CHALLENGES IN IMPLEMENTING EQUITY IN PREFERENTIAL PROCUREMENT POLICY

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DECLARATION

I declare that this report is my own unaided work. It is submitted in partial fulfilment of the requirements of the degree of Master of Management (in the field of Public and Development Management) in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other university.

Thulani Ernest Mahlangu

June 2008

DEDICATION

This work is dedicated to my mother, Peggy Esther Mahlangu, and all the Petha family members who have been supportive of me throughout the years of my study.

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ABSTRACT

Post 1994 South Africa necessitated the implementation of a Preferential Procurement scheme intended to balance the imbalances of the past. As we enter into the second decade of democracy, the success of the programme has been met with cacophony. Thus the purpose of this study is to investigate the effectiveness of the Preferential Procurement Policy in road construction bids, which are intended to promote and advance the interests of those who were on the receiving side and fringes of the then racially exclusive economic and social development system.

The study was conducted within the context of government tender procurement in the Department of Roads and Transport (Mpumalanga Provincial Government) with a clear focus on the 2004 / 2005 financial year capital projects. In order to realise the objective of the research, data was collected through face to face semi-structured interviews recorded on an MP3 voice recorder. The data was later word-processed and rigorously analysed to reach verifiable conclusions.

The research has managed to unearth a number of challenges affecting the successful implementation of this universally accepted preference programme. These challenges include the lack of adequacy of the policy regime used, lack of supply side interventions critical for the implementation of a programme of this magnitude and ethical challenges that needs to be nipped in the bud to ensure that the programme provides the necessary social cohesion within the society.

ABBREVIATIONS

BEE	**Black Economic Empowerment**
CC	**Closed Corporation**
CETA	**Construction Education Training Authority**
CIDB	**Construction Industry Development Board**
CIPRO	**Companies and Intellectual Property Registration Office**
DBSA	**Development Bank of South Africa**
HDI	**Historically Disadvantaged Individuals**
PDI	**Previously Disadvantaged Individuals**
IDC	**Industrial Development Corporation**
JV	**Joint Venture**
MEGA	**Mpumalanga Economic Growth Agency**
NEF	**National Empowerment Fund**
NGO	**Non Governmental Organisations**
PPPFA	**Preferential Procurement Policy Framework Act, No 5 of 2000 / Preferential Procurement Policy**
SABS	**South African Bureau of Standards**
SANS	**South African National Standard**
SARS	**South African Revenue Service**
SMME	**Small Medium and Micro Enterprises**
VAT	**Value Added Tax**

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CHAPTER 1

GENERAL INTRODUCTION

Prior to 1997, the government tendering system favoured the larger and more established businesses. It was very difficult for any new and upcoming entrepreneur to win a tender in the public sector procurement system. From 1997, the Ministries of Finance and Public Works embarked on the reform of the public sector procurement system to make the tendering system easily accessible to the small medium and micro enterprises (SMMEs). The emphasis was on the development and stimulation of the SMME sector and using the procurement system as an instrument to achieve certain socio-economic objectives without forfeiting the principles of good financial management. The objective was to establish a public sector procurement system that would meet the development needs of all the people of South Africa (Department of Trade and Industry, 1997).

Public sector procurement has a major impact on the South African macro economy, both in terms of consumption and investment spending. As such, public sector procurement can be used as a tool by government to achieve economic ideals, including advancing and protecting the interests of blacks, women, youth, the disabled and local communities who were at the receiving end of the previous regime. At the same time, an effective and efficient procurement system will permit government to deliver the quality and quantity of services demanded by its new constituency in accordance with Reconstruction and Development Programme principles and other policy objectives (Watermeyer, Gounden, Letchmiah and Shezi, 1998).

The dawn of the new democracy in South Africa ushered a new era of hope for all its citizens by providing equal opportunities without tampering with the rights, privileges and possessions of those privileged by the old system. In an endeavour to tilt the scale in favour of those who were underprivileged, the Preference

Procurement Policy Framework Act no. 5 of 2000 (Preferential Procurement Policy) was promulgated as the agent of the change. To date a plethora of legislation has been promulgated with the intentions of facilitating the creation and promulgation of black owned and controlled businesses that can drive the necessary transformation. This was coupled with the creation of several institutions to provide financial and other support to entrepreneurs. The Construction and Training Authority (CETA) was also mandated to take care of skills development.

Thus, as we enter the second decade of democracy it becomes imperative to conduct a scientific study that will provide evidence regarding the need to have a Preferential Procurement system, progress made to date in its implementation and challenges encountered as well as possible remedies to unlock blockages of the system.

1.1 STATEMENT OF PROBLEM

The aim of the Preferential Procurement Policy is to promote and advance previously disadvantaged individuals and communities, through accessing government procurement of goods and services. In addition to this act, the Mpumalanga Department of Roads and Transport has approved a procurement policy that will especially assist previously disadvantaged or designated groups to access tenders for road capital projects. Although contracts worth R129 million were awarded to the designated groups in 2003/2004, constituting over half of the possible allocation, less than 1% of allocations were awarded to these groups in 2004/2005. For example, in the landmark court judgment between *Grinaker LTA Ltd v Tender Board* (Mpumalanga), a road construction project, the court ruled that it is peremptory that a tender be awarded to a contractor who obtained the highest points.

Preferencing has even become more difficult since then. Thus, there is a growing perception that in spite of the implementation of the Preferential Procurement System, tender adjudication is still largely skewed towards well-established contractors. As little is known about the extent to which the tenders awarded have contributed to the effective empowerment of the designated groups, it is important to investigate the effectiveness of the Preferential Procurement System in promoting equity.

1.2 STATEMENT OF PURPOSE

Globally, Preferential Procurement systems have been established to address certain pressing national economic and social challenges. For example, after the Second World War in Europe the preference systems were established and used to protect and promote local industries that partly assisted to expedite growth of economies of European countries within a short period. Affirmative Procurement has also been implemented at the level of human resources management to balance historical imbalances in employment and tertiary education enrolment patterns affecting largely native and minority individuals at a given time.

The purpose of this study is to investigate the effectiveness of the Preferential Procurement System in road construction tenders in promoting and advancing the interests of those who were historically disadvantaged by the then racial system of economic and social development. These historically disadvantaged groups currently have legitimate constitutional expectations of economic and social advancement using the preferential procurement model in the public sector.

1.3 SIGNIFICANCE OF THE STUDY

The significance of the study should be viewed from the context that implementation of policy tools like Preferential Procurement should not be seen as a permanent feature of the society. Inherently, Preferential Procurement is used to balance imbalances of the past in a particular society. The history of the trajectory of the policy implementation suggests that in as much as the policy has good intentions and spin offs, it is always beset by numerous pitfalls. With South Africa having emerged from its past and implemented such a policy, it is only logical that the successful implementation of the programme hinges squarely on continuous scientific and evidence-based findings. Thus, the research is an endeavour to assist in gauging success and lack thereof to date and probably shared some light on strategic interventions to be undertaken to ensure that Preferential Procurement in South Africa becomes a model and successful story.

1.4 RESEARCH QUESTION

The research question is: What are the challenges facing the Preferential Procurement Policy regarding the economic empowerment of designated groups?

The initiation of government procurement reforms in the post 1994 era was intended to profoundly influence access of tender opportunities by designated groups that could have changed patterns of ownership and accumulation of wealth in the country. This process has the potential to positively address social ills like unemployment and poverty. The process was also intended to consolidate the gains of a constitutional democracy in the first decade of democratic rule. However, the progress to date in the implementation of the preference system has not only raised anxiety about the wind falls of the benefits of the system to beneficiaries of the system but the status quo tends to confirm and reinforce global perceptions that denounce Preferential Procurement as a means to address socio-economic objectives.

The subsequent question is: What is the rationale or justification of the Preferential Procurement Policy in terms of policy?

Preferential Procurement Policy is the South African regulatory framework and model of preference procurement regime designed to give effect to section 217 of the constitution of the republic. South Africa has peacefully emerged from a system that was characterised by systematic racial discrimination that supported and empowered less than 13% of its population at the expense of the majority of black citizens that remains impoverished, unemployed and highly under-resourced. Post 1994 has seen eradication of legislation that supported that system. However, the impact of the system is so pervasive and remains entrenched in the daily lives of the majority of the people. It is vital to understand that societies characterized by entrenched gender inequalities or racially or ethnically defined wealth disparities are likely to be socially and politically unstable. It is clear that in the past black South Africans were systematically deprived of viable business opportunities in the sense that they suffered drastic curtailment of property ownership rights, which made it impossible for them to acquire assets that could serve as collateral for loan financing. As if that was not enough, the system also excluded black persons from the long run process of acquiring education, skills, capital accumulation and growth. Given the magnitude of the problem created in the past and the shaky position of the new democratic order, the legacy of the past can only be reversed through progressive legislation and strategies that are tailor made to reverse the tide and contribute towards creation of a new society that has a strong and vibrant economy that can equally support the aspirations of all its citizens.

1.5 OVERVIEW OF RESEARCH METHODOLOGY

The primary method of data collection was through semi structured face-to-face interviews. Twenty-six open-ended questions were prepared before hand to guide the interview and ensure that all respondents are asked similar questions. Interviews were recorded through a MP3 recorder to capture accuracy of the information provided. By face-to-face interviews, the researcher was privileged to interact directly with the respondents. Through interaction with the respondents, the researcher was able to convince respondents about their anonymity and to provide as much information as they can. This also gave the researcher a unique opportunity to identify vagueness and ambiguity of questions asked to different samples interviewed. Moreover, the method assisted the researcher to make prompt follow-ups and clarifications on responses, concepts, citations and physical expressions displayed during the interview. Secondary data was obtained through analysing of bid evaluation reports for the 2003/2004 financial year, formally obtained through the recommendation and approval of the Senior Manager Supply Chain, Chairperson of the Bid Committee and Head of Department (Merriam 2003).

Bid Committee Members, Consultants and Contractors constituted the total population of the study. Bid Committee Members are a vital component of the implementation of Preferential Procurement Policy in that they evaluate and adjudicate tenders through interpretation of the Preferential Procurement Policy and its regulations. Consultants serve as implementing agents because government normally lacks necessary technically skilled personnel, i.e. civil engineers and technicians, who are critical in implementing Preferential Procurement to achieve socio-economic goals. Contractors are the beneficiaries of opportunities of government procurement. Emerging contractors and black owned and managed contractors being the main target of the preference policy and well established contractors are still dominating access to government procurement opportunities. Although, the population frame of the study is so diverse, nevertheless all the respondents are indispensable because they can collectively assist to ensure the successful implementation of government Preferential Procurement system.

The study was based on non-probability purposive sampling that targeted certain specific members of the population. In the context of bid members and consultants samples were carefully selected because of their perceived profound knowledge regarding Preferential Procurement and bid evaluation and adjudication in the context of roads construction in government. In addition, contractors were sampled on the basis of inroads and successes achieved in roads construction over years (Leedy and Ormrod 2005).

1.6 SCOPE AND LIMITS OF THE STUDY

The study was a case study triggered by the mediocre extent on which HDIs were economically empowered through the award of 2004/2005 road construction projects of the Department of Roads and Transport, Mpumalanga Province. At a broader spectrum, the study covered Black Economic Empowerment at the level of enterprise ownership and enterprise development as dictated by the scope of the Preferential Procurement Policy and its regulations, as opposed to all seven elements of the Broad Base Black Economic Empowerment that include direct and indirect elements of empowerment. At the industry level, the study covered process, functional and ethical challenges affecting effective implementation of the Preferential Procurement Policy. In addition, the study covered the theoretical basis of implementation of a preference scheme as well as the assessment of the progress achieved to date in the context of annual multi million Rand road construction projects.

The sample frame of the study adequately covered critical stakeholders that included Bid Committee Members within the department of Roads and Transport, contracted consultants of the department who assist the department in all aspects of procurement and project management. The study also included both the emerging and well-established contractors who are recipients of government procurement opportunities. However, the study was limited to the extent that it is a mini-thesis conducted within a short space of time and limited resources of the researcher to cover a broad spectrum of policy stakeholders e.g. financial institutions and the South African National Treasury who could have shed vital information on the research.

1.7 STRUCTURE OF THE REST OF THE STUDY

The research is divided into six chapters including this chapter. Chapter 2 is the literature review or theoretical account of preference schemes as implemented globally, regionally and in South African specifically. The third chapter covers the justification of the research methodology that was utilised to conduct the study. Chapter 4 is the presentation of the data and identification of key findings of the research. Chapter 5 contains a rigorous data analysis of the key findings vis-à-vis the theoretical perspectives contained in chapter two. Finally, chapter 6 contains the summary, conclusions and recommendations of the study

CHAPTER 2

LITERATURE REVIEW

The chapter reviews extensive literature and broad areas of theory on Preferential Procurement schemes globally and locally. Preferential Procurement Schemes have been implemented and documented dating back to the First World War. Since the promulgation in 2000 of the South African version of Preferential Procurement, there are mixed feelings about the achievement of the intended objectives. As the country gets into the second decade of liberal democratic politics, it is important to review and reflect on what has been done vis-à-vis Preferential Procurement schemes.

For Watermeyer (2003), Preferential Procurement is a procurement system that promotes objectives additional to those associated with the immediate objective of the procurement itself. The term Preferential Procurement is synonymous with Affirmative Action (Procurement) or Targeted Procurement (Bolton, 2003).Targeted Procurement can be described as a system that intends to economically empower previously disadvantaged or marginalized individuals and communities, which are referred to as target or designated groups.

At a global level, preference schemes are mainly referred to as , Affirmative Action, and constitute a set of positive anti discrimination measures intended to ensure access for members of groups who otherwise would be excluded or underrepresented in preferred positions in a society. It is intended as a strategy to address present day exclusions; it is not compensation for past discrimination, oppression, or injustice. It can function as a compensatory practice or offset for the effects of current racism or casteism. Thus, Affirmative Action promotes access for the dispossessed, but does not provide redress for their historic dispossessions. In particular, Affirmative Action often functions as a means of desegregating elites. It does not operate to alter the fundamental class character of a society, nor does it operate as a general anti-poverty program. It operates to alter the demography of the elite, to make the elite more representative of the ethnic / racial composition of the society as a whole (Darity, 2005).

2.1 GENERAL PREFERENTIAL PROCUREMENT PERSPECTIVES

Globally Affirmative Action takes two major forms 'Preferential Boosts' and 'Quotas'. Preferential Boosts add explicit or implicit points for being a member of a target group. Quotas are fixed allotments designed for members of the target group. Elements of both approaches can be found in countries utilising Affirmative Action; they need not be mutually exclusive. Nevertheless, one approach or the other usually dominates the system utilized in a specific country. For example, to the extent that Affirmative Action continues to be applied in the United States of America, it primarily takes the form of Preferential Boosts. In contrast, in India, Malaysia, Northern Ireland and Brazil, the most recent adopter, Affirmative Action primarily takes the form of quotas (Darity, 2005).

Affirmative Action policies were implemented in Malaysia since the 1970s to eliminate the socio-economic imbalances between Malays (Bumiputera) and non-Malays (non-Bumiputera), as brought about by colonialism. With the 13 May 1969 racial riots, the national government was finally concerned with the necessity of implementing Affirmative Action to create a more balanced society. The trajectory of Affirmative Action in Malaysia included the introduction of legislation that included the New Economic Policy (NEP) in 1970, which accorded the Bumiputera preferential treatment in order to correct the racial imbalances between Malays and non-Malays. It was hoped that within a period of 20 years (1971-1990), Malays would own and manage at least 30% of the commercial and industrial activities of the economy. In addition, in 1975 the Industrial Coordination Act (ICA) was promulgated to provide the state with the means to implement the equity policies.

Further, the constitutional amendments were made to discourage opposition of sections in the constitution that intend to promote and advance interest of Malaysians. A challenge to those provisos was considered tantamount with words or actions inciting people to rebel against the government. The NEP stressed national unity as the overriding objective and it contained a two pronged development programme. The first prong aimed at reducing and eventually eradicating poverty by raising income levels and increasing employment opportunities for all Malaysians. The second prong, which was the essence of the Affirmative Action scheme, aimed at accelerating the process of restructuring Malaysian society to correct economic imbalances. The government set up a timetable of 20 years from the inception of the NEP for the achievement of the restructuring target (De Klerk Foundation, 2005).

India has the longest modern history of Affirmative Action of any of the countries now practising the policy. As early as the start of the twentieth century, while India was still subjected to British colonial rule, three southern states of India established a policy of reserving positions in the state level civil service bureaucracy for the untouchables. In 1948 a national policy of reservations for the untouchables (or Dalits) and tribals (or Adivasis) was written directly into the Indian constitution. Affirmative Action in India is used to address the discriminatory effects of the caste system, in which groups were seen hierarchically according to their traditional roles in society. Outside this system were the untouchables who suffered serious prejudice and who now are one of the primary beneficiaries of Affirmative Action. Indian Affirmative Action establishes a total quota of 22.5 percent (15 percent for the untouchables and 7.5 percent for tribals) for the scheduled castes and tribes. The quotas apply to civil service positions, university students admissions, faculty posts, and other institutions that receive public funds, as well as parliamentary seats. Notably, to this date, India does not apply Affirmative Action to employment in the private sector, although political pressure is mounting in that direction (Darity, 2005).

Since the 1960s, Affirmative Action policies have been the primary weapon to combat racism and sexism in American society. Despite the Civil Rights Act of 1964 and the Voting Rights Act of 1965, both of which advanced the constitution's promise of equal opportunity, actual progress in the daily lives of people was slow and difficult. Thus, Affirmative Action was born and enacted. The policy trajectory was characterised and shaped by two fundamental judicial verdicts. In 1978, *Regents of the University of California vs. Bakke* decided that setting aside a specific number of places in the absence of proof of past discrimination was illegal, but it allowed racial preferences in admissions. In 1971, the Department of Labour under President Richard Nixon issued an order requiring all federal contractors to develop an 'acceptable Affirmative Action programme'.

