. The traditional design-bid-build process- where design and construction is undertaken by separate companies, is slow and less responsive to customers needs and is being replaced by the design-build approach where a single entity being responsible for design and construction. Unfair business practices, like bribery, need to be eliminated. The construction industry's serious problem is a lack of skilled workers (craftsmen, engineers and managers) and needs to develop innovative solutions to be competitive. Labour shortages cost time and money and being unable to keep projects on time. The quality of construction is threatened as inexperienced apprentices make more mistakes needing correction. Improper supervision can lead to errors going unrecognized or ignored so as not to delay the project. As quality declines, liability insurance, costs to maintain the structure and the risk of injury on the job increases.

Government can assist by providing vocational training (in high schools) in partnership with industry, unions and schools and should play a strong role to promote and sustain the industry. The industry can also begin an aggressive campaign to non-traditional workers such as women and minorities and enhance the image to become premier craftsmen. Information technology (IT) can be used to deliver projects faster and cheaper without sacrificing quality or the way projects are financed and executed. However, most companies do not invest time and money to keep employees abreast of latest technologies. Electronic data transfer can assist to avoid high costs of moving engineers and draftsmen from project to project or transfer technical work to locations where engineers are available. IT is being used as a business process tool in the construction industry to receive technical and product information, facilitates communication, project management and training. The Internet and e-mail provides quick communication between designers, contractors, customers and suppliers. And the time of information exchange shortens the decision cycle.

Project management software, like Primavera Planner can be used during the construction phase to manage labour allocation, material usage and cash resources thereby saving costs and time. A project leader can input data electronically into a

Web site to plan, schedule and track project performance. Web site collaboration is valuable for high-intensity, short-duration projects, as it facilitates quick decision making, saving costs and time. For large projects dispersed across the country, a standard application platform can be used for interoperable communication with team members. Government uses a manual bid process and needs to migrate to an electronic bid process. IT can be used to capture the solicitation process and create a virtual environment allowing contracting officers to post documents and update information from anywhere with Internet access. A major return on such a system is that it will simplify and shorten the administrative procurement process. Stimulation modelling can be used to improve project design processes as it allows an assessment of a change in physical implementation and avoids the incurrence of costly mistakes and rework.

To remain competitive, the construction industry must incorporate new technologies to improve their business, gain an advantage and outperform competitors. It provides the means of increasing the productivity of the construction sector. (http://www.ndu.edu/icaf/industry/2000/construction/construction.htm)

According to Ball and Gqubule, (*Mail & Guardian*, 15-21.9.06,) BEE is not an economic policy. It is considered a political necessity that has economic consequences. It has evolved as government policy due to pressure from black business and domestic and foreign businesses. Empowerment needs to begin with education. In Malaysia, the empowerment drive was education and training with 25% of the national budget devoted to this. South Africa is not too far off at 18%. The Skills Development Act, 1998 and 2003, promotes training opportunities based on race as the yardstick. Funding for training is also based on race. (Kriel, 2006)

7. Methodology of the Study

The theoretical framework of the report is underpinned by:
An overview of the Preferential Procurement point scoring system as practiced by the DPW for the construction sector.
Factors required for successful and sustained implementation

As the study is exploratory in nature, the case study research methodology was employed to enable the reader to obtain insight, make discoveries on the impact of the point scoring system. The research methodology includes a review of literature of public and private sector intervention as well as journals and internet searches in order to gain an overall context of preferential procurement.

8. Data collection strategies

The primary tools that were used were the opinion survey and questionnaire (random sampling). Research covers the period 2005 -2006 and 2006-2007. The sample is representative of all tenders received for the period under review. A random survey of 25 cases (5 cases per year) was drawn using the Excel computer system. A pre-test was undertaken before revisions were made to the final questionnaire. The information was then inputted into the excel computer system and outputs were analysed. The results have been tabulated per aspect surveyed. This is followed by comments on the findings, followed by a summary, before moving to the next area of survey.

9. Significance of the study

Prior to 2005, DPW utilised targeted procurement for the awarding of tenders and subsequent to the introduction of the Preferential Procurement Policy Framework Act, all tenders received are adjudicated in terms of the 80/20 and 90/10 point scoring system. The Department is primarily focussed on service delivery and in the process has overlooked who are the real beneficiaries in the preference system. Therefore, it is crucial to understand how the Department's preferential procurement policy has impacted on the empowerment of black contractors. Hence, this study will identify the results of the point scoring system; make recommendations on its improvement, as well as areas of further research.

10. Limitations of the study

This research is primarily focused on the Department of Public Works procurement processes with specific references to the construction sector. Hence, the research findings and recommendations made will only be relevant to this particular category. Although the Broad Based Black Economic Empowerment (BBBEE) scorecard has been developed, it has not been implemented by the Department. The issue of fronting is quite complex and further research will be needed on the issue of fronting by contractors to secure government contracts.

10.1. South African Government Procurement Processes

The Supply Chain Management initiated by government represents a paradigm shift from the former procurement processes whose primary interest was in the acquisition of goods and services. It is a shift from rule-bound, inflexible processes, which apart from being inefficient, were focussed only on the lowest quote even if factors critical for government policy went unfulfilled. Supply Chain Management on the other hand, is an interconnected process involving purchasing, storage, utilisation, risk management and disposal. Supply Chain Management will enable government to impact on poverty reduction, promote BEE and SMME's. Supply Chain Management is part of the financial reform in government initiated in the mid nineties. The PPPFA set out the framework for reforming and modernising public sector procurement practices. Tender Boards were abolished and in line with the PFMA and PPPFA, uniform procurement systems and the preference points system were established. Included are links with the budget and procurement planning, cost analysis, market review, life cycle costing, needs analysis and disposal of assets. Accounting Officers were made accountable for establishing procurement systems while the PPPFA sought to empower HDI's and SMME's.

Planning and purchasing links acquisition to the department's strategic objectives, management of the bid process and fulfilling contractual obligations. Storage entails timing the delivery, receipt, storage and reordering of goods/services. Usage involves logistics, asset management, maintenance and control of assets, consumption control and contract management. Disposal entails the time and method of disposal. Risk management considers risks of price or currency fluctuations by ensuring legally watertight contract documents. Also, Accounting Officers have to review supply chain management performance according to specified deliverables. The supply chain management framework is applicable to the acquisition and disposal of goods/services, construction and road works and movable property. Importantly is that supply chain management provides for increased delegation of powers to accounting officers, by providing them with greater scope and flexibility to manage supply chain management. Accounting officers have to account to the Auditor General and SCOPA on SCM. (Supply Chain Management conference, 2004)

10.2. The Legal Framework: The Constitution

Section 217 of the Constitution of the Republic of South Africa Act No 108 of 1996, provides for the primary and secondary objectives of procurement objectives. Section 217(1) states "procurement system is to be fair, equitable, transparent, competitive sand cost effective and Section 217(2) states "procurement policy may provide for: categories of preference in the allocation of contracts; and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination". These provisions provide for ensuring that the framework for procurement is in line with international norms and standards and the establishment of a policy that contains a preference scheme and measures to protect or advance persons disadvantaged by unfair discrimination. Accounting Officers may therefore determine their policies and implement it within a framework. The PFMA requires of Accounting Officers (Heads of Departments) to have: an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective; of financial and risk management and internal control; and, a system for properly evaluating all major capital projects prior to a final decision on the project. Policy guidelines have been issued and besides complying with norms and standards ensure transparency and expenditure control as required in Sections 215 to 219 of the Constitution. (CIDB, 2003)

The process of tendering in government is subject to the Preferential Procurement Policy Framework Act of 2000 (Act No.5 of 2000). The Act intends to promote public procurement reform, introduce a uniform procurement system in government and provide guidelines for procurement policy. The guidelines in the Act determine standards of behaviour, accountability and reporting, ethics and equity issues, expected of the public sector in procurement. The Act provides for the allocation of preference points and to protect or advance persons or categories of persons disadvantaged by unfair discrimination. The Act also requires that a State entity determine its preferential procurement policy, which has to be implemented in a framework that provides for a points system and specific goals. In the case of the construction sector this is the Department of Public Works. The role of the public sector is thus to manage the procurement process and select the projects. (Kajimo-Shakantu and Root, (2004))

The Preferential Procurement Policy Framework Act requires that for any specific goal for which points are awarded must be specified in the tender invitation; and, any goals contemplated need to be measurable, quantifiable and monitored for compliance. This means goals should be targeting enterprises and labour, historically disadvantaged by unfair discrimination due to race, gender or disability and to attain the goals of the RDP (CIDB, 2003).

The PPPFA prescribes two systems of point scoring, namely; 80/20 and 90/10. Tenders below R500, 000 use the 80/20 points scoring system where 80 points are awarded for price/functionality and 20 points are allocated to preference. The 90/10 point scoring system is used for tenders in excess of R500, 000 where 90 points are awarded for price/functionality and 10 points are allocated to preference. Section 2.1(f) of the PPPFA states that the tender must be awarded to the bidder/ tenderer who scores the highest points. In essence, this implies that government has implemented a facility to support previously disadvantaged companies but as most points are awarded for price, it still insists on the best deal possible. Consequently state procurement departments are under pressure to ensure the tender process is adhered to. (*Sunday Times*,20.8.06) A tenderer who has attained the highest points may have their tender rejected if they: have insufficient capacity to deliver; or are under suspension from participating in public procurement, e.g. withdrawing a tender after closing date, or offering bribes.

An aggrieved tenderer may request reasons for decisions in writing in terms of the Promotion of Administrative Justice Act. Any bidder, who is unsuccessful to secure a tender, has recourse to the Courts, if it can be proved that the regulations were not adhered to. This right was exercised in the case of Scribante Construction vs Coega Development Corporation(CDC) in the High Court, where CDC awarded a contract to Sakhisizwe Construction, which it considered as more BEE-compliant than Scribante. The Court ordered the stoppage of the contract pending review by the High Court. A legal dispute can thus delay the tender process and incur loads of expenses in the process. In the case of the DPW, it plans to spend almost R100 million weekly on infrastructure over the next four years, so the number of cases for litigation regarding tenders is likely to increase. (*Sunday Times*, 20.8.06)

10.3. Regulation of procurement

The regulatory framework is used to enable government to use procurement to achieve the socio-economic goals of the Reconstruction and Development Programme (RDP) and Growth, Employment and Redistribution Strategy (GEAR) and is covered by legislation, Green Papers, regulations, and procedures that provide for the management of procurement in the public sector. Procurement is regulated by the following legislation:

Constitution of the Republic of South Africa, No 208 of 1996; Public Finance Management Act, No 1 of 1999; Preferential Procurement Policy Framework Act No5 of 2000; Local Government Municipal Finance Act No 56 of 2003, Construction Industry Development Board Act No 38 of 2000 and the Broad-Based Back Economic Empowerment Act No 53 of 2003. The Constitution sets down the objective and policy for preferencing in procurement by government, the PFMA sets the framework for procurement and the PPPFA provides for the policy on preferential procurement.

Supply Chain Management must incorporate issues of demand and acquisition management, logistics and disposal management, risk management and assess its performance. For construction works, this would be the acquisition of supplies, services and engineering and construction works and assuming ownership of these. (CIDB Toolkit)

The PPPFA is just one of several pieces of legislation aimed at meeting the requirements of the RDP. The industry's importance in development is based on the fixed investment, contributes to national output and a major employer both directly and indirectly by its multiplier effect. The Act provides a basis for the implementation of affirmative action to cater for socio-economic opportunities to business and individuals who were historically disadvantaged and unfairly excluded from socio-economic participation. The construction sector was the first sector to implement preferential procurement policies (Kajimo- Shakantu and Root, (2004)

10.4. The five pillars of procurement

Procurement is founded on five pillars and if a pillar breaks the procurement system will fail. These are value for money, open and effective competition, ethics and fair dealing and accountability and reporting. Best value for money is not based solely on the lowest price as an indicator, but means ensuring the best possible outcome taking into account all costs and benefits. Supply Chain Management itself must be executed cost effectively by avoiding the incurrence of unnecessary costs and delays, monitoring the delivery process and reassess if the expected benefits will not accrue, improve its internal processes and systems. Open and effective competition calls for all laws, regulations, policies, procurement processes and procedures to be made transparent. Competition must be facilitated by aligning procurement methods to the situation in the market by undertaking research to permit the widest possible access by suppliers to access government bids and by advertising in the Government Gazette. If competition is limited, the procurement systems must recognise this and the methods adjusted appropriately. Adequate and timely information should be provided to bidders and any bias and favouritism eliminated.

Bidders should not be deterred by bid costs. The costs associated with promoting competition should be in line with the benefits that accrue. Ethics and fair dealing calls for mutual trust and respect and businesses being conducted fairly and with integrity. Supply Chain Management staff must be aware of conflict of interests, treat all bidders the same, do not accept gifts or hospitality, use government resources scrupulously and eliminate all fraud and corruption. Accountability and reporting means that both individuals and suppliers remain answerable for plans, actions and outcomes. There has to be public reporting. All Supply Chain Management practitioners are accountable to upper management and the Accounting Officer is also accountable to the Minister on Supply Chain Management. (AusAid, April 2000)

10.5 Procurement reform in South Africa

As government is not the producer of goods and services needed to carry out their activities. Government has to procure these services from external service providers in a contracting process. "New public management" (van der Waldt, et al, 2002) has affected how procurement is managed, as the expenditure involved must result in value for money. Among these reforms is the following:

Focus on outcomes;

Value for money;

Outsourcing, build-operate-transfer, and public- private- partnerships.

New public management reforms have seen government decentralising its procurement function accompanied by delegation of authority to maximise benefits and the use of best practices. Government has embarked on the establishment of a common framework that includes:

standardised processes for procurement;

general performance measurements;

standard setting ;

standardised systems;

value system-such as codes of good practise.

Such a change was attributed by an acknowledgement by government that it can achieve value for money by either a cost reduction or avoidance by reforming its current procurement practices. (van der Waldt, et al, 2002)

10.6 Principles of reforms in procurement

Best value for money is what procurement should be based on and what the public should always strive towards. For instance, this could be achieved using total quality management. Decision making should occur only after a careful consideration of all available options has been considered. Contract management should be carefully controlled and managed to improve value for money.

Procurement policies adopted should promote competition and source a larger supplier database by modelling procurement systems and practices based on international best practice. Partnerships should be stimulated to promote quality. Improvements in procurement cannot occur unless it is based on best practices and innovation and hence public procurement has to be benchmarked using international standards. New trends are the use of electronic procurement, collaborative procurement, performance measurement and employing professional personnel in procurement.

Government has committed itself to ensure best practices in its procurement thorough;

matching cost savings using best practices by the private and public sectors and by working with other public entities to ensure best value for money is attained;

using a variety of procurement methods like public-private partnerships, e.g. private financing, outsourcing and opting for the best solution;

having knowledge of products, services and markets with clear goals and needs;

using the entire Supply Chain Management process as a means of ensuring quality and economy;

compiling business cases with extreme care and in mitigating risks; and,

proper contract management. (van der Waldt, et al, 2002)

Reform of public management cannot exclude procurement management in view of procurement by government being quite substantial. Public procurement impacts both the domestic and international markets as it impacts on the profitability and sustainability of these sectors. This applies to South Africa where the different spheres of government have much buying power. In 1995-96 total procurement spend was R56b or 13% of gross domestic product and therefore impacts the macro-economy. This led to public procurement reform as government saw the need for an effective and efficient system of procurement in order to render the quality and quantity of services needed by citizens and is in accordance with the RDP and other policy objectives. Another reform was the Green Paper on Public Sector Procurement Reform in South Africa in 1997. It led to the adoption of professionalism through best practices so that the public sector gains competency in procurement. The Green Paper addressed issues relating to value for money, elimination of corruption, control and accountability, uniform procedures, policies documents and contracts. International developments have had their impact as well, on the socio-economic objectives such as, encouraging competition by promoting SMME's whilst still ensuring quality and standards. In the arena of good governance the international impact was on: effective and efficient practices and systems of procurement to enable government to deliver on its mandate; the establishment of uniform procurement system with a standard tender procedure, policy and contract procedure at all levels of government.(van der Waldt, et al, 2002)

The procurement system did not fulfil the requirements of the Constitution, which states that procurement has to be, "fair, equitable, transparent, competitive and cost-effective." South Africa's public sector procurement reform has three main objectives: good governance, uniformity and achieving socioeconomic goals. A key aspect of planned socioeconomic transformation coupled with the objective of efficiency is to encourage broader participation and overcome discrimination. A key piece of legislation in this regard is The Preferential Procurement Policy Framework Act 2000. The Act is applicable to all organs of government.

10.7 Construction procurement

Construction procurement includes services, suppliers, engineering and construction works and disposals (demolitions) and the reduction of surplus materials and equipment. The construction sector plays a key role in an economy and has impact on the multiplier effect on the economy. Government views the preferential procurement policy as a tool to attain its socio-economic objectives whilst simultaneously making a contribution to the development of the industry. However the implementation of the preferential procurement policy tends to produce unintended consequences for the industry. The construction sector needs to grow to ensure economic growth, job creation and eradicate the infrastructure backlog attributed to the previous government's policies. If preferential procurement is not applied correctly, it can lead to other unintended consequences and this may impact on the number of enterprises emerging, and the sustainability of such enterprises, employment and empowerment. Government has direct influence on the demand and supply sides of the industry with public sector spending forming a major source of demand. As the state is its major client, the state is in the unique position to exert market power. Government spending is determined by political priorities and presently priority is on capital formation in the public sector on structured major works programmes. The role of the state as both legislator and policy maker permits it to introduce new methods of procurement and construction, set standards and/or constrain the market in which the industry operates. The industry provides delivery mechanisms for government policy. This influence by the state means demand is influenced by economic activity and the social policies of the state. Guidelines on how the construction industry can develop its capacity to meet infrastructure needs are contained in the DPW's White Paper on Creating an Enabling Environment for Reconstruction and Development in the Construction Industry which states: "… a construction industry policy and strategy that promotes stability, fosters economic growth and international competitiveness, creates sustainable employment and addresses historic imbalances as it generates new industry capacity for industry development (Kajimo- Shakantu and Root, (2004))