The utilisation of public procurement for socio economic purposes relating to equal opportunities has been in operation for a substantial time in the US. The basis of the current program can be traced back to Executive order No 11246, promulgated by President Lyndon Johnson in 1965, which obliged government contractors to take Affirmative Action measures to ensure equality of opportunity. This order emanated primarily from observations as to the limited employment opportunities being made available to minority groups. The programme was initially linked only to the issue of labour equity, and it was only in 1978 that the program was formally expanded to provide preferences to business enterprises owned by socially, or economically, disadvantaged persons.

The construction industry has always been at the forefront in the utilisation of public sector procurement as an instrument of policy in USA, with the linkage between public procurement and employment equity in construction being traceable to area programs such as the St Louis Plan 1965 and the Philadelphia Plan in 1967. The construction industry was the first sector in the USA in which the US Federal Government developed an explicit approach to Affirmative Action. Since the issuing of the Executive Order in 1965, the policy relating to contract compliance in the US has evolved to embrace a wider range of target groups, such as woman-owned businesses, and has been implemented at various levels of government (Weisskopf, 2004)

According to the Global Rights Partners of Justice report (2005), regional meetings and subsequently the 2001 World Conference Against All Forms of Discrimination focused heavily on Affirmative Action as a means to deal with all forms of discrimination. The conference emerged with a declaration denouncing all forms of discrimination and outlined a programme of action to deal with the situation. The declaration repeatedly asked that special attention be devoted to, and funding be provided for, marginalized groups. It also provides a mandate for action oriented policies and action plans including Affirmative Action to ensure non-discrimination.

The regional follow up meetings to the world conference further confirmed the demand for Affirmative Action at the regional level. For example, the 2003 regional workshop in Montevideo, Uruguay produced conclusions and recommendations that resoundingly support race conscious programs. The workshop points out that affirmative action is a means of addressing and overcoming injustice and inequities based on racism and discrimination, and must be incorporated into domestic policies. The European system similarly rejects discrimination, and the norms and jurisprudence of both the European Union and the Council of Europe buttress the practice of Affirmative Action. European Court of Justice (ECJ) decisions have not directly addressed race-based Affirmative Action, but they repeatedly have acknowledged the legitimacy of positive actions to combat discrimination against woman. For example, *I Marschall VS. Land Nordrheim-Wesstfalen*, the ECJ upheld a German statute-favouring woman for positions in fields where they were underrepresented.

Non-discrimination is a core principle of the Organisation of American states (OAS) system. The OAS Charter, the American Declaration of the Rights and duties of Man (American Declaration), and the American Convention on Human Rights (American Convention, which collectively comprise the principal documents shaping the Inter-American system, contain strong emphases on non-discrimination. Inter-American norms and jurisprudence also mandate that states take effective action to guarantee these rights, thereby suggesting the need for affirmative measures (Darity, 2005).

International law strongly supports Affirmative Action to combat inequality or discrimination. Non-discrimination is a cornerstone concept in international human rights, as international norms are virtually unanimous in requiring that states take specific steps to support the right to no discrimination and equality before the law. Non-discrimination provisions are fundamental to major international human rights norms and these norms compel Affirmative Action in certain cases. As the United Nations Human Rights Committee declared, non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basis and general principle relating to the protection of human rights. Important regional treaties and universal norms like the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Convention on Elimination of All Forms of Racial Discrimination (ICERD) repeatedly emphasize the importance of non-discrimination.

The International Labour Organization's (ILO) Discrimination Convention also decisively precludes discrimination and endorses affirmative action. The United Nations Economic and Social Council's Human Rights Subcommittee has also articulated its support of affirmative action. The Subcommittee's Special Rapporteur on Racial Discrimination has issued multiple reports on specific states and on affirmative action. These norms affirm the need to take measures to make non-discrimination obligation effective. Certain norms specify that race conscious affirmative action policies do not violate non-discrimination provisions, while others explicitly call for affirmative action to combat discrimination. The World Trade Organization regulates discrimination in procurement through the pluri-lateral agreement on government procurement (GPA). The Doha declaration, on the other hand, expressly allows for discrimination (secondary objectives of procurement) (Watermeyer, 2003).

2.2 POSITIVE TRENDS

The NEP successfully improved the socio-economic positions of the long neglected and economically backward Bumiputera groups and eliminated the identification of ethnic groups with economic function. Overall income inequality as well as inter-ethnic and rural-urban inequality has declined since the mid-1970s. Malaysia achieved remarkable economic growth and development since the 1970s and it emerged as one of the most successful economies in South East Asia by the late 1980s. The expanding economic pie made it easier for the Chinese to accept preferential treatment of Malays, including Malay domination of Malaysian politics and the bureaucracy. The structural changes brought about by NEP, moreover, were accompanied by political and economic stability.

Malaysia experienced an average annual growth rate of 6.7 percent during the NEP's life span. The Bumiputera ownership of corporate wealth grew from 2.4% in 1970 to 27.2% in 1988. The overall incidence of poverty in Malaysia fell from 49.3% in 1970 to 22.4% in 1987. The total number of Bumiputera professionals in various fields increased from 4.9% in 1970 to 25.1% in 1988. For three decades the Malaysian government has presided over a massive experiment in social engineering, an affirmative action program designed to lift out of poverty the children of millions of rice farmers and rubber tappers, moulding them into a white-collar elite. Malaysia spent hundreds of millions of dollars sending the country's native population or the sons of the soil to leading universities in the US, Britain and Australia (Abdullah, 2005).

In the span of a generation, the program created a native urban middle class and helped avoid the outbreaks of ethnic violence that marred Malaysia's early years of independence in the 1960s. The goal of the policy was not only to put natives on a nearly equal footing with immigrant populations, mostly Chinese, but to reverse social imbalances that had set in during centuries under colonial rule. The country's natives were given preferential treatment for government contracts, cheap loans and discounted blocks of stock in big companies. The civil service became their exclusive domain. Arguably, the program has been successful in transferring wealth, collectively, sons of the soil control an estimated 30% of the country's total wealth (Abdullah, 2005).

Today in India, Affirmative Action, in the form of reservations, is available for approximately 65 percent of the population. Although problems remain, India's reservation system has brought Affirmative Action's beneficiaries into the middle class and has increased the mobility of members of the scheduled castes, scheduled tribes, and other backward classes. It has also given members of these groups' opportunities to participate in government at all levels.

The effects of affirmative action regulation on employment equity in the US indicates that significant gains were made in the sphere of both male and female black employment via contract compliance. There was no evidence that Affirmative Action has resulted in a productivity decline.

The introduction and implementation of contract compliance policy have been unsuccessfully contested on the grounds of constitutionality of the USA. Various programs utilising the set-aside model, or the preferencing model, or a combination of both, aimed at employment equity of minorities and the targeting of minority owned and woman owned businesses are applicable in all tiers of government in the US to day. In America, Affirmative Action is argued to be the essential bridge between changing the law to changing the culture. Between 1982 and 1995, the percentage of female managers and professionals in the US rose from 40.5 to 48.0 percent; blacks from 5.5 to 7.7 percent, and Hispanics from 5.2 to 7.6 percent. The percentage of woman joining the labour force has grown substantially, from 36 to 55 percent between 1964 and 1994. Under Affirmative Action policies enrolment of black college students rose from, 7.8 percent in 1970 to 11.3 percent in 1990 (Darity, 2005)

2.3 NEGATIVE TRENDS

Despite Malaysia's phenomenal economic growth and success in narrowing the inter-ethnic inequality gap, intra-ethnic income inequality, particularly intra-Malay inequality, has started to rise since 1990. Intra-Malay inequality has risen from 0.4% in 1968 to 0.4495% in 1997, according to the Gini-coefficinet. The Bumiputera preferential treatment provided for by the NEP alienated the Chinese population in general, as they felt that it discriminated against them. As constitutional amendments made it seditious to question provisions in the constitution pertaining to the preferential treatment of Malays, little dialogue about Affirmative Action took place, and non-Malays were not allowed to express their views about these policies, which increased their sense of alienation. Affirmative Action, critics say, has morphed into cronyism. The government transferred wealth to a small pool of politically well-connected businesspersons. It was the deliberate creation of an oligarchy. There was the idea that the economic success of the country depended on entrepreneurial giants. Malays, who make up about half of the population, are the country's largest native ethnic group (Abdullah, 2005).

Nurtured by the government for years, these handpicked captains of industry are today deep in debt and running unprofitable businesses that rely on government largesse. The country's native leaders are faced with the decision of whether to bail them out or let them sink and thus liquidate the very symbols of native enterprise. The entrepreneurs were supposed to handle the creation of Malay wealth but in fact, it has been a subversion of Malay wealth. The policy problem in Malay was that politicians with stakes abused the whole policy. There was no transparency in the way contracts were awarded. Malaysia had paid a heavy price in economic inefficiency and lost growth. By 2000, only 19.1% of business was Malay owned. Lucky Malays favoured by the government had concessions like licences, contracts and privatised projects, plus loans from government banks, dropped into their laps.

Supporters of the United Malays Organisation (UMNO) party became especially favoured and became some of the country's richest people. In house UMNO quarrels over influence and the spoils split the party. Even the UMNO leader, Dr Mahathir Mohamad, the high priest of positive discrimination, began talking about a culture of greed. Some recipients of business favours had no talent for building on the concessions. Business concessions became more clouded about who was really running them. Prominent businesspersons who fell out with the government were liable to see thriving businesses sink. By 2000, the government had majority ownership of seven of the 10 largest local stock exchange listed firms, a signal of the failure of privatisation. None of the ten was Malayan owned. A failure to develop real Malay entrepreneurs was due to the business favours given to unworthy recipients. The government's failure to check and discipline this style of growth caused the rapid collapse of firms when a currency crisis happened. Racial targeting by UMNO could cause the usurping by politicians of concessions meant for Malays. Targeting has draped UMNO with allegations of corruption, loss of public confidence and serious intra-Malay class differences. Vast resources have been wasted and another round of

Affirmative Action could seriously damage the economy, social justice and national unity (Abdullah, 2005).

With a 45- year history, affirmative action continues to be a divisive issue in the United States. In 1996, California voters ended Affirmative Action policies within the state with the passage of proposition 209. On the other hand, the Supreme Court in 2003 upheld Affirmative Action in the admission practices of the University Of Michigan. Despite the controversy, Affirmative Action over time is correlated with increased levels of participation of minorities and woman in employment, education, business and government contracts. Mostly using numerical goals, timetables and even formulas, the goals of diversity are pursued. Quotas are generally not considered and regarded to be unconstitutional. The downside of Affirmative Action is associated with its weak moral justification and the perception that its benefits are not worth its costs. At times, extreme social stigma is placed on those whose success has been deemed unearned while other Affirmative Action beneficiaries consider it insulting. As a by-product, divisions and animosity between different ethnic and gender groups are created. Moreover, even with Affirmative Action policies in place, its intentions are undermined by understaffing, underfunding and lacking enforcement authority (Weisskopf, 2004).

2.4 LOCAL PERSPECTIVES OF PREFERENCE PROCUREMENT

Preferential Procurement in South Africa exists because of the realisation of the African National Congress in 1993 that public sector procurement could be used as an instrument to address imbalances arising from the system of apartheid, particularly the skewed business ownership patterns along racial lines. A review by the Procurement Task Team, in 1995, of contracts awarded during the five years preceding 1994 indicated that approximately 95% of state contracts were awarded to white owned and controlled enterprises. This was underpinned by the apartheid era legislation that ensured that the prime participants and beneficiaries of public sector procurement were from the white race groups. Following the first democratic elections in the Republic of South Africa, after decades of unequal development based on racial lines, the government of National Unity embarked upon initiatives to reform public sector procurement. This initiative was driven, primarily, by the need to ensure a more equitable distribution of public sector procurement opportunities, but, also, to ensure the promotion of efficiency in public sector procurement (Watermeyer, Letchmiah and Gouden, 2005).

The Ten Point Plan on Public Sector Procurement was developed to create a range of interim procurement strategies aimed primarily at increasing the participation of previously disadvantaged enterprises in public sector procurement and to prevent the perpetuation of the inequitable award of state contracts after 1994, whilst new policy was being developed. The Ten Point Plan incorporated strategies that included improvement of access to tendering information, the development of tender advisory centres, broadening the participation base for small contractors, the waiving of securities on construction contracts on certain values, the unbundling of large projects into small projects, promotion of early payment cycles by government, the development of a preferential system for SMMEs owned by HDIs, the simplification of tender submissions, the appointment of a procurement ombudsperson and the classification of building and engineering contracts (Department of Trade and Industry, 2003).

In developing the Ten Point Plan, cognisance was taken of the work done by the Department of Trade and Industry on small business development, especially with regard to access to finance, training, and the development of entrepreneurial and managerial skills. The DTI had the responsibility for addressing supply side constraints facing Small Medium and Micro Enterprise (SMMEs), whilst the procurement reform initiative was required to create increased procurement opportunities for SMMEs, especially those owned by HDIs. These two approaches were intended to create an enabling environment for the growth and development of SMMEs. Cabinet adopted the Ten Point Plan in November 1995. Subsequently the Green Paper on Public Sector Procurement in South Africa was released in 1997 (Department of Trade and Industry, 2003). All policy perspectives contained in the Ten Point Plan have been incorporated into Green Paper. Based on the proposals in the Green Paper it was clear that the South African government had embraced the policy of utilising public sector procurement as an instrument to realise socio-economic policy. Moreover, it was very clear that targeted procurement was intended to be a key instrument in addressing inequalities in various sectors of the South African economy (Department of Trade and Industry, 2003).

As Governments have traditionally used their extensive powers of procurement to promote a variety of objectives unconnected with the immediate objective of the procurement. The Preferential Procurement regime in South Africa was largely influenced by a Procurement Task Team that reviewed various legal challenges to the USA preferencing / set-aside policy, and arrived at an approach that seeks the favouring of preferences, which are non-exclusionary, rather than set-aside, as the preferred modus operandi to give effect to targeted procurement in South Africa. The 1996 Constitution of the Republic of South Africa provided the framework for targeted procurement via preferencing and specifies that national legislation should clearly prescribe the framework within which such preferencing should be effected by organs of state. Affirmative Procurement was implemented through national legislation that has been widely known as the Preferential Procurement Framework Act, no. 5, of 2000. Targeted Procurement in South Africa provides employment and business opportunities for marginalised / disadvantaged individuals and communities referred to as the targeted groups. It enables social objectives to be linked to procurement in a fair, transparent, equitable, competitive and cost effective manner. Targeted Procurement also permits objectives to be quantified, measured, verified and audited.

Targeted Procurement, through a variety of techniques, provides opportunities for participation by targeted enterprises, even to those who may not have all the necessary resources, capacity or expertise to perform contracts in their own right. This is done in a manner that does not guarantee contracts to such enterprises. On small contracts having a value below a predetermined financial threshold, direct preference is accorded to targeted enterprises to tip the scales in their favour. On contracts above a financial threshold, bidders are required to compete on the basis of both that which is to be constructed or maintained (product) and the social benefits which target groups (business for targeted enterprises and / or employment for targeted labour) may derive in the execution of the contract (social deliverables) (Watermeyer, 2003).

Technical specifications are used to define the product and to set out the acceptance criteria relating thereto. Resource specifications are used to define social deliverables and the acceptance criteria relating thereto. These specifications not only define the social deliverables, which are to be realised in the process of delivery, but also set out the manner in which they can be achieved, measured and monitored. They accordingly enable bidders to quantify the social deliverables, which they are prepared to offer during the bidding stage of the procurement process and allow those who administer contracts to audit and verify that such deliverables were in fact delivered in the performance of the contract. Contracts are usually awarded to the most advantageous offer, based on a balance between the tendered price and the tendered deliverables in respect of targeted groups. Sanctions are applied to contractors who, in the performance of their contracts, fail to deliver their contracted social deliverables (Watermeyer, Letchmiah and Gouden, 2005)

According to Fagan (1997), there are two contradictory schools of thought on Preferential Procurement. One school looks at cost-effectiveness and the other at long- term economic development. Fagan (1997) argues that government, like any buyer or business, takes a decision to spend money to buy, purchase or procure goods and services based on consciously looking at comparative prices, quality, after-sales service and reputation. At the individual and business level, one's money is being spent, so it is one's decision. The government should also ensure quality and reliability at the most favourable price, while at the same time considering the interests of local communities. After the best, one as regards the buyer's needs is accepted.

However, Fagan (1997) also argues that many people are deluded into thinking that price is the only criterion of any significance in securing tender business. This is not the case. It comes down to price. For example, firstly one has to be able to produce a product or provide a service that will comply with the requirements of the buyer. If one cannot, one will not even get the chance to apply for tender. The buyer has to possess, one's capabilities and one's record of accomplishment before one is included on the tender list. Regardless of the price one charges, the buyer needs to be sure that one can do the job satisfactorily. One has to be able to deliver one's product to the buyer at the right place and at the right time and the buyer needs to be satisfied that one can do so. Eventually, price becomes an issue. However, if one has not dealt effectively with the primary aspects one will not even get the chance to talk of price.

On the other side, the other school that looks at the long-term economic development argues that the aim of Preferential Procurement is to provide opportunities for targeted groups to participate in public procurement even though they may not have all the necessary resources, capacity, or expertise to execute contracts in their own right (Watermeyer, 2003). The Preferential Procurement System can be used as a vehicle for achieving a number of social objectives, including job creation, increasing the use of local resources, economic empowerment, poverty alleviation and reducing disparities in employment and business ownership patterns in society (Watermeyer, 2003). Targeted Procurement thus attempts to link the achievement of social objectives to procurement with the minimum possible cost to government.

The South African National Treasury (2004) provides that the word 'equity' mean the application and observation of government policies, which are designed, to advance persons or categories of persons disadvantaged by unfair discrimination. The Treasury argues that equity is vital to public sector procurement in South Africa. It ensures that government is committed to economic growth by implementing measures to support industry generally, and especially to advance the development of SMMEs and HDIs. Treasury concludes that no public procurement system should be operated if it is not founded on equity.

The targeted approach of making the social benefits just one of the criteria relevant to the contract award, which must be balanced against other criteria (such as price and quality) ensures that social benefits are obtained with the minimum possible costs to the government. It can also restrict any potential financial premium to within predetermined limits. Contractors can be given the flexibility to decide exactly how the target groups will be used, rather than the government deciding itself the way in which those groups should be involved. This enables government to make use of private sector expertise and knowledge of the markets concerned to use the targeted groups in the most effective way possible. Targeted Procurement also promotes business linkages between large and small-scale enterprises (Watermeyer, 2003).