The industry's importance in development is based on the fixed investment, contributes to national output and a major employer both directly and indirectly by its multiplier effect. The Act provides a basis for the implementation of affirmative action to cater for socio-economic opportunities to business and individuals who were historically disadvantaged and unfairly excluded from socio-economic participation. The construction sector was the first sector to implement preferential procurement policies. (Kajimo- Shakantu and Root, (2004)

10.8 Construction Industry Development Board (CIDB)

CIDB is a schedule 3A company and its Board is committed to the objectives contained in the CIDB Act (38 of 2000). Its mandate is to provide the strategy and partnerships to grow the construction sector, ensure sustainable growth, improved and best practices in the construction sector, ensure uniform procurement practices, ethical standards and a code of conduct, and compile a register of projects, suppliers and contractors, to ensure improved performance and capability. Any contractor wishing to undertake work in the public sector has to be registered with CIDB and any public sector projects' exceeding a threshold has to be registered by clients. This serves to reduce bidding and evaluation costs. Contractors are categorised according to classes of work (general building, civil, electrical and mechanical engineering, and specialist works) from grade 1-9. Annual fees are charged with nominal fees for grades 1-2. This is used to offset costs to maintain the register. (CIDB Annual Report 2004/5)

10.9. The role of CIDB

The CIDB Code of Conduct establishes uniform and ethical standards for the construction sector and applies to construction related procurement. The CIDB Standard for uniformity in construction procurement is used to standardise the documents, practices and procedures used in procurement. It also has a library of best practice documents as well as a register of contractors, which are separated into different categories. The register serves to manage the risk in the tender process. The risk element will endeavour to establish if the contractor has the resources to meet the contract and that his/her capacity to undertake the construction will not be compromised if awarded the bid. The duration of engineering and works contracts should coincide with the progress made towards completion. A short contract has high costs and should only be undertaken if it is very urgent; reduce administrative processes and costs; facilitate emerging contractors to access contracts; assess contractor performance; ensure compliance to standards and best practice; maintain a database on contractors. A register of projects on the nature, value and distribution of projects is also maintained by CIDB. (CIDB Toolkit)

10.10 Standard for uniformity in construction procurement

DPW has committed itself to comply with the standards. Four forms of contract were identified as best practice and the documentation has been aligned accordingly. The standards set minimum requirements to ensure cost efficiency by having uniform bid documents and procedures, ensure transparent and fair bid procedures; forms of contract are user friendly and identify risks. DPW uses the best practice guides to select consultants, procure contractors and develop registered contractors. Streamlined processes ensure that contractors receive timely payment and are not disempowered by administrative delays.

To improve the performance of the construction industry CIDB has identified performance objectives to ensure effective and efficient procurement by focussing on ethics, wastage, risk management, ensuring quality and value for money for the project, in terms of cost, time, and quality, expansion of the industry capacity and black empowerment, ensuring health and safety, and environment protection by focussing on sustainable built environment.

The mechanisms used to improve performance are: regulating bids, establishing minimum standards and accrediting suppliers, promoting leadership in government and organisations, awareness creation using forums and demonstrations, use of best practice guidelines, capacity building and monitoring and evaluation. (CIDB Annual Report 2004-5) The CIDB register is a National Register of contractors and does not discriminate between woman and disability, which implies that contractors, despite their gender, race and physical status are eligible to tender for construction related projects. The award of contracts are based on the Preferential Procurement Policy Framework Act (PPPFA)

10.11 Categorisation in accordance with capability

The nature of work, (building, civil, etc.) determines the nature of work a contractor can perform. Grading sets the maximum contract value a contractor can perform in terms of finance and works capability.

Table 1 Contractor grades

Grading designation	Value of contract at each grade
1	R 200,000
2	500,000
3	1,500,000
4	3,000,000
5	5,000,000
6	10,000,000
7	30,000,000
8	100,000,000
9	No limit

A track record is maintained of emerging contractors. Contractors may register at any help desk situated in all provinces. By 2005, 1296 contractors were registered in Limpopo and Gauteng. The register serves to manage risk by categorising contractors according to their capability and provides a regulatory framework. The register has reduced tenders from 100-200 to about 45 for classroom construction. To ensure affirmative procurement the contract value for contractor grades 1-3 have been increased, while the criterion for a two-year track record has been extended to five years. Annual turnover and employable capital was also relaxed. To promote black contractors, many public sector clients entered into cession agreements whereby payment is made directly to material suppliers. (CIDB Annual Report, 2004-5)

10.12 Construction procurement process

Construction procurement comprises of six (6) processes :Firstly, as a process, procurement involves the establishment of what needs to be procured, in other words, demand management. The scope of work (the extent and location of works) and estimated costs are determined taking into consideration VAT and price escalations. A check is made to ensure that before any amendments or improvements are done, approval is obtained to commence with the procurement process. A procurement reference number is allocated.

Secondly, a decision is made of the procurement strategy, such as the preferential procurement policy, procedure, process and the contract and pricing strategy has to be established. For the Department of Public Works, the target group comprises of historically disadvantaged individuals which includes those individuals who had no franchise, women, and the disabled.

Thirdly, when inviting bids the tender documents have to be prepared. and approved and confirmation obtained that funds are available. The procurement procedure used can be as follows: negotiated procedure, when there is a sole source provider; nominated procedure which calls for expression of interest and contractors being populated onto a database; open procedure where tenders are advertised; proposal procedure where tenders are advertised using the two-envelope system and expression of interest (two stage); qualified procedure where tenders are advertised calling for expression of interest; quotation procedure where quotations are invited and bidders are allowed three days to respond. Adverts are placed on notice boards, websites, and newspapers or sought from the database; and, shopping procedure where three written or verbal quotes are obtained and the lowest offer is accepted. Bids are invited by advertising tenders, issuing tender documents and holding site meetings. Tenders are received and deposited in the tender deposit box. The Department ensures that its processes are compliant with the Promotion of Administrative Justice Act. (PAJA)

Fourthly, the bids are then recorded and evaluated and a tender submission is made. A check is made for debarment to ensure that the contractor has been registered with CIDB for the particular contract grading. The tender evaluation report provides a shortlist of the bidders and a recommendation. Tender offers are invited from those on the short list. Site meetings and/or clarification meetings are held with contractors. Once the tender box is opened the tender documents are checked for completeness and a record made of those incomplete. For instance schedules and documents may not have been returned or are incomplete. These are returned to the tenderer to complete within a reasonable time and it is categorically mentioned that it is for evaluation purposes only. The latter are considered non-responsive and the reasons cited. Tenders are returned if they are received after closing time; the tender submission is not made on the prescribed procurement documents, and only one tender is received and a decision is made to call for new tenders.

Fifthly, the tender submissions are evaluated according to the preferential procurement process. However, open, negotiated, quotation and proposal procedures are not subject to this step. Expressions of interest are opened in the presence of at least two officials on the closing date. The bids are recorded and an acknowledgement of receipt is posted. The financial offers are checked for correctness, and then assessed to see if it is reasonable.

With the nominated procedure, the information is captured on the database and the status in a particular category is conferred. For the qualified procedure, a recommendation is made on the tenderer being short-listed or not. In a proposal procedure, the technical proposals are evaluated and a recommendation made on which tenderer to invite to make financial proposals. In the qualified and proposal procedure officials from the procurement unit review the evaluation report and confirm the recommendations made.

Responsive tenders are risk assessed. A tender evaluation report is compiled outlining points awarded, reasons for disregarding offers and recommending the successful bidder and submitted for approval. Both unsuccessful and successful bidders are notified of the outcome. A check is made to ensure that the contractor has a valid tax clearance certificate. The contract is captured and awarded and recorded in the database A contract is entered into with the successful bidder. The contractor is issued with a signed copy of the contract. Only the acceptance portion of the Form of Offer and Acceptance needs to be signed. A schedule is attached to the Form of Offer and Acceptance which records all agreed deviations from the tender documents and there is an audit trail of changes agreed to between offer and acceptance. Once a contract has been awarded, it gets registered on the Register of Projects within 21 days from date of acceptance in writing by the contractor to accept the contract. A record is kept in the database of the following data: reference number of contract; work description; contract price; preference claimed; points awarded; price used for comparison; name and address of successful tenderer; reasons for awarding contract; reasons for rejecting tenderers; and; the procedure used for procurement.

Sixthly, contract administration involves ensuring that the terms and condition of contract are adhered to and that contractors receive prompt payment. The contractors' performance is monitored to ensure compliance with set standards and certify successful completion of the project. The database is populated with indicators of time, cost and goals attained, and reasons for termination of contract. In this regard it used a toolkit for construction procurement. Administration serves to also resolve any disputes that may arise. CIDB is notified within one calendar month, of the completion of a project where a practical completion certificate has been issued, any renewing, cancelling or termination of a contract. (CIDB Toolkit)

Emerging ownership and capacity patterns

As at August 2005, some 3454 contractors had registered for grades 1-9. Most were for general building (76%), civil engineering (15%), electrical engineering (3%), mechanical engineering (3%) and specialist works (3%).

Table 2- Black owned enterprises 2005 (DPW Statistics, 2005/06)

CIDB Grade	Max tender value	% Black owned enterprises
1	200,000	98
2	500,000	97
3	1,500,000	96
4	3,000,000	90
5	5,000,000	78
6	10,000,000	71
7	30,000,000	46
8	100,000,000	17
9	No limit	0

Table 2 shows most black owned enterprises are to be found in grades 1-4, followed by grades 5-6. None are registered for grade 9. From grade 7 onwards, there are lesser registered black owned enterprises.

Table 3- Women owned enterprises 2005

CIDB Grade	**Max tender value**	**Women owned enterprises**
1	200,000	59
2	500,000	60
3	1,500,000	71
4	3,000,000	38
5	5,000,000	21
6	10,000,000	12
7	30,000,000	4
8	100,000,000	0
9	No Limit	0
	Total	**57%**

Table 3 reflects that most of the women owned enterprises are registered for grades 1-3. Relatively few, if not any, are registered for grades 7-9. CIDB has aligned its contractor development programmes and the register of contractors. A successful programme enables a contractor to gain financial and technical expertise. By monitoring the contractors before and after the programme, CIDB is able to measure the success of the development programme. It has also ensured that registered contractors enrol and benefit from the learnership programmes in the Expanded Public Works Programme (EPWP) and CETA. The intake is around 600. (CIBD Annual Report, 2004-5)

Table 4- Contracts awarded 2005-06

Type	No .of contrac tors	Total value of contracts awarded	No franchise	No franchise-	Women	Women	Disabled	Value of award
Mechanical	108	R 311,876,078.00	58	39	19	6	0	R 56,742,731.00
Electrical	13	R35,933,763.00	5	3	0	0	0	17,274,957.00
Construction	177	R2,187,170,371.00	116	57	37	14	0	37,250,664.00
TOTAL	**298**	**R 2,534,980,212.00**	**179**	**99**	**56**	**20**	**0**	**R 111,268,352.00**

Table 4 reflects that 298 contracts with a total value of R 2,534,980,212-00 were awarded during 2005-06. Of these, 179 contracts (which equates to 60%) were awarded to contractors without franchise totalling R 111,268,352-00. This translates to a contract value of a mere 4.4% of the total contract value. Those previously advantaged companies (totalling 119) secured contracts with a value of R 2,423,711,860-00. The disabled person does not feature in this sector of the market. Women do not feature in the electrical sector, but represent 32.8% of the disenfranchised in the mechanical sector and 31.9 % in the construction sector. On the other hand, wholly owned women enterprises represent 10.3% and 12% in the mechanical and construction sectors respectively.

Per sector, those without franchise secured 54% of contracts in the mechanical sector but with just 18% of the value of contracts. In the electrical sector, they secured 38.5% of contracts with 48% of contract value. In the construction sector, they managed to obtain 65.5% of contracts but with a relatively low value which equates to only 1.7% of the contract value.

Table 5- Contracts awarded 2006-07

Type	**Number of contractors**	**Total value of contracts awarded**	**No franchise**	**No franchise -100%**	**Women**	**Disabled**	**Value of award**
Mechanical	46	R 700,826,483.00	24	22	0	0	R 555,552,319
Electrical	7	R 21,238,308.00	2	1	0	0	R 5,059,576
Construction	110	R 780,250,894.00	60	48	1	1	R 129,973,480
Total	163	R1,502,315,685	86	71	1	1	R690,585,375

Table 5 reflects that those contractors without franchise secured 53% of contracts awarded which represents 46% of the total value of contracts. Neither women nor the disabled persons featured in the contracts that were awarded in the mechanical and electrical sectors but they are represented in the construction sector where they represent a mere 1.7% respectively of the disenfranchised. Those companies without franchise secured 52.2% of contracts in the mechanical sector with 79% of contract value. In the electrical sector, they secured 28.6% of contracts with 23.8% of contract value. In the construction sector it was 54.5% of contracts and 16.7% of contract value.

In comparing Table 4 and Table 5, during 2005-06, there were less contracts awarded but with the exception of the electrical sector, a considerably higher contract value in 2006-07 was awarded in the mechanical sector. The disenfranchised secured 53% of contracts in 2006-07 compared to 60% in 2005-06. This is a decrease of 7%. The value of awards to disenfranchised companies was 4.4% in 2005-06 and in 2006-07 it amounted to 46%. This shows a significant increase (of 41.6%) in the value of contracts that the disenfranchised companies secured during 2006-07. No woman contractors were represented in the mechanical and electrical sectors in 2006-07.

Figure 1- Total value of contracts awarded

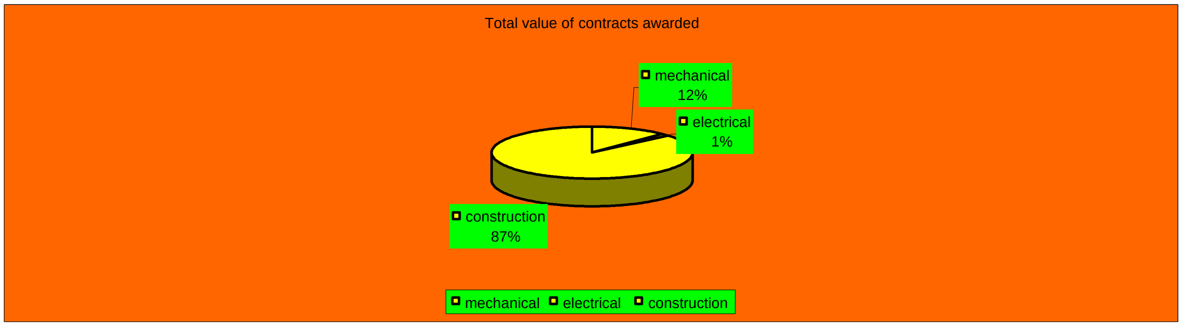


Figure 1 represents the value of contracts awarded in the three sectors-mechanical, electrical and construction. Of the R2,534,980,212-00 total value of contracts awarded during 2005/06, 87% went to the construction sector, 12% to the mechanical sector and only 1% to the electrical sector.

During 2005/06, a total of 298 contracts were awarded. The majority (60%), of contracts, were in the construction sector, followed by the mechanical sector, (36%) and the electrical sector at (4%). The demand is thus in the construction sector. Of the contracts awarded, 179 (60%) were awarded to those dis-enfranchised with a total value of R111, 268, 352-00 (or 4.4% of the total value of contracts awarded). Of the disenfranchised, 56 contracts (31%) were awarded to contractors with women participation, of which 35% went solely to wholly owned women contractors. There was no participation by the disabled in any of the contracts awarded. Although the number of contracts awarded to those disenfranchised is high, the actual value of such contracts is relatively low.

In the mechanical sector, 54% of contracts amounting to R56,742,731-00 (18%) was awarded to the disenfranchised. Women contractors accounted for 33% of contracts awarded, of which 32% were wholly owned women enterprises. In the electrical sector there were no women contractors. Thirty eight percent (38%) of contracts with a value of R 17,274,957.00 (48%) were awarded to the disenfranchised. In this category the value of contracts awarded to the disenfranchised is much higher.

In the construction sector sixty six percent (66%) of contracts went to the disenfranchised. Women contractors accounted for 32% of contracts awarded, of which 38% were wholly women-owned enterprises. Those disenfranchised were awarded contracts to the value of R37, 250,664.00 representing only 1.7% of the contract value.(Source: DPW Statistics of Award, 2005-06)

Table 6- Sample 2005/06

Electrical	**TYPE OF CONST**	**VALUE**	**NO FRANCHISE**	**WOMAN**	**DISABILITY**	**VALUE OF BEE**
	Electrical	R 110,604.00	100	0	0	R 110,604.00
	Electrical	R 107,373.00	0	0	0	R 0.00
	Electrical	R 150,971.00	0	0	0	R 0.00
	Electrical	R 106,926.00	0	0	0	R 0.00
	Electrical	R 183,056.00	0	0	0	R 0.00
	TOTAL	R 658,930.00	1	0	0	R 110,604.00

Construction	**TYPE OF CONST**	**VALUE**	**NO FRANCHISE**	**WOMAN**	**DISABILITY**	**VALUE OF BEE**
	Construction	R 185,780.00	100	0	0	R 185,780.00
	Construction	R 159,834.00	0	0	0	R 0.00
	Construction	R 3,387,967.00	100	0	0	R 3,387,967.00
	Construction	R 1,601,759.00	0	0	0	R 0.00
	Construction	R 8,349,503.00	4	0	0	R 333,980.00
	TOTAL	R 13,684,843.00	3	0	0	R 3,907,727.00

Mechanical	**TYPE OF CONST**	**VALUE**	**NO FRANCHISE**	**WOMAN**	**DISABILITY**	**VALUE OF BEE**
	Mechanical	R 306,993.00	100	65	0	R 306,993-00
	Mechanical	R 1,112,907.00	0	0	0	R 0.00
	Mechanical	R 474,662.00	100	0	0	R 474,662.00
	Mechanical	R 235,043.00	0	0	0	R 0.00
	Mechanical	R 1,793,745.00	0	0	0	R 0.00
	TOTAL	R 3,923,350.00	2	1	0	R 781,655.00