Fagan (1997) identifies two factors affecting the impact of Preference Procurement, namely, there are insufficient numbers of entrepreneurs from the target groups with the technical and business skills and experience, record of accomplishment and capital structure to be able to take full advantage of the significant business opportunities available. In addition, many purchasing officials still harbour reservations that these businesses may not be able to provide quality on a reliable and punctual basis. Fagan (1997) argues that designated groups companies normally lack the capacity to secure meaningful tender opportunities. They lack certain skills, either resources or experience to tender successfully. However, well-established contractors have the necessary capacity.

Often the dilemma faced by designated groups results in partnerships that are characterised by a number of practices. There is 'tokenism', where the joint venture between well-established contractors and emerging contractors is not a meaningful one, with each partner sharing equitably the risks and rewards, and where there is no serious intention to build the capability of the target groups. There are 'passengers', where black fronts accept financial reward for giving the impression of being genuine partners, where, in fact, they comprise mere window-dressing and contribute little or nothing to the business. There is 'engagement', where the partners leap straight into bed with one another only to find out later that the substance of a happy marriage was never there in the first place. There are 'clever-tricks', where an established business exploits the naivety of owners of target groups in order to take advantage of them. Thus, business partnerships should be a serious long-term relationship, and it is essential that both partners are entirely happy with one another before a deal is struck (Fagan, 1997).

Because of quasi-relationships in Preferential Procurement, designated contractors are unable to achieve their potential, leading to frustration and excessive pressure.

For established business, there is lack of growth, or even growth decline. For opportunity providers, there are procurement difficulties and productivity problems. The economy is inhibited in its growth, fewer jobs are created and there is little or no international competitiveness.

Bolton (2003) says that the freedom of governments to use procurement as a policy tool has, however, largely, been curbed in recent years by the implementation of measures aimed at achieving free trade in markets. Concerns regarding the undermining of primary procurement objectives are invariably expressed whenever procurement is used as an instrument for socio-economic policy. Concerns and risks in implementing Preferential Procurement include inefficiency in procurement, the exclusion of certain eligible applicants for tender from competing for tenders, a reduction in competition, unfair and inequitable treatment of contractors, lack of integrity or fairness, lack of transparency in procurement procedures and failure to achieve socio-economic objectives through procurement (Watermeyer, 2003). According to McEwan (2004), a fundamental weakness in the implementation of Preferential Procurement is fronting. He defines fronting as using fictitious black shareholders to promote white companies. Other mentioned reservations about the preference system in South Africa include a variety of procurement practices, documentation used, lack of financial support and credit facilities available to emerging contractors, late payment, and lack of training of emerging contractors. Some countries have even gone as far as ruling out the use of procurement as an instrument of social policy.

According to Khaas (2005), Preferential Procurement can be regarded as one of the key enablers of sustainable enterprise development. However, the current procurement system is skewed in favour of white-owned enterprises. It is the intention of the Black Economic Empowerment (BEE) policies and legislation to ameliorate the problematic situation. The Preferential Procurement Framework Act of 2000 is one such tool. In the past, government institutions had sought to implement their own policies to increase black participation in the economy. However, not long after the promulgation of the act, others sought to subvert its goals (Khaas, 2005). During an annual general meeting of the Chambers of

Commerce and Industry of South Africa, Gauteng Premier Mbazima Shilowa argued that Black equity participation should be the ticket to the procurement game. Although these kinds of views are not received warmly by certain quarters, black business embraces them as a good move (Khaas, 2005).

South African National Standard (SANS) 10396 (2003) provides that**,** appropriate action should be taken against those who are being preferred because of fraud. However, it is frequently not in the contracting authority's interest to cancel a contract and the imposition of financial penalties is often the most practical solution. The following remedies and contractual penalties are available to address fraud: Recovering all costs, losses or damages incurred or suffered. Cancelling the contract/tender and claiming any damages suffered because of having to make less favourable arrangements. The rejection of payment certificates as being incomplete should the appropriate supporting documentation not provided. Withholding of the issuing of completion certificates until such time that the contractor has satisfactory demonstrated that social and economic deliverables have been achieved. Imposing a financial penalty more severe than the financial preference calculated at the time when tenders were evaluated or more severe than complying with contractual obligations and restricting the contractor and its shareholders and directors from being awarded further contracts by the contracting authority for a specified period.

According to Qunta (2005), there are two key problems about the Preferential Act, namely, the Preferential Act should prescribe minimum points as it does, and if a maximum is to be prescribed at all, it should be more than it currently is. Second, the lowest acceptable tender must score a high number of points on price. He maintains that these factors are indicative of underlying assumptions that price is a big issue in procurement, whereas for black business, access and capacity are major constraints. He contends that these assumptions benefit established companies because they can afford to reduce margins in order to overcome whatever advantage the framework may give black business, and since that advantage is only slight, they do not need to reduce their margins very much. These factors also result in a very narrow band within which Preferential Procurement can be achieved. This is a major hindrance and the big losers are small and medium size black enterprises and black professional firms (Qunta, 2005).

2.5 SUMMARY

In summary, the above literature largely points to the belief that Preferential Procurement is an imperative to combat all forms of discrimination. It is a measure to address exclusion or under representation in a society because of discrimination perpetuated against minorities and native individuals. The system is neither a measure for reparations from the wrongs done in the past, nor a general antipoverty programme, nor means to alter class character. It promotes access to current opportunities and ensures that the society elite is representative of all the ethnic groups or / and racial groups in a society.

Globally, preference schemes have been implemented through specific forms i.e. through Preferential Boosts, Quotas and Reservations or a combination thereof. Depending on the prevailing circumstances to address specific historic socio-economic issues that cannot be dealt with by a mere changing of statutes books. However, it requires proactive and progressive policy and strategic programmes to remove the affected groups from the quagmire that is not of their making but is a direct result of being systematically excluded because of being a particular group e.g. black, minority, poor etc.

On the other hand, Preference Procurement could be subjected to judiciary challenges, resistance and alienation, particularly the implementation of set-aside, on the grounds of constitutionality. Preferential Procurement is a subject of demand and supply. The supply side of Preferential Procurement entails addressing constraints that affect effective participation of designated groups in the preference schemes i.e. training, finance, development and management skills etc. Inherently, preferential schemes are not able to empower every individual but can provide a balance of forces in racial and / or class and ultimately create some form of intra-gabs within races or ethnic groups.

Globally, funding of designated groups has been identified as a key issue; massive capital investment is required to uplift designated groups. Stake and greed constantly dominates implementation. This is characterised by self-service and is perpetuated in different forms. Lack of transparency on contracts or wealth allocations can affect capacity and sustainability and ultimately there can be wastage of huge capital investment, loss of growth and threats to re-ignite instability intended to be managed by the programme of Preferential Procurement or Affirmative Procurement. Implementation of preference schemes is normally undermined by understaffing, underfunding and lack of enforcement authority.

The preference system in South Africa is two pronged. One prong focuses on cost effectiveness (product) and the other focuses on long-term economic development (social deliverables). Contracts are awarded in an open competition to the most advantageous offer based on a balance between tendered price and tendered deliverables. As far as South Africa is concerned, the literature can safely be said to have unequivocally accepted Preferential Procurement as a meaningful way to broaden the country's economic base and to accelerate growth, job creation and poverty alleviation amongst the previously disadvantaged.

However, despite the formidable legislation framework in place, Preferential Procurement is yet to achieve its intended objective hence the contention that unless there is a mechanism for monitoring compliance, bad habits like fronting etc will continue unabated. It is also pointed out critically that although the government is committed to de-racialising the economy through Preferential Procurement, the implementation of this noble policy imperative is fraught with difficulties despite the comprehensive legislation framework that underpins it. The slow progress is therefore attributed to the fact that the implementation procedure, as it stands, is a fertile ground for abuse.

CHAPTER 3

RESEARCH METHODOLOGY

This chapter provides the research design and methodology for the study. It discusses data collection techniques (such as semi-structured interview), organisation of research material and preliminary analysis of data. It also discusses data quality issues such as reliability, form of bias and validity, since a lack of standard in semi-structured interviews often leads to concerns about reliability. Ethical considerations are made of the research, which has particular implications for the negotiation of access to people as research subjects.

3.1 RESEARCH DESIGN

A qualitative case study design was used in the study. The intention was to understand the status quo in as far as Preferential Procurement is concerned, from various stakeholders in road construction in the Mpumalanga Province. The study specifically focused on the original Black Economic Empowerment elements, which are equity and enterprise development. Equity and enterprise development are BEE elements that focus on equity ownership by HDIs and all efforts and support afforded to them to effectively participate in a preference scheme. The questions were open-ended and were meant to solicit personal views, attitudes and behaviour vis-à-vis Preferential Procurement. Questions were centred on categories on the need for Preferential Procurement, progress achieved, mechanisms and approaches used to prefer more HDIs, challenges of HDIs, and solutions to improve the current pace and progress achieved.

The study is a case study. It focuses on challenges affecting designated groups. The temporal unit was 2004/2005 since in that particular financial year less than 1% budget was spent in terms of tender award to beneficiaries of the government Preferential Procurement Policy. As such, the next to nothing budget spent on these designated groups necessitated the research.

3.2 SAMPLING

The study used non-probability purposive sampling to select individuals and contractors that provided quality information based on their technical abilities on Preferential Procurement and government tendering in general. Preferential Procurement and government tendering is a multi stakeholder phenomenon and any solution to the challenges faced could be as a result of a collective and collaborative effort. As such various important stakeholders were identified to constitute the population frame of the research. However, the sample of the study was limited to a few individuals to allow interviews to be in depth as much as possible. The sample consisted of three historically disadvantaged and three well established contractors as contained in the 2004/2005 annual financial report. Secondly, the study selected three consulting firms from the approved list of consultants for 2004/2005 projects. Thirdly, the sample consisted of three Bid Committee Members within the Department of Roads and Transport.

3.3 RESEARCH PROCEDURE

The researcher obtained written approval from the Accounting Officer of the Department to conduct the study during office hours. As such, the researcher was able to be flexible in terms of interview schedules. Interviews took place either at the departmental boardroom in Nelspruit, private home offices of respondents, Holiday Inn Hatfield in Pretoria and boardroom offices of contractors located around Gauteng Province. Since all respondents either are workers of the department or actively do business with the department, the researcher managed to organise prior telephonic appointments that were confirmed on the eve of interview day.

3.4 DATA COLLECTION

The main means of collecting data was through face-to-face semi-structured interviews recorded on an MP3 voice recorder. The data was later word-processed in order to be able to analyze the data rigorously and to draw verifiable conclusions. The researcher, while word-processing the interview, was particularly careful to note especially relevant verbatim comments from the samples. Some of the verbatim quotes were used to illustrate key arguments that he was developing from the data. The researcher also felt that this offered a distinct advantage of ensuring accuracy of data over other methods since the sample responses were captured directly on tape and data errors were avoided. Other researchers will obtain similar results in this year within this group of participants. The results obtained are thus reliable. Bid Evaluation and Adjudication Committee reports for 2004/2005 were also obtained to amplify some points.

The sample comprised three Bid Committee Members within the Department of Roads and Transport, three historically disadvantaged Contractors, three consultants from the approved list of consultants for 2004/2005. There were three well-established contractors as contained in the 2004/2005 annual financial report based on their experiences and abilities to provide quality and relevant data on Preferential Procurement processes and tendering in general.

3.5 INTERVIEW QUESTIONS

The research took the form of face-to-face semi structured interviews with all the respondents. The researcher compiled a set of twenty-six questions that guided the researcher in the process of the interview and ensured that all respondents were asked similar questions and that all necessary information was gathered. Clarification and rephrasing of questions was done where the researcher felt the respondent did not understand the question well. Interview questions took the form of open-ended questions. Questions were carefully structured to avoid leading or ambiguous questions. The type of questions asked revolved around what respondents think, how they feel, what their opinion is and what the most / least important issues about Preferential Procurement Policy and issues related to it are. In addition, other questions enquired about the attitude of the respondents regarding the concept of Preferential Procurement Policy and its related issues.

3.6 RELIABILITY AND VALIDITY

As stated in Saunders et al (2003), there are four threats to reliability, namely subject or participation error, subject or participant bias, observer error and observer bias. On subject or participant error, a neutral time was chosen to conduct the interview when samples are neither on a 'high' (looking forward to a weekend) or a 'low' (working week ahead of them). The interviews were conducted at an appointed time as indicated by the samples. On subject or participant bias, participants were made aware of the fact that the research was conducted independently of government (Mpumalanga Department of Roads and Transport) and that management had no stake in the data collected. They were thus able to express bias-free opinions. On observer error, I was the only observer and semi-structured interviews with selected samples formed the basis for responses obtained. Moreover, on observer bias, the questions were simple and easy to understand, the researcher made sure that all respondents understood the wording of individual questions in the same way and that there were no unclear or ambiguous questions. There was little room for interviewer bias.

3.7 SUMMARY

The research is valid. The results obtained were based on semi-structured interviews designed to address relevant issues pertinent to the research topic. As a manager in the Supply Chain myself, the researcher conducted the research as an interviewer without rendering any bias in the results. Recruitment of participants involved inclusion criteria of being able to give quality and relevant information in terms of Preferential Procurement system and tendering in general within the Roads industry of the Mpumalanga Province.

As I am a staff member in the department, there were no real access problems experienced and the participants were therefore confident and enthusiastic in their participation. There were no concerns regarding my credibility. There were potential sensitivities addressed but the participants were aware that no information supplied by them would be used against them or their companies as the research topic addresses an issue of concern.

Participating in the research allowed participants to vent opinions about relevant issues. There are no real potential harms of participating as the interviewee were all informed beforehand that their opinions and contributions will be regarded as strictly confidential. Participants were informed verbally of their rights when participating. It was also indicated to them that the interview was conducted strictly for research purposes and that the Department of Roads and Transport has no stake in the collected sample data.

CHAPTER 4

PRESENTATION OF RESEARCH FINDINGS

This chapter contains presentation of the research findings. These findings will be classified into six categories that emerge from the data collected. The chapter will be concluded by lifting up key findings from the data presented. The responses elicited from the interviews were consistent across the sample. It is noteworthy that data collected were analyzed preliminarily from the first interview to make necessary adjustments, and to ensure that the data collected had captured the major issues of concern. Some responses were more detailed than others were. The researcher classified the data into six categories, which provided an emergent structure that is relevant to the research. The identification of these categories was guided by the purpose of the research as expressed through the research question and objectives.

The categories devised were part of a coherent set that provided the researcher with a well-structured analytical framework to pursue the analysis. The researcher worked through the transcript and identified categories related to the research purpose and produced a description for each of the categories that were devised. The material that has been revealed through the interviews relates to any theoretical explanation or initial proposition that the researcher commenced the data collection with. From the description given below, trends emerged which shed more light on the challenges of implementing the government Preferential Procurement Policy.

4.1 PREFERENTIAL PROCUREMENT POLICY AS A STRATEGIC INTERVENTION

In response to the essence of implementing a Preference Procurement Policy, the responses showed that the Preferential Procurement Policy provides an opportunity for HDIs to participate in the tendering process as a way of economic empowerment to redress the imbalances of the past. One emerging contractor contended that the system generally provides jobs for HDIs. Nevertheless, the system must be implemented with caution because HDIs do not have all the relevant skills. Another emerging contractor indicated that it is an idea to empower women to redress the imbalances of the past, through provision of work that impacts on poverty and crime.

One well established contractor indicated that the system is a means to give a chance to HDIs as well as to be fair to all while another argued that Preferential Procurement Policy is a form of social responsibility and it is used for addressing the ills of the past. Similarly, another contractor maintained that it is a drastic measure to address the imbalances of the past engineered by apartheid. One consultant argued that Preferential Procurement is there to build up contractor scope for the future because wealth cannot be in the hands of the few. Most agreed that Preferential Procurement Policy seeks to redress the imbalances of the past and the system must have a transitional period. When PDIs are fully included in the system, then people should be allowed to compete freely.

Most participants agreed that Preferential Procurement Policy is needed to develop HDIs contractors and to give them more exposure and experience to be able to compete in the future. One Bid Member maintained that Preferential Procurement Policy is implemented to balance the issues of the past. In the past, HDIs were not awarded contracts or business and Preferential Procurement Policy give HDIs benefits not given in the past; another bid member provided that the system give opportunities and try to fill the gaps in terms of the imbalances of the past. However, they still need to be brought on board so that they can benefit. The other bid member provided that the system was developed to promote transparency, fairness, and the policy basically redresses the imbalances of the past.

4.1.1 PROGRESS ON PREFERENTIAL PROCUREMENT POLICY

On the progress achieved since the promulgation of the Preference Procurement Policy, the respondents maintained that; the government has tried but there is still room for improvement because there are some stumbling blocks, i.e. the grading system does not allow HDIs to tender for some projects. Preferential Procurement Policy is a good thing, it gives HDIs an opportunity to showcase what they can do.

However, it should not stop there, 'it should be ensured that we get the contracts'. It is unfair practice to continue giving contracts to well established contractors unless it is a case of emergency that can only be handled by well-established contractors. Government should assist emerging contractors with access to finance to carry out projects because banks usually require guarantees before lending money, which obviously because of our disadvantage past is unavailable; another emerging contractor provided that those who got jobs have to go into joint ventures with established contractors. HDIs still feel left out. The Construction Industrial Development Board (CIDB) grading system is still disadvantaging them. Expanded Public Works Programme (EPWP) training is provided but afterwards tendering is without any success. HDIs feel left out in the process. Established contractors given jobs should be forced to work with HDIs. Some work can be allocated to them with a condition to work with HDIs in carrying out the projects; and the other emerging contractor agreed that yes, there is progress and she has benefited from the process. Women are often given preference in tendering. Preferential Procurement Policy is working. As long as well established contractors can perform they can be given jobs, however, the CIDB grading system favours established contractors more than emerging contractors.