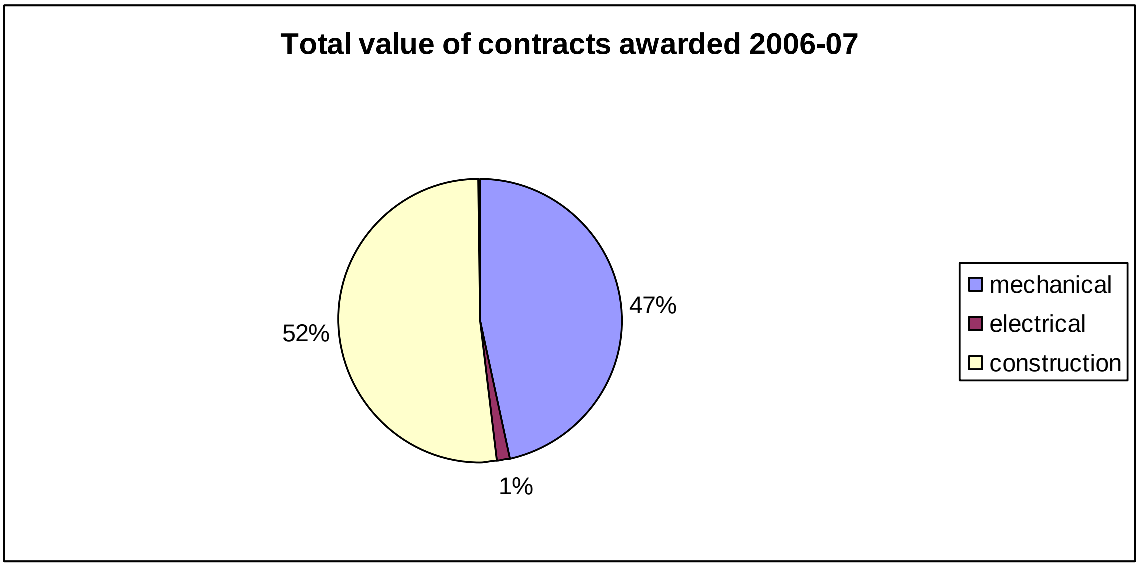
As depicted in Table 6, in the electrical sector for 2005/06, 17% of the value of contracts went to the disenfranchised, of which no women or disabled were represented. In the construction sector for 2005/06, 29% of the value of contracts went to the disenfranchised, with no women or disabled contractors securing bids. In the mechanical sector, 20% of the value of contracts was awarded to the disenfranchised, of which 50% were women contractors. The formerly advantaged contractors (60%) have thus secured the more lucrative contracts (R 3,147,695.00 or 83%). It will thus be observed that the value of contracts awarded to the disenfranchised tends to be rather low and that women and the disabled are totally excluded in the electrical sector.

Table 7 Contracts awarded 2006/07

	Total value of contracts awarded	**Value of BEE award**	**Number of contractors**	**No franchise**	**Women**	**Disabled**
Mechanical	R 700,826,483.00	R 555,552,319	46	24	0	0
electrical	R 21,238,308.00	R 5,059,576	7	2	0	0
Construction	R 780,250,894.00	R 129,973,480	110	60	1	1
Total	R1,502,315,685	690,585,375	163	86	1	1

In Table 7 we see that during 2006-07,out of a total of 163 bids, the disenfranchised secured 52.8% of the contracts and 46% of the total contract value. The actual number of contracts awarded to disenfranchised companies was 52% of bids in the mechanical sector with a corresponding bid value of 79%. No women or disabled companies tendered. In the electrical sector, disenfranchised companies secured 28.6% of contracts and a modest 23.8% of the contract value. Once again no women or disabled companies tendered. In the construction sector, they secured 54.5% of contracts with a contract value of R 129,973,480 or 16.7% of the total contract value. In this sector both women and the disabled represented just 2% respectively.

Figure 2



As we see in figure 2, during 2006-07, the value of bids was highest in the construction sector at 52%, followed by the mechanical sector at 47% and lastly the electrical sector with 1%. For the disenfranchised this translates into mechanical 79%, electrical 23.8% and construction16.6% of the total value of bids that was allocated to those disenfranchised companies. During 2006-07 disenfranchised companies were able to secure contracts with a considerably higher contract value. However in the electrical and construction sector, the former advantaged companies secured contracts with a much higher value in comparison to those disenfranchised.

Table 8- Sample 2006/07						
Electrical	**TYPE OF CONST**	**VALUE**	**NO FRANCHISE**	**WOMAN**	**DISABILITY**	**VALUE OF DISENFRANCIISED**
	Electrical	R 5,977,212	0	0	0	R 0
	Electrical	R5,267,317	0	0	0	0
	Electrical	R930,759	100	0	0	R930,759
	Electrical	R1,071,315	0	0	0	0
	Electrical	R6,881,361	60	0	0	R4,128,817
	Totals	**R 20,127,964**	**2**	**0**	**0**	**R 5,059,576**
Construction	**TYPE OF CONST**	**VALUE**	**NO FRANCHISE**	**WOMAN**	**DISABILITY**	**VALUE OF DISENFRANCHISED**
	Construction	R 2,135,005	0	0	0	R 0
	Construction	R1,851,336	100	0	0	R1,851,336
	Construction	R1,485,605	0	0	0	0
	Construction	R1,161,891	100	0	0	R1,161,891
	Construction	R1,893,436	100	0	0	R1,893,436
	Totals	**R 8,527,274**	**3**	**0**	**0**	**R 4,906,664**

Mechanical	**TYPE OF CONST**	**VALUE**	**NO FRANCHISE**	**WOMAN**	**DISABILITY**	**VALUE OF DISENFRANCHISED**
	Mechanical	R 2,931,037	100	0	0	R 2,931,037
	Mechanical	R11,687,202	0	0	0	0
	Mechanical	R369,440	0	0	0	0
	Mechanical	R32,535,719	0	0	0	0
	Mechanical	R1,246,582	100	0	0	R1,246,582
	Totals	**R 48,769,980**	**2**	**0**	**0**	**R 4,177,619**

Summary	**VALUE**	**NO FRANCHISE**	**WOMAN**	**DISABILITY**	**VALUE OF DISENFRANCHISED**
Electrical	R 20,127,964.35	2	0	0	R 5,059,575.78
Construction	R 8,527,273.82	3	0	0	R 4,906,663.74
Mechanical	R 48,769,980	2	0	0	R 4,177,619
Totals	R 77,425,218.14	7	0	0	R 14,143,858.44

From Table 8 it can be seen that during 2006-07 in the electrical sector no women or disabled contractors secured bids. Disenfranchised companies secured 20% of contracts worth 25% or R 5 059 576 against a total contract value of R20, 127, 964. There were no women contractors nor were there disabled contractors in the construction sector. However, disenfranchised contractors managed to secure 60% of contracts totally 6 R 4,906,664 or 57.5% of the total contract value. In the mechanical sector the dis-enfranchised managed to secure 40% of contracts. There were no women or disabled contractors represented.. Disenfranchised companies only managed to secure contracts worth R 4,177,619 or 0.09% against a total contract value of R 48,769,980. Neither women nor the disabled were represented in all three sectors.