One well established contractor argued that not much progress is seen in the HDIs. Nevertheless, there is improvement in women who run construction companies. More women are joining the industry. Preferential Procurement Policy is part of the system, it is necessary to implement it and there is no problem about it. The political side of contract award should not be looked anymore, the country has gone to a state where the there are big companies that are owned by HDIs. Although there are people that need to be uplifted, tenders should be properly evaluated to get the right people, awarding of contracts should not be based on political objectives, fairness should be the guiding principle. In terms of job creation for local people, designated contractors can be given the opportunity too.

One other well-established contractor stated that progress has been slow in the past 12 years. It is difficult because it takes between 12 to 15 years to train somebody in the construction industry. Progress cannot be achieved over 2 years. The policy does not get back to contractors about the results. It is difficult to determine how you have performed as a contractor. How many points were allocated and what went wrong. The policy becomes worthless because even if you phone you cannot get a response. The policy should be guarded not to disadvantage white youth that was born after 1994 because they did not benefit from the past system. Discriminatory policy is not bad in predominantly black areas. 'We must be a little bit careful on how prescriptive the policy is'.

The policy should not elevate black youth over white youth. Jobs should not always be given to well established contractors, HDIs need to be taken into consideration as well. Government should evaluate the policy every year and get inputs from all stakeholders. Government must administer and manage policies that suit certain circumstances, it does not have to suit everybody; and another well established contractor agreed that government has tried its best but the problem is that people sometimes venture into business for short term money making and do not seize the opportunity to develop themselves out of poverty. Generally, we appreciate Preferential Procurement Policy. It is a good policy. It encourages new entrance into the system so that opportunities can be spread to others. After considering the advantage that comes with the point system and the established contractor still wins the tender, then it should be awarded to the well established contractor.

One consultant observed that a lot of progress has been made, for example, the CIDB has a contractor's register that has contractors that have already done some work and have achieved a certain standard. Progress is going a little bit slow. In order to gain the necessary experience and get further you have to do the work. If you were disadvantaged, you feel good about the system. However, if you were not you have to accept it. There is general acceptance of the Preferential Procurement Policy by contractors. Smaller contractors who have not yet advanced are eager to participate as compared to those who have been in business for sometime. The system is free anybody can put a bid on condition that he has the ability to do the work properly.

The other consultant provided that the government is not doing enough. Government needs to build the long-term capacity of contractors and not just short term growth so that contractors can develop up to the level that they can even compete internationally. There is a bit of a challenge because sometimes people enter the industry to grab some slice and head another way. There are some people who are taking advantage of the opportunity and are employing more people and growing the company. In awarding contracts, whites should be given a percentage, let us say 30%. There must be a scorecard that will assist to ensure that so many blacks and so many whites are awarded. The imbalance of the past has almost been corrected to a certain extent now we need to keep the balance.

The other consultant maintained that the system can never be perfect but it has yielded some positive results. There are negatives as well, some contractors are not capable and cannot provide quality work. At the extreme end, there has been some enrichment. A selected few people have misused or abused the system to bid for the sake of money. The system is generally correct and must be maintained like this and the points scoring mechanism is a good way of implementing the system. The preferencing point scoring system has the benefit of making HDIs not to feel that they are getting contracts on a platter of gold as they go through the competitive process. However, set-aside will make HDIs feel they get contracts on a platter of gold. We should not have exclusive policy because it will damage the economy. The South African procurement system support open competition. If some people can be excluded it will be direct contravention of the 'Greek code of open system.'

The bid member observed that the system is not working well. There needs to be some amendments because of collusion and fronting. An HDI is said to be given the work but when you dig deeper down, you discover that you have given the tender to somebody else behind the HDI. Until that problem is solved, impact will never be measured. Legislation does not allow ring fencing. Ring fencing will guarantee a certain percent to HDIs. An ideal situation will be when awarded a contract you will be required to give 30% of the work to HDIs. Then have a monitoring mechanism so that we can reach the target goal. Sometimes government is forced to go for a company with proven record, for example, big projects because you do not want to take chances and you will not go for a designated group. If circumstances forced you to award it to the old company then you do not have a choice. It depends on the risk involved, if the risk is high then you do not want to take chances because one fellow brother can disappoint you and you may have to go and do the work again. The period as well dictates that a project must be given to established contractors;

The other Bid Member stated that the policy is wonderful and clear. However, there is no progress in implementation. Disabled people still struggle to get opportunities because the policy does not talk about targets. Annual budget set aside for the disabled, women and youth must be done to ensure designated groups benefit. HDIs are not benefiting because at the end of the day they are still weighed like established institutions. For example, most often experience, record of accomplishment and quality of work done is checked before given work. HDIs do not have most of the requirements since in the past they did not access university education to get skills.

In addition, departments are not currently willing to use HDIs so that they can gain the necessary experience and in that context, a lot has not been done. There is a lot of gaps and work to be done. Some contractors are using Preferential Procurement Policy to their advantage. A big company owned by white males with 40 years of experience is mostly likely to succeed over a company owned by black women because the latter lack experience. In addition, women lose out in terms of quality and experience. Record of accomplishment of the last six months may indicate that the women's company has not done any thing and they might lose because nobody knows whether they will be able to do the job, as government wants it. Well-established contractors should only be given contracts on condition that there will be genuine skills transfer.

Similarly, one other Bid Member showed that there are no statistics but there is good progress. Many HDIs have benefited from the opportunities offered by the policy. Preferential Procurement Policy serves the country well. HDIs feel better for being given the opportunity to compete and being preferred. It is well accepted among the HDIs. If established contractors deserve to be awarded contracts then let it be. If in a particular tender there is no HDI that has tendered, then it can be awarded to well established contractors.

4.1.2 STRATEGIC POLICY CHOICES

One emerging Contractor observed that government should use contractors that performed well before the introduction of the grading system in big projects. Working with experienced and established contractors can be a good mechanism. Preference points allocated to HDIs are enough, they are one-step forward. HDIs need experience to be successful; the other emerging contractor provided that the EPWP programme was a good approach, it targeted the PDIs directly. Government should rotate the opportunities so that people who have never benefited can benefit. Preference points allocated to HDIs are not enough. HDIs sometimes get the chance to be awarded jobs; and the other one emerging contractor provided that government should do something to upgrade emerging contractors and get mechanisms which can encourage Joint Venture between established companies and emerging contractors as a way of solving the problem. Points allocations to HDIs are enough.

Similarly, another contractor noted that designated groups need to be given opportunities. It is dangerous to put a disabled person on site and they can be given office job that is related to the work of the industry. It is a bad idea to guarantee HDIs a portion of the work. Point allocation depends on the price; the other established contractor provided that the current government policy is working. Preferential Procurement Policy should guarantee work to HDIs particularly on grass cutting or small projects. However, you cannot give an HDI contractor a R10 million contract since you must take into consideration working capital, experience, infrastructure, workshop, and other facilities. Corruption needs to be avoided and control measures be put in place to curb it.

The tender adjudication process should be based on an open system. Preference points allocation to HDIs is enough to give advantage to win tenders; and the other one established contractor provided that the Preferential Procurement Policy objectives must be communicated to the broader society. Education can encourage more people to want to participate in the process. Government should not be left alone, it should be assisted in implementing the system. It will be unfair for government to guarantee the outcome of the Preferential Procurement Policy process. Nevertheless, people should grasp the opportunity and educate one another about the objective of the policy. It depends how the system is applied. It should be clear how the 10 points are split. If eight points are allocated to women and two to HDI, then the HDI component is not assisted.

One Consultant pointed out that the current policy is fairly good. Contractors have to be technically, financially and administratively empowered. HDIs contractors lack knowledge in these aspects. Empowerment does not have to be via a course but it can be an in-house training or it can be done via mentorship to some certain extent. A free bidding situation will help and points allocation for HDIs. A percentage of contracts to be given to HDIs can be specified but the bidding process must also be kept open so that everybody can compete. It depends on how the point system is structured. For an example, in Mbombela Municipality the point system is split 90/30 point system rather the 90/10 system used in the Department of Roads and Transport.

The other Consultant provided that the CIDB grading system is the solution to the problem. Emerging contractors need to be sent to training to acquire relevant skills. The concept of empowerment must not cover financial empowerment only but empowerment must be on technical knowledge and skills. Empowerment can assist a contractor to go to Australia or anywhere in the world to compete. Mentoring approach system can also be used. Future investment is important because the younger generation is not interested in the service and skills, they are only interested in the money. Preferential Procurement Policy normally empowers people through job creation but the objective of contractor empowerment is not fulfilled. A contract should be awarded based on how many people will specifically benefit. For big projects the points system is fine because of the risk involved. Point allocation should be determined by the number of people employed. It is good to award a white company that employs 100 people rather than a black company that benefits one person.

The other Consultant provided that the point scoring system provides a bit of advantage to HDIs since they do not have access to funding and other things. There must be competition not set-aside because it opens the process to many irregularities, misuse and abuse. Moreover, it may benefit contractors who are not really the best. Competition will unearth the best in the market. The system should not guarantee anything but provide a chance for HDIs to compete in the open market. Nevertheless, because the percentage of HDIs companies is small, then the purpose will be defeated. The system should not be a quota system but a preference to make it easier for those contractors so that they can compete in an open system. The profit margin on infrastructure projects is about 10 to 15 percent. If an HDI tender effectively it has 9 points advantage than an established contractor. In infrastructure the current point allocation is a very significant margin.

One bid member noted that EPWP is better than the preference system. The preference system does not work for HDIs. EPWP is the best model because monitoring of the success of the contractor can be done until the contractor becomes independent. Contractors should not be given short-term contracts, but long-term contracts so that they can assist the government to create job opportunities. Contracts should be given as long as you can be sustained. The points system is not enough to give advantage to HDIs. Most of these HDIs do not even know how to claim these points and ultimately they are not awarded the points.

There should be other criteria because the current one does not give the necessary advantage. Currently functionality carries more weight. If a contractor fails on functionality, then preference does not give any advantage; the other bid member provided that targets and setting aside of budgets, targeted at younger people and / or women, so that government can give them exposure to gain necessary experience. Set-aside will provide a pool of people with necessary experience and skills over a period of 3 years.

The so-called HDIs will fade over time and those given the opportunities will be able to provide proper work with quality. The system should guarantee the job and it should also guarantee equalisation of opportunities because there is nothing tangible.

Set-aside money is done for EPWP but gives people certificates but people are unable to do roads projects eventually because of the other institutional regulations in the construction industry. Ultimately training from the EPWP is not usable. The point allocation to HDIs is not enough. Sometimes contractors do not even claim the points. The point system is not helping the system. The reality is that if they do not have the necessary skills, finance or exposure, they will still not get the tender and then how does the points allocation help.

The other Bid member provided that it is not worthy that a contract be awarded solely because a contractor is a HDI. There are other couple of requirements that need to be complied with. People want a blanket approach. There must be skills transfer in the process. The point system should include a criteria whereby typical established contractors accrues points if it can be established that genuine skills transfer will take place on carrying out the project. Monitoring should be provided to avoid fronting. The system boils down to lack of technical skills. The system should provide opportunities for HDIs and should also encourage competition in line with the constitution. Competitiveness should be the guiding principle because it will enable HDIs to want to acquire the necessary skills and resources and know how to deliver good quality product.

The point allocation to HDIs is not enough, HDIs should get more points or the system should be changed to a 60/40 approach. Although price is key, the current preference point system is not advancing the interest of the HDIs. Competitiveness has to play a role so that emerging contractors can be really developed and empowered to enable them to compete globally in future. The preferencing system should be discouraged and be replaced with the practise of setting-aside certain projects. Alternatively if youth is targeted say 20 points should be given to them to tilt the scale in their favour.

4.1.3 PROCESS CHALLENGES AFFECTING PREFERENTIAL PROCUREMENT POLICY

One emerging Contractor pointed out that HDIs just buy a document, put it aside, and start completing it at the last hour resulting in many mistakes in pricing rates. Relevant documents are not attached as well. Although professionals sometimes are paid to fill the document but it is not checked for mistakes. Contractors should be familiar with the job, provide correct rates and have plant available. Contractors can be considered for contracts if they have sources of material, experience and availability of good personnel and work force. Emerging contractors sometimes cannot keep up with a project time schedule. Contractors can be denied contracts because they do not provide necessary information correctly. Provision of poor workmanship could be as a result of lack of experience. Contractors sometimes do not complete their projects because the department delays payment of emerging contractors. Emerging contractors should get small projects first and learn through it. But they should have financial capacity.

The other emerging Contractor noted that safety plan programmes in tender documents need to be reviewed because it is always difficult for HDIs to comply with it. Sometimes HDIs do not even finish completing the tender documents. Some contractors even hire people to complete the tender documents but they will submit without signing it. Experience counts in order for one to be given a contract. Small projects should be given to HDIs. HDIs should form a company then the department should provide an engineer to mentor the contractor to gain experience. The CIDB grading system has affected most emerging contractors. Emerging contractors have skills gaps on how to complete a tender document and should be trained by the department. Experience sometimes deprives emerging contractors jobs. Contractors who do not complete their projects spoil the name of other HDIs and makes the government not trust HDIs. Emerging contractors must have skills. The Department of Labour is not living up to expectations in terms of providing capacity building or training like supervision skills and communication skills. Getting quality material is a problem. Financial resources to handle a project are also very important.

The other emerging contractor argued that the 10% guarantee requirement should be removed from the tendering process. Black contractors are not educated in terms of technical skills. Some pages of the tender document require completion of academic qualification. Although people with qualifications can be sourced but they do not have on the job capability. People with the necessary experience and records should be considered and not people with signing power. The disabled and women can be included in a company just for the sake of acquiring points. Being a local contractor may sometimes constitute a problem to the project, which may be occasioned by jealousy from the other community members. EPWP learnership schemes assist because participants are not required to have technical skills or tools, but are labour intensive and it has advanced the intrest of HDIs. Completing your tender document correctly, not cheating and supply of all the necessary information as honest as possible can help the cause of HDIs. HDIs are affected if officials want to give their own companies contracts. HDIs can give a poor workmanship because they are not trained. Blacks, when awarded a contract with a lump sum, their projects suffer because they rush to want to lead a high life and buy new cars and houses at the expense of completing the project first. As long as you are trained you can be able to complete a small project and gain experience that can assist you in completing bigger ones.

One established contractor equally noted that background, experience, involvement in their community, the price and proper completion of the tender document are main requirements for tender award. PDIs do not provide responsive tenders because sometimes they are not willing to take their time to complete the tender documents properly. Tenders should be awarded because of ability to do the work properly. Experience and background must play a big role. Secondary to that is experience. HDIs are affected by not having experience and sometimes finance, which plays a big role in many things. HDIs must show passion for the work and give good service, promote themselves and show their record of accomplishments. HDIs are not obtaining contracts because of a lack of necessary CIDB grading and not having plant. Experience and record of accomplishment must be considered before awarding a contract. PDIs must just be able to show capability to do the work. Formulation of JVs with established companies.

The other established contractor showed that it is not known if the system is working. Requirements to award a contract should be price, quality, safety, administration. Corruption should be scrapped off the list. Performance of HDIs is not known, since there is no feedback from the government. Communication needs to be improved in government tendering. There should be no single requirement for tender award but price, quality, safety and ability to do the job and working capital should be main factors considered for tender award. The major one is price because it is public funds that are being used. Emerging contractors need more work on a regular basis. There is no system in place to ensure that they get jobs on a continuous basis. They need to work on the quality they provide and safety to be able to get projects, they need a bit of luck, more work and employ the right people. Many factors come into place. PDIs should market themselves. Government database should be created to make them available. HDIs provide good workmanship, although sometimes they are late. PDIs that do not provide good work get penalised. They are paid what they have done and established contractors finish the work. Bringing a person who has never done civil construction will not work. To do work you should have done the work before or similar work. Experience should come into play.

The other established contractor provided that the main objective is to promote the government policy of empowerment and benefit of the community. Some of the people offer acceptable bids. However, visionless contractors obviously will not submit a good bid. Often some contractors leave a lot of things to chance. Sometimes they hire people to do important things that they should have done themselves before submitting the bid. Financial capability is crucial. If you lack resources then you will always be forced to approach established contractors to do the project. Some HDIs need to change their attitude. Sometimes they behave as if they are doing somebody a favour. HDIs chances of being awarded tenders may be increased through skills transfer. Most of the HDIs need tight supervision. HDIs sometimes under price the project and they cannot complete the job because they come short. Contractors should have CIDB grading. Key resources are finance and personnel. However, plant can be hired.

One consultant mentioned that there are many requirements. One of the requirements is that contractors must have experience and must be able to display it in the field. He must have financial knowledge specifically in terms of how to handle a contract to make profit. It is important that the contractor must be able to technically understand what he has to do and technically fulfil those obligations. You do get contractors that do not read what is required and end up not providing it. There are people who just want to provide an amount and do not sign on the bottom of the page of offer. The contractor must have technical and financial skills. HDIs must realise that they are in business and they must make profit. Experience in the past and the fact that they did previous work properly on time within budget is very important. It is not the experience they had but the experience that the client had of them doing the job properly. Gaining of knowledge of what they want to do and be keen to do it. An HDI must be financially stable. One of the most important issues is that financially they are not able to carry through their jobs and that is why they are denied the jobs. To be successful, HDIs have to have capabilities in finances, technical capabilities, work equipment and work force.

The consultant interviewed regarding these issues clarified that what needs to be checked is how many HDIs are benefiting. Responsiveness of tenders is the major problem in the construction industry. Maybe tender documents need to be made quite simple and not complicated. Secondly there may be a need to inform people to submit some of the things that are required then they will not have a problem of complying. Risk management should be a primary consideration in awarding a tender; for a R20 million tender you cannot appoint an inexperienced contractor. It is proper to appoint a project manager and a JV. The underlying problem is sometimes quality, financial or irregularities and it is tied down to risk management. Sometimes there is an unhealthy relationship between the contractor and the department, which leads to non-payment. Contractors must put realistic prices for clients not a ridiculous price. There will always be contractors that run away. In the roads industry you need on experienced contractor who has completed similar projects. Some with a good site agent;

The other consultant mentioned that contractors should have at least business skills, knowledge of construction, and project management to a certain degree. If they do not have the financial capability they can start as a small contractor and gradually progress so that they can minimise the risk towards government. For big projects they must have some strong financial capability, tax paying citizens and abide by all the relevant legislation. Government should be willing to take high risk because you cannot apply the same standards as the well-established contractors because HDIs will not be able to compete freely and grow. Rules should be clear and consistent so that even the tenderer will know how they will be evaluated. When adjudication is done one should check the bill of quantity and tax return. What matters the most is the price. It must be a combination of price and preference. The two should be combined. Secondary to that are the issues of responsiveness or risk. If you do that then empowerment objectives should be achieved.

HDIs challenges are to get tenders through the government procurement system. In construction every contractor must bear his expenditure and so then the challenge is where a contractor does not have access to finance. Other things depend on finance, like plant. A contractor must perform well because any contractor with a good track record increases his chances of being awarded other contracts in the future. There can be perceptions that an HDI cannot do a project maybe because the contractor did not finish his previous job. In South Africa there were people who jumped the bandwagon and they went to be contractors and are not qualified to be that. Contractors must be knowledgeable and be able to manage a project. They must have finance or access to finance to start a project. They must be hard working and diligent in order to achieve the objective. It is a career to build a company and then become a successful contractor even within the constraints of political objectives in the country.

One bid member pointed out that capacity to deliver should be the requirement for a contractor to be awarded a contract. He must prove that he is able to deliver capacity wise. Improvement need to be done by 'CEDA' in fulfilling its mandate of assisting contractors to fill forms and to ensure that their bids are responsive. Contractors do not know how to fill forms. Tenderers should know what can disqualify them. You have cases where HDIs provided good offers but failed to submit tax clearance certificates. It should be price, capacity to deliver and functionality. Beside price it should be the impact of the project to the community. The majority of HDIs have no resources and the major factor is financial resources.

Lack of resources compels HDIs to go into joint ventures wherein sometimes-bigger companies give them a lesser role. HDIs should join hands together. HDIs should pass the functionality criteria and will be given the work irrespective of whether the contractor is a women or a young person. The majority of HDIs do well when given contractors. HDIs sometimes when given a contract they first want to enrich themselves personally forgetting about the project. Ultimately the decision to award comes back to haunt the government in terms of risk assessment of contracts before they are given jobs. People should stop lying. They must identify their strengths and use them. People tend to say that they are qualified in all aspects but when given an opportunity they disappoint. People want to build roads while they are not engineers and they do not have engineers in their employment.

The Bid member responded by stating that tender requirements for Preferential Procurement Policy should be clear. If a tender is targeting women, it should be said upfront. However, if you advertise a tender in the open market and invite those who were not disadvantaged you create more problems for the people that you are trying to uplift. A tender must be specific who is being targeted to avoid waste of time for other contractors who are not targeted. Experience should be the major consideration in awarding a tender. Secondary to that should be employment creation. Lot of things affects HDIs. A lot of them do not have academic qualifications to be engineers. The current system is also not helping them to get the necessary skills to better their lives. The attitude of managers is such that they still look down on people with disabilities as lacking the capacity to do what others can do.

In order for HDIs to function, there should be some form of skills transfer or training for HDIs. HDIs could be denied a contract because of lack of experience, quality and track record, which is paramount. If an HDI does not have experience then they will provide poor quality work. Record of accomplishment should be checked before being given the work you should have done similar work in the past three years. Contractors who do not finish their work should be blacklisted. Government should set monitoring mechanisms to avoid that happening. To handle roads projects HDIs have to have necessary skills, but because they never had opportunities in the past as such they do not have skills now. Established companies succeed because they have the backing of all the big financial institutions. There should be some form of skills transfer or training for HDIs that is long-term say 3 years. Experience, quality, track record should be paramount in providing the service.

The other bid member noted that contractors have to be registered with CIDB, have tax clearance and other project specific requirements like UIF and workman's compensation. It must be understood that responsiveness of HDIs bids is influenced by deprivation of skills in the past. The process is new to them, some cannot even complete the tender document and hence a majority will not submit competitive bids. The primary consideration should be price. It does not help to give an HDI a contract while the price is too high. If the price is fine then we can award preference points. However, the current system of 90/10 does not seem to be helping HDIs and it should be reviewed to may be 60 points for price and 40 points for equity. HDIs are affected by acquisition of skills.

Most HDIs who have contracts due to the lack of financial management skills, general management and legal issues they sometimes end up being bankrupt and as such, their growth is affected. Practice makes perfect, HDIs should read books on construction management, tendering process, get expert opinion and should not be afraid to pay quantity surveyors to assist them. Sometimes contractors quote too low and when they are given a contract then they cannot do well. They should get as much knowledge as possible and inquire about the tenders. They are in business they should be able to make profit. Conditions are stated in the CIDB prescripts some of which I do not agree with.

The company with highest points must get the job. It all borders on risk analysis even though all requirements are met. Risk is not limited to HDIs only. Poor workmanship is not only restricted to HDIs but also can be linked to lack of skills. Contractors might not finish a project because they have priced the document wrongly, some might not have necessary resources, and some are just fly-by-nights who are taking chances in the industry. So the one's that are reckless you can black list. Those who have quoted low, and realised the problem early can come and explain to the department so that they can be assisted. Those without resources can team up with established contractors so that they can save the project and their faces. Mechanisms must be put in place to assist the emerging contractors in terms of taking some risks on their behalf and give them a platform to learn. Other than financial resources, emerging contractors should have minimum education qualifications so that you can be sure that they can be able to deal with figures.

4.1.4 ETHICAL CHALLENGES AFFECTING PREFERENTIAL PROCUREMENT POLICY

One Contractor noted in his response that sometimes-emerging contractors could not keep up with the project time schedule. It is important for HDIs to meet the tender requirements and be clean. A contractor who is trying to unfairly influence the tender process is killing the industry. The contractor that scored the highest points should be given the work. Providing quality work and passion for road construction should be the guiding principle for HDIs. The contractor also provided that the preference system is not abused.

The other emerging Contractor provided that CIDB grading affect most emerging contractors. Contractors cannot influence the tender process. It is not fair to influence tender award, people do it a lot, sometimes they phone people mentioned on the tender document. Sometimes they succeed to influence tender award. The contract should be awarded to the company that scored the highest points. The process should be made open so that it can be known how bids were evaluated. A contractor should be disqualified for not completing a previous project. Analysis needs to be done to identify failures that are caused by lack of experience and under pricing by HDIs. Crime like stealing of materials on site can be a contributing factor. The system is abused. Poor quality work is provided and people hide behind the fact that they are not experienced. Moreover, no penalties are instituted. Although contracts are not awarded but the contractor can move to another department and get a project.

In addition, the other one emerging contractor observed that EPWP learnership schemes assist HDIs. It does not require participants to have technical skills or tools. Consultants used by the department sometimes have interest on the projects. They invite contractors and fill in their tender documents to increase their chances, which is corruption. Supply of false and incomplete documents can result in a contract not being awarded to an HDI that scored the highest points. It is not good to provide poor quality work because you betray trust given by the department to HDIs. Your record as an HDI should talk for you so that it would be easy to get another project. Consultants contracted by the department for specific projects should not be allowed to do evaluation since they make you pay in order to get a tender document completed. Officials in the Tender Board do not make tender documents available on time, they reserve documents to their preferred contractors.

The established contractor noted that HDIs are affected by lack of experience. They have equal opportunities, they must learn how to do projects. Sometimes lack of finance plays a big role. Contractors cannot influence tender award, the rules are clear. Those who try to influence the system should be disqualified or charged penalties for dishonesty. It is only fair that a company that scored the highest points should get the tender. It is upsetting not to complete a project. It amounts to wastage on the part of the government. The system is not abused.

The other established contractor provided that HDIs need to be given work on a regular basis. They need to work on the quality they provide, safety, employ the right people and they need a bit of luck. Contractors can influence the award of tender by giving a best price, proven record of accomplishment, quality and standard. It is wrong and illegal to influence tender award. Contractors who do so should face the music because they are stealing emerging contractor's business opportunities. It is not easy to know that you were denied a contract. Denying a contractor work contravenes government policy. Moreover, it affects faith in the government system.

HDIs provide good quality work, although at times their projects are delivered late. 'Quality does not mean the best but should be within standard'. The system is not really abused. People tried and they were caught. You can be blacklisted for abusing the procurement system. The system is monitored. Targets are monitored of how many women, youth and disabled are employed. Penalties are harsh.

Moreover, the other established contractor provided that there must be a change of attitude because others do not focus on their jobs, they feel they are doing somebody a favour. It is difficult to intercept the tender process because there are stages of evaluation before approval. Well-established contractors can use their ridiculously low prices to influence tender award. Those influencing the system negatively must be kicked out of the system. Competition must be encouraged. Quality must come first, all contractors must conform to quality standards. Some contractors do abuse the system because they do not have long-term business objectives, they are in it for quick money making ventures and thereby defeating the true economic objective of government.

The consultant observed that contractors must realise that they are in business that must make profit. Contractors influence contract award in a number of ways. That is including portraying good image, providing false experience claims and promises of taking care of government officials after the award of the tender. Influencing of tender award should be dealt away with. A contract should not necessarily be given to the one that has scored the highest points because it has coasted the government at times. The contract should be given to the capable contractor. Quality of work should always be provided. There are employers or clients that manipulate the tender system.

The other consultant provided that quality is the underlying problem, risk management, financial management and irregularities are great influences of tender award. Poor relationships between the contractor and the department leads to non-payment. Influencing tender award is unacceptable. Contractors will do any thing to get into the pocket of decision makers. Contractors can go out of their way to influence contract award, which is cutting across all races and is universal.

Influencing contracts is not something new. It is part of the business plan of the contractor. A contractor should not be rejected for trying his luck. Misrepresentation of facts on points like disability should result in disqualification. Tender award depends on quantifying the risk in terms of points. Quality is not a difficult thing that needs a person who has a civil engineering degree. There are black contractors that are performing excellently. Quality must never be sacrificed.

Moreover, the other one Consultant pointed out that the challenge is access to finance. Most things depend on finance, like plant. Finance leads to subcontracting of work and the contractor ultimately lose empowerment and get a slice of the contract. People do influence the process of tender award. Money is important to many people, sometimes more important than morality and honesty and this happens worldwide. This can be curbed by having a clear process of bidding to bid members since some are not clear about the process. A contractor that attempts to commit irregularity can be disqualified from the process and can be charged depending on the gravity of the case. The contractor that has scored the highest points must be awarded the contract, unless he has two other contracts running. There must be consistency in the system, tampering should be avoided since it encourages irregularities. Contractors who are failing are across the races. One needs to understand whether it is material problem, supply problem, or lack of ability in terms of technical and quality control. In some cases, the system is abused. However, efforts are made to ensure transparency by Treasury and the CIDB grading.

The bid member observed that financial resources are the major factor affecting HDIs. Majority have no resources, which compels them to go into joint ventures with bigger companies so that they can have necessary resources to run their projects. Sometimes this disables them from taking active part in the projects as bigger companies give them less role to play. Designated contractors do not have influence on contract award. Influence is with the established contractors. Influence of HDIs is in terms of teaming up with well-established contractors to demonstrate their muscle.

Contracts should be awarded in a fair and competitive basis. It does happen that you score the highest points in functionality and price but be denied a contract. Nevertheless, there are no reasons why a contractor that has scored the highest points should be denied just because of incapability to deliver. It is disappointing to award a contract to somebody who fails to prove himself. When a contract is awarded, it is expected that the contractor should excel because failure impacts on the person that awarded the contract. Some contractors include disabled persons in their company to gain advantage or scoring points, while these designated groups are inactive. They include women but these women do not know what is happening in the operations of the company.

The other bid member noted a lack of qualified engineers. Attitude of managers is such that they still look down on people with disabilities as lacking the capacity to do what others can do. Many contractors influence awarding of contracts. For example, well-established contractors bid with the financial backing of all financial institutions. Contractors who influence contracts unfairly are greedy and most of them do fronting by getting people with disability or young women and pay them off. It is intended to defraud the government. It is bad if a contractor is denied a contract for the sake of it. Government departments should not accept work that is less than the quality and standard they have set. The system is not working. The fact is that the point system does not help, often the established companies can still compete favourably and win the tender.

The other one Bid member maintained that lack of financial management skills, general management and legal issues. Some end up being bankrupt. Contract management is lacking. No capacity building is done on these contractors. People have different ways of marketing. Some marketing techniques are not acceptable and that is why bid members must be screened to avoid influence by contractors. Contractors buy bid members gifts. Some contractors request favours in terms of the price or estimated price of the project. Contractors use the information to work out their tenders around the prices given.

Contractors who want to influence contract award should be blacklisted because they are contravening the constitution and can cripple the economy of the country. The company that scored the highest points must be given the work or else explanation should be provided. Penalties must be implemented to those contractors that are not performing according to specifications to ensure the development of good contractors. The department accrues losses if poor quality is provided. If a project fails, it has to be re-advertised and evaluated. Contractors who are causing this should be blacklisted. A down grading system should be implemented for non-performing contractors. Abuse of the system is through not following the procedures. Some go into construction for other reasons other than passion of the work.

4.2 INTERVENTIONS TO PREFERENTIAL PROCUREMENT

The emerging contractor observed that PDIs should meet requirements. There must be something wrong if PDIs are denied a contract. Perhaps the person does not provide necessary information correctly. PDIs should be more involved in the field where they have strength. PDIs should concentrate on quality, skills transfer and accuracy in the time frame of a project. PDIs should be assisted in terms of technical know how of a road project. Roads projects require real technical skills and experience. The department must insist on skills transfer to curb dominance and greed by well-established contractors.

Nevertheless, sometimes the emerging contractors do not want to undergo tutelage under the established contractors. The government needs to set up mechanisms to monitor emerging contractors and nurture them; the other contractor provided that the department should train emerging contractors on how to complete tender documents and other requirements in a one-day workshop. Contractors should know what page to complete and which page you should not complete. Experience sometimes deprives contractors' jobs. It is important that contractors should be assisted to gain experience. Payment agreements with subcontractors are a problem. Partnerships must stipulate the role of each of the partners in such relationships. The point system needs to be reviewed or amended in such a way as to benefit the HDIs more.

In addition, the other contractor noted that consultants could assist contractors to fill in a tender document, which increases their chances to get the tender. Contractors should complete the tender document correctly, avoid cheating and supply all the necessary information as honest as possible and self-interest should be avoided. There should be mentoring to assist emerging contractors in terms of acquiring technical skills and financial management skills. The department must state clearly the role of HDIs in partnerships otherwise empowerment objectives will be defeated. Established contractors are often selfish and may want to pay an emerging contractor off the project. The established companies can give you high rates on plant, equipment hire and administration and there is nothing to share as profit at the end of the day. The government should continue with the EPWP programme. The CIDB grading system still favours the established companies at the expense of emerging contractors.

The established contractor pointed out that there is properly laid down procedures. PDIs should work on themselves and show they are passionate about contracting in roads. PDIs should give good service, promote themselves and show their track record in their presentation that stands out so that they can be noticed. Contractors do not have the necessary CIDB grading, experience and plant. PDIs may be assisted by giving them leads, finance and through providing them with relevant information. Designated contractors who do not have experience should partner with established companies to acquire skills and experience.

There must be good relations within a partnership and every partner must show interest in carrying out the project; the other established contractor provided that PDIs should have proven track record, quality and high standard. Marketing of the business by contractors and availability of database in government where they can be obtained. If all requirements in the tender document are met and no irregularity is found then a tender should be awarded to any PDI. It is government policy to support contractors in the construction industry. A carrot and stick approach can be used by bringing in more incentives for training of emerging contractors by established contractor. In partnership, contractors must share the risk because in every project they need to bring in working capital. Partnerships can be successful with contractors with a record of accomplishment and finance. The government need to communicate more with the contractors to provide feedback on tenders submitted. Moreover, keep their schedule on start date of projects and be strict on budget spending.

In addition, the other established contractor mentioned that providing low price and complementing with other things could influence awarding of the tender. Skills transfer should be used to empower PDIs and members of the community through contract participation goal. Some officials think that they are doing you a favour when a job is warded. Skills transfer through partnership can assist to meet government objectives of empowerment. The principle behind the policy is ok. However, the implementation needs improvement.

The consultant observed that contractors could tell the government who they are and how they will do the job. Proof of previous experience and prove that work was done on time and within the budget is important. Contractors should gain knowledge on what they want to do and be keen to do it. Contractors have to be financially stable, have personnel and ability to organise so that work can be finished on time. Ability of different aspects of the work and importantly finance can assist the contractor to do the job. Contractors who do not cope should accept assistance. HDIs can learn how to plan, what is important, timelines and financial wise in a JV. One can learn from a good contractor how to make money and how to do the job properly with a minimum of effort to make good profit. Wrong attitude can make a JV to collapse. The system should not be changed is fine.

The consultant confirmed that allocation of contracts should not be controlled somewhere while decisions are taken somewhere else. Contractors must have a responsibility to make things easier for clients. They must put in realistic prices not ridiculous prices and provide quality, which is not emphasised. Government before disqualifying someone need to interview the person and tell him or her about what is wrong with the bid. Emerging contractors need to be trained, they need to build their capacity, and skills transfer in the process. JVs must be clearly defined, there must be a performance agreement for the contract. The process should be built on skills transfer and must be monitored. Mentorship can be supported as well. Control measures must be put in place to ensure that whites embrace the system and do not abuse it because there is a feeling that the system is not fair. The government must be prepared to inject a lot of money to ensure that the system works.

In addition, the other one consultant said that collusion with decision makers can influence a tender award and should be punished. Morality and honesty is not important at times and money is given priority. Tender processes must be very clear. Contractors must perform well to create a good track record. Not everybody has the same understanding of many of the Preferential Procurement Policy concepts. Empowerment and restitution can be achieved through training or retraining, on site mentoring and support and coaching is necessary. Partnership is always a good thing because it is one way of learning by emerging contractors. Understanding of parties in partnerships can help. Personality traits play a role. Some contractors have a bossy attitude and some are very accommodating. Some displays some degree of arrogance towards emerging contractors. CIDB has brought sanity into the system.