Figure 3

Value of sample contracts awarded 2006-07

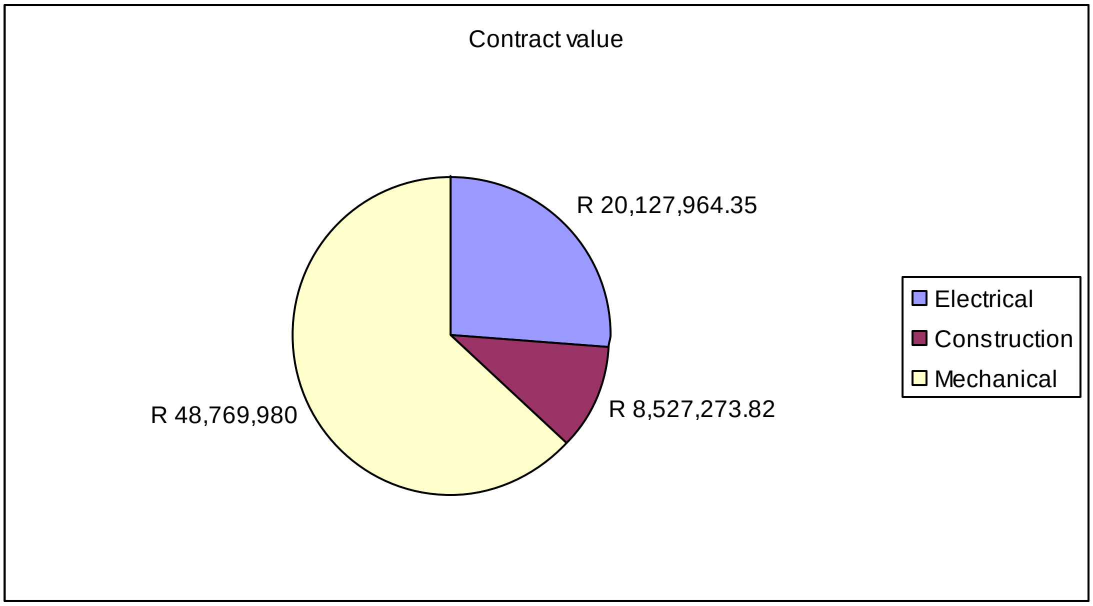
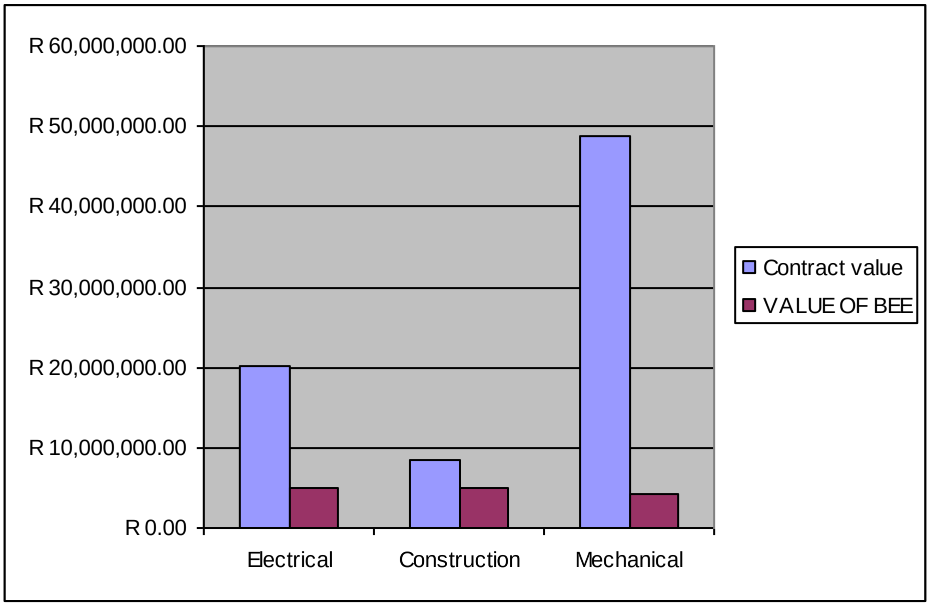


Figure 3 depicts that most of the contracts awarded during 2006-07 were in the mechanical field(63%) with a contract value of R 48,769,980 followed by the electrical sector (26%) with bids totalling R 20,127,964 and lastly the construction sector (11%) with bids worth R 8,527,273. The demand was in the mechanical and electrical sectors during 2006-07, whereas during 2005-06 it was in the construction and mechanical sectors. However, neither women nor disabled contractors were represented in any of these three sectors. The disenfranchised only managed to secure 20% of electrical contracts; 40% of mechanical contracts but equating to a mere 0.09% of the total contract value. Where they did manage to succeed was in the mechanical sector where they secured 60% of contracts and 57.5% of the value of contracts.

Figure 4

Breakdown per category 2006/07



In Figure 4 we see that of the contracts awarded, mechanical was the highest at R 48,769,980 followed by electrical at R 20,127,964 and lastly the construction sector at R 8,527,273.82. The BEE sector secured 18% of the contract value. In effect, this means that 82% of the value of contracts was awarded to non-BEE companies. This reflects a skills deficiency in the technical environment amongst BEE companies. This also implies that established companies have the correct pricing strategies which enabled them to then secure bids even thought they may not score points for preference (i.e. HDI's). It likewise reflects the skills deficit that is sorely lacking amongst women and the disabled.

11. Interpretation and Analysis of findings: Interviews

Interviews can provide reliable data by the interviewee's recollection of data and so long as it is truthful. Probing questions were asked to clarify matters and prevent any misunderstandings. The interviewer had to obtain the interviewee's trust and confidence to secure information that would not normally be readily available. Thus the interviewer was able to form an impression about the person and their views on preferential procurement. As interviews can be long, only the members of the BID Committee and contractors were interviewed. Interviews were allowed to develop by allowing the interviewees to express themselves. The interviewer was able to assist them to understand the questions and to offer the desired information.

Table 9- Interview sample

Interviews: Bid Committee members	**Yes**	**No**
Does the PPPFA contribute to economic upliftment of HDI''s?	3	0
Reasons- Pros		
PPPFA is a tool for indirect preferencing and not promoting direct ownership as per the BEE scorecard		
Using a margin of 10-20% on the scoring model, it allows for points allocation to HDI''s or RDP goals		
The CIDB register of contractors shows significant numbers of black and female owned firms in grades 1-8. At grade 6, over 70% of contractors are black owned, and over 90% for the lower grades.		
Cons		
It may not contribute to sustainability of the entity over the long term		

The percentages are lower for specialist work, mechanical and electrical engineering		
	Fair	**Skewed**
Does the point's distribution constitute a fair or skewed distribution?	3	0
Reasons: Pros		
It allows for specific goals to be achieved effectively by informing the HDI percentage contribution.		
In the general building and civil engineering categories, black owned companies in gradesx1-6 are now competing with each other. The allocation of additional points would not assist them.		
Companies above Grade 7 can contribute via the Construction Charter to the goals of BBBEE and equity ownership		
Cons		
As 48% of contracting companies are owned by women, family type fronting is rife. The allocation of additional points to women owned companies would exacerbate this.		
Suggestions to improve the point scoring system		
Grant points to firms that sub-contract to HDI firms		
Align the 10 or 20 points to the BEE scorecard		

	Yes	No
Has DPW in your opinion attained its HDI targets HDI's by implementing the PPPFA?	3	0
Are members of the BID Adjudicating Committee(BAC) familiar with the application of the PPPFA?	**Yes**	**No**
	3	0
Reasons		
BAC members have a good understanding of the PPPFA		

Of the six people who were interviewed, they were unanimous that the PPPFA is contributing to the economic upliftment of HDI's. They see it as a tool for indirect preferencing whereby 10-20% of the point scoring system could be allocated to HDI's. CIDB's register recorded number of black and female contractors in grades 1-8. Seventy percent (70%) are black owned in grade 6 and in the lower grades it is well over 90%.

All members also believed that the preference point allocation system was fair as it permitted the attainment of specific goals by informing the HDI percentage contribution. Black owned companies are competing with each other in grades 1-6. Further, they felt that companies in grade 7 and higher could, via the Construction Charter, contribute to the goals of BBBEE and equity ownership.

The majority of members considered that about family type fronting was an important problem, as 48% of contracting companies are owned by women. and granting any additional points to women owned companies would only exacerbate this. They felt there was a need to empower women contractors by the use of training programmes,(especially in the tender processes) and workshops, and the use of learnerships, apprenticeships, mentorships, and incubator programmes.

This was considered to be an important problem. Still others felt that there was no need to allocate additional points as it would not assist HDI's any further. They were of the opinion that the points distribution system provided for specific goals to be attained by allowing for HDI participation by preferencing. Black owned companies are competing in the construction environment. On the other hand, the others felt that any additional points allocated to them would not be of assistance.

The Construction Charter enables black companies to be awarded construction bids. The CIDB register grades contractors.. They know how to claim for preference points and felt that the point scoring system assists black contractors to secure bids.

All members felt that DPW has achieved its HDI targets via the PPPFA and that BAC members were fully au-fait with the application of the PPPFA. The PPPFA compels companies to engage in active management of a business. Government pays a premium towards the empowerment of black companies. More black and women owned companies are being registered on the CIDB register. Others felt that black owned companies may obtain contracts but cannot sustain them. There is a shortage of skills in the mechanical and electrical sectors.

Among their recommendations were: that points should be allocated to firms that sub-contract to HDI companies with the 10-20 points aligned to the BEE scorecard. Their suggestions to improve the point scoring system were to give points to firms which sub-contract to HDI's and also by aligning the 10-20 points to the BEE scorecard.

Table 10 Contactor interview questionnaire

Contactor interview questionnaire		
	Yes	No
Does the point scoring system assist HDI''s to secure bids?	3	0
Reasons		
CIDB provides the grading of contractors and this helps to facilitate the scoring		
One can target HDI''s such as women and the disabled		
	Yes	No
Does the 80/20 and 90/10 point scoring system empower local contractors to secure bids?	3	0
Reasons		
With CIDB in place, the details of contractors are easy to locate. It is easy to allocate points when scoring contractors		
	Yes	No
Do you know how to claim for preference points?	2	1
Reason		
Furnish proof of the preference group you are claiming		
Need training		
How can DPW empower women contractors?		
Contractor development and training programmes-on tendering requirements and systems		
Conduct training and workshops		
Learnersips/apprenticeships/mentorships/incubator programmes		
Do you believe fronting is occurring?	Yes	No
	3	0
Reasons		
Most black HDI''s have a problem to raise finance and opt to fronting. The previously advantaged companie companies as fronts to get contracts. Abuse Of BEE initiatives		

As we notice in Table 10, all contractors interviewed felt that the point scoring system did assist and empower HDI's to secure bids, as contractors were graded by CIDB and women and the disabled are targeted. The 80/20 and 90/10 point scoring did assist local contractors to secure bids, as CIDB has a register of contractors per province.

Two thirds of contractors knew how to claim for preference points. But other contractors felt a need for training. They felt women contractors could be empowered by means of contractor development and training programmes and the hosting of workshops on tender requirements. Other suggestions were learnerships, apprenticeships, mentorships and incubator programmes.

The majority were of the opinion that fronting was occurring. The reasons cited were that most HDI's lacked finances and opted to front, whilst previously advantaged white companies often used black companies as fronts to secure lucrative government contracts.

12. Research findings

From the analysis it could be determined that the department was able to achieve its objective for HDI's and SMME's. It can be observed from the survey undertaken of the extent to which these groups are participating in the bid processes. The barriers to participation are briefly as follows:

The use of fronting by companies to secure bids; a lack of contractor training and development programmes for women and disabled; a lack of finance by HDI companies; and the need for contractor training.

According to the figures held by the department for the financial years 2005-2006 and 2006-07, the value of contracts awarded to HDI' was as follows: R111,268,352 in 2005-06 or 4% out of a total contract value of R2,534,980,212. During 2006-07 HDI's secured 46% or R690, 585,375 worth of contracts out of a total contract value of R 1,502,315,685. These figures show a drop the value of contracts awarded to BEE as the figures stand they show a bid drop in percentages from in the value of contracts awarded to HDI's. Thus one is able to assess how effective the PPPFA has been, particularly the point scoring system, in directing preferences and what the outcomes have been. Only by instituting an effective measuring system can the department determine if the policy objectives it has set are being attained.

It has to be established whether HDI's and SMME's who are keen to participate in government bids but are precluded from doing so as the process is too complex, costly or even too daunting. If this is indeed true, then the mechanisms to delivery of the preference policy system requires re-examining.

The CIDB register shows predominance in general building, with empowerment gaps noticeable in civil, electrical and mechanical engineering and grades 8-9. This is due to ease of entry into general building and the need for specialist and financial resources needed for large and complex projects. The investment in infrastructure means that the public sector will require more capacity in grades 3-6. Such gaps cannot be met by affirmative procurement alone but requires contractor development programmes that focus on capacity building. (CIDB Annual Report, 2004/5)

13. Conclusion and recommendations

Conclusions:

The PPPFA is consistent with international best practice aside from the 20% allocation for low value contracts. The examination of the records of tender awards in the construction sector has led us to the following conclusions:

Firstly, the number and value of contracts awarded to BEE companies has fallen well below the targets. HDI's secured 53% of contracts in 2006-07 compared to 60% in 2005-06. This represents a decrease of 7%. The value of contracts awarded to HDI's however grew from 4% in 2005-06 to 46% by 2006-07.

For example, during 2005-06, of the 298 bids with a value of R2, 534,980,212, HDI's secured 60% of contracts equating to 4% of contract value.

No disabled contractors featured, but women were represented in the mechanical and construction sectors but not electrical. In the mechanical sector women represented 10.3%, and 12% in the_construction sector. HDI's secured 54% of bids in the mechanical sector but 18% of contract value; 38.5% of electrical contracts with 48% of contract value; 65.5% of constructions contracts with 1.7 % of contract value.

In 2006-07, HDI's secured 53% of contracts or 46% of the value of contracts. HDI's secured 52% of mechanical contracts with a significant 79% of contract value; 28.6% of electrical contracts with 23.8% of contract value; 54.5% of construction contracts but only 16.7% of contract value.

Secondly, the shortage is especially acute as regards black women and disabled contractors in the mechanical and electrical sectors. During 2006-07 women made up a mere 1.7% in the construction sector but 12% during 2005-06. This shows a decrease of 10.3% of women owned construction companies from 2005-2007. Women owned construction companies represented 10.3% in the mechanical sector for 2005-06 but do not feature in this sector at all during 2006-07.

Thirdly, the mechanical and electrical industries are particularly problematic. HDI's are mostly registered in grades 1-4 (bids valued from R200, 000- R3m) and are underrepresented in grades 7-9 (bids from R30m and over). HDI's only managed to secure 28.6% of electrical contracts during 2006-07 with 23.8% of contract value; 54.5% of construction contracts but a mere 16.7% of construction contract value. In 2005-06 HDI's had 54% of mechanical contracts but 185 of contract value; 38.5% of electrical contracts with 48% contract value65.5 % of construction contracts but only worth 1.7% of contract value. Women owned enterprises are mostly registered for grades 1-3(bids from R200, 000-R1.5m); relatively few are registered in grades 4-7(R3m- R30m) and none for grades 8and 9.

Fourthly, where targets are reached, it is primarily in the smaller categories. This is primarily due to newly emerging black companies. Due to a lack of experience, skills and a proven track record, they are registered in grade 1. In addition the estimated costs of the projects are within the range of these small contractors and not in the multi- million rand contracts.

13.1 Analysis of conclusions

Our questionnaire study led us to the following explanations:

Inability of small contractors to prepare acceptable proposals. Contractors lack the experience and expertise to properly prepare price proposals.

Failure to meet the requirements for registration on the supplier database. Many fail to submit the correct documentation for registration purposes with CIDB. This ultimately delays contractor registration.

Frequency of poor performance ratings, leading to failure to be re-appointed. A contractor will abandon site, often due to financial difficulties on site and lack of project management skills.

Deficiencies in the point scoring process. There is no proper verification checks undertaken and this makes it easy for companies which tender to misrepresent themselves by claiming fraudulently for preference points

Contractors expressed the need for training especially in the business environment.

The creation of opportunities for fronting to occur.

The lack of formation of joint ventures.

13.2 Proposed Improvement framework

Based on these findings, we suggest the following improvement framework:

Based on 1 above, the DPW needs to embark on a communication awareness and hold briefing sessions with prospective contractors on the bidding process, and the documents required in the tender process.

Based on 2 above, DPW together with CIDB should undertake road shows, workshops and use the media to disseminate information to potential contractors.

Based on 3 above, DPW should partner with financial institutions to assist successful bidders to secure funding for the project. The letter of award should be used as proof that it has secured a government contract.

Based on 4 above, officials in the Supply Chain Management unit should conduct verification checks on the preferences claimed by contractors. This should include in-loco inspections.

Based on 5 above, specific days in the year should be devoted to training of potential bidders. The dates should be advertised in the media and the department's website, public places and at hardware stores.

Based on 6 above, measures should be placed to verify preference points claimed by contractors before award of bids. The investigation of fronting by companies, criminal prosecution and blacklisting of companies.

Based on 7 above, a plan must be embarked upon to encourage black and white business to partner with each other by means of outsourced production elements processes.

In developing economies, the improvement of the procurement system to comply with standards of economy, competition, accountability and honesty needs a shift to:

Simple legal and regulatory framework for procurement;

Clear organisational arrangements with a central procurement policy/oversight with decentralised operations;

Measures ensuring that competent civil servants with integrity manage government procurement, and are rewarded via career options and frequent rotation;

A simple and transparent process of procurement;

Instituting effective mechanisms to curb fraud, corruption and abuse with the assistance of international organisations;

Review the value of thresholds above which complex biding rules apply and raise these with inflation, and, More attention being devoted to contract execution and monitoring. (Acquiring goods and services: public procurement, 2000)

13.3 The way forward

Setting targets and monitoring performance

The construction sector has not effectively implemented preferential procurement practices. The construction sector is marked by huge disparities in equity ownership, due to a lack of transformation. The construction sector shows marked inequalities in ownership, with black participation primarily at the micro and small business level. The Construction Charter seeks to remedy this by 2013. It expects the sector to achieve 30% ownership by black people and 10% wholly owned by black women. Black companies mostly operate as SMME's and cannot sustain them as the CIDB regulation depicts that contractors can only tender for contracts in their qualifying grades. Black business is unable to engage in the sector on account of it being capital and knowledge intensive. Still another problem is their lack of finance.

There are restricted numbers of black people, and more especially black women, in the ownership, management and in the specialised posts in the sector. Sub-contractors are employed but not given recognition for their participation in the project. Black people and black women in particular continue to be underrepresented at management level. Besides the targets the parties to the charter have to: have targeted procurement policies that promote access to tender opportunities, early payment cycles and intervene in the supply side for micro and small enterprises; counter fronting and the abuse of targeting arrangements; ensure that local communities benefit, procure from local enterprises, more especially micro and small enterprises with black ownership exceeding 50%. (Construction Sector Broad-Based BEE Charter Fourth draft)

It is crucial for systems to exist in the Supply Chain Management cycle that will inform both management and the minister with reliable, accurate and timely information on the state of Supply Chain Management. The success of the PPPFA and point scoring system has to be measured and indicators established to guide where improvement is still needed, key performance indicators are needed to inform management on how well the point scoring system is doing, and Supply Chain Management in general, especially in respect of cost effectiveness, timely acquisition of goods and services, total quality management and customer focus. Measurement methodologies must be designed and implemented and monitored by management. National Treasury should monitor these and best practices should be adopted by other entities to ensure the avoidance of poor outcomes. The Treasury should convene meetings with heads of Supply Chain Management with monthly reporting per quarter on procurement spend and the monetary value paid to the Historical Disadvantaged Individual (HDI's). Supply contracts should permit new tenderers during the currency of the contract to allow for changing circumstances like new technology. Existing period contracts should be allowed to expire and replaced by general supply contracts by a common service provider, provided such contracts are cost effective and where goods are in high demand and savings will accrue to departments.