The bid member stated that designated contractors should team up with bigger companies so that they can be seen as having the necessary muscle. HDIs should form joint ventures among themselves rather than with established contractors; the other bid member provided that established companies succeed because they have the backing of all the big financial institutions. There should be some form of skills transfer or training for HDIs that is long term, say 3 years, experience, quality, track record should be paramount in providing the service. Assistance should be provided where there is lack of necessary experience. The mentoring process can assist emerging contractors. Partnerships should be done and be specific to target skills transfer and empowerment in the real sense of the word. Preferential Procurement Policy needs to be marketed because people are not aware about it. In reality and tangibly it is not helping.

In addition, the other bid member provided that marketing techniques are important to ensure that a contractor gets a contract. Practise makes perfect. HDIs must be assisted to acquire necessary skills, since the award decision will come back to the department. They can be encouraged to learn through mentoring system. Upfront payment too can assist, but the payment should not be directed to the contractor but to the debtors of the contractor. Upfront payment can assist to facilitate the work. Partnerships can assist to redistribute wealth and skills in terms of financial management and contract management. The process is ok and designated contractors should be given preference only and maybe introducing a down grading system in the CIDB.

4.2.1 PREFERENTIAL PROCUREMENT POLICY AS A STRATEGIC INTERVENTION MEASURE

The study has revealed a fundamental basis for existence and implementation of Preferential Procurement Policy. The entire sample explicitly and in different ways concurred that the Preferential Procurement Policy is intended to address the imbalances of the past. One established contractor was emphatic that 'Preferential Procurement Policy is a drastic measure to address the imbalances of the past engineered by apartheid'. One emerging contractor feels Preferential Procurement Policy provides an opportunity for HDIs to participate in the tendering process as a way of economic empowerment to redress the imbalances of the past. For one emerging contractor the Preferential Procurement Policy provides jobs. For another emerging contractor Preferential Procurement Policy is an idea to empower women to redress the imbalances of the past through provision of work that impacts on poverty and crime. One established contractor feels that the system is there to give a chance to HDIs as well as to be fair to all.

One other well-established contractor feels that Preferential Procurement Policy is a form of social responsibility and it is used for addressing the ills of the past. One consultant feels that the system is there to build up a contractor scope for the future because wealth cannot be in the hands of few, however, care should be taken to ensure that the system is not implemented indefinitely and at a certain point no one should still be regarded as so called historical disadvantaged. One consultant feels that the system seeks to redress the imbalances of the past.

The other consultant feels that the system is a way to rectify the situation of the past and give HDIs a chance through development of HDI contractors and to give them more exposure and experience to be able to compete in the future. One bid member feels that the system is implemented to balance issues of the past because since HDIs were not awarded contracts or business and thus they are given benefits not given before. One other bid member feels that the system gives opportunities and try to fill the gabs in terms of the imbalances of the past, which they still need to be brought on board so that they can benefit. The other bid member feels that the system was developed to promote transparency and fairness and the policy basically redress the imbalances of the past.

4.2.2 PROGRESS ON PREFERENTIAL PROCUREMENT POLICY

The study unravelled that while some respondents feel that significant gains were achieved some feel mediocre progress has been achieved owing to multi-fold problems. Those who are pessimistic feel that the system has empowered a significant number of HDIs who can now compete pound to pound with well-established contractors who are dominantly white males. Nevertheless, the pessimist like optimists identifies persistent challenges that dominates and diminishes any claims in favour of success of the Preferential Procurement Policy. One optimist emerging contractor supports the view by proudly declaring that 'yes there is progress' in implementing the preference system she can be quoted as saying 'I benefited from the process and women in particular get preferred'.

One consultant is also of the view that the number of HDI contractors empowered to be well established is enough to stop the whole Preferencing system as the goal is achieved. One established contractor gives the system a green light in that he says the system encourages new entrants. A point supported by another consultant who points to the CIDB contractor register as the living evidence that there are already HDI contractors who have done well and can produce work of a high standard. One consultant supports the sentiment as well because he believes that at an extreme the system has produced HDIs who got very rich. and for him the system is not only working but is good because those who got contracts in this system unlike set-aside do not get it on what he called a 'platter of gold'. They earn contracts and open competition will not damage the economy. The established contractor noted that the system is well accepted by contractors across the board.

The bid member was in no compromising mood that while the system is desirable but she identifies poor progress in the implementation. One consultant identified government as not doing enough to ensure empowerment of the HDIs. One bid member just feels the system is not working well because of collusion and fronting that takes pace. Those pessimistic about the progress achieved decry the CIDB grading system that is a barrier to entrance for many CIDB registered HDI contractors and potential contractors. Their view is that the grading system favours established contractors who should be given work on condition of commitment to genuine skills transfer to HDIs to ameliorate the current slow progress. One emerging contractor is not so optimistic as well, in that he says efforts to empower HDIs have been in vain because those who were offered jobs often do not have finance to carry out the projects. Banks are not of assistance because they want guarantees not available because of the disadvantageous position of the past of HDIs. Another emerging contractor feels the situation is worse because even if extensive EPWP training is provided but over a long time it has become impossible to obtain a single contract.

One well established contractor and a consultant who are pessimistic about the effectiveness of the system are of the view that the system is let down by those who venture into business to make quick money and disappear after grabbing a slice of the share. One consultant is of the view that the slow pace in achieving great results is as a result that some HDIs contractors cannot provide quality work. The study also unravelled tension regarding the suitability of the policy regime currently in us as the cause of lack of progress.

One bid member who sees disabled persons as not benefiting at all because the whole system does not talk about targets echoed strong views against the system. She contends that annual budget set-aside for youth, women and the disabled could see much visible results being achieved. However, she decries the fact that HDIs are weighed on the same scale as well established contractors. Though well-established contractors have vast experience, track record and quality work produced in the past. On one hand, HDIs do not have most of the requirements since they did not have access to tertiary education to acquire necessary skills that can allow them to compete on an equal footing. The status quo will remain for a long time because on balance of probabilities capacity tilts the scale in favour of well-established contractors. Moreover, white owned companies are using the system to their advantage. One emerging contractor feels that it is unfair for HDIs because government continues to give contracts to well-established contractors who emerged through the apartheid system. The system should ensure that HDIs get contracts. One bid member feels that an ideal situation will be when there is ring fencing, currently not allowed in terms of the law. This will guarantee a certain percentage of contracts to HDIs.

One established contractor feels that it will obviously be difficult for HDIs to emerge. Development of a contractor in the industry takes more than a decade. A view supported by one consultant that government is not doing enough to build long-term capacity and ensure availability of competitive contractors.

4.2.3 STRATEGIC POLICY CHOICES

On suitable policy regime, the study has elicited two different views one inclined on open competition and the other on set-aside for designated groups. Those inclined on Preferencing in an open system are of the view that the preference points allocated to HDIs are enough to give them advantage in competing for bids. One emerging contractor feels that the preference points give HDIs one-step ahead and only what is needed to be successful is experience. The other emerging contractor is of the same view and feels that the only thing that needs to be done by government is to upgrade emerging contractors and get mechanisms, which can encourage Joint

Ventures between established companies and emerging contractors as a way of solving problems of non-access.

One established contractor is in support of the view and feels it is a bad idea to guarantee HDIs a portion of the work. The other established contractor feels that the current government system is working and maybe if HDIs could be guaranteed work on grass cutting or small projects, but not big projects because you must take into consideration working capital, experience, infrastructure, workshop and other facilities. The tender system should be based on open system and control measures be put in place to curb corruption. The other established contractor feels that it will be unfair to guarantee the outcome of the preference system, rather HDIs must have access. Objectives of the system must be communicated to the broader society and education be provided to encourage more people to participate. The contractor contends that people should grasp the opportunity and educate one another about the objectives of the policy. Points allocation should be allocated to one specific group to give it a clear advantage.

One consultant feels the system is good and HDI contractors just have to be empowered. The bidding process must be kept open so that everybody can compete. The Effectiveness of the points system depends on how the points are structured. There must be a balance between points for price and equity. Points for equity groups must give clear advantage to each group at a time. Emerging contractors must be empowered financially and on technical knowledge and skills to compete even globally.

Points allocation should be determined by the number of people employed rather than equity. The other consultant's view is that the system must guarantee access to opportunity and nothing else. In his view there must be competition not set-asides because it opens the process for many irregularities, misuse and abuse. In addition, it may benefit contractors who are not really the best. Competition will unearth the best in the market. There are few HDI companies and they may not be able to take all the quota of jobs allocated to them. The consultant contends that the profit margin on infrastructure projects is about 10 to 15 percent. If an HDI tenders effectively, it has 9 points advantage than an established contractor. In infrastructure, the current point allocation is a very significant margin.

On the other hand, one emerging contractor is not so upbeat about the current preference approach. A good approach is the one that targets PDIs directly, EPWP being a good model. A view of one bid member who feels that the current preference system does not work for HDIs, giving points does not help because others do not even know how to claim them. There should be other criteria because the current one does not give HDIs the necessary advantage. Currently functionality carries more weight. If a contractor fails on functionality, then preference does not give any advantage.

The other bid member feels that targets and setting aside of the budget targeted at the youth and women can give exposure to gain necessary experience. It will give a pool of HDI contractors with necessary experience and skills. Overtime the so-called HDIs will not exist and every body will be able to provide good quality work. The system should guarantee jobs because currently there is nothing tangible, although training is provided but it is difficult to get a contract. The bid member remarked that 'the reality is that if HDIs do not have the necessary skills, finance or exposure, they will still not get the tenders and then how does the points allocation help'.

One bid member had contradictory views in that on one hand he feels that it is not worth that a contract be awarded solely because a contractor is a HDI. There should be other requirements that need to be complied with. The points system should credit those genuinely transferring skills. Competitiveness should be the guiding principle because it will enable HDIs to want to acquire the necessary skills and resources and know how to deliver good quality product. On one hand, the bid member feels that the system is not advancing interest of HDIs. He feels the system should be replaced with the practise of setting aside certain projects. Alternatively more preference points be given as compared to the points currently given to price

4.2.4 PROCESS CHALLENGES AFFECTING PREFERENTIAL PROCUREMENT POLICY

The study has largely uncovered that more than anything HDIs lack necessary skills to take advantage of the preference system. The study has uncovered acute lack of skills among HDI contractors as a limiting factor in terms of effective participation in the preference system. One emerging contractor says black contractors are not educated in terms of technical skills. It becomes difficult to fill in pages of the tender document that requires academic qualifications of key personnel because HDIs do not have them.

The other bid member felt that the problem with HDIs is that a lot of them do not have academic qualifications to be engineers and the current system is not helping them to get necessary skills to improve their lives. One bid member feels that people want to build roads while they are not engineers and do not have any engineer in their employment. One emerging contractor feels that EPWP learnership schemes assist because participants are not required to have technical skills or tools.

The consultant agrees as well that it is important for the contractor to technically understand what he has to do and fulfil those obligations. One consultant feels that contractors should at least have basic business skills, knowledge of construction and project management to a certain degree. A view echoed by one bid member who says HDIs are affected by acquisition of skills. Most HDIs who have contracts due to lack of financial management skills, general management and legal issues end up being bankrupt and as such their growth is affected. Sometimes contractors quote too low and when they are given a contract they cannot do well. HDIs should realise that they are in business, they must acquire knowledge and be able to make profit.

One consultant observes that sometimes you get contractors that do not read what is required and end up not delivering. One established contractor says PDIs do not provide responsive tenders because sometimes they are not willing to take their time to complete the tender documents properly. One established contractor notes that some contractors leave many things to chance. Sometimes they hire people to do important things that they should have done themselves before submitting the bid.

One bid member says it must be understood that tender responsiveness of HDIs bids is influenced by deprivation of skills in the past. The process is new to them, some cannot even complete the tender document and hence a majority cannot submit competitive bids.

One bid member says tenderers should know what could disqualify them. You have cases where HDIs provided good offers but failed to submit a tax clearance certificate. The bid member also provides that sometimes HDIs when given a contract they first want to enrich themselves personally forgetting about the project. The decision to offer then haunts the government. One emerging contractor feels that HDIs have a serious skill gab, particularly on how to complete a tender. The problem is so acute in that HDIs just buy a document, put it aside, and start completing it at the last hour resulting in many mistakes in pricing rates being done. Sometimes HDIs do not finish completing the tender document. Even though some contractors hire professionals to complete documents, submissions are still found without necessary signatures.

Contractors feel that the government should provide training. The Department of Labour is not living up to expectation in terms of capacity building or training like supervision skills and communication skills. One bid member says improvement need to be done by 'CEDA' in fulfilling its mandate of assisting contractors to fill forms and to ensure they submit responsive tenders. Tenderers should know what could make them to be disqualified.

On other challenges, one contractor feels that the problem is that government delays payment that affects the cash flow of emerging contractors. One emerging contractor feels HDIs should be given small projects. HDIs should just form a company then the government provide engineers to mentor them to grow. Three contractors feel that the CIDB grading system has affected most emerging contractors because the grading system excludes them to tender for all jobs. One emerging contractor feels that HDIs who do not complete their projects spoil the name of other HDIs and the ability to be given jobs since government trust is jeopardised. One emerging contractor feels that the payment of guarantees affects HDIs because of lack of financial resources.

One emerging contractor feels PDIs are affected when government officials intend to award their own companies contracts intended to them. One established contractor feels that communication need to improve since contractors are in the dark about their performance. One established contractor feels that HDIs sometimes under price their projects and fail to complete their projects because they come short. One consultant feels that sometimes there is an unhealthy relationship between contractors and the department, which leads to non-payment. One consultant feels that contractors must put realistic prices for clients. Government should be willing to take risk because you cannot apply the same standards to HDIs as those applied to well established contractors since HDIs will not be able to compete freely and grow. One bid member feels the tender preferencing requirements should target HDIs exclusively and be published. Open competition creates problems for those intended to be uplifted.

On functional challenges, one emerging contractor is of the view that HDI contractors should be familiar with the job, provide correct rates, have financial capacity and have a plan available. Provision of poor workmanship could be as a result of lack of experience. The other emerging contractor feels that experience count in order for one to be given a contract. Experience sometimes deprives emerging contractor's jobs.

The other emerging contractor is also of the view that people with necessary experience and track record should be considered for contract award and not just people with signing powers, since disabled people and women can be included in a company for the sake of acquiring tender points. One established contractor's view is that HDIs are affected by not having experience. HDIs must show passion of the work and give good service, promote themselves and show their track record. PDIs must be able to show capability to do the work. Another established contractor feels that bringing a person who has never done civil construction will not work. To work, you should have done the work or similar work. Experience should come into play.

According to one consultant experience in the past and the fact that HDIs did previous work properly on time within the budget is very important. It is not the experience they had but the experience that clients had of them doing the job properly. The other consultant feels that in roads industry you need experienced contractor who has completed similar projects. Sometimes with a good site agent.

One consultant feels that contractor must be knowledgeable and be able to manage a project. It is a career to build a company and then become successful contractor even within the constraints of political objectives in the country. One bid member feels that HDIs can be denied a contract because of lack of experience, quality and track record, which is paramount. If an HDI does not have experience then they tend to provide poor quality work. Track record should be checked before being given the work, you should have done similar work in the past three years.

On resources challenges, one established contractor feels that contractors can be considered for contracts if they have sources of material, experience and availability of good personnel and work force. Another established contractor feels that financial capability is crucial. If you lack resources then you will always be forced to approach established contractors to do the project. Financial and personnel are key resources since plant can be hired. One consultant feels that HDIs must be financially stable. One of the most important issues is that financially they are not able to carry through their jobs and that is why they are denied the jobs.

To be successful HDIs, had to have capabilities in finances, technical, equipment and work force. One consultant feels if an HDI does not have financial capability they can start as a small contractor and gradually progress so that they can minimize the risk towards government. In big projects, they must have some strong financial capability. In construction, every contractor must bear his expenditure and so then, the challenge is where a contractor does not have access to finance. Other things like plant depend on finance. HDI contractors must have finance or access to finance to start a project. One bid member feels that the majority of HDIs have no resources and the major factor is financial resources. Lack of resources compels HDIs to go into JVs, wherein sometimes-bigger companies give them a lesser role. The other bid member feels that established companies succeed because they have backing of all the big financial institutions.

4.2.5 ETHICAL CHALLENGES AFFECTING PREFERENTIAL PROCUREMENT POLICY

The study has un earth two contrasting views on corruption in the system one group of the sample feeling that there is an element of undue influence in the system while the other group feels that the behaviour, conduct and actions of role players is above board. One emerging contractor feels that it is not 'ok' to influence the award of contracts, people do it a lot, sometimes they phone people mentioned on the tender documents and at times they succeed to influence a tender to their way. It will be better if the system is made open so that it can be known how bids were evaluated.

One emerging contractor feels consultants used by the department sometimes have interest on the projects. They invite contractors and fill in their tender documents to increase their chances of having the right estimate price, which is corruption. Supply of false information can result in a contract not being awarded to an HDI that scored the highest points. It is not good to provide poor quality work because that is a betrayal of trust given by the department to HDIs. Consultants contracted by the department for specific projects should not be allowed to do evaluation since they make you pay in order to get a tender.

The consultant feels that contractors influence contract award in a number of ways including portraying a good image, providing false experience claims and promises of taking care of government officials after the award of the tender. Influence of tender award should be finished since there are employers or clients that manipulate the tender system. Irregularities are one of the great tender award influences and it is unacceptable. Contractors as well will do anything to get into the pocket of decision makers. Contractors can go out of their way to influence contract award, which is cutting across all races and is universal. It is not something new, it is part of the business plan of the contractor and a contractor should not be penalised for trying his luck. Misrepresentation of facts on points like disability should result in disqualification. The other consultant feels that people do influence the process of tender award. Money is important to many people, sometimes is important than morality and honesty and this happens worldwide. A contractor that attempts to commit irregularities can be disqualified from the process and can be charged depending on the gravity of the case. There must be consistency in the system, tempering should be avoided since it encourages irregularities.

One bid member feels that some contractors include disabled person in their companies to gain advantage or for scoring points, while these designated people are inactive. They sometimes include women who do not know what is happening in the operations of the company. The other bid member feels that contractors who influence contractors award unfairly are greedy and most of them do fronting by getting people with disability or young women and pay them off. This is intended to milk the government. Moreover, the other bid member feels that people have different ways of marketing. Some marketing techniques are not acceptable and that is why bid members must be screened to avoid influence by contractors. Contractors sometimes buy bid members gifts. Some contractors request favours in terms of the price or estimated price of the project and use that information to work out their tenders around the prices given. Contractors who want to influence contract award should be blacklisted because they are contravening the constitution and can cripple the economy of the country.

On the other side, one emerging contractor feels that the system is not abused. The only problem with HDIs is not meeting tender requirements like keeping with project time schedule. It is important for HDIs to be clean as well and let those who score highest points be given the work. One established contractor feels contractors cannot influence tender ward because the rules are clear. Those who try to influence the system should be disqualified or charged penalties for dishonesty. Another established contractor feels it is wrong and illegal to influence tender award. Contractors who do so should face the music because they are stealing emerging contractor’s business opportunities. Denying a contractor that scored the highest points contravenes the same policy to empower contractors and it affects faith in the government system. HDIs provide good quality work, although at times their projects are delivered late. Another established contractor feels that it is difficult to intercept the tender process because there are stages of evaluation before approval. Well-established contractors can use their ridiculous low prices to influence tender award. Those influencing the system negatively must be kicked out of the system. People should not be motivated by making money, but should have long-term business objectives in the industry.

4.3 SUMMARY

The study has elicited some vital intervention information from the sample on how HDIs can be assisted to enhance their participation in the preference system. This includes what contractors can do themselves to improve their position and condition. In addition, what external interventions can be provided particularly by government who has inherent responsibility of assisting intended beneficiaries of the preference system and well-established contractors who have what it takes to be successful in the construction industry. On what contractors should do, one emerging contractor feels the PDIs should be more involved in the field where they have strength. They should concentrate on providing quality, skill transfer and accuracy in the timeframe of a project. One other emerging contractor feels that HDI contractors should focus on completing the tender documents correctly, avoiding cheating and supply all the necessary information as honestly as possible.

One established contractor feels that PDIs should work on themselves and show that they are passionate about contracting in roads. They should give good service, promote themselves and show their track record that stands out in their presentation so that they can be noticed. One consultant feels that HDIs should market themselves. They should gain knowledge on what they want to do and be keen to do it. Contractors have to be financially stable, have personnel and ability to organise so that work can be finished on time. Ability of different aspects of the work and importantly finance can assist contractors to do the job. Contractors who do not cope should accept assistance. HDIs can learn how to plan, what is important, timelines and financial wise in a JV. One can learn from a good contractor how to make money and how to do the job properly with a minimum of effort to make good profit. One consultant feels that contractors must have a responsibility to make things easier for clients by putting in realistic prices not ridiculous prices and provide quality work.

On what can be done to assist HDI contractor to emerge, one emerging contractor feels that PDIs should be assisted in terms of technical know how of a road project because they require real technical skills and experience. The department must insist on skills transfer to curb dominance and greed by well-established contractors. Emerging contractors must be willing to learn from well-established contractors. Government needs to set up mechanisms to monitor emerging contractors and nurture them. The other emerging contractor feels that government should train emerging contractors on how to complete tender documents and to fulfil other tender requirements in a one-day workshop. Since experience sometimes deprives contractor's jobs, it is important that contractors should be assisted to gain experience. Payment agreements in partnerships must stipulate the role of each partner.

The point system needs to be reviewed or amended in such a way as to benefit the HDIs more. The other emerging contractor feels there should be mentoring to assist emerging contractors in terms of acquiring technical skills and financial management. The department must state clearly the role of HDIs in partnerships otherwise, empowerment objectives will be defeated. Established contractors are often selfish and want to pay emerging contractors off the project. Established companies who has everything can give high rates on own plant, equipment and administration and ultimately there is nothing to share as profit with the emerging contractors. The government should continue with the EPWP because it guarantees contracts to HDIs.

One established contractor feels that PDIs may be assisted by giving them leads, finance and through providing them with relevant information. HDIs who do not have experience should partner with established companies to acquire skills and experience. There must be good relations within a partnership and every partner must show interest in carrying out the project. The other established contractor feels that it is government policy to support contractors in construction industry. A carrot and stick approach can be used by bringing in more incentives for training of emerging contractors by established contractors. Government needs to communicate more with the bidders to provide feedback on tenders submitted. The other established contractor feels that skills transfer should be used to empower PDIs and members of the community through contract participation goal. Skills transfer through partnerships can assist to meet government objectives of empowerment.

The consultant feels that government, before disqualifying a contractor, needs to provide feedback to the contractor. Emerging contractors need to be trained and they need to build their capacity in the process. Mentorship can be supported as well. The consultant argues that control measures must be put in place to ensure that whites embrace the system and do not abuse it because there is a feeling that the system is not fair. The government must be prepared to inject a lot of money to ensure the system works. One consultant feels that empowerment and restitution can be achieved through training or retraining, on site mentoring and support and coaching is necessary. Partnerships are always a good thing because it is one way of learning by emerging contractors.

The bid member feels designated contractors should team up with bigger companies so that they can be seen to be having the necessary muscle. HDIs can also form JVs among themselves. The other bid member feels that big contractors succeeded because of financial backing from all big financial institutions, which should be extended to HDI contractors. There should be some long-term skills transfer or training. Assistance should be provided where there is lack of necessary experience and mentoring can assist emerging contractors. Partnerships should be done and be specific to target skills transfer and empowerment in the real sense of the word. The other bid member feels that HDIs must be assisted to acquire necessary skills. They can be encouraged to learn through mentorship system. Upfront payment too can assist but payment should be directed to the debtors of the contractor to facilitate the start of work. Partnerships can assist to redistribute wealth and skills in terms of financial management and contract management.

CHAPTER 5

INTERPRETATION OF RESEARCH FINDINGS

This chapter is intended to analyse key findings of the research. This will be done by searching for patterns in the data in chapter four. Every pattern identified will be interpreted in terms of literature as contained in chapter two. In addition, interpretation of the findings will be done to determine what the researcher ultimately knows about Preferential Procurement Policy from having studied some of its parts and their relationship.

5.1 PREFERENTIAL PROCUREMENT POLICY: AN EMPOWERMENT TOOL

Emerging from the study is that although statute books of the apartheid regime have been repealed, a concerted effort is required to reverse the profoundness of the legacy of that system. The study explicitly revealed that the Preferential Procurement Policy is at the core of a policy endeavour to economically empower designated groups through allocation of roads construction tenders that provide necessary jobs, address poverty and assist with the transfer of wealth. Darity (2005) argues that implementation of a preference scheme that includes the Preferential Procurement Policy is not peculiar to South Africa. It is a concept that is universally applied as far as the USA, which boasts a vibrant economy and advanced democracy globally.

Nevertheless, with the demise of apartheid, proactive programmes are required to address present day exclusions because of all forms of discrimination perpetuated against the majority of citizens in the past South Africa. Whether it might be gender, racial, ethnic, geographic discrimination, preference programmes are universally embraced as an indispensable, morally, politically and economically justified tool that can be used by any government to address present day circumstances. Taking from the research it is a renewed view of the researcher that the Preferential Procurement Policy is not just a necessity programme. However, a principled, pragmatic and proactive strategy can ensure social and economic cohesion of even deep-rooted democracies and thriving economies.

As such, implementation of the Preferential Procurement Policy in South Africa is justifiable in all respects and could be intensified to ensure that all forms of discrimination experienced in South Africa for many decades is completely eradicated sooner than later. Moreover, the dream of a better South Africa for all is achieved in time, without fearing that the Preferential Procurement Policy itself can be deemed a discriminatory policy intended to apply apartheid in reverse.

5.2 PROGRESS ON PREFERENTIAL PROCUREMENT POLICY

On paper, one can safely assume that it is imperative to implement one form of Preferential Procurement or the other. Nevertheless, the universal unanimity on implementation of preference schemes is solely based on the need to decisively deal with all forms of discrimination. The research has somehow demonstrated that, it is common practice that quite often government, as drivers of the policy change, portrays a rosy picture in terms of successes in implementing a preference programme. Detractors of the system are also often not so quiet about the lack of tangible benefits accrued by the designated groups from the system.

In trying to reconcile the contradiction, the study empirically revealed that Preferential Procurement is a useful tool of empowerment to ensure harmony among groups within a country. However, any progress that can be achieved by a preference system should be understood in its rightful context. Looking at the views of pessimists respondent of the research, it becomes clear that some segment of the previously disadvantaged have tremendously benefited from the new system. One consultant argued that that 'to an extreme extent the system has managed to produce very wealthy HDIs, a sign to vindicate some form of effectiveness of the system. This pattern seems to correlate exactly with what is being argued by Darity (2005), who is in firm view that Preferential Procurement is not inherently intended to benefit each and every individual among the designated groups. In fact, literature is very clear that globally Preferential Procurement operates to alter the demography of the elite, rather than to make the elite more representative of the ethnic and / or ethnic composition of the society as a whole.

Darity (2005) vividly amplifies the point again who argued that the system is not about addressing past imbalances through a reparation kind of a programme, wherein you could provide a social grant to all designated groups. Nevertheless, the system is by definition designed to provide access to opportunities systematically denied in the past. As such, progress becomes comparative, since success depends on the ability and capability to take advantage of the presented opportunities. Viewed in that context it becomes understandable that to some extent some HDIs have been empowered to the extent that the line between them and white owned established companies has been blurred over the first decade of the implementation of the system.

Thus, one could safely say that the Preferential Procurement Policy has made progress in producing black elite useful to be sympathetic to the course of the new government in terms of maybe assisting to consolidate democracy by investing their acquired wealth in labour intensive projects that can assist to employ the majority of people. In turn the kind of employment created would restore dignity of the people since they are employed to earn an income that can assist them to eradicate poverty rather than being given hand outs. On the contrary, one could detect some dissenting views from the pessimists respondents on the progress achieved to date. However, these dissenting views centre on bottlenecks resulting from possible choices of Preferential Procurement and resulting from poor implementation of the system that is characterised by barriers, e.g. industry regulation, corruption and supply side interventions to be dealt with extensively in the next parts of the analysis, as opposed to principle arguments that could dismiss implementation of the preference system as an ineffective tool to address past imbalance.

Based on hindsight, it is the understanding of the researcher that Preferential Procurement as a strategic tool to address ills of the past should not be perceived as an end but as a means to an end. Preferential Procurement thus needs to be understood in the context that it can balance forces among ethnic and /or racial groups. As opposed to totally changing the face of the total population of those previously disadvantaged. However, this does not preclude that Preference Procurement Policy can be effectively implemented to massively change ownership of wealth among South Africans and further address all present day challenges affecting the society.

5.3 STRATEGIC POLICY CHOICES IN IMPLEMENTING PREFERENCE PROCUREMENT POLICY

The enactment of Preferential Procurement Policy in South Africa was no doubt a positive step to ensure that millions of designated groups affected by apartheid finally are brought in to the main stream of the economy. In view of the research, one can safely assume that Preferential Procurement Policy approach choices are dichotomised into preferential boosts and quotas. South African procurement policy regime leans towards preference boots, wherein the so-called designated groups are allocated points that can be used to tilt the scale in their favour after everything else has been considered in an open and competitive market.

Clearly, this is in direct contrast with quotas, which are 'fixed allotments designed for members of the target groups. Be the case as it may, the research has exposed those policy debates and surrounding tensions. At the centre of the debate in favour of preference boosts is the need to empower designated groups in the sense that does not exclude those who are not targeted by the system. It is the finding of the research that there are deep-rooted divided feelings about the conceptualisation of the procurement regime currently used. The underlying feeling about the policy approach can be captured by the words of one established contractor who argues that, it will be unfair to guarantee the outcome of the preference system. Entailing that set-aside of the annual budget be done to ensure that HDIs are contracted in a particular year and are able to get reasonable percentage of the total allocation, which is currently not the case.

On the other side, is the high conviction that the current system of point allocation is not working to the advantage of the designated groups, comparatively speaking other factors e.g. functionality and lack of skills completely outweighs the preference allocated. One bid member argues that sometimes other designated contractors are not claiming or properly claiming the points. In addition, he contends that point allocation is done after evaluation of functionality and risk associated with it. If an HDI does not pass the functionality criteria, then the points allocated become useless since the contractor is outright disqualified and no further consideration is given to his tender. Given the background of most designated contractors, it is clear that lack of access in the past denied them the opportunity to acquire capabilities. Hence, the model does not consider those. However, it is somehow assumed that HDIs are entrepreneurs that should be able to compete in an open competition without protection from well-established contractors who have what it takes to compete for a project.

These underlying feelings fly in the face of the literature that, although the choice of Preferential Procurement is subject to the needs of a particular country. Nevertheless, those threatened by the wave of change to the extent that policy choices like in the USA were shaped by jurisprudence have always frowned at the implementation of set-aside. In addition, in Malaysia it was precipitated by violent protests by marginalised indigenous ethnic groups. The researcher is unequivocal that, although South Africa has chosen a clear policy path, there are serious doubts whether the choice is well informed by the magnitude and extent of the problem that it desire to address. Flowing from the research, it becomes the new understanding of the researcher that procurement policy regimes could either serve as a means to level the playing field for designated groups or to give them an outright advantage that guarantees them a certain percentage of the cake over a certain period. And of which the current system in South Africa is not even near to ensure that HDIs are adequately promoted and protected

5.4 CHALLENGES AFFECTING PREFERENTIAL PROCUREMENT POLICY

Implementation of Preference Procurement entails that there should be demand and supply of goods and services from designated contractors. The demand side is covered by the sourcing of goods and services from enterprises owned and managed by HDIs, which is not a subject of debate owing to millions of thousands of annual budget at the disposal of both the government and private sector, that can be used to give necessary business to these designated groups. On the other side, you have the supply side of HDIs enterprises that is triggered by the need to implement a Preferential Procurement system.

When everything has been said and done at the level of policy conceptualisation and enactment, supply side interventions become the logical step, to be addressed. It is immaterial whether it is in a preferential boost or quota system. Drawing from the literature is that despite global acceptance of preference schemes as an acceptable and pro-active anti-discrimination measure. More tangible programmes needs to be provided to assist designated groups to participate in these schemes, e.g. the regional meetings and subsequently the 2001 World Conference Against All Forms of Discrimination specifically identified funding of HDIs as a matter that needs special attention in ensuring the Preferential Procurement works for its intended beneficiaries.

The lack of financial resources is but one factor that comes up clearly from the research. The lack of finance and / or access thereof is a serious challenge for HDIs. Moreover, everything hinges on the availability of finance. There is a whole range of things, which might be required to apply, start and complete a road project. This could include workshops, plant and machinery.

However, their possession is immaterial because they can be sourced depending on the availability of monetary resources. Secondary to finance is lack of experience and necessary skills to compete for projects within the context of open and transparent tender system, start and complete projects within a given time and allocated resources. The picture portrayed by most respondents looks gloomy because it appears that the majority of HDIs fail to meet even the basic requirements of tenders as a result of lack of skills and experience. The situation is compounded by the fact that the necessary and much talked about governmental intervention has not yet transcended to ameliorate the dire situation of HDIs, particularly in the multi million Rand road construction industry.

It is the view of the researcher that although there is general articulation about supply side interventions in implementing Preferential Procurement Policy, there seem to be very little or no action towards that direction. There seem to be a survival of the fittest syndrome and hence very little HDIs manage to emerge and sustain themselves overtime.

5.5 ETHICAL CHALLENGES AFFECTING PREFERENTIAL PROCUREMENT POLICY

Preferential Procurement has been globally acclaimed as a strategic means to deal with all forms of discrimination. Governments have been unequivocally encouraged to use this as a tool of anti-discrimination. Many governments responded swiftly by implementing various regimes of Preferential Procurement with varying stories of successes and failures. However, supply side interventions have been identified as a fundamental to ensure effective participation of HDIs in the preference schemes. However, an equally challenging and persisting endemic seeks to undermine the very same noble programme.

The researcher has largely unearthed that different forms of corruption undermine the implementation of the Preferential Procurement Policy. To add salt to the wound, it is apparent that these unbecoming acts are perpetuated by internal and external factors alike. Fagan (1997) McEwan (2004) and SANS 10396 (2003) attest to the fact that lack of transparency in awarding of contracts underpins various forms of undue influences to the system. As such, benefits accruing from the system are completely diverted from the marginalised sector of the society, which are rightful beneficiaries of the scheme to those who possess power and influence and are in no real need to be empowered, but end up with sizeable share of the cake in terms of contracts awarded annually. Clearly, this does not only divert benefits but seeks to perpetuate existing trends of inequalities and even create new intra inequalities that compound the problems and it becomes a matter of time before the system inflame instability and the system is challenged from all angles.

In view of the research, it is the understanding of the researcher that implementation of the preference policy is not only fraught with poor choices of policy regimes and supply side interventions but the system is engulfed by many ethical challenges including poor cultural, behavioural and corrupt tendencies of various stakeholders. Quite often one hears about one form of allegation or the other mentioned and quashed by authorities, nevertheless it is evident that not everything is 'ok' from the ethical point of view of implementation of the system

5.6 SUMMARY

Preferential Procurement Policy is inherently a policy prerogative of the government intended to empower certain sections of the population who were victims of the past exclusion or discrimination. Globally consensus has been garnered to legitimise implementation thereof. While it is the responsibility of the government to introduce, monitor and ensure that the policy achieves its intended objectives, it is clear that implementation is a subject of many stakeholders who are critical to ensure success or failure of the policy. As much as beneficiaries of the policy need to be assisted, some respondents, however, have a strong feeling that contractors should also play a certain role in uplifting themselves. Tendering is business after all and success depends on entrepreneurial individual capability. One established contractor contends that contractors in this business of road construction should work on themselves and show that they are passionate about contracting in the roads industry, he emphasises that they should give good service and promote themselves when the opportunity presents itself.