Government officials do not investigate companies that submit tenders. Tenders are called close to the closing date and project implementation. Thus, there is insufficient time to evaluate tender documents to confirm if those listed in the project are actually involved. Departments' need to verify a company's existence and its relationship with the tenderer to verify if the percentage reflected in the tender documents going to black business is correct. If not done, the department will incorrectly reflect in its records that a tender was awarded to a white female owned business with subcontracts to a black, female-owned and managed company and the departments financial records reflect a black company as having received a share of the department's budget.

Training

Supply Chain Management practitioners need to consider the impediments that HDI's encounter to access government bids and find innovative solutions and proactive measures to address these impediments. They need to be capacitated and empowered. Procedures need to be simplified, communication improved, red tape removed, turn-around times improved, whilst also attaining better value for money. Supply Chain Management has immense potential to stimulate growth of the SMME sector and advance BEE. Supply Chain Management has been able to achieve some of this by means of its policies and processes such as by focussing on specific groups or sub-groups, such as women, youth, disabled, rural, local, manufacturers and suppliers.

as SMME's are inclined to be labour intensive, and are not dependent on vast capital and advanced technology and equipment, they can increase output and employment and by expanding the SMME's sector, can reduce unemployment, increase the incomes of poor households, generate more national income and so provide long term economic growth. (AUSAID, 2000)

Facilitating full implementation of existing regulations

As government's tender evaluation is flawed on account of its tendency to place more reliance on information in the tender document than on reality, it will continue the process of empowering the previously empowered. Another problem is that, despite public officials stating they will investigate all tenders submitted by companies, in practice, this is never done. Tenders are often invited close to submission date and project implementation. Consequently, there is insufficient time to undertake a proper evaluation of the tender document to verify that those listed in the tender documents as part of the project are actually involved. There is thus an incorrect reflection in the records of government that a tender has been awarded to a company with a black partner, (for which it obtains points) and the department's financial records also incorrectly reflecting that a BEE company has received a slice of its preferential procurement budget. Hence it is deemed prudent for government to review its procurement strategy in order to assure itself that budgeted funds have actually reached black businesses. *(Sunday Times*, 20.8.06.)

Economy

Economy is the performance criterion that is used to evaluate procurement activities. Typically, a major portion of government expenditure is incurred via goods and services it procures and construction work. Such procurement accounts for 20% of central government expenditure and almost 50% for developing countries. When procurement is managed poorly, its impacts beyond project implementation and the functioning of the relevant department. It can delay or dilute the program's benefits to society, constrain private sector performance and is often perceived to be associated with bribery in the award of contracts. (Acquiring goods and services: public procurement, 2000)

A major problem in public procurement relates to disinterest and neglect by operational managers who have a tendency to leave procurement to the "specialists." Their concern is with policy and they do not have time to understand the intricacies of product quality, pricing structures and technical specifications. It also insulates them from corruption. One way to get senior managers more involved in the procurement function is by making it part of their explicit performance expectations. Although they need not be procurement specialists, they need to be aware of the process and its risks. (Acquiring goods and services: public procurement, 2000)

Directions for research

Fraud and corruption

The department needs to adopt a pro-active stance against fronting by outlining its attitude and consequences for offenders in the tender documents. A prequalification check would be for the department to establish that the bidder has not been found guilty of corrupt and fraudulent practice. This practice is needed due to the increased emphasis on the fight against corruption in developing countries. Whilst most countries follow the practice of providing information on the award of contracts available to the public, no uniform practices exist on informing the unsuccessful bidders. Tanzania, for instance, there was corruption in its construction and procurement tenders on account of a disregard for rules and regulations. There were major differences between the tendered cost and the final cost of completion, which were used to defraud the government. The procurement procedures showed deficiencies, creating room for corruption and major financial misappropriations to manifest. In addition there was poor record keeping, lengthy bureaucratic process of collecting goods and poor procurement systems. Purchase via price quotations to be used for emergencies had become the norm. Poor–quality goods were purchased at exorbitant prices by collusion and without the necessary authorisation. Hence nonexistent goods were procured using proforma invoices. Financial orders were never updated and deficient in setting out procedures for construction tenders. Personnel handling the costing and tender evaluations did not check current market prices at evaluation. Some bidders bribed personnel to get favourable bid specifications and prequalification. Procurement personnel got bidders to quote low and then helped them change orders to receive higher payments. These bids were awarded in violation of procedures and yet still ratified by higher authorities. (Acquiring goods and services: public procurement, 2000)

Fronting can be detected by in-loco visits by a departmental team comprising Supply Chain Management practitioners, project managers and BID committee members, to bidders and by observing the activities of tenderers or contractors. A checklist to detect fronting should be compiled. Monitoring and visits should also occur after the bids have been awarded. After visits, a report should be compiled with a record of findings and any action to be taken. When fronting has been detected, those found guilty should be blacklisted for at least three years from bidding for government contracts. Bidders should be requested to make presentations on affirmative action policies and practices. The department should watch out for token appointments. The communication unit should embark on a strategy to eradicate fronting. The department should request bidders to include as much information to substantiate their bids.

Both the ABD and World Bank have issued guidelines on fraud and corruption to ensure borrowers and contractors observe the highest standards of ethics in procurement and execution of contracts. Sanctions were imposed on those found to have engaged in corrupt practices and barred for long periods. (Acquiring goods and services: public procurement, 2000). DPW needs to consider the imposition of sanctions on bidders engaged in mal-practices.

Preference points

To claim for preference points, bidders should furnish the following information to enable the department to ensure that fronting is not occurring, namely: group ownership, gender ownership, disability ownership, business size, and, executive management structure per group. The department can verify information with the Department of Trade and Industry (DTI) and other entities but with the onus on bidders to provide such information. This would effectively scare off any unscrupulous bidders. Documents are: copy of the company and registration certificates, copy of certificate of membership of trade associations, previous business name and full explanation necessitating the name change, copy of shareholding, share certificates, percentage ownership, copy of identity documents of owners, management and directors, classification and percentage ownership and management structure, organisational chart and CV's of directors and key management personnel. The application of the preference schedule allows for different percentage preferences to be deducted from the tender price to get at the comparative tender value. The percentage is dependent on the size of the entity. Among these is the number of employees, annual turnover and gross asset value. An annual audited financial statement would enable the amount to be verified. The department should build up a database of suppliers to compare data on bidders who tender in the future, those blacklisted, and also so that other government entities can access or publish such information on bidders involved in fronting. Other action the department can consider instituting is: cancelling the contact, institute criminal charges and recover any losses sustained by instituting civil action. (Gobodo Forensic Accounting, 2002)

Indicators for BEE

For Gqubule, the indicators for black participation in the economy should be employment and the quality of work. Gqubule contends it is too early to say that BEE has failed, as the aims were not spelt out and the monitoring of results is weak. BEE is an evolving phenomenon and is a hotly contested idea rather than cast in stone. It is expected that BEE will further evolve beyond compliance with codes and charters and find creative solutions to empower the multitude of poor people. Resources need to be redistributed to attain empowerment from below and enable the black majority to radically transform the power relations in society, change institutional cultures and lead to the creation of democratic and inclusive decision-making structures. Malaysia provides a good example to inspire our own BEE drive. In this respect the Broad Based Black Economic Empowerment Act, 2003 provides the legal framework that compels all sectors of the economy to compile a charter to reflect how black equity participation is going to be promoted. The criteria used in the scorecards are race and not socio-economic status and means charters will achieve little to combat socio-economic inequalities. (Kriel, 2006)

The workshop held by CIBD found that preferential procurement itself cannot fulfil the requirement for capacity and empowerment. There is an acute need to focus on skills formation and sustainable enterprises and also by adopting a targeted development using the register of contractors and register of projects. (CIBD Annual Report, 2004-5)

Promoting the development of SMME's

Participation of small contractors is mostly facilitated by dividing the service area into several smaller regions or packages of equipment and works and encourages competitive bidding for each area or package. The disadvantage is the higher cost of overall procurement and the bias of central government towards large tenders. Where authority is delegated, central government needs to have the power to monitor and conduct audits but not intervene in the award or administration of any contract. To assist decentralized units, government should encourage joint procurement or award contracts covering a number of jurisdictions such as in France. Government could also assist to remove barriers to entry by small contractors, provide training programmes for contractors and construction firms and support services. In some countries there are public sector consultant organisations, staffed by experts to assist state departments in planning and managing large construction and irrigation works and to procure supplies from local and foreign sources. Use can be made of central rate contracts with reputable suppliers, as is done in India. (Acquiring goods and services: public procurement, 2000)

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