However, literature puts more emphasis on the intervention, particularly by the government, to assist HDIs who were systematically excluded from the main frame of economic activity. It is the view of the researcher that this implies acknowledgement of the dire situation in which HDIs find themselves and the need for government, through whatever institutional mechanisms, to intervene and ensure that HDIs are not only given an opportunity to tender but effectively tender and start and complete projects profitably. Thus, be able to contribute to nation building, cohesion, and stability that could be triggered by ever-increasing inequalities in the new democratic society. Based on the research it is clear that a myriad of problems beset implementation of the Preferential Procurement Policy system, so much that it is through strategic interventions by government, the private sector and perhaps non-governmental organisations that could finally ensure that HDIs ultimately turn the tide for a better life.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

The study has undoubtedly uncovered vital facts surrounding challenges of implementing the Preferential Procurement Policy. Namely, the acknowledgement of universality and legitimacy of implementing the Preference Policy, mediocre progress achieved to date, dichotomised policy regimes at our disposal, extent and nature of functional, process and ethical challenges affecting operational progress in the implementation and proposed solutions to challenges were solicited from the various role players. On the legitimacy of implementing preference policy, it is clear that, South Africa, having emerged from the ethnically divided past, the dawn of democracy was hailed as a bold step towards peaceful, non-racial, non-sexist, equal and economically progressing society. However, our new democracy remains fragile unless internationally acclaimed policies or programmes like Affirmative Procurement or Preferential Procurement are adopted. This will ensure that persistent poverty, high unemployment and ever-widening inequality gaps do not trigger any form of instability that could reverse all gains and benefits of being a rainbow nation, unprecedented growing economy and a model of constitutional democracy in Africa.

Secondly, the study has also unravelled mixed feelings about the progress achieved to date with the current preference point system as opposed to quotas. This served also to confirm the 2004 / 2005 data that indicated that only less than one percent of the total allocation was given to HDIs in terms of tender award. The study not only confirmed mediocre progress but also somehow exposed underlying feelings of despondence about the status quo. Thirdly, the study has shown that there is a popular assumption that the preference points system currently in use is not assisting HDIs in any significant way. Perhaps the introduction of quotas could spark earnest progress towards visible empowerment of HDIs. Fourthly, other than the policy dilemmas, there are a myriad of problems affecting implementation of the Preferential Procurement Policy and subsequent achievement of intended objectives and goals.

Chief among the challenges being the lack of finance or access to finance that is much desirable in all aspects of roads construction. Secondary to that is the perennial problem of lack of skills and experience that is informed by the discriminatory nature of the past policies that permeated all aspects of life in the society. Nevertheless, the latter challenges are a fundamental and integral part of the tender adjudication. Quite often compromise bids of HDIs before preference points can be allocated to gain advantage over white and male owned and controlled enterprises, who continue to get a bigger slice of the cake, right in the second decade of democratic rule. Equally important is the undue influence of tender award perpetuated by different role players in different forms e.g. fronting. The act of corruption is not only deemed as diverting resources of the needy but it compounds the problem of slow progress in empowering HDIs, particularly women and the disabled who are helpless and unsuspecting victims of the corrupt practices. Finally, possible solutions were solicited not only from some key role players but also from a sample of contractors that have already emerged and most importantly from the current beneficiaries of the system.

Flowing from the above observation, it is logical to recommend among other things that, citizens of the country should be sensitised that black economic empowerment is a fundamental international principle that seeks to combat all forms of discrimination. Thus, it should be embraced as a catalyst to entrench unity rather than being seen as a threat to one section of the society and unfair advantage to the other sector of the society. The fact of the matter is that, it should be inculcated in the minds of all that Preferential Procurement Policy is an acceptable non-discriminatory measure globally. It is the view of the researcher that it is indispensable that the mindset of everybody should be adjusted accordingly. Currently, wealth, skills, experience and knowledge is squarely located among the white community of the society, who are not intended beneficiaries of the system. In terms of the research, it was revealed that preference programmes are not readily accepted and supported. Thus, it becomes important that government should appeal to the consciousness of its citizens that Preferential Procurement represents a common good to both privileged and previously disadvantaged.

It is firmly believed that any buy-in at this level could serve as a precursor for smooth and successful implementation of any procurement regime. Moreover, the current form of Preference Procurement system requires healthy partnerships between white owned enterprises and emerging contractors largely owned and managed by HDIs. In time, reasonable progress could be achieved without compromising the quality and quantity of goods and services required by government and without marginalising those who are currently privileged.

At the level of policy conceptualisation and implementation, it is the view of the researcher that at least government has alternatives or choices. At the level of the government, particularly the National Treasury, who are custodians of the Preferential Procurement Policy, it is important to constantly review the current policy path to ensure that goals are achieved and necessary policy shifts or adjustments are made. Government policy should never be perceived as cast in stone. Once policy objectives are set, their achievement needs to be monitored. Preference Procurement could be implemented through a systematic model that is multi-faceted. The model includes processes namely, initiation of the policy, regular review, identification of strengths and weaknesses or challenges, instituting interventions and ultimately resolving on stopping or continuing with the policy.

The Preference Procurement model is important in the sense that Preferential Procurement should not be a permanent feature of the society but a specific and time bound strategy. Approached in this manner, it is believed that a win-win situation will be achieved in many respects. This entails that a pragmatic procurement regime will be adopted and implemented. Secondly, roles and responsibilities can be defined i.e. what ought, financial institution (private sector) , various government departments as policy implementing agents, NGOs, established contractors and emerging contractors, should do to realise the objectives of the policy. Thirdly, regular reviews are done to inform the course of action on critical issues like fraud and corruption. Fourthly, on how to deal specifically with fears among those who might fear negative influence of policy change in their lives. On the other side, it will deal with any sense of entitlement that can get into the minds of HDIs. In addition, it will instil a sense of discipline, responsibility and entrepreneurial ship rather than being a government vendor among HDIs. At the level of government, investment done to institute supply side interventions can be assessed and appropriate decisions be taken over time to curb investment done in vain and threats to loss to economic efficiency and growth. Fourthly, necessary interventions are put in place i.e. training, funding etc. Fifthly, monitoring and evaluation can be done to influence critical decisions on the continuity of or abandoning of the preference policy.

6.1 CONCLUSION

The research started by pondering about the challenges affecting implementation of the Preferential Procurement Policy and the rationale or justification of having Preferential Procurement Policy. In conclusion it is important to take stock of what has transpired. The initiation of government procurement reforms in the post 1994 was intended to profoundly influence access to the tender opportunities by designated groups that could have changed patterns of ownership and accumulation of wealth. A process that could have significantly influenced social challenges like unemployment, poverty, inequality thus consolidates democracy in the first decade. However, to date implementation of the policy does not provide signs of success. In the frantic search for answers the research uncovered key process, functional and ethical barriers to achievement of Preferential Procurement Policy ideals. It is the view of the researcher that key among the challenges put forward by the sample and the literature was the lack of finance or access to finance by HDIs. The lack of finance or access to it is by far the most outstanding factor affecting HDIs in their quest for effective participation in opportunities presented by the Preferential Procurement Policy.

It should be clear that this is not just a coincidence but it should be understood in the context that in the past blacks were systematically excluded from the long run process of capital accumulation and growth. In addition, black South Africans were also systematically deprived of viable business opportunities in the sense that they suffered drastic curtailment of property ownership rights, which made it impossible for them to acquire assets that could serve as collateral for loan financing. To date a plethora of legislation has been promulgated since 1995 with the intention to facilitate the creation and promotion of black owned and controlled businesses. This included among others: the National Strategy for the Development and Promotion of Small Business, Employment Equity Act of 1998, National Empowerment Fund (NEF) Act of 1998, National Small Business Act of 1996 and the Competition Act of 1998. These were coupled by the creation of several institutions to provide financial and other support to entrepreneurs. These institutions included Khula, Ntsika, NEF, Independent Development Corporation (IDC), Development Bank of South Africa (DBSA), Isibaya fund and Umsombovu Youth fund and Mpumalanga Economic Growth Agency (MEGA) was also established in Mpumalanga Province to cater for businesses within the province. At the core of all these initiatives is the understanding that the devastation and profoundness of the legacy of the past regime is still being felt.

However, often HDIs are compelled to resort to private market financial institutions that are not yet transformed and progressive enough to put their shoulder on the wheel. In addition the much talked about state funding on BEE that is leveraged by the private sector funding is yet to flow down to reach HDIs in the roads construction, where it seems is needed the most. Thus, it should not come as a surprise that finance has become the biggest externality constraining access and success of designated contractors.

Secondly, the research unravelled lack of skills or access to skilful manpower as a barrier to effective participation in the Preferential Procurement Policy. To really succeed in tendering one needs to acquire or have access to a vast variety of skills. But the reality is that the majority of black owned and controlled companies are not able to even sustain their operations beyond their first year of existence due to lack of skills like general business management, project management and contract management. As it has been correctly put by some respondents, to be in the roads construction business one definitely needs to have basic understanding of technical issues or at least have one professional or technical person under his or her employment either permanently or on a temporary basis. In view of the discriminatory past, it is clear that Black South Africans did not have access to tertiary education, let alone technical skills e.g. civil engineering. Thus, lack of skills and or shortage thereof among black contractors tends to aggravate the challenge to a greater extent.

Thirdly, at the level of tender adjudication process experience was uncovered as a serious barrier in terms of being awarded a contract. Government tender adjudication processes entail first and foremost evaluating risk associated with functionality. Key to the evaluation of functionality is checking of tenderer's track record on previous work done or related work. Consequently, those with little or lack of the experience thereof result in being disqualified long before preference points can be awarded to give the necessary advantage. Thus, the growth of a contractor is related to a large extent, to the experience gained in the operation of the business. Accordingly, one of the primary means of accelerating the growth rate is to increase the rate of gaining experience that is currently non existent among HDIs.

Fourthly, besides all the functional and process challenges mentioned above, the research identified corruption as a serious phenomenon. Implementation of the Preferential Procurement Policy is undoubtedly plagued with serious acts of fronting perpetuated by contractors and those in government. This is done at the expense of many designated contractors who genuinely tender and are prepared to offer the right quality and quantity and also stay in the industry to be counted among those who have emerged and are still an integral part of the industry. Nevertheless those who possess power and influence unduly take those opportunities to satisfy their unquenchable thirst for wealth and luxury.

Finally, when everything has been said and done, the research elicited that the solution to all the challenges lies with contractors themselves and government led institutional interventions. It should be remembered that contractors are entrepreneurs that should determine their destiny and work towards its achievement. Nevertheless, it is globally explicitly required that when implementing Preference Procurement with the objective of addressing socio-economic objectives it is indispensable that assistance of whatever form should be provided to those who were excluded or underrepresented.

Subsequently, the research enquired about the rationale or justification of implementation of the Preference Procurement system. In view of the fact that government procurement in the past was systematically used to empower companies owned and controlled by white males. Post 1994 necessitated that all legislation used to perpetuate any form of discrimination be removed from the statute books and be replaced with procurement policies that could support the new government order. Subconsciously, it was clear that South Africa was a society that was characterised by highly entrenched gender inequalities, racial and ethnically defined wealth disparities that could have destabilised the country to the point that democratic rule is undermined and reversed.

It is strongly believed that the research was spot on in terms of the investigation of the essence of existence or implementation of the Preferential Procurement Policy through comparison with similar or other schemes around the globe. It has been the finding of the research that preference schemes policies are not just another government policy. Irrespective of the procurement regime which is either Preference Boost or Quotas Preference Procurement or Affirmative Procurement can assist to empower those currently excluded or are underrepresented in the society. Viewed from the world experience preference schemes have not yet proven that can empower every member of the designated groups. Nevertheless, it can manage to change the balance of forces among the elite groups in existence in a particular society. Thus the choice of either Preference Boost or Quotas cannot conclusively determine empowerment of all or the majority of designated groups. As such progress achieved to date can be deemed to be relative rather than absolute. With various voices either calling to set-aside for HDIs and others believing in the current system, it is the view of the researcher that further investigation should be done to compare among the two approaches as to whether which one can better suit the needs of the HDIs.

6.2 RECOMMENDATIONS

The section summarizes the researcher's findings vis-à-vis recommending effective practice that will necessarily lead to a better implementation of Preferential Procurement System in South Africa. Let it be said that, probably the most realistic conclusion is that the research has opened the lid on a number of reasons why economic empowerment objective of the Preferential Procurement Policy has not been achieved to date. It has also brought into limelight the conflict between what is theoretically desirable in terms of the Preferential Procurement system in South Africa as canvassed by some sample on the one hand and what is practically possible on the other.

There is no doubt that the Preferential Procurement policy has created huge demand for the supply of service and products of targeted contractors. The producers of financial capital and products, like guarantees and construction equipment and machinery, provide access to markets for designated contractors. Given the difficult position in which designated contractors find themselves in terms of capacity, supply side interventions are required to ensure that the demand for a service and products by designated contractors is balanced with the supply or availability of contractors owned and managed by blacks, women, youth, disabled and local communities. This is vital given the intricacy of the road construction industry, the huge capital injections required and industry regulations that do not favour small and micro enterprises as well as emerging contractors. As such, interventions will go a long way in terms of guaranteeing meaningful and effective participation in the market.

6.2.1 PROCUREMENT POLICY REGIME CHANGE

It is conclusive that modest progress in addressing the imbalances of the past has been achieved to date with the current rigid policy option of open competition and preferencing at the award stage. It is evident that the balance between international competitiveness, non discrimination and cost effective procurement systems vis-à-vis promotion and advancing of HDIs was marginally not achieved. Prospects are that if the current status quo remains and no drastic policy changes are effected, little is going to be achieved in terms of changing the patterns of ownership and employment and the creation of wealth for the HDIs. As such, the multi-million Rand annual budget spent on roads infrastructure will be spent in vain in terms of stimulating the economy and even contributing towards the millennium development goals. Thus, it is an opportune time to begin to consider much more flexible policy options and /or a combination of policy options that will begin to recognize other progressive approaches like set-aside, offering back and general assistance as practical, viable and indispensable options to address the persistent national question of skewed wealth possession and employment patterns. A procurement model can be adopted to that effect to realise this objective.

6.2.2 FINANCIAL FACILITATION INTERVENTION

Once the procurement model has been thrashed out and adopted as the operating framework. Flowing from the research, it will be incumbent upon the contracting government to address HDIs financial challenges through innovative mechanisms that include, but are not limited to the following. Setting of a special fund to specifically address funding constraints in the roads construction and related works. Review the role played by the existing state funding institutions in terms of their role in funding roads related works. Create funding of roads construction tenders as a bargaining tool in the multi billion tender for government banking. Encourage and approve contract ceding on payment of labour, hire of plant and equipment and material used during construction. Provide government plant and equipment on hire to designated contractors at reasonable rates and terms. Facilitation of provision of soft loans and facilitation of provision of bridging finance facilities.

6.2.3 SKILLS DEVELOPMENT AS A MEANS OF INTERVENTION

Other types of interventions include those facilitated by institutions. Such interventions are independent of the procurement arrangements and include business and risk management services and a range of supportive institutional arrangements. These arrangements should be put in place by contracting authorities and non governmental organizations (NGOs). Wide ranging interventions are required and include among other things, tender or business advice centres, training in commercial, technical, administrative and managerial areas and capacity building.

Quite often the rhetoric is that most contractors lack the necessary information, particularly, those who are in the deep rural areas. Acknowledgement about lack of communication and dissemination of information to designated contractors is often discussed at all levels of government. It is high time now that words be translated to actions by contracting authorities by ensuring that tender advice centres are established in all corners of the province. Crucial to the creation of the business and tender advice centres is the deployment of ethical, cultured and well trained cadres to communicate opportunities, through workshops, seminars and the use of print media, radio and television.

Critical to the question of information services is to transform the current briefing sessions from being a technical and mere tender compulsory condition to an effective learning and teaching session that is intended to capacitate both the contractors and contracting authorities about information on the strength and weaknesses of each. Approaching briefing sessions in this manner will not only discourage attendance for the sake of signing the attendance register to qualify later for the evaluation, but it will be the first stage to try and forge partnership between contracting authorities, implementing agents (consultants) designated contractors and well established contractors.

6.2.4 CONTRACTOR DEVELOPMENT

As it has been alluded to above, the growth of a contractor is related, to a large extent, to the experience gained in the operation of the business. Accordingly, one of the primary means of accelerating the growth rate is to increase the rate of gaining of experience. Interventions which form an integral part of the procurement arrangements and which are initiated, facilitated and paid for by the contracting authorities provide mechanisms of targeted enterprises to accelerate their development by learning from the experience of other contractors in a structured environment. These are programmes that include, inter alia, management, business development and technical skills transfer, technology transfer, establishment of administrative systems, cost control systems and infrastructure support, development of entity credit resources with suppliers, technical skills, sales and marketing skills, legal awareness and third party management support to emerging / fledgling / embryonic contractors or aspirant entrepreneurs.

6.2.5 ELIMINATION OF CORRUPTION

The government has both a constitutional obligation and a political and moral commitment to ensuring that all South Africans have the means to meet their basic needs. It is important that as endeavours are done to institute any assistance, it will be important that those efforts be complemented by a renewed commitment to government pillars of procurement and supply chain management code of conduct that espouses values that ensures that government conducts its business fairly, impartially and with integrity. Wherein all officials dealing with procurement should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or supply/contractor for themselves, their family or their friends. In addition, the principle of confidentiality, conflict of interest, accountability and openness must be the driving force.

Secondly, a wide range of measures could be implemented to curb influences by the private sector. Although these measures are widely publicised, it is important to emphasise that those in Authority should not pay lip service to them but should apply them without any favour or fear. The following remedies and contractual penalties are available to address fraud. Recovering all costs, losses or damages incurred or suffered. Cancelling the contract/tender and claiming any damages suffered because of having to make less favourable arrangements.

The rejection of payment certificates as being incomplete should the appropriate supporting documentation not provided. Withholding of the issuing of completion certificates until such time that the contractor has satisfactorily demonstrated that social and economic deliverables have been achieved. Imposing a financial penalty more severe than the financial preference calculated at the time when tenders were evaluated or more severe than complying with contractual obligations and restricting the contractor and its shareholders and directors from being awarded further contracts by the contracting authority for a specified period. In addition, the contractor must be blacklisted to do business with any of the government departments and public utilities in the Republic of South Africa.

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